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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)

**PLAN ADMINISTRATOR'S APPLICATION IN LIEU OF A MOTION IN SUPPORT  
OF ENTRY OF THE STIPULATION AND AGREED ORDER LIFTING THE  
AUTOMATIC STAY AND THE PLAN INJUNCTION TO ALLOW  
UNITEDHEALTHCARE INSURANCE COMPANY TO LIQUIDATE  
ITS PROOF OF CLAIM IN PENDING ARBITRATION**

<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 <https://veritaglobal.net/invitae>. The Debtors' service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.



TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Andrew Spirito, as the plan administrator (the “Plan Administrator”) to the above-captioned wind-down debtors (collectively, the “Debtors”) submits this application in lieu of motion (the “Application”), pursuant to Local Rule 9019-4(b) of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”), seeking approval and entry of the proposed *Stipulation and Agreed Order Lifting the Automatic Stay and the Plan Injunction to Allow UnitedHealthcare Insurance Company to Liquidate its Proof of Claim in Pending Arbitration* (the “Stipulation and Agreed Order”), a copy of which is attached hereto as **Exhibit A**, and respectfully states as follows:

1. On February 13, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of New Jersey (the “Court”). 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 *Declaration of Ana Schrank, Chief Financial Officer of Invitae Corporation, in Support of Chapter 11 Filing, First Day Motions, and Access to Cash Collateral* [Docket No. 21].

2. On February 16, 2024, the Court entered an order [Docket No. 54] authorizing the joint administration and procedural consolidation of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. This Application is submitted pursuant to Local Rule 9019-4(b) in lieu of a motion in support of the Plan Administrator’s request that the Court enter the Stipulation and Agreed Order as presented.

3. Prior to the Petition Date, UnitedHealthcare Insurance Company (“United”) and

Debtor Invitae Corporation (“Invitae”) entered into that certain National Ancillary Provider Participation Agreement with an effective date of January 1, 2017, which has been amended from time to time (the “PPA”).

4. On March 25, 2024, counsel to Invitae sent to United a letter alleging that United failed to comply with its obligations under the PPA and informing United that Invitae is seeking payment pursuant to the PPA in the aggregate amount of \$135,407,789 for 68,999 claims with dates of service from May 1, 2021 through February 29, 2024, as well as interest under applicable law (the “Invitae Demand”).

5. On April 12, 2024, United filed a proof of claim against Invitae in the amount of \$36,780,598.87 (Claim No. 830) (the “Original Claim”).

6. On April 12, 2024, United also filed an amended proof of claim against Invitae in the amount of \$36,780,598.87 (Claim No. 849) (the “First Amended Claim”).

7. On May 22, 2024, United filed an amended proof of claim against Invitae in the amount of \$100,783,067.82 (Claim No. 1240) (the “Second Amended Claim”) representing amounts United alleges are due and owing from Invitae to United under the PPA.

8. On July 12, 2024, the Debtors filed their *Second Amended Joint Plan of Invitae Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 791] (the “Second Amended Plan”).

9. On July 18, 2024, United filed *UnitedHealthcare Insurance Company’s Motion for Relief from the Stay to Preserve Right of Setoff* [Docket No. 831] (the “Setoff Motion”) seeking entry of an order pursuant to 11 U.S.C. § 362(d)(1) for relief from the automatic stay to preserve United’s right to setoff mutual prepetition debts owing under the PPA, notwithstanding any provision of the Second Amended Plan or any subsequent plan that otherwise would enjoin United

from asserting a right of setoff.

10. On August 1, 2024, the Debtors filed the *Third Amended Joint Plan of Invitae Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 909] (the “Third Amended Plan”).

11. On August 2, 2024, the Bankruptcy Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Plan of Invitae Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 913] (the “Confirmation Order”) confirming the Third Amended Plan (as may be modified, amended, or supplemented from time to time, the “Plan”).

