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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)

**DEBTORS' MOTION FOR
ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE DEBTORS
TO PAY CERTAIN PREPETITION CLAIMS OF**

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.



(A) CRITICAL VENDORS, (B) 503(B)(9) CLAIMANTS, (C) LIEN CLAIMANTS, AND (D) FOREIGN VENDORS AND (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS

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”), (a) authorizing the Debtors to pay prepetition amounts in the ordinary course of business owing on account of (i) Critical Vendor Claims in an aggregate amount of up to \$3.74 million on an interim basis and \$5.13 million on a final basis, (ii) 503(b)(9) Claims in an aggregate amount of up to \$1.85 million on an interim basis and \$2.04 million on a final basis, (iii) Lien Claims in an aggregate amount of up to \$2.63 million on an interim basis and \$2.89 million on a final basis, and (iv) Foreign Vendor Claims in an aggregate amount of up to \$1.09 million on an interim basis and \$1.19 million on a final basis, and (b) granting administrative expense priority status to all Outstanding Orders and authorizing the payment of such obligations in the ordinary course of business. 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.

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, in the First Day Declaration, or in the Cash Collateral Motion, as applicable.

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 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), 363, 503, 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1 and 9013-1 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 business 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.

Overview of the Debtors’ Vendors

6. As described in further detail in the First Day Declaration, the Debtors’ business makes available critical and potentially life-saving genetic data that guides patients in making

informed medical decisions and evaluating their health and wellness throughout their lifetime. To this end, a critical part of Debtors' operation is the distribution, and processing of, genetic testing kits (each, a "Test Kit") that identify a variety of medical and genetic information in various clinical areas to determine patients' genetic predispositions to certain cancers and other diseases. The Company's tests are broken down into three (3) major categories: (i) oncology, (ii) rare diseases, and (iii) women's health.³ The Company delivers genetic tests and medical information to patients and institutional customers such as hospitals, medical clinics, and biopharmaceutical partners, as well as government and private insurance payers.

7. To effectuate their business model and ensure the uninterrupted provision of goods and services to their customers, the Debtors rely on strong vendor relationships. Any disruption in the provision of the critical supplies and materials the Debtors source from their vendors would have far-reaching and adverse economic and operational consequences on the Debtors' business.

8. The Debtors conduct business with the Critical Vendors, the 503(b)(9) Claimants, the Lien Claimants, and the Foreign Vendors (collectively, the "Trade Claimants") and such claims, collectively, the "Trade Claims") for the manufacturing of the genetic testing kits, the provision of certain laboratory equipment and supplies, and the shipment of the Test Kits. These goods are highly specialized and, in some cases, might give rise, either directly or indirectly, to mechanic's, possessory, or other liens. Due to the specialized nature of the supplies that the Debtors use, there are a limited number of qualified vendors available. In many cases, the Debtors have limited to no options for replacement suppliers, as the Debtors are only certified to use certain laboratory consumables—changing such suppliers would require the Debtors to first undergo a lengthy

³ For the avoidance of doubt, the Debtors divested its women's health business line but are still processing tests related to this business line until mid-March.

validation process. Thus, even where alternative vendors might exist, the time and costs associated with switching from one vendor to another could irreparably harm the Debtors’ business, goodwill, and market share.

9. In order to protect their business on a postpetition basis, the Debtors request authorization to pay certain outstanding prepetition claims of the Trade Claimants, subject to the terms set forth in the Interim Order and the terms set forth in the Final Order. The following table summarizes the categories of claims that the Debtors request authority to pay and the estimated prepetition amounts outstanding:

Category	Description of Services Provided	Estimated Amount to Be Paid Within Thirty Days (Interim Order)	Estimated Total Amount to Be Paid (Final Order)
Critical Vendors	Suppliers of goods and services that are critical to maintain the Debtors’ day-to-day operations and necessary to ensure the health, safety, regulatory, and environmental compliance of the Debtors’ operations, but that are not Lien Claimants, 503(b)(9) Claimants, Foreign Vendors, or other suppliers.	\$3.74 million	\$5.13 million
503(b)(9) Claimants	Suppliers that provided goods to the Debtors that were received within twenty (20) days before the Petition Date.	\$1.85 million	\$2.04 million
Lien Claimants	Suppliers of goods or services utilized by or provided to the Debtors that may assert mechanic’s, possessory, or other similar liens (excluding 503(b)(9) Claimants).	\$2.63 million	\$2.89 million
Foreign Vendors	Suppliers of goods or services that are based outside of the United States.	\$1.09 million	\$1.19 million
Total amount of claims:		\$9.31 million	\$11.26 million

I. The Critical Vendors.

10. The Debtors operate in a highly competitive industry. The Debtors’ ability to continue generating revenue and operating their business, and thus the success of these chapter 11 cases, fundamentally depends on the Debtors’ ability to effectively manage the complex and

regulated process by which they provide comprehensive, high-quality medical genetic information to the healthcare ecosystem. The Debtors rely on equipment and materials provided by certain vendors (the “Critical Vendors”) that enable the Debtors to effectively operate their laboratories and administer the genetic tests that are fundamental to the success of their business.

