

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

In the Matter of

**Illumina, Inc.
a corporation,**

and

**GRAIL, Inc.
a corporation,**

Respondents.

Docket No. 9401

RESPONDENT GRAIL, LLC'S FOURTH MOTION FOR *IN CAMERA* REVIEW OF CERTAIN TRIAL EXHIBITS

Respondent GRAIL, LLC. (“GRAIL”) respectfully renews its motion under 16 C.F.R. § 3.45 for *in camera* treatment of confidential and competitively sensitive information on the parties’ final proposed exhibit lists. On August 5, 2021, August 17, 2021, and August 27, 2021 GRAIL filed its first, second, and third motions for *in camera* review of certain trial exhibits (the “First Motion,” “Second Motion,” and “Third Motion,” respectively). In its September 3, 2021 Order on GRAIL, Inc.’s Third Motion for *In Camera* Treatment, the Court granted the Third Motion as to GRAIL’s document designations, but denied it as to GRAIL’s deposition and investigatory hearing transcript designations, directing GRAIL to narrow the scope of its transcript designations. Order on Resp’t GRAIL, Inc.’s Third Mot. for *In Camera* Treatment (Sept. 3, 2021) (“Third Order”).

GRAIL has done so. GRAIL has comprehensively reviewed all of its deposition and investigatory hearing transcript designations and narrowed such designations wherever possible. This process has resulted in precisely-drawn transcript designations that address the core of

GRAIL’s confidential information. Thus, as explained here and in the accompanying third supplemental declaration of Marissa Lee Song, General Counsel of GRAIL (the “Third Song Supplemental Declaration”) the transcript sections identified in this motion include information that “will likely result in a clearly defined, serious injury” to GRAIL if publicized. 16 C.F.R. § 3.45(b). Accordingly, GRAIL respectfully requests the Court grant its motion for *in camera* treatment.

I. **LEGAL STANDARD**

Parties to a Part 3 proceeding may move the Court to “obtain *in camera* treatment for material, or portions thereof, offered into evidence.” *Id.* *In camera* treatment is appropriate if public disclosure of the information is likely to “result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.” *Id.* “[M]aterial made subject to an *in camera* order will be kept confidential and not placed on the public record of the proceeding in which it was submitted.” 16 C.F.R. § 3.45(a). “Only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative Law Judge, the Commission and reviewing courts may disclose such *in camera* material to the extent necessary for the proper disposition of the proceeding.” *Id.*

In camera treatment may be granted if “public disclosure will likely result in clearly defined, serious injury.” § 3.45(b). In considering whether to grant *in camera* treatment, 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 within the business; (3) the extent of measures taken to protect the information’s secrecy; (4) the value of the information to the business and its competitors; (5) the effort or investment made in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-*

Meyers Co., 90 F.T.C. 455, 456-57 (1977). *In camera* review may be appropriate not just for trade secrets and highly detailed cost data, but also for information in many ordinary-course business records “such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents.” *In re 1-800 Contacts, Inc.*, No. 9372, 2017 FTC LEXIS 55, at *5-6 (Apr. 4, 2017). In addition, “sensitive personal information”—like telephone numbers, home addresses, and/or social security numbers—warrants *in camera* treatment. *In re Otto Bock Healthcare N. Am., Inc.*, No. 9378, 2018 WL 3491602, at *3 (F.T.C. July 2, 2018); 16 C.F.R. § 3.45(b)(3). The Court has already granted GRAIL’s motion for *in camera* treatment of sensitive personal information. Order on Resp’t GRAIL, Inc.’s Mot. for *In Camera* Treatment (Aug. 12, 2021) (“First Order”).

II. ARGUMENT

The deposition and investigatory hearing transcript sections identified in this Motion describe sensitive materials central to GRAIL’s current and future operations. GRAIL’s product-development efforts and its plans to transition from research-and-development to commercialization are topics central to the subject-matter of the present litigation. As such, Complaint and Respondent Counsels have extensively investigated these subjects across multiple investigatory hearings and depositions of various witnesses and experts. Given this in-depth exploration of these commercially sensitive topics, GRAIL has a vested interest in preventing disclosure of these highly confidential transcript sections. Their publication would harm GRAIL, granting other companies insight into GRAIL’s confidential product development and commercialization efforts, which would undermine GRAIL’s mission and its future endeavors as a company.

