

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

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

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

<sup>1</sup> The last four digits of Debtor Invitae Corporation’s (“**Invitae**,” and with its subsidiary debtors, the “**Debtors**”) tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ proposed claims and noticing agent at [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.



**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO  
DEERFIELD PARTNERS, L.P.'S MOTION TO COMPEL DEPOSITION AND  
PRODUCTION OF DOCUMENTS BY BAKER BROS. ADVISORS LP**

The Official Committee of Unsecured Creditors (the “**Committee**”) appointed in these chapter 11 cases (the “**Chapter 11 Cases**”), by and through its undersigned counsel, hereby submit this objection (the “**Objection**”) to *Deerfield Partners, L.P.’s Motion to Compel Deposition and Production of Documents by Baker Bros. Advisors LP* [Docket No. 646] (the “**Motion**”), supported by the *Declaration of Ashley Chase in Support of the Official Committee of Unsecured Creditors’ Objection to Deerfield Partners L.P.’s Motion to Compel Deposition and Production of Documents by Baker Bros. Advisors LP* (the “**Chase Declaration**” or “**Chase Decl.**”) filed contemporaneously herewith. In support of its Objection, the Committee respectfully states as follows:<sup>2</sup>

**PRELIMINARY STATEMENT**

1. At the June 11, 2024 hearing, the Court made clear that it did not intend to hear expert testimony or to “delve that far” into the merits of the underlying claims when deciding certain “factual predicates” raised in the Committee’s Standing Motion. June 11, 2024, Hr’g. Tr. 30:4-38:2. Yet, Deerfield—whose attorney’s fees are being reimbursed by the Debtors’ estate—insists on wasting estate resources seeking discovery from prepetition unsecured creditors with respect to, among other things, its parochial views on the Debtors’ solvency and restructuring proposals made to the Debtors prior to the Petition Date. For a one-day hearing where the Court

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion or *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* [Docket No. 526] (the “**Standing Motion**”) and Exhibit A attached thereto (the “**Proposed Complaint**”).

has already said it will not hear expert evidence on the Debtors' solvency (or any other issue), a non-party, creditor's lay views on the Debtors' solvency serves no probative purpose.

2. Notwithstanding, Deerfield now seeks emergency relief from this Court compelling Baker Bros. Advisors LP ('**Baker Bros**') to produce an array of valuation and solvency documents and a witness for deposition.<sup>3</sup> All of that will come at the unsecured creditors' expense, as the Debtors admit that unsecured creditors are the "fulcrum"<sup>4</sup> stakeholders and these cases are "super cuspy."<sup>5</sup> In addition to the cost of litigating this Motion, compelling the requested discovery will lead to multiple estate-funded attorneys reviewing documents and preparing for and attending a deposition that is unnecessary for purposes of the Standing Motion. To be clear, neither the Committee nor the Debtors have sought the requested third party discovery at this procedural posture.

3. Even if this Court were inclined to allow Deerfield to obtain documents and depose a non-party witness, Deerfield would be precluded from introducing such testimony at the July 9, 2024 hearing on the Standing Motion. According to the governing schedule, the parties were required to disclose potential affirmative witnesses on June 14, 2024. Deerfield did not disclose any third party witness. Because Baker Bros is located within the subpoena power of this Court and, accordingly, is not "unavailable" for live testimony, any deposition would be inadmissible hearsay.

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<sup>3</sup> Deerfield's "emergency" is of its own making. Deerfield waited ten days after the Committee filed its Standing Motion to serve third party discovery. Notably, the Baker Bros subpoena is not the only outstanding third-party subpoena belatedly issued by Deerfield. Deerfield has served another subpoena on a holder of the 2028 Unsecured Notes and, pending that target's response, may again insist on coming back to the Court with another alleged emergency on the unsecured creditors' dime.

<sup>4</sup> May 7, 2024, Hr'g. Tr. at 48:17-21.

<sup>5</sup> June 11, 2024, Hr'g. Tr. at 28:23-29:1.

4. In sum, there is no probative value from the discovery Deerfield seeks to compel from Baker Bros—only significant costs to the estates. This Court should deny the Motion and preclude Deerfield from seeking any third party discovery unless and until this Court grants the Standing Motion.

### ARGUMENT

5. A hearing on a standing motion is not the proper forum for the Court to host a mini-trial on the merits of the underlying proposed claims. *See* June 11, 2024, Hr’g. Tr. at 30:4-38:2 (stating that this Court has “no intention of having expert testimony at a standing motion. I think that undercuts the nature of the relief sought. The Court is not to delve that far into the merit of the underlying litigation.”); *id.* at 37:25-38:2 (“The standing issue does involve certain factual predicates, and we’ll focus on those that are needed for the standing issue.”); *see also Adelpia Communs. Corp. v. Bank of Am. (In re Adelpia Communs. Corp.)*, 330 B.R. 364, 375-76 (Bankr. S.D.N.Y. 2005) (“Several of the Defendants contend that the Court must conduct a de facto mini-trial on the merits to determine whether the Creditors’ Committee has a probability of success before granting the Creditors’ Committee standing. But the Court cannot agree. . . a mini-trial is not required[.]”); *G-I Holdings, Inc. v. Those Parties Listed On Exhibit A (In re G-I Holdings, Inc.)*, 313 B.R. 612, 629 (Bankr. D.N.J. 2004) (explaining that courts “need not undertake a ‘mini-trial’ to determine the likelihood of success” of claims proposed in a standing motion).

6. Deerfield is in possession of all productions from the Debtors, which include the prepetition proposals made by Baker Bros referenced in the Committee’s draft complaint and Standing Motion. While Baker Bros may have a set of potentially relevant, non-duplicative documents that could shed light on the underlying merits of any claims the Committee decides to pursue if it is granted standing to do so, those facts are not relevant with respect to whether the

claims are colorable. Rather, the upcoming hearing is only to determine whether the Committee has demonstrated that the proposed causes of action meet the applicable Federal Rule of Civil Procedure 12 pleading standards and thus should be granted standing. *See* Standing Motion at ¶ 74.

7. The Debtors and Deerfield have asserted that more evidence is required to determine whether the Debtors have unjustifiably refused to bring the claims. *See, e.g.* Standing Mot. ¶ 11; June 11 Hr’g. Tr. at 27:6-15 (“We all know the law in this area, right? That unjustifiable refusal typically takes in some form of cost-benefit analysis to evaluate what is before the Court with regard to a plan and settlement as opposed to what the costs and expense of proceeding with the case.”). However, as the Court made clear, that does not require a mini-trial or expert testimony as to solvency. If expert testimony is not needed, a non-party, creditor’s lay opinion is not relevant.

8. Deerfield’s position that this discovery is necessary for the Standing Motion is also contrary to its prior statements concerning the need to preserve estate resources. For instance, two weeks ago, Deerfield’s counsel stated:

This case is a liquidating case to distribute assets. With every moment of delay, there is less value available for distribution to creditors. With every dollar paid to advisors, there is a less dollar available for creditors. And just as it should be the goal for the Committee, our goal is to maximize the value available for creditors.

May 30, 2024, Hr’g. Tr. 14:24-15:5. Deerfield, whose professional fees are paid by the estate (and have been for years prior to the Petition Date), is the only party pushing for third party discovery at this time.<sup>6</sup> The Debtors, who did not serve any third party discovery in connection with the

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<sup>6</sup> The Committee reserves the right to challenge any fees Deerfield charges the estate in connection with its pursuit of discovery for the Standing Motion. *See Final Order Pursuant to Sections 105, 361, 362, 363, 503, and 507 of the Bankruptcy Code and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure: (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; and (IV) Granting Related Relief*, ¶¶ 4(e), 25 [Docket No. 188] (requiring professional fees to be reasonable and preserving the ability of the Committee to challenge such fees).

Standing Motion, seemingly agree with the Committee that the requested discovery is not necessary to determine whether the Committee should be granted standing to pursue certain claims. Any potential benefit of this discovery is far outweighed by the significant administrative fees associated with negotiating, reviewing, and taking the requested discovery. *See* Fed. R. Civ. P. 26(b)(1) (including “whether the burden or expense of the proposed discovery outweighs its likely benefit” as one factor for delineating the proper scope of discovery).

9. Even if the Court were inclined to allow Deerfield to proceed with its sideshow, the deadline to disclose potential witnesses in connection with the Standing Motion hearing has passed and Deerfield did not identify a witness from Baker Bros in support of its opposition.<sup>7</sup> Given that Baker Bros is located in Manhattan, it also does not qualify as an “unavailable” witness such that testimony by any means other than live testimony would be permitted. There is no legitimate basis for Deerfield to take a third party deposition when that deposition cannot be used at the hearing on the Standing Motion.

