PUBLIC

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.**	**DOCKET NO. 9401**

COMPLAINT COUNSEL'S MOTION *IN LIMINE* TO EXCLUDE CERTAIN OPINIONS OF RESPONDENTS' EXPERT, RICHARD ABRAMS, M.D.

Complaint Counsel respectfully asks the Court to exclude certain opinions that Respondents Illumina, Inc. ("Illumina") and GRAIL, Inc. ("GRAIL") (collectively, "Respondents") may offer from their expert witness, Richard Abrams, M.D., about whether or how primary care physicians besides himself might choose among different multi-cancer early detection ("MCED") tests.

Dr. Abrams originally formed his opinions by relying on third-party confidential information, which he now "disowns[.]"[1] Without that information, and by his own admission, Dr. Abrams "{ }" in primary care and "{ }."[2] As an internist whose { }

[1] Ex. A (July 23, 2021 11:31 a.m. email from A. Rathbun to W. Harrell).

[2] Ex. B at 63:6–64:10 (transcript of the July 30, 2021 deposition of Richard Abrams, marked PX7137) ("Abrams Dep. Tr.").

[redacted]},[3] Dr. Abrams is not qualified to opine on how differently-situated physicians would substitute among different MCED tests. And without the third-party confidential information on which he had previously relied, his opinions are based solely on {[redacted]}. His extrapolations from his own experience are not the products of any reliable method—or indeed any method at all.

Dr. Abrams may have specialized knowledge that qualifies him to testify about his own decision-making. But opinions he might offer about the decision-making of other physicians are inescapably unreliable. Any such opinions are properly excluded.

BACKGROUND

On the morning of Saturday, July 17, 2021, Respondents' counsel served the expert report of Richard Abrams, M.D. One of Dr. Abrams' assignments from Respondents was {[redacted]}."[4] In his report, Dr. Abrams opines, among other things, about the {[redacted]}.[5] Respondents later told the Court that Dr. Abrams "will testify about current and potential cancer screening options and the factors clinicians would consider prior to using a multi-cancer early detection test."[6]

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[3] *Id.* at 8:3–23.

[4] Ex. C ¶ 9 (Expert Report and Declaration of Richard Abrams, M.D., redacted and marked PX6097) ("Abrams Rep.").

[5] *Id.* ¶¶ 10(b) & (c).

[6] Motion for Leave to Allow Two Additional Testifying Experts at 6, *In re Illumina, Inc. & GRAIL, Inc.*, FTC Dkt. No. 9401 (July 24, 2021), *available at* https://www ftc.gov/system/files/documents/cases/d09401_-_motion_for_leave_to_allow_two_addidtional_testifying_experts_-_public.pdf. *See also* Ex. D at 8 (Respondents' Final Proposed Witness List) (previewing that Dr. Abrams "will testify about current and anticipated cancer

In forming his opinions, Dr. Abrams relied on materials containing third-party confidential information. According to Appendix B of his original expert report, Dr. Abrams considered {[redacted]}.[7] Most of these materials contain information that had been designated as confidential by third parties {[redacted]}. After Complaint Counsel raised concerns that the Protective Order did not allow him to receive third-party confidential information,[8] Dr. Abrams destroyed all such information in his possession; he now "disowns reliance on the third-party confidential materials listed in Appendix B in support of the opinions provided in his report."[9] Respondents also provided Dr. Abrams with a redacted version of his report.[10]

Complaint Counsel took Dr. Abrams' deposition on July 30, 2021. Dr. Abrams testified that {[redacted]}.[11] Dr. Abrams confirmed that he {[redacted]}

screening options, including purported MCED tests, the factors primary care physicians would consider prior to using a MCED test and whether the blood-based tests with other characteristics could substitute for GRAIL's Galleri test and vice versa").

[7] Complaint Counsel will submit copies of Dr. Abrams' previously unredacted report, along with the materials on which he had previously relied containing third-party confidential information, for *in camera* inspection at the Court's request.

[8] Ex. A (July 20, 2021 email from W. Harrell to A. Rathbun).

[9] Ex. A (July 23, 2021 11:31 a.m. email from A. Rathbun to W. Harrell).