With these considerations in mind, GRAIL has performed an additional comprehensive review of all of its deposition and investigatory hearing transcript designations and substantially

pared them back, focusing its designations on the information that is most critical to GRAIL. While a numerical quantification of this reduction and re-targeting of designations is impossible, GRAIL believes that its transcript designations are now far more tailored to GRAIL’s confidential information. Resultantly, GRAIL has “significantly narrowed” its transcript designations in accordance with the Court’s directions, Third Order at 4, and the transcript sections identified in this Motion include GRAIL’s most confidential and competitively sensitive information relating to its multi-year efforts with Galleri and other projects.¹

The below chart lists each category of transcript sections for which GRAIL seeks *in camera* treatment, the paragraph discussing each category in the Third Song Supplemental Declaration,² and the time period for which GRAIL requests *in camera* treatment. Exhibit 1 contains pincites to the deposition and investigatory hearing transcripts that are the subject of this Motion. Exhibit 2 contains copies of the transcripts with yellow highlighting to indicate where the transcripts should be redacted. Multiple portions of the testimony designated in Exhibits 1 and 2 are related to documents for which this Court has already granted *in camera* treatment in its Order dated September 3, 2021. *See Order On GRAIL, Inc.’s Third Mot. For In Camera Treatment at 2-3.*

¹ GRAIL has expended its best efforts to conform this Motion’s designations to only unpublicized materials. However, given the continuing and evolving nature of this litigation, GRAIL’s activities and publications, and other developments that may destroy confidentiality, GRAIL respectfully requests that the Court grant it an opportunity to further correct any erroneous *in camera* request made in this Motion that may be identified by the Court or any other party.

² The Third Song Supplemental Declaration provides a similar level of detail as declarations that this Court had previously found sufficient to support a party’s request for *in camera* treatment on many issues. *See, e.g., In re Altria Grp., Inc. & JUUL Labs, Inc.*, No. 9393, 2021 WL 2258803, at *4-6 (F.T.C. May 19, 2021) (granting *in camera* treatment for ten years to documents including trade secrets and product development plans, and granting *in camera* treatment to numerous other categories of documents including regulatory filings).

Category	Song Declaration	Time period for <i>In Camera</i> Treatment
Trade Secrets and Product Development	¶8	Five or Ten Years
Financial Data	¶9	
Pricing and Pricing Strategy	¶10	
Sales and Marketing Strategy	¶11	
Regulatory Strategy	¶12	
Strategic Initiatives	¶13	
Sensitive Personal Information	¶14	Indefinitely

A. Trade Secrets and Product Development

Documents that contain trade secrets, such as the technical specifications of GRAIL’s multi-cancer early detection test, Galleri, and GRAIL’s development of future tests and versions of those tests, warrant in camera treatment. *See I-800 Contacts*, 2017 FTC LEXIS 55, at *5 (“Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, or information that is privileged.” (citation omitted)); *Altria Grp.*, 2021 WL 2258803, at *4 (granting *in camera* treatment for a period of ten years to trade secrets, specifications and product development plans).

Documents that contain GRAIL’s product development plans are also highly sensitive and should be protected from public disclosure. As Complaint Counsel concedes, and as the third-party *in camera* motions and trial testimony confirms, multi-cancer screening is a nascent technology and while there are other companies developing other types of early cancer detection tests, those tests are many years behind GRAIL in development. Information about GRAIL’s current and future products is competitively sensitive and the disclosure of this otherwise

³ In the Third Order, the Court, in the interest of increasing administrative efficiency, granted all non-trade-secret exhibits five years of *in camera* treatment. Third Order at 3 n. 1; *see In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, at *20 n.1 (May 25, 2011). Consistent with the interests outlined in the Third Order, GRAIL is seeking the same five-year *in camera* treatment for the designated portions of the investigatory hearing and deposition transcripts here.

confidential material would allow potential competitors to copy GRAIL’s technology, and develop commercial strategies designed to undermine GRAIL’s current products.

Ultimately, because GRAIL would experience a clearly defined, serious injury if its trade secrets and product development plans were publicly disclosed, GRAIL respectfully requests 10 years of protection for trade secret designations and 5 years of protection for product development designations, as denoted in Exhibit 1. This level of protection is consistent with protections granted by this Court in previous proceedings and is consistent with the protections that other third party test developers will receive for similar information. *See, e.g., Altria Grp.*, 2021 WL 2258803, at *4.

