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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)

(Joint Administration Requested)

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' proposed 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.



**DEBTORS' MOTION
FOR ENTRY OF INTERIM AND
FINAL ORDERS AUTHORIZING THE
DEBTORS TO (I) PAY PREPETITION WAGES,
SALARIES, OTHER COMPENSATION, AND REIMBURSABLE
EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS**

TO THE HONORABLE 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”):²

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”), authorizing the Debtors to (a) pay all prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Compensation and Benefits and (b) continue to administer the Compensation and Benefits in the ordinary course of business, including payment of prepetition obligations related thereto. In addition, the Debtors request that the Court schedule a final hearing within approximately thirty (30) days after the commencement of these chapter 11 cases to consider entry of the Final Order.

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

² A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth 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* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not immediately defined are defined later in this Motion, the First Day Declaration, or in the Cash Collateral Motion, as applicable.

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), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1, 9013-1, and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

Background

5. On February 13, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrent with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration 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, and no official committees have been appointed or designated.

The Debtors’ Workforce

6. The Debtors’ ability to operate is contingent on continuing to pay employee compensation and benefits in the ordinary course of business. As of the Petition Date, the Company employs approximately 1,235 individuals, of which approximately 1,224 are employed

by the Debtors (the “Employees”).³ The Employees are all located in the United States, of whom 1,219 are full-time and five (5) are part-time. In addition to the Employees, the Debtors’ supplement their workforce by retaining approximately 313 independent contractors, service providers, and temporary workers (the “Contingent Workers,” and together with the Employees, the “Workforce”) through third-party staffing agencies.

7. Employees are essential to the Debtors’ business and are intimately familiar with the complexities of the Debtors’ business, processes, and systems, and possess unique skills and experience with respect to the Debtors’ core business segments. The Employees perform a wide variety of corporate, scientific, and administrative functions, such as (a) scientific research and development; (b) laboratory operations, including processing the Debtors’ genetic testing kits; (c) sales and marketing; and (d) finance, accounting, legal, and human resources functions. Alongside the Employees, the Contingent Workers perform various functions, including, among others; (w) accounting, billing, and revenue collection services; (x) technology support and IT services; (y) business analysis and managerial support services; and (z) security services that support the Debtors’ Employees and operations.

8. The Workforce provides essential services for the Debtors that are necessary for the Debtors’ businesses to operate in the ordinary course. Without the Workforce’s continued, uninterrupted services, the Debtors’ business operations will be halted, and the administration of the Debtors’ estates will be materially impaired.

9. Additionally, many members of the Workforce rely on their compensation and benefits to pay their daily living expenses. The Workforce will be unfairly harmed if the Debtors

³ Non-Debtor entities in Canada, India, and Latvia employ approximately eleven (11) individuals. For the avoidance of doubt, the relief sought under this Motion relates only to payments made to individuals who are employed by the Debtors.

are not permitted to continue paying compensation and providing health and other benefits during these chapter 11 cases. Accordingly, the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

Compensation and Benefits

10. To minimize the personal hardship that the Workforce could suffer if prepetition obligations related thereto remain unpaid during these chapter 11 cases, the Debtors seek authority to: (a) pay and honor certain prepetition claims relating to, among other things, Wage Obligations, Withholding Obligations, Payroll Processing Fees, Reimbursable Expenses, Health and Welfare Coverage and Benefits, COBRA, the Workers' Compensation Program, the 401(k) Plan (including the 401(k) Matching Contributions), Paid Leave Benefits, the Non-Insider Bonus Programs (subject to entry of a Final Order), the Non-Insider Severance Program (subject to entry of a Final Order), WARN Act Obligations, the Additional Benefit Programs, Non-Employee Director Compensation, and certain other benefits that the Debtors have provided in the ordinary course (collectively, the "Compensation and Benefits");⁴ and (b) pay all costs related to or on account of the Compensation and Benefits in the ordinary course of business on a postpetition basis.

11. Subject to the Court's approval, the Debtors intend to continue their prepetition Compensation and Benefits in the ordinary course of business. Out of an abundance of caution, the Debtors further request confirmation of their right to modify, change, and/or discontinue any of their Compensation and Benefits and/or to implement new programs, policies, and benefits in

⁴ The descriptions of the Compensation and Benefits set forth in this Motion constitute a summary only. The actual terms of the agreements, contracts, plans, programs, and manuals governing the Compensation and Benefits will govern in the event of any inconsistency with the description in this Motion. The Debtors request authority to honor obligations related to Compensation and Benefits in the ordinary course of business consistent with prepetition practices, regardless of whether the Debtors inadvertently failed to include a particular benefit or aspect of compensation in the defined term "Compensation and Benefits," and any such omitted benefit or aspect of compensation is hereby included in the defined term "Compensation and Benefits" as used herein and in the Interim Order and Final Order.

the ordinary course during these chapter 11 cases and in the Debtors' sole discretion without the need for further Court approval, subject to applicable law. As of the Petition Date, the Debtors estimate that approximately \$14 million on account of Compensation and Benefits will become due and owing within the interim period.

12. Furthermore, as of the Petition Date, the Debtors believe that certain Employees, specifically on account of the 2023 Non-Insider Annual Incentive Plan, are owed aggregate prepetition amounts in excess of the \$15,150 statutory cap set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the "Statutory Cap"). For the avoidance of doubt, the Debtors seek authority to pay any amounts above the Statutory Cap solely pursuant to the Final Order.

I. Compensation, Withholding Obligations, Payroll Processing, and Reimbursable Expenses.

A. Wage Obligations.

13. In the ordinary course of business, the Debtors have incurred obligations to the Workforce for Employee Compensation, Contingent Worker Obligations, and Unpaid Commissions (collectively, the "Wage Obligations"). As of the Petition Date, the Debtors estimate that they owe approximately \$6.4 million on account of accrued but unpaid Wage Obligations. Authority to pay Wage Obligations and continue paying their Workforce is critical to the Debtors' ability to maintain and administer their estates. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue to honor the Wage Obligations and to pay any prepetition claims with respect thereto in the ordinary course of business.

i. Employee Compensation.

14. In the ordinary course of business, the Debtors incur obligations to their Employees for wages, overtime, and similar obligations (the "Employee Compensation"). Because Employees are generally paid on a bi-weekly basis, one week in arrears, certain Employees are

owed accrued but unpaid Employee Compensation as of the Petition Date (the “Unpaid Employee Compensation”). Employee Compensation may also be due and owing as of the Petition Date because of, among other things, potential discrepancies between amounts paid and amounts that Employees believe they should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees.

