KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Jeffrey Goldfine (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
jeffrey.goldfine@kirkland.com

Co-Counsel to the Wind-Down Debtors

COLE SCHOTZ P.C.
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Daniel J. Harris, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com
dharris@coleschotz.com

Co-Counsel to the Wind-Down Debtors

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Chapter 11
INVITAE CORPORATION, *et al*.,	Case No. 24-11362 (MBK)
Wind-Down Debtors.[1]	(Jointly Administered)

THE WIND-DOWN DEBTORS' REPLY IN FURTHER SUPPORT OF ITS MOTION TO ENFORCE THE PLAN, CONFIRMATION ORDER, AND SALE ORDER

The above-captioned wind-down debtors (collectively, the "Debtors"), by and through the undersigned counsel, hereby submit this reply (the "Reply") in further support of the *Wind-Down Debtors' Motion to Enforce the Plan, Confirmation Order, and Sale Order* [Dkt. No. 1265] (the "Motion") and in response to Plaintiff's *Opposition to the Wind-Down Debtors' Motion to*

[1] The last four digits of Debtor Invitae Corporation's tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at https://www.veritaglobal.net/invitae. The Debtors' service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.

Enforce the Plan [Dkt. No. 1282] (the "Opposition" or "Opp'n").[2] In support of this Reply, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. As Debtors explain in their Motion, Plaintiff's ongoing Violative Action defies multiple provisions in this Court's Sale Order, Confirmation Order, and Plan. These include the Plan and Sale Order's exclusive jurisdiction provisions, as well as the Plan and Confirmation Order's releases, injunction provision, exculpation clause, and gatekeeper provision.

2. The Court's Orders continue to play an integral role in coordinating the complex, ongoing liquidation of the Debtors' Wind-Down Estates. By violating the Orders, Plaintiff's suit risks disrupting that process, along with the vested expectations of all of the Debtors' pre-existing creditors—many of whom are still awaiting further payment under the Plan.

3. Before filing their Motion to Enforce, the Debtors offered Plaintiff the chance to voluntarily dismiss the Violative Action and re-file his Complaint before this Court, in compliance with its Orders. Plaintiff not only declined to dismiss the Violative Action but further amended his Complaint to add Labcorp (the good-faith purchaser of the Debtors' assets under the Sale Order) as a defendant.

4. Now, in responding to the Debtors' Motion to Enforce, Plaintiff contends that this Court is unable to enforce its own Orders—even against parties, like Plaintiff, who disregard those Orders to the detriment of all other stakeholders in the Debtors' chapter 11 cases. That argument cannot be correct.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the *Third Amended Joint Plan of Invitae Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 909] (the "Plan") and the Motion.

5. *First*, Plaintiff argues that the Court lacks the necessary "core" bankruptcy jurisdiction to enforce its existing Orders. But pursuant to the Bankruptcy Code and binding Third Circuit precedent, this Court has "core" jurisdiction several times over. Courts in this Circuit regularly grant or affirm motions to enforce against parties—like Plaintiff—who bring state-law claims against debtors' estates in violation of court orders to the contrary.

6. *Second*, Plaintiff raises a series of premature merits arguments as to why his claims against the Debtors were not extinguished under the Orders. These points are irrelevant to resolving the Motion because Plaintiff is currently violating the Orders' express terms *regardless* of whether his claims were extinguished. The Court need not address any of these merits arguments before granting the Debtors' Motion and requiring Plaintiff to dismiss the Violative Action; the only Court Plaintiff should be permitted to proceed in (if he chooses to proceed at all) is this Court.

7. *Finally*, should the Court instead choose to consider any of Plaintiff's merits arguments in ruling on the Motion, those arguments are clearly baseless. Plaintiff argues, for example, that he is not making a "claim" for bankruptcy purposes, despite seeking millions of dollars from the Wind-Down Estates; that he is only asserting claims arising from post-Effective Date conduct, despite his Complaint clearly stating the contrary; and that factual findings this Court entered over two years ago are somehow still ripe for dispute.

8. For all of the reasons set forth herein, the Court should overrule Plaintiff's Opposition and grant the relief requested in the Motion.

ARGUMENT

I. This Court Maintains "Core" Bankruptcy Jurisdiction to Enforce Its Orders.

9. As a threshold matter, Plaintiff asserts that this Court is powerless to interpret or enforce its prior Sale Order and Confirmation Order when faced with ongoing violation of those Orders. Neither the Bankruptcy Code nor Third Circuit precedent support such an absurd result.

10. Plaintiff's jurisdictional argument confuses the issue presently before the Court. The Motion does not yet ask this Court to adjudicate Plaintiff's GIPA claims on the merits; rather, the only question currently before the Court is whether this Court can and should stop Plaintiff from prosecuting his claims in a way that clearly violates its Orders. Stated differently, the Motion merely asks the Court to interpret and enforce the release, injunction, and gatekeeper provisions of its Sale Order and Confirmation Order. That is a core bankruptcy function within this Court's original jurisdiction, regardless of whether the underlying claim arises under state law or could otherwise be adjudicated in another forum.