B. Financial Data

Documents that contain detailed financial information—including but not limited to sales, costs and margin data—also warrant *in camera* treatment. *See I-800 Contacts*, 2017 FTC LEXIS 55, at *9 (protecting “financial metrics, customer and supplier data, and market growth indicators.”); *see also In re McWane Inc.*, No. 9351, 2012 FTC LEXIS 143, at *26-27 (Aug. 17, 2012) (protecting “purchase and sales data”). Recently, in *In the Matter of Altria Group, Inc. & JUUL Labs, Inc.*, the Court granted in camera treatment for similar sales, costs and margin data that the company described as “fundamental to [its] operations.” *Altria Grp.*, 2021 WL 2258803, at *4. The Court should reach the same result here.

This financial data is fundamental to GRAIL’s operations, and because GRAIL has been a privately held company, this information is not publicly available. Disclosure of this data would provide competitors and third parties insight into GRAIL’s financial and commercial performance, including regarding its current and projected cost of goods sold, research and development costs, current and future cash flows and investment requirements, and the confidential financial terms of supply agreements, licenses, and royalties. This data could be used by aspiring prospective

competitors of GRAIL to obtain a strategic advantage, or to aid their development of strategies related to sales and marketing. For example, having knowledge of GRAIL margins for a particular product could allow a future potential competitor to target GRAIL’s sales to particular distributors or customers. In addition, access to this data could undermine GRAIL’s negotiations with its trade partners. Because GRAIL would experience a clearly defined, serious injury if its financial data were publicly disclosed, GRAIL respectfully requests 5 years of protection for these transcript sections, as denoted in Exhibit 1. This level of protection is warranted due to the nascence of the industry and the extent to which information regarding GRAIL’s longstanding license and royalty agreements as well as other financial information could be used by third parties to extrapolate competitively sensitive information about GRAIL’s costs. *See, e.g., In re E.I. DuPont de Nemours*, 151 F.T.C. 679, 680 (2011) (granting ten year in camera protection for financial data that could be extrapolated by third parties).

C. Pricing and Pricing Strategy

Detailed information regarding GRAIL’s current and future prices to its customers, prices and pricing strategies also should be protected in camera. This includes details on prices charged to GRAIL’s customers, price negotiations, the process GRAIL goes through to set prices and deliberations regarding potential future changes to prices. *See I-800 Contacts*, 2017 FTC LEXIS 55, at *11 (protecting documents containing “pricing . . . and internal analyses of customer demographics and buying patterns”); *In re McWane, Inc. & Star Pipe Prods., Ltd.*, No. 9351, 2012 FTC LEXIS 143, at *7-8 (Aug. 17, 2012) (protecting documents containing “customer data, pricing and cost information, business strategies, and negotiating strategies”); *Altria Grp.*, 2021 WL 2258803, at *4 (protecting documents reflecting pricing information).

This pricing information is competitively sensitive and its disclosure would provide GRAIL’s aspiring future competitors with insight into GRAIL’s pricing methods and strategies

for obtaining reimbursement from payors in the future, causing harm to both GRAIL and potentially to consumers. Disclosure could also harm GRAIL’s relationships with its customers and partners and undermine GRAIL’s negotiating positions, resulting in competitive and commercial harm to GRAIL. GRAIL’s strategies for approaching third-party payors related to reimbursement of the Galleri test and other potential products involve detailed discussions of GRAIL’s test and product strategies. Because GRAIL would experience a clearly defined, serious injury if the information on pricing and pricing strategy in these transcript sections were publicly disclosed, GRAIL respectfully requests 5 years of protection for these transcript sections. Five years of protection, as denoted for each transcript section in Exhibit 1, is warranted due to the uniqueness of GRAIL’s strategies and negotiations with payors to reimburse the Galleri test. Potential competitors may not have a commercial product available for seven years or more, meaning that GRAIL’s confidential strategies regarding pricing and payor reimbursement may still have competitive utility five-plus years from now. *See, e.g., E.I. DuPont de Nemours*, 151 F.T.C. at 680 (granting ten years of *in camera* protection for unique information whose competitive utility was not likely to diminish due to the characteristics of the industry at issue).

D. Sales and Marketing Strategy

Recent detailed information regarding GRAIL’s strategy and considerations related to sales and marketing also warrant *in camera* treatment. *See 1-800 Contacts*, 2017 FTC LEXIS 55, at *11 (protecting documents containing “marketing and bidding strategies”).

