

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro M. Bedoya

In the Matter of

**Illumina, Inc.,
a corporation;**

and

**GRAIL, Inc.,
a corporation.**

**Docket No. 9401
PUBLIC**

FINAL ORDER

It is hereby **ORDERED**:

I. Definitions

As used in this Order (“Order”), the following definitions shall apply:

- A. “Acquisition” means the acquisition by Illumina of the remaining ownership interest in GRAIL that Illumina did not own prior to the Acquisition Date.
- B. “Acquisition Date” means August 18, 2021.
- C. “Acquirer” means the Person that acquires the Hold Separate Business from Respondents pursuant to this Order. In the event of a divestiture effectuated through a corporate spin-off or offering of shares directly to investors, “Acquirer” shall mean the new, independent corporate entity.
- D. “Business Information” means books, records, data, and information, wherever located and however stored, including documents, written information, graphic materials, and data and information in electronic format. Business Information includes records and information relating to sales, marketing, advertising, personnel, accounting, business strategy, algorithms, machine learning data, artificial intelligence, clinical trials and studies, information technology systems, customers, suppliers, research and development, registrations, licenses, permits, and operations.

- E. “Commission” or “FTC” or “Complaint Counsel” means the Federal Trade Commission.
- F. “Confidential Information” means nonpublic Business Information.
- G. “Consent” means an approval, consent, ratification, waiver, or other authorization.
- H. “Contract” means an agreement, contract, lease, license agreement, consensual obligation, promise or undertaking with one or more third parties, whether written or oral, express or implied, or legally binding.
- I. “Respondents” mean Illumina and GRAIL.
- J. “Direct Cost” means a cost not to exceed the actual cost of labor, materials, travel, and other expenditures. The cost of any labor included in Direct Cost shall not exceed the then-current average hourly wage rate for the employee providing such labor.
- K. “Divest” means to transfer ownership of the Hold Separate Business through sale to an Acquirer, or through a spin-off or public stock offering.
- L. “Divestiture Agreement” means any agreement, including all exhibits, attachments, agreements, schedules, and amendments thereto, and through which Respondents (or the Divestiture Trustee) transfer ownership of the Hold Separate Business through sale to an Acquirer, or through a spin-off or public stock offering.
- M. “Divestiture Date” means the date Respondents (or the Divestiture Trustee) close on a transaction to Divest the Hold Separate Business.
- N. “Divestiture Trustee” means the Person appointed pursuant to Section VI of this Order.
- O. “Governmental Authorizations” means a Consent, license, registration, pending application, clearance, authorization, approval, or permit that is issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- P. “GRAIL” means GRAIL, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by GRAIL, LLC, and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.
- Q. “GRAIL Assets” means all rights, title, and interest in and to all tangible and intangible property and assets, of every kind and description, wherever located, and any improvements or additions thereto, used in or relating to the GRAIL Business, or acquired in connection with the Acquisition, including:
 - 1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. All equipment;
 3. All accounts receivable;
 4. All inventories;
 5. All Business Information;
 6. All Intellectual Property;
 7. All Contracts and all outstanding offers or solicitations to enter any contract, and all rights thereunder and related thereto; and
 8. All Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable.
- R. “GRAIL Business” means (1) the business in which GRAIL was engaged prior to the Acquisition Date, including the business of developing, marketing, and selling NGS-based oncology tests such as multi-cancer early detection (“MCED”) tests, and (2) any improvements, developments, expansions, and changes to the business in which GRAIL has or is engaged since the Acquisition Date.
- S. “GRAIL Employees” means all persons who were employed by GRAIL at any time between September 21, 2020, and the Divestiture Date, including contractors, representatives, and consultants.
- T. “GRAIL Executive” means any person serving in a position (including positions that are the functional equivalent) of GRAIL Chief Executive Officer, Chief Medical Officer, President, Chief Financial Officer, Chief Operating Officer, Chief Security Officer, Chief Marketing Officer, Chief Commercial Officer, Chief Technology Officer, General Counsel, and anyone serving at the Vice President level (or higher) with responsibilities for sales, marketing, R&D, product development, corporate development, strategy, investor relations, regulatory affairs, government affairs, or financial planning.
- U. “Hold Separate Business” means the (1) GRAIL Assets and (2) GRAIL Business.
- V. “Hold Separate Manager” means the individual appointed pursuant to Paragraph IV.A of this Order.
- W. “Hold Separate Period” means the period between the date this Order is issued and the Divestiture Date.
- X. “Illumina” means Illumina, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Illumina Inc., and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

