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

In the Matter of

**Illumina, Inc.,
a Corporation;**

AND

**GRAIL, Inc.,
a Corporation.**

Docket No. 9401

**THIRD-PARTY LABORATORY CORPORATION OF
AMERICA HOLDINGS' MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), third-party Laboratory Corporation of America Holdings' ("Labcorp") moves this Court for *in camera* treatment for portions of the deposition transcript of Marcia Eisenberg. Labcorp produced the testimony of Marcia Eisenberg in response to a third-party subpoena. The Federal Trade Commission ("FTC") and Defendants have now notified Labcorp that they intend to introduce Labcorp's deposition transcript into evidence at the administrative trial in this matter. See Letter from the Federal Trade Commission dated July 26, 2021 (attached as Exhibit A) and email from Cravath, Swaine & Moore LLP dated July 26, 2021 (attached as Exhibit B).

Portions of the deposition transcript for which Labcorp is seeking *in camera* treatment contain confidential business secrets, such that if they were to become part of the public record, Labcorp would be significantly harmed in its ability to compete in the laboratory testing services industry. For the reasons discussed in this motion, and in the accompanying Eisenberg Declaration, Labcorp requests that this Court afford portions of the deposition transcript of Marcia

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Eisenberg *in camera* treatment for a minimum period of five years. In support of this motion, Labcorp relies on the Declaration of Marcia Eisenberg (“Eisenberg Declaration”) attached as Exhibit C, which provides additional details on the deposition transcript for which Labcorp is seeking *in camera* treatment.

I. Portions of the Deposition Transcript for Which Protection is Sought

Labcorp seeks *in camera* treatment for the following portions of the deposition transcript (Exhibit No. PX7122), a copy of which are attached as Exhibit D: 24:16-25; 25:1-13; 28:4-17; 29:4-6; 29:19-25; 30:1-25; 31:11-21; 32:11-25; 33:1-8; 34:6-11; 34:24-25; 35:1-6; 35:16-25; 36:1-25; 37:1-2; 37:8-25; 38:1-16; 39:1-7; 39:12-21; 40:3-25; 41:1-10; 41:15-23; 41:25; 42:1-25; 43:1-25; 44:1-8; 46:10-25; 47:1-25; 48:1-25; 49:1-25; 50:1-25; 51:1-25; 52:1-2; 52:10-11; 52:22-25; 53:1-25; 54:1-25; 55:1-14; 56:1-25; 57:1-11; 57:15-25; 58:1-25; 59:1-25; 60: 1-25; 61:1-25; 62:1-25; 63:1-10; 63:12-25; 64:1-7; 64:19-24; 65:3-25; 66:1-25; 67:1-25; 68:1-25; 69:1-25; 70:1-21; 71:9-25; 72:1-16; 73:8-19; 77:5-15; 78:13-25; 79:1-16; 80:25; 81:1-3; 81:6-25; 82:1-25; 83:1-20; 83:24-25; 84:1-24; 85:16-22; 88:3-25; 89:1-25; 90:1-4; 90:8-25; 91:1-25; 92:1-25; 93:1-5; 93:15-25; 94:1-25; 95:1-25; 96:1-25; 97:1-2; 97:6-11; 97:16-20; 97:24-25; 98:1-25; 99:1-25; 100:1-25; 101:1-5; 101:9-25; 102:11-18; 102:21-25; 103:1-19; 103:23-25; 104:1-24; 105:3-25; 106:1-25; 107:1-25; 108:1-13; 108:24-25; 109:1-25; 110:1-25; 111:1-11; 111:23-25; 112:1-25; 113:1-25; 114:1-25; 115:1-25; 116:1-25; 117:1-25; 118:1-25; 119:1-25; 120:1-25; 121:1-10; 121:22-25; 122:1-25; 123:1-25; 124:1-20; 125:7-25; 126:1-25; 127:1-25; 128:1-25; 129:1-25; 130:1-25; 131:1-25; 132:1-25; 133:1-25; 134:1-25; 135:1-25; 136:1-25; 137:1-25; 138:1-25; 139:1-23; 140:10-25; 141:1-24; and the Index.

PUBLIC**II. The Deposition Transcript of Marcia Eisenberg Contains Business Secrets such that Disclosure Would Result in Serious Injury to Labcorp**

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” such treatment. 16 C.F.R. § 3.45(b). The proponent demonstrates serious competitive injury by showing that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *5 (1999). In this context, courts generally attempt “to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

In considering both secrecy and materiality, the Court may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977).

The deposition transcript of Ms. Marcia Eisenberg contains discussion of Labcorp’s business secrets as discussed in detail in the Eisenberg Declaration. In sum, the deposition transcript contains a candid discussion of information of competitive significance to Labcorp, such as sensitive business plans or strategies, projections, and/or terms of dealing with potential and current partners, including Labcorp’s development of new products, the disclosure of which would cause Labcorp serious competitive harm from other NIPT and cancer detection competitors. Eisenberg Decl. at ¶ 4. As a laboratory testing company, Labcorp depends on its ability to negotiate contracts with partners. Eisenberg Decl. at ¶ 4. Thus, it has developed internal processes

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to assess negotiation leverage for which it has spent significant resources. Such information and processes are proprietary to Labcorp and not publicly known outside of Labcorp. Eisenberg Decl. at ¶ 4. Even within Labcorp, confidential business information is only available on a need to know basis internally as Labcorp employees with access to this information are subject to confidentiality obligations not to disclose such information. Eisenberg Decl. at ¶ 4. Given the competitively sensitive nature of these discussions throughout the transcript, Labcorp requests that the portions of the deposition transcript detailed above receive *in camera* treatment for a minimum period of five years.

Further, disclosure of the Confidential documents will result in the loss of a business advantage to Labcorp. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at *7 (Dec. 23, 1999) (“The likely loss of business advantages is a good example of a `clearly defined, serious injury.”). The deposition transcript contains discussions that are material to Labcorp’s strategy for the development and promotion of testing offerings in order to compete with other testing developers and suppliers in these industries. Eisenberg Decl. at ¶ 4. Making such information public would result in a loss of business advantage that Labcorp has built and continues to build as the result of its own substantial investments in the development tests, exploration of new platforms, and collaborations with others to bring new and innovative offerings to market.

Finally, Labcorp’s status as a third party is relevant to the treatment of its documents. The FTC has held that “[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *H.P. Hood & Sons*, 58 F.T.C. at 1186. This is especially so in the case of a third-party, which deserves “special solicitude” in its request for *in camera* treatment for its confidential business information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 500 (1984) (“As a policy matter, extensions of

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confidential or in camera treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”). Labcorp’s third-party status therefore weighs in favor of granting *in camera* status for portions of the deposition transcript.

III. Conclusion

For the reasons set forth above, and in the accompanying Eisenberg Declaration, Labcorp respectfully requests that this Court grant *in camera* treatment for portions of the deposition transcript of Marcia Eisenberg.

Dated: August 26, 2021

Respectfully submitted,

/s/ Leigh L. Oliver _____

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*Counsel for Laboratory Corporation of
America Holdings*

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

In the Matter of

**Illumina, Inc.,
a Corporation;**

AND

**GRAIL, Inc.,
a Corporation.**

Docket No. 9401

**[PROPOSED] ORDER RE THIRD-PARTY LABORATORY CORPORATION OF
AMERICA HOLDINGS' MOTION FOR *IN CAMERA* TREATMENT**

Upon consideration of Third-Party Laboratory Corporation of America Holdings' Motion for *In Camera* Treatment, it is hereby ordered that the following portions of the deposition transcript of Marcia Eisenberg, listed below, are to be provided *in camera* treatment for a minimum period of five years from the date of this Order, and it is further ORDERED that the redacted portions of this document may only be viewed by those permitted to view it under the Protective Order entered in this matter.