11. The Court's authority to enforce its own Orders is firmly grounded in the statutory jurisdictional scheme governing bankruptcy proceedings. Congress vested district courts with original jurisdiction over all civil proceedings (i) "arising under title 11," (ii) "arising in … cases under title 11," or (iii) "related to cases under title 11." 28 U.S.C. § 1334(b). That jurisdiction is referred to bankruptcy courts pursuant to 28 U.S.C. § 157(a). Bankruptcy judges may hear and determine all referred "core proceedings" arising under title 11 or arising in a case under title 11. 28 U.S.C. § 157(b)(1). Those core proceedings include but are not limited to: "(A) matters concerning the administration of the estate;" "(B) allowance or disallowance of claims against the estate[;]" "(I) determinations as to the dischargeability of particular debts;" "(L) confirmation of plans;" and "(N) orders approving the sale of property[.]" 28 U.S.C. § 157(b)(2).

12. Plaintiff's Violative Action and Opposition implicate core bankruptcy matters in several respects, each of which is independently sufficient to give this Court jurisdiction.[3] For one, the law is settled that a bankruptcy court has full authority to resolve disputes concerning the meaning and scope of its own sale order. *See In re Allegheny Health Educ. & Rsch. Found.*, 383 F.3d 169, 176 (3d Cir. 2004) ("[W]e hold that the bankruptcy court correctly determined that the suit was a core proceeding because it required the court to interpret and give effect to its previous sale orders."). Plaintiff's theory of liability turns directly on the Sale Order. The Complaint, for instance, alleges that "***[p]ursuant to*** the court-ordered sale and the asset purchase agreement Defendant ***Invitae was compelled to disclose*** its database of genetic test records . . . to Labcorp." Opp'n Ex. A, Compl. ¶ 68 (emphasis added). Plaintiff now does an about-face in his briefing, claiming that any transfer was not pursuant to and instead contravened the Sale Order: "[t]o the extent that private genetic information was transferred, Labcorp and Invitae acted outside of the authority conferred by the Sale Order." Opp'n ¶ 33. Even if Plaintiff could amend his Complaint through briefing (which he cannot, *see infra* ¶ 23), this new theory remains grounded in interpreting what the Sale Order did or did not authorize. Under either theory, determining whether the Violative Action is permissible in light of the Sale Order requires this Court to interpret and give effect to its own Order—a quintessential exercise of core jurisdiction.

[3] Bankruptcy courts also "have inherent or ancillary jurisdiction to interpret and enforce their own orders wholly independent of the statutory grant under 28 U.S.C. § 1334." *In re Bowflex, Inc.*, 2026 WL 2198743, at *5 (D.N.J. July 30, 2026) (citation omitted). A bankruptcy court's ancillary jurisdiction is much broader than statutory jurisdiction and operates for the purposes of "permit[ting] disposition by a single court of claims that are, in varying respects and degrees, factually interdependent" and enabling a court "to manage its proceedings, vindicate its authority, and effectuate its decrees." *Id.* (citation omitted). In addition to its firm grounding within this Court's core jurisdiction, the present Motion also clearly falls within the Court's ancillary jurisdiction. *See In re Revel AC, Inc.*, 532 B.R. 216, 224 (Bankr. D.N.J. 2015) ("Here, the Court is asserting ancillary jurisdiction to enforce the Sale Order, which expressly reserved this Court's jurisdiction over matters arising out of or related to the Sale Order.").

13. Core bankruptcy jurisdiction also exists where, as here, the Court must interpret and enforce its Confirmation Order to determine whether that Order extinguishes or enjoins the claims asserted in the Violative Action. *In re Essar Steel Minn., LLC*, 47 F.4th 193, 199 (3d Cir. 2022); *compare* Mot. ¶¶ 25–29 *with* Opp'n ¶¶ 66–70. That authority is particularly clear in this matter because the Court expressly retained jurisdiction to enforce the release, injunction and gatekeeper provisions contained in the Confirmation Order. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (explaining that "the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders," particularly where "it explicitly retained jurisdiction to enforce its injunctions"); Dkt. No. 913, Art. XI at 124–26.

14. The Motion falls within the Court's core jurisdiction for yet another reason: determining whether the Orders permit the Violative Action will "affect[] the liquidation of the assets of the estate[.]" 28 U.S.C. § 157(b)(2)(O). Here, crucially, the liquidation of the Wind-Down Estates is active and ongoing—no final decree has been entered. The Violative Action seeks up to $15,000 per alleged violation on behalf of a putative class of "thousands" of individuals, Compl. ¶ 48. If the Violative Action is permitted to proceed, that asserted liability—and the costs of defending against it—could deplete the Estate's remaining resources and upset recoveries otherwise available to existing creditors under the Plan. The connection to the ongoing liquidation is direct, as the Debtors continue to resolve claims before making a final distribution. Dkt. No. 1283 (adjourning hearing on case closure to March 25, 2027); Dkt. No. 1276 (extending deadline to object to unsecured claims to February 1, 2027). Accordingly, determining whether the Orders bar or otherwise channel the Violative Action to this Court is a proceeding "affecting the liquidation of the assets of the estate" within the meaning of 28 U.S.C. § 157(b)(2)(O).

