



treatment dated August 5, 2021, and respectfully moves this Court for indefinite *in camera* treatment of portions of the Deposition transcript, provided in response to a subpoena *ad testificandum* issued by Respondents Illumina, Inc. and GRAIL, Inc. in the Action, and which contain competitively-sensitive and/or proprietary information such that the disclosure of this information would cause Natera serious competitive injury (“Confidential Testimony”) (the “Motion”).

The Confidential Testimony includes sensitive business information and trade secrets of Natera such that if it was to become part of the public record Natera would be significantly harmed in its ability to compete in the diagnostics industry. Accordingly, Natera submits this Motion requesting permanent *in camera* treatment of the Confidential Testimony included in the transcript of the Deposition. In support of this Motion, Natera submits the Affidavit of Arka Chatterjee (“Chatterjee Declaration”), Natera’s lead intellectual property litigation counsel, attached as Exhibit B. On August 20, 2021, Counsel for Natera notified counsel for the parties in the Action that it would be seeking permanent *in camera* treatment of the Confidential Testimony. Counsel for the parties responded that they do not plan to oppose this Motion.

#### **I. The Confidential Testimony for Which Protection Is Sought**

Natera seeks permanent *in camera* treatment for the Confidential Testimony listed in the table below, which is comprised of portions of the transcript of the Deposition, a copy of which is attached under seal as Exhibit C.

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Lines/Pages for which <i>in camera</i> treatment is requested</b>
PX7125	Depo Transcript: Steven Chapman	7/30/2021	4:9-10; 8:14-15; 9:3-9; 10:9-12; 11:4-11; 12:1-9; 12:12-13; 12:16-19; 13:5-9; 13:11-13; 13:15-16; 13:19-25; 14:2-5; 14:9-15:4; 15:8-15:19; 16:1-16:16; 16:18-17:9; 17:11-20:16; 20:18-22:6; 23:10-16; 23:18; 23:20;

			<p>23:24-25; 24:5; 24:14; 24:21; 25:3-29:2; 29:9-17; 29:22-30:13; 30:15-31:25; 32:3-4; 32:9-34:15; 34:19-34:24; 35:4-9; 35:15-21; 36:3-12</p> <p>And PX7125-013 through PX7125-022 (the glossary; as it could be used to reconstruct the confidential testimony).35:15-21; 36:3-12.</p>
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**II. The Confidential Testimony Contain Secret and Material Business Information such that Disclosure Would Result in Serious Injury to Natera**

*In camera* treatment of material offered into evidence is appropriate where 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). *In camera* treatment is appropriate with respect to information that is secret and material to the business as the disclosure of such information would result in serious competitive injury. *See General Foods Corp.*, 95 F.T.C. 352, 355 (1980). *In camera* treatment is appropriate where the disclosure of the business information would result in the loss of significant business advantages, as that is a serious competitive injury. *See In re Dura Lube Corp.*, No. 9292, 1999 LEXIS 255, at \*7 (F.T.C. Dec. 23 1999). This Court routinely recognizes that it is appropriate to afford secret and material business information *in camera* treatment in an endeavor “to protect confidential business information from unnecessary airing.” *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

Courts may consider the following factors when evaluating both the secrecy and materiality of the business information: “(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). As set forth herein, and discussed in greater detail in the Chatterjee Declaration, each of these factors supports *in camera* treatment of the Confidential Testimony.

With respect to the first three secrecy-related factors enumerated in *Bristol-Myers*, Natera has taken all reasonable steps to protect the confidential information contained in the Confidential Testimony, which was produced pursuant to a compulsory process and under the terms of the Protective Order in this Action. Counsel designated the transcript of the Deposition “Confidential” pursuant to the Protective Order in this Action upon determining such a designation was appropriate based on the information contained therein. Accordingly, Natera, a non-party in this Action, provided such information to the FTC and Respondents on the basis of its understanding that the Confidential Testimony would remain confidential and not be made public pursuant to the Protective Order entered in this Action. Furthermore, the competitively-sensitive information in the Confidential Testimony is not known to competitors or the general public and remains confidential within Natera. *See* Chatterjee Declaration at ¶ 5.

With respect to the last three materiality-related factors enumerated in *Bristol-Myers*, the information contained in the Confidential Testimony is competitively-valuable with respect to Natera’s diagnostics business. Natera has invested significant resources into developing and commercializing cell-free DNA testing, particularly related to women’s health, oncology, and transplant. *Id.* at ¶ 3. The Confidential Testimony include highly confidential, competitively-sensitive, and proprietary information concerning development and/or commercialization plans with respect to diagnostics products involving such technology. *Id.* at ¶ 5. The Confidential Testimony includes, for example, information relating to Natera’s sales, marketing, product, and other strategic initiatives with respect to its oncology business; analyses of potential business relationships, including information relating to contract terms; and analyses of the diagnostics

industry, including information relating to product perceptions and preferences and complaints.

