

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.

Docket No. 9401

THIRD PARTY FREENOME HOLDINGS, INC.'S
MOTION FOR *IN CAMERA* TREATMENT
OF PROPOSED TRIAL EXHIBITS

Pursuant to 16 C.F.R. § 3.45(b) and the Administrative Law Judge’s April 26, 2021 Scheduling Order, Third Party Freenome Holdings, Inc. (“Freenome”) respectfully moves for *in camera* treatment of its testimony and documents that counsel supporting the Federal Trade Commission’s Complaint and/or counsel for Respondents Illumina, Inc. and GRAIL, Inc., have designated as trial exhibits for the upcoming hearing in this matter. For the reasons stated in the Supporting Memorandum below, Freenome asks that the Administrative Law Judge accord permanent *in camera* treatment to the documents in Categories I and II and the testimony in Category V, and ten-year *in camera* treatment to the documents in Categories III, IV, and V. As required by 16 C.F.R. § 3.22(c), a proposed Order accompanies this Motion.

Supporting Memorandum

Freenome is not a party in this matter. But it is engaged—in the words of the Federal Trade Commission’s Administrative Complaint—in a veritable “race” with GRAIL and other

firms “to develop and ultimately commercialize ... revolutionary technology” for multi-cancer early detection. Admin. Compl. (redacted public version) ¶ 4. Like GRAIL and a few other firms, Freenome is developing multi-cancer early detection technology—namely, its confidential and proprietary multiomics platform—that “seek[s] to shift the cancer paradigm by simultaneously screening for multiple cancers, including those not screened for today, using blood samples.” *Id.* Like GRAIL and a few other firms, Freenome is “researching, designing, and working to commercialize products that will shift the cancer screening and treatment paradigm.” *Id.* ¶ 26. Like GRAIL and a few other firms, Freenome uses next-generation sequencing equipment and related consumables purchased from Illumina. *Id.* ¶ 5.

In response to compulsory process issued during the FTC’s investigation of Illumina’s proposed acquisition of GRAIL and during discovery in the pending matter, Freenome has produced thousands of pages of documents and hundreds of pages of testimony disclosing and describing in considerable detail, *inter alia*, (1) its innovation, development, and continuing refinement of a confidential and proprietary multiomics platform for multi-cancer early detection; (2) its ongoing research, design, and eventual commercialization of products, like a blood test for early detection of colorectal cancer; (3) its purchase and use of next-generation sequencing equipment and related consumables purchased from Illumina; and (4) other strategically valuable and competitively sensitive aspects of its business like (a) how it has used venture capital funds it has raised and how it proposes to generate returns on that investment, and (b) how it views other firms participating in this “race” to develop multi-cancer early detection technology and to commercialize testing products based on such technology.

Given Freenome's posture as a pre-launch, pre-commercial firm in this "race" with its rivals, most of the documents and testimony produced and provided to the parties' counsel unquestionably qualify as confidential material warranting protection under the Administrative Law Judge's March 30, 2021 Protective Order Governing Confidential Material and have been designated as such. If these documents and testimony were disclosed to the public, to Freenome's rivals, or to Freenome's business partners and suppliers, they would undoubtedly cause clearly defined, serious competitive injury to Freenome, thereby satisfying the standard set forth in *Matter of Bristol-Myers Co.*, 90 F.T.C. 455 (1977), *Matter of General Foods Corp.*, 95 F.T.C. 352 (1980), and progeny.

On July 26, 2021, counsel for Freenome received via email separate notices from counsel supporting the Complaint and counsel for Respondents designating certain Freenome testimony and documents as trial exhibits. See Exhibits A and B. The volume of Freenome material that the parties intend to use at the upcoming hearing is not insubstantial. They consist of (1) four transcripts in their entirety – (a) the March 2, 2021 investigational hearing of Michael Nolan (312 pages), (b) the March 4, 2021 investigational hearing of Gabriel Otte (147 pages), (c) the June 1, 2021 deposition of Michael Nolan (310 pages), and (d) the June 24, 2021 deposition of Gabriel Otte (232 pages); and (2) 78 unique documents numbering hundreds of pages.

Freenome, through the assistance of counsel, has carefully reviewed these materials and determined that most of the testimony and documents warrant *in camera* treatment. These materials are listed in a table attached as Exhibit C. The far right-hand column of this table contains, for transcripts, the pages and line numbers of testimony for which Freenome seeks *in camera* treatment, and for documents, the *in camera* category (I, II, III, IV, or V) into which they fall, as discussed in the accompanying Declaration of Michael Nolan, Freenome's

Chief Executive Officer. As required by Commission Rule 3.45(b), copies of the designated testimony and documents on Exhibit C are being submitted as nonpublic exhibits to this Motion for *in camera* review by the Administrative Law Judge.

Category I consists of two confidential slide decks that Freenome has prepared and presented to potential investors and/or candidates for its scientific advisory board. Nolan Decl. ¶ 9. In order to generate and attract serious interest in investing in or advising Freenome as a startup, these slide decks purposely provide a candid, in-depth, comprehensive look at the company, and they delve into the most strategically valuable and competitively sensitive aspects of the technology and the business. *Id.* ¶ 8. Freenome protects these slide decks by requiring that recipients sign a nondisclosure agreement. *Id.* ¶ 9. Freenome would not have produced copies to the parties' counsel in this matter without assurances that the slide decks would be given confidential treatment under the Protective Order.

No other documents created by Freenome pull together and pack this much information about the company, including its technology and its business, in one place. (Indeed, it is little wonder that counsel for the parties have used these slide decks in their examinations of Freenome during discovery and intend to do so at the hearing.) Public disclosure of these slide decks would cause clearly defined serious injury to Freenome because an actual or potential competitor would have an inside look at and a handy roadmap to Freenome's innovations and strategies in the multi-cancer early detection space. Nolan Decl. ¶ 9. For these reasons, Freenome seeks permanent *in camera* treatment of the documents in Category I.

Category II consists of an assortment of confidential correspondence, submissions, presentations, protocols, minutes, and summaries involving Freenome and the U.S. Food &

Drug Administration. Nolan Decl. ¶ 10. Similar to the slide decks in Category I, the materials in Category II provide a candid, detailed disclosure and explanation of Freenome’s scientific and medical research in the field of early cancer detection, including its hypotheses, data, findings, and conclusions; its multiomics platform and related technological innovations; and its arguments and rationale for various regulatory approvals. See *id.* ¶ 11. It goes without saying that Freenome has been candid and forthcoming in its submissions to and interactions with the FDA, and it has done so in reliance on the fact that FDA regulations safeguard the confidentiality of such submissions and interactions until regulatory approval has been granted or denied. See *generally* 21 C.F.R. § 814.9 (recognizing and guaranteeing the confidentiality of data and information in a premarket approval application file).

If publicly disclosed, the FDA materials in Category II would provide Freenome’s rivals, as well as its business partners and suppliers, with an invaluable glimpse into the data and findings that Freenome has generated from its research in the field of early cancer detection, Freenome’s recent discussions with and submissions to the FDA, and Freenome’s strategies and arguments with respect to regulatory approval. Nolan Decl. ¶ 12. In this “race” “to develop and ultimately commercialize ... revolutionary technology” for multi-cancer early detection, such a glimpse could provide a rival with an unfair advantage and also cripple Freenome’s own progress because regulatory approval may be a critical step towards commercialization and market success. Given that its FDA submissions and interactions are ongoing, and there is no specific, predetermined endpoint, Freenome asks that the materials in Category II be given permanent *in camera* treatment. Such treatment can always be later revised if and when FDA grants or denies approval of any application from Freenome.