15. Plaintiff does not dispute that this Court may interpret its own Orders—indeed, he concedes as much. Opp'n ¶ 62 (acknowledging that "in certain circumstances that this Court has jurisdiction to interpret its orders"). Instead, Plaintiff characterizes the GIPA claim as a post-Effective Date, "independent state-law privacy claim" that requires no interpretation of the Sale Order and lacks the requisite "close nexus" to confer post-confirmation jurisdiction. Opp'n ¶¶ 58–65. Plaintiff's own allegations belie that characterization. Even as amended, the Complaint alleges that:

- "***[T]hrough the court ordered bankruptcy sale and the terms of the asset purchase agreement*** that Invitae was mandated to enter into to complete bankruptcy proceedings, Labcorp unlawfully compelled Invitae to disclose the genetic information of Illinois residents." Compl. ¶ 28 (emphasis added).

- "Invitae ***could not complete bankruptcy proceedings*** and comply with the ***court-ordered bidding*** process ***without*** providing its genetic testing database to Labcorp." *Id*. ¶ 28 (emphasis added).

- "Having submitted the highest qualified bid for Invitae's assets, and ***pursuant to the bankruptcy court's orders***, Invitae was bound to be purchased by Labcorp and on May 1, 2024 Labcorp entered into an Asset Purchase Agreement with Invitae to acquire its assets, including its database of genetic test results." *Id*. ¶ 24 (emphasis added).

- "Following Labcorp's acquisition of Invitae's assets ***out of bankruptcy proceedings***, Labcorp reported that it had obtained genetic test results from Invitae's patients . . ." *Id*. ¶ 26 (emphasis added). "***Pursuant to the court-ordered sale and the asset purchase agreement*** Defendant Invitae was compelled to disclose its database of genetic test records . . . to Labcorp." *Id*. ¶ 68 (emphasis added).

The Opposition only creates further inconsistency. At times, Plaintiff contradicts his Complaint by arguing that Debtors' asset transfer was *not* pursuant to the Sale Order, and instead contravened it. Opp'n ¶ 33. At other times, he wages collateral attack on the Court's Order itself, claiming that "[t]he present record does not support" the Court's already-entered factual findings. Opp'n ¶¶ 35–38. But it ultimately makes no difference which of Plaintiff's many revolving theories the Court credits: all of them require the Court to interpret the scope and effect of its Sale Order. The

necessary nexus to the bankruptcy pleadings is therefore readily apparent from Plaintiff's own filings.

16. Moreover, even under the traditional categories of 28 U.S.C § 1334(b), both the Motion and the Violative Action present multiple grounds for original bankruptcy jurisdiction. The Motion "arises under" the Bankruptcy Code because the Code "provides the substantive right[s] invoked," including the Plan's release and exculpation provisions, and the free-and-clear asset sale to Labcorp under 11 U.S.C. § 363. *See Stoe v. Flaherty*, 436 F.3d 209, 217 (3d Cir. 2006). Both the Motion and Violative Action "arise in" Debtors' bankruptcy by implicating legal issues that have "no existence outside of . . . bankruptcy [law]," including the scope and effect of the Sale Order and Plan. *Id.* at 216. And both "relate[] to" this bankruptcy because their resolution could affect the Estates' remaining assets and continuing distributions under the Plan. *Id.*

17. Courts in this District have consistently reached the same conclusion in materially similar circumstances. *See*, *e.g.*, *In re Bowflex, Inc.*, 674 B.R. 47, 61–63 (Bankr. D.N.J. 2025), *aff'd*, 2026 WL 2198743 (D.N.J. July 30, 2026) (finding core jurisdiction over and granting motion to enforce sale order and plan against post-confirmation class-action tort suit); *In re E. Orange Gen. Hosp., Inc*., 587 B.R. 53, 75 (D.N.J. 2018) (affirming bankruptcy court's core jurisdiction over motion to enforce sale order against post-confirmation plaintiff); *In re CTE 1 LLC*, 2024 WL 2349620, at *2 (Bankr. D.N.J. May 21, 2024) (same).

18. Even in the cases Plaintiff cites in an attempt to rebut Debtors' arguments, those bankruptcy courts similarly found they possessed jurisdiction. *See*, *e.g.*, *In re Congoleum Corp.,* 149 F.4th 318, 327 (3d Cir. 2025) ("The Bankruptcy Court had jurisdiction … because the motion for an order interpreting and enforcing the Confirmation Order was a core bankruptcy proceeding."); *In re AeroCision Parent, LLC*, 667 B.R. 1, 7 (Bankr. D. Del. 2025) (finding that

core jurisdiction existed over restructuring support agreement dispute, even where the proceeding "is a state law action between two non-debtors"). Most surprisingly, Plaintiff cites the ongoing *23andMe* restructuring, in which the bankruptcy court recently *enforced* its bar-date order against a party attempting to pursue state-law data-privacy claims outside of the bankruptcy court in violation of the orders. *See* Order Enforcing Bar Date, *In re Chrome Holding Co. (f/k/a 23andMe Holding Co.)*, No. 25-40976-357 (Bankr. E.D. Mo. May 28, 2026), Dkt. No. 2207 (attached as Exhibit C). These authorities confirm that the state-law origin of Plaintiff's underlying claims does not deprive this Court of its original jurisdiction to determine whether prosecution violates the Orders and Plan.