10. Finally, Deerfield’s current position with respect to internal solvency analyses is a complete about-face from the position it had previously taken with the Committee. On March 14, 2024, the Committee served a subpoena on Deerfield pursuant to Federal Rule of Bankruptcy Procedure 2004 seeking responses to targeted document requests, including requests for “[a]ll solvency analyses concerning the Debtors” and “[a]ll analyses, including any fairness opinions, regarding the 2023 Exchange Transactions.” *See* Chase Decl. Ex. 1, at 11 (Req. for Produc. Nos. 13, 14). On March 22, 2024, Deerfield served responses and objections to the Committee’s Rule 2004 subpoena, refusing to produce “internal communications [] (between or among Deerfield and

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<sup>7</sup> The Committee takes issue with Deerfield’s assertion that it will put on any witnesses in opposition to the Standing Motion and intends to raise this issue with the Court in short order.

its legal or financial professionals or advisors) or internal documents reflecting Deerfield’s internal deliberations, assessments, analyses, or opinions analyzing Deerfield’s investments or the Debtors’ operations, assets, or financial conditions, including proprietary valuations and models, and references thereto.” *Id.* Ex. 2, at ¶ 13 and p. 21-22 (Deerfield’s Resp. to Req. for Produc. No. 13) (alleging such documents were not discoverable under Rule 2004 and citing cases that either granted the Rule 2004 discovery or were wholly irrelevant).

11. While Deerfield eventually acquiesced to searching for and reviewing documents responsive to the Committee’s reasonable requests, Deerfield has continued to withhold at least 60 documents regarding internal analyses on the basis of alleged attorney-client privilege. On May 20, 2024, the Committee raised concerns about Deerfield’s privilege determinations. *Id.* Ex. 3, at 3-4. Almost two weeks later, Deerfield responded, advising the Committee that it was “withholding documents which were prepared by Deerfield’s financial advisor at the instruction of counsel in order to facilitate the provision of legal advice and for which privilege was not otherwise waived.” *Id.* at 1.

12. Allowing Deerfield to take up this fight for non-probative discovery from a third party is nothing other than a waste of time and resources.

### **CONCLUSION**

13. For the foregoing reasons, the Committee respectfully requests that the Court deny the Motion and grant such other and further relief as the Court deems just and proper.

### **NOTICE**

14. In accordance with the Case Management Procedures, notice of this Objection will be provided to: (a) the Debtors; (b) counsel to the Debtors, Attn: Kirkland & Ellis LLP, and Cole Schotz P.C.; (c) the office of the United States Trustee for the District of New Jersey; (d) counsel

to the Required Holders; (e) the indenture trustee to the 2028 Convertible Notes and the 2024 Convertible Notes, and counsel thereto; (f) agent to the 2028 Senior Secured Notes, and counsel thereto; (g) the U.S. Securities and Exchange Commission; (h) the United States Attorney's Office for the District of New Jersey; (i) the attorneys general in the states where the Debtors conduct their business operations; (j) the Internal Revenue Service; and (k) any party that has requested notice pursuant to Federal Rule of Bankruptcy Procedure 2002. The Committee submits that, in view of the facts and circumstances, such notice is sufficient, and no other or further notice need be provided.

*[Remainder of page intentionally left blank]*



Dated: June 18, 2024

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

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

In re:

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

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

<sup>1</sup> The last four digits of Debtor Invitae Corporation's ("**Invitae**," and with its subsidiary debtors, the "**Debtors**") tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' 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.

**DECLARATION OF ASHLEY CHASE IN SUPPORT OF THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO  
DEERFIELD PARTNERS, L.P.'S MOTION TO COMPEL DEPOSITION AND  
PRODUCTION OF DOCUMENTS BY BAKER BROS. ADVISORS LP**

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I, Ashley Chase, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an associate at White & Case LLP and counsel for the Official Committee of Unsecured Creditors (the "**Committee**") in the above captioned cases. I offer this declaration in support of *The Official Committee of Unsecured Creditors' Objection to Deerfield Partners, L.P.'s Motion to Compel Deposition and Production of Documents by Baker Bros. Advisors LP* (the "**Objection**").<sup>2</sup> This declaration is based on my personal knowledge and upon my review of the records of this and related matters.

2. Attached as Exhibit 1 is a true and correct copy of the *Subpoena for Rule 2004 Examination* served on Deerfield Partners, L.P. by the Committee dated March 14, 2024.

3. Attached as Exhibit 2 is a true and correct copy of *Deerfield Partners, L.P.'s Responses and Objections to the Official Committee of Unsecured Creditors' Document Requests under Rule 2004 of the Federal Rules of Bankruptcy Procedure* dated March 22, 2024.

4. Attached as Exhibit 3 is a true and correct copy of email correspondence dated May 31, 2024, between the Committee's counsel and Deerfield's counsel concerning deficiencies in Deerfield's privilege logs.

*[Remainder of page intentionally left blank]*

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<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Objection filed contemporaneously herewith.

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

Executed on June 18, 2024  
New York, New York

By /s/ Ashley Chase  
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*Co-Counsel to the Official Committee of  
Unsecured Creditors*

**EXHIBIT 1**

UNITED STATES BANKRUPTCY COURT

District of New Jersey

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

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

Chapter 11

SUBPOENA FOR RULE 2004 EXAMINATION

To: Deerfield Partners, L.P.  
(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 an examination under Rule 2004, Federal Rules of Bankruptcy Procedure. A copy of the court order authorizing the examination is attached.

PLACE sam.hershey@whitecase.com White & Case LLP 1221 Avenue of the Americas, New York, NY 10020	DATE AND TIME March 28, 2024, at 5:00 p.m. E.T.
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The examination will be recorded by this method:

Production: You, or your representatives, must also bring with you to the examination the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See attached Schedule A.

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: 3/14/24

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Samuel P. Hershey

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Official Committee of Unsecured Creditors, who issues or requests this subpoena, are:

Samuel P. Hershey, sam.hershey@whitecase.com, (212) 819-8200

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).

<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' proposed claims and noticing agent at www.kccllc.net/invitae. The Debtors' service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.

**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 TO SUBPOENA TO DEERFIELD PARTNERS, L.P.**

**DEFINITIONS**

For the purposes of these Document Requests, the following Definitions shall apply:

1. “August 2023 Exchange” refers to the transaction through which Invitae exchanged \$17.2 million aggregate principal amount of certain outstanding 2024 Convertible Senior Unsecured Notes for \$0.1 million aggregate principal amount of Series A Notes and 15 million shares of common stock on or around August 22, 2023.
2. “Bankruptcy Code” means title 11 of the United States Code, as amended.
3. “Bankruptcy Court” means the United States Bankruptcy Court for the District of New Jersey.
4. “Chapter 11 Cases” means the voluntary chapter 11 cases commenced on the Petition Date by the Debtors in the Bankruptcy Court.
5. “Communication” means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including without limitation, correspondence, documents, conversations, dialogues, discussions, e-mail, interviews, consultations, agreements, and other understandings.
6. “Concerning,” “regarding,” “in connection with,” “relating to,” and/or “referring to” shall be construed to mean, without limitation, relating to, referring to, describing, evidencing, constituting, discussing, supporting, pertaining to, containing, analyzing, evaluating, studying, recording, showing, memorializing, reporting on, commenting on, mentioning, reviewed in conjunction with, setting forth, contradicting, refuting, considering, or recommending, in whole or in part.

7. “Consenting Senior Secured Noteholders” shall have the meaning ascribed to it in the First Day Declaration.

8. “Debtors” means, collectively, Invitae Corporation and its affiliated debtors, which filed voluntary chapter 11 petitions under the Bankruptcy Code commencing the Chapter 11 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.

9. “Deerfield” means Deerfield Partners, L.P. and any of their respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives, including but not limited to Deerfield Management Company, L.P., Deerfield Mgmt, L.P., and James E. Flynn, Managing Partner of Deerfield.