Exhibit No.	Portions of Deposition Transcript for <i>In Camera</i> Treatment	Document Title/Description
PX7122	24:16-25; 25:1-13; 28:4-17; 29:4-6; 29:19-25; 30:1-25; 31:11-21; 32:11-25; 33:1-8; 34:6-11; 34:24-25; 35:1-6; 35:16-25; 36:1-25; 37:1-2; 37:8-25; 38:1-16; 39:1-7; 39:12-21; 40:3-25; 41:1-10; 41:15-23; 41:25; 42:1-25; 43:1-25; 44:1-8; 46:10-25; 47:1-25; 48:1-25; 49:1-25; 50:1-25; 51:1-25; 52:1-2; 52:10-11; 52:22-25; 53:1-25; 54:1-25; 55:1-14; 56:1-25; 57:1-11; 57:15-25; 58:1-25; 59:1-25; 60:1-25; 61:1-25; 62:1-25; 63:1-10; 63:12-25; 64:1-7; 64:19-24; 65:3-25; 66:1-25; 67:1-25; 68:1-25; 69:1-25; 70:1-21; 71:9-25; 72:1-16; 73:8-19; 77:5-15; 78:13-25; 79:1-16; 80:25; 81:1-3; 81:6-25; 82:1-25; 83:1-20; 83:24-25; 84:1-24; 85:16-22; 88:3-25; 89:1-25; 90:1-4; 90:8-	Depo Transcript: Marcia Eisenberg 30(b)(6) (Labcorp)

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Exhibit No.	Portions of Deposition Transcript for <i>In Camera</i> Treatment	Document Title/Description
	25; 91:1-25; 92:1-25; 93:1-5; 93:15-25; 94:1-25; 95:1-25; 96:1-25; 97:1-2; 97:6-11; 97:16-20; 97:24-25; 98:1-25; 99:1- 25; 100:1-25; 101:1-5; 101:9-25; 102:11-18; 102:21-25; 103:1-19; 103:23-25; 104:1-24; 105:3-25; 106:1-25; 107:1-25; 108:1-13; 108:24-25; 109:1-25; 110:1-25; 111:1-11; 111:23- 25; 112:1-25; 113:1-25; 114:1-25; 115:1-25; 116:1-25; 117:1- 25; 118:1-25; 119:1-25; 120:1-25; 121:1-10; 121:22-25; 122:1-25; 123:1-25; 124:1-20; 125:7-25; 126:1-25; 127:1-25; 128:1-25; 129:1-25; 130:1-25; 131:1-25; 132:1-25; 133:1-25; 134:1-25; 135:1-25; 136:1-25; 137:1-25; 138:1-25; 139:1-23; 140:10-25; 141:1-24; and the Index.	

IT IS SO ORDERED

Dated:

By:

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 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:

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pcolwell@ftc.gov

Counsel Supporting the Complaint

Dated: August 26, 2021

/s/ Leigh L. Oliver

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Facsimile: 202-637-5910
leigh.oliver@hoganlovells.com

*Counsel for Laboratory Corporation of
America Holdings*

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EXHIBIT A



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

Bureau of Competition
Mergers I Division

July 26, 2021

VIA EMAIL TRANSMISSION

Laboratory Corporation of America Holdings
c/o Leigh L. Oliver
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004
leigh.oliver@hoganlovells.com

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

Dear Mr. Oliver:

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

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motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed 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) 326-2433.

Sincerely,

/s/ Dylan Naegele
Dylan Naegele
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
PX7122	PX7122-001	PX7122-068	6/24/2021	Depo Transcript: Marcia Eisenberg 30(b)(6) (Labcorp)
PX8574	LABCORP_0000001	LABCORP_0000022	3/5/2013	[REDACTED]
PX8575	LABCORP_0000023	LABCORP_0000037	??/??/14	[REDACTED]
PX8576	LABCORP_0000038	LABCORP_0000091	10/21/2014	[REDACTED]
PX8577	LABCORP_0000092	LABCORP_0000093	??/??/14	[REDACTED]
PX8578	LABCORP_0000094	LABCORP_0000112	10/29/2014	[REDACTED]
PX8579	LABCORP_0000113	LABCORP_0000122	12/??/14	[REDACTED]
PX8580	LABCORP_0000123	LABCORP_0000149	6/1/2021	[REDACTED]
PX8581	LABCORP_0000150	LABCORP_0000164	??/??/14	[REDACTED]
PX8582	LABCORP_0000165	LABCORP_0000178	09/??/14	[REDACTED]
PX8583	LABCORP_0000179	LABCORP_0000180	6/1/2021	[REDACTED]
PX8586	LABCORP_0000327	LABCORP_0000338	3/12/2021	[REDACTED]
PX8587	LABCORP_0000388	LABCORP_0000388	1/26/2021	[REDACTED]
PX8588	LABCORP_0000389	LABCORP_0000389	5/11/2021	[REDACTED]
PX8589	LABCORP_0000390	LABCORP_0000390	2/23/2021	[REDACTED]
PX8592	LABCORP_0000437	LABCORP_0000438	8/5/2020	[REDACTED]
PX8593	LABCORP_0000439	LABCORP_0000441	8/5/2020	[REDACTED]
PX8594	LABCORP_0000442	LABCORP_0000449	9/17/2020	[REDACTED]
PX8595	LABCORP_0000450	LABCORP_0000451	9/21/2020	[REDACTED]
PX8596	LABCORP_0000463	LABCORP_0000464	3/28/2021	[REDACTED]
PX8597	LABCORP_0000465	LABCORP_0000504	3/29/2021	[REDACTED]

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EXHIBIT B

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Noble, Meschelle L.

From: Xhesi Hysi <xhysi@cravath.com>
Sent: Monday, July 26, 2021 6:30 PM
To: Oliver, Leigh L.
Cc: Michael Zaken; Anna.Rathbun@lw.com
Subject: RE: In the Matter of Illumina Inc. and GRAIL Inc., Docket No. 9401

[EXTERNAL]
 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, 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 and any associated family members produced by LabCorp and testimony provided by LabCorp witnesses listed below as trial exhibits, pursuant to 16 C.F.R. § 3.45(b).

Documents
LABCORP_0000280
LABCORP_0000328
Testimony
Deposition Transcript of Marcia Eisenberg

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 above. 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

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Xhesi Hysi
Cravath, Swaine & Moore LLP
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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 C

PUBLIC

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

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

**DECLARATION OF MARCIA EISENBERG IN
SUPPORT OF THIRD-PARTY LABORATORY CORPORATION
OF AMERICAN HOLDINGS’ MOTION FOR *IN CAMERA* TREATMENT**

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

1. I am the Chief Scientific Officer and Senior Vice President of Laboratory Corporation of America Holdings (“Labcorp”). I make this declaration in support of third-party Labcorp’s Motion for *In Camera* Treatment for portions of the deposition transcript for which I participated. I have personal knowledge of the facts set forth in this declaration, and if called as a witness I could and would testify competently under oath to such facts.