II. Plaintiff Violated—and Continues to Violate—the Orders.

19. With the Court's jurisdiction established, the only remaining question before the Court is whether Plaintiff defied its Orders by commencing and prosecuting the Violative Action. The answer is clearly yes: Plaintiff filed the action without complying with the Plan's gatekeeper provision, asserted claims barred by the Plan's release and injunction provisions, and has since compounded these violations by amending the Complaint to add Labcorp as a Defendant after receiving notice of the Motion. The Motion identified numerous provisions of the Sale Order, Confirmation Order, and Plan that Plaintiff flouted by filing the Violative Action outside of this Court. These provisions include:

- **The exclusive jurisdiction provisions** in Article XI of the Plan, and Paragraph 41 of the Sale Order, under which the Court expressly retains "exclusive jurisdiction over all matters arising out of, or relating to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code," including "cases, controversies, suits or disputes that may arise in connection with the interpretation of the Sale Order." Dkt. No. 913 at 124–25; Dkt. No. 463 at 40.

- **The Plan's gatekeeper provision**, under which no party may proceed against any Released Party (including the Debtors and Labcorp) without first receiving specific authorization from this Court that its claims are not subject to release.

The provision expressly states that this Court has "sole and exclusive" jurisdiction to determine whether the claim may proceed. Dkt. No. 913 at 121.

- **The Plan's releases and injunction provisions**, under which any former Holders of Claims under the Plan are now deemed to have irrevocably released and discharged such causes of action against the Debtors—and are permanently enjoined from "enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests." Dkt. No. 913 at 121.

20. By subsequently adding Labcorp to the Violative Action, Plaintiff also violated the Sale Order's injunction protecting the Purchaser Group. That injunction "forever prohibited and enjoined" "all persons and entities" from commencing or continuing claims against any member of the Purchaser Group "in connection with or related to the Sale Transaction, the Debtors or the Acquired Assets." Dkt. No. 463 ¶ 34.

21. Plaintiff's decision to amend his Complaint in the Violative Action to add Labcorp as a defendant violates this Court's Orders for yet another reason. Labcorp is a "Released Party" under the Plan, Dkt. No. 913 at 87–88, and a signatory to the APA. Labcorp is also the buyer under the Sale Order, which, among other things, prohibits all persons from taking any actions that would interfere with the effectuation of the APA or asserting any claims arising in connection with or relating to the Sale Transaction. Dkt. No. 463 ¶¶ 26, 34. Plaintiff's addition of Labcorp to the Violative Action in the face of the pending Motion only deepens the need for immediate Court intervention.

22. Plaintiff's Opposition does not address—let alone dispute—his ongoing noncompliance with the Orders' exclusive jurisdiction provisions or the Plan's gatekeeper provision. These grounds for relief are therefore unopposed. *See*, *e.g., Kliesh v. Redevelopment Auth. of Bucks Cnty*., 2023 WL 5739841, at *1 n.1 (3d Cir. Sept. 6, 2023) ("A party forfeits any argument that he does not raise in his opening brief."). In any event, Plaintiff cannot possibly dispute that he violated the gatekeeper provision by pursuing claims against two Released Parties

before the Court "specifically authoriz[ed]" him to do so. Dkt. No. 913 at 121. Likewise, the exclusive jurisdiction provisions clearly state that any cases, suits, or disputes that arise "in connection with the interpretation of the Sale Order" must be litigated in this Court. Dkt. No. 913 at 125. But rather than respect the Court's authority over its own Orders, Plaintiff opted to file a case disputing the Sale Order in a state court halfway across the country. *See* Opp'n ¶¶ 27–34.

23. Plaintiff disputes only whether the Plan's release and injunction provisions reach his claims, arguing that the Violative Action exclusively covers conduct occurring after the Plan's Effective Date. *See* Opp'n ¶¶ 15–23. But that is not the theory pleaded in the Complaint. Plaintiff's Complaint alleges that "Defendant Invitae was compelled to disclose its database of genetic test records" "***[p]ursuant to the court-ordered sale and the asset purchase agreement***"—in other words, that the parties' compliance with the Sale Order itself caused the alleged GIPA violation. Compl. ¶ 68 (emphasis added). The Complaint further concedes the acquisition was completed on August 5, 2024, two days *before* the August 7, 2024 Effective Date and identifies no post-Effective Date transfer or other conduct giving rise to liability: "[o]n ***August 5, 2024***, Labcorp reported that it had fully completed its acquisition of Invitae for $239 million." *Id.* ¶ 25 (emphasis added). Plaintiff cannot now retroactively amend his Complaint through his Opposition. *See Priester v. Bethel Commandment Church of the Living God of N.J.*, 2026 WL 1133603, at *5 (D.N.J. Apr. 27, 2026) ("It is axiomatic that a plaintiff may not amend his complaint through briefing."). As pleaded, the Complaint clearly alleges liability against the Debtors for pre-Effective Date conduct covered by the Plan's releases and exculpation clause—and in doing so, further violates the Plan. *See* Dkt. No. 913 at 118 ("Article VIII.A. Settlement, Compromise, and Release of Claims"), 120–21 ("Article VIII.D. Releases by Holders of Claims and Interests"), 121 ("Article VIII.E. Exculpation.").