- Y. “Illumina Restricted Executive” means any person serving in the following positions at Illumina (including positions that are the functional equivalent): Chief Executive Officer, President, Chief Operating Officer, and Chief Commercial Officer.
- Z. “Intellectual Property” means all intellectual property, including: (1) all patents, patent applications, inventions, and discoveries that may be patentable; (2) all know-how, trade secrets, software, technical information, data, algorithms, artificial intelligence, machine learning data, registrations, applications for governmental approvals, inventions, processes, best practices (including clinical pathways), formulae, protocols, standards, methods, techniques, designs, quality-control practices and information, research and test procedures and information, and safety, environmental and health practices and information; (3) all confidential or proprietary information, commercial information, management systems, business processes and practices, qualification and approval practices and information, training materials, sales and marketing materials, customer support materials, advertising and promotional materials; and (4) commercial names, all assumed fictional business names, trade names, “doing business as” (d/b/a names), registered and unregistered trademarks, service marks and applications, and trade dress; (5) all registered and unregistered copyrights in both published works and unpublished works; (6) all rights in internet web sites and internet domain names presently used; and (7) all rights in any jurisdiction to limit the use or disclosure of any of the foregoing, and rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.
- AA. “Monitor” means the Person appointed pursuant to Section V of this Order.
- BB. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.
- CC. “Transition Assistance” means technical services, personnel, assistance, training, cooperation, and other logistical, administrative, and transitional support as required by the Acquirer to facilitate the transfer of the Hold Separate Business to the Acquirer, including with respect to: audits, finance and accounting, accounts receivable, accounts payable, employee benefits, payroll, pensions, human resources, purchasing, quality control, transfer of information technology and related systems, use of any name or brand used in the GRAIL Business for transitional purposes, Governmental Authorizations, regulatory approval and compliance, research and development, sales and marketing, and supply chain management.

II. Divestiture and Other Obligations

IT IS FURTHER ORDERED that:

- A. No later than 180 days from the date this Order is issued, Illumina shall Divest, absolutely and in good faith, and at no minimum price, the Hold Separate Business in accordance with a detailed divestiture plan that has been approved by the Commission and that identifies, as applicable, the proposed buyer of the Hold Separate Business,

Provided, however, that the Commission may approve, as part of the divestiture plan, a period longer than 180 days for Illumina to Divest the Hold Separate Business,

Provided, further, that Illumina may retain an investment in GRAIL equal to the amount of its investment prior to the Acquisition Date, which shall not exceed 12 percent on a fully-diluted basis, as provided in the divestiture plan.

- B. Any Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order,

Provided, however, that no Divestiture Agreement shall limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in this Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.

- C. Respondents shall:

1. Offer to furnish to prospective Acquirers all information and documents relating to the Hold Separate Business customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Respondents shall permit prospective Acquirers of the Hold Separate Business to have reasonable access to personnel, to physical facilities for inspection, and to all financial, operational, or other documents and information customarily provided as part of a due diligence process, and
2. Require all prospective Acquirers to sign a confidentiality agreement pursuant to which that prospective Acquirer shall be required to maintain all Confidential Information obtained as part of the due diligence process as strictly confidential, including the nondisclosure of that information to all other employees, executives, or other personnel of the prospective Acquirer that were not involved in the due diligence process. Respondents shall require, as part of a confidentiality agreement, that the prospective Acquirer limit access to Confidential Information to only those employees necessary to conduct sufficient due diligence.