11. Maintaining relationships with the Critical Vendors throughout the pendency of these chapter 11 cases is vital to the Debtors’ ability to preserve and maximize value for the benefit of their estates. Nearly all of the Critical Vendors are the Debtors’ *sole* suppliers of (i) key laboratory equipment, such as sequencers, which read each genetic test, (ii) laboratory reagents and enzymes, which are required to process the genetic tests through sequencers and are highly unique to the type of genetic test being processed, and (iii) other equipment and materials that are essential to laboratory operations and the sequencing process such as specimen collection device providers and equipment used in the DNA extraction process. Further, certain of the Critical Vendors provide supplies that require certification under the Certified Laboratory Improvement Amendments (“CLIA”). If the Debtors were to have to replace any of the CLIA-certified Critical Vendors, it would take the Debtors months to find an alternative substitute, as they would need to go through the recertification process and would incur significant costs in the process. Other Critical Vendors provide key services related to the Debtors’ systems and operations that ensure that the Debtors’ business runs smoothly, such as facilities maintenance services, software and technological amenities, and services for properly disposing of laboratory waste. Any disruption to the Debtors’ access to these services risks causing irreparable harm to the Debtors’ business because such disruptions would have significant downstream effects—healthcare providers would almost certainly turn to alternative genetic testing providers if faced with the prospect of delayed distribution of Test Kits or delayed or flawed test results. It is therefore essential to preserving the

value of the Debtors' estates that relationships with key vendors be unimpeded during the pendency of these chapter 11 cases.

12. In light of these concerns, the Debtors, with the assistance of their advisors, have spent significant time evaluating the vendor relationships, consulting operations managers, reviewing contracts and supply agreements, and analyzing applicable law, regulations, and historical practices to identify the Critical Vendors that supply the products and services most vital to the Debtors' go-forward operations. Specifically, when identifying vendors critical to their business, the Debtors examined each of their vendor relationships with, among other things, the following criteria in mind:

- whether certain specifications or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods and services from alternative sources;
- whether a particular vendor is a "sole source" supplier or service provider;
- whether the services provided by the vendor are so vital, or the vendor's operations are so commingled with the Debtors' business, that even the briefest disruption would cause significant harm to the Debtors' operations;
- whether the Debtors would be unable to obtain comparable products or services from alternative sources on a cost-effective basis within a reasonable timeframe;
- whether alternative vendors are available that can provide the requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;
- the degree to which replacement costs (including pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- whether the Debtors' supply levels or service coverage is sufficient to meet customer demands while an alternative vendor is located;

- the location and nationality of the vendor;
- whether a vendor meeting the foregoing criteria is able or likely to refuse to continue providing essential products or services to the Debtors if their prepetition balances are not paid; and
- whether the business relationship between the Debtors and the supplier is governed by a contract.

13. The Debtors' selection process balanced the need to ensure that these chapter 11 cases do not disrupt their operations or negatively impact their operations and customers, with the need to limit the expenditure of estate resources. Paying targeted prepetition claims of Critical Vendors (the "Critical Vendor Claims") benefits the Debtors' estates, both monetarily and operationally, by preserving liquidity and enabling the Debtors to operate effectively during these chapter 11 cases. For the twelve (12) months before the Petition Date, on average, the Debtors paid the Critical Vendors approximately \$12.90 million per month. The Debtors estimate that, as of the Petition Date, approximately \$5.13 million is outstanding on account of Critical Vendor Claims.

14. Based on the foregoing, the Debtors seek entry of the Interim Order and the Final Order granting them authority to make payments in their sole discretion and business judgment, on account of the Critical Vendor Claims in an amount not to exceed \$3.74 million during the interim period, and \$5.13 million on a final basis, which amounts represent the Debtors' best estimate as to what amounts must be paid to the Critical Vendors to continue an uninterrupted supply of critical goods and services.

II. The 503(b)(9) Claimants.

15. The Debtors might have received certain goods and/or materials from various vendors (the "503(b)(9) Claimants") within the twenty (20) days immediately preceding the Petition Date, thereby giving rise to claims that are accorded administrative priority under

section 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Claims”). Many of the Debtors’ relationships with the 503(b)(9) Claimants are not governed by long-term contracts or supply agreements. Instead, the Debtors obtain goods or other materials from such claimants on a purchase order basis. As a result, a 503(b)(9) Claimant may refuse to supply new orders without payment of its 503(b)(9) Claims, and such refusal could negatively affect the Debtors’ estates as the Debtors’ business are dependent on the steady flow of materials and equipment needed to operate the Company’s laboratories.

16. Additionally, the 503(b)(9) Claimants supply goods or materials that are critical to the Debtors’ ongoing operations. For instance, the 503(b)(9) Claimants include certain indispensable partners that supply the Debtors with reagent chemicals needed to run genetic sequencing processes, Test Kit materials, and laboratory consumables essential to the Debtors’ operations. Unless the Debtors pay some or all of the prepetition claims owing to such vendors, the 503(b)(9) Claimants might reduce the Debtors’ existing trade credit or refuse to ship postpetition. Any interruption in the flow of these goods would be highly disruptive to the Debtors’ operations and value-destructive for the Debtors’ business. As such, the Debtors believe that payment of the 503(b)(9) Claims is essential to avoid disruptions to the Debtors’ operations.