*Id.* In addition, the statements and information contained in the Confidential Testimony regarding product development and business relationships, if made public, would result in the loss of significant business advantages. If this information is made public, competitors and other industry participants would discover Natera's test specifications, development plans and market strategies, negotiation tactics and contract terms, which would allow competitors to unfairly compete against Natera and/or undermine the advantages Natera has built on the basis of its substantial investments in the development and commercialization of its proprietary technologies and products. *Id.*

Finally, Natera's status as a non-party is relevant to the treatment of the Confidential Testimony. This Court 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." *In re H.P. Hood & Sons*, 58 F.T.C. at 1186. This is particularly important with respect to a non-party, as a non-party deserves "special solicitude" in its request for *in camera* treatment for its confidential business information. *See In re Kaiser Aluminum & Chern. Corp.*, 103 F.T.C. 500, 500 (1984). Thus, Natera's non-party status also weighs in favor of this Court granting its request for the Confidential Testimony to be afforded *in camera* treatment.

### **III. The Confidential Testimony Contain Trade Secrets, which will Remain Sensitive Over Time, such that Permanent *In Camera* Treatment is Justified**

The Confidential Testimony contain highly-sensitive trade secret information, which "is likely to remain sensitive or become more sensitive with the passage of time" such that permanent *in camera* treatment is appropriate. *In re Dura Lube Corp.*, 1999 LEXIS at \*7-8. Indefinite *in camera* treatment is appropriate where the documents contain trade secret information such as "secret formulas, processes, other secret technical information, or

information that is privileged.” *In re Altria Group, Inc.*, No. 9393, 2021 WL 2258745 (F.T.C. May 19, 2021) (citations omitted). As described in the Chatterjee Declaration, the Confidential Testimony contains trade secret information and highly-sensitive business information such that *in camera* treatment should be afforded indefinitely. Chatterjee Declaration at ¶ 5. Further, the competitive significance of the highly-sensitive business information contained in these documents is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate. *Id.*

#### IV. Conclusion

For the reasons set forth above and in the accompanying Chatterjee Declaration, Natera respectfully requests that this Court grant this Motion seeking permanent *in camera* treatment for the Confidential Testimony.

Dated: August 23, 2021  
Washington, DC

Respectfully submitted,

/s/ JeanAnn Tabbaa

Stephen Weissman  
JeanAnn Tabbaa

GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306  
(202) 955-8690  
jtabbaa@gibsondunn.com

*Counsel for Non-Party Natera, Inc.*



**PUBLIC**

D. Michael Chappell  
Chief Administrative Law Judge

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



**CERTIFICATE OF SERVICE**

I hereby certify that on August 23, 2021, I filed Non-Party Natera, Inc.'s Supplemental Motion for *In Camera* Treatment Pursuant to 16 C.F.R. § 3.45(b) electronically using the FTC's e-filing system, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., .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., NW, Room H-110  
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of Non-Party Natera, Inc.'s Supplemental Motion for *In Camera* Treatment Pursuant to 16 C.F.R. § 3.45(b) to:

**Complaint Counsel:**

Dylan Naegele (dnaegele@ftc.gov)  
Bridget Simons (bsimons@ftc.gov)  
Phoebe Flint (pflint@ftc.gov)  
James McCollough (jmccollough@ftc.gov)  
Teresa Martin (tmartin@ftc.gov)  
Devon Allen (dallen1@ftc.gov)  
Corene Wint (cwint@ftc.gov)  
Matthew E. Joseph (mjoseph1@ftc.gov)  
Jennifer Milici (jmilici@ftc.gov)  
Peter Colwell (pcolwell@ftc.gov)  
Brian A. O'Dea (bodea@ftc.gov)  
Samuel Fulliton (sfulliton@ftc.gov)  
Nicolas Stebinger (nstebinger@ftc.gov)  
Sarah Wohl (swohl@ftc.gov)  
Stephen A. Mohr (smohr@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

**Counsel for Respondent Illumina, Inc.:**

David R. Marriott (dmarriott@cravath.com)  
Christine A. Varney (cvarney@cravath.com)  
Sharonmoyee Goswami (sgoswami@cravath.com)

Richard J. Stark (rstark@cravath.com)  
J. Wesley Earnhardt (wearhardt@cravath.com)  
Jesse M. Weiss (jweiss@cravath.com)  
Michael J. Zaken (mzaken@cravath.com)  
Cravath, Swaine & Moore LLP  
825 Eighth Avenue  
New York, NY 10019

Counsel for Respondent GRAIL, Inc.:

Anna M. Rathbun (anna.rathbun@lw.com)  
Carla Weaver (carla.weaver@lw.com)  
David L. Johnson (david.johnson@lw.com)  
Michael G. Egge (michael.egge@lw.com)  
Marguerite M. Sullivan (marguerite.sullivan@lw.com)  
Latham & Watkins LLP  
555 Eleventh Street, NW  
Washington, DC 20004

