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

In the Matter of

**Illumina, Inc.,
a corporation,**

Docket No. 9401

and

**GRAIL, Inc.
a corporation,**

Respondents.

**THIRD PARTIES ROCHE SEQUENCING SOLUTIONS, INC.,
FOUNDATION MEDICINE, INC., AND ARIOSIA DIAGNOSTICS, INC.’S
MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED TRIAL EXHIBITS**

Roche Sequencing Solutions, Inc., Foundation Medicine, Inc., and Ariosa Diagnostics, Inc. (collectively, “Roche”) respectfully request that this Court grant *in camera* treatment pursuant to 16 C.F.R. § 3.45(b) to the proposed trial exhibits described in the accompanying Declaration of Cynthia Perettie.

I. INTRODUCTION

Complaint Counsel and Respondents have prepared proposed trial exhibit lists containing 92 Roche documents. Many Roche documents designated in these exhibit lists contain sensitive confidential information of Roche, public disclosure of which would cause serious, clearly defined injury to Roche’s business interests. Roche requests *in camera* treatment for 87 of the designated documents, 13 of which are duplicates, as described in the accompanying Declaration

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of Cynthia Perettie and Attachment A to that declaration (the “Document List” and, collectively, “Roche’s Confidential Documents”).¹

II. ARGUMENT

In camera treatment of documents offered into evidence is appropriate if “public disclosure will likely result in a clearly defined, serious injury to the . . . corporation requesting *in camera* treatment or after finding that the material constitutes sensitive personal information.” 16 C.F.R. § 3.45(b). The person or entity requesting *in camera* treatment can meet this standard by demonstrating that the documents are “sufficiently secret and sufficiently material to [the entity’s] business that disclosure would result in serious competitive injury.” See *In re Evanston Nw. Healthcare Corp.*, 2005 F.T.C. LEXIS 27, at *1 (Feb. 9, 2005) (citing *In re Bristol-Meyers Co.*, 90 F.T.C. 455, 456 (1977); *In re Gen. Foods Corp.*, 95 F.T.C. 352, 355 (1980)). For documents more than three years old, the applicant “must also demonstrate, by affidavit or declaration, that such material remains competitively sensitive.” *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55, at *3 (Apr. 4, 2017).

In *Bristol-Meyers* the Commission outlined six factors the Court may consider in assessing documents sought to be kept *in camera*:

- (1) the extent to which the information is known outside the applicant’s business;
- (2) the extent to which the information is known by employees and others involved in the applicant’s business;
- (3) the extent of measures taken by the applicant to guard the secrecy of the information;
- (4) the value of the information to the applicant and its competitors;
- (5) the resources expended by the applicant in developing the information; and

¹ Roche requests confidential treatment of the Perettie Declaration and Document List pursuant to the Protective Order Governing Confidential Material in this case and has attached as Exhibit 4 a copy of each page of this Motion and associated attachments containing material designated confidential. Pursuant to Rule 16 C.F.R. 3.45(e), the Protective Order is attached hereto as Exhibit 5. Due to their size, Roche has provided the documents listed on the Document List via File Transfer Protocol.

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(6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Bristol-Meyers, 90 F.T.C. at 456-57.

Rule 3.45(b) also requires the applicant to specify the duration of *in camera* treatment requested for each document. “In determining the length of time for which *in camera* treatment is appropriate, . . . ordinary business records are granted less protection than trade secrets.” *I-800 Contacts*, 2017 FTC LEXIS 55, at *5. Trade secrets include, *inter alia*, “secret formulas, processes, other secret technical information, or information that is privileged.” *Id.* “[O]rdinary business records include information such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents.” *Id.* at *5-6.

A. Roche’s Confidential Documents Are Sufficiently Secret and Sensitive to Warrant *in Camera* Treatment

Roche’s Confidential Documents, all of which were created within the last three years, contain information going to the core of Roche’s competitive and commercial development activity, and *in camera* treatment is necessary to protect Roche’s confidential business strategies, analyses, and proprietary technical information from public disclosure and use by Roche’s customers, suppliers, and competitors to Roche’s detriment. These documents contain information that could be used against Roche in business negotiations, that would harm Roche’s reputation or otherwise damage customer or supplier relationships, that would give competitors an unfair advantage over Roche, or that would facilitate competitors’ attempts to replicate or frustrate Roche’s strategic initiatives. This information is kept highly confidential within Roche. Perettie Decl. ¶¶ 11-13.

PUBLIC**1. Confidential Financial Forecasts and Information, Customer-Specific Pricing and Sales Information, and Supplier-Specific Pricing Information and Contract Terms**

The first through third categories of Roche Confidential Documents contain Roche's confidential financial forecasts and information, such as product-level pricing information and cost information, customer-specific pricing and sales information, and supplier-specific pricing information and contract terms. The Commission has long recognized the substantial injury that can result from the disclosure of confidential financial information. *See, e.g., In re SKF Indus.*, No. 9046C, 1977 F.T.C. LEXIS 86, at *3 (Oct. 4, 1977) (granting *in camera* treatment to exhibits containing detailed financial information). These documents contain the company's confidential, non-public financial information and forecasts, and pricing and cost information, disclosure of which would reveal details about the workings of Roche's business, financial positions, and competitive strengths and weaknesses. Perettie Decl. ¶¶ 14-30. This information could be used by customers, suppliers, and competitors to gain an advantage over Roche in negotiations and in the marketplace. *Id.* ¶¶ 15-16, 21-22, 26-28. Roche requests that documents in these categories be kept *in camera* for ten years, with the exception of documents that reveal supplier-specific pricing information and contract terms for contracts with terms expected to remain in force until 2033 or longer, for which Roche is requesting *in camera* treatment for 15 years. *Id.* ¶ 30.²

2. Customer/Supplier Negotiations, and Internal Customer/Supplier Strategy

The documents noticed for potential use at trial include internal company presentations and communications that reflect Roche's confidential customer and supplier negotiations, including internal strategy for those negotiations. Perettie Decl. ¶¶ 42-45. Public disclosure of these confidential communications would harm Roche by (i) damaging established customer and supplier relationships, (ii) giving customers and suppliers a strategic advantage in negotiations,

² Many documents contain more than one category of confidential information, as described in the Document List. For each such document, Roche is requesting the longest period of *in camera* treatment applicable to the document to protect the information justifying the longer duration from disclosure.

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and (iii) providing competitors with a roadmap of Roche's procurement, development, and sales processes. *Id.* ¶¶ 43-44. In addition, as discussed in the previous section, certain documents in this category, particularly those discussing supplier contract terms, will remain competitively sensitive for more than ten years and require extended *in camera* protection. As such, Roche requests that customer and supplier negotiations and related internal strategy documents be granted *in camera* treatment for ten years, and that contracts expected to be in force for longer than ten years, and documents describing the details of those contracts, be granted *in camera* treatment for fifteen years. *Id.* ¶¶ 30, 45.

