

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	
Illumina, Inc.,	)	
a corporation,	)	
	)	
and	)	<b>DOCKET NO. 9401</b>
	)	
GRAIL, Inc.,	)	
a corporation,	)	
	)	
Respondents.	)	
	)	

**NON-PARTY QUEST DIAGNOSTICS INCORPORATED’S MOTION  
FOR IN CAMERA TREATMENT**

Quest Diagnostics Incorporated, pursuant to Rule 3.45(b) of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), respectfully moves this Court for *in camera* treatment for certain competitively sensitive, confidential business documents and portions of a transcript. The parties do not oppose Quest Diagnostics’ request.

Quest Diagnostics also respectfully requests that the Court limit access to *in camera* materials to those individuals permitted access to “Confidential” materials as set forth in the Protective Order in this matter.

Respectfully submitted,

/s/ Michael E. Antalics  
Michael E. Antalics  
O’Melveny & Myers LLP  
1625 I Street, NW  
Washington, DC 20006  
Phone: (202) 383-5343  
[mantalics@omm.com](mailto:mantalics@omm.com)

Counsel for Quest Diagnostics Incorporated

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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**In the Matter of** )  
 )  
**Illumina, Inc.,** )  
**a corporation,** )  
 )  
**and** )  
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**GRAIL, Inc.,** )  
**a corporation,** )  
 )  
**Respondents.** )

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**DOCKET NO. 9401**

**NON-PARTY QUEST DIAGNOSTICS INCORPORATED’S MEMORANDUM OF LAW  
IN SUPPORT OF ITS MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45(b) of the Rules of Practice of the Federal Trade Commission, non-party Quest Diagnostics Incorporated respectfully submits this Memorandum of Law in support of its motion for in camera treatment for the following materials:

- five competitively sensitive, highly confidential planning documents,
- three supplier agreements with highly confidential pricing information,
- a single sentence in a proposed declaration from an email exchange that contains confidential sales/supply information, and
- portions of the transcript of Kristie Dolan’s deposition which was taken in this matter.

These documents and the deposition testimony have been produced and marked “Confidential” during the discovery phase of this litigation and are subject to the Protective Order in this matter. The documents and information for which *in camera* treatment is sought represent just a portion of the Quest Diagnostics’ documents and deposition testimony that the

parties plan to introduce into evidence in this matter. Quest Diagnostics carefully reviewed the documents and testimony that the parties plan to introduce, and has limited its request for *in camera* treatment to only the documents and testimony that contain competitively sensitive, non-public confidential business information that, if it were to become part of the public record, would significantly harm Quest Diagnostics' ability to compete or otherwise cause serious harm to Quest Diagnostics. (See Declaration of Kristie Dolan, which is attached as Attachment A)

Quest Diagnostics respectfully requests that the materials be granted in camera treatment for five years, with the exception of the five recent strategic planning and product development documents (in *italics*, below) for which we request ten years, or in the alternative five years, because of the extended amount of time product planning, development, regulatory approval and commercialization take, meaning these documents will have a great deal of sensitivity for a longer period of time than typical business plans dealing with sales and market share.

#### **I. The Documents and Transcript Testimony for which *In Camera* Treatment Is Sought**

Quest Diagnostics requests in camera treatment for selected documents and portions of a deposition that Complaint Counsel and Respondents intend to introduce into evidence at the administrative trial in this matter. See letter from Nicolas Stebinger dated July 26, 2021, which includes a list and description of the documents and testimony they intend to offer (Attachment B) and email from Anna Rathbun, dated July 26, 2021, which includes a list of two documents and a deposition transcript Respondents intend to offer (Attachment C).

