

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, INC.'S SECOND MOTION FOR *IN CAMERA* REVIEW OF  
CERTAIN TRIAL EXHIBITS**

GRAIL, Inc. (“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, GRAIL filed a motion for in camera review of certain trial exhibits. With its motion, GRAIL included a declaration from its in-house counsel, Marissa Song, detailing the confidentiality of the parties’ proposed trial exhibits, and the harm that would occur to GRAIL if those documents were disclosed. Decl. of Marissa Lee Song in Supp. of Resp’t Grail’s Mot. for *In Camera* Review of Certain Trial Exs., Aug. 5, 2021 (“Song Decl.”). The declaration provided 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). In its initial motion, GRAIL explained that due to the nascence of

multi-cancer screening tests, and the long time horizon before any multi-cancer screening tests other than GRAIL's are commercialized, *in camera* treatment for GRAIL's sensitive documents for ten years is appropriate. Complaint Counsel filed an opposition lodging blanket objections to GRAIL's motion. Despite objecting to GRAIL's motion in full, Complaint Counsel only identified nine specific documents they believed were not entitled to *in camera* treatment. Complaint Counsel asserted that GRAIL had not "explained why ten-year in camera treatment was warranted" for its exhibits, but *did not dispute any of the premises underlying GRAIL's request*. Importantly, Complaint Counsel has not objected to the exact same treatment requested by third parties who Complaint Counsel claims compete with GRAIL. Thus, they appear to apply a double standard to the confidentiality of the very same types of documents: according to Complaint Counsel, third parties' sensitive documents are entitled to ten-year *in camera* treatment, but GRAIL's are not. With respect to the specific lines of investigative hearing transcripts and depositions for which GRAIL requested in camera treatment, Complaint Counsel had no specific objections.

The Court denied GRAIL's motion without prejudice and ordered GRAIL to renew its motion with additional details regarding its request. Pursuant to the Court's order, GRAIL respectfully renews its motion for *in camera* treatment. As explained here and in the accompanying supplemental declaration of Marissa Lee Song, General Counsel of GRAIL (the "Song Supplemental Declaration"), the public disclosure of this information "will likely result in a clearly defined, serious injury" to GRAIL. 16 C.F.R. § 3.45(b).

## **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 of 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 many ordinary 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).

## II. ARGUMENT

As numerous third party multi-cancer screening test developers have made clear in connection with their own motions for *in camera* treatment, documents produced in this case regarding multi-cancer screening tests are highly sensitive and public disclosure could lead to

significant harm. Natera, Inc.’s Mot. for *In Camera* Treatment (“Natera Mot.”) Ex. C, Decl. of John Fesko; Exact Science’s Mot. for *In Camera* Treatment (“Exact Mot.”) Ex. C, Decl. of Scott Coward. These materials are so sensitive, in fact, that Complaint Counsel had no objection to other multi-cancer screening test developers seeking *permanent in camera* treatment for documents and testimony relating to the exact same categories of confidential information that GRAIL included in its own motion. For example, [REDACTED]

[REDACTED]

[REDACTED] Similarly,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Complaint Counsel did not object

to Exact’s Motion, either.

Here, Complaint Counsel designated 586 GRAIL internal business documents, which contain the same types of information regarding GRAIL’s products, regulatory plans, and commercial strategies, as potential exhibits to be admitted at trial. Compl. Counsel’s Final Proposed Ex. List, Aug. 13, 2021. Respondents’ exhibit list contains an additional 309 such documents. As GRAIL explained in its initial motion, this confidential and competitively sensitive material would cause serious competitive injury to GRAIL. As in GRAIL’s original motion, the below chart lists each category of documents for which GRAIL seeks *in camera* treatment, the paragraph discussing each category in the Song Supplemental Declaration, and the time period for which GRAIL requests *in camera* treatment. Exhibit 2 contains copies of the proposed exhibits,

with yellow highlighting to indicate where documents should be redacted. GRAIL respectfully requests that documents without highlighting be granted *in camera* treatment in full.