3. Business Plans and Competitive Strategy

The business plans and competitive strategy documents consist of Roche's proprietary analyses of market dynamics, margins, input costs, customer trends, and other sensitive strategic information, as well as product development plans and strategies. Perettie Decl. ¶¶ 32-41. These documents reveal highly confidential information concerning Roche's strategies in the marketplace, strategic decision making of executives, and strategic analyses of the genomic sequencing and testing industries, including recommendations on Roche's future competitive posture. *Id.* The core information contained in these documents regarding Roche's pricing, marketing, development, and production planning tactics, strategy regarding competitive pricing and customer and supplier negotiations, strategic supply planning, and broader competitive strategic initiatives have remained generally consistent over the past several years, and will remain highly competitively relevant for the foreseeable future. *Id.* Public disclosure of that closely held information would limit Roche's ability to execute those strategies and adjust them to changing competitive dynamics, would provide competitors the ability to exploit weaknesses and appropriate strengths in Roche's plans, and could harm Roche's customer and supplier relationships and position in negotiations. *Id.* ¶¶ 36-39. Roche therefore requests that the

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documents in this category receive *in camera* treatment for ten years, with the exceptions of specific documents that contain less sensitive information, for which Roche seeks *in camera* treatment of three or five years, as indicated on the Document List. *Id.* ¶ 41.

4. Proprietary Technical Information

Roche's technical information documents consist of information regarding the technical specifications, testing, development, and capabilities of Roche's products and development initiatives. This information includes descriptions of proprietary systems and processes, testing and benchmarking results, internal analysis of product quality and specifications, and product development and improvement plans. *Id.* ¶¶ 46, 48.

Release of such documents would significantly lessen Roche's ability to compete in the marketplace. Roche would lose competitive advantages regarding its product development processes and systems as well as specific pipeline products, which could be particularly detrimental to the business in a rapidly changing and dynamic industry. Competitors with access to this information would be able to unfairly appropriate Roche's innovations and proprietary information. Competitors would be able to ascertain any perceived weaknesses within Roche's development systems and processes as well as in Roche's products and unfairly exploit that confidential information to significantly lessen Roche's competitiveness in the marketplace. *Id.* ¶¶ 49-52. As such, Roche requests *in camera* treatment for documents in this category for ten years. *Id.* ¶ 53.

5. Documents Obtained Pursuant to a Limited License

The final category of documents are third party market research reports that Roche did not create, but that are in Roche's possession by virtue of a limited license prohibiting distribution. *See id.* ¶¶ 54-57. Roche purchased these reports to gain the value of the research put together by leading market research firms in the industry, and public disclosure of the reports would both risk Roche's reputation with those firms and allow Roche's competitors to gain an unfair advantage

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by obtaining the information in the reports for free. *Id.* ¶¶ 55-56. Roche seeks *in camera* treatment of these documents for three years from the date of publication.

B. Roche’s Status as a Third Party Weighs in Favor of *In Camera* Treatment

Finally, Roche’s status as a third party is relevant to the treatment of its documents. The FTC has held that protection of confidential records from public disclosure is especially important in the case of a third party, which deserves “special solicitude” in its request for *in camera* treatment of its confidential business information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, at *2-3 (May 25, 1984) (“As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”). As such, Roche’s third-party status weighs in favor of granting Roche’s request for *in camera* treatment.

* * *

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Each of these documents is a confidential business record or contains proprietary information that Roche has not disclosed publicly and has worked to keep secret. These documents reveal secret and competitively sensitive information about Roche's business strategy, product development plans, customer and supplier negotiations and contracts, and present and future operations. If these documents were placed onto the public record, Roche's competitive position would be significantly harmed in a multitude of ways. Accordingly, Roche respectfully requests that the Court grant its request for *in camera* treatment. Should the Court find that Roche has not met its burden to demonstrate necessity of *in camera* treatment of any of the requested documents, Roche respectfully requests the opportunity to proffer additional supporting information.

Dated: August 5, 2021

Respectfully submitted,

/s/ Katherine Clemons

Jason C. Ewart
Katherine Clemons
ARNOLD & PORTER KAYE SCHOLER
601 Massachusetts Ave NW
Washington, DC 20001-3743
(202) 942-5000
(202) 942-5999 (facsimile)
Jason.Ewart@arnoldporter.com
Katherine.Clemons@arnoldporter.com

Attorneys for Third Parties Roche Sequencing Solutions, Inc., Foundation Medicine, Inc., and Ariosa Diagnostics, Inc.

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EXHIBIT 1

FTC Notice Letter



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers I Division

July 26, 2021

VIA EMAIL TRANSMISSION

Roche Sequencing Solutions, Inc.
c/o Jay Ewart
Arnold & Porter
601 Massachusetts Ave, NW
Washington, DC 20001-3743
Jason.Ewart@arnoldporter.com

RE: *In the Matter of Illumina, Inc., and GRAIL, Inc., Docket No. 9401*

Dear Mr. Ewart:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on August 24, 2021. All exhibits admitted into evidence become part of the public record unless Chief Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). If you do not file an *in camera* motion, your documents will not receive *in camera* treatment and may be publicly disclosed. Judge Chappell may order that materials be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602 at *1 (July 2, 2018); and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed

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and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge.

Also, please be advised, if you intend to file an *in camera* motion, you will need credentials for the Commission's electronic filing system and a Notice of Appearance. The Notice of Appearance must be approved by the Office of the Secretary and can take up to twenty-four ("24") hours to issue. As such, you will need to file your Notice of Appearance at least one day prior to the day on which you intend to file your *in camera* motion. I have attached an e-filing checklist to assist with this process.

Please be aware that under the current Scheduling Order **the deadline for filing motions seeking *in camera* treatment is August 5, 2021**. A copy of the April 26, 2021 Scheduling Order can be found at <https://www.ftc.gov/enforcement/cases-proceedings/201-0144/illumina-inc-grail-inc-matter>. If you have any questions, please feel free to contact me at 202-326-2856.

Sincerely,

/s/ Betty Jean McNeil

Betty Jean McNeil

Counsel Supporting the Complaint

Attachment

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Attachment A

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Confidentiality Notice
Attachment A

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX7043	PX7043-001	PX7043-077	2/18/2021	
PX7068	PX7068-001	PX7068-053	3/24/2021	
PX7074	PX7074-001	PX7074-098	5/21/2021	
PX7118	PX7118-001	PX7118-043	6/18/2021	
PX8324	ROCHE-CID-00000434	FTC-Roche-00000450	10/21/2020	
PX8325	ROCHE-CID-00000118	ROCHE-CID-00000160	4/24/2020	
PX8326	ROCHE-CID-00002072	ROCHE-CID-00002184	12/??/20	
PX8327	ROCHE-CID-00002248	ROCHE-CID-00002250	01/??/21	
PX8328	ROCHE-CID-00002251	ROCHE-CID-00002255	02/??/21	
PX8329	ROCHE-CID-00002256	ROCHE-CID-00002289	1/25/2021	
PX8351	ROCHE-CID-00000001	ROCHE-CID-00000023	9/19/2019	
PX8352	ROCHE-CID-00001046	ROCHE-CID-00001069	11/5/2020	
PX8354	ROCHE-CID-00001641	ROCHE-CID-00001644	1/29/2021	
PX8396	PX8396-001	PX8396-056	3/4/2021	
PX8397	ROCHE-CID-00002357	ROCHE-CID-00002362	1/21/2021	
PX8447	ROCHE-00000446	ROCHE-00000492	4/24/2021	
PX8449	ROCHE-00000538	ROCHE-00000568	10/13/2020	
PX8450	ROCHE-00000812	ROCHE-00000828	4/24/2021	
PX8564	ROCHE-CID-00002590	ROCHE-CID-00002595	2/17/2021	
PX8565	ROCHE-CID-00003575	ROCHE-CID-00003580	3/4/2021	
PX8566	ROCHE-CID-00003581	ROCHE-CID-00003583	3/4/2021	
PX8614	ROCHE-CID-00002784	ROCHE-CID-00002795	2/21/2021	
PX9069	ROCHE-CID-00001203	ROCHE-CID-00001225	??/??/19	