[10] *See generally* Ex. C (Abrams Rep.).

[11] Ex. B at 5:23–9:24, 36:19–24, 37:25–40:13 (Abrams Dep. Tr.).

[redacted].[12] He also confirmed that he [redacted].[13]

Dr. Abrams also testified about the basis for his opinions on how other physicians besides himself would choose among different MCED tests:

[redacted]

[12] *Id.* at 44:21–50:5, 64:11–66:5.

[13] *Id.* at 22:9–24:8.

[redacted]}.[14]

Having disowned reliance on any third-party confidential information, Dr. Abrams could {[redacted]}.[15] He clarified that he has no opinion on {[redacted]}.[16] And he acknowledged that his opinions are not based on any {[redacted]} but rather on {[redacted]}.[17]

ARGUMENT

Rule 3.43(b) of the Commission Rules of Practice provides that "[i]rrelevant, immaterial, and unreliable evidence shall be excluded." 16 C.F.R. § 3.43(b). The Court may preclude the introduction of inadmissible evidence by granting motions *in limine*, which "are generally used to ensure evenhanded and expeditious management of trials by eliminating evidence that is clearly inadmissible."[18] To determine whether proffered expert testimony is unreliable and therefore inadmissible, the Court may consider "whether the expert is qualified in the relevant

[14] *Id.* at 63:6–64:10 (emphasis added).

[15] *Id.* at 68:1–72:24.

[16] *Id.* at 24:21–29:11, 76:23–77:9.

[17] *Id.* at 56:23–61:3, 66:16–69:21.

[18] Order on Complaint Counsel's Motion *in Limine* at 2, *In re Basic Research, LLC*, FTC Dkt. No. 9318 (Jan. 10, 2006), *available at* https://www ftc.gov/sites/default/files/documents/cases/2006/01/060110aljordonccmoinlim.pdf (citing *Bouchard v. American Home Products Corp.*, 213 F. Supp. 2d 802, 810 (N.D. Ohio 2002*); Intermatic Inc. v. Toeppen*, 1998 WL 102702, at *2 (N.D. Ill. 1998)).

field and examine the methodology the expert used in reaching the conclusions at issue."[19] The Court may also consider whether the testimony "lacks a proper foundation."[20] These considerations apply even in "cases where an expert eschews reliance on any rigorous methodology and instead purports to base his opinion merely on 'experience' or 'training.'"[21]

Complaint Counsel does not dispute Dr. Abrams' qualifications to testify about how he uses GRAIL's Galleri test today or how he expects to choose among different MCED tests in the future. Dr. Abrams is not qualified, however, to speculate about what *other* physicians might do—especially physicians who are not internists with {[redacted]}.[22] Dr. Abrams admitted as much during his deposition, where he testified that he {[redacted]}.[23] He practices only {[redacted]}. Nothing qualifies Dr. Abrams to opine on how every other primary

[19] *Id.* (citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 153–54 (1999)).

[20] Order on Motions *in Limine* at 4, *In re Rambus Inc.*, FTC Dkt. No. 9302 (Apr. 21, 2003), *available at* https://www.ftc.gov/sites/default/files/documents/cases/2003/04/030421aljordonmoinlimine.pdf (granting motion *in limine* to exclude expert report and preclude hearing testimony).

[21] *Clark v. Takata Corp.*, 192 F.3d 750, 758 (7th Cir. 1999).

[22] *See Goebel v. Denver & Rio Grande W. R.R. Co.*, 215 F.3d 1083, 1088 (10th Cir. 2000) ("It is axiomatic that an expert, no matter how good his credentials, is not permitted to speculate.").

[23] Ex. B at 63:6–64:10 (Abrams Dep. Tr.). To whatever extent these admissions walk back statements in Dr. Abrams' expert report, his deposition testimony controls. *See Chartier v. Brabender Technologie, Inc.*, No. 08cv40237, 2011 WL 4732940, at *7 (D. Mass. Oct. 5, 2011) (recognizing that "expert witnesses should generally be held to their testimonial concessions, particularly where those concessions contradict their earlier expert reports"); *Modern Automotive Network, LLC v. E. Alliance Ins. Co.*, 416. F. Supp. 3d 529, 539 (M.D.N.C. 2019) (granting motion *in limine* after concluding that the expert's "inconsistent testimony demonstrates that his opinions … are unreliable").

care physician in the United States—with different specialties in different practices serving different patient populations across different states—will make decisions regarding MCED tests.

