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UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

Illumina, Inc., a corporation,

and

GRAIL, Inc., a corporation,

Respondents.

Docket No. 9401

ORDER GRANTING UNOPPOSED MOTION TO AMEND SCHEDULING ORDER AND FIRST REVISED SCHEDULING ORDER

On June 15, 2021, Respondents Illumina, Inc. and GRAIL, Inc. (collectively, "Respondents") filed an unopposed motion to amend the Scheduling Order issued in this case on April 26, 2021 ("Unopposed Motion"). Respondents seek to extend two deadlines in the Scheduling Order: (i) the deadline for issuing document requests and interrogatories, from May 21, 2021 to May 28, 2021; and (ii) the deadline for issuing subpoenas to non-parties, from May 21, 2021 to June 4, 2021. Respondents assert that the requested changes will provide the parties and non-parties with additional time for their responses, and state that, with a limited exception,¹ the responses would still be due before the close of fact discovery.

In addition, Respondents request that Additional Provision 7 be amended to provide that, in responding to document requests in this case, the parties need not produce to each other any documents previously produced (i) by Respondents to the Federal Trade Commission ("FTC") in the course of the investigation of the acquisition of GRAIL by Illumina or (ii) by either FTC Complaint Counsel or by Respondents in federal district court litigation between the parties (the "District Court Action").

¹ Under the requested extension, Complaint Counsel's responses to document requests and interrogatories would be due no later than June 28, 2021, which is one business day after the close of fact discovery on June 25, 2021. By this Order, the close of discovery is extended for this limited category of discovery by one business day to June 28, 2021.

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Respondents state that this amendment is designed to confirm that the parties may avoid the burden and expense of producing such documents in this case that have already been produced in the District Court Action.

Complaint Counsel does not oppose Respondents' motion. The parties have not sought any prior extensions, and the proposed extensions will not delay any other deadlines. Good cause exists to amend the schedule set forth in the Scheduling Order. Accordingly, the Unopposed Motion is GRANTED. The First Revised Scheduling Order revises and sets the following two dates:

May 28, 2021 - Deadline for issuing document requests, deposition notices and interrogatories except for discovery for purposes of authenticity and admissibility of exhibits.

June 4, 2021 - Deadline to issue subpoenas to third party witnesses that were noticed in the District Court Action, except for discovery for purposes of authenticity and admissibility of exhibits.

All other deadlines and provisions of the April 26, 2021 Scheduling Order are unchanged, except that Additional Provision #7 is amended to add the following:

In response to any document requests, the parties need not produce to each other in discovery in this case any documents previously produced (i) by Respondents to the FTC in the course of the investigation of the acquisition of GRAIL by Illumina, FTC File Nos. 2021-0063 and 201-0144 or (ii) by either Complaint Counsel or by Respondents in the federal court litigation (including FTC v. Illumina, Inc., Case No. 3:21-cv-00800-CAB-BGS (S.D. Cal.)).

ORDERED:

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D. Michael Chappell Chief Administrative Law Judge

Date: June 16, 2021