By way of example, this category includes documents that provide insight on GRAIL’s commercial planning related to which distribution channels GRAIL plans to target and why, they identify specific potential customers that GRAIL has approached or intends to approach in the future; and they disclose GRAIL’s sales strategy for approaching those customers. These materials serve as the basis for the formulation of GRAIL’s business plans, and disclosure of these

confidential materials would provide GRAIL’s potential future competitors with previously unavailable details about GRAIL’s sales and marketing strategies, which they could use in their own negotiations with retailers or as they consider marketing plans to compete with GRAIL. Moreover, disclosure could undermine GRAIL’s relationships and negotiating positions with its customers, resulting in competitive and commercial harm to GRAIL. Because GRAIL would experience a clearly defined, serious injury if the information on sales and market strategies in these transcript sections were publicly disclosed, GRAIL respectfully requests 5 years of protection for these transcript sections. Five years of protection, as noted in Exhibit 1, is warranted for information in this category due to the nascent nature of GRAIL’s products. *See, e.g., E.I. DuPont de Nemours*, 151 F.T.C. at 680 (granting ten year in camera protection for unique information whose competitive utility was not likely to diminish due to the characteristics of the industry at issue).

E. Regulatory Strategy

Documents that reflect GRAIL’s regulatory strategy and efforts – including confidential details regarding the design and execution of its clinical trials – are also highly competitively sensitive and should not be disclosed publicly. This information is sensitive because it provides direct insight into GRAIL’s regulatory strategy and deliberative process related to obtaining FDA approval for multi-cancer early detection tests, and its interactions with the FDA. Disclosure of this information could impact GRAIL’s ongoing discussions with the FDA, which are essential to GRAIL’s ability to obtain FDA approval. In addition, providing potential competitors with insight into this information may give them an unfair advantage over GRAIL in the FDA approval process, resulting in competitive and commercial harm to GRAIL. Because GRAIL would experience a clearly defined, serious injury if the information on regulatory strategy in these transcript sections were publicly disclosed, GRAIL respectfully requests 5 years of protection for these transcript

sections as noted in Exhibit 1. *See, e.g., Altria Grp.*, 2021 WL 2258803, at *6. This level of protection is warranted for information regarding GRAIL’s regulatory strategy due to the unique issues raised by GRAIL’s attempts to obtain FDA approval for a multi-cancer early detection test, which has never been granted by the FDA. Today, no one knows whether the competitive value of this data will diminish or when it will diminish. *See, e.g., E.I. DuPont de Nemours*, 151 F.T.C. at 680 (granting ten year in camera protection for unique information whose competitive utility was not likely to diminish due to the characteristics of the industry at issue). Indeed, other test developers sought *permanent* in-camera treatment for the same types of materials and Complaint Counsel had no objections. Non-Party Natera, Inc.’s Mot. for *In Camera* Treatment at 9-10; Non-Party Exact Scis.’ Mot. for In Camera Treatment at 16-17.

F. Strategic Initiatives

Strategic initiatives – such as GRAIL Board’s analyses of potential transactions, financing options and timing, and other strategic initiatives – contain confidential information about the company’s strategic direction and also require in camera treatment. *See 1-800 Contacts*, 2017 FTC LEXIS 55, at *9 (protecting documents including “evaluations of market factors, market risks, company advantages, company disadvantages, and company risks, and which also review future strategic plans”); *see also McWane*, 2012 FTC LEXIS 143, at *7-8 (protecting documents “which contain. . . business strategies, and negotiating strategies”).

Disclosure of this information could result in serious injury to GRAIL because it would reveal GRAIL’s internal analyses of its business and provide direct insight into the company’s deliberative process with respect to strategic initiatives. *Altria Grp.*, 2021 WL 2258745, at *4-5 (granting in camera status to documents that reflect “discussions among or presentations to Altria’s board of directors or top executives about what opportunities to pursue and how such decisions are made.”). Moreover, disclosure of this information could undermine GRAIL’s position in

future corporate transactions or financing efforts by revealing GRAIL’s internal targets for such financing or rationales for future transactions.

