

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

**In the Matter of**

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

**and**

**GRAIL, Inc.,  
a corporation.**

**DOCKET NO. 9401**

**COMPLAINT COUNSEL'S MOTION *IN LIMINE* TO EXCLUDE THE DECLARATION  
AND DEPOSITION TRANSCRIPT OF GEORGE J. SERAFIN**

Complaint Counsel moves to exclude the declaration and deposition transcript of George J. Serafin. The Part 3 Rules provide for testimony from two types of witnesses: testifying expert witnesses and fact witnesses. Respondents' counsel did not list Mr. Serafin as a testifying expert on their Final Proposed Witness List and have confirmed that they are not offering Mr. Serafin as a testifying expert. Mr. Serafin's declaration and deposition transcript is thus inadmissible as expert testimony.

If Mr. Serafin is not a testifying expert, then his testimony is only admissible as fact witness testimony. Mr. Serafin is clearly not a fact witness, and even if he were, his declaration was produced far too late. Mr. Serafin's testimony offered through his declaration and deposition is thus inadmissible as fact witness testimony.

## BACKGROUND

Respondents served the declaration of George J. Serafin on July 17, 2021. The text of Respondents' transmittal email referred to Mr. Serafin's declaration as an "expert report."<sup>1</sup> On July 23, 2021, Respondents filed their Final Proposed Witness List. Respondents' Final Witness List did not include or mention Mr. Serafin. That same day, Respondents filed their Final Proposed Exhibit List on July 23, 2021, which included entries for Mr. Serafin's declaration and deposition transcript.<sup>2</sup>

On July 29, 2021, Complaint Counsel notified Respondents of its intent to move to strike the declaration of George Serafin.<sup>3</sup> Respondents' Counsel represented to Complaint Counsel that that the declaration of George Serafin is not an expert report and that Respondents are not presenting his statements as expert testimony.<sup>4</sup> During George Serafin's deposition on August 2, 2021, Respondents confirmed that the declaration of George Serafin { [REDACTED]

[REDACTED] }

[REDACTED]

[REDACTED]

[REDACTED] } Mr. Serafin stated in his deposition that { [REDACTED]

[REDACTED]

---

<sup>1</sup> Ex. A at 1 ("Attached are Respondents' expert reports from George Serafin, Richard Abrams, Margaret Guerin-Calvert, Richard Cote, Rob Rock and Dennis Carlton.").

<sup>2</sup> See Ex. C at 67 (Respondents' Final Proposed Exhibit List, July 23, 2021).

<sup>3</sup> Ex. D at 1 (Email from B. O'Dea, Fed. Trade Comm'n, to Counsel for Respondents, July 29, 2021).

<sup>4</sup> See Ex. E at 1 (Email from B. O'Dea, Fed. Trade Comm'n, to Counsel for Respondents, July 30, 2021).

<sup>5</sup> Ex. F (George J. Serafin Deposition Tr.) at 4:7-20.

<sup>6</sup> *Id.* at 28:18-29:4.

[REDACTED] } [REDACTED]  
 [REDACTED]

## ARGUMENT

### 1. Mr. Serafin is Not an Expert Witness in This Case

Respondents' counsel did not designate Mr. Serafin as a testifying expert witness on their Final Proposed Witness List.<sup>9</sup> Respondents' counsel have also [REDACTED]

[REDACTED] } The Court's Scheduling Order set July 16, 2021 as the "Deadline for Respondents' Counsel to provide expert witness reports."<sup>11</sup> If Respondents wanted to introduce Mr. Serafin as a testifying expert witness, they were obligated to list him on their final witness list and to seek leave to add him as an additional expert beyond the five experts allowed by Rule §3.31A(b).

The Part 3 Rules on expert discovery contemplate expert testimony only from experts who have been designated as testifying witnesses for the evidentiary hearing. The very first sentence of Rule 3.31A(a) makes clear that "expert witnesses" for purposes of Part 3 are "experts [the parties] intend to call as witnesses at the hearing."<sup>12</sup> Rule 3.31A(e) confirms this definition by making clear that discovery is only permitted with respect to experts who are listed on the parties' final witness lists: "A party may not discover facts known or opinions held by an expert

<sup>7</sup> *Id.* at 30:17-31:17.

<sup>8</sup> *Id.* at 31:18-33:17; 33:9-33:17; 43:18-44:4; 78:11-78:16.

<sup>9</sup> *See* Ex. B. at 6 (Respondents' Final Proposed Witness List, July 23, 2021).

<sup>10</sup> *See* Ex. F (George J. Serafin Deposition Tr.) at 4:7-20.

<sup>11</sup> Scheduling Order at 2, Dkt. No. 9401 (Apr. 26, 2021) (emphasis added).