10. “Document” means any printed, written, typed, recorded, transcribed, taped, photographic, or graphic mater, in draft or final form, including, but not limited to: any letter, correspondence, or Communication of any sort; photograph; sound recording; video recording; note, notebook, diary, calendar, minutes, memorandum, contract, agreement, or any amendment thereto; telex, telegram, or cable; summary, report or record of telephone conversation, voice mail or voice mail back-up, text message, instant message, Bloomberg message, WhatsApp message, personal conversation, discussion, interview, meeting, conference, investigation, negotiation, act, or activity; projection, work paper, or draft; computer or computer network output or input, portable storage devices, e-mail, magnetic and/or optical medias, archived or back up data on any of these medias on the cloud or otherwise, and documents that have been deleted but are recoverable from any of these medias; opinion or report of consultant; request, order, invoice, or

bill of lading; analysis, diagram, map, index, sketch, drawing, plan, chart, manual, brochure, pamphlet, advertisement, circular, newspaper or magazine clipping, or press release; receipt, journal, ledger, schedule, bill, or voucher; financial statement, statement of account, bank statement, checkbook, stubs, register, canceled check, deposit slip, charge slip, tax return (income or other), requisition, file, study, graph, or tabulation, and any and all other writings and recordings of whatever nature, and any other data compilation from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonable usable form; including, without limitation, all things meeting the definition of “documents” or “electronically stored information” set forth in Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, or meeting the definition of “writing” or “recording” set forth in Rule 1001 of the Federal Rules of Evidence. Any document with any marks such as initials, comments, or notations of any kind is not deemed to be identical to one without such marks and is a separate document within the meaning of this term.

11. “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* [D.I. 21].

12. “Including” means “including, without limitation” or “including, but not limited to.”

13. “Invitae” refers to Invitae Corporation and its Debtor and non-Debtor affiliates.

14. “March 2023 Exchange” refers to the transaction through which Invitae (a) exchanged \$305.7 million aggregate principal amount of 2024 Convertible Senior Unsecured Notes for \$275.3 million aggregate principal amount of new secured Series A Notes due in 2028

and 14,219,859 shares of Invitae’s common stock and (b) issued and sold new secured Series B Notes on or around March 7, 2023.

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

16. “Relate” and its variants encompass the terms “refer,” “reflect,” “constitute,” “evidence,” “in connection with,” and “concern” and shall be construed to bring within the scope of the Document Request, as applicable, all documents and information that comprise, evidence, constitute, describe, explicitly or implicitly refer to, were reviewed in conjunction with, or were generated as a result of the subject matter of the Document Request, as applicable, including, but not limited to, all documents and information that reflect, record, memorialize, discuss, evaluate, consider, review, report, or otherwise evidence the existence of the subject matter of the Document Request, as applicable.

17. “Series A Notes” shall have the meaning ascribed to it in the First Day Declaration.

18. “Series B Notes” shall have the meaning ascribed to it in the First Day Declaration.

19. “Transaction Support Agreement” or “TSA” refers to the transaction support agreement attached as Exhibit B to the First Day Declaration.

20. “You” and “Your” shall mean and refer to Deerfield and any of its respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of its respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

21. “2020 Term Loan” refers to the credit agreement Invitae and Perceptive Credit Holdings III, LP executed on or around October 2, 2020, as may have been amended from time to time.

22. “2023 Exchange Transactions” means the March 2023 Exchange and the August 2023 Exchange.

23. “2024 Convertible Senior Unsecured Notes” shall have the meaning ascribed to it in the First Day Declaration.

24. “2028 Convertible Senior Secured Notes” shall have the meaning ascribed to it in the First Day Declaration.

25. “2028 Convertible Senior Unsecured Notes” shall have the meaning ascribed to it in the First Day Declaration.

### **INSTRUCTIONS**

The preceding Definitions apply to each of these Instructions and for purposes of these Document Requests, the following Instructions shall be followed:

1. In accordance with Rule 2004 of the Federal Rules of Bankruptcy Procedure, District of New Jersey Local Bankruptcy Rule 2004-1, Rule 34(a) of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, the Document Requests shall be deemed to include any document now or at any time in Your possession, custody, or control, including, but not limited to, documents in the possession, custody, or control of any Your current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives, or other person acting or purporting to act on its or their behalf. A document is deemed to be in Your possession, custody, or control if it is in Your physical custody, or if it is in the physical custody of any other person or entity and You: (i) own such document in whole or in part; (ii) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (iii) have an understanding, express or implied, that You may use, inspect, examine, or copy such document

when You sought to do so, or (iv) as a practical matter, have been able to use, inspect, examine or copy such document on any terms. If any requested document was, but no longer is, in Your control, state the disposition of each such document.

2. As the term “possession” pertains to e-mails, the term includes, but is not limited to, e-mails contained in Your electronic e-mail directories containing (i) “deleted” e-mails which have not been permanently deleted, including all subdirectories irrespective of the title of such subdirectories; (ii) “sent” e-mails, including all subdirectories irrespective of the title of such subdirectories; and (iii) “received” e-mails, including all subdirectories irrespective of the title of such subdirectories.

3. The word “all” shall also include “each of,” and vice versa. The word “any” shall be construed to mean “any and all” where the effect of such construction is to broaden the scope of the Document Request.

4. In responding to each Document Request, You are to review and search all relevant files of appropriate entities and persons.

5. All Document Requests shall be deemed to include requests for any and all transmittal sheets, cover letters, enclosures, or any other annexes or attachments to the documents.

6. You are to produce the original and all non-identical copies, including all drafts of each document requested. If You are not able to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts. Any document that cannot be produced in full shall be produced to the fullest extent possible.

7. In accordance with Rule 34(b) of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, documents shall be produced as they are kept in the ordinary course of business or shall be

organized and labeled to correspond with the categories in each Document Request. The name of the file from which it was produced, the identity of the person from whose file it was produced, and the identity of the present custodian of that file each shall be set forth. All documents requested herein shall be produced electronically as tagged image file format (“TIFF”) or portable document format (“PDF”) files, except that all spreadsheets and accounting and financial data, including those created with Excel software, shall be produced in a fully functional native form (i.e., in a linked format).

8. If any responsive document 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, including:

a. A description of the document, including the date, a summary of its contents and the identity of its author and the persons(s) to whom it was sent or shown:

b. The last known custodian;

c. Whether the document is missing or lost or was destroyed, discarded, or otherwise disposed;

d. The date of loss, destruction, discarding, or other disposition;

e. The reason(s) for destruction, discarding, or other disposition;

f. The person(s) authorizing or carrying out such destruction, discarding, or other disposition; and

g. The efforts made to locate lost or misplaced documents.

9. In the event You seek to withhold any document, thing, or information on the basis that it is properly entitled to some privilege or other limitation of discovery, You shall produce as much of the document concerned as to which no claim of privilege or other limitation of discovery

is made. With respect to documents or portions of documents for which a claim of privilege or other limitation of discovery is made, You are instructed to provide a numeral list of the document(s) and thing(s) for which a privilege or limitation is claimed that (1) identifies the nature of the privilege or limitation (including work product) asserted and, if the privilege or limitation is governed by state law, indicate the state of the privilege rule or other limitation invoked; and (2) provides the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged or otherwise protected information: (i) the type of document; (ii) the name and capacity of each author and recipient of the document; (iii) the general subject matter of the document in a manner sufficient to support the privilege or other protection claimed; (iv) the date of the document; (v) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where appropriate, the author(s) of the document, the addressee(s) of the document, and any other recipient(s) shown in the document, and, where not apparent, the relationship of the author(s), addressee(s), and recipient(s) to each other; and (vi) the same information referenced in (i)-(v) above for each enclosure or attachment to each listed document if the enclosure or attachment is also withheld from production. Notwithstanding the assertion of any privilege or other protection, any requested document that contains responsive, non-privileged or protected information should be produced, but that portion of the document for which the 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.

10. Each Definition, Instruction, and Document Request herein shall be construed independently and not with reference to any other Definition, Instruction, or Document Request, for the purposes of limitation.



11. If any meaning of any term in any Document Request herein is unclear to You, without waiver of the right to seek a full and complete response to the 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.

12. In accordance with Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, objections to any part of these Document Requests shall be stated in full and with specificity. In the event You interpose an objection to a Document Request, You must produce the documents to which objection is not made or provide testimony or information not objected to.

13. Each Document Request shall be deemed continuing. If, after responding, You obtain or become aware of any additional documents or information responsive to these Document Requests, production of such additional documents or information shall be made forthwith.

14. “Including” shall not be construed to limit the scope of any Document Request.

15. Whenever necessary to bring within the scope of a Document Request documents or information that might otherwise be construed to be outside its scope:

- a. The use of a verb in any tense shall be construed as the use of that verb in all other tenses;
- b. The use of a word in its singular form shall be deemed to include within its use the plural form, and vice versa;
- c. The use of the masculine form of a noun or pronoun shall include the feminine form, and vice versa; and
- d. The use of the conjunctive or disjunctive, respectively, shall be construed as necessary to be inclusive rather than exclusive.

16. 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.