15. The Debtors pay approximately 833 Employees on a salaried basis and approximately 391 Employees on an hourly basis. The majority of the Debtors’ payroll is paid by direct deposit through electronic transfer of funds to the Employees’ bank accounts on Fridays on a bi-weekly basis. As of the Petition Date, the Debtors estimate that they owe approximately \$4.5 million on account of accrued but Unpaid Employee Compensation. Accordingly, the Debtors seek authority to pay all outstanding Unpaid Employee Compensation, including any prepetition amounts with respect thereto, as they become due and payable in the ordinary course of the Debtors’ business.

ii. Contingent Worker Obligations.

16. In the ordinary course of business, the Debtors incur payment obligations to third-party staffing agencies and Contingent Workers for services rendered to the Debtors (the “Contingent Worker Obligations”). The Debtors pay their Contingent Workers on a weekly, biweekly or monthly basis, although most Contingent Workers are paid monthly. Maintaining the authority to continue paying the Contingent Workers is critical to the continued operation of the Debtors’ business and administering the Debtors’ estates.

17. In the twelve (12) month period before the Petition Date, the Debtors spent approximately \$2.3 million per month on average on account of Contingent Worker Obligations. As of the Petition Date, the Debtors estimate that they owe approximately \$1.9 million in accrued but unpaid Contingent Worker Obligations. Accordingly, the Debtors seek authority to pay all

outstanding Contingent Worker Obligations, including any prepetition amounts with respect thereto, as they become due and payable in the ordinary course of business.

iii. Unpaid Commissions.

18. The Debtors offer certain full time, sales-designated Employees (each a “Sales Employee”) the opportunity to earn commissions based on attainment of quarterly sales quotas as determined by implied revenue generated from sales (the “Commissions”). Implied revenue is calculated by taking the total accessioned genetic test volume from a particular account (or a Sales Employee’s pro-rata volume from a shared account) and multiplying by the average price per genetic test applicable to the given sales region or product type (as determined in the Company’s sole discretion). Commissions are typically paid on the first bi-weekly pay date of the second month of a quarter, for sales processed in the previous quarter.

19. The Commissions are an important part of Sales Employees’ overall compensation package and motivate the Sales Employees to maximize their sales performance. On average, the Debtors spend approximately \$4.8 million per quarter on Commissions. Commissions from sales occurring during the first quarter of 2024 will not be able to be calculated until the quarter is complete. Accordingly, as of the Petition Date, the Debtors do not believe they owe any amounts on account of the Commissions. Out an abundance of caution, and due to the particular importance of Commissions to the Debtors’ business, including their ability to maintain workforce morale and sales momentum during these chapter 11 cases, the Debtors seek authority to continue to pay all outstanding Commissions, including prepetition amounts with respect thereto, as they become due and payable in the ordinary course of business.

B. Withholding Obligations.

20. In the ordinary course of business, the Debtors incur obligations on account of Payroll Deductions and Payroll Taxes (collectively, the “Withholding Obligations”). In the

twelve (12) month period before the Petition Date, the Debtors incurred a monthly average of approximately \$3.9 million in Withholding Obligations. As of the Petition Date, the Debtors estimate that they owe approximately \$500,000 in Withholding Obligations. The Debtors submit that, with the exception of the Employer Payroll Taxes, the Withholding Obligations are not property of the estate and are held in trust. However, out of an abundance of caution, the Debtors respectfully request that the Court authorize the Debtors to continue to honor their Withholding Obligations and to pay any prepetition amounts owed with respect thereto in the ordinary course of business.

i. Payroll Deductions.

21. During each payroll period, the Debtors deduct certain amounts from Employees' paychecks, including garnishments, child support, and similar deductions, as well as other pre-tax and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, such as an Employee's share of healthcare benefits and insurance premiums, 401(k) contributions, legally ordered deductions, and miscellaneous deductions (collectively, the "Payroll Deductions"), and forward the Payroll Deductions to various third-party recipients. During each pay cycle, the Debtors retain only those Payroll Deductions related to the Employees' share of health care benefits and insurance premiums. Such amounts are held in trust by the Debtors until remitted as they come due to the applicable third parties. As of the Petition Date, the Debtors estimate that they owe approximately \$500,000 on account of the Payroll Deductions. However, out of an abundance of caution, the Debtors respectfully request that the Court authorize the Debtors to continue to honor their Payroll Deductions and to pay any prepetition amounts owed with respect thereto in the ordinary course of business.

ii. Payroll Taxes.

22. In addition to the Payroll Deductions, certain federal and state laws require that the Debtors withhold amounts from Employees' gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes for remittance to the appropriate federal, state, or local taxing authorities (collectively, the "Employee Payroll Taxes"). The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance and Social Security and Medicare taxes (collectively, the "Employer Payroll Taxes" and, together with the Employee Payroll Taxes, the "Payroll Taxes"). The Debtors' payroll processor processes and forwards the Payroll Taxes to the appropriate federal, state, and local taxing authorities in accordance with remittance intervals and deadlines established by those taxing authorities. As of the Petition Date, the Debtors estimate that they do not owe any amounts on account of the Payroll Taxes. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue to honor their Payroll Taxes and to pay any prepetition amounts owed with respect thereto in the ordinary course of business.

iii. Payroll Processing.

23. The Debtors employ Automatic Data Processing, Inc ("ADP") to process and administer the Employees' Withholding Obligations. During each pay period ADP charges the Debtors a fee for the payroll processing services that is driven by the total number of Employees (the "Payroll Processing Fees"). The Payroll Processing Fees are automatically remitted to ADP with the payroll payment. In the four months preceding these chapter 11 cases, the Debtors incurred a monthly average of approximately \$30,000 on account of the Payroll Processing Fees. Without the services provided by the ADP, the Debtors would face significant administrative burden processing their payroll and ultimately paying Employees. As of the Petition Date,

the Debtors estimate they do not owe any amounts on account of the Payroll Processing Fees. Nevertheless, out of an abundance of caution, the Debtors request that the Court authorize the Debtors to continue to honor the Payroll Processing Fees and to pay any prepetition claims with respect thereto in the ordinary course of business.

C. Reimbursable Expenses.

24. In the ordinary course of business, the Debtors reimburse Employees for certain pre-approved expenses incurred on behalf of the Debtors within the scope of their employment (the “Reimbursable Expenses”). Reimbursable Expenses include, among other expenses, lodging, air travel, car rentals, taxi or ride-share services, public transportation, bicycle allowances, meal allowances, car mileage allowances, business-related entertainment expenses, certain home office expenses, technology, equipment, and software expenses, work-related administrative expenses, internet, and mobile phone expenses. Employees generally pay for their own Reimbursable Expenses up-front (*i.e.*, not via a Company credit card) and then apply for reimbursement of such expenses by submitting an expense report to the Debtors through SAP Concur, the Debtors’ expense management software. Once the Debtors determine that the charges are for allowable reimbursable business expenses, the Debtors reimburse such Employees for any such expenses.