17. The Debtors estimate that, as of the Petition Date, approximately \$2.04 million is outstanding on account of 503(b)(9) Claims, approximately \$1.85 million of which may become due within the interim period. For the foregoing reasons, the Debtors seek entry of the Interim Order and Final Order granting them authority to make payments, in their sole discretion and business judgment, on account of the undisputed 503(b)(9) Claims. Importantly, the Debtors do not seek to accelerate or modify existing payment terms with respect to the 503(b)(9) Claims.

Rather, the Debtors will pay the 503(b)(9) Claims only as they come due in the ordinary course of business.

III. The Lien Claimants.

18. In the ordinary course of business, the Debtors incur obligations (the “Lien Claims”) to warehouse providers, shippers, maintenance workers, and other service providers (collectively, the “Lien Claimants”) for (a) the warehousing of the Debtors’ Test Kit inventory at third-party production facilities, (b) the assembly and transportation of the Test Kits from third-party production facilities to customers, and (c) various services for the Debtors, including remodeling and on-site construction or repairs to the Debtors’ facilities, machinery, and equipment. The Debtors routinely do business with a number of vendors that may be able to assert a variety of statutory, common law, or possessory liens against the Debtors and their property if the Debtors fail to pay for certain goods delivered or services rendered.

19. The Debtors’ business depends on the uninterrupted flow of materials and equipment needed to maintain and operate the Company’s laboratories, as well as ship and process Test Kits. To maintain their operations and efficiently transport products, the Debtors store their Test Kit inventory at third-party production facilities and employ FedEx Corporation and United Parcel Service to transport their Test Kits from these third-party manufacturers to customers, and from customers to the Debtors’ laboratories. Under the laws of most states, these warehouse providers and carriers will, in certain circumstances, have a lien on the goods in their possession that secures the charges or expenses incurred in connection with the transportation of goods. Thus, if the Lien Claims are not satisfied, the Lien Claimants may refuse to release the Debtors’ property, thereby disrupting the Debtors’ supply chain and distribution network.

20. Additionally, under certain non-bankruptcy laws, some Lien Claimants may assert liens on property they improved to secure payment of the charges or expenses incurred in

connection with these improvements or maintenance. In the event these claims remain unpaid, the Lien Claimants could attempt to assert liens or otherwise impede the Debtors' use of property until their claims are satisfied and their liens redeemed. The Lien Claimants' possession, and retention, or enforcement of a mechanic's lien would disrupt the Debtors' operations and affect the Debtors' ability to efficiently administer these chapter 11 cases. The cost of such disruption to the Debtors' estates would likely be greater than the applicable Lien Claims. Further, pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants might be entitled to adequate protection of any valid possessory lien, which could drain estate assets. For the twelve (12) months before the Petition Date, on average, the Debtors paid the Lien Claimants approximately \$3.37 million per month. The Debtors estimate that, as of the Petition Date, approximately \$2.89 million is outstanding on account of Lien Claims.

21. Based on the foregoing, the Debtors seek entry of the Interim Order and the Final Order granting them authority to make payments in their sole discretion and business judgment, on account of the Lien Claims in an amount not to exceed \$2.63 million during the interim period, and \$2.89 million on a final basis, which amounts represent the Debtors' best estimate as to what amounts must be paid to the Lien Claimants to continue an uninterrupted supply of critical goods and services.

IV. The Foreign Vendors.

22. A critical component of the Debtors' operations involves transacting with certain foreign vendors (collectively, the "Foreign Vendors"). The Foreign Vendors supply materials and goods that are critical to the success of the Debtors' ongoing operations. There is a significant risk that nonpayment of prepetition claims could cause a Foreign Vendor to stop providing materials or goods to the Debtors on a timely basis following the Petition Date or sever its business relationship with the Debtors completely. Short of severing relations with the Debtors,

nonpayment of prepetition claims could cause Foreign Vendors to take other precipitous actions, including refusing to continue to provide critical materials to the Debtors until more certainty develops with respect to the Debtors' reorganization or the Debtors agree to more onerous payment terms. As with any company, receiving products and services in a timely and cost-effective manner is critical to the Debtors' business—the Debtors cannot afford delays of this nature or the increased costs associated therewith.

23. Further, if prepetition claims held by the Foreign Vendors (the "Foreign Vendor Claims") are not paid, the Foreign Vendors may take action against the Debtors despite the automatic stay provisions of section 362(a) of the Bankruptcy Code. Although the automatic stay applies to protect the Debtors' assets wherever they are located in the world, attempting to enforce the Bankruptcy Code in foreign countries is often a fruitless exercise. Moreover, even if the automatic stay could be effectively enforced abroad, the automatic stay by itself might not protect assets of the Debtors' non-Debtor foreign affiliates, which could remain at risk of seizure or setoff. In the absence of enforcement of the automatic stay, the Foreign Vendors could initiate a lawsuit in a foreign court and obtain a judgment against the Debtors to collect prepetition amounts owed to them, or seek to attach or seize foreign assets of the Debtors or their non-Debtor affiliates even prior to obtaining a judgment.

