

**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

**NON-PARTY INVITAE CORPORATION'S
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), non-party Invitae Corporation ("Invitae") respectfully moves this Court for *in camera* treatment of twelve competitively sensitive, confidential business documents and sections of four deposition transcripts (the "Confidential Documents"). Invitae produced these documents, among others, and provided testimony in response to a non-party subpoena and civil investigative demand in this matter. The Federal Trade Commission ("FTC") has now notified Invitae that it intends to introduce thirty-two of Invitae's documents, including the Confidential Documents, into evidence at the administrative trial in this matter. *See* Letter from the FTC dated July 26, 2021 (attached as Exhibit A).¹

The Confidential Documents warrant protection from public disclosure given the sensitive business information they contain. Thus, Invitae submits this Motion *in camera* treatment of the Confidential Documents for five years.

All of the materials for which Invitae is seeking *in camera* treatment are confidential

¹ The FTC in its letter dated July 26, 2021, identified thirty Invitae documents it intends to introduce into evidence. The FTC sent Invitae an email on July 30, 2021, identifying two additional Invitae documents it intends to introduce into evidence. Invitae is not seeking *in camera* treatment for either of the additional two documents.

business documents, such that if they were to become part of the public record, Invitae would be significantly harmed in its ability to compete in the medical genetic testing and information industry. For the reasons discussed in this motion, Invitae requests that this Court afford its confidential business documents *in camera* treatment for five years. In support of this motion, Invitae relies on the Affidavit of Tom Brida (“Brida Declaration”), attached as Exhibit B, which provides additional details regarding the documents for which Invitae is seeking *in camera* treatment.

I. THE DOCUMENTS FOR WHICH PROTECTION IS SOUGHT

Invitae seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as Exhibit C, except for PX9176, which is attached as Exhibit D. Attached as Exhibit E are portions of the deposition transcripts highlighting the sections for which *in camera* treatment is requested.

Exhibit No.	Bates – Begin	Bates – End	Date	Full Name
PX7044	N/A	N/A	2/19/2021	Condensed Transcript of Deposition of Joshua Stahl (<i>in camera</i> treatment requested for selected passages): p. 38, line 23 to p. 39, line 2 p. 99, line 15 p. 100, line 2 to line 3 p. 128, line 9 p. 131, line 19 to line 20 p. 131, line 25 p. 132, line 1 p. 132, line 4 to line 6 p. 133, line 23 to p 134, line 15 p. 133, line 20 to line 21 p. 135, line 9 to line 11 p. 135, line 16 to line 19 p. 135, line 21 to p 136, line 8 p. 137, line 14 to line 21 p. 138, line 25 to p. 139, line 3

				<p>p. 139, line 6</p> <p>p. 139, line 8 to line 9</p>
PX7046	N/A	N/A	2/26/2021	<p>Condensed Transcript of Deposition of Sean Emerson George (<i>in camera</i> treatment requested for selected passages)</p> <p>p. 31, line 2</p> <p>p 39. Line 14 to line 15</p> <p>p. 40, line 4 to line 8</p> <p>p. 51, line 15 to line 24</p> <p>p. 52, line 7</p> <p>p. 55, line 11 to line 12</p> <p>p. 55, line 14</p> <p>p. 55, line 16 to line 17</p> <p>p. 60, line 10</p> <p>p. 61, line 18</p> <p>p. 61, line 21 to line 22</p> <p>p. 65, line 17 to line 18</p> <p>p 74, line 25</p> <p>p. 76, line 5 to line 6</p> <p>p. 77, line 20 to line 22</p> <p>p. 77, line 24 to p. 78, line 1</p> <p>p. 78, line 4 to line 6</p> <p>p. 78, line 9</p> <p>p. 78, line 17</p> <p>p. 78, line 22</p> <p>p. 80, line 17 to line 19</p> <p>p. 81, line 5 to line 6</p> <p>p. 81, line 8</p> <p>p. 83, line 21 to line 24</p> <p>p. 89, line 16 to line 17</p> <p>p. 95, line 13 to line 17</p> <p>p. 98, line 1 to line 2</p> <p>p. 98, line 8 to line 9</p> <p>p. 103, line 23 to p. 104, line 1</p> <p>p. 107, line 19 to line 23</p> <p>p. 108, line 2 to line 11</p>