The documents in Category III consist of numerous confidential emails and other exchanges between Freenome and Illumina in the course of their vendor-customer relationship for next-generation sequencing equipment and related consumables. Nolan Decl. ¶ 13. As one would reasonably expect, these documents touch on any and all confidential aspects of the vendor-customer relationship, including prices, non-price terms like provisions for defective items, how much Freenome spends on next-generation sequencing equipment and supplies, and how the parties document their relationship. *Id.* ¶ 14. All of these exchanges between Freenome and Illumina were made in reliance on the protections of a nondisclosure agreement governing their relationship. *Id.* ¶ 13; see PX8373 (FRNM00001192). Importantly, all of these exchanges have occurred in the last fifteen months. *Id.* ¶ 15.

As the Administrative Complaint alleges, Freenome's rivals, including GRAIL, also use next-generation sequencing equipment and supplies. Admin. Compl. ¶ 5. Accordingly, documents in Category III that shed light on Freenome's business terms and discussions with Illumina may give Freenome's rivals an unfair edge either with respect to the negotiation and procurement of next-generation sequencing equipment and supplies, or the manner of their use in multi-cancer early detection applications. Nolan ¶ 14. Either way, Freenome would sustain serious competitive injury to its business. Recognizing that documents in Category III generally lose their confidential sensitivity and competitive significance over time, Freenome asks for ten-year *in camera* treatment rather than permanent *in camera* treatment.

Category IV consists of two emails containing Freenome's internal comments about and reactions to Illumina's proposed acquisition of GRAIL. Nolan Decl. ¶ 16. As the email threads will indicate, the discussion was limited to Freenome's senior executives, including

Mr. Nolan and Gabriel Otte, who at the time served as Freenome's Chief Executive Officer. No one else within or outside the company was privy to this discussion, and Freenome shared these emails with counsel for the parties only because the discovery requests specifically sought Freenome's comments and reactions regarding the acquisition, and such comments and reactions would be protected from disclosure to Illumina and GRAIL, as well as Freenome's rivals and the public, under the governing Protective Order.

Given Freenome's posture as an Illumina customer for next-generation sequencing equipment, and as a rival of GRAIL in this race to develop multi-cancer early detection technologies and to commercialize products based on such technologies, disclosure of Freenome's comments and reactions regarding the acquisition to Illumina and GRAIL, leaving aside the public and other rivals, would result in serious injury to the company. Nolan Decl. ¶ 17. Freenome therefore asks for ten-year *in camera* treatment for the emails in Category IV.

Last but not least, Category V consists of Freenome's confidential responses to the FTC's Civil Investigative Demand and a Request for Information from the European Commission, along with transcripts of the investigational hearings and depositions of Mr. Nolan and Mr. Otte. Nolan Decl. ¶ 18. Even a cursory examination of Freenome's written responses and witness testimony will show that they cover a wide range of strategically significant and competitively sensitive topics, including the technology underlying Freenome's multiomics platform, data and other results that Freenome has obtained thus far in evaluating early cancer detection tests powered by its platform, Freenome's product development strategy for colorectal and other early cancer detection, its available regulatory and commercial pathways, its candid assessment of the competitive landscape for early cancer detection products and the companies that populate this landscape, and its

business model and launch strategy. *Id.* ¶ 19. Importantly, even in instances where the underlying information may not be confidential (e.g., recommendations regarding colorectal cancer screening by the U.S. Preventive Services Task Force), Freenome's responses and testimony are still confidential and competitively significant because they reflect the company's internal assessment and application of that information to its business.

For the reasons already given for Categories I and II, Freenome requests permanent *in camera* treatment of the responses and testimony in Category V. To facilitate the Administrative Law Judge's review, Freenome has highlighted the portions of the written responses that merit *in camera* treatment. And as required for transcribed testimony, Freenome has done its best to identify by page and line numbers the passages that merit *in camera* treatment. As stated before, given the fact that Freenome is a pre-launch, pre-commercial startup engaged, as the Administrative Complaint alleges, in this veritable race with rivals to develop groundbreaking multi-cancer early detection technology and to commercialize products based on that technology, it should not come as a surprise that the bulk of the testimony is confidentially sensitive and competitively significant. Nolan Decl. ¶ 7. In its relatively short existence as a company, Freenome has channeled the talents of its staff and the venture capital funds it has raised towards the development of technologies, products, and information that its rivals engaged in a similar pursuit would regard as invaluable and put to immediate use.

While it may be possible for Freenome, upon further review, to de-designate certain lines of testimony for public disclosure, it should be incumbent on the parties, in the first instance, to identify specific passages that they intend to use rather than designate entire transcripts, up to three hundred pages in length, as trial exhibits. Additionally, given that the designated documents and testimony touch on many different aspects of its research,

technologies, products, and operations, Freenome is willing to provide a supplemental declaration if the Administrative Law Judge requires additional support for *in camera* treatment. See Nolan Decl. ¶ 20.

For the foregoing reasons, Freenome's Motion for *In Camera* Treatment of Proposed Trial Exhibits should be granted.

Dated: August 10, 2021

Respectfully Submitted,

By: /s/ Henry C. Su

Henry C. Su (D.C. Bar No. 441271)

Constantine Cannon LLP

1001 Pennsylvania Ave., N.W.

Suite 1300N

Washington, DC 20004-2579

(202) 204-3504 (O)

(650) 430-2754 (C)

hsu@constantinecannon.com

Counsel for Third Party Freenome Holdings, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2021, I filed the foregoing document electronically using the FTC's Administrative E-Filing System, which will send notification of this filing to:

The Honorable April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

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

I also certify that I served the foregoing document by email to the following counsel of record for the parties:

Lauren M. Gaskin
U.S. Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, DC 20580
lgaskin@ftc.gov

R.G. Locke, Jr.
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
rlocke@cravath.com

Counsel Supporting the Complaint

Counsel for Illumina, Inc.

Anna M. Rathbun
Latham & Watkins LLP
555 Eleventh Street, N.W.
Washington, DC 20004
anna.rathbun@lw.com

Counsel for GRAIL, Inc.

By: /s/ Henry C. Su

Counsel for Third Party Freenome Holdings, Inc.