<sup>12</sup> § 3.31A(a) (emphasis added).

who has been retained or specifically employed by another party in anticipation of litigation or preparation for hearing and who is not listed as a witness for the evidentiary hearing.”<sup>13</sup>

During Mr. Serafin’s deposition, Respondents’ counsel asserted that [REDACTED] [REDACTED] } There is no mechanism for the submission of an “expert declaration” by a non-testifying “consulting” expert under the Part 3 Rules. If there were, parties could enter unlimited “expert declarations” into the record without leave of the court, without complying with the requirements of Rule 3.31A(c), and without offering the other side any opportunity for discovery. Such an interpretation of the Part 3 Rules would vastly increase the burdens on this Court, violate precepts of fundamental fairness, and constitute an unacceptable end run around the procedures and limitations the Commission set for expert testimony in Part 3.<sup>15</sup>

Mr. Serafin’s declaration does not comply with the requirements for expert reports set forth in Rule 3.31A(c). Although Mr. Serafin’s declaration is drafted in a style that imitates that of an expert report, Mr. Serafin did not list all publications that he authored within the preceding 10 years, as Rule 3.31A(c) requires for expert reports. Rather, Mr. Serafin provided what he described as a [REDACTED]

[REDACTED]

[REDACTED]

---

<sup>13</sup> *Id.*

<sup>14</sup> Ex. F (George J. Serafin Deposition Tr.) at 4:7-20.

<sup>15</sup> *See* In the Matter of LabMD, Inc., Order Granting Motion in Limine to Limit the Testimony of Eric Johnson, Dkt. No. 9357 at 4 (May 8, 2014) (“A witness who presents testimony that falls under Rule 702 must be designated as an expert, as a matter of fundamental fairness, to prevent lay witness opinions being offered without compliance with all the expert witness disclosure requirements set forth in FTC Rule 3.31A, which enable a determination of the reliability of the expert’s opinions.”).



[REDACTED]

Mr. Serafin specifically confirmed in his deposition that [REDACTED]

[REDACTED]

Mr. Serafin also admitted in his deposition that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } Mr.

Serafin’s declaration also fails to provide a complete statement of the basis and reasons for the specific opinions he expressed in his declaration. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondents should not be permitted to introduce expert testimony into the record without complying with the basic requirements of Rule 3.31A(c).

<sup>16</sup> Ex. F (George J. Serafin Deposition Tr.) at 69:16-70:19.

<sup>17</sup> *Id.* at 70:20-75:11.

<sup>18</sup> *Id.* at 36:9-37:5; 44:5-45:20; 45:21-47:13.

<sup>19</sup> *Id.* at 115:6-116:4.

<sup>20</sup> *See, e.g., id.* at 187:22-188:22 [REDACTED]

## 2. Mr. Serafin Is Not a Percipient Fact Witness

Mr. Serafin's testimony is fundamentally expert testimony, rather than relevant fact testimony. Given that Respondents have not designated Mr. Serafin as a testifying expert witness { [REDACTED] }, the scope of his testimony is limited to issues about which he has personal knowledge. The Court's Scheduling Order adopts Federal Rule of Evidence 701,<sup>21</sup> which provides that:

[i]f a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.<sup>22</sup>

The Scheduling Order also adopts Federal Rule of Evidence 602, which states that witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.<sup>23</sup> The Advisory Committee Note explains that this requires a witness to "be a percipient witness whose testimony is grounded in first-hand information obtained through one of his or her five senses."<sup>24</sup>

Mr. Serafin, however, is not a percipient fact witness. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>21</sup> Scheduling Order, Additional Provision 17 ("Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.").

<sup>22</sup> Fed. R. Evid. 701.

<sup>23</sup> Scheduling Order, Additional Provision 16, Dkt. No. 9401 (Apr. 26, 2021); Fed. R. Evid. 602.

<sup>24</sup> 405 Condo Assocs LLC. v. Greenwich Ins. Co., 2012 U.S. Dist. LEXIS 181922, \*13 (S.D.N.Y. Dec. 26, 2012); Fed. R. Evid. 602, Advisory Committee Note.

<sup>25</sup> Ex. G at ¶5 (Declaration of George J. Serafin).

[REDACTED]

[REDACTED]

Mr. Serafin { [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] } Respondents themselves clearly viewed Mr. Serafin as an expert;

they identified Mr. Serafin to Complaint Counsel on May 21, 2021 as a potential “expert

witness” in their initial proposed expert witness list.<sup>29</sup>

In his deposition, Mr. Serafin admitted { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Similarly, Mr. Serafin stated that he was { [REDACTED]

[REDACTED]

<sup>26</sup> Ex. F (George J. Serafin Deposition Tr.) at 28:18-29:4.

<sup>27</sup> *Id.* at 30:6-30:8.

<sup>28</sup> Ex. G at 2 (Declaration of George J. Serafin) (emphasis added).

<sup>29</sup> Ex. H at 2 (Respondents’ Initial Expert Witness List).

<sup>30</sup> Ex. F (George J. Serafin Deposition Tr.) at 30:17-31:6.

[REDACTED] } Mr.

Serafin is not a percipient witness with respect to the underlying facts contained within his report.