Regardless of his qualifications, Dr. Abrams has failed to ground his opinions about other physicians' decision-making in any sort of methodology, much less one that the Court can consider reliable. Hardly anything was left of those opinions after Dr. Abrams disowned his prior reliance on third-party confidential information and then admitted in his deposition that he does not {[redacted]}.[24] As for what remained, Dr. Abrams {[redacted]}. He has made no attempt to follow a scientific, well-accepted, or otherwise objective method. Instead, Dr. Abrams {[redacted]}. This is exactly the sort of *ipse dixit* approach that federal courts routinely reject as unreliable and inadmissible.[25]

[24] Ex. B at 76:23–77:9 (Abrams Dep. Tr.).

[25] *See, e.g.*, *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146–47 (1997) ("But nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered."); *Clark*, 192 F.3d at 758 (affirming exclusion of an expert's opinion that was "based solely on his belief and assumption without any scientific testing data or supporting research material in the record"); *United States v. Frazier*, 387 F.3d 1244, 1265 (11th Cir. 2004) (en banc) (finding no abuse of discretion in exclusion of an expert's opinion after observing that because the expert "was relying solely or primarily on his experience, it remained the burden of the proponent of this testimony to explain how that experience led to the conclusion he reached, why that experience was a sufficient basis for the opinion, and just how that experience was reliably applied to the facts of the case").

CONCLUSION

For these reasons, Complaint Counsel respectfully requests that the Court bar the introduction of testimony from Dr. Abrams about other physicians' thought processes and future or hypothetical decisions regarding MCED tests.

Date: August 6, 2021

Respectfully submitted,

/s/ J. Wells Harrell

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[PROPOSED] ORDER

Upon Complaint Counsel's Motion *in Limine* to Exclude Certain Opinions of Respondents' Expert Witness, Richard Abrams, M.D., it is hereby:

ORDERED that Complaint Counsel's motion is GRANTED; and it is further

ORDERED that Dr. Richard Abrams cannot testify about what physicians besides himself will do in the future, or might do under certain circumstances, with regard to the selection and/or use of multi-cancer early detection tests; and it is further

ORDERED that any statements in Dr. Abrams' expert report that purport to opine on what physicians besides himself will do in the future, or might do under certain circumstances, with regard to the selection and/or use of multi-cancer early detection tests are hereby stricken and will not be received in evidence.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: August _____, 2021

STATEMENT OF CONFERENCE PURSUANT TO PARAGRAPH 4 OF THE SCHEDULING ORDER

At 4:02 p.m. Eastern time on August 4, 2021, Complaint Counsel emailed Respondents' counsel asking to confer in an effort in good faith to resolve by agreement the issues raised by the motion and have been unable to reach such an agreement.

Date: August 5, 2021

/s/ J. Wells Harrell
J. Wells Harrell

Counsel Supporting the Complaint

EXHIBIT A

REDACTED IN ENTIRETY

EXHIBIT B

REDACTED IN ENTIRETY

EXHIBIT C

REDACTED IN ENTIRETY

Exhibit D

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In the Matter of **Illumina, Inc.,** **a corporation** **and** **GRAIL, Inc.,** **a corporation,** **Respondents**	**DOCKET NO. 9401**

RESPONDENTS' FINAL PROPOSED WITNESS LIST

Pursuant to the April 26, 2021 Scheduling Order, this list designates the witnesses whom Illumina, Inc. ("Illumina") and GRAIL, Inc. ("GRAIL") (collectively, the "Respondents") currently contemplate calling as witnesses to testify in the above-captioned matter, along with the topics of each witness's proposed testimony, based on the information available on the undersigned date. Subject to the limitations in the Scheduling Order entered in this matter, Respondents reserve the right:

A. To amend this list, including to add or remove witnesses as necessary, including, but not limited to, in connection with any motions (including motions in limine) and the submission of witness testimony, exhibits or other evidence that Complaint Counsel may proffer;

