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

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

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

Baker Bros. Advisors LP (“BBA”), by and through its undersigned counsel, hereby submits the following Response to *Deerfield Partners, L.P.’s Motion to Compel Deposition and Production of Documents by Baker Bros. Advisors LP* (the “Motion”) in the above-captioned chapter 11 case of Invitae Corporation, *et al.* (the “Debtors”).

PRELIMINARY STATEMENT

1. The discovery Deerfield Partners, L.P. (“Deerfield”) seeks from BBA is neither

¹ The last four digits of Debtor Invitae Corporation’s tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at www.kccllc.net/invitae. The Debtors’ service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.



relevant to nor proportional to this Court’s resolution of *The Official Committee of Unsecured Creditors’ Motion for (I) Leave, Standing, and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors’ Estates and (II) Exclusive Settlement Authority* (the “Standing Motion”). BBA, as a non-party, does not possess information that the Court needs to determine whether the allegations in the proposed complaint adequately support a claim for, among other things, fraudulent conveyance or a breach of fiduciary duty. Assessing those claims requires the Court to look to the specifics of the March Exchange and the conduct of the Debtors, the proposed defendants, and Deerfield. It does not require any discovery related to BBA’s communications—and certainly does not require any evaluation of BBA’s internal communications and analyses. Similarly, nothing about the information BBA possesses will aid the Court in evaluating whether prosecution of the claims would be beneficial to the estate or whether the Debtors have unjustifiably refused to bring the claims identified in the Standing Motion.

2. Despite this, and to avoid a needless dispute and waste of this Court’s time and resources, BBA was prepared to produce all non-privileged third-party communications about the March Exchange and any alternative transaction proposed by BBA that Deerfield did not already have access to. This is, in fact, exactly the information that could possibly relate to the allegations Deerfield points to in support of its motion. (Mot. ¶ 2). BBA also agreed to discuss the need for a deposition of a BBA representative. (Mot. ¶ 5). BBA, however, was unwilling to produce internal communications and analyses both because (i) they were not relevant to the Standing Motion and also (ii) the vast majority of internal communications involved an attorney who communicated legal advice associated with the proposed transactions and the events leading up to bankruptcy. BBA would have to conduct a substantial privilege review to avoid the production of attorney-

client privileged communications despite the overall irrelevance of the information it possesses. BBA should not have to undertake this costly burden.²

3. Rather than limit the subpoena to the communications with third parties, Deerfield pressed forward with a motion to compel the production of BBA's internal communications and analyses.

4. In addition to seeking information related to the March Exchange and any alternative transaction, the Subpoena seeks the deposition of a BBA witness, as well as several categories of documents related to BBA's "historical debt or equity positions" in the Debtors, and "actual or potential offers, bids, or indications of interest" to "purchase or sell debt or equity to the Debtors." (Subpoena, Exhibit 1). There is simply no justification for seeking any of this information, and bankruptcy courts consistently exclude such information from discovery.

5. Deerfield's effort to compel more than BBA's third-party communications regarding the March Transaction and any alternative transaction, including the unnecessary deposition of a BBA witness, is little more than a fishing expedition that will not aid this Court in the resolution of the Standing Motion. Indeed, the Court itself has made clear that the parties should endeavor to pursue only "limited discovery" in order to "save dollars" in connection with the Standing Motion. Hr'g Tr. at 36:17-23, *In re Invitae Corp.*, No. 24-11362 (MBK) (Bankr. D.N.J. May 30, 2024) [D.I. 548]. The discovery Deerfield seeks here is irrelevant and disproportionate to the needs of the Standing Motion.

² While Deerfield's offer to exclude any communications involving attorneys from the review and production would limit some of the burden, it would not eliminate the need to do a diligent review of all communications given the involvement of in-house counsel throughout the process. More importantly, it does not address the fundamental question of relevance.

ARGUMENT

A. The Discovery Deerfield Seeks from BBA Is Not Relevant to the Evaluation of the Standing Motion.

6. Standing motions are evaluated under Fed. R. Civ. P. 12(b)(6), and the relevant inquiry is “[w]hether a party sufficiently states a claim [which] is a question of law.” *Walnut Creek Mining Co. v. Cascade Inv., LLC (In re Optim Energy, LLC)*, 527 B.R. 169, 173 (D. Del. 2015) (citing *Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010)). “In deciding a motion to dismiss for failure to state a claim, the court is ‘required to accept as true all factual allegations in the complaint and draw all inferences from the facts alleged in the light most favorable to [the non-moving party].’” *Id.* (quoting *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008)).