25. During the twelve (12) month period before the Petition Date, the Debtors incurred a monthly average of approximately \$750,000 on account of Reimbursable Expenses. Due to the timing of when Employees submit Reimbursable Expenses, it is difficult for the Debtors to precisely estimate the amount of prepetition Reimbursable Expenses outstanding as of the Petition Date. Based on historical practice, however, the Debtors estimate that as of the Petition Date, they owe approximately \$700,000 on account of Reimbursable Expenses.

26. The Debtors’ inability to reimburse the Reimbursable Expenses could impose a hardship on the Employees where such individuals incurred obligations for the Debtors’ benefit,

with the understanding that such expenses would be reimbursed. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue to honor their Reimbursable Expenses and to pay any prepetition claims with respect thereto in the ordinary course of business and consistent with historical practices.

II. Health and Welfare Coverage and Benefits.

27. The Debtors offer their Employees the ability to participate in a number of health, insurance, and benefits programs, including, among other programs, medical and prescription insurance, life and disability insurance, dental insurance, vision insurance, savings and spending account programs, and other employee benefit plans (collectively, the “Health and Welfare Coverage and Benefits”). The Health and Welfare Coverage and Benefits are available to Employees if they are regular, active, full-time or part-time Employees that work at least twenty (20) hours per week (the “Eligible Employees”).

28. The Debtors’ Health and Welfare Coverage and Benefits include:

- (a). **Medical and Prescription Coverage:** The Debtors provide Eligible Employees with self-insured medical and prescription coverage programs administered through HealthComp Core and Anthem Blue Cross Blue Shield (together the “HealthComp-Anthem Plan”), and a traditional low-deductible HMO medical and prescription coverage through Kaiser Permanente (“Kaiser Plan”).⁵ Employees have the option to waive coverage if they are covered under another insurance plan. Under the HealthComp-Anthem Plan, Eligible Employees utilize care, claims are processed and paid, and amounts are automatically debited from the Debtors’ accounts. Eligible Employees may also elect to participate in a high-deductible health plan (“HDHP”). Each Employee that elects the HDHP is eligible for a tax-free, pre-tax health savings account (“HSA”) that offsets certain costs associated with the HDHP. Alternatively, Eligible Employees may elect a low-deductible, higher premium health plan through the HealthComp-Anthem Plan that provides more savings if the

⁵ The Kaiser plan is only offered to Eligible Employees in California, Colorado, and Hawaii.

Eligible Employees utilize medical providers with a preferred provider organization. On average, the Debtors cover approximately 80-90 percent of the cost of premiums, while the Eligible Employees cover the remaining 10-20 percent. Legal spouses and children are covered under the Medical and Prescription Coverage as eligible dependents. Approximately 90 percent of Employees enroll in Medical and Prescription Coverage. The Debtors also maintain a stop-loss plan through Voya Financial that limits the Debtors' maximum exposure to \$250,000 per Employee per plan year. The annual cost of the Medical and Prescription Coverage to the Debtors is approximately \$23.5 million. As of the Petition Date, the Debtors estimate they owe approximately \$3.2 million on account incurred but not reported obligations under the HealthComp-Anthem Plan and \$250,000 on account of incurred but unpaid premiums under the Kaiser Plan.

- (b). **Life Insurance and Other Related Coverage:** The Debtors provide basic life insurance (at an amount calculated based on two (2) times the Eligible Employee's salary, up to a fixed maximum amount of \$500,000), basic accidental death and dismemberment insurance (at an amount calculated based on two (2) times the Eligible Employee's salary, up to a fixed maximum amount of \$500,000), long- and short-term disability insurance to all active, full-time, or part-time Eligible Employees, as well as supplemental, spouse, and child life products offered on a voluntary, Eligible Employee-paid basis, critical illness insurance as a lump-sum of up to \$30,000 payable upon diagnosis of a covered illness, and group accident insurance (collectively, the "Life Insurance and Other Related Coverage"), which are administered by The Standard Life Insurance. The average annual cost of the Life Insurance and Other Related Coverage to the Debtors is approximately \$1.2 million. As of the Petition Date, the Debtors estimate they owe approximately \$100,000 on account of unpaid Life Insurance and Other Related Coverage.
- (c). **Dental Insurance Coverage:** The Debtors offer Eligible Employees base and premier dental plans administered by Guardian Life (collectively, the "Dental Insurance Coverage"). The Dental Insurance Coverage provides Eligible Employees the freedom to use providers in and out of the Debtors' health insurance network, though using an out-of-network insurance provider may increase Eligible Employees' out of pocket costs. The percentage of the Dental Insurance Coverage premium that is employer-covered depends on which plan each Eligible Employee selects. The average annual cost of the Dental

Insurance Coverage to the Debtors is approximately \$1.6 million. As of the Petition Date, the Debtors estimate they owe approximately \$100,000 on account of unpaid Dental Insurance Coverage.

- (d). **Vision Insurance Coverage:** The Debtors offer vision insurance plans provided by VSP Choice Network (the “Vision Insurance Coverage”). On average, the Debtors cover approximately 83 percent of the cost of premiums, while the Eligible Employees cover the remaining 17 percent. The average annual cost of the Vision Insurance Coverage to the Debtors is approximately \$250,000. As of the Petition Date, the Debtors estimate they owe approximately \$15,000 on account of unpaid Vision Insurance Coverage.
- (e). **Unpaid HSA Costs:** The Debtors provide Eligible Employees enrolled in a HDHP the opportunity to contribute pre-tax contributions to an HSA through payroll deductions for certain health and welfare needs. HSAs are administered by Igoe Administrative Services (“Igoe”). HSA withholdings are held in trust by the Debtors and are remitted to Igoe on a bi-weekly basis. The Debtors deduct approximately \$35,000 each pay period on account of Eligible Employee contributions to HSAs. To incentivize employees to take advantage of the tax savings associated with an HSA and the lower associated cost of a HDHP, the Debtors contribute approximately \$1,500 or \$3,000 per year to an Eligible Employee’s HSA, depending on the Eligible Employee’s benefits elections and whether they claim dependents. The Debtors remit these contributions to Igoe on a bi-weekly basis. Currently, approximately 364 Eligible Employees contribute to an HSA. As of the Petition Date, the Debtors owe approximately \$75,000 on account of accrued but unpaid HSA amounts and fees (the “Unpaid HSA Costs”). As a result, the Debtors seek authority to pay and/or remit the Unpaid HSA Costs and continue the HSAs in the ordinary course of business on a postpetition basis.
- (f). **Unused FSA Amounts:** The Debtors provide Eligible Employees with the opportunity to contribute to three (3) types of flexible spending accounts: the Healthcare FSA, the Limited Purpose FSA, and the Dependent Care FSA (each, a “FSA”), to make pre-tax contributions through payroll deductions for certain health and welfare needs. The FSAs are administered by Igoe. Eligible Employees may use the entire amount of their FSA elections at any point during the year; however, any unutilized amounts at the end of the year are forfeited by the Eligible Employee. The Debtors do not contribute to Eligible

Employees' FSAs, and any unutilized FSA contributions are generally held in trust by the Debtors until the end of each year and are not property of their estates. Each pay period, the Debtors deduct approximately \$40,000 on account of the Eligible Employee contributions to the FSAs. Currently, approximately 337 Eligible Employees contribute to the FSAs. As of the Petition Date, the Debtors owe approximately \$1.1 million on account of allocated but unused FSA amounts (the "Unused FSA Amounts"). As a result, the Debtors seek authority to pay and/or remit the Unused FSA Amounts and continue the FSAs in the ordinary course of business on a postpetition basis.

