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**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)

**DEBTORS' MOTION TO FILE UNDER SEAL DEBTORS' OBJECTION 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 DEBTORS'  
ESTATES AND (II) EXCLUSIVE SETTLEMENT AUTHORITY**

<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.



TO THE HONORABLE CHIEF JUDGE MICHAEL B. KAPLAN,  
UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), authorizing the Debtors to file the *Debtors’ Objection 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 Debtors’ Estates and (II) Exclusive Settlement Authority* (the “Unredacted Standing Motion Objection”) and the *Declaration of Jeffrey Goldfine in Support of the Debtors’ Objection 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 Debtors’ Estates and (II) Exclusive Settlement Authority* (the “Goldfine Decl.”) and exhibits attached thereto, each under seal, and (ii) directing that the Unredacted Standing Motion Objection and Goldfine Decl. remain under seal and confidential and not be made available to anyone, except for the Court, until such time that a hearing can be held, and (iii) granting related relief.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 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.). The Debtors confirm their consent to the Court entering a

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<sup>2</sup> Capitalized terms used but not immediately defined are defined later in this Motion or Unredacted Standing Motion Objection, filed contemporaneously herewith.

final order in connection with this Motion to the extent that 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.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 9013-1 and 9018-1 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. On February 13, 2024, each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description of the Debtors, their businesses, and the facts and circumstances supporting the Debtors’ chapter 11 cases are set forth in greater detail in the First Day Declaration and incorporated by reference herein.

6. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On February 16, 2024, the Court entered an order [Docket No. 54] authorizing procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). On March 1, 2024, the United States Trustee for the District of New Jersey (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) [Docket No. 131] pursuant to section 1102 of the Bankruptcy Code.

7. On April 19, 2024, the Debtors, the Committee, and Deerfield submitted the *Stipulated Confidentiality Agreement and Protective Order* [Docket No. 339] (the “Protective Order”), which allows a party to designate discovery material “Confidential” or “Highly Confidential.” Protective Order ¶ 7(b). The Protective Order also provides that “all portions of

pleadings, motions or other papers filed with the Court that disclose, quote or reference Designated Material, shall be filed under seal in accordance with the Federal Rules, the Bankruptcy Rules, and the Local Rules, with a version of the filing redacting or omitting the Designated Material filed publicly by the next day.” *Id.* ¶ 14.

8. On May 22, 2024, the Committee filed *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. 536] (the “Standing Motion”).

### **Basis for Relief**

9. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may:

- (1) protect an entity with respect to a trade secret or confidential research, development, or *commercial information*; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.<sup>3</sup>

10. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code. Specifically, Bankruptcy Rule 9018 provides, in relevant part, that, upon 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.

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<sup>3</sup> 11 U.S.C. § 107(b) (emphasis added).

11. If the material sought to be protected satisfies one of the categories identified in section 107(b) of the Bankruptcy Code, “the court is *required* to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original). Stated differently, section 107(b) of the Bankruptcy Code does not require a party seeking its protections to demonstrate “good cause.” *Orion Pictures*, 21 F.3d at 28. “Courts have supervisory power over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose.” *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005). Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” *Orion Pictures*, 21 F.3d at 27. Indeed, the “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” *See In re Glob. Crossing Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003). Confidential commercial information “has been defined as information which would cause ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” *In re Faucett*, 438 B.R. 564, 567–68 (Bankr. W.D. Tex. 2010) (quoting *Orion Pictures Corp.*, 21 F.3d at 27)). Commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code.<sup>4</sup> Courts have also held that the resulting

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<sup>4</sup> *See In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D. Tex. 2004) (“A bankruptcy court is required to seal ‘documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity’s competitors.’”); *see also Orion Pictures*, 21 F.3d at 27–28 (holding that section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party must show only that the information it wishes to seal is “confidential” and “commercial” in nature).

sealing order should be broad (*i.e.*, “any order which justice requires”). *See, e.g., In re Glob. Crossing, Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003) (citing Fed. R. Bankr. P. 9018).