- D. Respondents shall obtain, no later than the Divestiture Date and at their sole expense, all Consents from third parties and all Governmental Authorizations that are necessary to affect the complete transfer and divestiture of the Hold Separate Business to the Acquirer or for the Acquirer to operate any aspect of the Hold Separate Business;

Provided, however:

1. Respondents may satisfy the requirement to obtain all Consents from third parties by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant third parties, or has otherwise obtained all necessary Consents and waivers; and

2. With respect to any Governmental Authorizations that are not transferable, Respondents shall, to the extent permitted under applicable law, allow the Acquirer to operate under Respondents' Governmental Authorizations pending the Acquirer's receipt of its own Governmental Authorizations, and Respondents shall provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Authorizations.
- E. At the option of the Acquirer, Illumina shall provide the Acquirer with Transition Assistance sufficient to efficiently transfer the Hold Separate Business to the Acquirer, and assist the Acquirer in operating the Hold Separate Business in all material respects in the manner in which it was operated prior to the Acquisition and prior to the Divestiture Date.
1. Illumina shall provide such Transition Assistance:
 - a. As set forth in the Divestiture Agreement, or as otherwise reasonably requested by the Acquirer;
 - b. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Direct Cost; and
 - c. Until the Acquirer can operate the Hold Separate Business in all material respects in the manner in which it was operated prior to the Acquisition and prior to the Divestiture Date, or for a period of 2 years from the date the Hold Separate Business is transferred to an Acquirer pursuant to Paragraph II.A of this Order, whichever is later.
 2. Illumina shall allow the Acquirer to terminate, in whole or part, any Transition Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.
 3. Illumina shall not cease providing Transition Assistance due to a breach by the Acquirer of the Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondents' breach of the Divestiture Agreement.
- F. Respondents shall allow the Acquirer to recruit and employ any GRAIL Employees in connection with the divestiture of the Hold Separate Business, including as follows:
1. No later than 5 days after execution of a Divestiture Agreement, Respondents shall (a) identify each GRAIL Employee, (b) allow the Acquirer an opportunity to interview any GRAIL Employee, and (c) allow the Acquirer to inspect the personnel files and other documentation relating to any GRAIL Employee, to the extent permissible under applicable laws.

2. Illumina shall (a) not offer any incentive to any GRAIL Employee to decline employment with the Acquirer, (b) remove any contractual impediments that may deter any GRAIL Employee from accepting employment with the Acquirer, including any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of the GRAIL Employee to be employed by the Acquirer, and (c) not otherwise interfere with the recruitment of any GRAIL Employee by the Acquirer.
3. Respondents shall (a) vest all current and accrued pension benefits within 30 days of transition of employment to the Acquirer for every GRAIL Employee who accepts an offer of employment from the Acquirer, and (b) provide all GRAIL Employees with reasonable financial incentives to accept a position with the Acquirer.

Provided, further, that Respondents and the Acquirer will work together in good faith to determine whether any other Illumina employees should be identified and subject to the provisions of this Paragraph II.F.