Instead, Mr. Serafin’s testimony relied on his review and analysis of documents and deposition transcripts of others with first-hand knowledge. Mr. Serafin’s declaration lists [REDACTED]

[REDACTED] } Mr. Serafin made clear in his deposition that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }

Even if Mr. Serafin were somehow to be considered a relevant fact witness, the submission of his testimony by Respondents was untimely. The Scheduling Order set June 25, 2021 as the close of discovery. Respondents cannot avail themselves of the July 16, 2021 deadline for “expert witness reports” under the Scheduling Order for a declaration that

<sup>31</sup> Ex. F (George J. Serafin Deposition Tr.) at 42:11-42:20.

<sup>32</sup> See *id.* at 53:17-54:20.

<sup>33</sup> *Id.* at 187:22-188:22.

<sup>34</sup> *Id.* at 78:11-78:16.

Respondents themselves have determined is not an expert report, from an individual who Respondents have not designated as a testifying expert witness. Thus, Respondents' attempt to introduce the declaration of Mr. Serafin into the record three weeks after the close of discovery would clearly violate the Court's Scheduling Order even if he were to be considered a fact witness. Accordingly, Mr. Serafin's declaration should be excluded. Because Mr. Serafin's testimony in his deposition transcript is similarly based on his untimely declaration, is not offered as expert testimony, and is not based on Mr. Serafin's personal knowledge, it should also be excluded from the record.

### CONCLUSION

For these reasons, Complaint Counsel respectfully requests that the Court enter the accompanying proposed order to exclude the Declaration and Deposition Transcript of George J. Serafin.

Date: August 9, 2021

Respectfully submitted,

*s/ Brian A. O'Dea*

---

Brian A. O'Dea  
Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
Telephone: (202) 326-2227  
Email: [bodea@ftc.gov](mailto:bodea@ftc.gov)

*Counsel Supporting the Complaint*

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

**In the Matter of**

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

**and**

**GRAIL, Inc.,  
a corporation.**

**DOCKET NO. 9401**

**[PROPOSED] ORDER TO EXCLUDE THE DECLARATION OF GEORGE J. SERAFIN  
AND DEPOSITION TRANSCRIPT OF GEORGE J. SERAFIN**

Upon Complaint Counsel’s Motion *in Limine* to Exclude the Declaration of George J. Serafin and Deposition Transcript of George J. Serafin, it is hereby:

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

ORDERED that Mr. Serafin’s Declaration and Deposition Transcript will not be received in evidence.

ORDERED:

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

Date: August \_\_\_\_\_, 2021

**STATEMENT OF CONFERENCE PURSUANT TO  
PARAGRAPH 4 OF THE SCHEDULING ORDER**

At 3:59 p.m. Eastern Daylight Time on August 4, 2021, Complaint Counsel emailed Respondents' Counsel asking to confer in good faith to resolve by agreement the issues raised by the motion and was unable to reach such an agreement.

Date: August 5, 2021

*s/ Brian A. O'Dea* \_\_\_\_\_  
Brian A. O'Dea

*Counsel Supporting the Complaint*

# Exhibit A



PUBLIC

**From:** [Michael Zaken](#)  
**To:** [Andrew, Jordan S.](#)  
**Cc:** [Zach, Daniel](#); [Mohr, Stephen A.](#); [Musser, Susan](#); [Cooke, William](#); [Verwilt, Hana](#); [Schrag, Joel L.](#); [Hulbert, Jason](#); [McAdams, John](#); [Hearle, Kevin](#); [Martin, Teresa](#); [Wint, Corene](#); [Simons, Bridget](#); [Illumina Trial Team](#); [LWVALORANTITRUST.LWTEAM@lw.com](mailto:LWVALORANTITRUST.LWTEAM@lw.com)  
**Subject:** In re Illumina & Grail, Docket No. 9401 -- Respondents' Expert Reports (Email 1 of 2)  
**Date:** Saturday, July 17, 2021 12:13:37 AM  
**Attachments:** [2021.07.16 -- Declaration of George J. Serafin.pdf](#)  
[2021.07.16 - Richard Abrams Expert Report.pdf](#)  
[2021.07.16 -- Expert Report of Margaret E. Guerin-Calvert Confidential.pdf](#)  
[2021.07.16 - Richard J. Cote Expert Report.pdf](#)  
[2021.07.16 -- Rob Rock Expert Report and Declaration.pdf](#)  
[2021.07.16 - Dennis Carlton Expert Report.pdf](#)

---

Counsel,

Attached are Respondents' expert reports from George Serafin, Richard Abrams, Margaret Guerin-Calvert, Richard Cote, Rob Rock and Dennis Carlton. I will follow up with additional reports and backup materials in a separate email.

Regards,

Michael

Michael Zaken  
Cravath, Swaine & Moore LLP  
825 8th Avenue  
New York, NY 10019  
212-474-1888

---

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.