				<p>p. 113, line 10 to line 11</p> <p>p. 122, line 19 to line 20</p> <p>p. 122, line 24</p> <p>p. 123, line 1</p> <p>p. 123, line 19</p> <p>p. 124, line 1</p> <p>p. 124, line 3 to line 12</p> <p>p. 125, line 5 to line 6</p> <p>p. 125, line 25 to p. 126, line 1</p> <p>p. 126, line 11 to line 12</p> <p>p. 128, line 1 to line 2</p> <p>p. 130, line 12 to line 13</p> <p>p. 130, line 21</p> <p>p. 132, line 23</p> <p>p. 148, line 25 to p. 149, line 1</p> <p>p. 149, line 17 to line 18</p> <p>p. 150, line 6 to line 12</p> <p>p. 168, line 11</p>
PX7075	N/A	N/A	5/21/2021	<p>Video Videoconferenced Deposition of Joshua Allan Stahl (<i>in camera</i> treatment requested for selected passages)</p> <p>p. 51, line 2 to p. 54 line 22</p> <p>p. 55, line 4 to p. 57, line 25</p> <p>p. 58, line 13 to line 24</p> <p>p. 63, line 7 to p. 64, line 4</p> <p>p. 64, line 24 to p 65, line 24</p> <p>p. 66, line 1 to line 18</p> <p>p. 66, line 25 to p. 67, line 19</p> <p>p. 70, line 3 to line 12</p> <p>p. 77, line 12 to p. 78, line 11</p> <p>p. 80, line 5 to line 18</p> <p>p. 95, line 17 to line 22</p> <p>p. 96, line 4 to line 11</p>
PX7081	N/A	N/A	5/26/2021	<p>Remote Videotaped Deposition of Sean Emerson George (<i>in camera</i> treatment requested for selected passages)</p> <p>p.21, line 10 to line 11</p>

				<p>p.21, line 22</p> <p>p. 22, line 8 to line 9</p> <p>p. 22, line 11 to line 15</p> <p>p. 25, line 5 to line 8</p> <p>p. 34, line 20 to line 23</p> <p>p. 46, line 10 to line 11</p> <p>p. 63, line 13</p> <p>p. 63, line 21 to p. 64, line 6</p> <p>p. 65, line 19 to p. 66, line 9</p> <p>p. 67, line 13 to p. 68, line 5</p> <p>p. 68, line 9 to line 18</p> <p>p. 69, line 6 to line 16</p> <p>p. 69, line 22 to line 25</p> <p>p. 70, line 2 to line 9</p> <p>p. 81, line 8 to line 12</p> <p>p. 96, line 2 to p. 99, line 25</p>
PX8331	NVTA00000331	NVTA00000331	5/10/2019	Presentation: Illumina - Archer, May 10th, 2019
PX8333	NVTA00000830	NVTA00000830	9/25/2019	Presentation: Archer Overview, September 2019
PX8334	NVTA00000927	NVTA00000942	11/6/2019	Contract: First Amendment to the Individual Project Agreement #3
PX8335	NVTA00001097	NVTA00001112	3/11/2020	Email from Eric Olivares to Josiah Wilcots re: PacBio/Invitae Panel Development w/ Attach: Invitae_CONFIDENTIAL_PacBio_Task_111_2020.pdf
PX8336	NVTA00001571	NVTA00001571	8/19/2020	Presentation: Universal Illumina DxAccess Agreement
PX8337	NVTA00003116	NVTA00003117	6/8/2020	Email from Maria Bornstein to Brian Wright re: Archer_Illumina IVD Partnership Discounting Document Considerations
PX8338	NVTA00003118	NVTA00003119	6/8/2020	Email from Darren Fogg to Brian Wright re: Status of Illumina Contract
PX8339	NVTA00004245	NVTA00004247	10/9/2020	Email from Britton Russell to Brian Wright; Peter Swider re: Illumina Contract
PX8340	NVTA00004251	NVTA00004318	9/25/2020	Email from Maria Bornstein to Christian LaPointe; Brian Wright re: Partially Executed Agreement w/ Attach: ILMN_Archer IVD Dev and 2 IVD Plans 5sept24(executed).pdf
PX8355	NVTA00000000	NVTA00000011	1/30/2017	Email from Robbie Evans to Sean George re:

	116	6		NovaSeq Discussion?
PX9176	PX9176-001	PX9176-001	00/00/000 0	Spreadsheet: Invitae, Americas - National – Sales Report - Profiling Products and Services - 01-19-2021.xlsx
PX9177	PX9177-001	PX9177-005	??/??/20	Spreadsheet: Invitae, ArcherDX 2020 Distributor Price List

II. INVITAE’S DOCUMENTS ARE SECRET AND MATERIAL SUCH THAT DISCLOSURE WOULD RESULT IN SERIOUS INJURY TO INVITAE

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 Confidential Documents are both secret and material to Invitae’s business, as discussed in detail in the Brida Declaration. In sum, the materials at issue contain information of competitive significance to Invitae, such as pricing, costs of goods sold, and internal strategy. Invitae’s industry is highly competitive, and the material presented in the Confidential Documents would give Invitae’s competitors an unfair advantage in the marketplace. Brida Declaration at ¶¶ 3, 5-10.