2. I have reviewed and am familiar with the deposition transcript, which has been identified by the Federal Trade Commission (“FTC”) and Defendants for use as an exhibit in the above-captioned matter. Given my position at Labcorp, and that I was deposed during this deposition, I am familiar with the type of information contained in the deposition transcript at issue and its competitive significance to Labcorp. Based on my review of the transcript, my knowledge of Labcorp’s business, and my familiarity with the confidentiality protection

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afforded this type of information by Labcorp, I submit that the disclosure of certain portions of the deposition transcript, that are specified below and in Labcorp's Motion for *In Camera* Treatment, to the public and to competitors of Labcorp would cause serious competitive injury to Labcorp. The portions of the deposition transcript that would cause serious competitive injury to Labcorp include the following: 24:16-25; 25:1-13; 28:4-17; 29:4-6; 29:19-25; 30:1-25; 31:11-21; 32:11-25; 33:1-8; 34:6-11; 34:24-25; 35:1-6; 35:16-25; 36:1-25; 37:1-2; 37:8-25; 38:1-16; 39:1-7; 39:12-21; 40:3-25; 41:1-10; 41:15-23; 41:25; 42:1-25; 43:1-25; 44:1-8; 46:10-25; 47:1-25; 48:1-25; 49:1-25; 50:1-25; 51:1-25; 52:1-2; 52:10-11; 52:22-25; 53:1-25; 54:1-25; 55:1-14; 56:1-25; 57:1-11; 57:15-25; 58:1-25; 59:1-25; 60: 1-25; 61:1-25; 62:1-25; 63:1-10; 63:12-25; 64:1-7; 64:19-24; 65:3-25; 66:1-25; 67:1-25; 68:1-25; 69:1-25; 70:1-21; 71:9-25; 72:1-16; 73:8-19; 77:5-15; 78:13-25; 79:1-16; 80:25; 81:1-3; 81:6-25; 82:1-25; 83:1-20; 83:24-25; 84:1-24; 85:16-22; 88:3-25; 89:1-25; 90:1-4; 90:8-25; 91:1-25; 92:1-25; 93:1-5; 93:15-25; 94:1-25; 95:1-25; 96:1-25; 97:1-2; 97:6-11; 97:16-20; 97:24-25; 98:1-25; 99:1-25; 100:1-25; 101:1-5; 101:9-25; 102:11-18; 102:21-25; 103:1-19; 103:23-25; 104:1-24; 105:3-25; 106:1-25; 107:1-25; 108:1-13; 108:24-25; 109:1-25; 110:1-25; 111:1-11; 111:23-25; 112:1-25; 113:1-25; 114:1-25; 115:1-25; 116:1-25; 117:1-25; 118:1-25; 119:1-25; 120:1-25; 121:1-10; 121:22-25; 122:1-25; 123:1-25; 124:1-20; 125:7-25; 126:1-25; 127:1-25; 128:1-25; 129:1-25; 130:1-25; 131:1-25; 132:1-25; 133:1-25; 134:1-25; 135:1-25; 136:1-25; 137:1-25; 138:1-25; 139:1-23; 140:10-25; 141:1-24; and the Index.

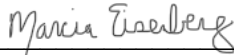
3. Labcorp is a leading global life sciences company that provides vital information to assist doctors, hospitals, pharmaceutical companies, researchers, and patients with their medical needs. Labcorp focuses its diagnostic and drug development capabilities to provide insight and accelerate innovations to improve the health and lives of others. Labcorp is a

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leading provider of laboratory testing services in the U.S. Within its broad testing portfolio, Labcorp competes to provide noninvasive prenatal testing (“NIPT”) and other genetic tests for cancer detection.

4. Exhibit PX7122 is the deposition transcript for which I participated as Chief Scientific Officer and Senior Vice President of Labcorp. Throughout this deposition, I spoke candidly about competitively sensitive information relating to Labcorp’s current testing offerings and also future offerings currently in development. Information regarding Labcorp’s competitive strategy, approaches to competition and the evaluation of the laboratory testing market were also discussed throughout the transcript. The information I shared relating to Labcorp’s development of new testing offerings and internal strategy discussions is not publicly disclosed information and would be harmful to Labcorp’s continued success in the market if this information became publicly accessible. Further, this type of information is only available on a need to know basis internally at Labcorp and its employees with access to this information are subject to confidentiality obligations not to disclose it. Thus, to reiterate, the disclosure of certain portions of the deposition transcript that are specified above, to the public and to competitors of Labcorp, would cause serious competitive injury to Labcorp and therefore deserve *in camera* treatment. 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: August 26, 2021



Name: Marcia Eisenberg
Title: Chief Scientific Officer, Senior Vice
President

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EXHIBIT D

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Deposition of:
Marcia Eisenberg

June 24, 2021

In the Matter of:
**Illumina, Inc. and GRAIL, Inc. (In the
Matter of)**

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

-----X

FEDERAL TRADE COMMISSION,

PLAINTIFF,

-against-

Case No.:

3:21-CV-00800-CAB-BGS

ILLUMINA, INC. AND GRAIL, INC.,

DEFENDANTS.

-----X

DATE: June 24, 2021

TIME: 8:22 a.m.

CONFIDENTIAL UNDER THE PROTECTIVE ORDER
VIDEOTAPED VIDEOCONFERENCE DEPOSITION
of a non-party witness, MARCIA EISENBERG,
PhD., taken by the respective parties,
pursuant to a Subpoena and to the Federal
Rules of Civil Procedure, held via Zoom,
before Nicole Veltri, RPR, CRR, a Notary
Public of the State of New York.