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Confidentiality Notice
Attachment A

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX9070	ROCHE-CID-00000086	ROCHE-CID-00000117	7/24/2020	
PX9072	PX9072-001	PX9072-002	TBD	
PX9073	PX9073-001	PX9073-004	TBD	
PX9075	PX9075-001	PX9075-001	TBD	
PX9076	PX9076-001	PX9076-001	TBD	
PX9077	ROCHE-CID-00001154	ROCHE-CID-00001202	1/21/2021	
PX9078	ROCHE-CID-00001070	ROCHE-CID-00001153	1/21/2021	
PX9079	ROCHE-CID-00001294	ROCHE-CID-00001301	03/??/20	
PX9080	ROCHE-CID-00001342	ROCHE-CID-00001396	8/28/2019	
PX9081	ROCHE-CID-00001325	ROCHE-CID-00001341	06/??/20	
PX9082	ROCHE-CID-00001314	ROCHE-CID-00001324	6/4/2020	
PX9084	ROCHE-CID-00001013	ROCHE-CID-00001045	??/??/18	
PX9085	ROCHE-CID-00000784	ROCHE-CID-00000925	12/4/2020	
PX9086	ROCHE-CID-00000926	ROCHE-CID-00001012	??/??/19	
PX9087	ROCHE-CID-00000024	ROCHE-CID-00000031	12/10/2019	
PX9089	ROCHE-CID-00000059	ROCHE-CID-00000059	TBD	
PX9090	ROCHE-CID-00000726	ROCHE-CID-00000783	9/18/2020	
PX9091	ROCHE-CID-00000464	ROCHE-CID-00000725	12/??/20	
PX9092	ROCHE-CID-00000451	ROCHE-CID-00000463	09/??/20	
PX9096	ROCHE-CID-00001282	ROCHE-CID-00001293	TBD	
PX9097	ROCHE-CID-00000056	ROCHE-CID-00000058	9/6/2019	
PX9098	ROCHE-CID-00000055	ROCHE-CID-00000055	TBD	
PX9099	ROCHE-CID-00000049	ROCHE-CID-00000054	10/8/2019	
PX9100	ROCHE-CID-00000042	ROCHE-CID-00000044	11/15/2019	

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Attachment A

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX9101	ROCHE-CID-00000048	ROCHE-CID-00000048	TBD	
PX9102	ROCHE-CID-00000035	ROCHE-CID-00000041	12/10/2019	
PX9106	ROCHE-CID-00000172	ROCHE-CID-00000433	02/??/20	
PX9107	ROCHE-CID-00000081	ROCHE-CID-00000085	01/??/21	
PX9108	ROCHE-CID-00000075	ROCHE-CID-00000080	TBD	
PX9109	ROCHE-CID-00001304	ROCHE-CID-00001313	1/14/2020	
PX9114	ROCHE-CID-00000060	ROCHE-CID-00000074	10/14/2019	

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EXHIBIT 2

Respondents' Notice Letter

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From: Xhesi Hysi <xhysi@cravath.com>
Sent: Monday, July 26, 2021 5:43 PM
To: Ewart, Jason C. <Jason.Ewart@arnoldporter.com>; Clemons, Katherine <Katherine.Clemons@arnoldporter.com>
Cc: Michael Zaken <mzaken@cravath.com>; Sharonmoyee Goswami <sgoswami@cravath.com>
Subject: In the Matter of Illumina, Inc. and GRAIL, Inc., No. 9401

External E-mail

Counsel,

As part of the Administrative Trial for *In the Matter of Illumina, Inc. and GRAIL, Inc.*, (Dkt. No. 9401) set to begin on August 24, we have submitted a proposed list of documents and testimony we intend to use as trial exhibits. This list includes third party documents and testimony that have been designated confidential under the protective order entered by the Administrative Law Judge.

Per our obligation under the Scheduling Order, we are providing you with notice that we intend to use the documents listed below, and any associated family members produced by Roche Sequencing Solutions Inc., Foundation Medicine Inc., Ariosa Diagnostics Inc. or all other Roche-affiliated entities as well as the deposition transcripts of Cynthia Perettie and Konstantin Fiedler as trial exhibits, pursuant to 16 C.F.R. § 3.45(b).

Documents
FTC-Roche-00000435
FTC-Roche-00001047
FTC-Roche-00001071
FTC-Roche-00001234
FTC-Roche-00001235
FTC-Roche-00001305
FTC-Roche-00001646
FTC-Roche-00001708
FTC-Roche-00002249
FTC-Roche-00002252
FTC-Roche-00002257
ROCHE-00000080
ROCHE-00000273
ROCHE-00000303
ROCHE-00000319

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ROCHE-00000446
ROCHE-00000516
ROCHE-00000795
ROCHE-00000812
ROCHE-00000829
ROCHE-00000864
ROCHE-00000896
ROCHE-00001195
ROCHE-00001200
ROCHE-00001205
ROCHE-00001220
ROCHE-CID-00002256
ROCHE-CID-00002357
ROCHE-CID-00002401
ROCHE-CID-00002403
ROCHE-CID-00003767
Testimony
Deposition Transcript of Cindy Perettie
Deposition Transcript of Konstantin Fiedler

Under 16 C.F.R. § 3.45(b), if you wish, you may move the Administrative Law Judge to obtain *in camera* treatment for the documents and testimony listed below. Please note that the deadline for filing such a motion is August 5, 2021, and note the following information set forth in the Scheduling Order about the content of any such motion:

[There are] strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602 at *1 (July 2, 2018); and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (Apr. 4, 2017). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (Apr. 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

Scheduling Order ¶ 12.

Please confirm receipt of this notice.

Thanks,
 Xhesi
 Xhesi Hysi
 Cravath, Swaine & Moore LLP
 825 Eighth Avenue | New York, NY 10019

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T: (212) 474-1198

xhysi@cravath.com

This e-mail is confidential and may be privileged. Use or disclosure of it by anyone other than a designated addressee is unauthorized. If you are not an intended recipient, please delete this e-mail from the computer on which you received it.

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EXHIBIT 3

Declaration in Support

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

In the Matter of

Illumina, Inc.,

a corporation,

Docket No. 9401

and

GRAIL, Inc.

a corporation,

Respondents.

DECLARATION OF CYNTHIA PERETTIE

I, Cynthia Perettie, based upon my personal knowledge concerning matters to which I am competent to testify, hereby declare as follows:

1. I am the Head of Roche Molecular Labs, a division of Roche Molecular Systems, Inc., a subsidiary of the Roche Group, and the former Chief Executive Officer of Foundation Medicine, Inc. (“FMI”), also a subsidiary of Roche Group.