29. Failure to continue the Health and Welfare Coverage and Benefits could cause severe hardship for Employees and make it difficult to retain the Debtors' Workforce. Accordingly, the Debtors request that the Court authorize the Debtors to continue to honor their Health and Welfare Coverage and Benefits and to pay any prepetition claims with respect thereto in the ordinary course of business.

III. COBRA.

30. The Debtors' Medical and Prescription Coverage also provides former employees with certain health benefits following their departure from the Debtors. More specifically, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), former employees of the Debtors (the "COBRA Employees") may opt-in to continue their Medical and Prescription Coverage, Dental Insurance Coverage, and Vision Insurance Coverage (the "COBRA Benefits") following the termination of their employment or certain events resulting in a reduction of hours. COBRA Employees are entitled by law to continue to receive COBRA Benefits for up to eighteen (18) months, and in some instances up to twenty-nine (29) months, following termination of employment. The cost of COBRA Benefits is the responsibility of the COBRA Employees, with no premium amounts owed by the Company. The Company pays its COBRA administrator, Igoe, a fee that is calculated on an annual basis.

31. As of the Petition Date, the Debtors estimate that they do not owe any amounts to Igoe to administer the COBRA Benefits. Out of an abundance of caution, the Debtors seek authority (a) to pay any prepetition amounts outstanding on account of any fees owed to Igoe to administer the COBRA Benefits, (b) to continue to offer the COBRA Benefits, including to those Employees who may be terminated after the Petition Date, and honor all obligations related thereto on a postpetition basis in the ordinary course of business and consistent with past practices, and (c) to continue to pay fees related to the COBRA Benefits on a postpetition basis in the ordinary course of business and consistent with past practices.

IV. Workers' Compensation Program.

32. The Debtors maintain workers' compensation insurance for their Employees at the statutorily required level for each state in which the Debtors have Employees (collectively, and as described herein, the "Workers' Compensation Program"). As part of the Workers' Compensation Program, the Debtors maintain a workers' compensation insurance policy with Chubb (the "Workers' Compensation Insurance Policy").⁶

33. The Debtors must continue claim assessment, determination, adjudication, and payment pursuant to the Workers' Compensation Program, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements.⁷ There are currently five (5) active

⁶ In addition to the Workers' Compensation Insurance Policy, the Debtors maintain numerous other insurance policies, which are described in the *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Maintain Insurance and Surety Coverage Entered Into Prepetition and Pay Related Prepetition Obligations and (II) Renew, Supplement, Modify, or Purchase Insurance and Surety Coverage* (the "Insurance Motion"), filed contemporaneously herewith.

⁷ The Debtors' Workers' Compensation Program may change postpetition in the ordinary course due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. By this Motion, the Debtors request authority to continue the Workers' Compensation Program postpetition, including making any necessary modifications thereto.

open claims under the Workers' Compensation Program. To the extent any Employees assert claims arising under the Workers' Compensation Program during these chapter 11 cases, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit such Employees to proceed with such claims. This requested modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

34. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences that potentially could disrupt the reorganization process. As of the Petition Date, the Debtors estimate they do not owe any amounts on account of the Workers' Compensation Program. Nevertheless, out of an abundance of caution, the Debtors request that the Court authorize the Debtors to continue to pay any prepetition and postpetition amounts with respect thereto as they become due and payable in the ordinary course of business.⁸

35. The Workers' Compensation Program is subject to regular audits (the "Workers' Compensation Audits"), which may result in an adjustment of the premiums owed on account thereof. Workers' Compensation Audits for prepetition premium payments will not conclude until after the Petition Date. As a result, the aggregate amount of the Debtors' obligations arising from the Workers' Compensation Audits remains to be determined. The Debtors seek authority to honor any amounts owed on account of any Workers' Compensation Audits in the ordinary course of business.

⁸ The Debtors maintain a surety bond for workers' compensation obligations on account of a remote Employee residing in Wyoming (the "Workers' Compensation Bond"). As of the Petition Date, the remote Employee is no longer employed by the Debtors. The Debtors estimate that they do not owe any obligations on account of the Workers' Compensation Bond. The Debtors seek authority to pay any obligations under the Workers' Compensation Bond in the Insurance Motion, filed contemporaneously herewith.

V. The 401(k) Plan.

36. The Debtors maintain a retirement savings plan for the benefit of their U.S. Employees that satisfies the requirements of section 401(k) of the Internal Revenue Code (the “401(k) Plan”). The 401(k) Plan is administered by Empower Retirement and allows for automatic pre-tax or post-tax salary deductions of eligible compensation up to the limits set forth by the Internal Revenue Code. Employees’ contributions are automatically deducted from each paycheck, and amounts are held in trust until they are remitted to Empower Retirement (typically within a week of the payroll date). As of the Petition Date, the Debtors estimate that they owe approximately \$500,000 of unremitted Employee 401(k) contributions held in trust. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue honoring their obligations under the 401(k) Plan and remit any prepetition amounts in respect thereto in the ordinary course of business.

37. The Debtors fully match Employees’ 401(k) contributions, up to the greater of: (i) two percent of the Employee’s compensation; or (ii) \$1,500 (collectively, the “401(k) Matching Contributions”). The relevant contribution period for purposes of calculating the amount of any matching contribution is each 401(k) Plan year, and Employees must be an active employee of the Debtors on the last day of the 401(k) Plan year to be eligible for the 401(k) Matching Contribution. Each 401(k) Matching Contribution is fully vested upon deposit into an Employee’s account and such 401(k) Matching Contributions are deposited during the first quarter of the following plan year.

38. During the twelve (12) month period before the Petition Date, the Debtors incurred approximately \$3.3 million on account of 401(k) Matching Contributions. As of the Petition Date, the Debtors estimate that they owe approximately \$3.3 million on account of 401(k) Matching Contributions. Accordingly, the Debtors respectfully request that the Court authorize the Debtors

to continue to honor their 401(k) Matching Contributions and to pay any prepetition claims with respect thereto in the ordinary course of business.