24. It is abundantly apparent that Plaintiff "seemingly rushed into [state] court without any concern for the effects of the Debtors' bankruptcy case on their claims or any regard for the injunction and gatekeeper provisions approved by this court." *Bowflex*, 674 B.R. at 63. For that reason alone, granting the Debtors' Motion would be an appropriate response. *See id.* at 70.

III. Plaintiff's Remaining Merits Arguments Are Irrelevant to this Motion and Factually and Legally Baseless.

25. Finally, in an attempt to excuse his noncompliance with the Court's Orders, Plaintiff's Opposition raises a series of merits-based arguments. These arguments are both wrong and premature at the Motion to Enforce stage. What is more, rather than support Plaintiff's argument that the Violative Action is somehow entirely divorced from these bankruptcy proceedings, Plaintiff's fact- and merits-based arguments merely highlight the degree to which Plaintiff's Complaint is intertwined with Debtors' bankruptcy case and ongoing liquidation.

26. As a general point (and as indicated above), Plaintiff appears to misunderstand the issues the Motion places before the Court. *See*, *e.g.*, Opp'n ¶¶ 22–23 ("It is noteworthy that Defendant has not challenged the allegations about the transfer date. … Thus, the conduct giving rise to Plaintiff's injury occurred at some point … following Labcorp's acquisition announcement on August 5, 2024."). The Court is not being asked to decide the factual issues underlying Plaintiff's GIPA claims—those questions have not been briefed and are not currently before the Court. Instead, the *only* question the Motion poses is whether, based on the face of his Complaint and Opposition, Plaintiff's decision to file the Violative Action "without first proceeding in this Court and without prior Court authorization in accordance with the Plan[] … is a violation of, and is barred by" the Orders. Mot. at 21. Put differently, the Motion is intended to address the threshold issues of *where* and *how* Plaintiff has chosen to pursue the Violative Action—issues that must be addressed before the merits of Plaintiff's claim may be litigated.

27. However, to the extent the Court is inclined to reach Plaintiff's merits arguments while deciding the Motion, those arguments fail and only underscore the "core" nature of the issues presented. For example, Plaintiff argues that he is a patient, not a "creditor," and is therefore not asserting a "claim" against the Debtors' Estates. Opp'n ¶¶ 17–18. But the Bankruptcy Code and the Plan define "claim" broadly as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A); Dkt. No. 913 at 80. Nothing in that definition excludes patients. Whatever Plaintiff's relationship with the Debtors, his demand on behalf of a putative class for thousands of dollars for each alleged GIPA violation asserts a "right to payment" and thus a Claim within the meaning of the Plan and the Bankruptcy Code.

28. Plaintiff further argues that he did not receive sufficient actual notice of the bankruptcy proceedings for his claims to be extinguished by the Confirmation Order. Opp'n at 13–14. But Plaintiff was not entitled to actual notice, because he was an unknown creditor at the time of Plan confirmation. For due process purposes, an "unknown creditor" is one whose claims "are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to knowledge of the debtor." *Bowflex*, 674 B.R. at 66 (citation modified). As Plaintiff acknowledges, unknown creditors have their due process rights satisfied when publication notice of the bankruptcy proceedings is provided. Opp'n ¶ 53 (citing *Bowflex*, 674 B.R. at 66).[4]

29. Plaintiff does not allege he was a known creditor at the time of Plan confirmation—at most, he alleges he was a known *customer*, which courts have found is insufficient. *See, e.g.*,

[4] The other cases Plaintiff cites reinforce this well-established rule. *See, e.g.*, *Chemetron Corp. v. Jones,* 72 F.3d 341, 348 (3d Cir. 1995) ("It is well established that, in providing notice to unknown creditors, constructive notice of the bar claims date by publication satisfies the requirement of due process.") (citation omitted).

In re New Century TRS Holdings, Inc., 465 B.R. 38, 47 (Bankr. D. Del. 2012) ("The availability of the Whites' names and address in the Debtors' loan files may have reflected that the Whites were known *customers*, but without more, it did not make them known *creditors*.") (citation modified). Debtors had no reason during the bankruptcy proceedings to think that their participation in the Court-approved, value-maximizing Sale Order and APA had transformed any of their customers into new creditors. Plaintiff identifies no preconfirmation communication informing the Debtors of an actual or potential data-privacy claim. *See In re CTE 1 LLC,* 2024 WL 2349620, at *6 ("In [the creditor's] affidavit, he does not state that he had any communication with the Debtor, or its predecessor AUA, concerning the existence of his $51 claim."). Nor would the mere inclusion of Plaintiff's information in the Debtors' records—alongside that of countless other patients and customers—have made such a claim reasonably ascertainable. *See Bowflex*, 674 B.R. at 67 (finding plaintiffs were unknown creditors where they had "not alleged they are among the small group of customers who complained to the Debtors about [Debtors' products].").