Particularly, because GRAIL was already exploring financing pathways prior to the merger with Illumina, GRAIL is likely to be seriously harmed if its confidential materials, including those related to the 2020 GRAIL Initial Public Offering (“IPO”), are disclosed here. Complaint Counsel is seeking to unwind the merger here. *See e.g.*, Aug. 24, 2021 Hr’g Tr. at 53:4-6 (“[W]hich is why at the close of this case complaint counsel will be asking you [the Court] to unwind this transaction.”). If Complaint Counsel prevails and the merger is unwound, disclosure of GRAIL’s strategic initiative documents, including those related to the 2020 GRAIL IPO, will immediately harm GRAIL’s ability to resume its search for alternative financing pathways by giving a wide range of third parties insight into GRAIL’s goals, priorities, internal business analyses, and other confidential strategies, disadvantaging GRAIL in negotiations and other commercial activities.

Because GRAIL would experience a clearly defined, serious injury if the information on strategic initiatives in these documents were publicly disclosed, GRAIL respectfully requests 5 years of protection for these transcript sections, as listed in Exhibit 1, due to the nascent nature of the multi-cancer early detection test industry and the potentially long time horizon before other potential test developers bring any cancer screening tests to market. *See, e.g., E.I. DuPont de Nemours*, 151 F.T.C. at 680 (granting ten year in camera protection for unique information whose competitive utility was not likely to diminish due to the characteristics of the industry at issue).

G. Sensitive Personal Information

Documents that contain details regarding individuals’ compensation, their job performance, personal phone numbers, personal email addresses, and home addresses. *See Otto Bock*, 2018 WL 3491602, at *3; 16 C.F.R. § 3.45(b)(3). Information regarding compensation and job performance is particularly sensitive and its disclosure within GRAIL is limited to the named

individual and those who need the information to perform their jobs. Disclosure of this material could have the effect of embarrassing the named individuals or impacting their careers, and personal contact information need not be disclosed to the public in connection with this case. *Altria Grp.*, 2021 WL 2258803, at *3. GRAIL respectfully requests indefinite protection for transcript sections containing sensitive personal information, as noted in Exhibit 1.

III. CONCLUSION

Given the serious risk that public disclosure of these transcript sections would cause serious injury to GRAIL's business or reveal personal identifying information, GRAIL respectfully requests an *in camera* order to protect the transcript sections listed in Exhibit 1 to the Third Song Supplemental Declaration from public disclosure.

Dated: September 8, 2021

Respectfully submitted,

/s/ Anna M. Rathbun

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

Alfred C. Pfeiffer
505 Montgomery Street
Suite 2000
San Francisco, CA 94111-6538

Telephone: (415) 391-0600
Facsimile: (415) 395-8095
Al.Pfeiffer@lw.com

Marilyn N. Guirguis
1271 Avenue of the Americas
New York, NY 10020
Telephone: (212) 906-4748
Marilyn.Guirguis@lw.com

Marcus Curtis
Nathaniel J. Amann
12670 High Bluff Drive
San Diego, CA 92130
Telephone: (858) 509-8465
Marcus.Curtis@lw.com
Nathaniel.Amann@lw.com

*Attorneys for Respondent
GRAIL, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Acting Secretary Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

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

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

Complaint Counsel
U.S. Federal Trade Commission

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

Counsel for Respondent Illumina, Inc.
Cravath, Swaine & Moore LLP

Christine A. Varney
Richard J. Stark
David R. Marriott
J. Wesley Earnhardt
Sharonmoyee Goswami

Jesse M. Weiss
Michael J. Zaken

Counsel for Respondent GRAIL, LLC
Latham & Watkins LLP

Michael G. Egge
Marguerite M. Sullivan
Alfred C. Pfeiffer, Jr.
Anna M. Rathbun
David L. Johnson
Marcus Curtis
Marilyn N. Guirguis
Sean Mulloy
Nathaniel J. Amann

September 8, 2021

/s/ Anna M. Rathbun

Anna M. Rathbun

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

In the Matter of

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

**GRAIL, Inc.
a corporation,**

Respondents.

Docket No. 9401

[PROPOSED] ORDER

Upon consideration of Respondent GRAIL LLC.'s ("GRAIL") Third and Fourth Motions for *In Camera* Review of Certain Trial Exhibits, it is hereby

ORDERED, that GRAIL's motion is GRANTED, and it is further

ORDERED, that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), the exhibits and testimony identified in Exhibit 1 to the Motion, and any related trial testimony, shall be subject to *in camera* treatment and will be kept confidential and not placed on the public record of this proceeding.