##### **A. Documents**

The documents for which Quest Diagnostics seeks in camera treatment are more fully

described in Attachment A, but are listed here:

- | <u>Exhibit No.</u>             | <u>Bates Range</u>   |  |
|--------------------------------|--|--|
| • PX8554                       | PX8554-001 to 023  | <i>(Respondents refer to this as Quest 000713)</i> |
| • PX8555                       | PX8555-001 to 041  |  |
| • PX8558                       | PX8558-001 to 021  |  |
| • PX8559                       | PX8559-001 to 106  |  |
| • Quest 002219 to Quest 002299 |  | <i>(to be introduced by Respondents)</i>           |
| • PX8553                       | PX8553-001 to 003  |  |
| • PX8557                       | PX8557-001 to 030  |  |
| • PX8556                       | PX8556-001 to 002  |  |
| • PX8552                       | PX8852, The second sentence of Paragraph 6 (PX8552-004 to 005) |  |

**B. Transcript Sections**

The transcript sections for which Quest Diagnostics seeks *in camera* treatment are included in :

- PX7116 Deposition of Kristie Dolan

Deposition Transcript Designations (page:line)
38:6 to 38:15
48:11 to 49:7
50:2 to 52:2
53:3 to 55:1
55:13 to 57:25
59:9 to 62:24
65:2 to 65:20
71:5 to 72:18
74:25 to 80:6
82:19 to 83:23
84:24 to 89:9
89:25 to 91:18
92:9 to 92:16
99:22 to 101:15
102:6 to 105:17

106:18 to 107:5
111:12 to 112:7
112:21 to 119:21
120:15 to 122:25
126:25 to 132:25
135:21 to 136:3
144:2 to 154:2
159:12 to 159:18
160:14 to 160:19
161:9 to 163:11
164:23 to 165:1
192:5 to 193:4
193:13 to 193:17

## II. The Documents and Identified Transcript Sections Merit *In Camera* Treatment

*In camera* treatment of material is appropriate when “its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment.” 16 C.F.R. § 3.45(b). *In camera* treatment is appropriate when “the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.” *In re Gen. Foods Corp.*, 95 F.T.C. 352, 355 (1980); accord *In re Bristol-Myers Co.*, 90 F.T.C. 455, 455 (1977); and *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

“The showing may consist of extrinsic evidence or, in certain instances, may be inferred from the nature of the documents themselves.” *Gen Foods Corp.*, 95 F.T.C. at 355; see also *Bristol-Myers Co.*, 90 F.T.C. at 456. The likely loss of business advantages is a good example of a clearly defined, serious injury. *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 138, at 6 (Sept. 19, 2000). “Moreover . . . the requests of [third parties] deserve special solicitude. . . . [I]n *camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.” *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984).

In considering secrecy and materiality, the Administrative Law Judge may consider the following non-exhaustive list of factors: “(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” *Bristol-Myers*, 90 F.T.C. at 456–57 (quoting RSTMT. TORTS § 757, Cmt. b at 6 (1939)).

Each of these factors is present here. As Ms. Dolan’s Declaration explains, the high level strategic planning and product development documents and pricing documents and information at issue here have a limited circulation within Quest Diagnostics and the documents and information certainly are not shared with persons outside of the company. The Declaration also outlines some of the significant corporate practices and policies that apply to assure that highly confidential documents of the type at issue here are kept confidential.

A great deal of time, effort and expense is involved in creating the planning documents that are the basis for executive decision-making and strategic planning. The documents assess market demand, competitor positioning and strengths and weaknesses, along with an assortment of regulatory scenarios and market risks, so that the company can plan, develop and commercialize new products. Through its ongoing product development and strategic planning, Quest Diagnostics has amassed significant experience, expertise and new product development capabilities that would be very difficult for competitors to duplicate, absent public disclosure of the information. In addition, the pricing information is of the type of information that is always

highly confidential and competitively significant, and thus has limited circulation within the company and is kept confidential from competitors and other suppliers.

If competitors or others had access to this planning and pricing information, they would be able to free-ride on the vast amount of work and company insights that go into developing these plans, and would gain unfair insights into Quest Diagnostics' negotiating strategies through access to Quest Diagnostics' confidential pricing and supply information. Others could use that information to take away the business advantages that the information provides Quest Diagnostics, and competitors could target market areas to take business away from Quest Diagnostics using Quest Diagnostics' own highly confidential information. Quest Diagnostics also would be at a competitive disadvantage in negotiating agreements with those that have access to its confidential pricing and supply information.