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 FEDERAL TRADE COMMISSION</p> <p>3 BUREAU OF COMPETITION</p> <p>4 Attorneys for the Plaintiff</p> <p>5 400 Seventh Street SW</p> <p>6 Washington, DC 20024</p> <p>7 BY: ERIC EDMONDSON, ESQ.</p> <p>8 eedmondson@ftc.gov</p> <p>9 CRAVATH, SWAINE & MOORE LLP</p> <p>10 Attorneys for the Defendant</p> <p>11 ILLUMINA, INC.</p> <p>12 825 Eighth Avenue, Suite 4043B</p> <p>13 New York, New York 10019</p> <p>14 BY: MICHAEL J. ZAKEN, ESQ.</p> <p>15 mzaken@cravath.com</p> <p>16 LATHAM & WATKINS, LLP</p> <p>17 Attorneys for the Defendant</p> <p>18 GRAIL, INC.</p> <p>19 555 11th Street NW, Suite 1000</p> <p>20 Washington, DC 20004-1327</p> <p>21 BY: DAVID JOHNSON, ESQ.</p> <p>22 david.johnson@lw.com</p> <p>23 HOGAN LOVELLS US LLP</p> <p>24 Attorneys for the non-party witness</p> <p>25 555 13th Street NW</p> <p>Washington, DC 20004-1161</p> <p>BY: LEIGH OLIVER, ESQ.</p> <p>leigh.oliver@hoganlovells.com</p> <p>ALSO PRESENT:</p> <p>GINA THIESFELDT: Concierge with Veritext</p> <p>SCOTT FORMAN: Videographer with Veritext</p> <p>MATT MALL, ESQ.: In-house counsel for</p> <p>LabCorp</p> <p>MARCUS CURTIS, ESQ.: Latham & Watkins</p> <p>STEPHANIE BOVEE, ESQ.: Federal Trade</p> <p>Commission</p> <p>KATE STAMELL, ESQ.: Cravath Swaine & Moore</p>	<p style="text-align: right;">Page 4</p> <p>1 M. EISENBERG, PhD.</p> <p>2 (Whereupon, the aforementioned Dr.</p> <p>3 Marcia Eisenberg's LinkedIn printout</p> <p>4 was premarked as Plaintiff's Exhibit</p> <p>5 PX0078 for identification as of this</p> <p>6 date.)</p> <p>7 (Whereupon, the aforementioned</p> <p>8 email string was premarked as</p> <p>9 Plaintiff's Exhibit PX8587 for</p> <p>10 identification as of this date.)</p> <p>11 (Whereupon, the aforementioned</p> <p>12 email string was premarked as</p> <p>13 Plaintiff's Exhibit PX8589 for</p> <p>14 identification as of this date.)</p> <p>15 (Whereupon, the aforementioned</p> <p>16 email string was premarked as</p> <p>17 Plaintiff's Exhibit PX8591 for</p> <p>18 identification as of this date.)</p> <p>19 (Whereupon, the aforementioned</p> <p>20 email string was premarked as</p> <p>21 Plaintiff's Exhibit PX8592 for</p> <p>22 identification as of this date.)</p> <p>23 (Whereupon, the aforementioned</p> <p>24 email string was premarked as</p> <p>25 Plaintiff's Exhibit PX8593 for</p>
<p style="text-align: right;">Page 3</p> <p>1 FEDERAL STIPULATIONS</p> <p>2</p> <p>3</p> <p>4 IT IS HEREBY STIPULATED AND AGREED by</p> <p>5 and between the counsel for the respective</p> <p>6 parties herein that the sealing, filing and</p> <p>7 certification of the within deposition be</p> <p>8 waived; that the original of the deposition</p> <p>9 may be signed and sworn to by the witness</p> <p>10 before anyone authorized to administer an</p> <p>11 oath, with the same effect as if signed</p> <p>12 before a Judge of the Court; that an</p> <p>13 unsigned copy of the deposition may be used</p> <p>14 with the same force and effect as if signed</p> <p>15 by the witness, 30 days after service of the</p> <p>16 original & 1 copy of same upon counsel for</p> <p>17 the witness.</p> <p>18</p> <p>19 IT IS FURTHER STIPULATED AND AGREED</p> <p>20 that all objections except as to form, are</p> <p>21 reserved to the time of trial.</p> <p>22</p> <p>23 * * * *</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 M. EISENBERG, PhD.</p> <p>2 identification as of this date.)</p> <p>3 (Whereupon, the aforementioned</p> <p>4 email string was premarked as</p> <p>5 Plaintiff's Exhibit PX8594 for</p> <p>6 identification as of this date.)</p> <p>7 (Whereupon, the aforementioned</p> <p>8 email string was premarked as</p> <p>9 Plaintiff's Exhibit PX8595 for</p> <p>10 identification as of this date.)</p> <p>11 (Whereupon, the aforementioned</p> <p>12 email was marked as Plaintiff's Exhibit</p> <p>13 PX8596 for identification as of this</p> <p>14 date by the Reporter.)</p> <p>15 (Whereupon, the aforementioned</p> <p>16 Illumina letter to Dr. Marcia Eisenberg</p> <p>17 was premarked as Plaintiff's Exhibit</p> <p>18 PX8597 for identification as of this</p> <p>19 date.)</p> <p>20 (Whereupon, the aforementioned</p> <p>21 Subpoena to Testify at a Deposition was</p> <p>22 premarked as Plaintiff's Exhibit PX9230</p> <p>23 for identification as of this date.)</p> <p>24 (Whereupon, the aforementioned</p> <p>25 Transaction Review - Referral Agreement</p>

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<p style="text-align: right;">Page 6</p> <p>1 M. EISENBERG, PhD. 2 was marked as Defendants' Exhibit 1 for 3 identification as of this date by the 4 Reporter.) 5 (Whereupon, the aforementioned 6 Quest Diagnostics article was marked as 7 Defendants' Exhibit 2 for 8 identification as of this date by the 9 Reporter.) 10 (Whereupon, the aforementioned 11 Oncology Portfolio Plan was marked as 12 Defendant's Exhibit 3 for 13 identification as of this date by the 14 Reporter.) 15 VIDEOGRAPHER: Good morning. 16 We're going on the record at 8:22 a.m. 17 on June this 24th, 2021. This is media 18 unit one of the video recorded 19 deposition of Marcia Eisenberg, PhD, in 20 the matter of Illumina, Inc., and 21 GRAIL, Inc., filed in the Federal Trade 22 Commission, case number 2010144. 23 This deposition is being held at 24 the residence of Dr. Eisenberg. My 25 name is Scott Forman from the firm</p>	<p style="text-align: right;">Page 8</p> <p>1 M. EISENBERG, PhD. 2 MR. MALL: Good morning. This is 3 Matt Mall, in-house lawyer for LabCorp. 4 THE WITNESS: This is Dr. Marcia 5 Eisenberg, Chief Scientific Officer and 6 Senior VP with LabCorp. 7 VIDEOGRAPHER: I'll pause for a 8 moment to make sure we have everyone. 9 Thank you very much. 10 Will the court reporter please 11 swear in the witness. 12 M A R C I A E I S E N B E R G, called as a 13 witness, having been first duly sworn by a 14 Notary Public of the State of New York, was 15 examined and testified as follows: 16 VIDEOGRAPHER: You may proceed. 17 EXAMINATION BY 18 MR. EDMONDSON: 19 Q. Good morning, Dr. Eisenberg. 20 A. Good morning. 21 Q. As you heard there a moment ago, 22 my name is Eric Edmondson; and I am an 23 attorney with the FTC, and I'm going to be 24 asking you some questions this morning. 25 Have you ever been deposed before,</p>
<p style="text-align: right;">Page 7</p> <p>1 M. EISENBERG, PhD. 2 Veritext, and I'm the videographer. 3 The court reporter is Nicole Veltri 4 from the firm Veritext. I'm not 5 related to any party in this action nor 6 am I financially interested in the 7 outcome. 8 Counsel will now state their 9 appearances and affiliations for the 10 record. 11 MR. EDMONDSON: Good afternoon. 12 This is Eric Edmondson for the Federal 13 Trade Commission, and I am joined by my 14 colleague Stephanie Bovee of the FTC 15 who is also an attorney. 16 MR. JOHNSON: Good morning. This 17 is David Johnson from Latham & Watkins, 18 and I represent GRAIL. 19 MR. ZAKEN: And this is Michael 20 Zaken of Cravath Swaine & Moore 21 representing Illumina, and with me is 22 my colleague Kate Stamell. 23 MS. OLIVER: Hi. This is Leigh 24 Oliver from Hogan Lovells representing 25 Labcorp and the witness.</p>	<p style="text-align: right;">Page 9</p> <p>1 M. EISENBERG, PhD. 2 Dr. Eisenberg? 3 A. Yes, I have. 4 Q. How many times? 5 A. Probably at least a dozen or so. 6 Q. Have you ever testified in an open 7 court at a trial proceeding? 8 A. Yes, I have. 9 Q. Okay. 10 Have you ever testified as an 11 expert? 12 A. Yes, I have. 13 Q. What -- how many times have you 14 testified as an expert? 15 A. I will guesstimate here somewhere 16 between 25 and 50. I used to oversee our 17 forensic DNA testing lab and testified quite 18 often. 19 Q. And were these -- would you please 20 describe the types of cases that you 21 typically testified in when you were -- when 22 you oversaw LabCorp's DNA testing labs? 23 A. These were mostly criminal cases 24 that involved DNA testing. 25 Q. Have you ever been deposed before</p>