VI. Paid Leave Benefits.

39. The Debtors provide paid time off to certain Employees (the “Paid Leave Benefits”). The Debtors provide the Employees certain paid time off for vacation and illness (collectively “PTO”). The Debtors provide Employees with a flexible time off schedule and unlimited PTO. Employees are entitled to other Paid Leave Benefits in certain circumstances. Such circumstances include, among others: holidays, disability, medical leave, pregnancy and childbirth, leave related to certain legal and governmental obligations, and bereavement leave. When an Employee elects to use Paid Leave Benefits, that Employee is paid their regular hourly or salaried rate.

40. Continuation of the Paid Leave Benefits policies in accordance with historical practice is essential to maintaining the Workforce’s morale during these chapter 11 cases. Further, the Paid Leave Benefits are broad-based programs upon which all Employees have come to depend. As of the Petition Date, the Debtors do not believe they owe any amounts on account of the accrued but Unpaid Leave Benefits. Out of an abundance of caution, the Debtors seek authority to continue to pay all outstanding Paid Leave Benefits, including prepetition and postpetition amounts with respect thereto, as they become due and payable in the ordinary course of business.

VII. Non-Insider Bonus Programs (Final Order Only).

41. In the ordinary course of business, to encourage and reward outstanding performance, the Debtors incur obligations to their Employees for periodic bonuses pursuant to the Debtors’ Non-Insider Annual Incentive Plan and Non-Insider Retention Program, under which Employees are paid bonuses in accordance with various performance and financial metrics, as

applicable (collectively, the “Non-Insider Bonus Programs”). The Non-Insider Bonus Programs are necessary to properly motivate Employees to perform and drive value for all stakeholders. Thus, authority to continue the Non-Insider Bonus Programs and pay all obligations thereunder is critical to preserving Employee morale and to avoid disruption to the Debtors’ workforce.

A. The Non-Insider Annual Incentive Plan (Final Order Only).

42. The Debtors maintain a non-insider annual incentive plan (the “Non-Insider Annual Incentive Plan”) to reward Employees for contributing to the achievement of the Debtors’ annual business performance objectives. All full-time and part-time Employees in good standing and who do not receive Commissions are eligible to participate. Historically, eligible Employees received an annual performance-based bonus calculated as a percentage based on the Company’s attainment of certain financial and operational milestones, including certain cash burn, revenue, and gross margin milestones for any bonuses earned under the Non-Insider Annual Incentive Plan during the previous calendar year. However, in January 2024, the Debtors amended the terms of the Non-Insider Annual Incentive Plan, and now the approximately 1,100 eligible Employees are eligible to receive three (3) lump-sum payments under the 2024 Non-Insider Annual Incentive Plan. Payments under the 2024 Non-Insider Annual Incentive Plan are scheduled for May 2024, September 2024, and December 2024. In order to be eligible for payment, Employees must be in good standing and actively employed by the Debtors on the payment date. The 2024 Non-Insider Annual Incentive Plan will be paid at 100% attainment.

43. As of the Petition Date, the Debtors estimate that they owe approximately \$11.1 million on account of the 2023 Non-Insider Annual Incentive Plan. Furthermore, the Debtors estimate that approximately \$5 million will become due and owing during these chapter 11 cases on account of the 2024 Non-Insider Annual Incentive Plan. The Debtors seek authority, subject to entry of the Final Order, to pay prepetition amounts to non-insiders on account

of the Non-Insider Annual Incentive Plan and to continue the Non-Insider Annual Incentive Plan in the ordinary course of business consistent with the terms of the Non-Insider Annual Incentive Plan during the pendency of these chapter 11 cases. For the avoidance of doubt, the relief sought with respect to the Non-Insider Annual Incentive Plan does not include payments to any Employee that is an “insider,” as such term is defined in section 101(31) of the Bankruptcy Code. Furthermore, the Debtors are not seeking to pay any Employee in excess of the Statutory Cap during the interim period. Out of an abundance of caution, the Debtors seek authority to pay any amounts above the Statutory Cap solely pursuant to the Final Order.

B. Non-Insider Retention Program.

44. Under the Debtors’ ordinary course rank-and-file retention program (the “Non-Insider Retention Program”), approximately 151 non-insider Employees are entitled to payments—each receiving a specific amount pursuant to a specific payment schedule—as determined by the Debtors in their business judgment. The Non-Insider Retention Program is in addition to the Non-Insider Annual Incentive Program as the Non-Insider Retention Program is meant to provide further retentive incentive apart from ordinary bonus payments, especially at this critical juncture. The Non-Insider Retention Program is crucial to retain the Debtors’ valuable Employees and continue to receive the services that the Employees provide in the ordinary course of business.

45. As of the Petition Date, the Debtors do not owe any amounts on account of the Non-Insider Retention Program. The Debtors anticipate that approximately \$6.4 million will become due and owing under the Non-Insider Retention Program during the pendency of these chapter 11 cases. The Debtors seek authority to pay any postpetition obligations under the Non-Insider Retention Program as they arise in the ordinary course of business. For the avoidance of doubt, the Debtors are seeking to maintain the Non-Insider Retention Program in the ordinary

course of business and the Debtors are not seeking relief to pay any Employee that is an insider, as such term is defined in section 101(31) of the Bankruptcy Code under the Non-Insider Retention Program.

VIII. Non-Insider Severance Program (Final Order Only).

46. In the ordinary course of business, although the Debtors do not maintain an official severance policy, the Debtors' historically provided severance for the benefit of certain non-insider Employees (the "Non-Insider Severance Program"). Under the Non-Insider Severance Program, certain non-insider Employees may be eligible for payment of severance if their employment is terminated due to a workforce adjustment or any not-for-cause employer-initiated termination. Such severance benefits (the "Severance Benefits") typically include a twelve (12) week lump-sum severance payment, other termination benefit costs, and an acceleration of the vesting schedule for restricted stock units and other stock-based compensation.

47. The Debtors' maintenance of the Non-Insider Severance Program and payment of Severance Benefits is critical to sustaining Employee morale and loyalty. Failure to maintain the Non-Insider Severance Program will result in increased instability in the Debtors' workforce, which will undermine the Debtors' ability to strengthen their financial and operational foundation, navigate these chapter 11 cases, generate growth, and position themselves for long-term success.

48. As of the Petition Date, the Debtors do not owe any amounts on account of the Non-Insider Severance Program. During the pendency of these chapter 11 cases, the Debtors believe they will owe approximately \$1.6 million under the Non-Insider Severance Program upon certain Employees' postpetition exit dates on account of the December 2023 and January 2024 reductions in force of approximately 114 Employees. The Debtors respectfully request that the Court authorize the Debtors to continue to pay amounts on account of the Severance Benefits if and when they come due in the ordinary course of business. For the avoidance of doubt, the

Debtors are not seeking relief to pay any Employee that is an insider, as such term is defined in section 101(31) of the Bankruptcy Code, under the Non-Insider Severance Program. Furthermore, the Debtors are not seeking to pay any Employee in excess of the Statutory Cap during the interim period. Out of an abundance of caution, the Debtors seek authority to pay any amounts above the Statutory Cap solely pursuant to the Final Order.