24. Payment of the Foreign Vendor Claims is essential to avoid disruption of the Debtors' operations during these chapter 11 cases. The Debtors' estimated amount of Foreign Vendor Claims pales in comparison to the potential damage to the Debtors' business if the Debtors' operations were to experience significant disruption in the continued provision of goods and materials by the Foreign Vendors. The Debtors, their estates, and their stakeholders will ultimately benefit from the Debtors' payments to the Foreign Vendors.

25. The Debtors propose to pay the Foreign Vendor Claims only to the extent necessary and only on such terms and conditions as are appropriate, in the Debtors' business judgment, to avoid disruption to their business. For the twelve (12) months before the Petition Date, on average, the Debtors paid the Foreign Vendors approximately \$600,000 per month. The Debtors estimate that, as of the Petition Date, approximately \$1.19 million is outstanding on account of Foreign Vendor Claims.

26. Based on the foregoing, the Debtors seek entry of the Interim Order and the Final Order granting them authority to make payments in their sole discretion and business judgment, on account of the Foreign Vendor Claims in an amount not to exceed \$1.09 million during the interim period, and \$1.19 million on a final basis, which amounts represent the Debtors' best estimate as to what amounts must be paid to the Foreign Vendors to continue an uninterrupted supply of critical goods and services.

V. Customary Trade Terms.

27. Subject to the Court's approval, the Debtors intend to pay the Trade Claims only to the extent necessary to preserve the value of their estates. The Debtors have designated a core group of executives, advisors, and employees who have experience in the Debtors' business and in the reorganization process to review, assess, and potentially recommend any payment on account of a Trade Claim. In return for paying the Trade Claims, the Debtors will use commercially reasonable efforts to condition payment of the Trade Claims upon each vendor's agreement to, as applicable, continue supplying goods and services on terms at least as favorable to the Debtors as those in place during the twelve (12) months prior to the Petition Date, or as otherwise agreed by the Debtors in their reasonable business judgment (the "Customary Trade Terms"). The Debtors also seek authorization to require, at their discretion, certain Trade Claimants to enter into a contractual agreement evidencing such Customary Trade Terms.

The Debtors reserve the right to require, at their discretion, that the Customary Trade Terms conditions to payment be made in writing.

28. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this Motion and thereafter does not continue to provide goods or services on Customary Trade Terms, then: (a) such payment may be deemed to be an improper postpetition transfer on account of a prepetition claim, and therefore, immediately recoverable by the Debtors in cash upon request; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

VI. Payment of Outstanding Orders.

29. Before the Petition Date and in the ordinary course of business, the Debtors might have ordered goods that will not be delivered until after the Petition Date (collectively, the “Outstanding Orders”). To avoid the risk of becoming general unsecured creditors of the Debtors’ estates with respect to such goods, certain suppliers might refuse to ship or transport such goods (or might recall such shipments) with respect to such Outstanding Orders, unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors’ business operations, and given that goods delivered after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order (a) granting administrative expense priority under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the acceptance of goods subject to

Outstanding Orders, and (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business.

Basis for Relief

I. The Court Should Authorize the Payment of the Trade Claims.

30. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations, including payments to critical vendors, where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 468 (2017) (noting that courts "have approved . . . 'critical vendor' orders that allow payment of essential suppliers' prepetition invoices"); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was "essential to the survival of the debtor during the chapter 11 reorganization"); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("The ability of a bankruptcy court 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 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.

31. Pursuant to section 363(b) of the Bankruptcy Code, payment of prepetition obligations may be authorized where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) of the Bankruptcy Code provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants). Indeed, courts have 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, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

32. 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 business. *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 prepetition 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.

33. The Debtors have a sound business purpose for the relief requested herein. The authority to honor unpaid, prepetition Critical Vendor Claims, 503(b)(9) Claims, Lien Claims, and Foreign Vendor Claims in the initial days of these chapter 11 cases, without disrupting the Debtors' operations, will allow the Debtors to maintain operations at their laboratories, facilitate the distribution of the Debtors' Test Kits, and allow the Debtors to efficiently administer these chapter 11 cases.

34. The resulting harm to the Debtors' estates far outweighs the costs associated with paying the Debtors' prepetition obligations to the 503(b)(9) Claimants, Lien Claimants, Foreign Vendors, and Critical Vendors. Thus, the Debtors' other creditors will be no worse off, and will likely fare better, if the Debtors are empowered to negotiate such payments to achieve a smooth transition into chapter 11 with minimal disruption to their operations. As such, the Debtors believe the relief sought in this Motion will not burden the Debtors but will help them maximize the value of their estates. Accordingly, for the reasons set forth herein, the Debtors submit that it is appropriate for the Court to authorize the Debtors to satisfy the Critical Vendor Claims, 503(b)(9) Claims, Lien Claims, and Foreign Vendor Claims.

