

**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 THIRD 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 and August 17, 2021, GRAIL filed its first and second motions for *in camera* review of certain trial exhibits (the “First Motion” and “Second Motion,” respectively). The Court denied both motions without prejudice, and instructed that GRAIL (1) provide additional details regarding its request, (2) reduce the amount of documents identified for *in camera* treatment, and (3) shorten the amount of time requested for *in camera* treatment.

GRAIL has done so. In this Motion, GRAIL has provided additional detail above and beyond the information supplied in its Second Motion, where appropriate, regarding the documents requiring *in camera* treatment. Furthermore, GRAIL has reduced the number of documents identified for *in camera* treatment from 895 documents (as of GRAIL’s Second Motion) to 674 documents and has shortened the requested amount of time for *in camera* treatment

by an average of 46% for the vast majority of identified documents.<sup>1</sup> Thus, as explained here and in the accompanying second supplemental declaration of Marissa Lee Song, General Counsel of GRAIL (the “Second Song Supplemental Declaration”) the documents identified in this motion represent the core of 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

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<sup>1</sup> Due to the nascent nature of the multi-cancer early detection industry, and the uncertain timelines for the commercialization of additional multi-cancer early detection tests, it is difficult to know when GRAIL’s confidential internal documents will no longer be commercially sensitive due to the passage of time. GRAIL respectfully requests that it be given an opportunity to move to renew its motion for *in camera* treatment for documents when the time period initially requested by GRAIL has run. *See, e.g., In re E.I. DuPont De Nemours & Co.*, 151 F.T.C. 679 (2011) (granting extension for *in camera* treatment for certain documents used as trial exhibits in 1979).

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 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. Or. on Resp't Grail's Mot. for *In Camera* Treatment (Aug. 12, 2021) (“First Order”).

## II. ARGUMENT

The documents identified in this Motion contain sensitive materials central and indispensable to GRAIL's operations. GRAIL's business has always focused on researching and developing methods to detect cancer. These research-and-development efforts, along with their results, are central to the subject-matter of the present litigation. As such, GRAIL has a substantial number of highly sensitive documents contained in the exhibit lists submitted in this litigation. The number of sensitive GRAIL documents identified is also reflective of the fact that Complaint Counsel has submitted as exhibits many versions of GRAIL's most sensitive documents, including its long-term detailed financial planning documents and other highly sensitive strategic plans. *See*

e.g., PX4078, PX5044, PX4153, PX4363, PX5040 (containing different versions of GRAIL’s Long-Range Planning documents portraying GRAIL’s detailed projections for specific costs, revenues, and margins over a ten-year period). It is not surprising that a large number of GRAIL’s documents are highly sensitive—GRAIL has created and commercialized the first and only multi-cancer early detection test, an effort that took multiple years and that other test developers are furiously (but unsuccessfully) trying to emulate. GRAIL has a vested interest in preventing disclosure of these highly confidential documents. Their publication would be catastrophic for GRAIL, allowing other entities to free-ride on GRAIL’s billion-dollar investments and years of hard work, which would undermine GRAIL’s mission and its future endeavors as a company.<sup>2</sup> Even so, as requested per the Court’s August 24, 2021 Order (the “Second Order”), GRAIL has performed an additional comprehensive review of all exhibits identified in its First and Second Motions and has substantially tailored its list of identified documents for *in camera* treatment.

First, GRAIL has re-classified a significant number of documents and updated many document descriptions to better clarify the confidential material contained within each document. These modified classifications and descriptions are contained in Exhibit 1, attached hereto.

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<sup>2</sup> GRAIL notes that the Court granted *in camera* treatment for similar documents submitted by third parties. For example, Guardant Health, Inc. (“Guardant”) sought *in camera* treatment of PX8314, { [REDACTED] }. Guardant’s Mot. Ex. A, at Attach. A. By order, dated August 19, the Administrative Law Judge (“ALJ”) granted *in camera* treatment, finding that the document could result in competitive injury to Guardant. Or. on Non-Parties’ Mots. (“Non-Parties’ Or.”). Similarly, Guardant sought *in camera* treatment of PX8506, RX0540 (Bates no. GH 000007591), RX0572 (Bates nos. GH 000013011-13012), which { [REDACTED] }. Guardant’s Mot. Ex. D, at 8, 10. The Court similarly granted *in camera* treatment, finding that the documents could result in competitive injury to Guardant. Non-Parties Or. at 8.

Second, GRAIL has reduced the number of documents identified for *in camera* treatment from 895 documents (as of the Second Motion) to 674. The resulting documents identified in Exhibits 1 and 2 reflect GRAIL's most sensitive, closely-held business secrets. GRAIL also re-reviewed its proposed deposition and investigatory hearing transcript redactions and has pared its proposals back where possible. Third, GRAIL has reduced the requested *in camera* time for the vast majority of documents from five to ten years to two to five years. In fact, for all document categories other than trade secrets and product development, the maximum time sought for *in camera* treatment is now five years, consistent with the guidelines that the Court set out in its Orders. First Or. at 4; Second Or. at 2. This paring back has reduced GRAIL's average *in camera* time requested by 46%.

As a result of these modifications, this Motion for *in camera* treatment is more detailed and far narrower along all relevant dimensions than GRAIL's previous motions for *in camera* treatment, in accordance with the Court's directions. Second Or. at 3. Ultimately, the documents identified in this Motion represent the core of GRAIL's confidential and competitively sensitive information relating to its multi-year efforts with Galleri and other projects.<sup>3</sup>

The below chart lists each category of documents for which GRAIL seeks *in camera* treatment, the paragraph discussing each category in the Second Song Supplemental Declaration,<sup>4</sup>

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<sup>3</sup> GRAIL has expended its best efforts to conform this Motion's requests 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.

<sup>4</sup> The Second 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).

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 of 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 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

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 2-5 years of protection for product development documents, and requests 10 years of protection for only 18 trade secret documents, 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*, 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 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 the financial data in these documents were publicly disclosed, GRAIL respectfully requests between 2-5 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., E.I. DuPont de Nemours*, 151 F.T.C. at 680 (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 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 documents were publicly disclosed, GRAIL respectfully requests 2-5 years of protection for these documents. Two to five 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 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 documents were publicly disclosed, GRAIL respectfully requests 2-5 years of protection for these documents. Two to 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 documents were publicly disclosed, GRAIL respectfully requests 2-5 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*, 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. *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.

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 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 2-5 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*, 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*, 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 Second Song Supplemental Declaration from public disclosure.

Dated: August 27, 2021

Respectfully submitted,

/s/ Anna M. Rathbun

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 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  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
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I also certify that I caused the foregoing document to be served via email to:

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August 27, 2021

*/s/ Anna M. Rathbun*  
\_\_\_\_\_  
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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 LLC.'s ("GRAIL") Third 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, trade secret information should remain confidential for 10 years and product development information should remain confidential for 2-5 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 2-5 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 2-5 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 2-5 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 2-5 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 2-5 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. 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 27, 2021, in Los Altos, California.



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Marissa Lee Song

**PUBLIC RECORD**

# **EXHIBIT 1**

**PUBLIC RECORD**

**FILED *IN CAMERA***

**PUBLIC RECORD**

## **EXHIBIT 2**

**PUBLIC RECORD**

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