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**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)
Hearing Date: Pursuant to OST

**NOTICE OF MOTION OF DEERFIELD
PARTNERS, L.P. TO SUBMIT UNDER SEAL ITS (I) OBJECTION
TO THE COMMITTEE’S STANDING MOTION AND (II) RESPONSE
TO THE COMMITTEE’S OBJECTIONS TO THE MAKE WHOLE AMOUNT**

PLEASE TAKE NOTICE that on the date set by the Court pursuant to a proposed Order Shortening Time (“OST”) and Application submitted herewith, a hearing on the Motion of Deerfield Partners, L.P. (together with its applicable affiliated funds and entities, “Deerfield”) to submit under seal its (I) objection to the Committee’s Standing Motion and (II) response to the Committee’s Objections to the make whole amount (“Motion”) will be held on the date and time stated in the OST or as soon thereafter as counsel may be heard (the “Hearing”) before the

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.kcellc.net/invitae. The Debtors’ service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.



Honorable Chief Judge Michael B. Kaplan, Clarkson S. Fisher United States Courthouse, 402 East State Street, Second Floor, Courtroom 8, Trenton, NJ 08608.

PLEASE TAKE FURTHER NOTICE that the Motion sets forth the relevant factual bases upon which the relief requested should be granted. A proposed Order granting the relief requested in the Motion is also submitted herewith.

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

PLEASE TAKE FURTHER NOTICE that only those responses or objections that are timely filed, served, and received will be considered at the Hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the movants.

PLEASE TAKE FURTHER NOTICE that, unless an objection is timely filed and served, the Motion will be deemed uncontested in accordance with D.N.J. LBR 9013-3(d) and the relief may be granted without a hearing.

Dated: July 2, 2024

/s/ James N. Lawlor

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

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

**MOTION OF DEERFIELD PARTNERS, L.P. TO SUBMIT UNDER SEAL ITS (I)
OBJECTION TO THE COMMITTEE’S STANDING MOTION AND (II) RESPONSE
TO THE COMMITTEE’S OBJECTIONS TO THE MAKE WHOLE AMOUNT**

Deerfield Partners, L.P. (together with its applicable affiliated funds and entities, “Deerfield”) moves the Court (the “Motion”) pursuant to 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 Rule 9018-1 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Bankruptcy Rules”) for entry of an order (i) authorizing Deerfield to submit its *(I) Objection to the Committee’s Standing Motion and (II) Response to the Committee’s Objections to the Make Whole Amount* (the “Standing Motion”

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Objection”) and the *Declaration of Benjamin S. Beller in Support of Deerfield’s (I) Objection to the Committee’s Standing Motion and (II) Response to the Committee’s Objections to the Make Whole Amount* (the “Beller Decl.”) and exhibits attached thereto, each under seal, (ii) directing that the unredacted Standing Motion Objection and unredacted Beller 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, (iii) authorizing Deerfield to redact confidential portions of the Standing Motion Objection and Beller Decl. that disclose Designated Materials (as defined below) and to submit such redacted versions on the docket in these Chapter 11 Cases (as defined below) and (iv) granting related relief. In support of this Motion, Deerfield represents as follows:

Jurisdiction and Venue

1. This Court has subject matter jurisdiction to consider this matter 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 on July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are found in 11 U.S.C. §§ 105(a) and 107(b), Bankruptcy Rule 9018, and Local Bankruptcy Rule 9018-1.

Background

3. On February 13, 2024 (the “Petition Date”), Invitae Corporation and its affiliated debtors and debtors in possession (the “Debtors”) each commenced a reorganization case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which were consolidated into the above-captioned case (the “Chapter 11 Case”).

4. On March 1, 2024, an official committee of unsecured creditors (the “Committee”) was appointed pursuant to section 1102 of the Bankruptcy Code. Docket No. 131.

5. On April 19, 2024, the Court entered the *Stipulated Confidentiality Agreement and Protective Order* [Docket No. 339] (the “Protective Order”), signed by the Debtors, the Committee, and Deerfield, which allows a party thereto to designate discovery material “Confidential” or “Highly Confidential” (the “Designated Materials”). 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.

6. On May 22, 2024, the Committee filed (i) *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”) and (ii) *The Official Committee of Unsecured Creditors’ Objection to the 2028 Senior Secured Note Claims [Claims Nos. 360, 378, 379, 380, 381, 382]* [Docket No. 528] (the “Claims Objection”).

7. Contemporaneously herewith, Deerfield filed its objection to the Standing Motion and response to the Claims Objection. Deerfield understands that the Debtors are moving for similar relief with respect to their objection to the Standing Motion and response to the Claims Objection, and related exhibits.