B. To call any witnesses necessary to present summaries of voluminous evidence, or to demonstrate the authenticity or admissibility of any such summaries;

C. To supplement this list in light of any discovery that has not yet been completed;

D. To supplement this list in light of the Complaint Counsel's expert reports and/or expert depositions;

E. To present testimony by investigational hearing or deposition transcript of any person identified by a Party or non-Party as an FTC Rule 3.33(c) or Federal Rule of Civil Procedure 30(b)(6) representative of that Party or non-Party pursuant to a 3.33(c) or 30(b)(6) notice served by Complaint Counsel or Respondents;

F. To present testimony by declaration;

G. To call the custodian of records of any Party or non-Party from whom documents or records have been obtained—including but not limited to those Parties and non-Parties listed below—to the extent necessary for the admission of documents or deposition testimony into evidence in the event a stipulation cannot be reached concerning the authenticity or admissibility of such documents or testimony;

H. To call witnesses who may be necessary to lay the foundation for the admissibility of evidence should the parties prove unable to stipulate to admissibility;

E. To call any witnesses for the purposes of rebuttal or impeachment;

F. To question the persons listed below about any topics that are the subjects of testimony by witnesses called by Complaint Counsel;

G. To call any of these individuals or other witnesses who are not named, including any individual identified in Complaint Counsel's or Respondents' Preliminary Witness Lists, Supplemental Witness Lists, Final Witness Lists, any witness lists disclosed as part of the district court litigation, or who was otherwise deposed in this proceeding or in the district court litigation for rebuttal testimony, including any person who has or may be identified by Complaint Counsel as a potential witness in this matter.

Subject to these reservations of rights, Respondents provide the following final proposed witness list. Respondents currently intend to present the testimony of the below witnesses through live testimony (by virtual web platform) at the hearing. Respondents reserve the right to offer the prior testimony of additional witnesses who have been deposed, provided declarations or otherwise given testimony in connection with the district court litigation, this proceeding or the FTC's investigation of the Proposed Transaction. By including any of the witnesses on this list, Respondents assume no obligation to call or make available any witness during the proceeding, or to call them live rather than by deposition, investigational hearing transcript or declaration.

PARTY WITNESS LIST

1. **Francis deSouza** – President and Chief Executive Officer, Illumina, Inc. We expect Mr. deSouza will testify about Illumina's business strategy; Illumina's Next-Generation Sequencing Technology ("NGS") products; Illumina's customer relationships, including Illumina's open offer and the standard contract for oncology customers; Illumina's proposed re-acquisition of GRAIL (the "Proposed Transaction"); and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts,[1] and any topics identified by Complaint Counsel as potential topics for his testimony.

2. **Alex Aravanis** – Senior VP and Chief Technology Officer, Illumina, Inc. We expect Dr. Aravanis will testify about Illumina's NGS products; switching between diagnostic platforms for clinical applications, including oncology; alternative diagnostic platforms; the history of GRAIL; the Proposed Transaction, including Illumina's deal model; efficiencies and procompetitive effects of the Proposed Transaction; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for his testimony.

3. **Phil Febbo** – Chief Medical Officer, Illumina, Inc. We expect Dr. Febbo will testify about Illumina's NGS products; efficiencies and procompetitive effects of the Proposed Transaction, including efficiencies and procompetitive effects relating to regulatory approval of GRAIL's tests, including the Galleri test; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.

4. **Joydeep Goswami** – Senior VP, Corporate Development and Strategic Planning, Illumina Inc. We expect Dr. Goswami will testify about the Proposed Transaction, Illumina's strategic planning, Illumina's deal model, Illumina's agreements with customers including the open offer and agreements relating to regulated, kitted tests on Illumina's instruments; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for his testimony.

5. **Nicole Berry** – Senior VP and General Manager, Americas Region, Illumina, Inc. We expect Ms. Berry will testify about Illumina's NGS products, Illumina's negotiations with customers, Illumina's customer relationships,

[1] Respondents reserve all rights to object to the admissibility of all transcripts of investigational hearings conducted by the FTC during its investigation of the Proposed Transaction, and reference herein to the facts and opinions expressed in the investigational hearing transcripts does not alter those objections.

including Illumina's open offer and the standard contract for oncology customers; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in her investigational hearing and deposition transcript and any topics identified by Complaint Counsel as potential topics for her testimony.