EXHIBIT A TO FREENOME'S MOTION FOR *IN CAMERA* TREATMENT



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Bureau of Competition
Mergers I Division

July 26, 2021

VIA EMAIL TRANSMISSION

Freenome Holdings, Inc.
c/o Henry C. Su
Constantine Cannon LLP
1001 Pennsylvania Ave, NW
Suite 1300N
Washington, DC 20004
hsu@constantinecannon.com

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

Dear Mr. Su:

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
PX7050	PX7050-001	PX7050-122	3/2/2021	IH Transcript: Michael Nolan (Freenome)
PX7055	PX7055-001	PX7055-062	3/4/2021	IH Transcript: Gabriel Otte (Freenome)
PX7094	PX7094-001	PX7094-150	6/1/2021	Depo Transcript: Michael Nolan (Freenome)
PX7121	PX7121-001	PX7121-110	6/24/2021	Depo Transcript: Gabe Otte (Freenome)
PX8368	FRNM00000002	FRNM00000125	??/??/20	[REDACTED]
PX8369	FRNM00000254	FRNM00000255	10/9/2020	[REDACTED]
PX8370	FRNM00000279	FRNM00000283	1/22/2021	[REDACTED]
PX8371	FRNM00000629	FRNM00000629	10/30/2020	[REDACTED]
PX8372	FRNM00000792	FRNM00000794	1/18/2021	[REDACTED]
PX8373	FRNM00001192	FRNM00001217	1/24/2021	[REDACTED]
PX8374	FRNM00003428	FRNM00003430	1/6/2021	[REDACTED]
PX8375	FRNM00003623	FRNM00003627	2/6/2021	[REDACTED]
PX8377	FRNM00003534	FRNM00003580	1/30/2021	[REDACTED]
PX8378	PX8378-001	PX8378-010	2/26/2021	[REDACTED]
PX8386	PX8386-001	PX8386-023	2/19/2021	[REDACTED]
PX8445	FRNM00003619	FRNM00003620	2/6/2021	[REDACTED]
PX8446	FRNM00000722	FRNM00000740	12/2/2020	[REDACTED]
PX8489	FTC-FREENOME-0000001	FTC-FREENOME-0000001	5/19/2021	[REDACTED]
PX8490	FRNM00000620	FRNM00000623	11/20/2020	[REDACTED]
PX8491	FRNM00001096	FRNM00001098	11/9/2020	[REDACTED]
PX8492	FRNM00001181	FRNM00001183	11/11/2020	[REDACTED]
PX8599	FRNM00003593	FRNM00003616	1/26/2021	[REDACTED]
PX8600	FRNM00003587	FRNM00003592	1/25/2021	[REDACTED]
PX8631	FRNM00003372	FRNM00003373	1/26/2021	[REDACTED]
PX8632	FRNM00003424	FRNM00003425	1/26/2021	[REDACTED]
PX9058	PX9058-001	PX9058-003	2/25/2021	[REDACTED]

EXHIBIT B TO FREENOME'S MOTION FOR *IN CAMERA* TREATMENT

Su, Henry C.

From: Michael Zaken <mzaken@cravath.com>
Sent: Monday, July 26, 2021 11:39 PM
To: Su, Henry C.; Retley Locke
Cc: Allison Kempf; Xhesi Hysi
Subject: RE: In the Matter of Illumina, Inc. & GRAIL, Inc. - Notice Regarding Use of Confidential Information

Counsel,

In addition to the materials below, we have included the deposition transcript of Gabriel Otte on our list.

Testimony
Deposition Transcript of Gabriel Otte

Regards,

Michael

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

From: Su, Henry C. <hsu@constantinecannon.com>
Sent: Monday, July 26, 2021 5:22 PM
To: Retley Locke <rlocke@cravath.com>
Cc: Michael Zaken <mzaken@cravath.com>; Allison Kempf <akempf@cravath.com>; Xhesi Hysi <xhysi@cravath.com>
Subject: RE: In the Matter of Illumina, Inc. & GRAIL, Inc. - Notice Regarding Use of Confidential Information

Dear Retley,

I am confirming receipt.

Best,
Henry

From: Retley Locke <rlocke@cravath.com>
Sent: Monday, July 26, 2021 4:35 PM
To: Su, Henry C. <hsu@constantinecannon.com>
Cc: Michael Zaken <mzaken@cravath.com>; Allison Kempf <akempf@cravath.com>; Xhesi Hysi <xhysi@cravath.com>
Subject: In the Matter of Illumina, Inc. & GRAIL, Inc. - Notice Regarding Use of Confidential Information

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

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 Freenome and testimony provided by Freenome witnesses listed below as trial exhibits, pursuant to 16 C.F.R. § 3.45(b).

Documents	
FRNM00000002	FRNM00000781
FRNM00000126	FRNM00000792
FRNM00000254	FRNM00000902
FRNM00000256	FRNM00001075
FRNM00000279	FRNM00001086
FRNM00000284	FRNM00001143
FRNM00000297	FRNM00001158
FRNM00000298	FRNM00001173
FRNM00000325	FRNM00001192
FRNM00000375	FRNM00001197
FRNM00000403	FRNM00001365
FRNM00000458	FRNM00001582
FRNM00000463	FRNM00001625
FRNM00000475	FRNM00001687
FRNM00000476	FRNM00001706
FRNM00000537	FRNM00001886
FRNM00000568	FRNM00002438
FRNM00000577	FRNM00003402
FRNM00000580	FRNM00003406
FRNM00000586	FRNM00003408
FRNM00000618	FRNM00003414
FRNM00000629	FRNM00003428
FRNM00000702	FRNM00003431
FRNM00000742	FRNM00003480
FRNM00000755	FRNM00003510
FRNM00000770	FRNM00003534
FRNM00000771	FRNM00003534
FRNM00003535	FRNM00003621
FRNM00003558	FRNM00003623
FRNM00003581	FRNM00003685
FRNM00003583	FRNM00003703
FRNM00003587	FRNM00003708
FRNM00003588	FRNM00003709
FRNM00003593	FRNM00003710
FRNM00003595	FRNM00003873
FRNM00003619	
Testimony	
Deposition Transcript of Michael Nolan	

Under 16 C.F.R. § 3.45(b), if you wish, you may move the Administrative Law Judge to obtain in camera treatment for the documents and testimony listed below. Please note that the deadline for filing such a motion is August 5, 2021, and note the following information set forth in the Scheduling Order about the content of any such motion:

[There are] strict standards for motions for in camera treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *re Otto Bock Healthcare N. Am.*, 2018 WL 3491602 at *1 (July 2, 2018); and in *re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (Apr. 4, 2017). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. In *re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (Apr. 4, 2017); in *re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). Each party or non-party that files a motion for in camera treatment shall provide one copy of the documents for which in camera treatment is sought to the Administrative Law Judge.

Scheduling Order ¶ 12.

Please confirm receipt of this notice.

Thank you,

R.G. Locke, Jr.
Cravath, Swaine & Moore LLP
825 Eighth Avenue | New York, NY 10019
T: 1 (212) 474-1943
rlocke@cravath.com

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EXHIBIT C TO FREENOME'S MOTION FOR *IN CAMERA* TREATMENT

**DOCUMENTS AND TESTIMONY FOR WHICH FREENOME HOLDINGS, INC.
SEEKS FULL OR PARTIAL *IN CAMERA* TREATMENT**

Exhibit No. ¹	Document Description	Beg Bates	End Bates	Date	Rationale
PX7050	IH Transcript: Michael Nolan (Freenome)	PX7050-001	PX7050-122	3/2/2021	V (6:15-20, 10:23-24, 22:7-25:3, 33:7-22, 38:15-39:21, 42:25-44:13, 45:5-9, 45:24-47:17, 50:6-54:9, 55:10-56:10, 58:12-20, 59:16-20, 61:25-79:3, 80:15-86:10, 86:17-87:21, 89:25-106:2, 107:19-119:18, 119:23-132:23, 135:13-138:1, 138:25-139:3, 139:14-146:25, 147:4-151:21, 154:4-157:11, 157:19-158:15, 159:13-180:7, 180:17-210:12, 211:1-224:16, 225:17-229:2, 229:11-253:24, 254:11-263:10, 263:16-264:6, 266:10-268:19, 268:23-271:24, 271:25-

¹ Respondents' counsel did not provide any exhibit numbers so documents that they have designated as exhibits are merely referenced as "RX."