Basis for Relief

8. Although the public has a common law “right of access to judicial proceedings and records,”² the Bankruptcy Code requires courts to protect businesses by limiting public access, placing papers under seal, or otherwise entering orders to prohibit the dissemination of sensitive information. See 11 U.S.C. § 107(b), Fed. R. Bankr. P. 9018; see also Cendant, 260 F.3d at 194 (public’s right of access “is not absolute”) (citations omitted); Leucadia, Inc. v. Applied Extrusion Tech., Inc., 998 F.2d 157, 165 (3d Cir. 1993) (“Although the right of access is firmly entrenched, so also is the correlative principle that the right is not absolute.”) (internal quotation marks omitted).

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

On request of a party in interest, the bankruptcy court shall . . . (1) protect an entity with respect to a trade secret or confidential research, development, or **commercial information**

11 U.S.C. § 107(b) (emphasis added).³

10. “Commercial information” warranting relief under this section includes “information that would cause ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” In re OneJet, Inc., 613 B.R. 841, 848 (Bankr. W.D. Pa. 2020) (citing In re Orion Pictures Corp., 21 F.3d 24, 27 (2d Cir. 1994)). Thus, “courts

² In re Cendant Corp., 260 F.3d 183, 192 (3d Cir. 2001).

³ Bankruptcy Rule 9018 sets forth the procedure for seeking relief under section 107 of the Bankruptcy Code. Under Bankruptcy Rule 9018, the Court, on a motion or upon its own initiative:

may make any order which justice requires (1) 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.

must deny access to judicial documents—generally where open inspection may be used as a vehicle for improper purposes.” Orion Pictures, 21 F.3d at 27 (holding that to obtain the protections of section 107(b)(1), an interested party must show only that the information it wishes to seal is “confidential” and “commercial” in nature).

11. The exhibits attached to the Beller Decl. are materials that Deerfield and/or other parties to the Protective Order have designated as “Confidential” or “Highly Confidential” pursuant to the Protective Order. Further, the Standing Motion Objection references, discusses, and/or includes excerpts of those confidential exhibits. Thus, Deerfield seeks entry of the Order to comply with the terms of the Protective Order which requires Deerfield to file any references to the Designated Material (as defined in the Protective Order) under seal in accordance with the Federal Rules, the Bankruptcy Rules, and the Local Rules. Protective Order ¶ 14. Moreover, the Standing Motion Objection and exhibits attached to the Beller 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 including 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 Standing Motion Objection and the Beller Decl. is justified under the circumstances.

12. Sealing the record with respect to the Standing Motion Objection and exhibits attached to the Beller Decl. is the least restrictive alternative at this juncture. Accordingly, Deerfield respectfully submits that the Standing Motion Objection and exhibits attached to the Beller Decl. fall within the scope of the protections afforded by the Bankruptcy Code and that the relief requested herein should be granted.

Waiver of Memorandum of Law

13. Deerfield requests that this Court waive the requirement to file a separate memorandum of law pursuant to D.N.J. LBR 9013-1(a)(3), because the basis which Deerfield relies upon is incorporated herein and the Motion does not raise any novel issues of law.

No Prior Request

14. No prior request for the relief sought in this Motion has been made to this or any other court in connection with this Chapter 11 Case.

Notice

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

Conclusion

16. For the foregoing reasons, Deerfield respectfully requests that the Court: (a) enter an order, substantially in the form submitted herewith, granting the relief requested herein; and (b) grant such other and further relief to Deerfield as the Court may deem just and proper.

Dated: July 2, 2024

/s/ James N. Lawlor

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In re:

INVITAE CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No.: 24-11362 (MBK)

Judge: Hon. Michael B. Kaplan

(Jointly Administered)

**ORDER GRANTING MOTION OF DEERFIELD PARTNERS, L.P.
TO SUBMIT UNDER SEAL ITS (I) OBJECTION TO THE COMMITTEE'S STANDING MOTION
AND (II) RESPONSE TO THE COMMITTEE'S OBJECTIONS TO THE MAKE WHOLE AMOUNT**

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

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Debtor: Invitae Corporation

Case No.: 24-11362 (MBK)

Caption: Order Granting Motion of Deerfield Partners, L.P. to Submit Under Seal Its (I) Objection to the Committee's Standing Motion and (II) Response to the Committee's Objections to the Make Whole Amount

Upon the motion (the "Motion")² of Deerfield Partners, L.P. (together with its applicable affiliated funds and entities, "Deerfield") to Submit Under Seal Its (I) Objection to the Committee's Standing Motion and (II) Response to the Committee's Objections to the Make Whole Amount; and the Court having considered the request and any objection thereto, it is

- ORDERED that the request is denied, and the underlying document(s) shall be filed on the court's electronic filing system.

- ORDERED that the request is granted, and the document(s) shall be filed under seal until the expiration of the judiciary records retention period at which time the document will be permanently deleted.

² Capitalized terms not defined herein shall have the meaning ascribed in the Motion.