Invitae’s mission is to make high-quality genetic testing affordable and accessible to everyone, and the specific methods Invitae uses to achieve this mission is proprietary to Invitae and not publicly known outside of Invitae. *Id.* Indeed, when Invitae produced the Confidential Documents, it took steps to maintain confidentiality by requesting that the FTC treat the documents as confidential in accordance with 15 U.S.C. § 18a(h); 16 C.F.R. § 2.1, et seq.; and any other applicable law, regulation, rule or practice. Because of the highly confidential and proprietary nature of the information and its materiality to Invitae’s business, *in camera* treatment is appropriate.

Finally, Invitae’s status as a non-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 non-party, which deserves “special solicitude” in its request for *in camera* treatment for its confidential business information. *See In re Kaiser Aluminum & Chern. Corp.*, 103 FTC 500, 500 (1984) (“As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”). Invitae’s non-party status therefore weighs in favor of granting *in camera* treatment to the Confidential Documents.

III. *IN CAMERA* TREATMENT FOR FIVE YEARS IS APPROPRIATE FOR THE CONFIDENTIAL DOCUMENTS

Because the Confidential Documents contain competitively significant information that Invitae continues to use and considers key to its business strategies, performance, and ongoing operations, lasting protection is appropriate in order to avoid competitive injury to Invitae’s business. *See In re 1-800 Contacts*, 2017 FTC LEXIS 55, at *3, *8 (2017) (*in camera* treatment is appropriate where the material remains “competitively sensitive.”). If Invitae’s Confidential Documents are disclosed, Invitae would lose the advantages it currently enjoys based on its efforts to maintain the confidentiality of the information contained in the Confidential Documents. *In re Otto Bock Healthcare N. Am., Inc.*, No. 9378, 2018 FTC LEXIS 111, at *11

(July 6, 2018) (granting *in camera* treatment for documents containing product level sales data and pricing information); *In re 1-800 Contacts*, 2017 FTC LEXIS 55, at *2-3.

Recognizing the public interest in holding all aspects of this proceeding open to the public, Invitae requests that the information contained in the Confidential Documents be granted *in camera* protection limited to five years. See *In re Louisiana Real Estate Appraisers Board*, Order on Non-Parties' Motions for *In Camera* Treatment (March 29, 2021) (granting protection for five years to confidential documents of nine non-parties); *In re Axon Enterprise, Inc.*, Order on Non-Parties' Motions for *In Camera* Treatment (October 2, 2020) (granting protection for five years to confidential documents of nine non-parties).

IV. CONCLUSION

For the reasons set forth above and in the accompanying Brida Declaration, Invitae respectfully requests that this Court grant *in camera* treatment for five years for its Confidential Documents.

Dated: August 5, 2021

Respectfully submitted,

/s/ Alvin Dunn
Alvin Dunn
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Counsel for Non-party Invitae Corporation

**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

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for non-party Invitae Corporation (“Invitae”) notified counsel for the parties via email on or about August 3, 2021, that it would be seeking *in camera* treatment of the Confidential Documents. Each party, through counsel, has indicated that it does not intend to oppose Invitae’s motion.

Dated: August 5, 2021

Respectfully submitted,

/s/ Alvin Dunn

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Counsel for Non-party Invitae Corporation

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
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In the Matter of

Illumina, Inc.,
a corporation,

and

GRAIL, Inc.,
a corporation,

Respondents.

Docket No. 9401

CERTIFICATE OF SERVICE

I, Alvin Dunn, declare under penalty of perjury that the following is true and correct. On August 5, 2021, I caused to be served the following documents on the parties listed below by the manner indicated:

- Non-Party Invitae Corporation’s Motion for *In Camera* Treatment, with accompanying Exhibits and Statement regarding Meet and Confer
- [Proposed] Order Granting *In Camera* Treatment

The Office of the Secretary (via FTC E-Filing System (public version) and email (non-public version))

April Tabor
Acting Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-172
Washington, DC 20580
ElectronicFiling@ftc.gov

The Office of the Administrative Law Judge (via FTC E-Filing System (public version) and email (non-public version))

The Honorable D, Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-106

Washington, DC 20580
oolj@ftc.gov

Complaint Counsel for Federal Trade Commission (via FTC E-Filing System (public version) and email (non-public version))

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Counsel for Respondent Illumina, Inc. (via FTC E-Filing System (public version) and email (non-public version))

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Counsel for Respondent Grail, Inc. (via FTC E-Filing System (public version) and email (non-public version))

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/s/ Alvin Dunn

**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.
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Docket No. 9401

NON-PARTY INVITAE CORPORATION’S
[PROPOSED] ORDER

Upon consideration of non-party Invitae Corporation (“Invitae”), Motion for *In Camera* Treatment, IT IS HEREBY ORDERED that the following documents are to be provided *in camera* treatment under 16 C.F.R. § 3.45 for five years from the date of this Order.