Al Pfeiffer (al.pfeiffer@lw.com)  
Latham & Watkins LLP  
505 Montgomery Street, Suite 2000  
San Francisco, CA 9411

Marcus Curtis (marcus.curtis@lw.com)  
Latham & Watkins LLP  
12670 High Bluff Drive  
San Diego, CA 92130

Dated: August 23, 2021  
Washington, DC

Respectfully submitted,

/s/ JeanAnn Tabbaa

Stephen Weissman  
JeanAnn Tabbaa

GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306  
(202) 955-8690  
jtabbaa@gibsondunn.com

*Counsel for Non-Party  
Natera, Inc.*

# **EXHIBIT A**

PUBLIC

**From:** [Naegele, Dylan](#)  
**To:** [Weissman, Stephen](#); [Tabbaa, JeanAnn](#)  
**Cc:** [Allen, Devon](#); [Martin, Teresa](#); [McCollough, James](#); [Simons, Bridget](#); [Wint, Corene](#)  
**Subject:** In the Matter of Illumina, Inc., and GRAIL, Inc., Docket No. 9401  
**Date:** Thursday, August 12, 2021 6:16:35 PM  
**Attachments:** [PX7125.pdf](#)

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**[WARNING: External Email]**

Dear Steve,

By this email 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 testimony of Steve Chapman into evidence in the administrative trial *In the Matter of Illumina, Inc., and GRAIL, Inc.*, Docket No. 9401. For your convenience, a copy of the testimony is attached to this email.

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.

Sincerely,

Dylan

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Dylan Naegele  
Attorney - Federal Trade Commission  
W: (202) 326-2433 | M: (202) 710-2717

# **EXHIBIT B**



confidentiality protection afforded this type of information by Natera, I submit that the disclosure of this testimony to the public and to competitors of Natera would cause serious competitive injury to Natera.

3. Natera is a global supplier of cell-free DNA (“cfDNA”) testing with a focus on women’s health, oncology, and organ health. Natera pioneers noninvasive blood-based testing through the development of its next-generation, cfDNA technology platform. The development of this platform involves significant investment in novel molecular methods and proprietary bioinformatics. This technical information is highly-sensitive, distinguishes Natera from its competitors, and is critical to Natera’s business development and competition strategies.

4. As described in the Motion, Natera seeks permanent *in camera* protection of the following portions of the deposition transcript:

Exhibit No.	Document Title/Description	Date	Lines/Pages for which <i>in camera</i> treatment is requested
PX7125	Depo Transcript: Steven Chapman	7/30/2021	4:9-10; 8:14-15; 9:3-9; 10:9-12; 11:4-11; 12:1-9; 12:12-13; 12:16-19; 13:5-9; 13:11-13; 13:15-16; 13:19-25; 14:2-5; 14:9-15:4; 15:8-15:19; 16:1-16:16; 16:18-17:9; 17:11-20:16; 20:18-22:6; 23:10-16; 23:18; 23:20; 23:24-25; 24:5; 24:14; 24:21; 25:3-29:2; 29:9-17; 29:22-30:13; 30:15-31:25; 32:3-4; 32:9-34:15; 34:19-34:24; 35:4-9; 35:15-21; 36:3-12  And PX7125-013 through PX7125-022 (the glossary; as it could be used to reconstruct the confidential testimony).35:15-21; 36:3-12.

5. The document beginning PX7125 is the transcript of the deposition testimony of Steven Chapman, the Chief Executive Officer of Natera. This deposition was conducted pursuant to a subpoena *ad testificandum* issued by Respondents in the Action. The specified

testimony in this transcript consists entirely of discussion concerning either trade secrets or highly-sensitive business information. For example, the testimony concerns Natera's strategic and development and business plans for its diagnostics; Natera's relationship with suppliers, customers, competitors and other industry participants; and Natera's strategic considerations concerning the commercialization of products, including the pricing and reimbursement of products associated with such plans. Furthermore, competition in the diagnostics industry is premised on significant proprietary and trade secret information and business relationships. Based on my experience at Natera and in the industry, the disclosure of Natera's consideration of such material to the public and its competitors, would reveal information concerning Natera's test specifications, development plans and market strategies, negotiation tactics and contract terms, which would allow competitors to unfairly compete against Natera and/or undermine the advantages Natera has built on the basis of its substantial investments in the development and commercialization of its proprietary technologies and products. For these reasons, this testimony, which was provided by the Chief Executive Officer at non-party Natera pursuant to a compulsory process and discusses Natera's consideration of the market today and projections for the market and its plans as a participant in such market should be afforded *in camera* treatment indefinitely.

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

Executed on: August 23, 2021

/s/ Arka Chatterjee  
Name: Arka Chatterjee  
Lead Intellectual Property Litigation  
Counsel of Natera, Inc.



# **EXHIBIT C**

**Proceeding Exhibit No.: PX7125**

**Beginning Bates No.: PX7125-001**

**Confidential - In Camera Treatment Requested**