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*Co-Counsel to Natera Inc.*

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

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

(Hon. Michael B. Kaplan)  
Chapter 11  
Case No. 24-11362 (MBK)  
(Jointly Administered)  
**Hearing Date: July 11, 2024 at 10:00 a.m. (ET)**  
**Obj. Deadline: July 4, 2024**

**NATERA INC.’S MOTION TO FILE UNDER SEAL  
NATERA’S MOTION FOR RELIEF FROM STAY TO EFFECTUATE A SETOFF**

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



Natera Inc. (“Natera”) hereby moves (the “Seal Motion”) before this Court for the entry of an order, substantially in the form of the proposed order submitted herewith (the “Proposed Order”), authorizing it to file *Natera’s Motion for Relief from Stay to Effectuate a Setoff* [Docket No. 670] (the “Setoff Motion”) under seal. In support of this Motion, Natera states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b), and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). Natera consents to entry of a final judgment by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are section 107(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9018-1 of the Local Rules of the United States Bankruptcy Court District of New Jersey (the “Local Rules”).

**FACTUAL BACKGROUND**

4. On February 13, 2024 (the “Petition Date”), the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) commenced these chapter 11 cases (the “Chapter 11 Cases”) by filing petitions for relief under chapter 11 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and

Local Rule 1015-1. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

5. On the date hereof, Natera filed the Setoff Motion, including that certain confidential Asset Purchase Agreement attached to the Setoff Motion as Exhibit A (the “APA”).

**RELIEF REQUESTED**

6. By way of this Motion, Natera seeks entry of the Proposed Order (i) authorizing Natera to file the Setoff Motion under seal, and (ii) sealing the Setoff Motion until the expiration of the judiciary records retention period at which time the document will be permanently deleted.

**BASIS FOR RELIEF**

7. Certain portions of the Setoff Motion, as well as the APA, contain information that has been designated by Natera and Debtor Invitae Corporation as confidential pursuant to that certain Confidentiality and Rule 408-Plus Agreement, dated as of September 1, 2022, by and between Natera and its subsidiaries and affiliates on the one hand, and certain of the Debtors and their respective employees, legal counsel, and board members on the other hand, as amended by Addendum No. 1 thereto (the “Confidentiality Agreement”).

8. The Court may grant the relief requested pursuant to Bankruptcy Code section 107(b)(1), Bankruptcy Rule 9018, and Local Rule 9018-1. Pursuant to Bankruptcy Code section 107(b)(1), the Court may authorize the filing of certain documents under seal to “protect an entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b). Bankruptcy Rule 9018 sets forth the procedure by which a party may move to seal a document under Bankruptcy Code section 107(b). In relevant part, “[o]n motion . . . the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial

information.” Fed. R. Bankr. P. 9018; *see also* Local Rule 9018-1 (setting out the procedure for obtaining a sealing order by filing a motion to seal and the proposed form of order).

9. Protections under section 107(b) extend to commercial information that, if disclosed to the public, could be used by parties or competitors for an unfair advantage. *See In re OneJet, Inc.*, 613 B.R. 841, 848 (Bankr. W.D. Pa. 2020) (citing *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27–28 (2d Cir. 1994) (stating that section 107(b)(1) creates an exception to the general rule permitting open examination of court records by the public and that under this exception, an interested party must only show that the information it wishes to seal is “confidential commercial” in nature); *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (same).

10. Once it is established that information sought to be protected can be categorized as confidential commercial information, Bankruptcy Code section 107(b) does not require a party seeking protection to demonstrate “good cause.” *In re Orion Pictures Corp.*, 21 F.3d at 28. Instead, if the Court determines that the information sought to be protected from disclosure falls within one of the categories enumerated in section 107(b), “the court is *required* to protect a requesting interested party and has no discretion to deny the application.” *Id.* at 27 (emphasis in original). In other words, a party in interest must only demonstrate that the information it wishes to seal is “confidential” and “commercial” in nature. *Id.* at 28.

11. Here, the APA and certain portions of the Setoff Motion that describe the terms of the APA contain commercial information designated as confidential pursuant to the Confidentiality Agreement, including financial and business terms. Because there is sensitive non-public information describing the confidential assets purchased under the APA and the business terms of this sale, this is commercial information that must be protected. If the details contained

in the APA were publicly disclosed, the Confidentiality Agreement that governs the APA would be violated and rendered meaningless. Moreover, the disclosure would afford competitors of Natera an unfair advantage by having access to information involving the confidential assets and the business terms it agreed to with respect to the purchase of the assets. The disclosure of such information also may be detrimental to the business interests of the Debtors.

12. For the above reasons, Natera respectfully requests that the Court enter the Proposed Order (i) authorizing Natera to file the Setoff Motion under seal and (ii) sealing the Setoff Motion until the expiration of the judiciary records retention period at which time the document will be permanently deleted. To the extent that the Debtors file responsive pleadings to this Seal Motion or the Setoff Motion, Natera respectfully requests that the Court order the Debtors to redact any information regarding the terms set forth in the APA in their pleadings without the need for further orders from the Court.

13. Natera will provide an unredacted version of the Setoff Motion and the APA to the Court for *in camera* review, counsel to the Creditors' Committee, and the U.S. Trustee, on a confidential basis.

**WAIVER OF MEMORANDUM OF LAW**

14. Natera represents that the facts and circumstances set forth herein do not present novel questions of law, and, as such, respectfully requests that this Court waive the requirement of filing a memorandum of law in accordance with Local Rule 9013-1(a)(3).

**NOTICE**

15. Copies of this Seal Motion have been provided to: (i) the Debtors, Invitae Corporation, 1400 16th Street, San Francisco, California 94103, Attn: Tom Brida (tom.brida@invitae.com); (ii) co-counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Nicole L. Greenblatt, P.C.