Exhibit No.	Bates – Begin	Bates – End	Date	Full Name
PX7044	N/A	N/A	2/19/2021	Condensed Transcript of Deposition of Joshua Stahl (<i>in camera</i> treatment requested for selected passages): p. 38, line 23 to p. 39, line 2 p. 99, line 15 p. 100, line 2 to line 3 p. 128, line 9 p. 131, line 19 to line 20 p. 131, line 25 p. 132, line 1 p. 132, line 4 to line 6 p. 133, line 23 to p 134, line 15 p. 133, line 20 to line 21 p. 135, line 9 to line 11 p. 135, line 16 to line 19

				<p>p. 135, line 21 to p 136, line 8</p> <p>p. 137, line 14 to line 21</p> <p>p. 138, line 25 to p. 139, line 3</p> <p>p. 139, line 6</p> <p>p. 139, line 8 to line 9</p>
PX7046	N/A	N/A	2/26/2021	<p>Condensed Transcript of Deposition of Sean Emerson George (<i>in camera</i> treatment requested for selected passages)</p> <p>p. 31, line 2</p> <p>p 39. Line 14 to line 15</p> <p>p. 40, line 4 to line 8</p> <p>p. 51, line 15 to line 24</p> <p>p. 52, line 7</p> <p>p. 55, line 11 to line 12</p> <p>p. 55, line 14</p> <p>p. 55, line 16 to line 17</p> <p>p. 60, line 10</p> <p>p. 61, line 18</p> <p>p. 61, line 21 to line 22</p> <p>p. 65, line 17 to line 18</p> <p>p 74, line 25</p> <p>p. 76, line 5 to line 6</p> <p>p. 77, line 20 to line 22</p> <p>p. 77, line 24 to p. 78, line 1</p> <p>p. 78, line 4 to line 6</p> <p>p. 78, line 9</p> <p>p. 78, line 17</p> <p>p. 78, line 22</p> <p>p. 80, line 17 to line 19</p> <p>p. 81, line 5 to line 6</p> <p>p. 81, line 8</p> <p>p. 83, line 21 to line 24</p> <p>p. 89, line 16 to line 17</p> <p>p. 95, line 13 to line 17</p> <p>p. 98, line 1 to line 2</p> <p>p. 98, line 8 to line 9</p>

				<p>p. 103, line 23 to p. 104, line 1</p> <p>p. 107, line 19 to line 23</p> <p>p. 108, line 2 to line 11</p> <p>p. 113, line 10 to line 11</p> <p>p. 122, line 19 to line 20</p> <p>p. 122, line 24</p> <p>p. 123, line 1</p> <p>p. 123, line 19</p> <p>p. 124, line 1</p> <p>p. 124, line 3 to line 12</p> <p>p. 125, line 5 to line 6</p> <p>p. 125, line 25 to p. 126, line 1</p> <p>p. 126, line 11 to line 12</p> <p>p. 128, line 1 to line 2</p> <p>p. 130, line 12 to line 13</p> <p>p. 130, line 21</p> <p>p. 132, line 23</p> <p>p. 148, line 25 to p. 149, line 1</p> <p>p. 149, line 17 to line 18</p> <p>p. 150, line 6 to line 12</p> <p>p. 168, line 11</p>
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PX7081	N/A	N/A	5/26/2021	Remote Videotaped Deposition of Sean Emerson George (<i>in camera</i> treatment requested for selected passages) p.21, line 10 to line 11 p.21, line 22 p. 22, line 8 to line 9 p. 22, line 11 to line 15 p. 25, line 5 to line 8 p. 34, line 20 to line 23 p. 46, line 10 to line 11 p. 63, line 13 p. 63, line 21 to p. 64, line 6 p. 65, line 19 to p. 66, line 9 p. 67, line 13 to p. 68, line 5 p. 68, line 9 to line 18 p. 69, line 6 to line 16 p. 69, line 22 to line 25 p. 70, line 2 to line 9 p. 81, line 8 to line 12 p. 96, line 2 to p. 99, line 25
PX8331	NVTA00000331	NVTA00000331	5/10/2019	Presentation: Illumina - Archer, May 10th, 2019
PX8333	NVTA00000830	NVTA00000830	9/25/2019	Presentation: Archer Overview, September 2019
PX8334	NVTA00000927	NVTA00000942	11/6/2019	Contract: First Amendment to the Individual Project Agreement #3
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PX8337	NVTA00003116	NVTA00003117	6/8/2020	Email from Maria Bornstein to Brian Wright re: Archer_Illumina IVD Partnership Discounting Document Considerations
PX8338	NVTA00003118	NVTA00003119	6/8/2020	Email from Darren Fogg to Brian Wright re: Status of Illumina Contract
PX8339	NVTA00004245	NVTA00004247	10/9/2020	Email from Britton Russell to Brian Wright; Peter Swider re: Illumina Contract