2. I also work closely with Roche Sequencing Solutions, Inc., and Ariosa Diagnostics, Inc., each of which, along with FMI, provided documents and information to the Federal Trade Commission and Respondents in the above-captioned matter pursuant to subpoena.

3. Roche Sequencing Solutions, Inc., Foundation Medicine, Inc., and Ariosa Diagnostics, Inc. are not parties to the above-captioned matter.

4. I am authorized to testify on behalf of all three of these third-party entities (collectively, “Roche”) for purposes of this declaration regarding the contents, confidentiality, and materiality of Roche documents proposed to be introduced at trial.

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5. I am familiar with the types of documents for which Roche is seeking *in camera* treatment as well as the types of information contained in those documents. I am also familiar with the confidentiality protection afforded this type of information by Roche and the importance of this information and the confidentiality thereof to Roche's business interests.

6. Counsel for Roche has conducted a thorough review of the documents for which Roche is seeking *in camera* treatment and has provided me with detailed descriptions of the documents containing confidential Roche information.

7. As explained further below, public disclosure of the documents and information described in Attachment A to this Declaration ("Document List") and in Roche's Motion for *In Camera* Treatment of Proposed Trial Exhibits would cause Roche serious competitive injury.

8. The Document List attached to this Declaration contains a detailed description of the confidential material in each document for which Roche is seeking *in camera* treatment. The list also identifies each document as falling into one or more of the following categories of confidential information that is material to Roche's business and that would harm Roche if disclosed:

- (1) Confidential Financial Information and Forecasts
- (2) Customer-Specific Pricing and Sales Information
- (3) Supplier-Specific Pricing Information and Contract Terms
- (4) Business Plans and Competitive Strategy
- (5) Customer/Supplier Negotiations and Internal Customer/Supplier Strategy
- (6) Proprietary Technical Information
- (7) Third Party Research Reports Obtained Pursuant to Limited License

9. For each of these categories, I have included a description below of the nature of information included in the documents falling into the category, as well as the serious injury that public disclosure of the information would inflict on Roche. For each category of documents, I have included a description of why the duration of *in camera* treatment that Roche is seeking is necessary to prevent future harm to Roche's business interests.

10. Although many of these documents are ordinary business records, they contain information that Roche has not distributed to the public, its customers, its competitors, its suppliers, or even all Roche employees.

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11. Roche expends significant effort to maintain the confidentiality of this information except with respect to individual counterparties in negotiations and entities that have signed non-disclosure agreements. Even in these situations, the information Roche shares is provided only on a need-to-know basis. The information in documents falling into these categories, as identified in the Document List, is not available to the public through other means.

12. Roche has established procedures and policies to restrict this type of competitively sensitive information to management-level employees, Roche employees who need access to the information in order to perform their job responsibilities, and the specific customers or suppliers with whom the sales, prices, or costs are being negotiated.

13. When Roche produced confidential material to the FTC and Respondents as a third party pursuant to compulsory process, it relied on the confidentiality rules and protective order that shielded confidential information from public disclosure.

I. Pricing, Sales, and Cost Information

14. A number of the documents listed for potential use at the public hearing, including many of Roche's Responses to the FTC's and Respondents' requests for documents and depositions of Roche employees, contain sensitive information involving Roche's sales and pricing information, confidential contract terms and supplier information, cost information, and other confidential financial data related to Roche's business. Public disclosure of such information threatens to compromise Roche's competitive position by putting Roche on uneven footing with customers, suppliers, and competitors in its business dealings.

A. Confidential Financial Information and Forecasts

15. The documents in this category contain the company's confidential financial information and forecasts, disclosure of which would reveal details about the workings of Roche's business, its financial positions, and its competitive strengths and weaknesses, all of which could be used by customers, suppliers, and competitors to gain an advantage over Roche in negotiations and in the marketplace.

16. Current and potential suppliers or customers could also use this confidential information in negotiations with Roche. Knowledge of how profitable Roche's products are, for example, would give customers leverage in negotiations, and would give competitors insight into where to devote resources to gain an unfair advantage over Roche. Competitors could also use this information in customer negotiations to undermine Roche's position with shared customers.

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B. Customer-Specific Pricing and Sales Information

17. [REDACTED]

18. Documents in this category contain customer-specific sales revenue and volume data that could be used to derive the specific pricing negotiated with particular customers and the details of their sales relationships with Roche. They also identify Roche's top customers.

19. Several of these documents, including PX9076, PX9077, and PX9078, were prepared by Roche specifically to respond to requests for information from the FTC related to the Illumina/GRAIL transaction and have not been shared outside that context.

20. The type of information contained in this category of documents is treated as highly confidential and proprietary within Roche. The information is disseminated on a need-to-know basis within Roche. This granular information is not disclosed outside of the company and its owners other than under an NDA for specific limited circumstances and, in particular, is not disclosed to Roche's competitors.

21. Roche would be significantly disadvantaged during negotiations with customers if this information became public. Through the documents in this category, customers would be able to estimate Roche's pricing to other customers for products they purchase from Roche and would gain a strategic advantage in negotiations by leveraging knowledge of their relative strength as a Roche customer regarding price and volume.

22. Competitors could exploit this information in negotiations with Roche's customers, and could use it to identify and target areas where such information would permit the competitor to gain a competitive advantage over Roche and focus resources on those areas.

23. Roche safeguards its customer information in order to avoid this type of competitive injury, and public disclosure of these secret data would render meaningless Roche's efforts to limit distribution of this sensitive information.

PUBLIC

C. Supplier-Specific Pricing Information and Contract Terms

24. Documents in this category include specific information about the terms of Roche's supply contracts that would reveal Roche's costs for sequencing equipment and per-test cost information for Roche's commercialized and pipeline products, including specific pricing, discount, and other sensitive commercial terms of its supply agreements with Illumina, Inc.

25. The type of information contained in this category of documents is treated as highly confidential and proprietary within Roche. The information is disseminated on a need-to-know basis within Roche. This granular information is not disclosed outside of the company and its owners other than under an NDA for specific limited circumstances and, in particular, is not disclosed to Roche's competitors or other suppliers.

26. Customers receiving this information could use Roche's costs and the terms of its supply agreements to gain an advantage in negotiations, to Roche's detriment.

27. Competitors could exploit this information in negotiations with Roche's customers and could use it to identify and target areas where such information would permit the competitor to gain a competitive advantage over Roche and focus resources on those areas.

28. Other suppliers could leverage the information about Roche's existing supplier contracts to gain an advantage in future negotiations with Roche over supply of similar products.

29. Roche safeguards its costs and procurement data in order to avoid this type of competitive injury, and public disclosure of these secret data would render meaningless Roche's efforts to limit distribution of this sensitive information.

30. Disclosure of the pricing information and supply terms in these documents would be harmful to Roche for [REDACTED]

II. Strategic and Future Plans

31. Certain of the documents listed for potential use at the public hearing contain internal Roche strategic plans and confidential analyses of Roche's business operations. Public disclosure of such information threatens to compromise Roche's competitive position by revealing confidential information to competitors and companies with whom Roche has business dealings.