Similarly, disclosure of the selected portions of testimony likewise would likely cause Quest Diagnostics considerable harm. The selected portions of testimony largely explain or otherwise relate to the confidential information contained in the confidential documents which is outlined in Ms. Dolan's Declaration. The testimony explains the judgments, competitor assessments, market conditions, confidential cost and pricing information and other information supporting product planning and development.

Finally, Quest Diagnostics is a third party in this matter, deserving of "special solicitude" when requesting *in camera* treatment. This weighs in favor of granting *in camera* treatment to the identified documents and testimony.

### **III. *In Camera* Treatment Should Extend for Five Years and, in the Case of Five Documents, Ten Years**

Because the information contained in the documents and testimony is likely to be of significant competitive sensitivity for the foreseeable future, *in camera* treatment should be

granted for five years. As discussed in the Dolan Declaration, due to the nature of product development in this industry, including the length of time involved in planning, developing, obtaining regulatory approval, and commercializing new and future products, the information contained in the identified recent strategic development and product planning documents will continue to be highly confidential and have a high level of competitive significance for many years. For these five documents, we request *in camera* treatment for ten years or, in the alternative, five years.

#### **IV. Conclusion**

For the reasons and as set forth above and in the accompanying Declaration from Kristie Dolan, Quest Diagnostics respectfully requests that this Court grant *in camera* treatment for the documents described here and in the Declaration, and the designated portions of the Kristie Dolan deposition transcript.

Respectfully submitted,

Dated: August 5, 2021

/s/Michael E. Antalics  
Michael E. Antalics  
O'Melveny & Myers LLP  
1625 I Street, NW  
Washington, DC 20006  
Phone: (202) 383-5343  
[mantalics@omm.com](mailto:mantalics@omm.com)

Counsel for Quest Diagnostics Incorporated



Motion for *In Camera* Treatment by Non-Party  
Quest Diagnostics Incorporated

**ATTACHMENT A**  
**(Declaration of Kristie Dolan)**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

_____	)	
<b>In the Matter of</b>	)	
	)	
<b>Illumina, Inc.,</b>	)	
<b>    a corporation,</b>	)	
	)	
<b>    and</b>	)	<b>DOCKET NO. 9401</b>
	)	
<b>GRAIL, Inc.,</b>	)	
<b>    a corporation,</b>	)	
	)	
<b>    Respondents.</b>	)	
_____	)	

**DECLARATION OF KRISTIE DOLAN**

I, Kristie Dolan, pursuant to 28 U.S.C. §1746, make the following statement:

- From October, 2013, until December 2017, I was General Manager of Quest Diagnostics Incorporated’s (“Quest Diagnostics”) Women’s Health Clinical Franchise. In July of 2017, I was also named General Manager of Quest Diagnostics’ Oncology Franchise, a position I currently hold. I submit this declaration in support of Quest Diagnostics’ Motion for *In Camera* Treatment for the documents and portions of deposition testimony listed below. I have personal knowledge of the matters stated herein.
- I am familiar with the Quest Diagnostics documents and deposition testimony (which was my own) that the parties have indicated they will offer in this matter. Given my positions running the Women’s Health and Oncology franchises, I am very familiar with the highly confidential nature of the documents and testimony in question, the importance of that information to Quest Diagnostics’ competitive position, and the competitive harm that could occur if that information became publicly available. If these documents and the portions of the

deposition testimony described below are disclosed to the public, to Quest Diagnostics' competitors and to others, Quest Diagnostics would suffer serious competitive injury.

3. Quest Diagnostics is the world's leading provider of diagnostic information services, and the company devotes considerable resources to the development and commercialization of new products and services. The confidential product development and commercialization information, along with pricing, capacity and supply information, contained in the documents and testimony at issue is critically important to the business' ability to compete and grow. Because there are many other healthcare companies competing with Quest Diagnostics in the areas at issue in this matter, it is extremely important that the documents and relevant deposition testimony remain confidential.

4. Quest Diagnostics takes significant measures to protect and maintain the confidentiality of this information. These documents have limited distribution within the company, and the company has an official policy regarding the treatment of confidential and proprietary information. Revealing confidential information to unauthorized persons is strictly prohibited. Confidential information is defined to include any information not generally known to the public, and it specifically includes, among other things, business plans, processes, business methods, trade secrets, pricing, sales and marketing information. The policy includes using password protection or company-approved encryption products wherever possible. Confidential information should be kept in a secure location when not in use. Violations of the policy will result in corrective action, up to and including discharge.