IX. WARN Act Obligations.

49. In the sixty (60) days prior to the Petition Date, the Debtors issued notices pursuant to the Worker Adjustment and Retraining Notification Act (the “Federal WARN Act”) to certain governmental entities and to 114 Employees—working remotely and at the Debtors’ laboratory facility in San Francisco, CA—that are expected to be impacted by a qualified “mass layoff” or “plant closing” (collectively, the “WARN Act Notices”).

50. Unless an exception applies, the Federal WARN Act generally requires sixty (60) days advance notice to affected employees and governmental entities prior to the implementation of a “mass layoff” or a “plant closing.” The WARN Act Notices each contemplate a termination date (the “WARN Act Termination Date”) for the relevant Employees that is in accordance with the notice period under the WARN Act. The Debtors intend to continue to employ the Employees who received the WARN Act Notices through the WARN Act Termination Date before terminating their employment.

51. As of the Petition Date, the Debtors believe they owe approximately \$652,000 under the WARN Acts on account of Employees who were given non-working WARN notices in the ordinary course. For those Employees who the Debtors asked to work through the WARN period, such Employees will also receive benefits under the Non-Insider Severance Program upon their exit. Out of an abundance of caution, the Debtors seek authority to comply with all accrued and upcoming obligations on account of the WARN Acts on a postpetition basis.

X. Additional Benefit Programs.

52. In addition to the foregoing, the Debtors offer Employees the opportunity to participate in a range of general, ancillary benefits, including, among other things: (a) critical illness insurance, whereby Employees may receive a lump-sum benefit upon diagnosis of a covered illness; (b) group accident insurance; (c) commuter benefits, under which Employees are reimbursed by the Company for using various modes of transportation; (d) mobile phone and data reimbursements; (e) mental health benefits, whereby Employees may seek counseling sessions; (f) access to certain legal services through Rocket Lawyer; (g) health and wellness programs, including access to the Debtors' genetic testing products; (h) parental benefits through Carrot; (i) financial coaching and access to SoFi for student loan refinancing, mortgages, and personal loans; (j) lifestyle benefits, including Fetch and PerkSpot; and (k) supplemental travel insurance through Blue Cross Global Traveler (collectively, the "Additional Benefit Programs").

53. As of the Petition Date, approximately \$10,000 is accrued and outstanding under the Additional Benefit Programs. The Debtors respectfully request that the Court authorize the Debtors to continue to honor their obligations on account of these Additional Benefit Programs, including any prepetition amounts with respect thereto, as they become due and payable in the ordinary course of the Debtors' business.

XI. Non-Employee Director Compensation.

54. The Debtors' board of directors consists of nine (9) members, including the Debtors' Chief Executive Officer and eight (8) non-Employee directors (each, a "Director"). Seven (7) non-Employee Directors receive an annual cash retainer of \$50,000, payable in advance in quarterly increments, for their services as Directors along with certain stock option incentives. One (1) non-Employee Director receives a monthly payment of \$40,000, payable in advance each month, for their services as Director. Certain non-Employee Directors are entitled to additional

monthly amounts ranging from \$5,000 to \$50,000 on account of their service on committees (such compensation collectively, the “Non-Employee Director Compensation”). Non-Employee Directors are also entitled to expense reimbursements for reasonable out-of-pocket expenses in connection with travel related to their Director duties (the “Non-Employee Director Reimbursements”).

55. As of the Petition Date, the Debtors estimate that they do not owe any amounts on account of the Non-Employee Director Compensation and Non-Employee Director Reimbursements. Out of an abundance of caution, the Debtors seek authority to pay their Directors any prepetition Non-Employee Director Compensation and Non-Employee Director Reimbursements in the ordinary course of business and consistent with past practice, and to continue paying Non-Employee Director Compensation and Non-Employee Director Reimbursements to their non-Employee Directors in the ordinary course of business on a postpetition basis and consistent with past practice.

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Compensation and Benefits Obligations.

A. Certain of the Compensation and Benefits Are Entitled to Priority Treatment.

56. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Compensation and Benefits to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims, given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, for (a) wages, salaries or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). To the extent that an Employee receives no more than \$15,150 on account of claims entitled

to priority, the relief sought with respect to compensation only affects the timing of payments to Employees and does not have any material negative impact on recoveries for general unsecured creditors. *See In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“The need to pay [employee wage] claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.”). To the extent an Employee is owed more than \$15,150 on account of certain Compensation and Benefits, the full payment of such obligations in the ordinary course is warranted under section 363(b)(1) of the Bankruptcy Code and the doctrine of necessity.

57. The Workforce is essential to the Debtors’ business, and payment of the Compensation and Benefits at this time is necessary to avoid potential material disruption to the Debtors’ ordinary-course operations. Finding, attracting, and training new qualified talent would be extremely difficult—if not impossible. Such recruitment efforts would most likely require, among other things, higher salaries and more comprehensive compensation packages than are currently provided to Employees.

B. Payment of Certain Compensation and Benefits Is Required by Law.

58. As discussed above, the Debtors seek authority to pay the Withholding Obligations to the appropriate third-party payees. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees’ wages. Certain Withholding Obligations are not property of the Debtors’ estates because the Debtors have withheld such amounts from Employees’ wages on other parties’ behalves. *See* 11 U.S.C. §§ 541(b)(1), (d). Federal and state laws require the Debtors to withhold certain tax payments from Employees’ wages and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92,

95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees’ wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Withholding Obligations may not be property of the Debtors’ estates, the Debtors request authorization to transmit the Withholding Obligations to the proper parties in the ordinary course of business. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998).

59. Similarly, state laws require the Debtors to maintain the Workers’ Compensation Program. If the Debtors fail to maintain the Workers’ Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all obligations related to the Workers’ Compensation Program is therefore crucial to the Debtors’ continued operations and the success of these chapter 11 cases.

60. The Debtors, therefore, respectfully request that the Court recognize that the Withholding Obligations are not property of the Debtors’ estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize the Debtors to transmit such monies to the proper parties in the ordinary course of business.

II. Payment of the Compensation and Benefits Is Warranted Under Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.

61. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business’s going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing,

these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

62. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow a contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to the debtors); *In re Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

63. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See In re Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as

the “doctrine of necessity”). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497.