17. Unless otherwise stated, each Request calls for production of documents from January 1, 2021 through the present.

### **DOCUMENT REQUESTS**

1. All Documents and Communications concerning any current or historical debt or equity position held by Deerfield in the Debtors.

2. All agreements by and between You and Invitae or an of its Debtor or non-Debtor affiliates.

3. All Communications regarding the Debtors' payment of the balance on the 2020 Term Loan in February 2023.

4. All Documents and Communications concerning any contemplated or consummated transaction or strategic alternative involving Deerfield and the Debtors.

5. All Documents and Communications concerning the March 2023 Exchange, including but not limited to, the negotiation of the March 2023 Exchange and the value provided to the Debtors and/or Deerfield.

6. All Documents and Communications concerning the August 2023 Exchange, including but not limited to, the negotiation of the August 2023 Exchange and the value provided to the Debtors and/or Deerfield.

7. All Documents and Communications concerning the 2024 Convertible Senior Unsecured Notes, including but not limited to the value of the 2024 Convertible Senior Unsecured Notes.

8. All Documents and Communications concerning the 2028 Convertible Senior Unsecured Notes, including but not limited to the value of the 2028 Convertible Senior Unsecured Notes.

9. All Documents and Communications concerning the 2028 Convertible Senior Secured Notes, including but not limited to the value of the 2028 Convertible Senior Secured Notes.

10. All Documents and Communications concerning the Consenting Senior Secured Noteholders' refusal to waive the \$150 million minimum liquidity covenant, as described in paragraph 10 of the First Day Declaration.

11. All Documents and Communications concerning the filing of these Chapter 11 Cases.

12. All Documents and Communications concerning the Transaction Support Agreement, including but not limited to the negotiation of the Transaction Support Agreement and any diligence related thereto.

13. All solvency analyses concerning the Debtors.

14. All analyses, including any fairness opinions, regarding the 2023 Exchange Transactions.

15. All engagement letters or other retention agreements between Deerfield and Perella.

16. Documents sufficient to show the names and positions of all individuals who provided advice in connection with the 2023 Exchange Transactions.

**EXHIBIT 2**

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Benjamin Beller (admitted *pro hac vice*)  
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*Counsel to Deerfield Partners, L.P.*

*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 RESPONSES AND OBJECTIONS TO THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS’ DOCUMENT REQUESTS  
UNDER RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Pursuant to Rules 26, 34, and 45 of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Rules 2004, 7026, and 7034 of the Federal Rules of Bankruptcy Procedure, Deerfield Partners, L.P. (“Deerfield”), by and through its undersigned attorneys, hereby provides the following Responses and Objections to the Official Committee of Unsecured Creditors’ (the “Committee”) Document Requests under Rule 2004 of the Federal Rules of Bankruptcy Procedure, dated March 14, 2024 (each a “Request,” and collectively, the “Requests”).

<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.kccelle.net/invitae](http://www.kccelle.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 otherwise defined herein shall have the meanings 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* (ECF No. 21).

**GENERAL OBJECTIONS AND RESERVATION OF RIGHTS**

1. The following general objections and reservation of rights (collectively, “General Objections and Reservation”) form a part of, and are hereby incorporated into, each and every specific objection to the Requests set forth below. The General Objections and Reservation are grouped collectively herein to avoid unnecessarily duplicative and repetitious responses to each Request. Failure to expressly repeat any General Objection and Reservation in any given response shall not be deemed a waiver of such General Objection and Reservation. Specification of one or more objections, including any General Objection and Reservation, in any given response does not preclude the applicability of any other objection or General Objection and Reservation to such response.

2. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they seek to impose burdens or obligations on Deerfield that are inconsistent with, or beyond those contemplated by, the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the Local Rules of the United States Bankruptcy Court for the District of New Jersey, the Court’s orders, or any other applicable rule or law (together, the “Applicable Rules”). Deerfield will construe the Requests, and each Definition and Instruction, in accordance with its obligations under the Applicable Rules.

3. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they seek information that is protected from disclosure by any applicable privilege, immunity, or protection, including the attorney-client privilege, work-product doctrine, joint-defense privilege, or common-interest privilege. Any inadvertent disclosure of information that is properly the subject of a claim of privilege is not, and shall not be deemed, a waiver, in whole or in part, of any privilege or protection.

4. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they are vague, ambiguous, or not described with reasonable particularity.

5. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they purport to require Deerfield to draw legal or factual conclusions, or are predicated on legal or factual conclusions or arguments. No response to any specific Request is, or shall be construed as, a legal or factual conclusion concerning any of the terms used or assumptions predicated in the Request.

6. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they are argumentative or lack foundation, assume the existence of facts that do not exist or the occurrence of events that did not take place, or incorporate allegations and assertions that are disputed or erroneous. In objecting and responding to the Requests, Deerfield does not admit the correctness of any such assertions.

7. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they seek documents that are not proportional to the needs of the case, not relevant to the proceedings, unreasonably duplicative or cumulative, or unduly burdensome to identify, review, or produce.

8. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they seek documents outside of Deerfield's possession, custody, or control.

9. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they call for examination of electronically stored information from sources that are not reasonably accessible because of undue burden or cost, or require more than a reasonable search under the circumstances.

10. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they seek documents or information that is already in the possession or custody of the Committee, that is publicly available, or that is available to the Committee through another source that is more convenient, less burdensome, or less expensive than from Deerfield, including, but not limited to, information that is in the possession of the Debtors.

11. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they call for the production of documents or data the disclosure of which would violate any law, rule, or regulation, including any foreign privacy or data transfer rules.

12. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they seek confidential, sensitive, and/or proprietary business or financial information.

13. Deerfield objects to all Instructions, Definitions, and Requests to the extent that they seek internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents analyzing Deerfield's investments or the Debtors' operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. It is improper for the Committee to seek discovery of Deerfield's internal communications and documents reflecting its internal deliberations, assessments, analyses, or opinions as to the value of its investments or of the debtor or its assets. *See In re Transmar Commodity Grp. Ltd.*, 2018 WL 4006324, at \*4-9 (Bankr. S.D.N.Y. Aug. 17, 2018) (denying the "Trustee's [Rule 2004] request for production of the . . . Internal Communications" of one of the debtors' "largest creditors"); *In re Defoor Ctr., LLC*, 634 B.R. 630, 633 (Bankr. M.D. Fla. 2021) (denying a debtor's Rule 2004 request for a lender to produce "all internal documents on how [the lender] processes, approves, and funds" its loans); *In re Underwood*, 457 B.R. 635, 643 (Bankr. S.D. Ohio 2011) (cautioning that a trustee "could use 2004 examinations to unfairly



intrude into the private business affairs of creditors and chill their participation in the bankruptcy process”); *In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 393 (Bankr. W.D. Pa. 2008) (Rule 2004 examinations are subject to heightened scrutiny unless they are “tightly-focused on the creditor’s relationship with a particular debtor” and “represent a low level of intrusion into the creditor’s business affairs and a low risk of abuse”); *Bank of Am., N.A. v. Landis*, 2011 WL 6104495, at \*6 (D. Nev. Dec. 7, 2011) (same); *In re Moore Trucking, Inc.*, 2020 WL 6948987, at \*7 (Bankr. S.D. W. Va. July 14, 2020) (same); *In re Kleynerman*, 617 B.R. 122, 128 (Bankr. E.D. Wis. 2020) (same).<sup>2</sup>

14. Deerfield’s investigation and factual inquiry are ongoing in this case. Deerfield’s Responses and Objections are based solely on facts reasonably known to Deerfield at the time of responding to the Requests. Deerfield reserves the right, but does not assume the obligation, to amend, supplement, or otherwise modify the content of these Responses and Objections at any time.