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<p style="text-align: right;">Page 10</p> <p>1 M. EISENBERG, PhD. 2 in a civil proceeding? 3 A. Yes. 4 Q. Roughly how many times? 5 A. Perhaps a half a dozen times. 6 Q. When was the most recent time that 7 you testified? 8 A. Probably the last time was another 9 FTC deposition. 10 Q. And what -- when was that? 11 A. I think about six or seven years 12 ago. I may have the timing off. 13 Q. What was the -- what was the 14 matter that you were testifying in? 15 A. It was around what was, I think, 16 characterized as insider trading, an 17 employee in relation to an acquisition. 18 Q. Okay. 19 You said you testified at an FTC 20 proceeding; was that actually a Securities 21 and Exchange Commission proceeding? 22 A. That could be. 23 Q. Doctor, I think I neglected to ask 24 you to state your full name and spell it for 25 the record; so I'll do so at this time.</p>	<p style="text-align: right;">Page 12</p> <p>1 M. EISENBERG, PhD. 2 is being transcribed; so it's very important 3 that we not talk over each other. I'll do 4 my best not to interrupt you while you are 5 still answering; and in return, I ask that 6 you please don't interrupt me before I 7 finish my question even if you know what I'm 8 going to ask, okay? 9 A. Yes. 10 Q. The record does not pick up 11 nonverbal responses like shrugs or head 12 shakes or other gestures, so I ask that you 13 please give verbal answers to my questions, 14 okay? 15 A. Okay. 16 Q. For clarity's sake, when answering 17 my questions, please say yes or no as 18 opposed to mhms, uh-hum. Do you understand? 19 A. Yes. 20 Q. If you don't understand one of my 21 questions, please let me know; and I will 22 repeat it or rephrase it, okay? 23 A. Yes. 24 Q. And if you answer a question, I'll 25 assume that you understood my question and</p>
<p style="text-align: right;">Page 11</p> <p>1 M. EISENBERG, PhD. 2 A. Sure. Marcia Terry Eisenberg. 3 M-A-R-C-I-A, T-E-R-R-Y, E-I-S-E-N-B-E-R-G. 4 Q. Thank you, Dr. Eisenberg. 5 You clearly have substantial 6 testifying experience, so I'm going to walk 7 through the rules of this deposition; and I 8 apologize if they -- if I'm repeating things 9 you've heard dozens of times, but I'll need 10 to go through them anyway. 11 A. Okay. 12 Q. You do understand that you are 13 under oath today? 14 A. Yes, I do. 15 Q. And even though we're 16 testifying -- you're testifying from your 17 home today, it's as if you are before a 18 judge or jury; do you understand that? 19 A. Yes. 20 Q. And I'm going to be asking you 21 questions and you are to answer those 22 questions completely, truthfully, and to the 23 best of your knowledge; do you understand? 24 A. Yes. 25 Q. As you can see, our conversation</p>	<p style="text-align: right;">Page 13</p> <p>1 M. EISENBERG, PhD. 2 answered it to the best of your ability, 3 okay? 4 A. Yes. 5 Q. Now, during today's hearing, your 6 attorney may object to a question I ask. A 7 little different than in open court where 8 you wait for a judge to issue a ruling on 9 the objection before you answer. 10 Today, unless your attorney 11 objects on the basis of privilege, you are 12 to answer my question. Do you understand? 13 A. Yes. 14 Q. If your attorney does object on 15 the basis of privilege, you are -- and 16 instructs you not to answer the question, 17 then you are to follow your attorney's 18 instructions. Do you understand? 19 A. Yes. 20 Q. If you need to break before I call 21 one, please let me know; and I'll do my best 22 to find a good stopping point. If we're in 23 the middle of a question, I will have you 24 finish answering that question before we 25 take our break; do you understand?</p>

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<p style="text-align: right;">Page 14</p> <p>1 M. EISENBERG, PhD. 2 A. Yes. 3 Q. And you're located at your home in 4 Quebec province; is that accurate? 5 A. That is correct, yes. 6 Q. Is there anyone in the room with 7 you from which you're being deposed? 8 A. No. 9 Q. Now, other than the devices that 10 you are using to view exhibits in this 11 deposition, do you have any other PCs, 12 laptops, iPads, cell phones, or other 13 electronic devices you 14 A. Yes. My cell phones are here, but 15 they are off. 16 Q. Okay. 17 Would you agree to tell me if you 18 turn on your cell phone during this hearing 19 or this deposition? 20 A. Yes. 21 Q. And would you please let me know 22 if you bring any other electronic devices or 23 materials into the room with you during this 24 deposition? 25 A. Yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 M. EISENBERG, PhD. 2 time. The time is 8:35 a.m. 3 (Whereupon, a short recess was 4 taken.) 5 VIDEOGRAPHER: We're back on the 6 record. The time is 8:49 a.m. 7 Q. Dr. Eisenberg, without revealing 8 any privileged information, how did you 9 prepare for today's hearing -- deposition? 10 A. I met with a number of individuals 11 within the company who had information 12 related to some of the questions that we 13 received that we may cover today as well as 14 met with Matt Mall and Leigh Oliver. 15 Q. Who were the individuals within 16 the company; and by company, do you mean 17 LabCorp? 18 A. Yes, sir. 19 Q. Who were the LabCorp employees 20 that you met with to prepare in preparation 21 for this deposition? 22 A. Megann Vaughn, Mike Minahan 23 (phonetic), Serena Guzman. 24 Q. You said you also met with Matt 25 Mall and Leigh Oliver?</p>
<p style="text-align: right;">Page 15</p> <p>1 M. EISENBERG, PhD. 2 Q. You do understand that while we 3 are on the record during this deposition, 4 that you are not to consult any outside 5 sources of information including cell 6 phones, Smartphones, computers, the 7 Internet, texts, or instant messaging 8 services? 9 A. Yes. 10 Q. Do you have any questions for me 11 at this time? 12 A. No. 13 Q. Is there any reason you cannot 14 testify truthfully today? 15 A. No. 16 Q. I'm going to ask you a few 17 questions now about how you prepared for 18 today's deposition. Would -- 19 MR. JOHNSON: Apologies. This is 20 David Johnson speaking before you get 21 into the questioning, the realtime 22 isn't updating for me; and I just want 23 to see if others are seeing the 24 transcript? Let's go off the record. 25 VIDEOGRAPHER: We're going off the</p>	<p style="text-align: right;">Page 17</p> <p>1 M. EISENBERG, PhD. 2 A. Yes, sir. 3 Q. And who is Matt Mall? 4 A. Matt is one of the LabCorp 5 attorneys. He's on the line with us. 6 Q. How long in total did you meet 7 with your attorneys? 8 A. Approximately two hours or so. 9 Q. How many times did you meet with 10 these attorneys? 11 A. Four times, approximately. 12 Q. Did you review any documents 13 during your meetings with the attorneys? 14 A. Not while meeting with the 15 attorneys, no. 16 Q. Did you review documents when you 17 met with your LabCorp colleagues? 18 A. No. 19 Q. Did you review documents in 20 preparation for this deposition? 21 A. Yes. 22 Q. Did someone provide the documents 23 to you? 24 A. Yes. 25 Q. Who provided the documents?</p>