12. The Plan includes an injunction (the “Plan Injunction”), which provides, in pertinent part, that “[p]ursuant to 11 U.S.C. § 362(c)(1), the automatic stay of an act against property of the Debtors’ estates will continue until such property is no longer property of the Debtors’ estates, and pursuant to 11 U.S.C. § 362(c)(2), the stay of any other act described in 11 U.S.C. § 362(a) continues until the earlier of the closure or dismissal of these Chapter 11 Cases,” and “as of the Effective Date . . . all Persons and Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim or Interest that is subject to the releases and exculpations set forth in the Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests, except for the receipt of the payments or Distributions that are contemplated by the Plan.” *See* Plan, Article VIII. F.

13. The Confirmation Order similarly enjoins “all Persons and Entities who have held, hold, or may hold Claims . . . that are fully satisfied pursuant to the Plan or any Claim . . . that is subject to the releases and exculpations set forth in the Plan shall be precluded and permanently

enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims . . .[.]” including “commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims . . . .”. *See* Confirmation Order, ¶¶ 104-105.

14. On August 5, 2024, the Bankruptcy Court entered that certain *Stipulation and Agreed Order Reserving All Rights of the Debtors and UnitedHealthcare Insurance Company* [Docket No. 922], which, in resolution of the Setoff Motion, orders that the Debtors’ and United’s rights and remedies are reserved with respect to all causes of action arising from the PPA, including—notwithstanding the Plan, the Confirmation Order, or the automatic stay under Section 362 of the Bankruptcy Code—the right to setoff mutual prepetition debts owing by and between United and Invitae under the PPA in accordance with Section 553 of the Bankruptcy Code.

15. The PPA provides, in pertinent part, that if Invitae and United are unable to resolve any dispute between them within 60 days following the date one party sent written notice of the dispute to the other party, and if either party wishes to pursue the dispute, “it may do so only by submitting the Dispute to binding arbitration conducted by the American Arbitration Association (‘AAA’) in accordance with the AAA Healthcare Payor Provider Arbitration Rules, as they may be amended from time to time . . . .”.

16. On October 28, 2024, Invitae, through the Plan Administrator, commenced an arbitration by filing with the AAA a demand for arbitration against United concerning the obligations owing under the PPA, which is pending as Case Number 01-24-0008-4073 (the “Arbitration”).

17. Due to the overlap in the subject matter of certain of Invitae’s claims against United in the Arbitration and United’s Second Amended Claim against Invitae, the Parties have agreed to

allow United to assert a counterclaim against Invitae in the Arbitration in order to liquidate United's claims against Invitae as set forth in the Second Amended Claim.

18. Accordingly, the Plan Administrator has agreed to enter into the Stipulation and Agreed Order lifting the automatic stay pursuant to the Bankruptcy Code and the Plan Injunction to allow United to assert a counterclaim in the Arbitration.

19. The Plan Administrator submits that the Stipulation and Agreed Order is in the best interest of the Debtors and their estates, and a sound exercise of the Plan Administrator's business judgment.

20. No prior request for the relief sought in this Application has been made to this Court or any other court.

*[Remainder of Page Intentionally Left Blank.]*

**WHEREFORE**, the Plan Administrator requests that the Court enter the Stipulation and Agreed Order, in substantially the form submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: November 27, 2024

/s/ Michael D. Sirota

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*Co-Counsel to the Plan Administrator and the Debtors*

**Exhibit A**

**Stipulation and Agreed 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)

**STIPULATION AND AGREED ORDER LIFTING THE AUTOMATIC STAY AND THE  
PLAN INJUNCTION TO ALLOW UNITEDHEALTHCARE INSURANCE COMPANY  
TO LIQUIDATE ITS PROOF OF CLAIM IN PENDING ARBITRATION**

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The relief set forth on the following pages, numbered three (3) through eight (8), is  
**ORDERED.**

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<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 <https://veritaglobal.net/invitae>. The Debtors' service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.