# Exhibit B

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

**In the Matter of**

**Illumina, Inc.,  
a corporation**

**and**

**GRAIL, Inc.,  
a corporation,**

**Respondents**

**DOCKET NO. 9401**

**RESPONDENTS' FINAL PROPOSED WITNESS LIST**

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

- A. To amend this list, including to add or remove witnesses as necessary, including, but not limited to, in connection with any motions (including motions in limine) and the submission of witness testimony, exhibits or other evidence that Complaint Counsel may proffer;
- B. To call any witnesses necessary to present summaries of voluminous evidence, or to demonstrate the authenticity or admissibility of any such summaries;
- C. To supplement this list in light of any discovery that has not yet been completed;
- D. To supplement this list in light of the Complaint Counsel’s expert reports and/or expert depositions;

- E. To present testimony by investigational hearing or deposition transcript of any person identified by a Party or non-Party as an FTC Rule 3.33(c) or Federal Rule of Civil Procedure 30(b)(6) representative of that Party or non-Party pursuant to a 3.33(c) or 30(b)(6) notice served by Complaint Counsel or Respondents;
- F. To present testimony by declaration;
- G. To call the custodian of records of any Party or non-Party from whom documents or records have been obtained—including but not limited to those Parties and non-Parties listed below—to the extent necessary for the admission of documents or deposition testimony into evidence in the event a stipulation cannot be reached concerning the authenticity or admissibility of such documents or testimony;
- H. To call witnesses who may be necessary to lay the foundation for the admissibility of evidence should the parties prove unable to stipulate to admissibility;
- E. To call any witnesses for the purposes of rebuttal or impeachment;
- F. To question the persons listed below about any topics that are the subjects of testimony by witnesses called by Complaint Counsel;
- G. To call any of these individuals or other witnesses who are not named, including any individual identified in Complaint Counsel's or Respondents' Preliminary Witness Lists, Supplemental Witness Lists, Final Witness Lists, any witness lists disclosed as part of the district court litigation, or who was otherwise deposed in this proceeding or in the district court litigation for rebuttal testimony, including any person who has or may be identified by Complaint Counsel as a potential witness in this matter.

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

**PARTY WITNESS LIST**

1. **Francis deSouza** – President and Chief Executive Officer, Illumina, Inc. We expect Mr. deSouza will testify about Illumina’s business strategy; Illumina’s Next-Generation Sequencing Technology (“NGS”) products; Illumina’s customer relationships, including Illumina’s open offer and the standard contract for oncology customers; Illumina’s proposed re-acquisition of GRAIL (the “Proposed Transaction”); and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts,<sup>1</sup> and any topics identified by Complaint Counsel as potential topics for his testimony.
2. **Alex Aravanis** – Senior VP and Chief Technology Officer, Illumina, Inc. We expect Dr. Aravanis will testify about Illumina’s NGS products; switching between diagnostic platforms for clinical applications, including oncology; alternative diagnostic platforms; the history of GRAIL; the Proposed Transaction, including Illumina’s deal model; efficiencies and procompetitive effects of the Proposed Transaction; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for his testimony.
3. **Phil Febbo** – Chief Medical Officer, Illumina, Inc. We expect Dr. Febbo will testify about Illumina’s NGS products; efficiencies and procompetitive effects of the Proposed Transaction, including efficiencies and procompetitive effects relating to regulatory approval of GRAIL’s tests, including the Galleri test; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.
4. **Joydeep Goswami** – Senior VP, Corporate Development and Strategic Planning, Illumina Inc. We expect Dr. Goswami will testify about the Proposed Transaction, Illumina’s strategic planning, Illumina’s deal model, Illumina’s agreements with customers including the open offer and agreements relating to regulated, kitted tests on Illumina’s instruments; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for his testimony.
5. **Nicole Berry** – Senior VP and General Manager, Americas Region, Illumina, Inc. We expect Ms. Berry will testify about Illumina’s NGS products, Illumina’s negotiations with customers, Illumina’s customer relationships,

---

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

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

6. **Ammar Qadan** – VP and Global Head of Market Access, Illumina, Inc. We expect Mr. Qadan will testify about efficiencies and procompetitive effects of the Proposed Transaction, including efficiencies and procompetitive effects relating to regulatory approval of, third party payor reimbursement for, GRAIL's tests, including the Galleri test; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.
7. **Stacie Young** – Senior Director of Business Development, Illumina, Inc. We expect Ms. Young will testify about Illumina's agreements with customers including the open offer and agreements relating to regulated, kitted tests on Illumina's instruments ("Illumina's IVD Agreements"); and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in her deposition transcript and any topics identified by Complaint Counsel as potential topics for her testimony.
8. **Jay Flatley** – former Chief Executive Officer; Outgoing Chairman of Illumina's Board of Directors, Illumina, Inc. We expect Mr. Flatley will testify about Illumina's NGS products; the history of GRAIL; Illumina's Non-Invasive Prenatal Testing ("NIPT") business; the Proposed Transaction; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for his testimony.
9. **Nicholas Naclerio** – former Senior VP, Corporate & Venture Development, Illumina Inc.; Founding Partner, Illumina Ventures. We expect Dr. Naclerio will testify about Illumina's NIPT business; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for his testimony.
10. **John Leite** – former VP Clinical Business Development, Illumina, Inc.; Chief Business Officer, InterVenn Biosciences. We expect Dr. Leite will testify about Illumina's agreements with customers including agreements relating to regulated, kitted tests on Illumina's instruments, InterVenn's proteomics platform, InterVenn's cancer screening tests in development and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts

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

11. **Hans Bishop** – Chief Executive Officer, GRAIL, Inc. We expect Mr. Bishop will testify about the history of GRAIL; GRAIL’s business; GRAIL’s tests; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for his testimony.
12. **Josh Ofman** – Chief Medical Officer, GRAIL, Inc. We expect Mr. Ofman will testify about efficiencies and procompetitive effects of the Proposed Transaction relating to regulatory approval and reimbursement of GRAIL’s tests, including the Galleri test; oncology tests, including GRAIL’s tests; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.
13. **Aaron Freidin** – Senior VP, Finance, GRAIL, Inc. We expect Mr. Freidin will testify about efficiencies and procompetitive effects of the Proposed Transaction; GRAIL’s deal model; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his investigational hearing and deposition transcripts and any topics identified by Complaint Counsel as potential topics for his testimony.
14. **Arash Jamshidi** – VP of Bioinformatics and Data Science, GRAIL, Inc. We expect Mr. Jamshidi will testify about oncology tests, including GRAIL’s tests; switching between diagnostic platforms for clinical applications, including oncology; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his deposition transcript, and any topics identified by Complaint Counsel as potential topics for his testimony.
15. **Chris Della Porta** – Director of Growth Marketing, GRAIL, Inc. We expect Mr. Della Porta will testify about GRAIL’s business; oncology tests including GRAIL’s tests; efficiencies and procompetitive effects of the Proposed Transaction; and other topics relevant to the Complaint, Answer or any affirmative defenses, including facts and opinions expressed in his deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.

### **THIRD PARTY WITNESS LIST**

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

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

17. **Lauren Silvis** – Senior VP, External Affairs, Tempus Labs, Inc. (“Tempus Labs”). We expect Ms. Silvis will testify about Tempus Labs’ business; its oncology products; the Proposed Transaction; supply agreement negotiations with Illumina, including the open offer and the standard contract for oncology customers; and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in her investigational hearing and deposition transcripts, and any topics identified by Complaint Counsel as potential topics for her testimony.
18. **Jorge Velarde** – Senior Vice President, Corporate Development and Strategy, Singular Genomics. We expect Mr. Velarde will testify about the Proposed Transaction; Singular’s S-1 filing and subsequent Initial Public Offering (“IPO”); Singular’s NGS platform and products in development; the ability to use Singular’s platforms and products in development for cancer screening applications; switching between Illumina’s platforms and Singular’s platforms for clinical applications and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his deposition transcript, and any topics identified by Complaint Counsel as potential topics for his testimony.
19. **Matthew Strom** – Managing Director, Morgan Stanley. We expect Mr. Strom will testify about any contemplated fundraising, IPO, or merger by GRAIL; Illumina and GRAIL’s royalty and supply agreement; efficiencies and procompetitive effects of the proposed transaction; and other topics relevant to the Complaint, Answer or any affirmative defenses, including facts and opinions expressed in his deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.
20. **William Cance** – Chief Medical and Scientific Officer at the American Cancer Society. We expect Dr. Cance will testify about the American Cancer Society’s operations, current cancer screening methods, the importance of early cancer detection, innovation in cancer detection and treatments, the importance of customer choice, market definition, regulatory processes and approvals, and other topics relevant to the Complaint, Answer, or any affirmative defenses, including facts and opinions expressed in his declaration and deposition transcript and any topics identified by Complaint Counsel as potential topics for his testimony.