Exhibit No. ¹	Document Description	Beg Bates	End Bates	Date	Rationale
					284:23, 285:5-8, 286:22-297:9, 297:22-306:7, 306:14-312:1)
PX7055	IH Transcript: Gabriel Otte (Freenome)	PX7055-001	PX7055-062	3/4/2021	V (7:25, 12:7-13:8, 14:17-15:23, 15:24-16:17, 17:5-20:13, 21:17-24:17, 24:18-30:6, 32:14-37:23, 38:14-44:22, 45:15-50:3, 50:6-53:12, 53:21-55:17, 56:3-66:25, 67:5-74:22, 74:23-82:2, 82:10-94:20, 94:21-96:7, 96:17-99:9, 99:18-102:17, 102:18-113:2, 114:2-118:10, 119:8-130:25, 131:6-134:6, 134:18-22, 135:12-145:18, 145:22-147:6)
PX7094, RX	Depo Transcript: Michael Nolan (Freenome)	PX7094-001	PX7094-150	6/1/2021	V (8:12-13, 14:3-5, 14:10-12, 14:16-19, 14:21-15:12, 23:13-19, 25:5-26:16, 26:25-27:20, 28:1, 28:9-29:1,

Exhibit No. ¹	Document Description	Beg Bates	End Bates	Date	Rationale
					29:11-25, 30:4-7, 30:20-24, 31:1-32:13, 32:18-33:15, 33:22-34:4, 35:6-22, 35:25-36:17, 41:1-8, 41:16-44:11, 44:21-25, 45:6-8, 45:11-47:15, 47:24-49:2, 49:12-50:3, 50:8-16, 51:2-22, 52:6-57:2, 57:12-58:2, 58:8-59:20, 60:1-18, 60:22-25, 61:5-20, 62:2-64:1, 64:18-65:1, 65:18-66:15, 66:24-71:8, 71:19-75:7, 75:17-82:10, 82:15-89:3, 89:11-96:20, 97:11-98:4, 98:12-101:7, 101:17-118:9, 119:4-8, 119:19-121:21, 122:8-123:4, 123:11-127:24, 128:7-130:18, 130:23-144:3, 144:14-151:14, 151:21-157:4, 157:14-158:7, 158:9-162:19, 162:23-

Exhibit No. ¹	Document Description	Beg Bates	End Bates	Date	Rationale
					165:8, 165:17- 171:12, 171:23- 176:24, 177:4- 188:15, 189:9- 191:14, 192:2- 214:24, 215:4- 219:18, 221:1- 228:17, 229:3- 231:24, 232:15- 20, 233:18- 244:2, 244:4- 276:23, 276:25- 288:1, 289:3- 292:13, 293:13- 301:9, 301:24- 303:3, 303:16- 304:16, 305:2- 308:2, 308:14- 309:19)
PX7121, RX	Depo Transcript: Gabe Otte (Freenome)	PX7121-001	PX7121-110	6/24/2021	V (15:12-16:4, 17:10-21:14, 21:25-23:19, 24:12-33:9, 33:10-34:5, 34:16-36:7, 36:9-41:16, 43:17-50:11, 50:22-67:6, 67:14-81:3, 81:9-90:15, 91:1-116:10, 117:7-119:13, 119:14-137:3, 137:4-153:19, 154:5-10, 156:10-163:5, 163:16-173:3, 173:25-180:1,

Exhibit No. ¹	Document Description	Beg Bates	End Bates	Date	Rationale
					180:9-194:8, 194:19-196:17, 196:25-199:2, 199:23-201:17, 202:25-203:10, 203:12-212:19, 212:20-222:2, 222:14-224:8, 224:23-226:4, 226:10-228:2, 228:14-231:18)
PX8368, RX	Presentation	FRNM00000002	FRNM00000125	??/??/2020	I
RX	Presentation	FRNM00000126	FRNM00000253	??/??/2020	I
RX	Draft Agreement	FRNM00000256	FRNM00000278	1/26/2021	III
PX8370, RX	Letter	FRNM00000279	FRNM00000283	1/22/2021	III
RX	Regulatory Summary	FRNM00000284	FRNM00000286	1/25/2021	II
RX	Letter	FRNM00000297	FRNM00000297	12/23/2020	II
RX	Communication	FRNM00000298	FRNM0000324	10/8/2020	II
RX	Submission	FRNM00000325	FRNM00000374	11/5/2020	II
RX	Submission	FRNM00000375	FRNM00000402	3/3/2020	II
RX	Submission	FRNM00000403	FRNM00000429	9/9/2019	II
RX	Draft Summary	FRNM00000458	FRNM00000462	9/29/2020	II
RX	Protocol	FRNM00000476	FRNM00000513	7/20/2020	II
RX	Presentation	FRNM00000537	FRNM00000567	11/22/2019	II

Exhibit No. ¹	Document Description	Beg Bates	End Bates	Date	Rationale
RX	Minutes	FRNM00000568	FRNM00000576	11/22/2019	II
RX	Letter	FRNM00000577	FRNM00000579	5/4/2020	II
RX	Regulatory History	FRNM00000580	FRNM00000580	2/3/2021	II
RX	Email	FRNM00000586	FRNM00000589	11/2/2020	III
RX	Email	FRNM00000618	FRNM00000619	11/4/2020	III
PX8490	Email	FRNM00000620	FRNM00000623	11/20/2020	III
PX8371, RX	Email	FRNM00000629	FRNM00000629	10/30/2020	III
RX	Email	FRNM00000702	FRNM00000702	11/20/2020	III
PX8446	Email with Attachment	FRNM00000722	FRNM00000740	12/2/2020	III
RX	Email	FRNM00000742	FRNM00000745	1/19/2021	III
RX	Email	FRNM00000771	FRNM00000780	1/8/2021	III
RX	Email	FRNM00000781	FRNM00000791	1/8/2021	III
PX8372, RX	Email	FRNM00000792	FRNM00000794	1/18/2021	III
RX	Email	FRNM00000902	FRNM00000907	1/8/2021	III
RX	Email	FRNM00001075	FRNM00001076	11/16/2020	III
RX	Email	FRNM00001086	FRNM00001087	10/6/2020	III
RX	Email	FRNM00001096	FRNM00001098	11/9/2020	III
RX	Email	FRNM00001143	FRNM00001143	10/2/2020	III