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<sup>2</sup> See also Hr’g Tr. 17:2-11, 49:8-19, *In re Ruby Pipeline, L.L.C.*, No. 22-10278 (CTG) ECF No. 274 (Bankr. D. Del. June 10, 2022) (lenders’ internal communications regarding a debtor do not need to be produced in discovery); Hr’g Tr. 18:13-19:6, *In re Quorum Health Corp.*, No. 20-10766 (KBO) (Bankr. D. Del. May 11, 2020) (discovery into creditors’ opinion of a debtor’s value irrelevant); *In re Energy Future Holdings Corp.*, 513 B.R. 651, 662 (Bankr. D. Del. 2014) (discovery into creditor’s internal valuation uncommon outside avoidable preference actions); Hr’g Tr. 44:22-47:25, *In re Hercules Offshore, Inc.*, No. 16-11385 (KJC) (Bankr. D. Del. July 18, 2016) (denying request for document production of “internal deliberations” and “internal valuations” of creditors); Hr’g Tr. 19:13-21:2, *In re Dolan Co.*, No. 14-10614 (BLS) (D. Del. May 2, 2014), ECF No. 284 (creditors’ internal assessments and deliberations “not an appropriate area of inquiry” when debtor motivations are at issue); Hr’g Tr. 60:4-62:19, *In re Genco Shipping & Trading*, No. 14-11108 (Bankr. S.D.N.Y. June 3, 2014) (denying as irrelevant request for discovery into internal valuations by parties to restructuring support agreement); Hr’g Tr. 21:15-25, *In re Washington Prime Grp.*, No. 21-31948 (Bankr. S.D. Tex. Aug. 5, 2021), ECF No. 774 (denying discovery into plan sponsor’s internal valuations and other communications); Hr’g Tr. 20:21-21:1, *In re Speedcast Int’l Ltd.*, No. 20-32243-11 (Bankr. S.D. Tex. Dec. 9, 2020), ECF No. 1058 (discovery into plan sponsor’s internal communications not relevant when movant would receive external communications on topic and had failed to show “something untoward going on internally”); Hr’g Tr. 8:23-9:3, *In re Legacy Reserves, Inc.*, No. 19-33395 (Bankr. S.D. Tex. Oct. 8, 2019), ECF No. 596 (granting protective order from discovery into internal analyses of parties to restructuring support agreement as irrelevant).

15. Any failure of Deerfield to make a specific objection to any specific Instruction, Definition, or Request is not, and shall not be construed as, a waiver of Deerfield's right to object on additional grounds. Deerfield reserves the right to use or rely on, at any time, any subsequently discovered information or information omitted from these Responses and Objections as a result of mistake, error, oversight, or inadvertence.

16. Deerfield reserves all objections that may be available to it at any hearing or trial or on any motion to the use or admissibility of any material produced. The production of any material does not constitute an admission by Deerfield that such material or the information contained therein is relevant or admissible as evidence. No incidental or implied admissions are intended by the objections herein, nor shall the fact that Deerfield has objected or responded to a particular Request be construed as an admission or indication that Deerfield possesses documents responsive to such Request or any other Request, or that such objections or responses constitute admissible evidence.

17. Deerfield's production of any documents or information in response to the Requests shall be kept confidential and subject to the terms of any protective order entered by the Court.

### **OBJECTIONS TO DEFINITIONS**

18. Deerfield's failure to expressly repeat its objections to the Definitions in each specific response shall not be deemed a waiver thereof. Moreover, to the extent Deerfield agrees to produce any documents or communications in response to any of the Requests to which Deerfield objects, such agreement shall not constitute a waiver of any objection to the Definitions. Without waiving or limiting in any manner any of the foregoing General Objections and Reservation, but rather incorporating them to the extent applicable into each of Deerfield objections to the Definitions below:

19. Deerfield objects to each of the Definitions, and to any Definition, Instruction, or Request that incorporates the Definitions, to the extent that they purport to impose on Deerfield any burden or obligation that is broader than, inconsistent with, or exceeds the requirements of the Applicable Rules.

20. Deerfield objects to Definition No. 5 (“Communication”) as vague and ambiguous and to the extent inconsistent with the Applicable Rules.

21. Deerfield objects to Definition No. 6 (“Concerning,” “regarding,” “in connection with,” “relating to,” and “referring to”) as vague and ambiguous and to the extent inconsistent with the Applicable Rules.

22. Deerfield objects to Definition No. 9 (“Deerfield”) as vague and ambiguous, as unduly burdensome and disproportionate to the needs of this case to the extent it purports to require the collection and production of documents from any person or entity other than Deerfield Partners L.P., and to the extent inconsistent with the Applicable Rules.

23. Deerfield objects to Definition No. 10 (“Document”) as vague and ambiguous and to the extent inconsistent with the Applicable Rules.

24. Deerfield objects to Definition No. 12 (“Including”) as vague and ambiguous and to the extent inconsistent with the Applicable Rules.

25. Deerfield objects to Definition No. 16 (“Relate” and “its variants”) as vague and ambiguous and to the extent inconsistent with the Applicable Rules.

26. Deerfield objects to Definition No. 20 (“You” and “Your”) as vague and ambiguous, as unduly burdensome and disproportionate to the needs of this case to the extent it purports to require the collection and production of documents from any person or entity other than Deerfield Partners L.P., and to the extent inconsistent with the Applicable Rules.

### **OBJECTIONS TO INSTRUCTIONS**

27. Deerfield's failure to expressly repeat its objections to the Instructions in each specific response shall not be deemed a waiver thereof. Moreover, to the extent Deerfield agrees to produce any documents or communications in response to any of the Requests to which Deerfield objects, such agreement shall not constitute a waiver of any objection to the Instructions. Without waiving or limiting in any manner any of the foregoing General Objections and Reservation or Objections to Definitions, but rather incorporating them to the extent applicable into each of Deerfield objections to the Instructions below:

28. Deerfield objects to each Instruction, and to any Definition, Instruction, or Request that incorporates that Instruction, to the extent that it purports to impose on Deerfield any burden or obligation that is broader than, inconsistent with, or exceeds the requirements of the Applicable Rules.

29. Deerfield objects to Instruction No. 1 as unduly burdensome and disproportionate to the needs of this case, including to the extent it purports to impose on Deerfield any burden or obligation to collect from persons or entities other than Deerfield Partners, L.P.

30. Deerfield objects to Instruction No. 8 as unduly burdensome and disproportionate to the needs of this case.

31. Deerfield objects to Instruction No. 9 as unduly burdensome and harassing to the extent that it purports to require Deerfield to produce or log detailed information regarding documents withheld in such an abbreviated time period. Specifically, the Requests were served on March 14, 2024, and purport to require Deerfield to complete its production by March 28, 2024. Deerfield is willing to meet and confer with the Committee concerning the need for, nature of, and timing for production, if any, of a categorical privilege log.

32. Deerfield objects to Instruction No. 17 as unduly burdensome and disproportionate to the needs of this case, including to the extent that it purports to impose on Deerfield any burden or obligation to collect documents or communications from any time period that is broader than, inconsistent with, or exceeds the requirements of the Applicable Rules. Deerfield is willing to meet and confer on an appropriate time period for its collection and review of documents responsive to the Requests.

### **OBJECTIONS TO SPECIFIC REQUESTS**

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

All Documents and Communications concerning any current or historical debt or equity position held by Deerfield in the Debtors.

#### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests “[a]ll Documents and Communications” as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Documents and Communications “concerning any current or historic debt or equity position” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield’s internal deliberations, assessments, analyses, or opinions analyzing Deerfield’s investments or the Debtors’ operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Deerfield further objects to this Request as calling for documents and things not within Deerfield’s custody, possession, or control, and/or readily available from a more convenient, more efficient,

less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents and communications responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

### **DOCUMENT REQUEST NO. 2**

All agreements by and between You and Invitae or an[y] of its Debtor or non-Debtor affiliates.

### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests “[a]ll agreements” as vague and ambiguous, overly broad, and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests agreements between Deerfield “and Invitae or an [sic] of its Debtor or non-Debtor affiliates” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request as calling for information readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

**DOCUMENT REQUEST NO. 3**

All Communications regarding the Debtors' payment of the balance on the 2020 Term Loan in February 2023.

**SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests "[a]ll Communications" as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Communications "regarding the Debtors' payment of the balance on the 2020 Term Loan in February 2023" as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield's internal deliberations, assessments, analyses, or opinions analyzing Deerfield's investments or the Debtors' operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Deerfield further objects to this Request as calling for documents and things not within Deerfield's custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged communications responsive to this Request, to the extent such communications exist and are located after a reasonable search proportional to the needs of the case.

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

All Documents and Communications concerning any contemplated or consummated transaction or strategic alternative involving Deerfield and the Debtors.

#### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests “[a]ll Documents and Communications” as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Documents and Communications “concerning any contemplated or consummated transaction or strategic alternative” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield’s internal deliberations, assessments, analyses, or opinions analyzing Deerfield’s investments or the Debtors’ operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Deerfield further objects to this Request as calling for documents and things not within Deerfield’s custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product



doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents and communications responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

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

All Documents and Communications concerning the March 2023 Exchange, including but not limited to, the negotiation of the March 2023 Exchange and the value provided to the Debtors and/or Deerfield.

### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests “[a]ll Documents and Communications” as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Documents and Communications “concerning the March 2023 Exchange” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield’s internal deliberations, assessments, analyses, or opinions analyzing Deerfield’s investments or the Debtors’ operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Deerfield further objects to this Request as calling for documents and things not within Deerfield’s custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors.

Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents and communications responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

### **DOCUMENT REQUEST NO. 6**

All Documents and Communications concerning the August 2023 Exchange, including but not limited to, the negotiation of the August 2023 Exchange and the value provided to the Debtors and/or Deerfield.

### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests “[a]ll Documents and Communications” as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Documents and Communications “concerning the August 2023 Exchange” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield’s internal deliberations, assessments, analyses, or opinions analyzing Deerfield’s investments or the Debtors’ operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Deerfield further objects to this Request as calling for documents and things not within Deerfield’s custody, possession, or control, and/or readily available from a more convenient, more efficient,

less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents and communications responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

#### **DOCUMENT REQUEST NO. 7**

All Documents and Communications concerning the 2024 Convertible Senior Unsecured Notes, including but not limited to the value of the 2024 Convertible Senior Unsecured Notes.

#### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests “[a]ll Documents and Communications” as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Documents and Communications “concerning the 2024 Convertible Senior Unsecured Notes” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield’s internal deliberations, assessments, analyses, or opinions analyzing Deerfield’s investments or the Debtors’ operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Deerfield further objects to this Request as calling for documents and things not within Deerfield’s

custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents and communications responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

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

All Documents and Communications concerning the 2028 Convertible Senior Unsecured Notes, including but not limited to the value of the 2028 Convertible Senior Unsecured Notes.

#### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests “[a]ll Documents and Communications” as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Documents and Communications “concerning the 2028 Convertible Senior Unsecured Notes” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield’s internal deliberations, assessments, analyses, or opinions analyzing Deerfield’s investments or the Debtors’ operations, assets, or financial conditions, including proprietary valuations and models, and references thereto.

Deerfield further objects to this Request as calling for documents and things not within Deerfield's custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents and communications responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

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

All Documents and Communications concerning the 2028 Convertible Senior Secured Notes, including but not limited to the value of the 2028 Convertible Senior Secured Notes.

#### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests “[a]ll Documents and Communications” as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Documents and Communications “concerning the 2028 Convertible Senior Secured Notes” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield's internal deliberations, assessments, analyses, or opinions analyzing Deerfield's investments or the Debtors' operations,

assets, or financial conditions, including proprietary valuations and models, and references thereto. Deerfield further objects to this Request as calling for documents and things not within Deerfield's custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents and communications responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

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

All Documents and Communications concerning the Consenting Senior Secured Noteholders' refusal to waive the \$150 million minimum liquidity covenant, as described in paragraph 10 of the First Day Declaration.

#### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests "[a]ll Documents and Communications" as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Documents and Communications "concerning the Consenting Senior Secured Noteholders' refusal to waive the \$150 million minimum liquidity covenant" as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent it purports to require Deerfield to draw legal or factual conclusions, or are predicated on legal or factual conclusions or arguments. Deerfield further objects to this Request

to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield's internal deliberations, assessments, analyses, or opinions analyzing Deerfield's investments or the Debtors' operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Deerfield further objects to this Request as calling for documents and things not within Deerfield's custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents and communications responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

#### **DOCUMENT REQUEST NO. 11**

All Documents and Communications concerning the filing of these Chapter 11 Cases.

#### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests “[a]ll Documents and Communications” as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Documents and Communications “concerning the filing of these Chapter 11 Cases” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case.

Deerfield further objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield's internal deliberations, assessments, analyses, or opinions analyzing Deerfield's investments or the Debtors' operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Deerfield further objects to this Request as calling for documents and things not within Deerfield's custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents and communications responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

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

All Documents and Communications concerning the Transaction Support Agreement, including but not limited to the negotiation of the Transaction Support Agreement and any diligence related thereto.

#### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests "[a]ll Documents and Communications" as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests Documents and Communications "concerning the Transaction Support Agreement" as vague and



ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield's internal deliberations, assessments, analyses, or opinions analyzing Deerfield's investments or the Debtors' operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Deerfield further objects to this Request as calling for documents and things not within Deerfield's custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents and communications responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

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

All solvency analyses concerning the Debtors.

### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference.

Deerfield objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield's internal deliberations,

assessments, analyses, or opinions analyzing Deerfield's investments or the Debtors' operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Numerous courts around the country have emphasized that Rule 2004 may not be used to "unfairly intrude into the private business affairs of creditors and chill their participation in the bankruptcy process." *Countrywide Home*, 384 B.R. at 392; *see also Underwood*, 457 B.R. at 643 (same); *Landis*, 2011 WL 6104495, at \*6; *Moore Trucking*, 2020 WL 6948987, at \*7 (same); *Kleynerman*, 617 B.R. at 128 (same). For this reason, requests that do not "represent a low level of intrusion into the creditor's business affairs and a low risk of abuse" are subject to the Court's heightened scrutiny. *Countrywide Home*, 384 B.R. at 393. This concern for intrusion is particularly acute when the Rule 2004 examination purports to request the production of a creditor's "internal documents," *Defoor*, 634 B.R. at 633, or "[i]nternal [c]ommunications" reflecting internal deliberations, *Transmar*, 2018 WL 4006324, at \*4-9. Even when there is a pending action that places a *debtor's* business at issue, courts have made clear that the judgment and motivations of *creditors* are not relevant and are not subject to discovery. *See, e.g.*, Hr'g Tr. 17:2-11, 49:8-19, *Ruby Pipeline*, No. 22-10278 (CTG) (Bankr. D. Del. June 10, 2022) ECF No. 274 ("I am not going to order the discovery of internal communications within the bondholder group that don't relate in any way to external communications. To me I think that is for the reasons that many of my colleagues have said in the cases that were cited, that's all just triangulating at something else."). For all these reasons, the Committee is not entitled to documents or communications reflecting Deerfield's internal deliberations, assessments, analyses, or opinions, including those called for by this Request.

Deerfield further objects to this Request to the extent the Committee requests "[a]ll solvency analyses" as overly broad and unduly burdensome. Deerfield further objects to this

Request to the extent the Committee requests solvency analyses “concerning the Debtors” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request as calling for documents and things not within Deerfield’s custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will not produce its internal solvency analyses of the Debtors, if any, but that it is willing to meet and confer concerning an appropriate scope for this Request.

#### **DOCUMENT REQUEST NO. 14**

All analyses, including any fairness opinions, regarding the 2023 Exchange Transactions.

#### **SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference.

Deerfield objects to this Request to the extent the Committee requests internal communications within Deerfield (or between or among Deerfield and its legal or financial professionals or advisors) or internal documents reflecting Deerfield’s internal deliberations, assessments, analyses, or opinions analyzing Deerfield’s investments or the Debtors’ operations, assets, or financial conditions, including proprietary valuations and models, and references thereto. Numerous courts around the country have emphasized that Rule 2004 may not be used to “unfairly intrude into the private business affairs of creditors and chill their participation in the bankruptcy process.” *Countrywide Home*, 384 B.R. at 392; *see also Underwood*, 457 B.R. at 643 (same);

*Landis*, 2011 WL 6104495, at \*6; *Moore Trucking*, 2020 WL 6948987, at \*7 (same); *Kleynerman*, 617 B.R. at 128 (same). For this reason, requests that do not “represent a low level of intrusion into the creditor’s business affairs and a low risk of abuse” are subject to the Court’s heightened scrutiny. *Countrywide Home*, 384 B.R. at 393. This concern for intrusion is particularly acute when the Rule 2004 examination purports to request the production of a creditor’s “internal documents,” *Defoor*, 634 B.R. at 633, or “[i]nternal [c]ommunications” reflecting internal deliberations, *Transmar*, 2018 WL 4006324, at \*4-9. Even when there is a pending action that places a *debtor’s* business at issue, courts have made clear that the judgment and motivations of *creditors* are not relevant and are not subject to discovery. *See, e.g.*, Hr’g Tr. 17:2-11, 49:8-19, *Ruby Pipeline*, No. 22-10278 (CTG) (Bankr. D. Del. June 10, 2022) ECF No. 274 (“I am not going to order the discovery of internal communications within the bondholder group that don’t relate in any way to external communications. To me I think that is for the reasons that many of my colleagues have said in the cases that were cited, that’s all just triangulating at something else.”). For all these reasons, the Committee is not entitled to documents or communications reflecting Deerfield’s internal deliberations, assessments, analyses, or opinions, including those called for by this Request.