PUBLIC

PX8340	NVTA00004251	NVTA00004318	9/25/2020	Email from Maria Bornstein to Christian LaPointe; Brian Wright re: Partially Executed Agreement w/ Attach: ILMN_Archer IVD Dev and 2 IVD Plans 5sept24(executed).pdf
PX8355	NVTA00000116	NVTA00000116	1/30/2017	Email from Robbie Evans to Sean George re: NovaSeq Discussion?
PX9176	PX9176-001	PX9176-001	00/00/0000	Spreadsheet: Invitae, Americas - National – Sales Report - Profiling Products and Services - 01-19-2021.xlsx
PX9177	PX9177-001	PX9177-005	??/??/20	Spreadsheet: Invitae, ArcherDX 2020 Distributor Price List

ORDERED:

The Honorable D. Michael Chappell
Chief Administrative Law Judge

Dated:

EXHIBIT A

VIA EMAIL TRANSMISSION

Invitae Corporation
c/o Tom Brida
Invitae
1400 16th Street
San Francisco, CA 94103
tom.brida@invitae.com

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

Dear Mr. Brida:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on August 24, 2021. All exhibits admitted into evidence become part of the public record unless Chief Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). If you do not file an *in camera* motion, your documents will not receive *in camera* treatment and may be publicly disclosed. Judge Chappell may order that materials be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602 at *1 (July 2, 2018); and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed

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) 326-3106.

Sincerely,

/s/ Lauren Gaskin

Lauren Gaskin

Counsel Supporting the Complaint

Attachment

Attachment A

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX7044	PX7044-001	PX7044-058	2/19/2021	IH Transcript: Josh Stahl (Invitae)
PX7046	PX7046-001	PX7046-072	2/26/2021	IH Transcript: Sean George (Invitae)
PX7075	PX7075-001	PX7075-052	5/21/2021	Depo Transcript: Joshua Stahl (Invitae)
PX7081	PX7081-001	PX7081-052	5/26/2021	Depo Transcript: Sean George (Invitae)
PX8331	NVTA00000331	NVTA00000331	5/10/2019	Presentation: Illumina - Archer, May 10th, 2019
PX8333	NVTA00000830	NVTA00000830	9/25/2019	Presentation: Archer Overview, September 2019
PX8334	NVTA00000927	NVTA00000942	11/6/2019	Contract: First Amendment to the Individual Project Agreement #3
PX8335	NVTA00001097	NVTA00001112	3/11/2020	Email from Eric Olivares to Josiah Wilcots re: PacBio/Invitae Panel Development w/ Attach: Invitae_CONFIDENTIAL_PacBio_Task_111_2020.pdf
PX8336	NVTA00001571	NVTA00001571	8/19/2020	Presentation: Universal Illumina DxAccess Agreement
PX8337	NVTA00003116	NVTA00003117	6/8/2020	Email from Maria Bornstein to Brian Wright re: Archer_Illumina IVD Partnership Discounting Document Considerations
PX8338	NVTA00003118	NVTA00003119	6/8/2020	Email from Darren Fogg to Brian Wright re: Status of Illumina Contract
PX8339	NVTA00004245	NVTA00004247	10/9/2020	Email from Britton Russell to Brian Wright; Peter Swider re: Illumina Contract
PX8340	NVTA00004251	NVTA00004318	9/25/2020	Email from Maria Bornstein to Christian LaPointe; Brian Wright re: Partially Executed Agreement w/ Attach: ILMN_Archer IVD Dev and 2 IVD Plans 5sept24(executed).pdf
PX8342	PX8342-001	PX8342-022	7/9/2020	Document: Archer LiquidPlex Protocol for Illumina
PX8343	PX8343-001	PX8343-024	6/26/2018	Document: Archer Immunoverse - HS TCR Protocol for Illumina
PX8344	PX8344-001	PX8344-026	00/00/0000	Document: Archer FusionPlex Protocol for Illumina
PX8345	PX8345-001	PX8345-016	11/12/2019	Document: Archer VariantPlex Protocol for Illumina
PX8355	NVTA00000116	NVTA00000116	1/30/2017	Email from Robbie Evans to Sean George re: NovaSeq Discussion?
PX8358	NVTA00006624	NVTA00006631	1/19/2021	Email from Charles Dadswell to Tom Brida re: FTC Declaration w/ Attach: [11949-002] Valor- Draft Invitae Declaration v.2.DOCX
PX8359	NVTA00006664	NVTA00006673	1/21/2021	Email from Tom Brida to Charles Dadswell re: FTC Declaration w/ Attach: [11949-002] Valor- Draft Invitae Declaration v.2 (Invitae revisions 1.21.21).docx
PX8362	NVTA00006707	NVTA00006719	1/22/2021	Email from Charles Dadswell to Tom Brida re: FTC Declaration w/ Attach: [11949-002] Valor- Draft Open Letter to Invitae(5567390.1)[1].docx; Draft Invitae Declaration (1-22-21).docx
PX8448	FTC-INVITAE-0000001	FTC-INVITAE-0000045	5/14/2021	Email from Tom Brida to Jonathan Ripa and Benjamin Carver re: Revised Open Offer Letter from Illumina w/ Attach: Open Letter to Invitae -- 3.29.2021.pdf; 2021 04 21 - Addendum to Quote (Special Project)(NVTA) (1).docx
PX9176	PX9176-001	PX9176-001	00/00/0000	Spreadsheet: Invitae, Americas - National - Sales Report - Profiling Products and Services - 01-19-2021.xlsx
PX9177	PX9177-001	PX9177-005	??/??/20	Spreadsheet: Invitae, ArcherDX 2020 Distributor Price List