**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: STIPULATION AND AGREED ORDER LIFTING THE AUTOMATIC  
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This stipulation and agreed order (this “Stipulation and Agreed Order”) is made this 27th day of November 2024 by each of Andrew Spirito as the plan administrator (the “Plan Administrator”) to the above-captioned wind-down debtors and debtors in possession (collectively, the “Debtors”) and UnitedHealthcare Insurance Company, on behalf of itself, its affiliates, parents, and subsidiaries (“United” and, together with the Plan Administrator, the “Parties” and each a “Party”). The Parties hereby stipulate as follows:

### **RECITALS**

**WHEREAS**, February 13, 2024 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”), and such cases are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure [Docket No. 54].

**WHEREAS**, prior to the Petition Date, United and Invitae Corporation (“Invitae”) entered into that certain National Ancillary Provider Participation Agreement with an effective date of January 1, 2017, which has been amended from time to time (the “PPA”).

**WHEREAS**, on March 25, 2024, counsel to Invitae sent to United a letter alleging that United failed to comply with its obligations under the PPA and informing United that Invitae is seeking payment pursuant to the PPA in the aggregate amount of \$135,407,789 for 68,999 claims with dates of service from May 1, 2021 through February 29, 2024, as well as interest under applicable law (the “Invitae Demand”).

**WHEREAS**, on April 12, 2024, United filed a proof of claim against Invitae in the amount

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of \$36,780,598.87 (Claim No. 830) (the “Original Claim”).

**WHEREAS**, immediately after filing the Original Claim, United identified a typographical error, and, as a result, United also filed on April 12, 2024 an amended proof of claim against Invitae in the amount of \$36,780,598.87 (Claim No. 849) (the “First Amended Claim”).

**WHEREAS**, on May 22, 2024, United filed an amended proof of claim against Invitae in the amount of \$100,783,067.82 (Claim No. 1240) (the “Second Amended Claim”).

**WHEREAS**, the Second Amended Claim represents amounts United alleges are due and owing from Invitae to United under the PPA.

**WHEREAS**, on July 12, 2024, the Debtors filed their *Second Amended Joint Plan of Invitae Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 791] (the “Second Amended Plan”).

**WHEREAS**, on July 18, 2024, United filed *UnitedHealthcare Insurance Company’s Motion for Relief from the Stay to Preserve Right of Setoff* [Docket No. 831] (the “Setoff Motion”) seeking entry of an order pursuant to 11 U.S.C. § 362(d)(1) for relief from the automatic stay to preserve United’s right to setoff mutual prepetition debts owing under the PPA, notwithstanding any provision of the Second Amended Plan or any subsequent plan that otherwise would enjoin United from asserting a right of setoff.

**WHEREAS**, on August 1, 2024, the Debtors filed the *Third Amended Joint Plan of Invitae Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 909] (the “Third Amended Plan”).

**WHEREAS**, on August 2, 2024, the Bankruptcy Court entered the *Findings of Fact*,

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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*Conclusions of Law, and Order Confirming the Third Amended Joint Plan of Invitae Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 913] (the “Confirmation Order”) confirming the Third Amended Plan (as may be modified, amended, or supplemented from time to time, the “Plan”).

**WHEREAS**, the Plan includes an injunction (the “Plan Injunction”), which provides, in pertinent part, that “[p]ursuant to 11 U.S.C. § 362(c)(1), the automatic stay of an act against property of the Debtors’ estates will continue until such property is no longer property of the Debtors’ estates, and pursuant to 11 U.S.C. § 362(c)(2), the stay of any other act described in 11 U.S.C. § 362(a) continues until the earlier of the closure or dismissal of these Chapter 11 Cases,” and “as of the Effective Date . . . all Persons and Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim or Interest that is subject to the releases and exculpations set forth in the Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests, except for the receipt of the payments or Distributions that are contemplated by the Plan.”

**WHEREAS**, Sections 104 and 105 of the Confirmation Order similarly enjoin “all Persons and Entities who have held, hold, or may hold Claims . . . that are fully satisfied pursuant to the Plan or any Claim . . . that is subject to the releases and exculpations set forth in the Plan shall be precluded and permanently enjoined on and after the Effective Date from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims . . . [.]” including “commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection

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Debtors: INVITAE CORPORATION, *et al.*  
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with or with respect to any such Claims . . . .”