64. These standards are satisfied here. The Debtors submit that the payment of the Compensation and Benefits in the ordinary course represents a sound exercise of the Debtors’ business judgment and is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code. Paying the Compensation and Benefits in the ordinary course will benefit the Debtors’ estates and their creditors by allowing the Debtors’ business operations to continue without interruption. Indeed, the Debtors believe that without the relief requested herein, Employees may seek alternative employment opportunities, perhaps with the Debtors’ competitors. Such a development would deplete the Debtors’ workforce, thereby hindering the Debtors’ ability to operate their businesses and, likely, diminishing stakeholder confidence in the Debtors’ ability to successfully reorganize. The loss of valuable Employees and the resulting need to recruit new personnel (and the costs

attendant thereto) would be distracting at this crucial time when the Debtors need to focus on stabilizing their business operations. Accordingly, the Debtors must do their utmost to retain their workforce by, among other things, paying Compensation and Benefits in the ordinary course.

65. In addition, many members of the Workforce rely exclusively on the Compensation and Benefits to satisfy their daily living expenses. Consequently, the Workforce will be exposed to significant financial difficulties if the Debtors are not permitted to pay Compensation and Benefits in the ordinary course. Moreover, failure to timely satisfy such obligations will jeopardize workforce morale and loyalty at this critical time, when needed most. If the Court does not grant the relief requested herein, Employees will not receive health coverage and, thus, may be obligated to pay certain health care claims that the Debtors have not satisfied. The loss of health care coverage will result in considerable anxiety for Employees (and likely attrition) at a time when the Debtors need all Employees to perform their best. As set forth above, Employee attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors' operations at this critical juncture.

66. The importance of a debtor's workforce to its operations has been repeatedly recognized by courts in this district, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Jan. 30, 2024) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto); *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Jan. 24, 2024) (same on an interim basis); *In re WeWork Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 6, 2023) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto); *In re Cyxtera Tech., Inc.*,

No. 23-14853 (JKS) (Bankr. D.N.J. June 29, 2023) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 18, 2023) (same).⁹

67. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue the Compensation and Benefits and pay related obligations in the ordinary course of business.

III. The Non-Insider Bonus Programs Should Be Approved Because They Are Valid Exercise of the Debtors' Business Judgment and Are Justified by the Facts and Circumstances of these Chapter 11 Cases.

68. The Debtors believe they have authority to continue the Non-Insider Bonus Programs as it is an ordinary course continuation of the Debtors' prepetition practices authorized by section 363(c) of the Bankruptcy Code and constitutes a sound exercise of the Debtors' business judgment. *See, e.g., In re Dana Corp.*, 358 B.R. 567, 581 (Bankr. S.D.N.Y. 2006); *In re Glob. Home Prods., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007). However, out of an abundance of caution, the Debtors further believe that the Non-Insider Bonus Programs comply with the requirements of sections 503(b) and (c) of the Bankruptcy Code. Accordingly, for the reasons more fully set forth below, payments under the Non-Insider Bonus Programs are justified by the facts and circumstances of the Debtors' chapter 11 cases and should be approved.

69. The standard for determining if the Non-Insider Bonus Programs do not run afoul of section 503(c)(3) of the Bankruptcy Code's requirement that such contemplated payments be justified by the facts and circumstances of the case is essentially the same business judgment standard articulated under section 363(b) of the Bankruptcy Code. *See In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) ("Courts have held that the 'facts and circumstances'

⁹ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b).”). Section 503(c)(3) of the Bankruptcy Code generally prohibits certain transfers made to officers, managers, consultants, and others that are not justified by the facts and circumstances of the case. 11 U.S.C. § 503(c)(3).

70. Here, the business justification supporting the Non-Insider Bonus Programs is clear: the Debtors require the key, non-Insider Employees’ specific knowledge and skill sets to preserve and maximize stakeholder value. The Non-Insider Bonus Programs’ Employees are intimately familiar with the Debtors’ operations, and many have skills that are unique and difficult to replace. Without the Non-Insider Bonus Programs, the Debtors risk the departure of their most crucial Employees. Such departures would likely cause a substantial disruption to the efficiency and future growth of the Debtors’ operations, reducing profits and revenues to the detriment of all parties in interest. Moreover, it is the Debtors’ reasonable belief that the cost of the Non-Insider Bonus Programs is less than the cost of recruiting and training replacement Employees to oversee the Debtors’ business and operations. Retaining Employees through the Non-Insider Bonus Programs will accordingly maintain stability and allow the Debtors to focus their efforts on reorganizing as effectively as possible. Overall, the Debtors believe that the Non-Insider Bonus Programs is vital to retaining Employees and protecting the enterprise value associated therewith.

71. Because implementing the Non-Insider Bonus Programs will motivate the Debtors’ Employees to the benefit of all parties in interest, the Non-Insider Bonus Programs reflect a sound exercise of the Debtors’ business judgment and is justified by the facts and circumstances of these chapter 11 cases. *See, e.g., In re Glob. Home Prods., LLC*, 369 B.R. at 784 (“The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor’s business judgment.”); *In re Mesa Air Grp., Inc.*, No. 10-10018 (MG), 2010 WL 3810899, *4 (Bankr.

S.D.N.Y. Sept. 24, 2010) (holding that bonus payments are “‘justified by the facts and circumstances of the case’ under section 503(c)(3) [where] they are within the ‘sound business judgment’ of the Debtors” (citation omitted)). Accordingly, to the extent necessary, the Non-Insider Bonus Programs satisfy section 503(c)(3) of the Bankruptcy Code.

IV. A Limited Waiver of the Automatic Stay for Workers’ Compensation Claims Is Appropriate Here.

72. Section 362(a) of the Bankruptcy Code operates to stay:

[T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

11 U.S.C. § 362(a)(1). Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1).

73. In accordance with section 362(d) of the Bankruptcy Code, the Debtors seek to modify the automatic stay to permit Employees to proceed with their workers’ compensation claims in the appropriate judicial or administrative forum. Cause exists here to modify the automatic stay because staying the workers’ compensation claims could have a detrimental effect on the financial wellbeing and morale of certain Employees and lead to the departure of Employees who are critical at this juncture. Such departures could cause a severe disruption in the Debtors’ businesses, which would be to the detriment of all parties in interest.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

74. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors’ existing cash management

system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

75. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one (21) days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The requested relief is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support the relief requested herein.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

76. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Waiver of Memorandum of Law

77. 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.

Reservation of Rights

78. Nothing contained in this Motion or any order granting the relief requested in this Motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

No Prior Request

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

Notice

80. 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) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, and granting the relief requested herein.

Dated: February 13, 2024

/s/ Michael D. Sirota

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*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Proposed Interim Order

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

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

Chapter 11
Case No. 24-11362 (MBK)
(Joint Administration Requested)

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' proposed 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.

**INTERIM ORDER AUTHORIZING THE
DEBTORS TO (I) PAY PREPETITION WAGES,
SALARIES, OTHER COMPENSATION, AND REIMBURSABLE
EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS**

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

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

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Proposed Co-Counsel for Debtors and Debtors in Possession

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

Upon the *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (II) Continue Employee Benefits Programs* (the "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "Interim Order") authorizing the Debtors to (a) pay prepetition wages, salaries, other compensation, and reimbursable expenses and (b) continue employee benefits programs, in each case in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto, and (c) scheduling a final hearing (the "Final Hearing") to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; 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 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 having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the

² 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: INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

proceedings had before the Court and after due deliberation and sufficient cause appearing therefore **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on an interim basis as set forth herein.