Confidentiality Notice
Attachment A

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX9179	PX9179-001	PX9179-022	7/9/2020	Document: Archer LiquidPlex Protocol for Illumina
PX9180	PX9180-001	PX9180-024	6/26/2018	Document: Archer Immunoverse-HS TCR Protocol for Illumina
PX9181	PX9181-001	PX9181-026	00/00/0000	Document: Archer FusionPlex Protocol for Illumina
PX9182	PX9182-001	PX9182-016	11/12/2019	Document: Archer VariantPlex Protocol for Illumina
PX9183	PX9183-001	PX9183-006	4/20/2017	Document: Archer PreSeq DNA QC Assay Protocol
PX9184	PX9184-001	PX9184-019	11/12/2019	Document: Archer VariantPlex HS/HGC Protocol for Illumina

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

DECLARATION OF THOMAS BRIDA IN SUPPORT OF NON-PARTY INVITAE CORPORATION’S MOTION FOR IN CAMERA TREATMENT

I, Thomas Brida, hereby declare as follows:

1. I am the General Counsel and Secretary of Invitae Corporation (“Invitae”). I make this declaration in support of Non-Party Invitae Corporation’s Motion for In Camera Treatment (the “Motion”). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have reviewed and am familiar with the documents Invitae produced in the above-captioned matter in response to a subpoena and civil investigative demand from the Federal Trade Commission. I provided a certification of authenticity as to the produced documents, including the documents that are the subject of the Motion. Given my position at Invitae, I am familiar with the type of information contained in the documents at issue and its competitive significance to Invitae. Based on my review of the documents, my knowledge of Invitae’s business, and my familiarity with the measures Invitae uses to protect the confidentiality of this type of information, I submit that the disclosure of these documents to the public and to competitors of Invitae would cause serious competitive injury to Invitae.

3. Invitae is in the business of delivering genetic testing services that support a lifetime of patient care – from inherited disease diagnoses, to family planning, to proactive health screening to personalized diagnosis, treatment, and monitoring of cancer. Those tests are delivered via a unique, rapidly expanding platform that serves patients, healthcare providers, biopharma companies, and other partners, thereby capturing the broad potential of genetics and helping to expand its use across the healthcare continuum. Invitae applies proprietary design, process automation, robotics and bioinformatics software solutions to achieve efficiencies in sample processing and complex variant interpretation, allowing medical interpretation at scale. The result is a new and simplified process for obtaining and using affordable, high-quality genetic information to inform critical healthcare decisions. That access and scale also enable genomic information to speed the discovery and development of new personalized medical therapies — all while making clinical genetic testing available to billions of people. Such methods and applications distinguish Invitae’s business model from its competitors and are critical to our growth and competition strategies.

4. The FTC has informed Invitae that it intends to use at the administrative hearing in this matter thirty-two of the documents that Invitae produced in response to a subpoena, which includes four deposition transcripts. Of these documents, the documents presented in the table below are particularly sensitive and contain confidential business information. As described in the Motion, Invitae seeks in camera protection for a period of five years for the following documents in their entirety, except for the deposition transcripts, as indicated.