30. Given Plaintiff's status as an unknown creditor, he was entitled only to publication notice of bankruptcy proceedings. The Debtors satisfied this requirement when they published multiple announcements in the New York Times communicating the status of their bankruptcy proceedings. These announcements included: a "Notice of Sale by Auction and Sale Hearing," which explained that "the Debtors are soliciting offers for the purchase of substantially all or a portion of the Assets"; a "Notice of Bar Dates for Submitting Proofs of Claim"; and a "Notice of (I) Entry of the Order Confirming the Third Amended Joint Plan of Invitae," which detailed that "the Court has approved certain settlement, release, exculpation, injunction, gatekeeper, and related provisions." Dkt. Nos. 88, 235, 952. Indeed, the Court found that proper and adequate notice was provided. Dkt. No. 463 ¶¶ D, E, 4. Plaintiff cannot show he was something more than

an unknown creditor, and his due process rights were therefore satisfied by this publication notice of the Debtors' bankruptcy. *See Bowflex*, 674 B.R. at 66–67 (explaining that the party claiming inadequate notice bears the burden of proof).

31. Finally, Plaintiff levels a lengthy collateral attack on this Court's express factual findings embodied in the Sale Order, including the Debtors' compliance with applicable privacy policies. Opp'n at 9–13. Based on this attack, Plaintiff argues that "[t]he sale of Plaintiff's and the Class's private information was improper under 11 U.S.C. § 363(b)(1)." *Id*. ¶ 50. These arguments are meritless. As a matter of first principles, sale orders in bankruptcy "are not subject to collateral attack," unless that attack meets "the tight limits that Fed. R. Civ. P. 60(b) imposes on collateral attacks on civil judgments." *In re Christ Hosp*., 502 B.R. 158, 175 (Bankr. D.N.J. 2013), *aff'd*, 2014 WL 4613316 (D.N.J. Sept. 12, 2014). Plaintiff has not sought relief under Rule 60(b), much less established any basis for disturbing the Sale Order more than two years after its entry. *See* Fed. R. Civ. P. 60(c)(1) (setting deadline to seek relief from an order). He cannot evade that final Order by challenging its findings in a separate state court action. And even if any court *were* somehow permitted to revisit the factual findings underlying the Sale Order, that task would naturally fall within this Court's "exclusive" authority. Dkt. No. 913 at 124–26.

CONCLUSION

32. For all of the reasons set forth in the Motion and herein, this Court should grant the relief requested in the Motion and the proposed order attached thereto as Exhibit A, including declaring that the Violative Action is barred by the Orders; ordering Plaintiff to dismiss the Violative Action within three (3) business days; and enjoining Plaintiff and related parties from further pursuing any action against the Debtors and Labcorp that is inconsistent with the Orders.

[*Remainder of page intentionally left blank*]

Dated: September 10, 2026

/s/ Felice R. Yudkin

COLE SCHOTZ P.C.
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Daniel J. Harris, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com
dharris@coleschotz.com

Co-Counsel to the Wind-Down Debtors

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Jeffrey Goldfine (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
jeffrey.goldfine@kirkland.com

Co-Counsel to the Wind-Down Debtors

Exhibit C

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: **CHROME HOLDING CO. (f/k/a 23ANDME HOLDING CO.),** **Wind-Down Debtor.**	**Case No. 25-40976-357** **Chapter 11** **Related to Doc. 2096**

ORDER ENFORCING BAR DATE AND OTHER ORDERS AND REQUIRING DISMISSAL OF CHROMECO, INC. FROM MARYLAND LITIGATION

This matter is before the Court on The Plan Administration Trust's Motion to Enforce the Bar Date Order, the Sale Order, the Plan and the Confirmation Order, filed on April 16, 2026 (Doc. 2096) (the "Motion"). I held a hearing on the Motion on May 11, 2026. Wind-Down Debtor Chrome Holding Co. appeared by its counsel, Vida Robinson. Respondent Terrence Williams appeared on his own behalf.

Background

Williams filed a civil complaint against ChromeCo, Inc., formerly known as 23andMe, Inc., and other defendants in the United States District Court for the District of Maryland on December 12, 2025, commencing Case No. 25-cv-4120 (the "Maryland Action").[1] The parties dispute whether Williams has the right to pursue his claims against ChromeCo, which I will refer to as the "Debtor," in light of certain developments in its Chapter 11 bankruptcy case in this Court. The Trust does not seek to prevent Williams from prosecuting his claims against the other defendants in the Maryland Action.

Williams alleges that he was a customer of the Debtor, and he and his genetic data were affected by a 2023 data breach. He asserts seventeen claims, all arising under state law, against the

[1] The caption of the Maryland Action identifies the relevant defendant's former name as 23andMe Holding Co. Although it does not matter for purposes of the issues before me, 23andMe Holding Co. is now Chrome Holding Co., an affiliate of ChromeCo, Inc. The allegations in the body of the complaint correctly identify the former name of ChromeCo, Inc. as 23andMe, Inc.

Debtor. Included in his complaint are specific allegations about the Chapter 11 bankruptcy case of the Debtor and the sale of its assets (Complaint at ¶ 3). Exhibits attached to the complaint also refer to the bankruptcy case or to this Court (*Id.* at Exhs. A, C, D).