Date: _____ D. Michael Chappell
Chief Administrative Law Judge

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

In the Matter of

**Illumina, Inc.
a corporation,**

and

**GRAIL, Inc.
a corporation,**

Respondents.

Docket No. 9401

**DECLARATION OF MARISSA LEE SONG IN SUPPORT OF RESPONDENT GRAIL,
LLC'S FOURTH MOTION FOR *IN CAMERA* REVIEW OF CERTAIN TRIAL
EXHIBITS**

I, Marissa Lee Song, declare as follows:

1. I am the General Counsel and Corporate Secretary at GRAIL, LLC (“GRAIL”), a defendant in the above-listed action. I have been employed by GRAIL since September 29, 2019.
2. I make this declaration in support of GRAIL LLC’s Fourth Motion for *In Camera* Review of Certain Trial Exhibits. GRAIL seeks *in camera* treatment for certain designated portions of the investigatory hearing and deposition transcripts identified in Exhibit 1, which are also attached in Exhibit 2. The portions of the investigatory hearing and deposition transcripts for which GRAIL seeks *in camera* treatment are also highlighted in yellow in Exhibit 2. I have personal knowledge of the competitive significance and confidential nature of these documents. Based on my review of Exhibit 1, my conversations with the individuals who reviewed the documents at my direction, my knowledge of GRAIL’s business, and my knowledge of the confidential nature of these documents, I respectfully submit that disclosure of the designated portions of investigatory hearing and

deposition transcripts listed in Exhibit 1 to the public would either result in clearly defined, serious injury to GRAIL or would reveal sensitive personal information.

3. In the ordinary course of business, GRAIL treats this information as strictly confidential and limits its disclosure to employees that need to know it to perform their business functions. GRAIL also takes reasonable steps to protect its network and electronically stored information to prevent access by outside parties.

4. Each investigatory hearing and deposition transcript identified in Exhibit 1 was designated as “Confidential Material” pursuant to the Protective Order entered on March 30, 2021.

5. The Motion is narrowly tailored to protect GRAIL’s confidential information. GRAIL’s counsel carefully reviewed the investigatory hearing and deposition transcripts identified in Exhibit 1 and provided me with their designations of confidential materials contained therein. I then reviewed Exhibit 1 and GRAIL’s outside counsel described to me the approach used to review and designate portions of the transcripts containing confidential information.

6. GRAIL has grouped the designated portions of the investigatory hearing and deposition transcripts listed in Exhibit 1 into the following categories:

- a. Trade Secrets and Product Development
- b. Financial Data
- c. Pricing and Pricing Strategy
- d. Sales and Marketing Strategy
- e. Regulatory Strategy
- f. Strategic Initiatives
- g. Sensitive Personal Information

7. Each category describes materials that either (a) disclose confidential and competitively sensitive information or (b) reveal sensitive personal information. Third parties with access to this information would either gain a significant business advantage at the expense of GRAIL or obtain sensitive personal information to the detriment of the individual whose information is revealed. For each investigatory hearing and deposition transcript, Exhibit 1 identifies the corresponding exhibit number and describes the portions of the transcript containing confidential material.

8. **Trade Secrets and Product Development:** The documents in this category include information on trade secrets, such as GRAIL's research and development efforts and technical specifications regarding GRAIL's current and future products including the Galleri test. This information is competitively sensitive and the disclosure of this otherwise confidential material would allow other companies to develop commercial strategies designed to undermine GRAIL's current and future products, or develop strategies to try to undermine GRAIL's products. Because GRAIL would experience a clearly defined, serious injury if its trade secrets and product development plans were publicly disclosed, trade secret information should remain confidential for 10 years and product development information should remain confidential for 5 years.

9. **Financial Data:** The documents in this category contain detailed sales, costs, and margin data and other financial information. This financial information is fundamental to GRAIL's operations, and is not publicly disclosed. Disclosure of this data would provide third parties with insight into GRAIL's commercial and financial performance, including details regarding its current and projected cost of goods sold, research and development costs, current and future cash flows and investment requirements, and the financial terms of supply agreements, licenses, and royalties. This data could be used by third parties to obtain a competitive advantage by providing them with insight

as to GRAIL's cost structures, licensing relationships, and royalties it may owe pursuant to those relationships. In addition, access to this data could undermine GRAIL's negotiations with its trade and research partners and investors. Because GRAIL would experience a clearly defined, serious injury if the financial data and information in these documents were publicly disclosed, this information should remain confidential for 5 years.

