

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

In the Matter of

Illumina, Inc.,
a corporation, and

and

GRAIL, Inc.,
a corporation,

Respondents.

Docket No. 9401

**RESPONDENTS' UNOPPOSED MOTION TO WITHDRAW PRIOR MOTIONS
RELATED TO CARIS LIFE SCIENCES**

For the reasons set forth below, Respondents Illumina, Inc. (“Illumina”) and GRAIL, Inc. (“GRAIL”), by their counsel, hereby move to withdraw the Motion to Certify to the Commission a Request Seeking Court Enforcement of Document and Testimony Subpoenas Issued to Caris Life Sciences, Inc. (“Caris”), filed on August 3, 2021 (the “Motion to Certify”). This Court granted the Motion to Certify on August 17, 2021, and certified to the Commission Respondents’ request for court enforcement of the subpoenas to Caris with the recommendation that district court enforcement be sought. Respondents now respectfully request that the Court withdraw its certification to the Commission and corresponding recommendation that district court enforcement be sought. As set forth below, Respondents further move to withdraw the pending Motion *in Limine* to Exclude the Investigational Hearing Testimony of Dr. David Spetzler and any Evidence from Caris (the “Motion *in Limine*”), filed on August 5, 2021.¹

¹ Respondents file this Motion concurrently with and on the condition that the parties’ Joint Stipulation to Exclude Caris-Related Material From the Record be granted.

The relevant procedural history is as follows. Respondents previously sought to compel discovery from Caris. *See* Motion to Certify. On August 17, 2021, this Court granted Respondents' motion, and certified to the Commission Respondents' request for court enforcement of the subpoenas to Caris.

Respondents concurrently filed a Motion *in Limine* seeking the exclusion of evidence previously obtained by Complaint Counsel from Caris, to the extent that Respondents were not able to obtain the additional discovery from Caris sought in the Motion to Certify. *See* Respondents' Motion *in Limine* to Exclude the Investigational Hearing Testimony of Dr. David Spetzler and any Evidence from Caris (Aug. 5, 2021). On August 23, 2021, this Court deferred ruling on this Motion *in Limine* pending the result of the subpoena enforcement request. Order Memorializing Bench Rulings (Aug. 25, 2021) at 2.

On August 24, 2021, following consideration of this Court's ruling on the Motion to Certify, the Commission ordered its General Counsel to pursue a subpoena enforcement action in federal district court against Caris. Order Directing General Counsel to Enforce Nonparty Subpoenas (Aug. 24, 2021) at 6. On September 9, 2021, the Commission brought an action in federal district court to seek enforcement of the subpoenas to Caris. Docket, *FTC v. Caris Life Sciences*, Case No. 1:21-mc-00115-RJL (D.D.C.). As of the filing of this Notice, the federal district court has not ruled on the subpoena enforcement request. *Id.*

The parties have now agreed to exclude Caris-related material from the record. This agreement is described in the parties' concurrently-filed Joint Stipulation to Exclude Caris-Related Material From the Record. As a result of this agreement, the relief sought in Respondents' Motion to Certify and Motion *in Limine* is now moot.

Therefore, Respondents hereby move to withdraw the Motion to Certify to the Commission a Request Seeking Court Enforcement of Document and Testimony Subpoenas Issued to Caris Life Sciences and respectfully request that the Court withdraw its certification to the Commission and corresponding recommendation that district court enforcement be sought. Respondents also hereby move to withdraw the pending Motion *in Limine* to Exclude the Investigational Hearing Testimony of Dr. David Spetzler and any Evidence from Caris. Complaint Counsel consents to the relief sought herein.

Dated: February 9, 2022

/s/ Anna M. Rathbun

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, 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
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I also certify that I caused the foregoing document to be served via email to:

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February 9, 2022

Respectfully submitted,

/s/ Sharonmoyee Goswami

Sharonmoyee Goswami

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

February 9, 2022

/s/ Sharonmoyee Goswami
Sharonmoyee Goswami

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BEFORE THE FEDERAL TRADE COMMISSION
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Docket No. 9401

**[PROPOSED] ORDER GRANTING RESPONDENTS' UNOPPOSED MOTION TO
WITHDRAW PRIOR MOTIONS RELATED TO CARIS LIFE SCIENCES**

On February 9, 2022, Respondents filed an Unopposed Motion to Withdraw Prior Motions Related to Caris Life Sciences.¹ It is hereby ORDERED that the following motions are withdrawn: (1) Respondents' Motion to Certify the Commission a Request Seeking Court Enforcement of Document and Testimony Subpoenas Issued to Caris Life Sciences and (2) Respondents Motion *in Limine* to Exclude the Investigational Hearing Testimony of Dr. David Spetzler and any Evidence from Caris. It is further ORDERED that this Court's August 17, 2021 certification to the Commission and corresponding recommendation for district court enforcement is withdrawn.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

¹ Respondents filed this Motion concurrently with and on the condition that the parties' Joint Stipulation to Exclude Caris-Related Material From the Record be approved. That stipulation has been approved.