12. The Unredacted Standing Motion Objection and the exhibits attached to the Goldfine Decl. reference certain material that the Debtors have designated as “Confidential” or “Highly Confidential” pursuant to the Protective Order. As a result, the Debtors seek entry of the Order to comply with the terms of the Protective Order as it requires the Debtors to file any references to the Designated Material under seal in accordance with the Federal Rules, the Bankruptcy Rules, and the Local Rules. Moreover, the Unredacted Standing Motion Objection and the Goldfine Decl. contain information that is proprietary in nature to the Debtors that, if made available to third parties would be detrimental to the Debtors’ estates and the Debtors’ chapter 11 cases. Specifically, the Unredacted Standing Motion Objection and exhibits attached to the Goldfine Decl. contain commercially sensitive business information that, if disclosed, could provide third parties with insight into the Debtors’ historical business activities. At a minimum, third parties could use such information to cause irreparable harm and prejudice to the Debtors and their estates. As such, preserving the confidentiality of the Unredacted Standing Motion Objection and the Goldfine Decl. is justified under the circumstances.

13. Accordingly, pursuant to section 107(b), Bankruptcy Rule 9018, and Local Rule 9018-1, the Debtors request that this Court enter the Order permitting the filing of the Unredacted Standing Motion Objection and the Goldfine Decl. under seal. Consistent with the Protective Order, the Debtors will file redacted versions with the Court within one business day of the filing of the Unredacted Standing Motion Objection and the Goldfine Decl. Protective Order ¶ 14.

**Waiver of Memorandum of Law**

14. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

**No Prior Request**

15. No prior request for the relief sought in this Motion has been made to this or any other court.

**Notice**

16. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the office of the United States Trustee for the District of New Jersey; (b) the Debtors' thirty (30) largest unsecured creditors (on a consolidated basis); (c) counsel to the agent to the Secured Notes; (d) the indenture trustee to the 2024 Convertible Notes; (e) the indenture trustee to the 2028 Convertible Notes; (f) Sullivan & Cromwell LLP, as counsel to the Required Holders; (g) Wollmuth Maher & Deutsch LLP, as counsel to the Required Holders; (h) counsel to the 2028 Convertible Noteholders; (i) the U.S. Securities and Exchange Commission; (j) the United States Attorney's Office for the District of New Jersey; (k) the attorneys general in the states where the Debtors conduct their business operations; (l) the Internal Revenue Service; (m) the Committee; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. A copy of this Motion is also available on the website of the Debtors' notice and claims agent at [www.kccllc.net/invitae](http://www.kccllc.net/invitae). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank]*

**WHEREFORE**, the Debtors respectfully request entry of the Order, substantially in the form attached hereto as **Exhibit A**.

Dated: July 2, 2024

*/s/ Michael D. Sirota*

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**Exhibit A**

**Proposed Order**

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

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>
In re:  INVITAE CORPORATION, <i>et al.</i> ,  Debtors. <sup>1</sup>

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

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**ORDER CONCERNING REQUEST TO SEAL DOCUMENTS**

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The relief set forth on the following pages two (2) and three (3) is **ORDERED**.

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

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: Order Concerning Request to Seal Documents

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Upon the Debtors' Motion for Entry of an Order Authorizing the Debtors to File Under Seal the *Debtors' Objection 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 Debtors' Estates and (II) Exclusive Settlement Authority* and the *Declaration of Jeffrey Goldfine in Support of the Debtors' Objection 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 Debtors' Estates and (II) Exclusive Settlement Authority* (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") (a) authorizing the Debtors to redact and file under seal the Unredacted Standing Motion Objection and the Goldfine Decl. and (b) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference to the Bankruptcy Court Under Title 11 of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sufficient cause exists for the relief set forth herein; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: Order Concerning Request to Seal Documents

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the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

ORDERED that the request is denied and the underlying document(s) 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.