10. Pricing and Pricing Strategy: The documents in this category contain detailed information on GRAIL's current and projected prices to customers, how those prices are determined, and strategies for obtaining payor reimbursement of GRAIL's products. This pricing information is competitively sensitive and its disclosure would provide third parties with insight into GRAIL's pricing methods and strategies, causing harm to both GRAIL and potentially to consumers. Disclosure could also harm GRAIL's relationships with its customers and payors and undermine GRAIL's negotiating positions, resulting in competitive and commercial harm to GRAIL. Because GRAIL would experience a clearly defined, serious injury if the information on pricing and pricing strategy in these documents were publicly disclosed, this information should remain confidential for 5 years.

11. Sales and Marketing Strategy: The documents in this category contain detailed information regarding GRAIL's strategy and considerations related to sales and marketing to patients, physicians, payors, research partners, and investors. GRAIL's documents provide insight as to how GRAIL intends to sell the first-of-its-kind multi-cancer screening test, Galleri, and other products in development in various channels and its plans to scale its tests to achieve wide range adoption. These materials serve as the basis for GRAIL's business plans, and disclosure of these confidential materials would provide third parties with previously unavailable details about GRAIL's current and future sales and marketing strategies, which they could use in their own

negotiations with the various stakeholders described above. Because GRAIL would experience a clearly defined, serious injury if the information on sales and marketing strategy in these documents were publicly disclosed, this information should remain confidential for 5 years.

12. **Regulatory Strategy:** The documents in this category reflect GRAIL's analysis and efforts to obtain approval from the U.S. Food and Drug Administration ("FDA") for the Galleri test and other products in development, including interactions with that agency. The documents also contain details regarding clinical and other studies conducted by GRAIL and its partners. This information is sensitive because it provides direct insight into GRAIL's regulatory strategy and deliberative process with respect to FDA approval, and GRAIL's interactions with the FDA. Disclosure of this information could impact GRAIL's discussions with the FDA and could provide third parties with insight into GRAIL's regulatory strategy. This insight could be used to negatively impact GRAIL's relationship with the FDA, resulting in competitive and commercial harm to GRAIL and harm to consumers. Because GRAIL would experience a clearly defined, serious injury if the information on regulatory strategy in these documents were publicly disclosed, this information should remain confidential for 5 years.

13. **Strategic Initiatives:** The documents in this category contain information on strategic initiatives currently or recently under consideration by GRAIL. These documents reflect consideration by GRAIL and/or GRAIL's Board of Directors of potential transactions, consideration of financing options and timing, and other strategic initiatives, and contain confidential information regarding GRAIL's strategic direction. Disclosure of this information could result in serious injury to GRAIL because it would reveal GRAIL's internal analyses of its business and provide direct insight into the company's deliberative process with respect to strategic initiatives. Although GRAIL has been acquired by Illumina, the Federal Trade Commission is seeking to unwind the deal. In the

event that the transaction is unwound, the information contained in these documents would retain their significance to GRAIL. Moreover, disclosure of this information could negatively impact GRAIL's position in future corporate transactions or financing efforts in the event of a divestiture. Because GRAIL would experience a clearly defined, serious injury if the information on strategic initiatives contained in these documents were publicly disclosed, this information should remain confidential for 5 years.

14. **Sensitive Personal Information:** The documents in this category reflect details regarding a named individual's compensation, their job performance, or their personal contact information including home addresses. Information regarding compensation and job performance is particularly sensitive and its disclosure within GRAIL is limited to the named individual and those who need it to perform their jobs. Disclosure of this information could embarrass the named individuals or impact their careers, and personal contact information is not necessary to disclose to the public in this case. As a result, this information should remain confidential indefinitely.

15. Because disclosure of the designated portions of the investigatory hearing and deposition transcripts described herein is likely to either reveal sensitive personal information or cause clearly defined, serious injury to GRAIL's financial and competitive position, GRAIL respectfully requests that the designated portions of the investigatory hearing and deposition transcripts listed in Exhibit 1 be given *in camera* treatment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I executed this declaration on September 8, 2021, in Menlo Park, California.



Marissa Lee Song

PUBLIC RECORD

EXHIBIT 1

PUBLIC RECORD

FILED *IN CAMERA*

PUBLIC RECORD

EXHIBIT 2

PUBLIC RECORD

**FILED *IN CAMERA*
VIA FILE TRANSFER**