The Debtor, along with several affiliates, sought relief under Chapter 11 of the Bankruptcy Code in this Court on March 23, 2025 (the "Petition Date"). On April 30, 2025, I entered an order establishing deadlines for creditors to file proofs of claim against the Debtor (Doc. 349) (the "Bar-Date Order"). For claims defined as Cyber Security Incident Claims, the filing deadline, or "bar date," was 75 days from entry of the Bar-Date Order, or July 14, 2025 (*Id.* at ¶ 6). Williams appears to fall within this group, but that is not material, because the same deadline applied to other types of creditors (*Id.* at ¶ 4). The Bar-Date Order provided that any entity that was required to file a proof of claim but failed to properly do so by the bar date would be "estopped and enjoined" from, among other things, "asserting any such claim against the Debtors or their estates or against any reorganized Debtor or successor in interest following the effective date of a chapter 11 plan of reorganization" (*Id.* at ¶ 35). It is undisputed that Williams did not file a proof of claim before the bar date.

On June 27, 2025, I entered an order approving the sale of substantially all of the Debtor's assets to a purchaser (Doc. 910) (the "Sale Order"). That order included a requirement that customers' claims arising on or before the closing of the sale also be asserted by the July 14 bar date (*Id.* at ¶ 16). The sale transaction closed on July 14, 2025 (Doc. 994).

I entered an order confirming the Debtor's Chapter 11 plan on December 5, 2025 (Doc. 1696) (the "Confirmation Order"). The plan and the Confirmation Order provided for the Debtor to transfer to the Plan Administration Trust all of its right, title, and interest in and to the Plan Administration Trust Assets, free and clear of claims that had been or could have been asserted against the Debtor or its bankruptcy estate (Doc. 1655 at 60; Doc. 1696 at ¶ 112). The Plan Administration Trust Assets included the proceeds of the sale of the Debtor's assets and essentially all other assets of the bankruptcy estate (Doc. 1655 at 25). The Plan Administration Trust is responsible for distributing its assets in accordance with the terms of the plan (*Id.*). The effective date of the plan occurred on December 5, 2025 (Doc. 1700).

Williams's Arguments

Williams argues that he is not bound by the Bar-Date Order or the other orders discussed above because (1) notice sent to him by electronic mail was improper and (2) he did not receive the bar-date notice, which resulted in a violation of his right to due process. He has submitted a sworn declaration that he "did not receive any notice of the bankruptcy filing, any notice of the Bar Date Order, any notice of any bar dates or claim filing deadlines, or any bankruptcy solicitation materials at any point during the course" of this case (Doc. 2150-1 at 17). He acknowledges

receiving an emailed notice captioned Notice of Potential Change of Ownership of Personal Information before the sale transaction closed, but he points out that it stated in bold type that he was "not required to take any action" (*Id.* at 3, 17). He also received a form by which customers and former customers of the Debtor could opt out of a class-action settlement approved by this Court (*Id.* at 5, 18). That form stated the following in the first paragraph, in bold type, about persons who choose to opt out:

> You will only retain any rights to sue, continue to sue, or pursue claims arising out of this Cyber Security Incident that are not otherwise barred or released by the bankruptcy proceedings. In particular, even if you opt out, you will be barred from pursuing any and all claims you may have against 23andMe (now known as "Chrome") and the other Debtor entities. (*Id.* at 5)

Despite this warning, Williams executed and submitted the opt-out form on December 5, 2025 (*Id.* at 6). He filed the Maryland Action one week later.

Jurisdiction

A bankruptcy court has jurisdiction to interpret and enforce its own orders. *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137, 151 (2009). This is a core proceeding. *See In re Bowflex, Inc.*, 674 B.R. 47, 61-62 (Bankr. D.N.J. 2025).

Sufficiency of Notice by Electronic Mail

Williams argues that the Debtor was required to give him notice of the bar date by first-class mail and that notice by electronic mail is impermissible. This is not accurate. The Federal Rules of Bankruptcy Procedure require service by first-class mail (and sometimes by more onerous methods) in certain circumstances, such as the commencement of an adversary proceeding or the initiation of a contested matter. *See* Fed. R. Bankr. P. 7004(b), 9014(b). But notice of a claims bar date is distinct from service of a complaint or a motion. It is governed by Rule 2002(a)(7). Rule 2002(a) also generally requires "notice by mail," but there is an exception in Rule 2002(*l*): "The court may order notice by publication if notice by mail is impracticable or if it is desirable to supplement the notice." The record before me in connection with the hearing to establish the bar date was that mailing notice to all of the Debtor's current and former customers was likely to cost more than $70 million (Doc. 338 at ¶ 4), which was about twice as much as the Debtor's total funding commitments. It also was likely that many of the mailing addresses on file with the Debtor were no longer valid, such that a large proportion of that $70 million expense, if the funds had even been available, would have been wasted. In short, if I had required the Debtor to provide notice by mail, the company would have collapsed long before it could have sold its assets, and no data-breach victims would have made any meaningful recoveries.

I therefore found that notice by mail was impracticable and authorized the Debtor to provide notice of the bar date to customers by electronic mail, with a supplemental mailing if a message was returned as undeliverable, combined with a robust publication plan involving traditional media, social media, the Debtors' website, and the court-approved noticing agent (Doc. 349 at ¶¶ 24, 36). The noticing agent, Kroll Restructuring Administration LLC, sent the approved notice to Williams by electronic mail on May 10, 2025 (Doc. 428; Doc. 2096-1 at ¶ 5). The notice also was published in the *Wall Street Journal* on May 5, 2025 (Doc. 387).

The notice provided to Williams thus complied with the applicable rules.