PUBLIC

A. Business Plans and Competitive Strategy

32. Documents in this category concern Roche's internal company presentations and communications that reflect Roche's confidential business plans and strategies. Some of these documents discuss confidential Roche business opportunities, strategic goals, competitive initiatives going forward, operating plans, competitive strategy, pricing strategy, and strengths and weaknesses with respect to pricing and margins, including discussions of Roche's industry outlook and future goals and initiatives.

33. These documents reveal highly confidential information concerning (i) Roche's customer and distributor contracts, negotiations, and communications, (ii) Roche's strategies in the testing and genomic sequencing marketplaces, (iii) the strategic decision making of Roche executives, and (iv) Roche's strategic analyses of the cancer testing and genomic sequencing industries, including Roche's current competitive positioning in the marketplace, recommendations on Roche's future competitive posture, and product development plans and strategies.

34. Roche does not broadly disseminate these types of strategy documents, even within Roche. Rather, these strategies are restricted to a limited group of management and executive personnel charged with devising and implementing Roche's strategic direction and competitive goals.

35. Disclosure of these documents would reveal detailed confidential information about Roche's business operations, sales performance, customer base, supplier relationships, product development initiatives, and customer service capabilities.

36. Release of such information to competitors would limit Roche's ability to execute its business plans and allow its competitors to undermine Roche's broader strategy as well as diminish Roche's ability to develop and market its products and maintain its customer and supplier relationships.

37. Competitors could use this information to gain insight into the workings and directional strategy of Roche's business, allowing them to undermine the competitiveness of Roche's business by exploiting areas of weakness and tailoring their own strategies to undermine Roche's business. Roche would not have access to similar information of its competitors and would therefore be at a strategic disadvantage.

38. Competitors could also use Roche's strategies, such as Roche's approach to [REDACTED] [REDACTED] in their own business and product planning. Competitors would get the benefit of Roche's strongest competitive, development, and operational initiatives without having to invest the resources that Roche has spent to develop these initiatives, harming Roche's ability to effectively compete against those competitors from a cost and value perspective.

PUBLIC

39. Current and potential suppliers or customers also could use confidential information in negotiations with Roche to gain an unfair advantage or otherwise undermine Roche's negotiating power.

40. Many of Roche's business plans, [REDACTED] [REDACTED] and revealing even the existence of these plans and their details could damage Roche's ability to execute its competitive strategy well into the future. For example, [REDACTED] [REDACTED] [REDACTED]

41. Because of the length of the development and approval timelines in the industries in which Roche operates its business and which are the subject of the FTC's challenge, *in camera* treatment for ten years of documents revealing Roche's business plans and competitive strategy, particularly with respect to products in development, is necessary to protect Roche's interests in most cases. However, certain documents with more limited applicability need only remain *in camera* for three to five years, as indicated for specific documents in the attached Document List.

B. Customer/Supplier Negotiations and Internal Customer/Supplier Strategy

42. Documents in this category contain information reflecting contract and sales negotiations with specific customers and suppliers and Roche's internal strategy with respect to those negotiations.

43. Supplier and customer relationship management is a critical part of Roche's business. Public disclosure of these confidential negotiations and internal communications would harm Roche by giving customers and suppliers a strategic advantage in negotiations.

44. If suppliers, customers, and competitors had the insight into Roche's negotiating strategy that can be gleaned from these documents, Roche's position in future negotiations would be undermined. Competitors whose internal strategies had not been publicly disclosed would be able to exploit those insights in negotiations with Roche customers and suppliers and use the information to their advantage when competing with Roche for access to and benefits from critical supply sources and in formulating their own approach to customer negotiations.

45. The damage caused by public disclosure of these documents would also be caused by release of the information more than five years into the future, as five years is a relatively short period of time in light of the length of Roche's supply contracts and industry cycles, which can exceed a decade.

PUBLIC

III. Technical Information and Other Trade Secrets

A. *Proprietary Technical Information*

46. The documents in the proprietary technical information category consist of information regarding the technical specifications, capabilities, and proprietary processes relating to Roche's products.

47. Roche does not broadly disseminate these types of documents or technical information, even within Roche.

48. With regard to Roche's products, this information includes testing and benchmarking results, internal analysis of product quality and specifications, product development and improvement plans, and technical support capabilities provided to customers.

49. Product development and innovation are critical components of the industries in which Roche operates, [REDACTED] and restricting access to proprietary technical information concerning products in development and Roches' development processes is critical to Roche's competitive strategy and viability in the industry.

50. Release of such documents would significantly lessen Roche's abilities to compete in the marketplace. Roche would lose competitive advantages it has developed and is working to develop with regard to its pipeline products as well as its scientific development processes and systems that have allowed it to achieve excellence.

51. Competitors would be able to unfairly appropriate Roche's innovations and proprietary information. Competitors would be able to ascertain any perceived weaknesses within Roche's development systems and processes or differences in knowledge, as well as the status of Roche's pipeline products and unfairly exploit that confidential information to significantly lessen Roche's competitiveness in the marketplace and gain unearned development advantages.

52. Roche devotes significant resources to developing and refining its technical expertise and keeping the details of that expertise confidential. These details are trade secrets, and public disclosure of these trade secrets would diminish their value.

53. The product development timelines [REDACTED] are often longer than five years, so it is important that Roche be able to maintain the confidentiality of this information for the foreseeable future, for at least the next ten years.

PUBLIC

IV. Documents in Roche’s Possession Pursuant to Limited License

54. The final category of documents for which Roche is seeking *in camera* treatment consists of third party market research reports that Roche obtained by purchasing them from market research firms for its own use under a license. Roche does not have permission from the creators to distribute these documents publicly.

55. Roche places value on the information in these reports and was willing to expend company resources to purchase the reports to assist the company in its strategic planning. If the documents are made public, Roche would be harmed in that its competitors would be able to gain this same value from public records without the same costs that Roche incurred.

56. Roche may also be placed at a disadvantage with third party market research firms that it uses in its strategic planning if the firms are reticent to provide further information to Roche at the risk that it might be made public.

57. Roche provided these reports to the FTC with the understanding that they would be kept confidential.

V. Conclusion

58. For each category, the examples provided are merely representative—they are not meant to be an exhaustive list of all potential harms from public disclosure. This declaration draws upon the collective efforts of multiple people other than myself, and is based on my understanding of the facts at this time. I reserve the right to modify or supplement this affidavit if I discover new facts that render it inaccurate or incomplete.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct.

DocuSigned by:
Cindy Perettie
947BF4C6269C40A...