5. The documents themselves are each marked "Confidential – For Internal Use Only." The deposition testimony also was designated and marked "Confidential."

**Documents**

6. Quest Diagnostics is seeking *in camera* treatment for ten years, or in the alternative five years, for (a) five strategic planning and product development documents; and *in camera* treatment for five years for (b) three supplier contracts, and (c) one sentence in a proposed declaration provided to Quest Diagnostics by Illumina that discloses confidential supplier sales information that also relates to capacity.

(a) The five business planning and product development documents are:

<b>Exhibit No.</b>	<b>Beg. Bates Label</b>	<b>End Bates Label</b>
PX8554	PX8554-001/QUEST 000713	PX8554-023/QUEST 000735
PX8555	PX8555-001/QUEST 000761	PX8555-041/QUEST 000787
PX8558	PX8558-001/QUEST 001126	PX8558-021/QUEST 001139
PX8559	PX8559-001/QUEST 001574	PX8559-106/QUEST 001661
n/a	QUEST 2219	QUEST 2299

Each of these documents contains highly confidential information concerning:

- Quest Diagnostics' strategic priorities and operations
- an assessment of potential areas and products for growth
- the development and commercialization status of new products
- assessment of clinical, analytical, and technology approaches
- assessment of regulatory risks
- assessment of pricing and reimbursement potential
- plans on how and where the company might commercialize its new products
- assessment of potential partnerships in the development and commercialization of new products

- assessment of the confidential terms of business relationships and potential future relationships
- an assessment of the varying products and approaches, and the strengths and weaknesses of the company’s competitors, suppliers and potential business partners.

All of the information in the planning documents is the result of a tremendous amount of time, effort and expense in order for the company to set and implement strategic priorities that enable it to compete and grow. Competitors and third parties with access to this information would gain a significant business advantage at the expense of Quest Diagnostics, and competitors could use the information to disadvantage Quest Diagnostics by targeting Quest Diagnostics’ business in various ways. Given the time horizon of the plans and the amount of time that it takes to plan for, develop and commercialize new products, the very sensitive nature of the information will last for many years.

(b) The supplier agreements are:

<b>Exhibit No.</b>	<b>Beg. Bates Label</b>	<b>End Bates Label</b>
PX8553	PX8553-001/QUEST 000710	PX8553-003/QUEST 000712
PX8557	PX8557-001/QUEST 000830	PX8557-030/QUEST 000859
PX8556	PX8556-001/QUEST 000824	PX8556-002/QUEST 000825

- PX8553 is an email exchange between Quest Diagnostics and a supplier that references materials in a way that discloses a current confidential supply agreement along with its confidential pricing terms.
- PX8557 is a supply agreement, and PX8556 is a rider to that supply agreement, that disclose a large amount of detailed, confidential pricing and other supply terms. PX8557 was signed on October 18, 2013 and expired on October 15, 2018, five years after

signing, but less than three years ago. This information is sufficiently current that disclosure would likely cause harm to Quest Diagnostics.

(c) PX8552 is an email exchange between Illumina and Quest Diagnostics that contains a proposed declaration for Quest Diagnostics' consideration. One sentence in the proposed declaration, the second sentence of Paragraph 6 (at PX8552-004 to PX8552-005), discloses the dollar amount of purchases of a certain product made by Quest Diagnostics over the period since January, 2019. That information, if disclosed, would provide competitors and others with confidential supply and capacity information.

### **Deposition Testimony**

7. Quest Diagnostics also is seeking *in camera* treatment for five years for only selected portions of PX7116, the transcript of my deposition in this matter. The selected portions fall into several categories:

- Confidential product development, strategic planning and marketing strategy. This includes my explaining the company's views and rationale for products and strategies the company is pursuing or not pursuing. The testimony explains positions we have and assessments we have made on a variety of the confidential topics contained in our highly confidential business planning and product development documents.
- Confidential assessments of the strengths and weaknesses of various companies in the industry with whom we compete or might enter into business dealings.
- Confidential contract pricing terms or negotiations with other companies.
- Confidential Quest Diagnostics cost structure or capacity information.