6. **Ammar Qadan** – VP and Global Head of Market Access, Illumina, Inc. We expect Mr. Qadan will testify about efficiencies and procompetitive effects of the Proposed Transaction, including efficiencies and procompetitive effects relating to regulatory approval of, third party payor reimbursement for, GRAIL's tests, including the Galleri test; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.

7. **Stacie Young** – Senior Director of Business Development, Illumina, Inc. We expect Ms. Young will testify about Illumina's agreements with customers including the open offer and agreements relating to regulated, kitted tests on Illumina's instruments ("Illumina's IVD Agreements"); and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in her deposition transcript and any topics identified by Complaint Counsel as potential topics for her testimony.

8. **Jay Flatley** – former Chief Executive Officer; Outgoing Chairman of Illumina's Board of Directors, Illumina, Inc. We expect Mr. Flatley will testify about Illumina's NGS products; the history of GRAIL; Illumina's Non-Invasive Prenatal Testing ("NIPT") business; the Proposed Transaction; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for his testimony.

9. **Nicholas Naclerio** – former Senior VP, Corporate & Venture Development, Illumina Inc.; Founding Partner, Illumina Ventures. We expect Dr. Naclerio will testify about Illumina's NIPT business; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for his testimony.

10. **John Leite** – former VP Clinical Business Development, Illumina, Inc.; Chief Business Officer, InterVenn Biosciences. We expect Dr. Leite will testify about Illumina's agreements with customers including agreements relating to regulated, kitted tests on Illumina's instruments, InterVenn's proteomics platform, InterVenn's cancer screening tests in development and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts

and any topics identified by Complaint Counsel as potential topics for his testimony.

11. **Hans Bishop** – Chief Executive Officer, GRAIL, Inc. We expect Mr. Bishop will testify about the history of GRAIL; GRAIL's business; GRAIL's tests; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for his testimony.

12. **Josh Ofman** – Chief Medical Officer, GRAIL, Inc. We expect Mr. Ofman will testify about efficiencies and procompetitive effects of the Proposed Transaction relating to regulatory approval and reimbursement of GRAIL's tests, including the Galleri test; oncology tests, including GRAIL's tests; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.

13. **Aaron Freidin** – Senior VP, Finance, GRAIL, Inc. We expect Mr. Freidin will testify about efficiencies and procompetitive effects of the Proposed Transaction; GRAIL's deal model; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts and any topics identified by Complaint Counsel as potential topics for his testimony.

14. **Arash Jamshidi** – VP of Bioinformatics and Data Science, GRAIL, Inc. We expect Mr. Jamshidi will testify about oncology tests, including GRAIL's tests; switching between diagnostic platforms for clinical applications, including oncology; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his deposition transcript, and any topics identified by Complaint Counsel as potential topics for his testimony.

15. **Chris Della Porta –** Director of Growth Marketing, GRAIL, Inc. We expect Mr. Della Porta will testify about GRAIL's business; oncology tests including GRAIL's tests; efficiencies and procompetitive effects of the Proposed Transaction; and other topics relevant to the Complaint, Answer or any affirmative defenses, including facts and opinions expressed in his deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.

THIRD PARTY WITNESS LIST

16. **Konstantin Fiedler** – Chief Operating Officer, Foundation Medicine, Inc. ("FMI"). We expect Dr. Fiedler will testify about the Proposed Transaction; Illumina's relationship with FMI and Roche, including agreements between FMI and Roche; Dr. Fiedler's declaration; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions

expressed in his deposition transcript, and any topics identified by Complaint Counsel as potential topics for his testimony.

17. **Lauren Silvis** – Senior VP, External Affairs, Tempus Labs, Inc. ("Tempus Labs"). We expect Ms. Silvis will testify about Tempus Labs' business; its oncology products; the Proposed Transaction; supply agreement negotiations with Illumina, including the open offer and the standard contract for oncology customers; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in her investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for her testimony.