Deerfield further objects to this Request to the extent the Committee requests “[a]ll analyses” as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests analyses “regarding the 2023 Exchange Transactions” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request as calling for documents and things not within Deerfield’s custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors.

Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will not produce its internal analyses, if any, regarding the 2023 Exchange Transactions, but that it is willing to meet and confer concerning an appropriate scope for this Request.

**DOCUMENT REQUEST NO. 15**

All engagement letters or other retention agreements between Deerfield and Perella.

**SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests “[a]ll engagement agreements and other retention agreements” as overly broad and unduly burdensome. Deerfield further objects to this Request to the extent the Committee requests engagement letters “between Deerfield and Perella” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce responsive non-privileged engagement or retention letters between Deerfield and Perella Weinberg Partners for matters concerning the Debtors and relevant to these Chapter 11 cases, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

**DOCUMENT REQUEST NO. 16**

Documents sufficient to show the names and positions of all individuals who provided advice in connection with the 2023 Exchange Transactions.

**SPECIFIC OBJECTIONS**

Deerfield incorporates the General Objections and Reservation, Objections to Definitions, and Objections to Instructions by reference. Deerfield objects to this Request to the extent the Committee requests Documents “sufficient to show the names and positions of all individuals who provided advice in connection with the 2023 Exchange Transactions” as vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this case. Deerfield further objects to this Request as calling for documents and things not within Deerfield’s custody, possession, or control, and/or readily available from a more convenient, more efficient, less burdensome, or less expensive source than Deerfield, including but not limited to the Debtors. Deerfield further objects to this Request to the extent it seeks information protected from disclosure under the attorney-client privilege, the work-product doctrine, or common-interest privilege, or any other applicable privilege, immunity, discovery protection, law, or rule.

Subject to and without waiving any of the foregoing objections, Deerfield responds that it will produce non-privileged documents responsive to this Request, to the extent such documents exist and are located after a reasonable search proportional to the needs of the case.

*[Remainder of page intentionally left blank.]*

Dated: March 22, 2024

*/s/ James N. Lawlor*

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*Counsel to Deerfield Partners, L.P.*

**EXHIBIT 3**



**From:** [McMillan, George L.](#)  
**To:** [Chase, Ashley](#); [Hershey, Samuel](#); [Invitae UCC - W&C Team](#); [W&C Invitae UCC Litigation](#); [Cowan, Clint](#); [zzExt-jeffrey.goldfine](#); [Sander, Ian Marshall](#); [Burcher-DuPont, Aulden](#); [Lawrence, Carl](#)  
**Cc:** [Beller, Benjamin S.](#); [Blaut, Ari B.](#); [DeCamp, Justin J.](#); [Souza, Matthew T.](#)  
**Subject:** [EXT] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)  
**Date:** Friday, May 31, 2024 10:30:50 AM

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Ashley,

We are continuing our review of documents related to the questions you raised last week. We address each point you raised below and are making a supplemental production of related documents this afternoon. We will provide updated privilege logs that reflect these changes. While reviewing these entries, we found that certain documents which were marked to be included in Production 5 were not produced due to a grouping error in our production process. We've included these documents in our supplemental production.

We are in the process of reviewing any documents that were withheld based on common interest privilege. These include documents created by Invitae or Deerfield's financial advisors that were shared with the other party during negotiations. We will get back to you shortly on these.

We are withholding documents which were prepared by Deerfield's financial advisor at the instruction of counsel in order to facilitate the provision of legal advice and for which privilege was not otherwise waived.

With respect to the documents you flagged in Deerfield's privilege logs which were withheld or redacted because they reflect legal advice:

- Withhold Log 3-4: We are producing Entries 85, 86, 88, 90, 100, and 165. We have redacted portions of these documents that relay or reflect advice from counsel. We are withholding Entry 163, which relays legal advice from outside counsel. Entry 44 erroneously grouped two separate email chains together, one of which included Katherine Wolf. We are producing the communications that Ms. Wolf was included on.
- Redact Log 3-4: Each of the entries you flagged were redacted because they relay or reflect legal advice or discuss the need to request legal advice.
- Redaction Log 5:
  - Entry 3 appropriately redacts a portion of the document that relays legal advice from outside counsel.
  - Entry 4 was not redacted and was included in this log erroneously.
  - For Entry 7, DEERFIELD-COMMITTEE-X\_000024302 - DEERFIELD-COMMITTEE-X\_000024307 was produced without redaction. DEERFIELD-COMMITTEE-X\_000024309-DEERFIELD-COMMITTEE-X\_000024510 and DEERFIELD-COMMITTEE-X\_000024554 - DEERFIELD-COMMITTEE-X\_000024557 were withheld under common interest privilege. We are reviewing these and similar documents listed below and will follow up once that review is complete.
  - Entry 9: DEERFIELD-COMMITTEE-X\_000025000 - DEERFIELD-COMMITTEE-X\_000025001 was produced without redaction. DEERFIELD-COMMITTEE-X\_000025002 was withheld under common interest privilege.
  - Entry 10: DEERFIELD-COMMITTEE-X\_000024511- DEERFIELD-COMMITTEE-X\_000024553 were produced without redaction. DEERFIELD-COMMITTEE-X\_000024553 was withheld under common interest privilege.
  - Entry 12: DEERFIELD-COMMITTEE-X\_000024558 - DEERFIELD-COMMITTEE-X\_000024983 were produced without redaction. DEERFIELD-COMMITTEE-X\_000025044 - DEERFIELD-COMMITTEE-X\_000025226 were withheld under common interest privilege.

Thanks,  
George

**George L. McMillan**

+1 212 558 3044 (T) | +1 205 362 7129 (M)

---

**From:** Chase, Ashley <ashley.chase@whitecase.com>

**Sent:** Thursday, May 30, 2024 3:08 PM

**To:** McMillan, George L. <mcmillang@sullcrom.com>; Hershey, Samuel <sam.hershey@whitecase.com>; Invitae UCC - W&C Team <InvitaeWCALL@whitecase.com>; W&C Invitae UCC Litigation <InvitaeWCLitigation@whitecase.com>; Cowan, Clint <clint.cowan@kirkland.com>; zzExt-jeffrey.goldfine <jeffrey.goldfine@kirkland.com>; Sander, Ian Marshall <ian.sander@kirkland.com>; Burcher-DuPont, Aulden <aulden.burcher-dupont@kirkland.com>; Lawrence, Carl <carl.lawrence@kirkland.com>

**Cc:** Beller, Benjamin S. <bellerb@sullcrom.com>; Blaut, Ari B. <Blauta@sullcrom.com>; DeCamp, Justin J. <decampj@sullcrom.com>; Souza, Matthew T. <souzam@sullcrom.com>

**Subject:** [EXTERNAL] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

George – do you have a timing update? Thanks.

**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

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**From:** McMillan, George L. <mcmillang@sullcrom.com>

**Sent:** Sunday, May 26, 2024 11:16 PM

**To:** Chase, Ashley <ashley.chase@whitecase.com>; Hershey, Samuel <sam.hershey@whitecase.com>; Invitae UCC - W&C Team <InvitaeWCALL@whitecase.com>; W&C Invitae UCC Litigation <InvitaeWCLitigation@whitecase.com>; Cowan, Clint <clint.cowan@kirkland.com>; zzExt-jeffrey.goldfine <jeffrey.goldfine@kirkland.com>; Sander, Ian Marshall <ian.sander@kirkland.com>; Burcher-DuPont, Aulden <aulden.burcher-dupont@kirkland.com>; Lawrence, Carl <carl.lawrence@kirkland.com>

**Cc:** Beller, Benjamin S. <bellerb@sullcrom.com>; Blaut, Ari B. <Blauta@sullcrom.com>; DeCamp, Justin J. <decampj@sullcrom.com>; Souza, Matthew T. <souzam@sullcrom.com>

**Subject:** [EXT] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Ashley,

We've reviewed the documents and privilege log entries you refer to below and plan to provide a small production and updated log early this week.

Best,  
George

**George L. McMillan**

+1 212 558 3044 (T) | +1 205 362 7129 (M)

---

**From:** Chase, Ashley <ashley.chase@whitecase.com>

**Sent:** Friday, May 24, 2024 1:36 PM

**To:** McMillan, George L. <mcmillang@sullcrom.com>; Hershey, Samuel <sam.hershey@whitecase.com>; Invitae UCC - W&C Team <InvitaeWCALL@whitecase.com>; W&C Invitae UCC Litigation <InvitaeWCLitigation@whitecase.com>; Cowan, Clint <clint.cowan@kirkland.com>; zzExt-jeffrey.goldfine <jeffrey.goldfine@kirkland.com>; Sander, Ian Marshall <ian.sander@kirkland.com>; Burcher-DuPont, Aulden <aulden.burcher-dupont@kirkland.com>; Lawrence, Carl <carl.lawrence@kirkland.com>

**Cc:** Beller, Benjamin S. <bellerb@sullcrom.com>; Blaut, Ari B. <Blauta@sullcrom.com>; DeCamp, Justin J.

<[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Subject:** [EXTERNAL] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

George, S&C team – following up on the below. Thanks.