8. This information is highly confidential. The information is the distillation of a great deal of time, effort and expense on the part of the company. Disclosure of Quest Diagnostics

assessments would serve to harm Quest Diagnostics’ ability to compete by providing the fruits of our labor to others in the industry who would then use our highly confidential information to compete against us.

9. Like the information contained in our confidential planning documents, this information is subject to our company strict guidelines prohibiting disclosure of confidential information.

10. The information will have continuing competitive significance for many years due in part to the nature of product development in the industry and the length of time product development and commercialization takes.

11. For these reasons, we are also requesting that the following sections of my deposition testimony be granted *in camera* treatment:

Deposition Transcript Designations (page:line)
38:6 to 38:15
48:11 to 49:7
50:2 to 52:2
53:3 to 55:1
55:13 to 57:25
59:9 to 62:24
65:2 to 65:20
71:5 to 72:18
74:25 to 80:6
82:19 to 83:23
84:24 to 89:9
89:25 to 91:18
92:9 to 92:16
99:22 to 101:15
102:6 to 105:17
106:18 to 107:5
111:12 to 112:7
112:21 to 119:21
120:15 to 122:25
126:25 to 132:25
135:21 to 136:3
144:2 to 154:2
159:12 to 159:18
160:14 to 160:19

**PUBLIC**

161:9 to 163:11
164:23 to 165:1
192:5 to 193:4
193:13 to 193:17

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

Executed on: 8/5/21

K D  
Name: Kristie Dolan  
General Manager, Oncology Clinical  
Franchise  
Quest Diagnostics Incorporated



# DOCUMENTS WITHHELD PENDING ORDER

Motion for *In Camera* Treatment by Non-Party  
Quest Diagnostics Incorporated

**ATTACHMENT B**  
**(Complaint Counsel letter providing  
notice of intent to use documents)**



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

Bureau of Competition  
Mergers I Division

**PUBLIC**

July 26, 2021

**VIA EMAIL TRANSMISSION**

Quest Diagnostics Incorporated  
c/o Michael E. Antalics  
O'Melveny & Myers LLP  
1625 Eye Street, N.W.  
Washington, D.C. 20006  
mantalics@omm.com

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

Dear Mr. Antalics:

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

**PUBLIC**

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) 326-2688.

Sincerely,

/s/ Nicholas Stebinger

Nicholas Stebinger

Counsel Supporting the Complaint

Attachment

# Attachment A

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX7116	PX7116-001	PX7116-094	6/10/2021	Depo Transcript: Kristie Dolan (Quest)
PX8552	QUEST 000654	QUEST 000659	5/11/2021	Email from Michael Antalics to Dina Mack, Amer Pharaon, and Courtney Byrd re: Declaration w/ Attach: Quest Declaration (2-12-21)(AW)[1].docx
PX8553	QUEST 000710	QUEST 000712	3/1/2021	Email from Nicole Berry to Carrie Eglinton Manner re: Open Offer of Assurances from Illumina
PX8554	QUEST 000713	QUEST 000735	1/22/2021	Presentation: Liquid Biopsy Market Landscape
PX8555	QUEST 000761	QUEST 000787	5/19/2021	Presentation: Liquid Biopsy Market and Strategy Overview
PX8556	QUEST 000824	QUEST 000825	11/12/2013	Letter from Wilson Conde to Nicholas Naclerio re: Option Exercise Letter pursuant to Section 2.2(c) dated November 12, 2013
PX8557	QUEST 000830	QUEST 000859	10/15/2013	Document: Supply Agreement between Illumina and Quest
PX8558	QUEST 001126	QUEST 001139	03/??/21	Presentation: Grail and Quest Co-marketing discussion
PX8559	QUEST 001574	QUEST 001661	01/??/21	Presentation: Liquid Biopsy Market Landscape
PX8560	QUEST 002374	QUEST 002409	12/??/12	Presentation: NIPT