Cynthia Perettie

06 August 2021

Date

PUBLIC
PUBLIC

Attachment A: Roche Documents for *In Camera* Treatment

Exhibit Number(s)	Date	Document Description	Categories of Confidential Information	Further Description of Document	Duration of <i>In Camera</i> Treatment
PX7043	02/08/2021		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years
PX7068, RX3800	03/24/2021		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years
PX7074	05/21/2021		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years
PX7118, RX3844	06/21/2021		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years
PX8324, RX0502	10/21/2020		Business Plans and Competitive Strategy		3 years

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PX8325	04/24/2020		Business Plans and Competitive Strategy		3 years
PX8326	12/2020		Business Plans and Competitive Strategy		3 years
PX8327, RX0510	01/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
PX8328, RX0511	02/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
PX8329, RX0512, RX2709	01/25/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
PX8351	09/2019		Business Plans and Competitive Strategy; Proprietary Technical Information; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years

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PX8352, RX0503	11/05/2020		Business Plans and Competitive Strategy		10 years
PX8354	01/29/2021		Business Plans and Competitive Strategy		10 Years
PX8394	03/04/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		3 years
PX8395	03/04/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years
PX8396	03/04/2021		Supplier-Specific Pricing Information; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX8397	01/21/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years

PUBLIC

PX8447, RX2698	11/30/2020		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years
PX8449	10/13/2020		Business Plans and Competitive Strategy; Proprietary Technical Information		10 Years
PX8450, RX2701	11/03/2020		Business Plans and Competitive Strategy		10 Years
PX8564	02/17/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX8565	03/04/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX8566	03/04/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		3 years

PUBLIC

PX8614	02/21/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy; Supplier-Specific Pricing Information		15 Years
PX9069	2019		Business Plans and Competitive Strategy		10 Years
PX9070	07/24/2020		Business Plans and Competitive Strategy		10 Years
PX9072	02/05/2021		Confidential Financial Information and Forecasts; Business Plans and Competitive Strategy; Proprietary Technical Information		10 Years
PX9073	01/22/2021		Confidential Financial Information and Forecasts; Supplier-Specific Pricing Information		10 Years
PX9075	02/05/2021		Business Plans and Competitive Strategy; Confidential Financial Information and Forecasts; Customer/Supplier-Specific Pricing Information		10 years

PUBLIC

PX9076	02/05/2021		Business Plans and Competitive Strategy; Confidential Financial Information and Forecasts; Customer/Supplier-Specific Pricing Information		10 years
PX9077	01/21/2021		Business Plans and Competitive Strategy		10 Years
PX9078, RX0504	01/21/2021		Business Plans and Competitive Strategy		10 Years
PX9079	01/21/2020		Business Plans and Competitive Strategy; Proprietary Technical Information		10 Years
PX9080	08/28/2019		Business Plans and Competitive Strategy		10 Years
PX9081	06/2020		Business Plans and Competitive Strategy		10 Years

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PX9084	2018		Business Plans and Competitive Strategy		5 Years
PX9085	12/04/2020		Third Party Research Reports Obtained Pursuant to Limited License		2 years
PX9086	2019		Third Party Research Reports Obtained Pursuant to Limited License		1 year
PX9087	12/10/2019		Confidential Financial Information and Forecasts; Customer/Supplier-Specific Pricing Information; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years
PX9090	09/18/2020		Third Party Research Reports Obtained Pursuant to Limited License		2 years
PX9091	12/2020		Third Party Research Reports Obtained Pursuant to Limited License		2 years

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PX9092	09/2020		Business Plans and Competitive Strategy		5 Years
PX9096	2020		Business Plans and Competitive Strategy; Proprietary Technical Information		10 Years
PX9097	09/06/2019		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years
PX9098	10/2019		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX9099	10/08/2019		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years
PX9100	11/15/2019		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years

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PX9101	11/2019		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX9102	12/10/2019		Confidential Financial Information and Forecasts; Supplier-Specific Pricing Information; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX9106	02/2020		Third Party Research Reports Obtained Pursuant to Limited License		2 years
PX9107	01/2021		Business Plans and Competitive Strategy		5 years
PX9108	2021		Business Plans and Competitive Strategy		5 years
PX9109, RX0507	01/14/2020		Business Plans and Competitive Strategy		5 years

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PX9114	10/14/2019		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX0485, RX2713	03/04/2021		Supplier-Specific Pricing Information; Supplier Negotiations and Internal Supply Strategy		15 Years
RX0486	03/04/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		3 years
RX0506	01/2020		Business Plans and Competitive Strategy		10 years
RX0508	09/22/2020		Confidential Financial Information and Forecasts; Business Plans and Competitive Strategy		5 years
RX0509	10/2020		Business Plans and Competitive Strategy		10 years

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RX2694	06/12/2019		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX2695	07/01/2020		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX2696	09/21/2020		Business Plans and Competitive Strategy		3 years
RX2697	03/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX2699	04/14/2021		Business Plans and Competitive Strategy		5 years
RX2700	06/2019		Business Plans and Competitive Strategy		3 years

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RX2702	11/03/2020		Business Plans and Competitive Strategy		10 Years
RX2703	2021		Confidential Financial Information and Forecasts; Supplier-Specific Pricing Information; Proprietary Technical Information		10 years
RX2704	03/19/2021		Business Plans and Competitive Strategy		10 years
RX2705	02/24/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX2706	01/24/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX2707	02/26/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years

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RX2708	4/14/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
PX2711	01/27/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy; Supplier-Specific Pricing Information		15 Years
PX2712	01/27/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy; Supplier-Specific Pricing Information		15 Years

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EXHIBIT 4

Confidential Material

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Confidentiality Notice
Attachment A

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX7043	PX7043-001	PX7043-077	2/18/2021	
PX7068	PX7068-001	PX7068-053	3/24/2021	
PX7074	PX7074-001	PX7074-098	5/21/2021	
PX7118	PX7118-001	PX7118-043	6/18/2021	
PX8324	ROCHE-CID-00000434	FTC-Roche-00000450	10/21/2020	
PX8325	ROCHE-CID-00000118	ROCHE-CID-00000160	4/24/2020	
PX8326	ROCHE-CID-00002072	ROCHE-CID-00002184	12/??/20	
PX8327	ROCHE-CID-00002248	ROCHE-CID-00002250	01/??/21	
PX8328	ROCHE-CID-00002251	ROCHE-CID-00002255	02/??/21	
PX8329	ROCHE-CID-00002256	ROCHE-CID-00002289	1/25/2021	
PX8351	ROCHE-CID-00000001	ROCHE-CID-00000023	9/19/2019	
PX8352	ROCHE-CID-00001046	ROCHE-CID-00001069	11/5/2020	
PX8354	ROCHE-CID-00001641	ROCHE-CID-00001644	1/29/2021	
PX8396	PX8396-001	PX8396-056	3/4/2021	
PX8397	ROCHE-CID-00002357	ROCHE-CID-00002362	1/21/2021	
PX8447	ROCHE-00000446	ROCHE-00000492	4/24/2021	
PX8449	ROCHE-00000538	ROCHE-00000568	10/13/2020	
PX8450	ROCHE-00000812	ROCHE-00000828	4/24/2021	
PX8564	ROCHE-CID-00002590	ROCHE-CID-00002595	2/17/2021	
PX8565	ROCHE-CID-00003575	ROCHE-CID-00003580	3/4/2021	
PX8566	ROCHE-CID-00003581	ROCHE-CID-00003583	3/4/2021	
PX8614	ROCHE-CID-00002784	ROCHE-CID-00002795	2/21/2021	
PX9069	ROCHE-CID-00001203	ROCHE-CID-00001225	??/??/19	

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Confidentiality Notice
Attachment A