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<p style="text-align: right;">Page 18</p> <p>1 M. EISENBERG, PhD. 2 A. Matt Mall. 3 Q. When did Matt Mall provide the 4 documents to you? 5 A. One of the documents last weekend, 6 and one of the documents yesterday. 7 Q. How many documents did you review 8 in total? 9 A. Two. 10 Q. Did these documents refresh your 11 recollection? 12 A. Yes. 13 Q. Were these documents prepared for 14 this deposition? 15 A. One of the documents, yes. 16 Q. Do you have that document with 17 you? 18 A. I have the document in the house, 19 yes. 20 Q. But it's not in the room with you? 21 A. It is in the room, but it's not 22 with me. 23 Q. On your own, did you review any 24 other documents in preparation for this 25 hearing -- deposition?</p>	<p style="text-align: right;">Page 20</p> <p>1 M. EISENBERG, PhD. 2 see the title deposition topics? 3 A. Yes. 4 Q. I'll give you a moment to review 5 the topics listed on the lower half of page 6 three of Exhibit 9230, and it continues on 7 through the middle of page four of this 8 exhibit; and let me know when you've had a 9 sufficient chance to review this. 10 A. Yes. 11 Q. Are you prepared to testify on 12 those topics? 13 A. Yes. 14 MS. OLIVER: I would say the 15 witness is prepared subject to the 16 objections and responses that were 17 served on the Federal Trade Commission 18 and the parties. 19 Q. I've just loaded or introduced 20 another exhibit. That's marked PX78; do you 21 see this? 22 A. No, not yet. Unless there's 23 something else that I need to do to see a 24 new file that's loaded. 25 MS. THIESFELDT: It hasn't come</p>
<p style="text-align: right;">Page 19</p> <p>1 M. EISENBERG, PhD. 2 A. No. 3 MR. EDMONDSON: I would like to 4 ask the concierge to introduce PX9230. 5 MS. THIESFELDT: Would you like 6 that marked as Exhibit 1? 7 MR. EDMONDSON: No. Exhibits are 8 premarked. 9 MS. THIESFELDT: It's in the 10 folder. 11 Q. You see the exhibit, Dr. 12 Eisenberg? 13 A. I'm going to see if I can do that. 14 Yes. 15 Q. Have you seen this document 16 before? 17 A. No. 18 Q. I'll represent to you that this is 19 a Subpoena issued by the Federal Trade 20 Commission to LabCorp that is asking LabCorp 21 to produce a witness to testify on several 22 topics. Take a look at page three of this 23 exhibit, please. 24 A. I'm there. 25 Q. In the middle of the page, do you</p>	<p style="text-align: right;">Page 21</p> <p>1 M. EISENBERG, PhD. 2 up. 3 There it is for me. I don't know 4 if you want to try and click the marked 5 exhibits tab. 6 A. Now I've got it. Thank you. 7 Q. Do you recognize this document? 8 A. I haven't seen this document 9 looking like this, but I recognize it as 10 some of my background. 11 Q. Okay. 12 I'll represent to you, Dr. 13 Eisenberg, that this is taken from your 14 LinkedIn page, LinkedIn allows -- now allows 15 for downloading the person's resume into a 16 PDF; and the presentation is a little 17 different than when you view the document on 18 a LinkedIn page. 19 So did you prepare the information 20 on your LinkedIn page? 21 A. Yes. 22 Q. Is the information on your 23 LinkedIn page accurate? 24 A. Yes. 25 Q. Is there anything missing from</p>

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1 M. EISENBERG, PhD.
 2 taken.)
 3 MS. THIESFELDT: We are back on
 4 the record. The time is 10:03.
 5 Q. Okay, Dr. Eisenberg.
 6 Just before the break, I asked you
 7 a question; and I would like to ask that
 8 question again, if I may.
 9 A. Yes, please.

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

Page 55

[REDACTED]

15 MS. THIESFELDT: It's in the
 16 folder.
 17 A. I've had a chance to look at the
 18 email thread.
 19 Q. Yes.
 20 It really just -- you're not
 21 copied on this email thread; are you?
 22 A. I did not see -- I haven't made it
 23 through all eight pages, but I so far have
 24 not seen my name on any of the emails.
 25 Q. Okay.

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[REDACTED]

12 MS. THIESFELDT: In the folder.
 13 Just a reminder you can enlarge the
 14 text.

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Page 60

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<p style="text-align: right;">Page 66</p> <p>[REDACTED]</p>	<p style="text-align: right;">Page 68</p> <p>[REDACTED]</p>
<p style="text-align: right;">Page 67</p> <p>[REDACTED]</p>	<p style="text-align: right;">Page 69</p> <p>[REDACTED]</p>

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1 M. EISENBERG, PhD.
 2 taken.)
 3 VIDEOGRAPHER: We are back on the
 4 record the time is 11:32 a.m.
 5 MR. EDMONDSON: Well, Dr.
 6 Eisenberg, as I said before the break,
 7 that I don't have any further questions
 8 at this time; but I would before
 9 turning you over to Mr. Johnson for
 10 questioning, I would note that I would
 11 reserve what time I have remaining for
 12 redirect if necessary. Thank you.
 13 MR. JOHNSON: Thank you, Eric; and
 14 good morning, Dr. Eisenberg.
 15 My name is David Johnson, and I am
 16 an attorney with the law firm Lathan &
 17 Watkins. We represent GRAIL, but I'm
 18 not a GRAIL employee. I'm going to be
 19 asking you some questions the remainder
 20 of the morning, a little bit into the
 21 afternoon.
 22 Is it okay with you if we just
 23 continue with the same ground rules
 24 that were set forth in the first
 25 segment of your questioning?

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1 M. EISENBERG, PhD.
 2 THE WITNESS: Yes.
 3 MR. JOHNSON: Great. So we'll
 4 just go forward on that basis.
 5 EXAMINATION BY
 6 MR. JOHNSON:
 7 Q. I would like to start by talking a
 8 little bit more about the NIPT market, and
 9 earlier you were speaking with Mr. Edmondson
 10 about NIPT. Do you still understand that to
 11 mean noninvasive prenatal tests?
 12 A. Yes.
 13 Q. You were discussing the
 14 noninvasive prenatal test that LabCorp has
 15 offered over time, and I believe the first
 16 one you mentioned was in collaboration with
 17 Ariosa; is that right?
 18 A. Yes.
 19 Q. Do you know the rough time period
 20 when LabCorp introduced that test with
 21 Ariosa?
 22 A. No.
 23 Q. Does around May 2012 sound about
 24 right?
 25 A. That could be, yes.

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1 M. EISENBERG, PhD.
 2 Q. And then you mentioned that there
 3 was an acquisition by Illumina of Verinata;
 4 do you remember that?
 5 A. Yes.
 6 Q. And then after that happened,
 7 LabCorp began to offer an NIPT test in
 8 collaboration with Illumina; is that right?
 9 A. Perhaps we may differ on the
 10 definition of in partnership with; but, yes,
 11 we offered a test based on the Verinata
 12 assay.
 13 Q. What was the name of that test?
 14 A. I'm sorry. I don't recall the
 15 marketing name for that test.
 16 Q. Does informaSeq, does that ring a
 17 bell?
 18 A. That could be correct.
 19 Q. Then at some point LabCorp
 20 acquired the company Sequenom; are you aware
 21 of that?
 22 A. Yes.
 23 Q. Do you know roughly when that
 24 happened? Just the year would be fine.
 25 A. No.