#### **EXPERT WITNESS LIST**

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



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

2. **Richard Cote** – Richard Cote is an expert on the field of cancer care, the area of test development for cancer screening and in the area of next-generation sequencing (“NGS”), and is a medical doctor. He will testify about cancer and cancer treatment, methods for cancer screening, the differences between different types of oncology tests in the cancer continuum, oncology tests on the market and in development, comparisons between such tests on the market and in development, the development timelines for such oncology tests, various platforms—both NGS and non-NGS—that can be used for such oncology tests, switching between different platforms for such oncology tests and the potential use of *in vitro* diagnostic (“IVD”) kitted tests for oncology testing. He will also testify regarding technical issues relating to the relevant market(s) alleged by Complaint Counsel, other topics relevant to the Complaint and Answer, any topics contained in his expert report(s) or deposition and any topics raised by Complaint Counsel's experts in their expert reports or depositions and will respond to any technical issues or other arguments put forward by Complaint Counsel, primarily focusing on issues relating to cancer screening and NGS technologies.
3. **Patricia Deverka** – Patricia Deverka is an expert on the field of health economics and outcomes research, focusing on the clinical adoption of genomics. She will testify about the process for obtaining private payor and Medicare/Medicaid coverage, including potential pathways for multi-cancer screening tests and Illumina's ability to accelerate that process for GRAIL's Galleri test, payor relationships, other topics relevant to the Complaint and Answer, any topics contained in her expert report(s) or deposition and any topics raised by Complaint Counsel's experts in their expert reports or depositions and will respond to any other arguments put forward by Complaint Counsel, primarily focusing on third party payor reimbursement and Medicare/Medicaid coverage for cancer screening tests.
4. **Margaret Guerin-Calvert** – Margaret Guerin-Calvert is an industrial organization, antitrust and healthcare economics expert. She will testify about issues relating to Illumina's open offer and standard contract for oncology, including Illumina's standard IVD terms, as a means to reduce or eliminate certain alleged potential anticompetitive effects raised by Complaint Counsel and Dr. Fiona Scott Morton, relating to Illumina's proposed acquisition of GRAIL; other topics relevant to the Complaint and Answer; any topics contained in her expert report(s) or deposition; and any topics raised by Complaint Counsel's experts in their expert reports or depositions and will respond to any economic analysis or other arguments put forward by

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

5. **Robert Willig** – Robert Willig is an industrial organization and antitrust economics expert. He will testify about the soundness and reliability of the relevant product market defined by Dr. Fiona Scott Morton, and her analysis in support of that definition, market participants’ conduct and whether their conduct is consistent with Complaint Counsel’s claim that there will be no viable substitutes for Illumina’s NGS platforms (from the standpoint of purported multi-cancer early detection (“MCED”) test developers), during the relevant time period, the bargaining model presented by Dr. Scott Morton, its applicability to the proposed merger, and its robustness, other topics relevant to the Complaint and Answer, any topics contained in his expert report(s) or deposition and any topics raised by Complaint Counsel’s experts in their expert reports or depositions and will respond to any economic analysis or other arguments put forward by Complaint Counsel, primarily focusing on the relevant product market from an economics standpoint, bargaining and theories of anticompetitive effects.
6. **Robert Rock**<sup>2</sup> – Robert Rock is an expert in financial accounting, contract compliance, and audit engagements. He will testify about the proposed transaction, customer relationships and contract negotiations; Illumina’s open offer, standard contract for oncology customers, and any other agreements, including the ability of an independent auditor or consultant to be effective in examining an entity’s compliance with various terms of contracts, performing agreed-upon procedures related to an entity’s compliance with specified terms and performing agreed-upon procedures related to an entity’s internal controls over compliance with specified terms; other topics relevant to the Complaint and Answer; any topics contained in his expert report(s) or deposition; and any topics raised by Complaint Counsel’s experts in their expert reports or depositions, and will respond to any accounting, compliance or audit analysis or other arguments put forward by the Complaint Counsel, primarily focusing on the open offer and other contractual terms from Illumina.
7. **Richard Abrams**<sup>3</sup> – Richard Abrams is an expert in the field of primary and preventative care, and is a medical doctor. He will testify about current and anticipated cancer screening options, including purported MCED tests, the factors primary care physicians would consider prior to using a MCED test and whether the blood-based tests with other characteristics could substitute for GRAIL’s Galleri test and vice versa, other topics relevant to the Complaint and Answer; any topics contained in his expert report(s) or deposition; and any

---

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

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

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

Dated: July 23, 2021

Respectfully submitted,

/s/ Richard J. Stark  
Christine A. Varney  
Richard J. Stark  
David R. Marriott  
J. Wesley Earnhardt  
Sharonmoyee Goswami  
CRAVATH, SWAINE & MOORE LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1000  
cvarney@cravath.com  
rstark@cravath.com  
dmarriott@cravath.com  
wearnhardt@cravath.com  
sgoswami@cravath.com

*Attorneys for Respondent  
Illumina, Inc.*

Michael G. Egge  
Marguerite M. Sullivan  
Anna M. Rathbun  
David L. Johnson  
LATHAM & WATKINS LLP,  
555 Eleventh Street NW  
Suite 1000  
Washington, D.C. 20004  
Telephone: (202) 637-2200  
Facsimile: (202) 637-2201  
michael.egge.lw.com

Alfred C. Pfeiffer  
505 Montgomery Street  
Suite 2000  
San Francisco, CA 94111-6538  
Telephone: (415) 391-0600  
Facsimile: (415) 395-8095  
Al.pfeiffer@lw.com