7. Courts evaluating standing motions “are to ‘consider no more than whether the complaint establishes enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary elements of the cause of action.’” *In re Roman Cath. Diocese of Harrisburg*, 640 B.R. 59, 73 (Bankr. M.D. Pa. 2022) (quoting *Trzaska v. L’Oreal USA, Inc.*, 865 F.3d 155, 162 (3d Cir. 2017)). None of the cases cited by Deerfield say otherwise.

8. In *In re One2One Communications, LLC*, this Court was “tasked with determining whether a debtor or a trustee has unjustifiably refused to bring an action” in connection with a standing motion 627 B.R. 273, 295 (Bankr. D.N.J. 2021), but did not find that discovery was necessary from non-parties for it to carry out its tasks. Similarly, *In re Diocese of Camden, New Jersey* describes the elements and cost-benefit analysis necessary to grant derivative standing to pursue actions on behalf of a bankruptcy estate, 2022 WL 884242, at *5-9 (Bankr. D.N.J. Mar. 24, 2022), but it in no way refutes the fact that those elements are evaluated under 12(b)(6) principles. Finally, *In re Pack Liquidating, LLC* notes how courts evaluating standing motions “consider the probability of success and the potential costs of litigation,” 658 B.R. 305, 336 (Bankr. D. Del.

2024), but does not support non-party discovery in this context. Indeed, the cases cited by Deerfield do not lend any support to the named defendant in a Proposed Complaint seeking broad discovery from a non-party.

9. The Court’s assessment of the allegations in the Proposed Complaint will turn on the specifics of the transaction at issue and the conduct of the Debtors, the proposed defendants, and Deerfield. BBA’s communications—especially its internal communications—would have no relevance to the Court’s analysis. Similarly, discovery from BBA will not aid the Court in deciding whether the prosecution of the claims would be beneficial to the estate.

10. To the extent that any discovery is necessary in connection with the Standing Motion, Deerfield either already has it, or can obtain it from parties to the dispute. Both the Debtors and the Committee have conducted an investigation in these chapter 11 cases in connection with the March Exchange and any alternative transaction. Deerfield already has all of this information. The Court should not entertain Deerfield’s request for overbroad, expensive, and needless discovery here.

B. Discovery of BBA’s Internal Communications and Analyses, along with a Deposition of BBA, Are Not Appropriate Here.

11. Even if some limited discovery—the discovery BBA already offered to produce—is appropriate, the broad discovery Deerfield seeks here is not proportional to the needs of this contested motion. Rule 26 of the Federal Rules of Civil Procedure governs the scope of discovery arising under Rule 9014 of the Bankruptcy Rules of Procedure, and it “gives the court authority to limit the scope of discovery beyond the usual scope which, sensibly, is tied to matters that are ‘relevant to any party’s claim or defense[.]’” *In re Serendipity Labs, Inc.*, No. 20-71003-SWD, 2020 Bankr. LEXIS 2869, at *3 (Bankr. W.D. Mich. Oct. 5, 2020). “Moreover, no one should doubt the court’s resolve in protecting non-parties from any undue burden of discovery.” *Id.*

i. Production of BBA's Internal Communications and Analyses Is Not Appropriate.

12. Deerfield seeks BBA's internal communications because it alleges that BBA's internal assessments, analyses, and evaluations, including solvency analyses, concerning the Debtors are relevant to the insolvency element of the Proposed Complaint's constructive fraudulent transfer claim.³ (Mot. ¶ 9). But Deerfield cannot explain how non-party BBA's internal communications are relevant here, much less that they are sufficiently critical to Deerfield's defense of the Standing Motion that BBA should be required to incur the burden and expense of reviewing and producing its internal documents. Discovery of BBA's internal communications for Deerfield's purported purposes exceeds the scope of Rule 9014 by unduly burdening a nonparty with needless discovery.

13. Further, Deerfield's efforts to obtain discovery of BBA's historical positions in the Debtors' debt and equity have no bearing on any issue before the Court. Bankruptcy courts in the Third Circuit consistently recognize this and deny discovery involving internal views of value and trading positions. *See In re Energy Future Holdings Corp.*, 513 B.R. 651, 663 (Bankr. D. Del. 2014) (denying discovery as to a third party's internal financial assessments related to the debtors); Hr'g Tr. 16:5-12, *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Apr. 8, 2024) [D.I. 2924] (declining to compel certain landlords to produce internal assessments of leases at issue in bankruptcy); Hr'g Tr. at 10:3-10, 22:6-14, *In re The Dolan Co.*, No. 14-10614 (BLS) (Bankr. D. Del. May 12, 2014) [D.I. 284] (stating that a third party's "assessment or determination of value is not an appropriate area of inquiry").