18. **Jorge Velarde** – Senior Vice President, Corporate Development and Strategy, Singular Genomics. We expect Mr. Velarde will testify about the Proposed Transaction; Singular's S-1 filing and subsequent Initial Public Offering ("IPO"); Singular's NGS platform and products in development; the ability to use Singular's platforms and products in development for cancer screening applications; switching between Illumina's platforms and Singular's platforms for clinical applications and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his deposition transcript, and any topics identified by Complaint Counsel as potential topics for his testimony.

19. **Matthew Strom** – Managing Director, Morgan Stanley. We expect Mr. Strom will testify about any contemplated fundraising, IPO, or merger by GRAIL; Illumina and GRAIL's royalty and supply agreement; efficiencies and procompetitive effects of the proposed transaction; and other topics relevant to the Complaint, Answer or any affirmative defenses, including facts and opinions expressed in his deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.

20. **William Cance** – Chief Medical and Scientific Officer at the American Cancer Society. We expect Dr. Cance will testify about the American Cancer Society's operations, current cancer screening methods, the importance of early cancer detection, innovation in cancer detection and treatments, the importance of customer choice, market definition, regulatory processes and approvals, and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his declaration and deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.

EXPERT WITNESS LIST

1. **Dennis Carlton** – Dennis Carlton is an industrial organization and antitrust economics expert. He will testify about economic issues, including the proposed transaction, finances, projections, strategic plans, pricing strategy and structure, cost structure, customer relationships and contract negotiations, the competitive effects of the proposed transaction, efficiencies arising from the

transaction and the procompetitive nature of the transaction, other topics relevant to the Complaint and Answer, any topics contained in his expert report(s) or deposition and any topics raised by Complaint Counsel's experts in their expert reports or depositions and will respond to any economic analysis or other arguments put forward by Complaint Counsel.

2. **Richard Cote** – Richard Cote is an expert on the field of cancer care, the area of test development for cancer screening and in the area of next-generation sequencing ("NGS"), and is a medical doctor. He will testify about cancer and cancer treatment, methods for cancer screening, the differences between different types of oncology tests in the cancer continuum, oncology tests on the market and in development, comparisons between such tests on the market and in development, the development timelines for such oncology tests, various platforms—both NGS and non-NGS—that can be used for such oncology tests, switching between different platforms for such oncology tests and the potential use of *in vitro* diagnostic ("IVD") kitted tests for oncology testing. He will also testify regarding technical issues relating to the relevant market(s) alleged by Complaint Counsel, other topics relevant to the Complaint and Answer, any topics contained in his expert report(s) or deposition and any topics raised by Complaint Counsel's experts in their expert reports or depositions and will respond to any technical issues or other arguments put forward by Complaint Counsel, primarily focusing on issues relating to cancer screening and NGS technologies.

3. **Patricia Deverka** – Patricia Deverka is an expert on the field of health economics and outcomes research, focusing on the clinical adoption of genomics. She will testify about the process for obtaining private payor and Medicare/Medicaid coverage, including potential pathways for multi-cancer screening tests and Illumina's ability to accelerate that process for GRAIL's Galleri test, payor relationships, other topics relevant to the Complaint and Answer, any topics contained in her expert report(s) or deposition and any topics raised by Complaint Counsel's experts in their expert reports or depositions and will respond to any other arguments put forward by Complaint Counsel, primarily focusing on third party payor reimbursement and Medicare/Medicaid coverage for cancer screening tests.

4. **Margaret Guerin-Calvert** – Margaret Guerin-Calvert is an industrial organization, antitrust and healthcare economics expert. She will testify about issues relating to Illumina's open offer and standard contract for oncology, including Illumina's standard IVD terms, as a means to reduce or eliminate certain alleged potential anticompetitive effects raised by Complaint Counsel and Dr. Fiona Scott Morton, relating to Illumina's proposed acquisition of GRAIL; other topics relevant to the Complaint and Answer; any topics contained in her expert report(s) or deposition; and any topics raised by Complaint Counsel's experts in their expert reports or depositions and will respond to any economic analysis or other arguments put forward by

Complaint Counsel, primarily focusing on the open offer and other contractual terms from Illumina.