(nicole.greenblatt@kirkland.com); Francis Petrie (francis.petrie@kirkland.com); and Nikki Gavey (nikki.gavey@kirkland.com) and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Spencer A. Winters, P.C. (spencer.winters@kirkland.com); (iii) co-counsel to the Debtors, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota (msirota@coleschotz.com); Warren A. Usatine (wusatine@coleschotz.com); Felice R. Yudkin (fyudkin@coleschotz.com); and Daniel J. Harris (dharris@coleschotz.com); (iv) the Office of the United States Trustee for the District of New Jersey, 1085 Raymond Boulevard, Suite 2100, Newark, New Jersey 07102, Attn: Jeffrey Sponder (jeffrey.m.sponder@usdoj.gov); and Lauren Bielskie (lauren.bielskie@usdoj.gov); (v) co-counsel to the Official Committee of Unsecured Creditors, White & Case LLC, 1221 Avenue of the Americas, New York, New York 10020, Attn.: J. Christopher Shore (cshore@whitecase.com); Harrison Denman (harrison.denman@whitecase.com); Andrew Zats (azats@whitecase.com); Samuel P. Hershey (sam.hershey@whitecase.com); Ashley Chase (ashley.chase@whitecase.com); and Brett Bakemeyer (brett.bakemeyer@whitecase.com); and (vi) co-counsel to the Official Committee of Unsecured Creditors, Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, P.O. Box 1997, Morristown, New Jersey 07962, Attn.: Warren J. Martin Jr. (wjmartin@pbnlaw.com); John S. Mario (jsmario@pbnlaw.com); and Christopher P. Mazza, Esq. (cpmazza@pbnlaw.com) via electronic mail, and all parties having formally requested notice in this proceeding electronically via the Court's CM/ECF system.

**NO PRIOR REQUEST**

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

*[Remainder of Page Intentionally Left Blank]*

**CONCLUSION**

**WHEREFORE**, for the reasons set forth herein, Natera respectfully requests that this Court enter an order, substantially in the form attached hereto, granting the relief requested herein and granting such other relief as is just and proper.

Dated: June 19, 2024  
Newark, New Jersey

**GIBBONS P.C.**

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

<p>In re:</p> <p>INVITAE CORPORATION, <i>et al.</i>,</p> <p>Debtors.<sup>1</sup></p>	<p>(Hon. Michael B. Kaplan)</p> <p>Chapter 11</p> <p>Case No. 24-11362 (MBK)</p> <p>(Jointly Administered)</p>
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**ORDER CONCERNING REQUEST TO SEAL DOCUMENTS**

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

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



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Debtors: INVITAE CORPORATION, *et al.*

Case No.: 24-11362 (MBK)

Caption: ORDER CONCERNING REQUEST TO SEAL DOCUMENTS

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On request of Natera Inc. to seal the following documents, *Natera's Motion for Relief from Stay to Effectuate a Setoff* [Docket No. 670] and the Asset Purchase Agreement attached to the Setoff Motion as Exhibit A,<sup>1</sup> and the Court having considered the request and no objections having been filed, it is

- ORDERED** that the request is denied and the underlying documents shall be deleted from the Court's electronic filing system.
  
- ORDERED** that the request is granted and the document(s) shall be sealed until the expiration of the judiciary records retention period at which time the document will be permanently deleted. Natera is authorized to share the sealed documents with (i) the Debtors, (ii) the United States Trustee pursuant to 11 U.S.C. §§ 103(c)(A) and (B); and counsel for the Committee on a Professional Eyes Only Basis, notwithstanding the Confidentiality Agreement or any other confidentiality agreements previously entered into with respect to information contained in the sealed documents.

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<sup>1</sup> Defined terms not otherwise defined herein shall have the meanings ascribed in the Seal Motion.

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

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

(Hon. Michael B. Kaplan)  
Chapter 11  
Case No. 24-11362 (MBK)  
(Jointly Administered)  
**Hearing Date: July 11, 2024 at 10:00 a.m. (ET)**  
**Objection Deadline: July 4, 2024**

**NOTICE OF NATERA INC.’S MOTION TO FILE UNDER SEAL NATERA’S  
MOTION FOR RELIEF FROM STAY TO EFFECTUATE A SETOFF**

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

**PLEASE TAKE NOTICE** that Natera Inc. (“Natera”) filed *Natera Inc.’s Motion to File Under Seal Natera’s Motion for Relief from Stay to Effectuate a Setoff* (the “Motion”) with the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”).

**PLEASE TAKE FURTHER NOTICE** that a hearing to consider the relief sought in the Motion will be held on **July 11, 2024 at 10:00 a.m. (ET)** before the Honorable Michael B. Kaplan, United States Bankruptcy Court for the District of New Jersey, at the Clarkson S. Fisher United States Courthouse, 402 East State Street, Second Floor, Courtroom No. 8, Trenton, New Jersey 08608.

**PLEASE TAKE FURTHER NOTICE** that responses or objections, if any, to the Motion shall: (i) be in writing; (ii) set forth the specific basis thereof; (iii) be filed with the Clerk of the Bankruptcy Court; and (iv) be served upon the Natera’s undersigned counsel, together with proof of service thereof, so as to be actually received no later than **July 4, 2024** (the “Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that unless a response or objection is timely filed and served in accordance with this notice, it may not be considered by the Bankruptcy Court. In the event no objections are filed and served by the Objection Deadline, the relief requested in the Motion may be granted without a hearing.

**PLEASE TAKE FURTHER NOTICE** that Natera has submitted a proposed form of order herewith. Oral argument is requested in the event an objection is timely filed.

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: June 19, 2024  
Newark, New Jersey

**GIBBONS P.C.**

/s/ Robert K. Malone  
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