*Attorneys for Respondent  
GRAIL, Inc.*

**CERTIFICATE OF SERVICE**

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

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

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

*Complaint Counsel*  
**U.S. Federal Trade Commission**

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

July 23, 2021

/s/ Richard J. Stark  
Richard J. Stark

## EXHIBIT C

REDACTED IN ENTIRETY

# Exhibit D

PUBLIC

**From:** [O'Dea, Brian A.](mailto:O'Dea, Brian A.)  
**To:** [sgoswami@cravath.com](mailto:sgoswami@cravath.com); [Anna.Rathbun@lw.com](mailto:Anna.Rathbun@lw.com); [IlluminaTrialTeam@cravath.com](mailto:IlluminaTrialTeam@cravath.com); [LWVALORANTITRUST.LWTEAM@lw.com](mailto:LWVALORANTITRUST.LWTEAM@lw.com)  
**Cc:** [Simons, Bridget](mailto:Simons, Bridget); [Gaskin, Lauren](mailto:Gaskin, Lauren); [Musser, Susan](mailto:Musser, Susan); [Joseph, Matthew](mailto:Joseph, Matthew)  
**Subject:** In re Illumina & Grail (No. 9401) - Serafin Declaration & Deposition  
**Date:** Thursday, July 29, 2021 5:42:00 PM

---

Counsel,

Complaint Counsel intend to file a motion to strike the declaration of George Serafin on the basis that Respondents' final witness list does not include Mr. Serafin and the Commission Rules of Practice do not provide a mechanism for presenting opinions from a non-testifying expert.

George Serafin's deposition is scheduled for Monday, August 2 at 9:30am. In the event that that the motion is not resolved by the Court in advance of the scheduled 9:30am start time for the deposition, we intend to proceed with the deposition. I am available to meet and confer on this topic this evening or tomorrow between 10:00am and 4:00pm.

Relatedly, please provide an email address and location (city/state) for Mr. Serafin for his deposition on August 2. Please also provide the names and email addresses for any of Respondents' counsel who will appear at the deposition. We will provide this information to the court reporter.

Best,  
Brian

-----  
Brian O'Dea  
Attorney, Bureau of Competition  
Federal Trade Commission  
400 7<sup>th</sup> St., SW  
Washington, DC 20024  
[bodea@ftc.gov](mailto:bodea@ftc.gov)  
(202) 326-2227



## EXHIBIT E

REDACTED IN ENTIRETY

## EXHIBIT F

REDACTED IN ENTIRETY

## EXHIBIT G

REDACTED IN ENTIRETY

# Exhibit H

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

**In the Matter of**

Illumina, Inc.,  
a corporation, and

and

GRAIL, Inc.,  
a corporation,

Respondents

Docket No. 9401

**RESPONDENTS' EXPERT WITNESS LIST**

Pursuant to the Scheduling Order entered in the above-captioned proceeding on April 26, 2021, this list designates the witnesses whom Illumina, Inc. (“Illumina”) and GRAIL, Inc. (“GRAIL”) (collectively, the “Respondents”) may call as expert witnesses to testify in this proceeding.

Respondents reserve the following rights:

- A. To provide supplemental expert reports and opinions, if necessary, to address any rebuttal or criticisms of the opinions offered by an expert or to supplement an expert’s conclusions and the basis therefore.
- B. To provide, through the below-identified experts or through subsequently identified experts, expert testimony rebutting any expert report or testimony offered by Complaint Counsel’s expert witnesses.
- C. Not to call at the hearing any of the persons listed, as circumstances may warrant.
- D. To call any of these individuals or any person at the hearing in order to provide rebuttal testimony.

Subject to these reservations of rights, Respondents provide the following list:

1. **Dennis Carlton:** Dr. Carlton's *curriculum vitae* is enclosed, which identifies all publications authored by Dr. Carlton within the last ten years. Also enclosed is a list of all matters in which Dr. Carlton has testified or has been deposed within the last four years. Enclosed are all transcripts of Dr. Carlton's testimony from these matters that are not under seal and that are within the possession, custody, or control of Respondents or Dr. Carlton.
2. **Richard Cote:** Dr. Cote's *curriculum vitae* is enclosed, which identifies most publications authored by Dr. Cote within the last ten years. Also enclosed is a list of Dr. Cote's additional publications within the last ten years and all matters in which Dr. Cote has testified or has been deposed within the last four years. Enclosed are all transcripts of Dr. Cote's testimony that are not under seal and that are in the possession, custody, or control of Respondents or Dr. Cote.
3. **George Serafin:** Mr. Serafin's *curriculum vitae* is enclosed, which identifies all publications authored by Mr. Serafin within the last ten years. Also enclosed is the name of the one matter in which Mr. Serafin has testified or has been deposed within the last four years. The transcript of this testimony is under seal and cannot be disclosed.
4. **Patricia Deverka:** Dr. Deverka's *curriculum vitae* is enclosed, which identifies all publications authored by Dr. Deverka within the last ten years. Dr. Deverka has not testified or been deposed within the last four years.
5. **Joseph Ferrara:** Mr. Ferrara's *curriculum vitae* is enclosed, which identifies all publications authored by Mr. Ferrara within the last ten years. Mr. Ferrara has not testified or been deposed within the last four years.
6. **Margaret Guerin-Calvert:** Ms. Guerin-Calvert's *curriculum vitae* is enclosed, which identifies all publications authored by Ms. Guerin-Calvert within the last ten years. Also enclosed is a list of all matters in which Ms. Guerin-Calvert has testified or has been deposed within the last four years. The transcripts of this testimony are under seal and cannot be disclosed.
7. **Tasneem Chipty:** Dr. Chipty's *curriculum vitae* is enclosed, which identifies all publications authored by Dr. Chipty within the last ten years. Also enclosed is a list of all matters in which Dr. Chipty has testified or has been deposed in the last four years. Enclosed are all transcripts of Dr. Chipty's testimony that are not under seal and that are within the possession, custody, or control of Respondents or Dr. Chipty.
8. **Robert Willig:** Dr. Willig's *curriculum vitae* is enclosed, which identifies all publications authored by Mr. Willig within the last ten years. Also enclosed is a list of all matters in which Dr. Willig has testified or has been deposed within the last four years. Enclosed are