Exhibit No. ¹	Document Description	Beg Bates	End Bates	Date	Rationale
RX	Email	FRNM00001158	FRNM00001160	10/1/2020	III
RX	Email	FRNM00001173	FRNM00001176	9/3/2020	III
RX	Email	FRNM00001181	FRNM00001183	11/11/2020	III
PX8373, RX	Email with Attachment	FRNM00001192	FRNM00001217	1/24/2021	III
RX	Email	FRNM00001365	FRNM00001368	8/26/2020	III
RX	Email	FRNM00001582	FRNM00001582	8/17/2020	III
RX	Email	FRNM00001625	FRNM00001629	7/27/2020	III
RX	Spreadsheet	FRNM00001687	FRNM00001687	9/17/2020	III
RX	Email	FRNM00002438	FRNM00002452	7/17/2020	III
PX8631	Email	FRNM00003372	FRNM00003373	1/26/2021	III
RX	Email	FRNM00003402	FRNM00003405	1/27/2021	III
RX	Email	FRNM00003414	FRNM00003417	1/27/2021	III
PX8632	Email	FRNM00003424	FRNM00003425	1/26/2021	III
PX8374	Email	FRNM00003428	FRNM00003430	1/6/2021	III
RX	Email	FRNM00003431	FRNM00003433	1/14/2021	III
RX	Email	FRNM00003480	FRNM00003491	1/8/2021	III
PX8377, RX	Email with Attachment	FRNM00003534	FRNM00003580	1/30/2021	III
RX	Email with Attachment	FRNM00003581	FRNM00003586	1/14/2021	III

Exhibit No. ¹	Document Description	Beg Bates	End Bates	Date	Rationale
PX8600, RX	Email with Attachment	FRNM00003587	FRNM00003592	1/25/2021	III
PX8599, RX	Email with Attachment	FRNM00003593	FRNM00003616	1/26/2021	III
PX8445, RX	Email (with Attachment)	FRNM00003619	FRNM00003620	2/6/2021	IV
RX	Email	FRNM00003623	FRNM00003627	10/12/2020	IV
RX	Response to Civil Investigative Demand	FRNM00003685	FRNM00003702	2/17/2021	V (see highlighted text to be given <i>in camera</i> treatment)
RX	Response to Request for Information	FRNM00003703	FRNM00003707	4/14/2021	V (only the highlighted information to be given <i>in camera</i> treatment)
PX9058, RX	Text Message	FRNM00003708	FRNM00003710	2/25/2021	III
PX8386, RX	Draft Agreement	FRNM00003873	FRNM00003895	2/19/2021	III
P8489	Draft Agreement	FRNM00003964	FRNM00004005	5/19/2021	III
PX8378, RX0494	Email	FRNM00004009 FTC-PROD-00002414	FRNM00004018 FTC-PROD-00002421	2/26/2021	III
RX0495	Email	FTC-PROD-00002440	FTC-PROD-00002443	2/19/2021	III

DECLARATION OF MICHAEL NOLAN

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.

Docket No. 9401

DECLARATION OF MICHAEL NOLAN IN SUPPORT OF
THIRD PARTY FREENOME HOLDINGS, INC.'S MOTION FOR
IN CAMERA TREATMENT OF PROPOSED TRIAL EXHIBITS

I, Michael Nolan, declare as follows:

1. I am the Chief Executive Officer of Third Party Freenome Holdings, Inc., and I make this declaration in support of Freenome's motion for *in camera* treatment of certain testimony and documents that counsel for the parties in this matter have designated as trial exhibits. I have personal knowledge of the statements I make below, and if I were called to testify about them, I could and would testify competently about them.

2. I am very familiar with the testimony and documents that Freenome has provided and produced in this matter, both during the Federal Trade Commission's investigation of Illumina, Inc.'s proposed acquisition of GRAIL, Inc., and in the pending administrative litigation. Specifically, I testified at an investigational hearing on March 2, 2021, and at a deposition on June 1, 2021.¹ Additionally, I worked closely with Freenome's

¹ I am aware that Mr. Gabriel Otte, whom I replaced as Freenome's Chief Executive Officer in May 2021, also testified on behalf of Freenome at an investigational hearing on March 4, 2021, and at a deposition on June 24, 2021, on similar topics and subjects.

outside counsel to collect and review responsive, non-privileged documents for production in response to subpoenas issued during the investigation and the pending administrative litigation. I have also reviewed the transcripts and documents that the parties have designated as trial exhibits. In providing testimony and producing documents to the parties for use in this matter, Freenome has expressly invoked and relied upon the provisions for protecting Confidential Material in the Administrative Law Judge's March 30, 2021 Protective Order Governing Confidential Material.

3. I am also very familiar with many aspects of Freenome's business and operations, given the various positions I have held and the various roles I have played at the company. Specifically, I joined Freenome in April 2018 as its Chief Commercial Officer, and in May 2019, I became its Chief Business Officer. I then replaced Mr. Otte as Freenome's Chief Executive Officer in May 2021. Based on my personal knowledge of many aspects of Freenome's business and operations, as well as my familiarity with the confidential and proprietary nature and strategic significance of the documents and information that the company has shared with the counsel for the parties, I respectfully submit that the disclosure of the testimony and documents identified in Freenome's motion to the public, to Freenome's competitors, and to Freenome's business partners and suppliers, would cause serious competitive injury to Freenome.

4. Founded in 2014, Freenome is a startup company that has been developing early cancer detection blood tests powered by what it refers to as a "multiomics platform." Freenome's multiomics platform is designed to analyze blood samples for cell-free biomarkers, to recognize specific patterns of biomarkers that indicate the early presence of specific cancer types, and to shed light on effective treatment pathways for those detected cancers. Importantly, the platform examines not only biomarkers in the blood that are

derived from cancerous tumors already growing in a person's body, but it also looks for biomarkers derived from other sources like a person's immune system in order to develop a fuller picture of the biological signatures that warn of the early presence of cancer.

5. To do this, Freenome's multiomics platform utilizes a panel of different assays, each one analyzing a different biomarker. Relevant here, one or more such assays involve the sequencing of cell-free DNA fragments in the blood sample, using next-generation sequencers designed, manufactured, and sold by Illumina. The assay results are then fed into the platform's computational architecture, which is trained to create a composite picture of the biomarker patterns of interest and to compare that profile to one that would be found in a healthy, cancer-free individual.

6. As its website indicates, Freenome is currently conducting a clinical trial known as the "PREEMPT CRC" study to evaluate the specificity and sensitivity of a blood test powered by its multiomics platform to detect the early presence of colorectal cancer (CRC). Freenome has designed its multiomics platform, however, to power blood tests for the early detection of other cancer types, whether individually or in a group.

7. With this overview about the company, I now address the confidential and proprietary nature and strategic significance of the documents and testimony that the parties have designated as trial exhibits. In assessing the sensitivity of these documents and testimony, it is critical to keep in mind that Freenome is still in a pre-launch, pre-commercial stage. In other words, it does not currently have an early cancer detection product in the market. Instead, Freenome, not unlike several other companies including GRAIL, has been actively engaged in research, development, evaluation, and refinement of potential early cancer detection tests, including one for colorectal cancer, leveraging its multiomics platform. Given Freenome's current posture, documents and information describing its

technology, potential early cancer detection products, positioning in the early cancer detection space, business model, and key partnerships and supply relationships take on greater strategic and competitive importance compared to similar details for a relatively mature, established company whose products have been widely marketed, distributed, sold, and used in the marketplace.