- G. Respondents shall transfer to the Acquirer, at Respondents' expense, all Business Information related to the Hold Separate Business, and:
 1. Deliver such Business Information as follows: (a) in good faith; (b) as soon as practicable, avoiding any delays in transmission; and (c) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
 2. Pending complete delivery of all such Business Information to the Acquirer, provide the Acquirer and Monitor with access to all such Business Information and employees who possess or can locate information for the purposes of identifying the books, records, and files that contain such Business Information and facilitate the delivery in a manner consistent with this Order.
- H. Until 2 years after the Divestiture Date, the provisions of Paragraphs III.F – III.I of this Order shall remain in effect. Respondents shall implement, in consultation with the Monitor, all necessary measures to ensure its compliance with those provisions.
- I. Until 5 years after the Divestiture Date, the provisions of Paragraph III.K of this Order shall remain in effect. Respondents shall implement, in consultation with the Monitor, all necessary measures to ensure its compliance with those provisions.
- J. Illumina shall, no later than 5 days after the date this Order becomes final and effective:
 1. Require that each employee of Illumina who has, had, or may have had access to Confidential Information relating to the Hold Separate Business, and the direct supervisor(s) of any such employee, sign a confidentiality agreement pursuant to which that employee shall be required to maintain all Confidential Information related to the Hold Separate Business as strictly confidential, including the nondisclosure of that information to all other employees, executives, or other

personnel of Illumina (other than as necessary to comply with the requirements of this Order), or the use of such Confidential Information in any way.

2. Provide written notification of the restrictions on the use and disclosure of the Confidential Information related to the Hold Separate Business by Illumina's personnel to all its employees who (a) may be in possession of such Confidential Information or (b) may have access to such Confidential Information. Illumina shall give the above-described notification by e-mail with return receipt requested or similar transmission and keep a file of those receipts for 2 years after the date this Order becomes final and effective. Illumina shall maintain complete records of all such notifications and shall provide a certification to the Commission affirming the implementation of, and compliance with, this Paragraph II.J.

III. Hold Separate and Asset Maintenance Obligations

IT IS FURTHER ORDERED that during the Hold Separate Period, or for a longer period of time pursuant to Paragraphs II.H and II.I:

- A. Illumina shall not consolidate, integrate, coordinate, commingle, or otherwise combine the businesses, operations, services, locations, employees, Business Information, or products of the Hold Separate Business into or with any of its other businesses, operations, services, locations, employees, Business Information, or products.

Provided, however, that Illumina may perform its obligations as required or allowed by this Order, a Divestiture Agreement, or an arms-length Contract between Illumina and the Hold Separate Business entered in the ordinary course of business as independent entities (whether entered before or during the Hold Separate Period).

- B. Illumina shall hold the Hold Separate Business separate, apart, and independent from Illumina, as required by the terms and conditions of this Order and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business without involvement from Illumina. Illumina shall not exercise direction or control over the operations of the Hold Separate Business or the Hold Separate Manager, except to the extent explicitly permitted by this Order.
- C. Illumina shall not sell, transfer, or otherwise encumber the Hold Separate Business.
- D. Illumina shall take all actions necessary to maintain and preserve the full economic viability, competitiveness, independence, and marketability of the Hold Separate Business, including maintaining its operations, regulatory approvals, and research and development programs in the regular and ordinary course of business and in accordance with past practice, and to prevent the destruction, wasting, deterioration, or impairment of the Hold Separate Business, except for ordinary wear and tear, including among other things:
 1. Provide the Hold Separate Business with sufficient funding, financial resources, and working capital necessary for it to independently operate at least at rates of

operation as of the Acquisition Date, and provided for in any planning documents or budgets, to meet all capital calls, and to carry on, at least at their scheduled pace, all research plans, development efforts, regulatory approvals, capital projects, budgets, business plans, and promotional activities;

2. Maintain a separate accounting and balance sheet for the Hold Separate Business, and ensure that any sales and profits of the Hold Separate Business become and remain part of the Hold Separate Business, independent of Illumina;
3. Provide such support services to the Hold Separate Business as were being provided to it as of or after the Acquisition Date, or as may be requested by the Hold Separate Manager or Monitor. For any services that Illumina may provide to the Hold Separate Business, Illumina may charge no more than the lesser of: (a) the same price, if any, charged to the Hold Separate Business for the service prior to the Hold Separate Period; or (b) its Direct Cost to provide such service;
4. Ensure that the Hold Separate Business has the resources to maintain a work force at least equivalent in size, training, and expertise to the work force of the Hold Separate Business prior to the Acquisition Date, plus any expansion provided for in any planning documents, budgets, or forecasts; and
5. Use best efforts to ensure the Hold Separate Business preserves and maintains its existing relationships with customers, suppliers, vendors, private and governmental entities, and others having business relations with the Hold Separate Business.