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX9070	ROCHE-CID-00000086	ROCHE-CID-00000117	7/24/2020	
PX9072	PX9072-001	PX9072-002	TBD	
PX9073	PX9073-001	PX9073-004	TBD	
PX9075	PX9075-001	PX9075-001	TBD	
PX9076	PX9076-001	PX9076-001	TBD	
PX9077	ROCHE-CID-00001154	ROCHE-CID-00001202	1/21/2021	
PX9078	ROCHE-CID-00001070	ROCHE-CID-00001153	1/21/2021	
PX9079	ROCHE-CID-00001294	ROCHE-CID-00001301	03/??/20	
PX9080	ROCHE-CID-00001342	ROCHE-CID-00001396	8/28/2019	
PX9081	ROCHE-CID-00001325	ROCHE-CID-00001341	06/??/20	
PX9082	ROCHE-CID-00001314	ROCHE-CID-00001324	6/4/2020	
PX9084	ROCHE-CID-00001013	ROCHE-CID-00001045	??/??/18	
PX9085	ROCHE-CID-00000784	ROCHE-CID-00000925	12/4/2020	
PX9086	ROCHE-CID-00000926	ROCHE-CID-00001012	??/??/19	
PX9087	ROCHE-CID-00000024	ROCHE-CID-00000031	12/10/2019	
PX9089	ROCHE-CID-00000059	ROCHE-CID-00000059	TBD	
PX9090	ROCHE-CID-00000726	ROCHE-CID-00000783	9/18/2020	
PX9091	ROCHE-CID-00000464	ROCHE-CID-00000725	12/??/20	
PX9092	ROCHE-CID-00000451	ROCHE-CID-00000463	09/??/20	
PX9096	ROCHE-CID-00001282	ROCHE-CID-00001293	TBD	
PX9097	ROCHE-CID-00000056	ROCHE-CID-00000058	9/6/2019	
PX9098	ROCHE-CID-00000055	ROCHE-CID-00000055	TBD	
PX9099	ROCHE-CID-00000049	ROCHE-CID-00000054	10/8/2019	
PX9100	ROCHE-CID-00000042	ROCHE-CID-00000044	11/15/2019	

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Attachment A

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX9101	ROCHE-CID-00000048	ROCHE-CID-00000048	TBD	
PX9102	ROCHE-CID-00000035	ROCHE-CID-00000041	12/10/2019	
PX9106	ROCHE-CID-00000172	ROCHE-CID-00000433	02/??/20	
PX9107	ROCHE-CID-00000081	ROCHE-CID-00000085	01/??/21	
PX9108	ROCHE-CID-00000075	ROCHE-CID-00000080	TBD	
PX9109	ROCHE-CID-00001304	ROCHE-CID-00001313	1/14/2020	
PX9114	ROCHE-CID-00000060	ROCHE-CID-00000074	10/14/2019	

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40. Many of Roche's business plans, [REDACTED]

[REDACTED] and revealing even the existence of these plans and their details could damage Roche's ability to execute its competitive strategy well into the future. For example, [REDACTED]

41. Because of the length of the development and approval timelines in the industries in which Roche operates its business and which are the subject of the FTC's challenge, *in camera* treatment for ten years of documents revealing Roche's business plans and competitive strategy, particularly with respect to products in development, is necessary to protect Roche's interests in most cases. However, certain documents with more limited applicability need only remain *in camera* for three to five years, as indicated for specific documents in the attached Document List.

B. Customer/Supplier Negotiations and Internal Customer/Supplier Strategy

42. Documents in this category contain information reflecting contract and sales negotiations with specific customers and suppliers and Roche's internal strategy with respect to those negotiations.

43. Supplier and customer relationship management is a critical part of Roche's business. Public disclosure of these confidential negotiations and internal communications would harm Roche by giving customers and suppliers a strategic advantage in negotiations.

44. If suppliers, customers, and competitors had the insight into Roche's negotiating strategy that can be gleaned from these documents, Roche's position in future negotiations would be undermined. Competitors whose internal strategies had not been publicly disclosed would be able to exploit those insights in negotiations with Roche customers and suppliers and use the information to their advantage when competing with Roche for access to and benefits from critical supply sources and in formulating their own approach to customer negotiations.

45. The damage caused by public disclosure of these documents would also be caused by release of the information more than five years into the future, as five years is a relatively short period of time in light of the length of Roche's supply contracts and industry cycles, which can exceed a decade.

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III. Technical Information and Other Trade Secrets

A. *Proprietary Technical Information*

46. The documents in the proprietary technical information category consist of information regarding the technical specifications, capabilities, and proprietary processes relating to Roche's products.

47. Roche does not broadly disseminate these types of documents or technical information, even within Roche.

48. With regard to Roche's products, this information includes testing and benchmarking results, internal analysis of product quality and specifications, product development and improvement plans, and technical support capabilities provided to customers.

49. Product development and innovation are critical components of the industries in which Roche operates, [REDACTED] and restricting access to proprietary technical information concerning products in development and Roches' development processes is critical to Roche's competitive strategy and viability in the industry.

50. Release of such documents would significantly lessen Roche's abilities to compete in the marketplace. Roche would lose competitive advantages it has developed and is working to develop with regard to its pipeline products as well as its scientific development processes and systems that have allowed it to achieve excellence.

51. Competitors would be able to unfairly appropriate Roche's innovations and proprietary information. Competitors would be able to ascertain any perceived weaknesses within Roche's development systems and processes or differences in knowledge, as well as the status of Roche's pipeline products and unfairly exploit that confidential information to significantly lessen Roche's competitiveness in the marketplace and gain unearned development advantages.

52. Roche devotes significant resources to developing and refining its technical expertise and keeping the details of that expertise confidential. These details are trade secrets, and public disclosure of these trade secrets would diminish their value.

53. The product development timelines [REDACTED] are often longer than five years, so it is important that Roche be able to maintain the confidentiality of this information for the foreseeable future, for at least the next ten years.

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Attachment A: Roche Documents for *In Camera* Treatment

Exhibit Number(s)	Date	Document Description	Categories of Confidential Information	Further Description of Document	Duration of <i>In Camera</i> Treatment
PX7043	02/08/2021		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years
PX7068, RX3800	03/24/2021		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years
PX7074	05/21/2021		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years
PX7118, RX3844	06/21/2021		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years
PX8324, RX0502	10/21/2020		Business Plans and Competitive Strategy		3 years

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PX8325	04/24/2020		Business Plans and Competitive Strategy		3 years
PX8326	12/2020		Business Plans and Competitive Strategy		3 years
PX8327, RX0510	01/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
PX8328, RX0511	02/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
PX8329, RX0512, RX2709	01/25/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
PX8351	09/2019		Business Plans and Competitive Strategy; Proprietary Technical Information; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years

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PX8352, RX0503	11/05/2020		Business Plans and Competitive Strategy		10 years
PX8354	01/29/2021		Business Plans and Competitive Strategy		10 Years
PX8394	03/04/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		3 years
PX8395	03/04/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 years
PX8396	03/04/2021		Supplier-Specific Pricing Information; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX8397	01/21/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years

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PX8447, RX2698	11/30/2020		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years
PX8449	10/13/2020		Business Plans and Competitive Strategy; Proprietary Technical Information		10 Years
PX8450, RX2701	11/03/2020		Business Plans and Competitive Strategy		10 Years
PX8564	02/17/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX8565	03/04/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX8566	03/04/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		3 years