all transcripts of Dr. Willig's testimony from these matters that are not under seal and that are within the possession, custody, or control of Respondents or Dr. Willig.

9. **Daniel O'Brien:** Dr. O'Brien's *curriculum vitae* is enclosed, which identifies all publications authored by Dr. O'Brien within the last ten years. Also enclosed is the name of the one matter in which Dr. O'Brien has testified or has been deposed within the last four years. The transcript of this testimony is under seal and cannot be disclosed.
10. **Judge Paul Michel:** Judge Michel's *curriculum vitae* is enclosed. Enclosed is a list of all publications authored by Judge Michel within the last ten years, and the name of the one matter in which Judge Michel has testified or has been deposed within the last four years. Also enclosed are all the excerpts of the transcript of this testimony that are within the possession, custody, or control of Respondents or Judge Michel.
11. **Judge Abraham Sofaer:** Judge Sofaer's *curriculum vitae* is enclosed, which identifies some publications authored by Judge Sofaer within the last ten years. Also enclosed is a list of additional publications authored by Judge Sofaer within the last ten years. Judge Sofaer has not testified or been deposed within the last four years.
12. **Robert Rock:** Mr. Rock's *curriculum vitae* is enclosed. He has not authored any publications in the last ten years. Also enclosed is a list of all matters in which Mr. Rock has testified or has been deposed within the last four years. Also enclosed are all transcripts of Mr. Rock's testimony from these matters that are not under seal and that are within the possession, custody, or control of Respondents or Mr. Rock.
13. **Sean Iyer:** Mr. Iyer's *curriculum vitae* is enclosed, which identifies all publications authored by Mr. Iyer within the last ten years. Also enclosed is a list of all matters in which Mr. Iyer has testified or has been deposed within the last four years. Also enclosed are transcripts of Mr. Iyer's testimony from those matters that are not under seal and that are within the possession, custody, or control of Respondents or Mr. Iyer.
14. **Charles Mathews:** Mr. Mathews' *curriculum vitae* is enclosed, which identifies all publications authored by Mr. Mathews within the last ten years. Also enclosed is the name of the one matter in which Mr. Mathews has testified or has been deposed within the last four years. The transcript from this testimony is under seal and cannot be disclosed.
15. **Richard Abrams:** Dr. Abrams' *curriculum vitae* is enclosed. Dr. Abrams has not authored any publications in the last ten years. Dr. Abrams has not testified or been deposed within the last four years.

Dated: May 21, 2021

Respectfully submitted,

/s/ Richard J. Stark

Christine A. Varney  
Richard J. Stark  
David R. Marriott  
J. Wesley Earnhardt  
Sharonmoyee Goswami  
CRAVATH, SWAINE & MOORE LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1000  
cvarney@cravath.com  
rstark@cravath.com  
dmarriott@cravath.com  
wearhardt@cravath.com  
sgoswami@cravath.com

*Attorneys for Respondent  
Illumina, Inc.*

Michael G. Egge  
Marguerite M. Sullivan  
Roman Martinez  
Anna M. Rathbun  
Carla Weaver  
David L. Johnson  
Charles A. Berdahl  
LATHAM & WATKINS LLP,  
555 Eleventh Street NW  
Suite 1000  
Washington, D.C. 20004  
Telephone: (202) 637-2200  
Facsimile: (202) 637-2201  
michael.egge.@lw.com



Alfred C. Pfeiffer  
505 Montgomery Street  
Suite 2000  
San Francisco, CA 94111-6538  
Telephone: (415) 391-0600  
Facsimile: (415) 395-8095  
Al.pfeiffer@lw.com

*Attorneys for Respondent  
GRAIL, Inc.*

**CERTIFICATE OF SERVICE**

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

*Complaint Counsel*

**U.S. Federal Trade Commission**

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

May 21, 2021

/s/ Richard J. Stark

Richard J. Stark

**CERTIFICATE OF SERVICE**

I hereby certify that on August 9, 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:

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

s/ Brian A. O’Dea  
 Brian A. O’Dea

*Counsel Supporting the Complaint*