A. The Court Should Authorize the Payment of Critical Vendor Claims.

35. The Debtors require the provision of the goods and services provided by the Critical Vendors to continue operating their business and maintaining operational stability, to the ultimate benefit of the Debtors' customers. Without the products and services provided by the Critical Vendors, the Debtors could be forced to unexpectedly halt operations while they search for substitute vendors and service providers and might have to forego existing favorable trade terms as a result of their haste to find new vendors, preventing the Debtors from capturing revenue. Critical Vendor Claims must be processed quickly and timely, as any delay in scheduled payment could pose disruption to the business, inhibiting the Debtors' ability to operate effectively. Any

disruption to the provision of goods and services provided by the Critical Vendors could jeopardize the Debtors' ability to distribute and process its portfolio of genetic tests, significantly decreasing the value of the Debtors' business, which could impair stakeholder value at the outset of these chapter 11 cases.

36. The Debtors operate in a highly competitive market, and consumers have many readily available alternative providers of genetic tests. Accordingly, if the Debtors are unable to continue distributing and processing their Test Kits, the Debtors' customers will look to other genetic testing providers. In short, without the relief requested, the Debtors' core business will suffer immediate and irreparable harm.

37. Allowing the Debtors to pay the Critical Vendor Claims pursuant to all or some of the above-referenced Bankruptcy Code provisions is especially appropriate where, as here, doing so is consistent with the "two recognized policies" of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999). Indeed, reflecting the recognition that payment of prepetition claims of certain essential suppliers and vendors is, in fact, both critical to a debtor's ability to preserve any going-concern value and maximize creditor recovery—thereby increasing prospects for a successful reorganization—courts in this circuit, including in this district, regularly grant relief consistent with that which the Debtors are seeking in this Motion. *See, e.g., In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Jan. 24, 2024) (authorizing the debtors to pay critical vendors on an interim basis); *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 6, 2023) (authorizing the debtors to pay critical vendor claims on a final basis); *In re Rite Aid Corporation*, No. 23-18993 (MBK) (Bankr. D.N.J. Dec. 20, 2023) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr.

D.N.J. June 29, 2023) (same); *In re David's Bridal LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. May 18, 2023) (same).⁴ Accordingly, for the reasons set forth herein, the Debtors submit that it is appropriate for the Court to authorize the Debtors to satisfy the Critical Vendor Claims.

B. The Court Should Authorize the Payment of 503(b)(9) Claimants.

38. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for the “value of any goods received by the debtor within [twenty] days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor’s business.” The 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Payment of such claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan, unless they consented otherwise. The timing of such payments also lies squarely within the Court’s discretion. *See In re Global Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that “the timing of the payment of that administrative expense claim is left to the discretion of the Court”). The Debtors’ ongoing ability to obtain goods is key to their survival and necessary to preserve the value of their estates. Absent payment of the 503(b)(9) Claims at the outset of these chapter 11 cases, the Debtors could be denied access to the goods necessary to maintain the Debtors’ business operations and maximize the value of the Debtors’ estates.

39. Moreover, the Bankruptcy Code does not prohibit a debtor from paying such claims prior to confirmation. As administrative claims incurred in the ordinary course of business, the Debtors believe they may pay such claims in accordance with their business judgment pursuant to

⁴ 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 of the Debtors’ proposed counsel.

section 363(c)(1) of the Bankruptcy Code. *See, e.g.*, Transcript of Hearing held on October 31, 2006 at 49, *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Nov. 6, 2006) (“THE COURT: I think arguably the debtor could pay its 503(b)(9) claimants without court approval.”). Again, the timing of such payments lies squarely within the Court’s discretion. *See In re Glob. Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at *3.

40. For these reasons, courts in this circuit, including in this district, have regularly authorized the payment of claims arising under section 503(b)(9) of the Bankruptcy Code in the ordinary course of business. *See, e.g., In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Jan. 24, 2024) (authorizing payment to parties with section 503(b)(9) claims on an interim basis); *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 6, 2023) (authorizing payment to parties with section 503(b)(9) claims on a final basis); *In re Rite Aid Corporation*, No. 23-18993 (MBK) (Bankr. D.N.J. Dec. 20, 2023) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. June 29, 2023) (same); *In re SIO2 Med. Prod., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 24, 2023) (same).⁵ Accordingly, for the reasons set forth herein, the Debtors submit that it is appropriate for the Court to authorize the Debtors to satisfy the 503(b)(9) Claims.

C. The Court Should Authorize the Payment of Lien Claims.

41. Certain Lien Claimants may be entitled under applicable non-bankruptcy law to assert certain mechanic’s or possessory liens on the Debtors’ goods or equipment in their possession in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b)

⁵ 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 of the Debtors’ proposed counsel.

of the Bankruptcy Code, is expressly excluded from the automatic stay. *See* 11 U.S.C. § 546(b)(1)(A) (providing that a debtor’s lien avoidance powers “are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires right in such property before the date of perfection.”). The Debtors anticipate that certain of the Lien Claimants might assert or perfect liens, simply refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent certain Lien Claimants have possession of the Debtors’ equipment or other property, mere possession or retention could disrupt the Debtors’ operations.

42. Paying the Lien Claimants should not impair unsecured creditor recoveries in these chapter 11 cases. In instances where the amount owed to a Lien Claimant is less than the value of the goods that could be held to secure a Lien Claimant’s claim, such party may be a fully secured creditor of the Debtors’ estates. In such instances, payment now only provides such party with what they might be entitled to receive under a plan of reorganization, without any interest costs that might otherwise accrue during these chapter 11 cases. Conversely, all creditors will benefit from the seamless transition of the Debtors’ operations into bankruptcy.