Constitutional Significance of Non-Receipt of Notice

It is undisputed that the Debtor sent notice of the bar date to Williams. It also is undisputed, at least for present purposes, that Williams did not receive the notice. He argues that the bar date cannot be enforced against him as a result.[2] This is not correct.

As a known creditor of the Debtor, Williams was entitled to be given actual notice of the claims bar date. *See, e.g., Dahlin v. Lyondell Chemical Co.*, 881 F.3d 599, 604 (8th Cir. 2018); *In re Peabody Energy Corp.*, 579 B.R. 208, 215 (Bankr. E.D. Mo. 2017). But "actual notice" is a due-process term of art that means, in essence, "not publication notice." The Supreme Court of the United States has specifically rejected the argument that Williams makes here: that the Constitution requires actual *receipt* of the notice. *See Dusenbery v. United States*, 534 U.S. 161, 170 (2002). Instead, as the Court stated in the leading case on this topic, notice to known parties must be "'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

Williams relies on older cases such as *In re Hairopoulos*, 118 F.3d 1240 (8th Cir. 1997), in which the court discussed the constitutional issues that "arise when a creditor fails to receive adequate notice of the bankruptcy proceedings." *Id.* at 1244; *see also In re Rose Exterminator Co.*, 135 B.R. 637, 638-39 (Bankr. E.D. Mo. 1992) (stating that due process requires that a creditor "receive reasonable notice of a claims bar date before it is effective against him"). To the extent that these courts held that the Due Process Clause requires actual receipt of a notice by a creditor, the decisions are no longer good law after the Supreme Court's definitive ruling to the contrary in

---

[2] It is not clear whether Williams also argues that giving notice by electronic mail is *per se* unconstitutional. If that is his argument, he is mistaken. *See Pearson Education Inc. v. Doe 1*, No. 18-cv-7380, 2019 WL 6498305, at *3 (S.D.N.Y. Dec. 2, 2019) ("Email service has also repeatedly been found by courts to meet the requirements of due process.").

Dusenbery.[3] But in any event, the problem in *Hairopolous* and *Rose* was that there was no evidence of an *attempt* to notify the relevant creditors of the bar date. *See Hairopolous*, 118 F.3d at 1242 ("[T]here was no identification of the parties to whom the notices were sent."); *Rose*, 135 B.R. at 638 & n.2 (noting that bar-date order was sent only to four parties).

The notice of the bar date in this case was reasonably calculated to inform current and former 23andMe customers of the pending Chapter 11 case and the deadline to file claims. The fact that Williams did not receive the notice has no bearing on the validity of the notice for due-process purposes.[4]

Other Issues

The Trust has presented several other arguments in support of the Motion, but it is not necessary for me to reach them. Nor is there any occasion for me to determine, as Williams requests, whether his claims are colorable. Regardless of the merits of his claims, he is pursuing them in a manner that violates orders of this Court and that is inconsistent with the equitable distribution of the Debtor's remaining assets under the Bankruptcy Code.

Williams has not requested leave to file a proof of claim in this case out of time. If he does so, the Trust will have an opportunity to respond, and I will evaluate the request under the excusable-neglect standard set forth in *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380 (1993).

IT IS THEREFORE ORDERED AS FOLLOWS:

1. The Motion (Doc. 2096) is GRANTED.

2. No later than 14 days after entry of this Order, Williams shall take all appropriate actions to dismiss the Debtor from the Maryland Action.

---

[3] The Supreme Court qualified *Dusenbery* somewhat several years later, holding that "additional reasonable steps" may be necessary if a mailed notice is returned unclaimed. *Jones v. Flowers*, 547 U.S. 220, 234 (2006). As discussed above, the notice plan in this case included a supplemental mailing to any customer whose emailed notice was returned as undeliverable.

[4] Williams does not expressly claim that he did not receive notice of the Sale Order. But receipt or non-receipt is irrelevant in that context as well, for a sale of assets under Section 363 of the Bankruptcy Code is good against the world, not merely against persons with notice. *See In re Veg Liquidation, Inc.*, 931 F.3d 730, 737 (8th Cir. 2019).

3. If Williams fails to take all appropriate actions to dismiss the Debtor from the Maryland Action within such 14-day period, this Court, upon further motion of the Plan Administration Trust to which any affected individual may object or otherwise respond, may issue an order holding Williams in contempt of the Court for violating the terms of this Order, the Bar-Date Order, the Sale Order, and the Confirmation Order, by virtue of his actions in violation of this Order, the Bar-Date Order, the Sale Order, and the Confirmation Order.

4. The Plan Administration Trust is authorized to take any and all actions necessary or appropriate to effectuate the relief granted pursuant to this Order in accordance with the Motion, which may include requesting such relief from the United States District Court for the District of Maryland as is appropriate in the circumstances.

5. Nothing in this Order precludes Williams from (a) requesting leave to file a proof of claim in this case out of time or (b) seeking to revoke his election to opt out of the U.S. Data Breach Settlement Class.

6. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

8. No later than two business days after the date of this Order, the Plan Administration Trust shall serve on Williams and the other Notice Parties a copy of the Order and shall file a certificate of service no later than 24 hours after service.

Dated: May 28, 2026
St. Louis, Missouri
cjs

Brian C. Walsh
United States Bankruptcy Judge