Exhibit No.	Bates – Begin	Bates – End	Date	Full Name
PX7044	N/A	N/A	2/19/2021	Condensed Transcript of Deposition of Joshua Stahl (<i>in camera</i> treatment requested for selected passages): p. 38, line 23 to p. 39, line 2 p. 99, line 15 p. 100, line 2 to line 3

				<p>p. 128, line 9</p> <p>p. 131, line 19 to line 20</p> <p>p. 131, line 25</p> <p>p. 132, line 1</p> <p>p. 132, line 4 to line 6</p> <p>p. 133, line 23 to p 134, line 15</p> <p>p. 133, line 20 to line 21</p> <p>p. 135, line 9 to line 11</p> <p>p. 135, line 16 to line 19</p> <p>p. 135, line 21 to p 136, line 8</p> <p>p. 137, line 14 to line 21</p> <p>p. 138, line 25 to p. 139, line 3</p> <p>p. 139, line 6</p> <p>p. 139, line 8 to line 9</p>
PX7046	N/A	N/A	2/26/2021	<p>Condensed Transcript of Deposition of Sean Emerson George (<i>in camera</i> treatment requested for selected passages)</p> <p>p. 31, line 2</p> <p>p 39. Line 14 to line 15</p> <p>p. 40, line 4 to line 8</p> <p>p. 51, line 15 to line 24</p> <p>p. 52, line 7</p> <p>p. 55, line 11 to line 12</p> <p>p. 55, line 14</p> <p>p. 55, line 16 to line 17</p> <p>p. 60, line 10</p> <p>p. 61, line 18</p> <p>p. 61, line 21 to line 22</p> <p>p. 65, line 17 to line 18</p> <p>p 74, line 25</p> <p>p. 76, line 5 to line 6</p> <p>p. 77, line 20 to line 22</p> <p>p. 77, line 24 to p. 78, line 1</p> <p>p. 78, line 4 to line 6</p> <p>p. 78, line 9</p> <p>p. 78, line 17</p>

				<p>p. 78, line 22</p> <p>p. 80, line 17 to line 19</p> <p>p. 81, line 5 to line 6</p> <p>p. 81, line 8</p> <p>p. 83, line 21 to line 24</p> <p>p. 89, line 16 to line 17</p> <p>p. 95, line 13 to line 17</p> <p>p. 98, line 1 to line 2</p> <p>p. 98, line 8 to line 9</p> <p>p. 103, line 23 to p. 104, line 1</p> <p>p. 107, line 19 to line 23</p> <p>p. 108, line 2 to line 11</p> <p>p. 113, line 10 to line 11</p> <p>p. 122, line 19 to line 20</p> <p>p. 122, line 24</p> <p>p. 123, line 1</p> <p>p. 123, line 19</p> <p>p. 124, line 1</p> <p>p. 124, line 3 to line 12</p> <p>p. 125, line 5 to line 6</p> <p>p. 125, line 25 to p. 126, line 1</p> <p>p. 126, line 11 to line 12</p> <p>p. 128, line 1 to line 2</p> <p>p. 130, line 12 to line 13</p> <p>p. 130, line 21</p> <p>p. 132, line 23</p> <p>p. 148, line 25 to p. 149, line 1</p> <p>p. 149, line 17 to line 18</p> <p>p. 150, line 6 to line 12</p> <p>p. 168, line 11</p>
PX7075	N/A	N/A	5/21/2021	<p>Video Videoconferenced Deposition of Joshua Allan Stahl (<i>in camera</i> treatment requested for selected passages)</p> <p>p. 51, line 2 to p. 54 line 22</p> <p>p. 55, line 4 to p. 57, line 25</p> <p>p. 58, line 13 to line 24</p>

				<p>p. 63, line 7 to p. 64, line 4</p> <p>p. 64, line 24 to p 65, line 24</p> <p>p. 66, line 1 to line 18</p> <p>p. 66, line 25 to p. 67, line 19</p> <p>p. 70, line 3 to line 12</p> <p>p. 77, line 12 to p. 78, line 11</p> <p>p. 80, line 5 to line 18</p> <p>p. 95, line 17 to line 22</p> <p>p. 96, line 4 to line 11</p>
PX7081	N/A	N/A	5/26/2021	<p>Remote Videotaped Deposition of Sean Emerson George (<i>in camera</i> treatment requested for selected passages)</p> <p>p.21, line 10 to line 11</p> <p>p.21, line 22</p> <p>p. 22, line 8 to line 9</p> <p>p. 22, line 11 to line 15</p> <p>p. 25, line 5 to line 8</p> <p>p. 34, line 20 to line 23</p> <p>p. 46, line 10 to line 11</p> <p>p. 63, line 13</p> <p>p. 63, line 21 to p. 64, line 6</p> <p>p. 65, line 19 to p. 66, line 9</p> <p>p. 67, line 13 to p. 68, line 5</p> <p>p. 68, line 9 to line 18</p> <p>p. 69, line 6 to line 16</p> <p>p. 69, line 22 to line 25</p> <p>p. 70, line 2 to line 9</p> <p>p. 81, line 8 to line 12</p> <p>p. 96, line 2 to p. 99, line 25</p>
PX8331	NVTA00000331	NVTA00000331	5/10/2019	Presentation: Illumina - Archer, May 10th, 2019
PX8333	NVTA00000830	NVTA00000830	9/25/2019	Presentation: Archer Overview, September 2019
PX8334	NVTA00000927	NVTA00000942	11/6/2019	Contract: First Amendment to the Individual Project Agreement #3
PX8335	NVTA00001097	NVTA00001112	3/11/2020	Email from Eric Olivares to Josiah Wilcots re: PacBio/Invitae Panel Development w/ Attach:

				Invitae_CONFIDENTIAL_PacBio_Task_111_2020.pdf
PX8336	NVTA00001571	NVTA00001571	8/19/2020	Presentation: Universal Illumina DxAccess Agreement
PX8337	NVTA00003116	NVTA00003117	6/8/2020	Email from Maria Bornstein to Brian Wright re: Archer_Illumina IVD Partnership Discounting Document Considerations
PX8338	NVTA00003118	NVTA00003119	6/8/2020	Email from Darren Fogg to Brian Wright re: Status of Illumina Contract
PX8339	NVTA00004245	NVTA00004247	10/9/2020	Email from Britton Russell to Brian Wright; Peter Swider re: Illumina Contract
PX8340	NVTA00004251	NVTA00004318	9/25/2020	Email from Maria Bornstein to Christian LaPointe; Brian Wright re: Partially Executed Agreement w/ Attach: ILMN_Archer IVD Dev and 2 IVD Plans Sept24(executed).pdf
PX8355	NVTA00000116	NVTA00000116	1/30/2017	Email from Robbie Evans to Sean George re: NovaSeq Discussion?
PX9176	PX9176-001	PX9176-001	00/00/0000	Spreadsheet: Invitae, Americas - National – Sales Report - Profiling Products and Services - 01-19-2021.xlsx
PX9177	PX9177-001	PX9177-005	??/??/20	Spreadsheet: Invitae, ArcherDX 2020 Distributor Price List

5. *In camera* treatment is requested for selected passages of PX7044 and PX7075 (transcripts of depositions of Joshua Stahl) and PX7046 and PX7081 (transcripts of depositions of Sean George). *In camera* treatment of these passages is needed to prevent the disclosure of confidential and non-public information regarding Invitae’s market share, position in the market, competitive strategy and proprietary methods. Disclosure of this information would do business harm to Invitae and allow our competitors to duplicate some of our most important efforts.

6. PX8331, PX8333, and PX8336 are confidential, internal company presentations that describe in detail our current and planned future product offerings, their fit in the competitive landscape, and our internal assessment of our growth opportunities. Public disclosure of these documents would provide our competitors with sensitive information that they could use to their advantage, and to our disadvantage, in the marketplace.

7. PX8334 and PX8340 are confidential commercial agreements between Invitae and Illumina. These documents contain descriptions of Invitae’s proprietary processes and technology

as well as confidential and non-public pricing information. Invitae keeps this information in strict confidence because it would place Invitae at a competitive disadvantage should our competitors have access to these confidential terms.

8. Similarly, PX8337 is an email discussion between Invitae and Illumina regarding pricing for access to Illumina's equipment. PX8338 and PX8339 are confidential, proprietary internal analyses of these pricing terms. PX9176 and PX9177 present detailed pricing information for many of Invitae's products. The terms of these arrangements and the product pricing information are confidential and non-public. Invitae has devoted its resources to protecting the confidentiality of this information, and its disclosure we do business harm to Invitae.

9. PX8340 is an email discussion that includes a final executed copy of an agreement between a subsidiary of Invitae and Illumina. This agreement contains confidential pricing terms and details on the arrangement between these two companies. Should our competitors have access to this document, they would obtain sensitive information that would do competitive harm to Invitae.

10. PX8355 is an internal email between executives of Invitae discussing our competitively sensitive strategy. This email also reveals our approach to the market, and its disclosure would do business harm to Invitae.

I declare under penalty of perjury that the foregoing is true and correct.

Executed August 5, 2021 at San Francisco, California.



Thomas Brida

EXHIBIT C

**Exhibit Withheld from Public Filing
In Camera Treatment Requested**

EXHIBIT D

**Exhibit Withheld from Public Filing
In Camera Treatment Requested**

EXHIBIT E

**Exhibit Withheld from Public Filing
In Camera Treatment Requested**