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1 M. EISENBERG, PhD.
 2 Q. Does around 2016 sound about
 3 right?
 4 A. Yes. That could be correct.
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 Q. Thank you for that clarification.
 17 I actually was not trying to use platform
 18 incorrectly there, so I appreciate that
 19 clarification.
 20 So after LabCorp acquired
 21 Sequenom, it transitioned to an NIPT test
 22 that was based on Sequenom technology; is
 23 that how you would characterize it?
 24 A. Technology know-how, development.
 25 Q. At that point LabCorp no longer

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1 M. EISENBERG, PhD.
 2 offered an NIPT test that was based on
 3 Illuminas NIPT technology?
 4 A. If you're using Illumina
 5 interchangeable with Verinata at this point
 6 then, yes.
 7 Q. Verinata, that's the NIPT company
 8 that Illumina acquired?
 9 A. Yes.
 10 Q. LabCorp, does it still offer a
 11 NIPT test to this day?
 12 A. Yes.
 [Redacted]

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[Redacted]

17 Q. You heard of the company Counsyl?
 18 A. Yes.
 19 Q. Do you know if they're offering an
 20 NIPT test today?
 21 A. They're one of the companies that
 22 I don't recall if they're offering their own
 23 test or have partnered with someone and
 24 offering it through a partnership
 25 opportunity.

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1 M. EISENBERG, PhD.
 2 Q. If we broadened the scope to
 3 include companies that are offering NIPT
 4 tests in partnership with someone, does that
 5 expand the number of companies that you're
 6 aware of that are selling NIPT tests today?
 7 A. Sitting here right now, no, not
 8 really; but there probably are a couple
 9 more. But I was including them earlier when
 10 I said that there were probably some others
 11 that I wasn't thinking of that were offering
 12 testing either because on their own or in
 13 partnership. So I think probably within the
 14 US there is probably four to six labs that
 15 meet those, you know, general definitions.
 16 Q. Are you familiar with a company
 17 Quest Diagnostics?
 18 A. Yes.
 19 Q. In what way are you familiar with
 20 Quest?
 21 A. They are the other large national
 22 diagnostic provider in the US.
 23 Q. With the other one being LabCorp?
 24 A. Yes.
 [Redacted]

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[Redacted]

4 Q. Does Quest offer an NIPT test?
 5 A. I believe, yes, that they do.
 [Redacted]

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<p>Page 82</p> <p>[REDACTED]</p>	<p>Page 84</p> <p>[REDACTED]</p> <p>25 Q. Is that organization you were just</p>
----------------------------------	--

<p>Page 83</p> <p>[REDACTED]</p> <p>21 Q. Sure. Maybe I can just rephrase</p> <p>22 the question.</p> <p>23 A. Okay.</p> <p>[REDACTED]</p>	<p>Page 85</p> <p>1 M. EISENBERG, PhD.</p> <p>2 referring to that Illumina helped found, is</p> <p>3 it the Coalition for Access to Prenatal</p> <p>4 Screening?</p> <p>5 A. Yes. Thank you.</p> <p>6 Q. And what do you understand to be</p> <p>7 the purpose of that organization? Sorry.</p> <p>8 Let me rephrase it.</p> <p>9 Is it your understanding that the</p> <p>10 goal of that organization is to promote</p> <p>11 broader payer coverage for NIPT tests?</p> <p>12 A. It is to promote education and</p> <p>13 understanding of the testing so that there</p> <p>14 is increased access as well as then coverage</p> <p>15 for testing that is performed.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>23 Q. Are you aware of generally how</p> <p>24 many NIPT tests are administered in the US a</p> <p>25 year?</p>
--	--

22 (Pages 82 - 85)

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1 M. EISENBERG, PhD.
 2 A. No.
 3 Q. Do you have a sense of whether the
 4 number of NIPT tests administered present
 5 day has increased since maybe 2012?
 6 A. Since 2012, I would say in
 7 general, yes. With perhaps a pause in the
 8 past year and a half or so where I think
 9 it's generally known that diagnostic testing
 10 as an average across all laboratories was
 11 somewhat suppressed during the pandemic.
 12 Q. And you're referring to the COVID
 13 pandemic?
 14 A. Yes.
 15 Q. So then would it be safe to say
 16 that from 2012 up and to the beginning of
 17 the COVID pandemic in say March 2020, there
 18 was a general trend of more NIPT tests being
 19 administered per year?
 20 A. Yes.
 21 Q. Do you know the current list price
 22 that LabCorp charges for an NIPT test?
 23 A. No.
 24 MR. JOHNSON: I would like my
 25 colleague to introduce tab eight,

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1 M. EISENBERG, PhD.
 2 let me just rephrase the question here.
 [REDACTED]

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1 M. EISENBERG, PhD.
 2 please.
 3 Q. Dr. Eisenberg, an exhibit is going
 4 to be coming into your folder.
 5 A. Okay. Will it be numbered as
 6 eight, or does it have a different number?
 7 Mine are just populating randomly, so I have
 8 to find it.
 9 Q. Hopefully it can be numbered as
 10 Exhibit 1 to differentiate it from the FTC's
 11 exhibits.
 12 A. Okay.
 13 Q. While that's loading, I'll just
 14 ask you a couple other questions in the
 15 interest of saving time.
 16 A. The documents loaded now.
 17 Q. Okay. I'm just going to ask this
 18 question, and then we'll turn to the
 19 exhibit.
 20 In response to my question you
 21 made reference to litigation involving NIPT
 22 intellectual property rights; do you recall
 23 that?
 24 A. Yes.
 25 Q. And I believe you characterized --

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[REDACTED]

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[REDACTED]

5 Q. And that's the state -- the
6 current state as well; is that right?
7 A. Yes.

[REDACTED]

Page 92

[REDACTED]

[REDACTED]

Page 91

[REDACTED]

Page 93

[REDACTED]

6 Q. Now we can go down --
7 A. Is it me or --
8 VIDEOGRAPHER: Would you like to
9 go off the record? We're going off the
10 record. Time is 11:58 a.m.
11 (Whereupon, a short recess was
12 taken.)
13 VIDEOGRAPHER: Back on the record.
14 Time is 12:10 p.m.

[REDACTED]

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<p style="text-align: right;">Page 98</p> <p>[REDACTED]</p>	<p style="text-align: right;">Page 100</p> <p>[REDACTED]</p>
<p style="text-align: right;">Page 99</p> <p>[REDACTED]</p>	<p style="text-align: right;">Page 101</p> <p>[REDACTED]</p> <p>6 Q. And just for the record, Verinata, 7 that was an NIPT manufacturer? 8 A. Yes.</p> <p>[REDACTED]</p>

26 (Pages 98 - 101)

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[REDACTED]

Page 108

[REDACTED]

14 Q. And LabCorp has a sourcing and
15 procurement division; is that right?
16 A. Correct.
17 Q. And they are the specialists in
18 reviewing contracts in LabCorp; is that
19 right?
20 A. Along with legal, yes.
21 MR. JOHNSON: Marcus, can we
22 introduce tab 13 as Exhibit 3?
23 Q. While that's loading, Dr.
[REDACTED]

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[REDACTED]

Page 109

[REDACTED]

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Page 110

[REDACTED]

Page 112

[REDACTED]

Page 111

[REDACTED]

12 Q. Thank you for that clarification..

13 I think we have Exhibit 3 ready if

14 you're able to see that, Dr. Eisenberg.