2. The Final Hearing on the Motion will be held on _____, **2024, at __:__ .m. (Eastern Time)**. Objections, if any, that relate to the Motion shall be filed and served so as to be actually received by (i) the Debtors' proposed counsel; (ii) the office of the United States Trustee for the District of New Jersey; (iii) the agent to the Secured Notes; (iv) the indenture trustee to the 2024 Convertible Notes; (v) the indenture trustee to the 2028 Convertible Notes; (vi) counsel to the Required Holders; (vii) counsel to the 2028 Convertible Noteholders; and (viii) counsel to any statutory committee appointed in these chapter 11 cases on or before _____, **2024, at 4:00 p.m. (Eastern Time)**. If no objections are filed to the Motion, the Court may enter an order approving the relief requested in the Motion on a final basis without further notice or hearing.

3. Subject to the Approved Budget, the Debtors are authorized to continue and/or modify the Compensation and Benefits in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, and to honor and pay any prepetition amounts related thereto as and when such obligations are due; *provided* that the Debtors shall not make any payments in excess of the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code to any individual Employee without further order of this Court; *provided further* that (a) the Debtors shall seek Court approval, on notice, of any modification or change that would implicate any portion of section 503(c) of the Bankruptcy Code; and (b) nothing herein shall be deemed to authorize the payment of any amounts that violate, implicate, or are otherwise subject to section

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

503(c) of the Bankruptcy Code. If the Debtors seek to pay any amounts that are subject to section 503(c) of the Bankruptcy Code, the Debtors will seek approval of such payments, if any, by separate motion under section 503(c) of the Bankruptcy Code. Nothing in this Interim Order shall be construed as approving any transfer pursuant to section 503(c) of the Bankruptcy Code.

4. The Debtors will provide seven (7) days' notice of any material changes to the Compensation and Benefits and any other programs described in the Motion to the U.S. Trustee and any statutory committees in accordance with the Debtors' prepetition policies and practices.

5. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum, and Employees are authorized to so proceed. The Debtors are authorized to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program in accordance with the Debtors' prepetition policies and practices.

6. The Debtors are authorized to forward any unpaid amounts on account of Payroll Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in the ordinary course of business.

7. The Debtors are authorized to pay in the ordinary course of business any costs and expenses incidental to payment of the Compensation and Benefits obligations, including the

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

Unpaid Payroll Processing Fees, all administrative and processing costs, and necessary payments in accordance with the Debtors' prepetition policies and practices.

8. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Compensation and Benefits obligations.

9. The Debtors are authorized to pay and honor all claims and obligations, if any, whether arising prepetition or postpetition, arising under the WARN Acts; *provided* that the Debtors shall not make any payments to any insiders (as that term is defined in section 101(31) of the Bankruptcy Code) without further order of this Court; *provided further* that, during the Interim Period, the Debtors shall provide the U.S. Trustee, on a confidential basis, with a report of the total amounts paid on account of claims and obligations arising under the WARN Acts within five (5) business days of making such payments.

10. Nothing in the Motion or this Interim Order shall constitute a determination by the Court as to whether any individual seeking payment pursuant to this Interim Order is or is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

12. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Interim Order except as otherwise provided in this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

13. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Interim Order.

14. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

15. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due.

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

19. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

20. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Interim Order.

21. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

22. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Exhibit B

Proposed Final Order

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

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

Chapter 11
Case No. 24-11362 (MBK)
(Joint Administration Requested)

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’ proposed 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.

**FINAL ORDER AUTHORIZING
THE DEBTORS TO (I) PAY PREPETITION WAGES,
SALARIES, OTHER COMPENSATION, AND REIMBURSABLE
EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS**

The relief set forth on the following pages, numbered three (3) through seven (7), is
ORDERED.

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

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(Page | 3)

Debtors: INVITAE CORPORATION, *et al.*
Case No. 24-11362 (MBK)
Caption of Order: FINAL ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

Upon the *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (II) Continue Employee Benefits Programs* (the "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of a final order (this "Final Order") authorizing the Debtors to (a) pay prepetition wages, salaries, other compensation, and reimbursable expenses and (b) continue employee benefits programs, in each case in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto, all as more fully set forth in the Motion; and upon the First Day Declaration; 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 having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief

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

(Page | 4)

Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

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

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. Subject to the Approved Budget, the Debtors are authorized to continue and/or modify the Compensation and Benefits in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, and to honor and pay any prepetition amounts related thereto as and when such obligations are due; *provided* that (a) the Debtors shall seek Court approval, on notice, of any modification or change that would implicate any portion of section 503(c) of the Bankruptcy Code; and (b) nothing herein shall be deemed to authorize the payment of any amounts that violate, implicate, or are otherwise subject to section 503(c) of the Bankruptcy Code. If the Debtors seek to pay any amounts that are subject to section 503(c) of the Bankruptcy Code, the Debtors will seek approval of such payments, if any, by separate motion under section 503(c) of the Bankruptcy Code. Nothing in this Final Order shall be construed as approving any transfer pursuant to section 503(c) of the Bankruptcy Code.
3. The Debtors will provide seven (7) days' notice of any material changes to the Compensation and Benefits and any other programs described in the Motion to the U.S. Trustee and any statutory committees.
4. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum, and Employees are authorized to so proceed. The Debtors are authorized to continue the Workers' Compensation

(Page | 5)

Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

Program and pay all prepetition amounts relating thereto in the ordinary course of business. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program in accordance with the Debtors' prepetition policies and practices.

5. The Debtors are authorized to forward any unpaid amounts on account of Payroll Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in the ordinary course of business.

6. The Debtors are authorized to pay in the ordinary course of business any costs and expenses incidental to payment of the Compensation and Benefits obligations, including the Unpaid Payroll Processing Fees, all administrative and processing costs, and necessary payments in accordance with the Debtors' prepetition policies and practices.

7. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Compensation and Benefits obligations.

8. The Debtors are authorized to pay and honor all claims and obligations, if any, whether arising prepetition or postpetition, arising under the WARN Acts; *provided* that the Debtors shall not make any payments to any insiders (as that term is defined in section 101(31) of the Bankruptcy Code) without further order of this Court.

9. Nothing in the Motion, the Interim Order, or this Final Order shall constitute a determination by the Court as to whether any individual seeking payment pursuant to this Final Order is or is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code.

(Page | 6)

Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

10. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

11. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order except as otherwise provided in this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

12. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored

(Page | 7)

Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS PROGRAMS

as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

13. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

17. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

18. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.