Category	Song Declaration	Time period for <i>In Camera</i> Treatment
Trade Secrets and Product Development	¶8	See Exhibit 1
Financial Data	¶9	
Pricing and Pricing Strategy	¶10	
Sales and Marketing Strategy	¶11	
Regulatory Strategy	¶12	
Strategic Initiatives	¶13	
Sensitive Personal Information	¶14	

**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 those tests, warrant *in camera* treatment. *See 1-800 Contacts*, 2017 FTC LEXIS 55, at \*5 (“Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, and information that is privileged.”); *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 confirm, 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 confidential material would allow competitors to copy GRAIL’s technology, and develop commercial strategies designed to undermine GRAIL’s current products. Because GRAIL would experience a clearly defined,

serious injury if its trade secrets and product development plans were publicly disclosed, GRAIL respectfully requests ten years of protection for these documents, which 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*, 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 1-800 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. and 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*, 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 is 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 competitors of GRAIL to obtain a competitive 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 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 the financial data in these documents were publicly disclosed, GRAIL respectfully requests between 3-10 years of protection for these documents, 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 & Co.*, No. 9108, 1990 FTC LEXIS 134 at \*5-6 (Apr. 25, 1990) (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 1-800 Contacts*, 2017 FTC LEXIS 55, at \*11 (protecting documents containing "pricing ... and internal analyses of customer demographics and buying patterns"); *McWane*, 2012 FTC LEXIS 143, at \*7-8 (protecting documents containing "customer data, pricing and cost information, business strategies, and negotiating strategies"); *Altria*, 2021 WL 2258803 at \*4 (protecting documents reflecting pricing information).

This pricing information is competitively sensitive and its disclosure would provide GRAIL's 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 documents were publicly disclosed, GRAIL respectfully requests 3-10 years of protection for these documents. Three to ten years of protection, as denoted for each document 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 ten years from now. *See, e.g., E.I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134 at \*5-6 (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 GRAIL's thought processes regarding which distribution channels to target and why, they identify specific potential customers that GRAIL has approached or intends to approach in the future; 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 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 documents were publicly disclosed, GRAIL respectfully requests 3-10 years of protection for these documents. Three to ten 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*, 1990 FTC LEXIS 134 at \*5-6 (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 documents were publicly disclosed, GRAIL respectfully requests 5-10 years of protection for these documents as noted in Exhibit 1. *See, e.g., Altria*, 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*, 1990 FTC LEXIS 134 at \*5-6 (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 third party test developers sought *permanent* in-camera treatment for the same types of materials and Complaint Counsel had no objections. *Natera Mot.* at 9-10; *Exact Mot.* 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*, 2021 WL 2258745 at \*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. Because GRAIL would experience a clearly defined, serious injury if the information on strategic initiatives in these documents were publicly disclosed, GRAIL respectfully requests 3-10 years of protection for these documents, as listed in Exhibit 1, due to the nascency 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*, 1990 FTC LEXIS 134 at \*5-6 (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*, 2021 WL 2258803 at \*3. GRAIL respectfully requests indefinite protection for portions of documents containing sensitive personal information, as noted in Exhibit 1.

### **III. CONCLUSION**

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

Dated: Aug. 17, 2021

Respectfully submitted,

/s/ Anna M. Rathbun

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**CERTIFICATE OF SERVICE**

I hereby certify that on Aug. 17, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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The Honorable D. Michael Chappell  
Administrative Law Judge  
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I also certify that I caused the foregoing document to be served via email to:

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Aug. 17, 2021

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**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 Inc.'s ("GRAIL") Motion 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, INC.'S SECOND 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, Inc. (“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’s motion for in camera review of certain trial exhibits. GRAIL seeks in camera treatment for the trial exhibits and portions of exhibits identified in Exhibit 1, which are also attached in Exhibit 2. The portions of exhibits for which GRAIL seeks in camera treatment are highlighted in yellow. 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 exhibits 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 exhibit 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 exhibits and provided me with the exhibits identified in Exhibit 1. I reviewed Exhibit 1, and GRAIL’s outside counsel described to me the approach used to identify the exhibits listed on Exhibit 1 and the categories of confidential information that appear in the listed exhibits.

6. GRAIL has grouped the exhibits 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 document, Exhibit 1 identifies the exhibit number and a description of the relevant category of information, a description of the confidential material contained in the document, denotes whether or not GRAIL is seeking to redact portions of the document, and denotes the duration of in camera treatment sought.

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, this information should remain confidential for 10 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 because GRAIL is a privately held company this information 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 3-10 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 3-10 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 3-10 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 10 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. Moreover, disclosure of this information could negatively impact GRAIL's position in

future corporate transactions or financing efforts. 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 3-10 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. There are certain proposed exhibits that contain information that is more than three years old. Due to the nascence of multi-cancer screening tests and the long time horizon before any multi-cancer screening test obtains third-party payor reimbursement or FDA approval, the information contained in these documents still reveals GRAIL's internal analyses and their disclosure would provide third parties with insights as to GRAIL's strategies with respect to product development, FDA approval, and reimbursement. Disclosure of this information could negatively impact GRAIL's relationships with the FDA, payors, and/or GRAIL's customers, causing harm to GRAIL and consumers.

16. Because disclosure of the exhibits 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 exhibits 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 August 17, 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**