**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:** Chase, Ashley  
**Sent:** Monday, May 20, 2024 9:10 PM  
**To:** 'McMillan, George L.' <[mcmillang@sullcrom.com](mailto:mcmillang@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>  
**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

George,

We have identified the following concerns with Deerfield's privilege logs:

1. Documents have been withheld as privileged without an attorney on the chain because they "reflect" legal advice. We raised this concern after we reviewed Deerfield's initial logs and did not hear back. We noticed you made some edits to Deerfield's initial logs without confirmation as to whether the privilege designations of the documents we identified have been revised. As before, we would request another review to produce these documents with appropriate redactions, if any.
  - a. Examples include:
    - i. Withhold Log 3-4: 85, 86, 88, 90, 100, 163, 165
    - ii. Redact Log 3-4: 1, 2, 3, 12, 20, 26
    - iii. Redaction Log 5: 3, 4, 7, 9, 10, 12
2. Documents created by Deerfield's financial advisors have been withheld; however, such documents are not alleged to contain any legal advice. We would request you review these documents and produce any that do not contain any legal advice or work product. To the extent you continue to withhold these documents, please explain on what basis you seek to shield these financial analyses from production.
  - a. Examples include:
    - i. Withhold Log 3-4: 16, 35, 89
3. Documents withheld as "common interest" when Deerfield and the Debtors were negotiating against each other. Documents regarding the 2023 Exchanges and the pre-TSA negotiations over a consent fee, for instance, where attorneys and/or financial advisors for Deerfield and the Company are on the chain are not privileged. In fact, the Debtors have produced certain documents regarding these negotiations. Please produce these immediately.
  - a. Non-exclusive examples:
    - i. Withhold Log 3-4: 12, 16, 42, 53, 68, 134, 150, 157, 158, 159
    - ii. Redact Log 3-4: 15, 17, 19
    - iii. Redaction Log 5: 13
4. Katherine Wolf appears to be a third party. Please produce the document withheld on the productions 3-4 log at entry 44.

5. Certain documents on the redaction logs have actually been withheld in full, including DEERFIELD-COMMITTEE-X\_000024309 and DEERFIELD-COMMITTEE-X\_000024554 - 24557. Please produce with appropriate redactions, if any.

We are available to meet and confer regarding these issues.

Best,  
Ashley

**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:** McMillan, George L. <[mcmillang@sullcrom.com](mailto:mcmillang@sullcrom.com)>

**Sent:** Monday, May 13, 2024 11:42 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>

**Subject:** [EXT] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Good evening,

On behalf of Deerfield, I've attached a production letter in the above-captioned case. The production can be accessed via the link below.

<https://sullcrom.box.com/s/fx6fnzjottwzsd8opg15h6hh0qki5e09>

I will send the password for the production file in a separate email.

Thank you,  
George

**George L. McMillan**

+1 212 558 3044 (T) | +1 205 362 7129 (M)

---

**From:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>

**Sent:** Tuesday, May 7, 2024 9:35 AM

**To:** McMillan, George L. <[mcmillang@sullcrom.com](mailto:mcmillang@sullcrom.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

The password for the zip file is:

[password removed]

**Matthew T. Souza**

+1 212 558 4109 (T)

---

**From:** Souza, Matthew T.

**Sent:** Tuesday, May 7, 2024 9:35 AM

**To:** McMillan, George L. <[mcmillang@sullcrom.com](mailto:mcmillang@sullcrom.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Good morning,

On behalf of Deerfield, I've attached a production letter in the above-captioned case. The production can be accessed via the link below.

[link removed]

I will send the password for the zip file in a separate email.

Thank you,  
Matthew

**Matthew T. Souza**

+1 212 558 4109 (T)

---

**From:** McMillan, George L. <[mcmillang@sullcrom.com](mailto:mcmillang@sullcrom.com)>

**Sent:** Sunday, May 5, 2024 11:01 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>

**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

The password for the zip file is:

[password removed]

**George L. McMillan**

+1 212 558 3044 (T) | +1 205 362 7129 (M)

---

**From:** McMillan, George L.

**Sent:** Sunday, May 5, 2024 11:00 PM

**To:** 'Chase, Ashley' <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; 'Hershey, Samuel' <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; 'Invitae UCC - W&C Team' <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; 'W&C Invitae UCC Litigation' <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; 'Cowan, Clint' <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; 'Sander, Ian Marshall' <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; 'Burcher-DuPont, Aulden' <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; 'Lawrence, Carl' <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>

**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Good evening,

On behalf of Deerfield, I've attached a production letter in the above-captioned case. The production can be accessed via the link below.

[\[link removed\]](#)

I will send the password for the zip file in a separate email.

Thank you,  
George

**George L. McMillan**

[+1 212 558 3044](tel:+12125583044) (T) | [+1 205 362 7129](tel:+12053627129) (M)

---

**From:** McMillan, George L.

**Sent:** Sunday, May 5, 2024 10:55 PM

**To:** 'Chase, Ashley' <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; 'Hershey, Samuel' <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; 'Invitae UCC - W&C Team' <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; 'W&C Invitae UCC Litigation' <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; 'Cowan, Clint' <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; 'Sander, Ian Marshall' <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; 'Burcher-DuPont, Aulden' <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; 'Lawrence, Carl' <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>

**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

All,

I'm attaching privilege logs showing documents from our April 12<sup>th</sup> and April 19<sup>th</sup> productions that were redacted or withheld due to privilege.

Thank you,  
George

**George L. McMillan**

[+1 212 558 3044](tel:+12125583044) (T) | [+1 205 362 7129](tel:+12053627129) (M)

---

**From:** McMillan, George L.

**Sent:** Friday, May 3, 2024 10:45 PM

**To:** 'Chase, Ashley' <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; 'Hershey, Samuel' <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; 'Invitae UCC - W&C Team' <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; 'W&C Invitae UCC Litigation' <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; 'Cowan, Clint' <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; 'Sander, Ian Marshall' <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; 'Burcher-DuPont, Aulden' <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; 'Lawrence, Carl' <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>  
**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

The password for the zip file is:

[password removed]

**George L. McMillan**  
[+1 212 558 3044](tel:+12125583044) (T) | [+1 205 362 7129](tel:+12053627129) (M)

---

**From:** McMillan, George L.  
**Sent:** Friday, May 3, 2024 10:43 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>  
**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Good evening,

On behalf of Deerfield, I've attached a production letter in the above-captioned case. The production can be accessed via the link below.

[link removed]

I will send the password for the zip file in a separate email.

Thank you,  
George

**George L. McMillan**  
[+1 212 558 3044](tel:+12125583044) (T) | [+1 205 362 7129](tel:+12053627129) (M)

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**From:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Sent:** Friday, April 19, 2024 8:44 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>  
**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J.

<[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

The password for the zip file is:

**Matthew T. Souza**

+1 212 558 4109 (T)

---

**From:** Souza, Matthew T.

**Sent:** Friday, April 19, 2024 8:43 PM

**To:** 'Chase, Ashley' <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Good evening,

On behalf of Deerfield, I've attached a production letter in the above-captioned case. The production can be accessed via the link below.

Thank you,  
Matthew

**Matthew T. Souza**

+1 212 558 4109 (T)

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

**Sent:** Thursday, April 18, 2024 4:43 PM

**To:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Subject:** [EXTERNAL] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Matthew,

When can we expect the next production?

Thanks,  
Ashley

**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:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>

**Sent:** Friday, April 12, 2024 8:26 PM

**To:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Subject:** [EXT] In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Good evening,

On behalf of Deerfield, I've attached a production letter in the above-captioned case. The production can be accessed via the link below.

<https://sullcrom.box.com/s/7rq06es2oenxhziy58mkyge83gonn44k>

Thank you,  
Matthew

**Matthew T. Souza**  
**SULLIVAN & CROMWELL LLP**  
125 Broad Street | New York, NY 10004-2498  
+1 212 558 4109 (T)  
[souzam@sullcrom.com](mailto:souzam@sullcrom.com) | [www.sullcrom.com](http://www.sullcrom.com)

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

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