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PX8614	02/21/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy; Supplier-Specific Pricing Information		15 Years
PX9069	2019		Business Plans and Competitive Strategy		10 Years
PX9070	07/24/2020		Business Plans and Competitive Strategy		10 Years
PX9072	02/05/2021		Confidential Financial Information and Forecasts; Business Plans and Competitive Strategy; Proprietary Technical Information		10 Years
PX9073	01/22/2021		Confidential Financial Information and Forecasts; Supplier-Specific Pricing Information		10 Years
PX9075	02/05/2021		Business Plans and Competitive Strategy; Confidential Financial Information and Forecasts; Customer/Supplier-Specific Pricing Information		10 years

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PX9076	02/05/2021		Business Plans and Competitive Strategy; Confidential Financial Information and Forecasts; Customer/Supplier-Specific Pricing Information		10 years
PX9077	01/21/2021		Business Plans and Competitive Strategy		10 Years
PX9078, RX0504	01/21/2021		Business Plans and Competitive Strategy		10 Years
PX9079	01/21/2020		Business Plans and Competitive Strategy; Proprietary Technical Information		10 Years
PX9080	08/28/2019		Business Plans and Competitive Strategy		10 Years
PX9081	06/2020		Business Plans and Competitive Strategy		10 Years

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PX9084	2018		Business Plans and Competitive Strategy		5 Years
PX9085	12/04/2020		Third Party Research Reports Obtained Pursuant to Limited License		2 years
PX9086	2019		Third Party Research Reports Obtained Pursuant to Limited License		1 year
PX9087	12/10/2019		Confidential Financial Information and Forecasts; Customer/Supplier-Specific Pricing Information; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years
PX9090	09/18/2020		Third Party Research Reports Obtained Pursuant to Limited License		2 years
PX9091	12/2020		Third Party Research Reports Obtained Pursuant to Limited License		2 years

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PX9092	09/2020		Business Plans and Competitive Strategy		5 Years
PX9096	2020		Business Plans and Competitive Strategy; Proprietary Technical Information		10 Years
PX9097	09/06/2019		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years
PX9098	10/2019		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX9099	10/08/2019		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years
PX9100	11/15/2019		Business Plans and Competitive Strategy; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		10 Years

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PX9101	11/2019		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX9102	12/10/2019		Confidential Financial Information and Forecasts; Supplier-Specific Pricing Information; Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		15 Years
PX9106	02/2020		Third Party Research Reports Obtained Pursuant to Limited License		2 years
PX9107	01/2021		Business Plans and Competitive Strategy		5 years
PX9108	2021		Business Plans and Competitive Strategy		5 years
PX9109, RX0507	01/14/2020		Business Plans and Competitive Strategy		5 years

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PX9114	10/14/2019		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX0485, RX2713	03/04/2021		Supplier-Specific Pricing Information; Supplier Negotiations and Internal Supply Strategy		15 Years
RX0486	03/04/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy		3 years
RX0506	01/2020		Business Plans and Competitive Strategy		10 years
RX0508	09/22/2020		Confidential Financial Information and Forecasts; Business Plans and Competitive Strategy		5 years
RX0509	10/2020		Business Plans and Competitive Strategy		10 years

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RX2694	06/12/2019		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX2695	07/01/2020		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX2696	09/21/2020		Business Plans and Competitive Strategy		3 years
RX2697	03/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX2699	04/14/2021		Business Plans and Competitive Strategy		5 years
RX2700	06/2019		Business Plans and Competitive Strategy		3 years

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RX2702	11/03/2020		Business Plans and Competitive Strategy		10 Years
RX2703	2021		Confidential Financial Information and Forecasts; Supplier-Specific Pricing Information; Proprietary Technical Information		10 years
RX2704	03/19/2021		Business Plans and Competitive Strategy		10 years
RX2705	02/24/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX2706	01/24/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
RX2707	02/26/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years

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RX2708	4/14/2021		Business Plans and Competitive Strategy; Proprietary Technical Information		10 years
PX2711	01/27/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy; Supplier-Specific Pricing Information		15 Years
PX2712	01/27/2021		Customer/Supplier Negotiations and Internal Customer/Supplier Strategy; Supplier-Specific Pricing Information		15 Years

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EXHIBIT 5

Protective Order

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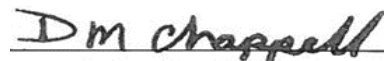
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)	
)	
Illumina, Inc.,)	
a corporation,)	Docket No. 9401
)	
and)	
)	
GRAIL, Inc.,)	
a corporation,)	
)	
Respondents.)	

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: “In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section.” Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: March 30, 2021

PUBLIC**PUBLIC****ATTACHMENT A**

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

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6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL – FTC Docket No. 9401” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL – FTC Docket No. 9401” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

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10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 2021, I filed the foregoing document electronically using the FTC’s E-Filing System, which will send notification of such filing to:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-113
Washington, DC 20580
electronicfilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also hereby certify that I caused a true and correct copy of the foregoing Motion for In Camera Treatment to be served upon the following via electronic mail.

/s/ Katherine Clemons
Katherine Clemons

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
Rm. H-113
Washington, DC 20580
Electronicfilings@ftc.gov

Office of the Administrative Law Judge
600 Pennsylvania Avenue, N.W.,
Rm. H-110
Washington, DC 20580
oalj@ftc.gov

Susan Musser
Dylan P. Naegele
David Gonen
Matthew E. Joseph
Betty Jean McNeil
Lauren Gaskin
Nicolas Stebinger
Samuel Fulliton
Stephen A. Mohr
Sarah Wohl
William Cooke
Stephanie C. Bovee
Peter Colwell
Ricardo Woolery

PUBLIC

Brian A. O’Dea
Jennifer Millici
smusser@ftc.gov
dnaegele@ftc.gov
dgonen@ftc.gov
mjoseph1@ftc.gov
bmcneil@ftc.gov
lgaskin@ftc.gov
nstebinger@ftc.gov
sfulliton@ftc.gov
smohr@ftc.gov
swohl@ftc.gov
wcooke@ftc.gov
sbovee@ftc.gov
pcolwell@ftc.gov
rwoolery@ftc.gov
bodea@ftc.gov
jmillici@ftc.gov
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
Counsel Supporting the Complaint

Cravath, Swaine & Moore LLP

Christine A. Varney
Richard J. Stark
David R. Marriott
J. Wesley Earnhardt
Sharonmoyee Goswami
Jesse M. Weiss
Michael J. Zaken
cvarney@cravath.com
rstark@cravath.com
dmariott@cravath.com
wearnhardt@cravath.com
sgoswami@cravath.com
jweiss@cravath.com
mzaken@cravath.com

Counsel for Respondent Illumina, Inc.

Latham & Watkins LLP

Michael G. Egge
Marguerite M. Sullivan
Alfred C. Pfeiffer, Jr.
Anna M. Rathbun

PUBLIC

David L. Johnson

Carla Weaver

Marcus Curtis

Charles A. Berdahl

michael.egge@lw.com

marguerite.sullivan@lw.com

al.pfeiffer@lw.com

anna.rathbun@lw.com

david.johnson@lw.com

carla.weaver@lw.com

marcus.curtis@lw.com

charles.berdahl@lw.com

Counsel for Respondent GRAIL, Inc.