43. Further, the Debtors require a steady provision of the services related to the Lien Claimants to maintain operational stability. Without the Lien Claimants, the Debtors could be forced to unexpectedly halt operations while they search for substitute vendors and service providers, thereby preventing the Debtors from capturing revenue, and more critically, maintaining standards of care and service. Any disruption to the Debtors’ supply chain could result in a significant loss of operational efficiency, which could irreparably harm the Debtors’ business.

44. For these reasons, courts in this district have authorized the payment of prepetition lien claims under similar circumstances in recent chapter 11 cases. *See, e.g., In re Careismatic*

Brands, LLC, No. 24-10561 (VFP) (Bankr. D.N.J. Jan. 24, 2024) (authorizing payment of certain lien claims on an interim basis); *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 6, 2023) (authorizing payment of certain lien claims on a final basis); *In re Rite Aid Corporation*, No. 23-18993 (MBK) (Bankr. D.N.J. Dec. 20, 2023) (same); *In re Cyxtera Techs., 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 31, 2023) (same).⁶ Accordingly, for the reasons set forth herein, the Debtors submit that it is appropriate for the Court to authorize the Debtors to satisfy the Lien Claims.

D. The Court Should Authorize the Payment of the Foreign Vendor Claims.

45. As described above, the Debtors' business depends on the supply of goods and materials from the Foreign Vendors. If the Debtors do not pay certain of the Foreign Vendor Claims, the Foreign Vendors might simply refuse to do business with the Debtors unless and until they receive payment on account of their prepetition claims. The Foreign Vendors might also take other precipitous action against the Debtors despite the automatic stay. For the Debtors to survive and thrive as a business during the pendency of these chapter 11 cases and emerge from chapter 11 successfully, they must preserve their relationships with the Foreign Vendors, as they provide goods and materials that are integral to the Debtors' operations.

46. For these reasons, courts in this circuit have regularly authorized the payment of claims to foreign vendors under similar circumstances. *See, e.g., In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Jan. 24, 2024) (authorizing payment to foreign vendors on an interim basis); *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 6, 2023) (authorizing payment to foreign vendors on a final basis); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS)

⁶ 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 of the Debtors' proposed counsel.

(Bankr. D.N.J. June 29, 2023) (same); *In re SIO2 Med. Prod., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 24, 2023) (same); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 17, 2023) (same).⁷ Accordingly, for the reasons set forth herein, the Debtors submit that it is appropriate for the Court to authorize the Debtors to satisfy the Foreign Vendor Claims.

II. The Court Should Confirm That Outstanding Orders Are Administrative Expense Priority Claims and That Payment of Such Claims Is Authorized.

47. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the estate postpetition. *See* 11 U.S.C. § 503(b)(1)(A) (providing that the “actual [and] necessary costs and expenses of preserving the estate” are administrative expenses); *see also In re John Clay & Co.*, 43 B.R. 797, 809–10 (Bankr. D. Utah 1984) (holding that goods ordered prepetition but delivered postpetition are entitled to administrative priority). Thus, granting the relief sought herein with respect to the Outstanding Orders will not afford such claimants any greater priority than they otherwise would have if the relief requested herein were not granted and will not prejudice any other party in interest.

48. Absent such relief, however, the Debtors might be required to expend substantial time and effort reissuing the Outstanding Orders to provide certain suppliers with assurance of such administrative priority. The attendant disruption and delay to the continuous and timely flow of critical materials and other goods to the Debtors would force the Debtors to potentially halt

⁷ 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 of the Debtors’ proposed counsel.

operations and production, disrupt the Debtors' business, and lead to a loss of revenue, all to the detriment of the Debtors and their creditors.

49. Indeed, courts in this circuit routinely grant the type of relief requested herein. *See, e.g., In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Jan. 24, 2024) (granting administrative expense priority to undisputed obligations on account of outstanding orders on an interim basis); *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 6, 2023) (granting administrative expense priority to undisputed obligations on account of outstanding orders on a final basis); *In re Rite Aid Corporation*, No. 23-18993 (MBK) (Bankr. D.N.J. Dec. 20, 2023) (same); *In re Cyxtera Techs., 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 31, 2023) (same).⁸ Accordingly, the Debtors submit that the Court should confirm the administrative expense priority status of the Outstanding Orders and should authorize the Debtors, in their discretion, to pay the Outstanding Orders in the ordinary course of business.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

50. 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

⁸ 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 of the Debtors' proposed counsel.

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

51. 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. Authorizing the Debtors to pay prepetition amounts related to the Trade Claims and satisfy their obligations related to the Outstanding Orders 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)

52. 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

53. 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

54. 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 except as otherwise provided in the 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

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

Notice

56. 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.

[Remainder of page intentionally left blank]

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)

**INTERIM ORDER
(I) AUTHORIZING THE DEBTORS
TO PAY CERTAIN PREPETITION CLAIMS OF
(A) CRITICAL VENDORS, (B) 503(B)(9) CLAIMANTS, (C) LIEN
CLAIMANTS AND (D) FOREIGN VENDORS, AND (II) CONFIRMING
ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS**

The relief set forth on the following pages, numbered three (3) through ten (10), is
ORDERED.