³ After internal review, BBA can confirm that it did not conduct and does not possess any solvency analysis. BBA does, however, possess internal recovery analyses in connection with its historical investments in the Debtors. Those recovery analyses reflect legal advice and, in any event, are not relevant to the Standing Motion.

ii. *BBA's Internal Communications Would Be Costly and Unduly Burdensome to Review.*

14. The vast majority of BBA's internal communications involving the March Exchange and any alternative transaction involved an attorney who communicated legal advice associated with the proposed transactions—including advice in connection with certain of the issues this Court must decide in connection with the Standing Motion—and the events leading up to bankruptcy. All such communications are protected by the attorney-client privilege. The Court should protect BBA—a non-party—from the heavy cost and burden of performing the substantial privilege review that would be required here as a non-party to the Standing Motion dispute. *See Serendipity Labs*, 2020 Bankr. LEXIS 2869, at *3 (“no one should doubt the court’s resolve in protecting non-parties from any undue burden of discovery”).

iii. *BBA Should Not Incur the Cost of Preparing and Sitting for a Deposition.*

15. Finally, Deerfield has failed to articulate any need for a deposition of BBA. The Standing Motion should not be used as a vehicle to obtain deposition discovery from a non-party. Absent any articulable basis, BBA should not be forced to incur the burden and expense of preparing for and participating in a deposition.

CONCLUSION

16. For the foregoing reasons, BBA respectfully requests that the Court deny Deerfield's Motion and its request for an order to compel the production of discovery from non-party BBA.

Dated: June 19, 2024

/s/ Joseph L. Sorkin
AKIN GUMP STRAUSS HAUER & FELD LLP
Stephanie Lindemuth

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Counsel to Baker Bros. Advisors LP

Certificate of Service

I certify that on June 19, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the District of New Jersey.

/s/ Joseph L. Sorkin
Joseph L. Sorkin

UNITED STATES BANKRUPTCY COURT

District of New Jersey

In re Invitae Corporation, et al.
Debtor

(Complete if issued in an adversary proceeding)

Case No. 24-11362 (MBK)

Chapter 11

Plaintiff

v.

Adv. Proc. No. _____

Defendant

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

To: Baker Bros. Advisors LP
(Name of person to whom the subpoena is directed)

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

PLACE <u>Sullivan & Cromwell LLP</u> <u>125 Broad Street, New York, New York 1004</u>	DATE AND TIME <u>June 14, 2024, at 10:00 a.m. E.T.</u>
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The deposition will be recorded by this method:
See Schedule A attached hereto.

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

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

Date: May 31, 2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Justin J. DeCamp
Attorney's signature

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

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

Notice to the person who issues or requests this subpoena

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

PROOF OF SERVICE

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

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

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

I returned the subpoena unexecuted because: _____

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

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

(c) Place of compliance.

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

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

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

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

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

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

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

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

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

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) *Claiming Privilege or Protection.*

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

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

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

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

SCHEDULE A

SULLIVAN & CROMWELL LLP

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Counsel to Deerfield Partners, L.P.

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

In re:

INVITAE CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

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

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rules 7030, 9016, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), in connection with the *Motion for (I) Leave, Standing, and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors' Estate and (II) Exclusive Settlement Authority* filed by the Official Committee of Unsecured Creditors (the "Committee") [Dkt. Nos. 526, 536], Deerfield Partners,

¹ The last four digits of Debtor Invitae Corporation's tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at www.kccllc.net/invitae. The Debtors' service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.

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

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

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

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

[Remainder of page intentionally left blank.]

Dated: May 31, 2024

/s/ Justin J. DeCamp

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Counsel to Deerfield Partners, L.P.

EXHIBIT A

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. “First Day Declaration” means the *Declaration of Ana Schrank, Chief Financial Officer of Invitae Corporation, in Support of Chapter 11 Filing, First Day Motions, and Access to Cash Collateral*, filed on February 14, 2024 [Dkt. No. 21].

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

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

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

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

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

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

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

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

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

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

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

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

30. “Standing Motion” refers to *The Official Committee of Unsecured Creditors’ Motion for (I) Leave, Standing, and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors’ Estate and (II) Exclusive Settlement Authority*, filed on May 21, 2024 [Dkt. No. 526], the redacted version of which was filed on May 22, 2024 [Dkt. No. 536].

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

INSTRUCTIONS

1. Each Document Request shall be answered completely, separately, and fully.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEPOSITION TOPICS

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

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

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

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

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

6. Your Communications with Your investors concerning Invitae.

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

DOCUMENT REQUESTS

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

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

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

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

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

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

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

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

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

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

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

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

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