**WHEREAS**, on August 5, 2024, the Bankruptcy Court entered that certain *Stipulation and Agreed Order Reserving All Rights of the Debtors and UnitedHealthcare Insurance Company* [Docket No. 922], which, in resolution of the Setoff Motion, orders that the Debtors’ and United’s rights and remedies are reserved with respect to all causes of action arising from the PPA, including—notwithstanding the Plan, the Confirmation Order, or the automatic stay under Section 362 of the Bankruptcy Code—the right to setoff mutual prepetition debts owing by and between United and Invitae under the PPA in accordance with Section 553 of the Bankruptcy Code.

**WHEREAS**, the PPA provides, in pertinent part, that if Invitae and United are unable to resolve any dispute between them within 60 days following the date one party sent written notice of the dispute to the other party, and if either party wishes to pursue the dispute, “it may do so only by submitting the Dispute to binding arbitration conducted by the American Arbitration Association (‘AAA’) in accordance with the AAA Healthcare Payor Provider Arbitration Rules, as they may be amended from time to time . . . .”

**WHEREAS**, on October 28, 2024, Invitae, through the Plan Administrator, commenced an arbitration by filing with the AAA a demand for arbitration against United concerning the obligations owing under the PPA, which is pending as Case Number 01-24-0008-4073 (the “Arbitration”).

**WHEREAS**, due to the overlap in the subject matter of certain of Invitae’s claims against United in the Arbitration and United’s Second Amended Claim against Invitae, the Parties have

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Debtors: INVITAE CORPORATION, *et al.*

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agreed to allow United to assert a counterclaim against Invitae in the Arbitration in order to liquidate United's claims against Invitae as set forth in the Second Amended Claim.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON  
APPROVAL BY THE BANKRUPTCY COURT OF THIS STIPULATION, THE  
FOLLOWING IS SO ORDERED:**

1. This Stipulation and Agreed Order shall only be effective and enforceable upon its approval and entry by the Bankruptcy Court on the docket for these chapter 11 cases, and then it shall be immediately effective and enforceable, with any stay of this Stipulation and Agreed Order waived under Fed. R. Bankr. P. 4001(a)(3).

2. The foregoing recitals are hereby incorporated by reference into this Stipulation and Agreed Order.

3. The Plan Injunction, the automatic stay, and injunction under the Confirmation Order shall be lifted under 11 U.S.C. §§ 105(a) and 362(d)(1) to allow United to assert and prosecute a counterclaim against Invitae in the Arbitration (including obtaining a judgment in court of competent jurisdiction to confirm any award) for the sole purpose of liquidating United's claims against Invitae as set forth in the Second Amended Claim, provided that (i) any recovery by United on the Second Amended Claim shall be governed by the Plan and Confirmation Order, and (ii) the other aspects of the Plan Injunction, automatic stay, and Confirmation Order injunction shall remain in effect.

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Debtors: INVITAE CORPORATION, *et al.*

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4. Neither this Stipulation and Agreed Order nor any actions taken pursuant hereto shall constitute evidence admissible against the Parties in any action or proceeding other than one to enforce the terms of this Stipulation and Agreed Order.

5. The Parties intend for this Stipulation and Agreed Order to be binding upon their successors, agents, assigns, including bankruptcy trustees and estate representatives and any parent, subsidiary, or affiliated entity of the Parties.

6. The undersigned hereby represent and warrant that they have full authority to execute this Stipulation and Agreed Order on behalf of the respective Parties and that the respective Parties have full knowledge of and have consented to this Stipulation and Agreed Order.

7. The Parties agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and Agreed Order, and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the Parties.

8. This Stipulation and Agreed Order constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions, agreements, and understandings, both written and oral, among the Parties with respect thereto.

9. The Bankruptcy Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Agreed Order, and the Parties hereby consent to such jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation and Agreed Order.



Dated: November 27, 2024

/s/ Jaime A. Welsh

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