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.

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

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF (A) CRITICAL VENDORS, (B) 503(B)(9) CLAIMANTS, (C) LIEN CLAIMANTS, AND (D) FOREIGN VENDORS AND (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS

Upon the *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Critical Vendors, (B) 503(b)(9) Claimants, (C) Lien Claimants, and (D) Foreign Vendors and (II) Confirming Administrative Expense Priority of Outstanding Orders* (the "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "Interim Order") (a) authorizing the Debtors to pay prepetition amounts in the ordinary course owing on account of (i) Critical Vendors, (ii) 503(b)(9) Claimants, (iii) Lien Claimants, and (iv) Foreign Vendors; (b) confirming the administrative expense priority status of Outstanding Orders and authorizing the payment of such obligations in the ordinary course of business; 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

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)

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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 proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **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 _____**

(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 committees 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 and to this Interim Order, the Debtors are authorized to pay the prepetition Trade Claims described in the Motion, in an aggregate amount not to exceed \$9.31 million on an interim basis as set forth in the categories and amounts in the Motion.

4. The Debtors are authorized to condition payment of Trade Claims upon each Trade Claimant's written agreement to (a) continue—or recommence—providing goods and services to

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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the Debtors in accordance with trade terms (including credit limits, pricing, timing of payments, availability, and other terms) at least as favorable to the Debtors as those in place during the twelve (12) months prior to the Petition Date, or as otherwise agreed by the Debtors in their reasonable business judgment (the “Customary Trade Terms”), and (b) agree that such specified Trade Claimants shall not cancel on less than ninety (90) days’ notice any contract or agreement pursuant to which they provide goods or services to the Debtors. The Debtors reserve the right to require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim. The Debtors reserve the right to require, in their sole discretion, that the Customary Trade Terms be made in writing, including by email, as a condition to payment.

5. Subject to the Approved Budget, the Debtors are authorized to permit the setoff of any prepetition cash deposits held by a Trade Claimant against prepetition obligations. Solely for the purposes of determining compliance with the amounts set forth in the Motion and in the Approved Budget, any payment of prepetition claims to a Trade Claimant by the Debtors shall be subtracted by the amount of any prepetition deposit released to the Debtors in connection therewith.

6. The Debtors shall maintain a matrix/schedule of amounts directly or indirectly paid, subject to the terms and conditions of this Interim Order including the following information: (a) the names of the payee; (b) the amount of the payment; (c) the category, nature, or type of payment; (d) the payment due; and (e) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to (i) the U.S. Trustee, (ii) Sullivan & Cromwell LLP,

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF (A) CRITICAL VENDORS, (B) 503(B)(9) CLAIMANTS, (C) LIEN CLAIMANTS, AND (D) FOREIGN VENDORS AND (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS

as counsel to the Required Holders, and (iii) counsel to any statutory committees appointed in these chapter 11 cases, every thirty (30) days beginning upon entry of this Interim Order.

7. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code; *provided* however that the Debtors can terminate any Outstanding Orders prior to delivery and any canceled orders are not afforded administrative priority.

8. Subject to the Approved Budget, the Debtors are authorized to pay all undisputed amounts relating to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

9. Prior to entry of a Final Order, the Debtors shall not pay any obligations under this Interim Order unless they are due or deemed necessary to be paid in the Debtors' reasonable business judgment to ensure ongoing provision of goods or services or otherwise to avoid an adverse effect on operations.

10. Any party that accepts payment from the Debtors on account of a Trade Claim or any of the obligations of the kind set forth in the Motion provided with a copy of this Interim Order and shall be deemed to have agreed to the terms and provisions of this Interim Order.

11. Regardless of whether the parties have agreed in writing that Customary Trade Terms are a condition to payment, if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as the Customary Trade Terms then, subject to the entry of the Final Order on the

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF (A) CRITICAL VENDORS, (B) 503(B)(9) CLAIMANTS, (C) LIEN CLAIMANTS, AND (D) FOREIGN VENDORS AND (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS

Motion from this Court: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to immediately repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

12. Nothing herein shall impair or prejudice the ability of the Debtors and any other party in interest to contest, in their discretion, the extent, perfection, priority, validity, or amounts of the Trade Claims. Neither the Debtors nor any party in interest concede that any claims satisfied pursuant to this Interim Order are valid, and the Debtors and all parties expressly reserve all rights to contest the extent, validity, or perfection or to seek the avoidance of all such liens or the priority of such claims.

13. 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

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF (A) CRITICAL VENDORS, (B) 503(B)(9) CLAIMANTS, (C) LIEN CLAIMANTS, AND (D) FOREIGN VENDORS AND (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS

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; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief authorized in this Interim Order are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

14. Nothing herein shall impair or prejudice the rights of the U.S. Trustee or any statutory committee appointed in these chapter 11 cases, which are expressly reserved, to object to any payment made pursuant to this Interim Order to an insider (as such term is defined in section 101(31) of the Bankruptcy Code), or any affiliate of an insider to the Debtors. To the extent the Debtors intend to make a payment to an insider or an affiliate of an insider of the Debtors, the Debtors shall provide five (5) business days' advance notice to, and opportunity to

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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object by, the U.S. Trustee and any statutory committee appointed in these chapter 11 cases; *provided* that if any party objects to a payment, the Debtors shall not make such payment without further order of this Court.