Category I

8. One category of documents consists of confidential presentations that Freenome has put together to disclose specific details regarding its multiomics platform, its product development strategy (e.g., which early cancer detection tests it plans to launch and when), its assessment of the competitive landscape for early cancer detection products and the various companies that populate this landscape, and its business model and strategy for achieving commercial success and realizing expected returns to its investors.

Exhibit No.	Document Description	Beg Bates	End Bates	Date
PX8368, RX	Presentation	FRNM00000002	FRNM00000125	??/??/2020
RX	Presentation	FRNM00000126	FRNM00000253	??/??/2020

9. These presentations were prepared to solicit and raise additional capital investments in the company and/or to attract and cultivate potential candidates for the company's scientific advisory board. For either purpose, would-be recipients of these presentations must sign a nondisclosure agreement with Freenome. Given these presentations' depth and breath of treatment concerning Freenome's technology, product development, strategic positioning, and business model, their disclosure to the public, to Freenome's competitors, or to Freenome's business partners and suppliers would undoubtedly cause serious competitive injury to the company. These presentations are

intended to provide a candid, comprehensive, 360-degree look at Freenome, from a self-critical assessment of the science and the diagnostic approaches to a thoughtful outlook regarding the market opportunities.

Category II

10. A second category of documents consists of confidential communications, submissions, presentations, protocols, minutes, and summaries involving Freenome and the U.S. Food & Drug Administration, as seen in the table below.

Exhibit No.	Document Description	Beg Bates	End Bates	Date
RX	Regulatory Summary	FRNM00000284	FRNM00000286	1/25/2021
RX	Letter	FRNM00000297	FRNM00000297	12/23/2020
RX	Communication	FRNM00000298	FRNM0000324	10/8/2020
RX	Submission	FRNM00000325	FRNM00000374	11/5/2020
RX	Submission	FRNM00000375	FRNM00000402	3/3/2020
RX	Submission	FRNM00000403	FRNM00000429	9/9/2019
RX	Draft Summary	FRNM00000458	FRNM00000462	9/29/2020
RX	Protocol	FRNM00000476	FRNM00000513	7/20/2020
RX	Presentation	FRNM00000537	FRNM00000567	11/22/2019
RX	Minutes	FRNM00000568	FRNM00000576	11/22/2019
RX	Letter	FRNM00000577	FRNM00000579	5/4/2020
RX	Regulatory History	FRNM00000580	FRNM00000580	2/3/2021

11. It has always been my understanding that unless and until the FDA has granted a company's application for premarket approval or other regulatory designation, the communications and information exchanged between the company and the agency remain completely confidential. All of the documents listed in the preceding table (a) disclose data or other information that Freenome has submitted or presented to the FDA, (b) memorialize communications and discussions between Freenome and the FDA about various topics

relevant to the application at issue, or (c) summarize decisions, actions, or milestones in the application process.

12. Suffice it to say, disclosure of any of these details to the public, to Freenome's competitors, or to Freenome's business partners and suppliers, would cause serious competitive injury to Freenome. Not only would the recipient gain inside information into Freenome's proprietary technology, scientific data, and expert analyses, but he or she would also invaluable insight into Freenome's strategies and applications for regulatory approval, including the current review stage and key observations and findings. For example, if Freenome has obtained any unexpected results in its evaluations, good or bad, a competitor would be able to put that knowledge to use in advancing its own efforts to develop an early cancer detection product.

Category III

13. A third—and very large—category of documents consists of communications, discussions, and other exchanges between Freenome and Illumina, which markets and sells next-generation sequencers and related consumables to Freenome. All of these vendor-customer exchanges are protected by a nondisclosure agreement between Illumina and Freenome that applies to the business relationship generally.

Exhibit No.	Document Description	Beg Bates	End Bates	Date
RX	Draft Agreement	FRNM00000256	FRNM00000278	1/26/2021
PX8370, RX	Letter	FRNM00000279	FRNM00000283	1/22/2021
RX	Email	FRNM00000586	FRNM00000589	11/2/2020
RX	Email	FRNM00000618	FRNM00000619	11/4/2020
PX8490	Email	FRNM00000620	FRNM00000623	11/20/2020
PX8371, RX	Email	FRNM00000629	FRNM00000629	10/30/2020
RX	Email	FRNM00000702	FRNM00000702	11/20/2020

Exhibit No.	Document Description	Beg Bates	End Bates	Date
PX8446	Email with Attachment	FRNM00000722	FRNM00000740	12/2/2020
RX	Email	FRNM00000742	FRNM00000745	1/19/2021
RX	Email	FRNM00000771	FRNM00000780	1/8/2021
RX	Email	FRNM00000781	FRNM00000791	1/8/2021
PX8372, RX	Email	FRNM00000792	FRNM00000794	1/18/2021
RX	Email	FRNM00000902	FRNM00000907	1/8/2021
RX	Email	FRNM00001075	FRNM00001076	11/16/2020
RX	Email	FRNM00001086	FRNM00001087	10/6/2020
RX	Email	FRNM00001096	FRNM00001098	11/9/2020
RX	Email	FRNM00001143	FRNM00001143	10/2/2020
RX	Email	FRNM00001158	FRNM00001160	10/1/2020
RX	Email	FRNM00001173	FRNM00001176	9/3/2020
RX	Email	FRNM00001181	FRNM00001183	11/11/2020
PX8373, RX	Email with Attachment	FRNM00001192	FRNM00001217	1/24/2021
RX	Email	FRNM00001365	FRNM00001368	8/26/2020
RX	Email	FRNM00001582	FRNM00001582	8/17/2020
RX	Email	FRNM00001625	FRNM00001629	7/27/2020
RX	Spreadsheet	FRNM00001687	FRNM00001687	9/17/2020
RX	Email	FRNM00002438	FRNM00002452	7/17/2020
PX8631	Email	FRNM00003372	FRNM00003373	1/26/2021
RX	Email	FRNM00003402	FRNM00003405	1/27/2021
RX	Email	FRNM00003414	FRNM00003417	1/27/2021
PX8632	Email	FRNM00003424	FRNM00003425	1/26/2021
PX8374	Email	FRNM00003428	FRNM00003430	1/6/2021
RX	Email	FRNM00003431	FRNM00003433	1/14/2021
RX	Email	FRNM00003480	FRNM00003491	1/8/2021
PX8377, RX	Email with Attachment	FRNM00003534	FRNM00003580	1/30/2021
RX	Email with Attachment	FRNM00003581	FRNM00003586	1/14/2021
PX8600, RX	Email with Attachment	FRNM00003587	FRNM00003592	1/25/2021

Exhibit No.	Document Description	Beg Bates	End Bates	Date
PX8599, RX	Email with Attachment	FRNM00003593	FRNM00003616	1/26/2021
PX9058, RX	Text Message	FRNM00003708	FRNM00003710	2/25/2021
PX8386, RX	Draft Agreement	FRNM00003873	FRNM00003895	2/19/2021
P8489	Draft Agreement	FRNM00003964	FRNM00004005	5/19/2021
PX8378, RX0494	Email	FRNM00004009 FTC-PROD- 00002414	FRNM00004018 FTC-PROD- 00002421	2/26/2021
RX0495	Email	FTC-PROD- 00002440	FTC-PROD- 00002443	2/19/2021

14. The documents listed on this table reference competitively sensitive aspects of Freenome's business relationship with Illumina, including prices, non-price terms like provisions for defective items, Freenome's spend on Illumina sequencing equipment, and the parties' documentation of their relationship. Disclosure of these documents to the public, to Freenome's competitors, or to other business partners or suppliers of Freenome besides Illumina would cause serious competitive injury to Freenome because the recipient of the information would gain useful insight into the sequencing equipment that Freenome buys from Illumina and what Freenome's needs are with respect to such equipment and related consumables.