Motion for *In Camera* Treatment by Non-Party  
Quest Diagnostics Incorporated

ATTACHMENT C  
(Respondents letter providing notice  
of intent to use documents)

**PUBLIC**

**From:** [Anna.Rathbun@lw.com](mailto:Anna.Rathbun@lw.com)  
**To:** [Antalics, Michael E.](#)  
**Subject:** FTC v. ILMN/GRAIL  
**Date:** Monday, July 26, 2021 5:31:48 PM

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**[EXTERNAL MESSAGE]**

Counsel,

As part of the Administrative Trial for *In the Matter of Illumina, Inc. & Grail, Inc.* (Dkt. No. 09401) set to begin on August 24, Respondents 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 and any associated family members produced by Quest and testimony provided by Quest witnesses listed below as trial exhibits, pursuant to 16 C.F.R. § 3.45(b).

<b>Documents</b>
QUEST 000713
QUEST 002219
<b>Testimony</b>
Deposition Transcript of Kristie Dolan

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.



**Anna M. Rathbun**

Pronouns: she/her/hers

**LATHAM & WATKINS LLP**

555 Eleventh Street, NW

Suite 1000

Washington, D.C. 20004-1304

Direct Dial: +1.202.637.3381

Email: [anna.rathbun@lw.com](mailto:anna.rathbun@lw.com)

<https://www.lw.com>

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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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<b>In the Matter of</b>	)
	)
<b>Illumina, Inc.,</b>	)
<b>    a corporation,</b>	)
	)
<b>        and</b>	)
	)
<b>GRAIL, Inc.,</b>	)
<b>    a corporation,</b>	)
	)
<b>        Respondents.</b>	)
<hr/>	

**DOCKET NO. 9401**

**[PROPOSED] ORDER GRANTING NON-PARTY QUEST DIAGNOSTICS  
INCORPORATED’S MOTION FOR *IN CAMERA* TREATMENT**

Having considered non-party Quest Diagnostics Incorporated’s Motion For *In Camera* Treatment, and the supporting memorandum and declaration, Quest Diagnostics Incorporated’s motion is granted. It is hereby **ORDERED** that the following exhibits are to be provided *in camera* treatment for a period of [ten/five] years from the date of this order:

- | <u>Exhibit No.</u>             | <u>Bates Range</u> |   |
|--------------------------------|--------------------|---|
| • PX8554                       | PX8554-001 to 023  | (Respondents refer to this as Quest 000713) |
| • PX8555                       | PX8555-001 to 041  |   |
| • PX8558                       | PX8558-001 to 021  |   |
| • PX8559                       | PX8559-001 to 106  |   |
| • Quest 002219 to Quest 002299 |                    | (to be introduced by Respondents)           |

Is is also hereby **ORDERED** that the following exhibits are to be provided *in camera* treatment for a period of five years from the date of this order:

- PX8553           PX8553-001 to 003
- PX8557           PX8557-001 to 030
- PX8556           PX8556-001 to 002
- PX8552           PX8852, The second sentence of Paragraph 6 (PX8552-004 to 005)

It is also hereby **ORDERED** that the following portions of the specified exhibit are to be provided *in camera* treatment for five years from the date of this order:

- PX7116           Deposition of Kristie Dolan

Deposition Transcript Designations (page:line)
38:6 to 38:15
48:11 to 49:7
50:2 to 52:2
53:3 to 55:1
55:13 to 57:25
59:9 to 62:24
65:2 to 65:20
71:5 to 72:18
74:25 to 80:6
82:19 to 83:23
84:24 to 89:9
89:25 to 91:18
92:9 to 92:16
99:22 to 101:15
102:6 to 105:17
106:18 to 107:5
111:12 to 112:7
112:21 to 119:21
120:15 to 122:25
126:25 to 132:25
135:21 to 136:3
144:2 to 154:2
159:12 to 159:18
160:14 to 160:19
161:9 to 163:11

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164:23 to 165:1
192:5 to 193:4
193:13 to 193:17

**ORDERED:**

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on August 5, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Acting Secretary Federal Trade Commission  
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The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
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Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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Dated: August 5, 2021

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**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

August 3, 2021

By: /s/ Michael E. Antalics  
Michael E. Antalics