

**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. )	
_____ )	

**ORDER GRANTING RESPONDENTS’ UNOPPOSED MOTION  
FOR LEAVE TO AMEND ANSWER**

On August 23, 2021, pursuant to Commission Rule 3.15(a), Respondents Illumina, Inc. and GRAIL, Inc. filed an unopposed motion for leave to amend their answer to add certain affirmative defenses (“Motion”). Specifically, Respondents seek to amend their Answer to plead the following additional affirmative defenses: (1) violation of the Appointments Clause in Article II, Section 2 of the United States Constitution, (2) violation of the President’s removal powers, as vested in Article II of the United States Constitution and as outlined in *Myers v. United States*, 272 U.S. 52, 117 (1926), and (3) violation of the Due Process and Equal Protection Clauses of the Fifth Amendment of the United States Constitution. Respondents attach their proposed amended answer as Exhibit A to the Motion.

Rule 3.15(a)(1) provides: “If and whenever determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to pleadings . . . .” 16 C.F.R. § 3.15(a)(1).

Respondents argue that allowing the amendment will not prejudice Complaint Counsel; that in seeking to amend, Respondents have acted in good faith and without undue delay; and that the affirmative defenses have not been waived by Respondents and are not futile. Respondents state that Federal Trade Commission Complaint Counsel has informed Respondents that Complaint Counsel will not oppose Respondents’ proposed amended answer, so long as Respondents do not seek further discovery relevant to the defenses.

Based on the foregoing, the Motion is GRANTED, and it is hereby ORDERED that Respondents are granted leave to amend their Amended Answer in accordance with Exhibit A to the Motion. Respondents shall file the Amended Answer by September 1, 2021.

ORDERED:

Handwritten signature of D. Michael Chappell in cursive script, underlined.

D. Michael Chappell  
Chief Administrative Law Judge

Date: August 25, 2021