15 A. I can.

16 Q. First, before we go to that, have

17 you seen this document before?

18 A. Yes.

19 Q. For the record -- sorry, go ahead.

20 A. I believe I have seen this exact

21 document; and if not, I am familiar with all

22 of the slides and content.

[REDACTED]

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[REDACTED]

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<p style="text-align: right;">Page 114</p> <p>[REDACTED]</p>	<p style="text-align: right;">Page 116</p> <p>[REDACTED]</p>
<p style="text-align: right;">Page 115</p> <p>[REDACTED]</p>	<p style="text-align: right;">Page 117</p> <p>[REDACTED]</p>

30 (Pages 114 - 117)

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[REDACTED]

Page 120

[REDACTED]

Page 119

[REDACTED]

Page 121

[REDACTED]

11 MR. JOHNSON: Can we go off the

12 record.

13 VIDEOGRAPHER: We're going off the

14 record. The time is 12:51 p.m.

15 (Whereupon, a short recess was

16 taken.)

17 VIDEOGRAPHER: We are back on the

18 record. The time is 1:03 p.m.

19 Q. Dr. Eisenberg, do you still have

20 Exhibit 3 open?

21 A. Yes.

[REDACTED]

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<p style="text-align: right;">Page 126</p> <p>[Redacted text block]</p>	<p style="text-align: right;">Page 128</p> <p>[Redacted text block]</p>
<p style="text-align: right;">Page 127</p> <p>[Redacted text block]</p>	<p style="text-align: right;">Page 129</p> <p>[Redacted text block]</p>

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<p>Page 130</p> <p>[REDACTED]</p>	<p>Page 132</p> <p>[REDACTED]</p>
<p>Page 131</p> <p>[REDACTED]</p>	<p>Page 133</p> <p>[REDACTED]</p>

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<p style="text-align: right;">Page 134</p> 	<p style="text-align: right;">Page 136</p> 
<p style="text-align: right;">Page 135</p> 	<p style="text-align: right;">Page 137</p> 

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<p style="text-align: right;">Page 142</p> <p>1 M. EISENBERG, PhD. 2 further questions at this time. 3 THE WITNESS: Thank you, sir. 4 MR. EDMONDSON: I'll pass the 5 baton to Mr. Johnson. 6 MR. JOHNSON: Dr. Eisenberg, I 7 don't have any further questions 8 either; so thank you for your time. 9 THE WITNESS: Thank you, 10 Mr. Johnson. 11 MS. OLIVER: Before we go off the 12 record, we would like to designate the 13 transcript as confidential under the 14 protective order and, obviously, all 15 the documents included therein. 16 VIDEOGRAPHER: This marks the end 17 of the deposition. We're going off the 18 record. The time is 1:46 p.m. 19 (Whereupon, at 1:46 p.m., the 20 Examination of this witness was 21 concluded.) 22 23 o o o o 24 25</p>	<p style="text-align: right;">Page 144</p> <p>1 M. EISENBERG, PhD. 2 I N D E X 3 4 EXAMINATION BY PAGE 5 MR. EDMONDSON 8, 125 6 MR. JOHNSON 75 7 8 9 10 INFORMATION AND/OR DOCUMENTS REQUESTED 11 INFORMATION AND/OR DOCUMENTS PAGE 12 (None) 13 14 15 QUESTIONS MARKED FOR RULINGS 16 PAGE LINE QUESTION 17 (None) 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 143</p> <p>1 M. EISENBERG, PhD. 2 E X H I B I T S 3 PLAINTIFFS' EXHIBITS: 4 5 EXHIBIT EXHIBIT PAGE 6 PX0078 Dr. Marcia Eisenberg's 4 LinkedIn printout 7 8 PX8587 Email string 4 9 PX8589 Email string 4 10 PX8591 Email string 4 11 PX8592 Email string 4 12 PX8593 Email string 4 13 PX8594 Email string 5 14 PX8595 Email string 5 15 PX8596 Email 5 16 PX8597 Illumina letter to Dr. 5 Marcia Eisenberg 17 PX9230 Subpoena to Testify at 5 a Deposition 18 19 DEFENDANTS' EXHIBITS: 20 21 EXHIBIT EXHIBIT PAGE 22 Exhibit 1 Transaction Review - 5 Referral Agreement 23 24 Exhibit 2 Quest Diagnostics 6 article 25 Exhibit 3 Oncology Portfolio Plan 6</p>	<p style="text-align: right;">Page 145</p> <p>1 M. EISENBERG, PhD. 2 C E R T I F I C A T E 3 4 STATE OF NEW YORK) : SS.: 5 COUNTY OF SUFFOLK) 6 7 I, NICOLE VELTRI, RPR, CRR, a Notary 8 Public for and within the State of New York, 9 do hereby certify: 10 That the witness whose examination is 11 hereinbefore set forth was duly sworn and 12 that such examination is a true record of 13 the testimony given by that witness. 14 I further certify that I am not related 15 to any of the parties to this action by 16 blood or by marriage and that I am in no way 17 interested in the outcome of this matter. 18 IN WITNESS WHEREOF, I have hereunto set 19 my hand this 24th day of June 2021. 20 21 22 23 24 25</p>

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<p style="text-align: right;">Page 146</p> <p>1 Leigh Oliver, Esquire 2 leigh.olver@hoganlovells.com 3 4 RE: Federal Trade Commission v. Illumina/Grail 5 6/24/2021, Marcia Eisenberg (#4670289) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 cs-midatlantic@veritext.com 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25</p>	<p style="text-align: right;">Page 148</p> <p>1 Federal Trade Commission v. Illumina/Grail 2 Marcia Eisenberg (#4670289) 3 ACKNOWLEDGEMENT OF DEPONENT 4 I, Marcia Eisenberg, do hereby declare that I 5 have read the foregoing transcript, I have made any 6 corrections, additions, or changes I deemed necessary as 7 noted above to be appended hereto, and that the same is 8 a true, correct and complete transcript of the testimony 9 given by me. 10 11 _____ 12 Marcia Eisenberg Date 13 *If notary is required 14 SUBSCRIBED AND SWORN TO BEFORE ME THIS 15 _____ DAY OF _____, 20____. 16 17 _____ 18 19 NOTARY PUBLIC 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 147</p> <p>1 Federal Trade Commission v. Illumina/Grail 2 Marcia Eisenberg (#4670289) 3 E R R A T A S H E E T 4 PAGE _____ LINE _____ CHANGE _____ 5 _____ 6 REASON _____ 7 PAGE _____ LINE _____ CHANGE _____ 8 _____ 9 REASON _____ 10 PAGE _____ LINE _____ CHANGE _____ 11 _____ 12 REASON _____ 13 PAGE _____ LINE _____ CHANGE _____ 14 _____ 15 REASON _____ 16 PAGE _____ LINE _____ CHANGE _____ 17 _____ 18 REASON _____ 19 PAGE _____ LINE _____ CHANGE _____ 20 _____ 21 REASON _____ 22 _____ 23 _____ 24 Marcia Eisenberg Date 25</p>	

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[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Page 13

The table content is almost entirely obscured by black redaction bars. Only a few small, isolated characters are visible within the grid structure.

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The table consists of four vertical columns. Each cell within these columns is filled with a solid black rectangle, indicating that the content has been redacted. The redaction covers nearly all text in the table, leaving only the grid structure visible. The redaction is consistent across all four columns and most rows.

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Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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