15. While the sensitivity of documents of this nature might lessen with the passage of time, I note that all of the exchanges on this table are less than fifteen months old. There is therefore no good reason not to protect all of these documents.

Category IV

16. A couple documents designated by counsel for the parties as trial exhibits reflect Freenome's internal comments and reactions about Illumina's proposed acquisition of GRAIL, as shown in the table below.

Exhibit No.	Document Description	Beg Bates	End Bates	Date
PX8445, RX	Email (with Attachment)	FRNM00003619	FRNM00003620	2/6/2021
RX	Email	FRNM00003623	FRNM00003627	10/12/2020

17. Any views that Freenome expresses internally about any impact that this proposed acquisition may have on Freenome's business and operations should be given *in camera* treatment. Such views are of course competitively sensitive, given Illumina's relationship as a supplier to Freenome and GRAIL's positioning as a company that like Freenome is also researching and developing early cancer detection tests. Disclosure of Freenome's views to the public, to Freenome's competitors (actual or potential) including GRAIL, or to Freenome's business partners and suppliers including Illumina would seriously injure Freenome.

Category V

18. A final category of documents consists of Freenome's confidential responses to the FTC's Civil Investigative Demand and the European Commission's request for information, as well as the transcripts of the investigational hearings and depositions of Mr. Otte and myself.


Exhibit No.	Document Description	Beg Bates	End Bates	Date
RX	Response to Civil Investigative Demand	FRNM00003685	FRNM00003702	2/17/2021
RX	Response to Request for Information	FRNM00003703	FRNM00003707	4/14/2021
PX7050	IH Transcript: Michael Nolan (Freenome)	PX7050-001	PX7050-122	3/2/2021
PX7055	IH Transcript: Gabriel Otte (Freenome)	PX7055-001	PX7055-062	3/4/2021
PX7094	Depo Transcript: Michael Nolan (Freenome)	PX7094-001	PX7094-150	6/1/2021
PX7121	Depo Transcript: Gabe Otte (Freenome)	PX7121-001	PX7121-110	6/24/2021

19. As one would expect, Freenome's responses and witness testimony covered a range of strategically significant and competitively sensitive topics, including without limitation the technology underlying Freenome's multiomics platform, the data and other results that Freenome has obtained thus far in evaluating early cancer detection tests powered by its platform, its product development strategy, its available regulatory and commercial pathways, its candid assessment of the competitive landscape for early cancer detection products and the companies that populate this landscape, and its business model and launch strategy. In Freenome's motion, we have specifically identified the pages and sections or lines containing subject matter that warrants *in camera* treatment, and they are for the same reasons I have already articulated for Categories I through IV above.

20. The parties in this matter have designated a significant volume of Freenome documents and testimony as trial exhibits. In seeking *in camera* treatment, I have tried to organize and address the confidential nature and strategic importance of these materials in a way that makes sense and promotes efficient review. If the Administrative Law Judge would like further justification regarding any of these materials, I would be happy to provide a supplemental declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: August 9, 2021

DocuSigned by:

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Michael Nolan, Chief Executive Officer
Freenome Holdings, Inc.

PROPOSED ORDER

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.

Docket No. 9401

**[PROPOSED] ORDER GRANTING THIRD PARTY FREENOME HOLDINGS, INC.'S
MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED TRIAL EXHIBITS**

This matter comes before the Administrative Law Judge on the Motion of Third Party Freenome Holdings, Inc., pursuant to 16 C.F.R. § 3.45(b), seeking *in camera* treatment of trial exhibits designated by the parties. Having considered Freenome's Supporting Memorandum, the supporting Declaration of Michael Nolan, and for good cause shown, the Motion is hereby GRANTED. As set forth in the attached Table, materials with a Category I, II, or V designation in the "Rationale" column shall be given permanent *in camera* treatment, and materials with a Category III or IV designation in the "Rationale" column shall be given ten-year *in camera* treatment.

It is SO ORDERED.

D. Michael Chappell
Chief Administrative Law Judge

Dated: August __, 2021

**DOCUMENTS AND TESTIMONY FOR WHICH FREENOME HOLDINGS, INC.
SEEKS FULL OR PARTIAL *IN CAMERA* TREATMENT**

Exhibit No. ¹	Document Description	Beg Bates	End Bates	Date	Rationale
PX7050	IH Transcript: Michael Nolan (Freenome)	PX7050-001	PX7050-122	3/2/2021	V (6:15-20, 10:23-24, 22:7-25:3, 33:7-22, 38:15-39:21, 42:25-44:13, 45:5-9, 45:24-47:17, 50:6-54:9, 55:10-56:10, 58:12-20, 59:16-20, 61:25-79:3, 80:15-86:10, 86:17-87:21, 89:25-106:2, 107:19-119:18, 119:23-132:23, 135:13-138:1, 138:25-139:3, 139:14-146:25, 147:4-151:21, 154:4-157:11, 157:19-158:15, 159:13-180:7, 180:17-210:12, 211:1-224:16, 225:17-229:2, 229:11-253:24, 254:11-263:10, 263:16-264:6, 266:10-268:19, 268:23-271:24, 271:25-

¹ Respondents' counsel did not provide any exhibit numbers so documents that they have designated as exhibits are merely referenced as "RX."

Exhibit No. ¹	Document Description	Beg Bates	End Bates	Date	Rationale
					284:23, 285:5-8, 286:22-297:9, 297:22-306:7, 306:14-312:1)
PX7055	IH Transcript: Gabriel Otte (Freenome)	PX7055-001	PX7055-062	3/4/2021	V (7:25, 12:7-13:8, 14:17-15:23, 15:24-16:17, 17:5-20:13, 21:17-24:17, 24:18-30:6, 32:14-37:23, 38:14-44:22, 45:15-50:3, 50:6-53:12, 53:21-55:17, 56:3-66:25, 67:5-74:22, 74:23-82:2, 82:10-94:20, 94:21-96:7, 96:17-99:9, 99:18-102:17, 102:18-113:2, 114:2-118:10, 119:8-130:25, 131:6-134:6, 134:18-22, 135:12-145:18, 145:22-147:6)
PX7094, RX	Depo Transcript: Michael Nolan (Freenome)	PX7094-001	PX7094-150	6/1/2021	V (8:12-13, 14:3-5, 14:10-12, 14:16-19, 14:21-15:12, 23:13-19, 25:5-26:16, 26:25-27:20, 28:1, 28:9-29:1,