15. 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.

16. 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.

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

18. 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.

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

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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

21. 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.

22. 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.

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

24. 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)

**FINAL ORDER
(I) AUTHORIZING THE DEBTORS
TO PAY CERTAIN PREPETITION CLAIMS OF
(A) CRITICAL VENDORS, (B) 503(B)(9) CLAIMANTS, (C) LIEN
CLAIMANTS, AND (D) FOREIGN VENDORS AND (II) CONFIRMING
ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS**

The relief set forth on the following pages, numbered three (3) through eight (9), is
ORDERED.

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.

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

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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Upon the *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Critical Vendors, (B) 503(b)(9) Claimants, (C) Lien Claimants, and (D) Foreign Vendors and (II) Confirming Administrative Expense Priority of Outstanding Orders* (the "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of a final order (this "Final Order") (a) authorizing the Debtors to pay prepetition amounts in the ordinary course owing on account of (i) Critical Vendors, (ii) 503(b)(9) Claimants, and (iii) Lien Claimants, and (iv) Foreign Vendors; and (b) confirming the administrative expense priority status of Outstanding Orders and authorizing the payment of such obligations in the ordinary course of business, 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

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)

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

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. Subject to the Approved Budget and this Final Order the Debtors are authorized to pay the prepetition Trade Claims described in the Motion, in an aggregate amount not to exceed \$11.26 million on a final basis as set forth in the categories and amounts in the Motion.
3. The Debtors are authorized to condition payment of Trade Claims upon each Trade Claimant's written agreement to (a) continue—or recommence—providing goods and services to the Debtors in accordance with trade terms (including credit limits, pricing, timing of payments, availability, and other terms) at least as favorable to the Debtors as those in place during the twelve (12) months prior to the Petition Date, or as otherwise agreed by the Debtors in their reasonable business judgment (the "Customary Trade Terms"), and (b) agree that such specified Trade Claimants shall not cancel on less than ninety (90) days' notice any contract or agreement pursuant to which they provide goods or services to the Debtors. The Debtors reserve the right to require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim. The Debtors reserve the right to require, in their sole discretion, that the Customary Trade Terms be made in writing, including by email, as a condition to payment.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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4. Subject to the Approved Budget, the Debtors are authorized to permit the setoff of any prepetition cash deposits held by a Trade Claimant against prepetition obligations. Solely for the purposes of determining compliance with the amounts set forth in the Motion, any payment of prepetition claims to a Trade Claimant by the Debtors shall be subtracted by the amount of any prepetition deposit released to the Debtors in connection therewith.

5. The Debtors shall maintain a matrix/schedule of amounts directly or indirectly paid, subject to the terms and conditions of this Final Order including the following information: (a) the names of the payee; (b) the amount of the payment; (c) the category, nature, or type of payment; (d) the payment due; and (e) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee and Sullivan & Cromwell LLP, as counsel to the Required Holders every thirty (30) days from the date of the Interim Order.

6. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

7. Any party that accepts payment from the Debtors on account of a Trade Claim or any of the obligations of the kind set forth in the Motion shall be provided with a copy of this Final Order and shall be deemed to have agreed to the terms and provisions of this Final Order; *provided* however that the Debtors can terminate any Outstanding Orders prior to delivery and any canceled orders are not afforded administrative priority.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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8. Subject to the Approved Budget, the Debtors are authorized to pay all undisputed amounts relating to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

9. Regardless of whether the parties have agreed in writing that Customary Trade Terms are a condition to payment, if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as the Customary Trade Terms then, subject to the entry of this Final Order: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to immediately repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

10. Nothing herein shall impair or prejudice the ability of the Debtors and any other party in interest to contest, in their discretion, the extent, perfection, priority, validity, or amounts of the Trade Claims. Neither the Debtors nor the any party in interest concede that any claims satisfied pursuant to this Final Order are valid, and the Debtors and all parties expressly reserve

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Debtors: INVITAE CORPORATION, *et al.*

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all rights to contest the extent, validity, or perfection or to seek the avoidance of all such liens or the priority of such claims.

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; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief authorized in this Final Order are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

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12. Nothing herein shall impair or prejudice the rights of the U.S. Trustee or any statutory committee appointed in these chapter 11 cases, which are expressly reserved, to object to any payment made pursuant to this Final Order to an insider (as such term is defined in section 101(31) of the Bankruptcy Code), or any affiliate of an insider to the Debtors. To the extent the Debtors intend to make a payment to an insider or an affiliate of an insider of the Debtors, the Debtors shall provide five (5) business days' advance notice to, and opportunity to object by, the U.S. Trustee and any statutory committee appointed in these chapter 11 cases; *provided* that if any party objects to a payment, the Debtors shall not make such payment without further order of this Court.

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 Final Order.

14. 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.

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

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