5. **Robert Willig** – Robert Willig is an industrial organization and antitrust economics expert. He will testify about the soundness and reliability of the relevant product market defined by Dr. Fiona Scott Morton, and her analysis in support of that definition, market participants' conduct and whether their conduct is consistent with Complaint Counsel's claim that there will be no viable substitutes for Illumina's NGS platforms (from the standpoint of purported multi-cancer early detection ("MCED") test developers), during the relevant time period, the bargaining model presented by Dr. Scott Morton, its applicability to the proposed merger, and its robustness, other topics relevant to the Complaint and Answer, any topics contained in his expert report(s) or deposition and any topics raised by Complaint Counsel's experts in their expert reports or depositions and will respond to any economic analysis or other arguments put forward by Complaint Counsel, primarily focusing on the relevant product market from an economics standpoint, bargaining and theories of anticompetitive effects.

6. **Robert Rock**[2] – Robert Rock is an expert in financial accounting, contract compliance, and audit engagements. He will testify about the proposed transaction, customer relationships and contract negotiations; Illumina's open offer, standard contract for oncology customers, and any other agreements, including the ability of an independent auditor or consultant to be effective in examining an entity's compliance with various terms of contracts, performing agreed-upon procedures related to an entity's compliance with specified terms and performing agreed-upon procedures related to an entity's internal controls over compliance with specified terms; other topics relevant to the Complaint and Answer; any topics contained in his expert report(s) or deposition; and any topics raised by Complaint Counsel's experts in their expert reports or depositions, and will respond to any accounting, compliance or audit analysis or other arguments put forward by the Complaint Counsel, primarily focusing on the open offer and other contractual terms from Illumina.

7. **Richard Abrams**[3] – Richard Abrams is an expert in the field of primary and preventative care, and is a medical doctor. He will testify about current and anticipated cancer screening options, including purported MCED tests, the factors primary care physicians would consider prior to using a MCED test and whether the blood-based tests with other characteristics could substitute for GRAIL's Galleri test and vice versa, other topics relevant to the Complaint and Answer; any topics contained in his expert report(s) or deposition; and any

[2] Pursuant to 16 CFR § 3.31A, Respondents intend to move for leave to call Robert Rock as an additional expert beyond the five expert witnesses permitted under the default rules.

[3] Pursuant to 16 CFR § 3.31A, Respondents intend to move for leave to call Richard Abrams as an additional expert beyond the five expert witnesses permitted under the default rules.

topics raised by Complaint Counsel's experts in their expert reports or depositions, and will respond to any analysis or arguments put forward by Complaint Counsel, primarily focusing on the factors primary care physicians would consider prior to using a MCED test.

Dated: July 23, 2021

Respectfully submitted,

/s/ Richard J. Stark

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GRAIL, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on July 23, 2021, I caused to be delivered via email a copy of Complaint Counsel's Final Proposed Witness List to:

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

I hereby certify that I caused the foregoing document to be served via email to:

Complaint Counsel
U.S. Federal Trade Commission

Susan Musser
Dylan P. Naegele
David Gonen
Jonathan Ripa
Matthew E. Joseph
Jordan S. Andrew
Betty Jean McNeil
Lauren Gaskin
Nicolas Stebinger
Samuel Fulliton
Stephen A. Mohr
Sarah Wohl
William Cooke
Catherine Sanchez
Joseph Neely
Nicholas A. Widnell
Daniel Zach
Eric D. Edmonson

July 23, 2021

/s/ Richard J. Stark
Richard J. Stark

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., 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 certify that I caused the foregoing document to be served via email to:

David Marriott Christine A. Varney Sharonmoyee Goswami Cravath, Swaine & Moore LLP 825 Eighth Avenue New York, NY 10019 (212) 474-1140 dmarriott@cravath.com cvarney@cravath.com sgoswami@cravath.com *Counsel for Illumina, Inc.*	Al Pfieffer Michael G. Egge Marguerite M. Sullivan Latham & Watkins LLP 555 Eleventh Street, NW Washington, DC 20004 (202) 637-2285 al.pfeiffer@lw.com michael.egge@lw.com marguerite.sullivan@lw.com *Counsel for GRAIL, Inc.*

/s/ J. Wells Harrell
J. Wells Harrell

Counsel Supporting the Complaint