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					29:11-25, 30:4-7, 30:20-24, 31:1-32:13, 32:18-33:15, 33:22-34:4, 35:6-22, 35:25-36:17, 41:1-8, 41:16-44:11, 44:21-25, 45:6-8, 45:11-47:15, 47:24-49:2, 49:12-50:3, 50:8-16, 51:2-22, 52:6-57:2, 57:12-58:2, 58:8-59:20, 60:1-18, 60:22-25, 61:5-20, 62:2-64:1, 64:18-65:1, 65:18-66:15, 66:24-71:8, 71:19-75:7, 75:17-82:10, 82:15-89:3, 89:11-96:20, 97:11-98:4, 98:12-101:7, 101:17-118:9, 119:4-8, 119:19-121:21, 122:8-123:4, 123:11-127:24, 128:7-130:18, 130:23-144:3, 144:14-151:14, 151:21-157:4, 157:14-158:7, 158:9-162:19, 162:23-

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					165:8, 165:17-171:12, 171:23-176:24, 177:4-188:15, 189:9-191:14, 192:2-214:24, 215:4-219:18, 221:1-228:17, 229:3-231:24, 232:15-20, 233:18-244:2, 244:4-276:23, 276:25-288:1, 289:3-292:13, 293:13-301:9, 301:24-303:3, 303:16-304:16, 305:2-308:2, 308:14-309:19)
PX7121, RX	Depo Transcript: Gabe Otte (Freenome)	PX7121-001	PX7121-110	6/24/2021	V (15:12-16:4, 17:10-21:14, 21:25-23:19, 24:12-33:9, 33:10-34:5, 34:16-36:7, 36:9-41:16, 43:17-50:11, 50:22-67:6, 67:14-81:3, 81:9-90:15, 91:1-116:10, 117:7-119:13, 119:14-137:3, 137:4-153:19, 154:5-10, 156:10-163:5, 163:16-173:3, 173:25-180:1,

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					180:9-194:8, 194:19-196:17, 196:25-199:2, 199:23-201:17, 202:25-203:10, 203:12-212:19, 212:20-222:2, 222:14-224:8, 224:23-226:4, 226:10-228:2, 228:14-231:18)
PX8368, RX	Presentation	FRNM00000002	FRNM00000125	??/??/2020	I
RX	Presentation	FRNM00000126	FRNM00000253	??/??/2020	I
RX	Draft Agreement	FRNM00000256	FRNM00000278	1/26/2021	III
PX8370, RX	Letter	FRNM00000279	FRNM00000283	1/22/2021	III
RX	Regulatory Summary	FRNM00000284	FRNM00000286	1/25/2021	II
RX	Letter	FRNM00000297	FRNM00000297	12/23/2020	II
RX	Communication	FRNM00000298	FRNM0000324	10/8/2020	II
RX	Submission	FRNM00000325	FRNM00000374	11/5/2020	II
RX	Submission	FRNM00000375	FRNM00000402	3/3/2020	II
RX	Submission	FRNM00000403	FRNM00000429	9/9/2019	II
RX	Draft Summary	FRNM00000458	FRNM00000462	9/29/2020	II
RX	Protocol	FRNM00000476	FRNM00000513	7/20/2020	II
RX	Presentation	FRNM00000537	FRNM00000567	11/22/2019	II

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RX	Minutes	FRNM00000568	FRNM00000576	11/22/2019	II
RX	Letter	FRNM00000577	FRNM00000579	5/4/2020	II
RX	Regulatory History	FRNM00000580	FRNM00000580	2/3/2021	II
RX	Email	FRNM00000586	FRNM00000589	11/2/2020	III
RX	Email	FRNM00000618	FRNM00000619	11/4/2020	III
PX8490	Email	FRNM00000620	FRNM00000623	11/20/2020	III
PX8371, RX	Email	FRNM00000629	FRNM00000629	10/30/2020	III
RX	Email	FRNM00000702	FRNM00000702	11/20/2020	III
PX8446	Email with Attachment	FRNM00000722	FRNM00000740	12/2/2020	III
RX	Email	FRNM00000742	FRNM00000745	1/19/2021	III
RX	Email	FRNM00000771	FRNM00000780	1/8/2021	III
RX	Email	FRNM00000781	FRNM00000791	1/8/2021	III
PX8372, RX	Email	FRNM00000792	FRNM00000794	1/18/2021	III
RX	Email	FRNM00000902	FRNM00000907	1/8/2021	III
RX	Email	FRNM00001075	FRNM00001076	11/16/2020	III
RX	Email	FRNM00001086	FRNM00001087	10/6/2020	III
RX	Email	FRNM00001096	FRNM00001098	11/9/2020	III
RX	Email	FRNM00001143	FRNM00001143	10/2/2020	III

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RX	Email	FRNM00001158	FRNM00001160	10/1/2020	III
RX	Email	FRNM00001173	FRNM00001176	9/3/2020	III
RX	Email	FRNM00001181	FRNM00001183	11/11/2020	III
PX8373, RX	Email with Attachment	FRNM00001192	FRNM00001217	1/24/2021	III
RX	Email	FRNM00001365	FRNM00001368	8/26/2020	III
RX	Email	FRNM00001582	FRNM00001582	8/17/2020	III
RX	Email	FRNM00001625	FRNM00001629	7/27/2020	III
RX	Spreadsheet	FRNM00001687	FRNM00001687	9/17/2020	III
RX	Email	FRNM00002438	FRNM00002452	7/17/2020	III
PX8631	Email	FRNM00003372	FRNM00003373	1/26/2021	III
RX	Email	FRNM00003402	FRNM00003405	1/27/2021	III
RX	Email	FRNM00003414	FRNM00003417	1/27/2021	III
PX8632	Email	FRNM00003424	FRNM00003425	1/26/2021	III
PX8374	Email	FRNM00003428	FRNM00003430	1/6/2021	III
RX	Email	FRNM00003431	FRNM00003433	1/14/2021	III
RX	Email	FRNM00003480	FRNM00003491	1/8/2021	III
PX8377, RX	Email with Attachment	FRNM00003534	FRNM00003580	1/30/2021	III
RX	Email with Attachment	FRNM00003581	FRNM00003586	1/14/2021	III

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PX8600, RX	Email with Attachment	FRNM00003587	FRNM00003592	1/25/2021	III
PX8599, RX	Email with Attachment	FRNM00003593	FRNM00003616	1/26/2021	III
PX8445, RX	Email (with Attachment)	FRNM00003619	FRNM00003620	2/6/2021	IV
RX	Email	FRNM00003623	FRNM00003627	10/12/2020	IV
RX	Response to Civil Investigative Demand	FRNM00003685	FRNM00003702	2/17/2021	V (see highlighted text to be given <i>in camera</i> treatment)
RX	Response to Request for Information	FRNM00003703	FRNM00003707	4/14/2021	V (only the highlighted information to be given <i>in camera</i> treatment)
PX9058, RX	Text Message	FRNM00003708	FRNM00003710	2/25/2021	III
PX8386, RX	Draft Agreement	FRNM00003873	FRNM00003895	2/19/2021	III
P8489	Draft Agreement	FRNM00003964	FRNM00004005	5/19/2021	III
PX8378, RX0494	Email	FRNM00004009 FTC-PROD-00002414	FRNM00004018 FTC-PROD-00002421	2/26/2021	III
RX0495	Email	FTC-PROD-00002440	FTC-PROD-00002443	2/19/2021	III