Provided, however, in connection with Divesting the Hold Separate Business, Illumina and the Hold Separate Manager may take actions that an Acquirer has requested or agreed to in writing and that have been approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of the Hold Separate Business consistent with the purposes of this Order.

- E. Illumina shall ensure that GRAIL Employees are provided with reasonable financial incentives to continue in their positions consistent with past practices or otherwise necessary to preserve the Hold Separate Business's viability, competitiveness, independence, and marketability. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives necessary (including as may be determined by the Hold Separate Manager or Monitor) to ensure the continuation and prevent any diminution of the Hold Separate Business's viability, competitiveness, independence, and marketability.
- F. GRAIL shall not employ any person as a GRAIL Executive who has served as an Illumina Restricted Executive during the preceding 5 years.

Provided, however, that GRAIL shall have 60 days from the date this Order is issued to comply with this Paragraph III.F.

Provided, further, the Hold Separate Manager shall bi-annually review each GRAIL Executive's holdings of financial interests or investments in Illumina (including stock ownership or options), as well as the GRAIL Executive's current and future compensation structure, and may require divestment of holdings or changes to the compensation structure to avoid conflicts of financial interest, as the Manager may deem appropriate to satisfy the purposes of this Order.

- G. Illumina shall not hire any GRAIL Executive, or any person who served as a GRAIL Executive during the preceding 5 years.
- H. Illumina shall not, directly or indirectly, transfer any GRAIL employee or solicit or otherwise attempt to induce any GRAIL Employee to terminate his or her employment with the Hold Separate Business.

Provided, however, Illumina may:

- 1. Hire an employee whose employment has been terminated by GRAIL, as long as such termination was not solicited or induced in violation of this Order;
 - 2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more GRAIL Employees; or
 - 3. Hire an employee who has applied for employment with Illumina, as long as such application was not solicited or induced in violation of this Order.
- I. Illumina shall ensure that any former GRAIL Employee who works for Illumina (but not GRAIL) after entry of this Order (as allowed in Paragraph III.H):
 - 1. Does not perform work on behalf of Illumina relating to MCED tests for at least 3 years after becoming an employee of Illumina, other than in support of GRAIL;
 - 2. Does not use or share any GRAIL Confidential Information while he or she is an Illumina employee, except as explicitly permitted by this Order; and
 - 3. Is eligible, at the option of the Hold Separate Manager, to be recruited and hired by the Hold Separate Business, in a capacity and on a timetable as determined by the Hold Separate Manager, and that:
 - a. Any impediments to recruiting or hiring of such employee, or to the employee accepting such offer, are removed by Illumina, including any non-compete or confidentiality provisions, or other contractual impediments that may deter or affect the ability of the employee to be employed by the Hold Separate Business; and
 - b. Illumina offer no incentives to the employee to decline employment with the Hold Separate Business, and not otherwise interfere with the recruitment of any such employee by the Hold Separate Business.

- J. Within 30 days of the date of this Order is issued, Respondents shall make an accounting of all Confidential Information of the Hold Separate Business that has been accessed or shared with Illumina and its employees or management, and (with the assistance and approval of the Monitor) develop and implement a plan to return all Confidential Information to the Hold Separate Business, and destroy all copies of, or notes derived from, the same, and to prevent the use of or access to the Confidential Information by Illumina or any other Person, except as may be allowed or required by this Order.
- K. Respondents shall ensure, and shall implement, in consultation with the Monitor, all necessary measures to ensure, that:
1. Confidential Information is not shared or accessible between Illumina and GRAIL;
 2. Confidential Information is separately maintained and stored;
 3. Illumina does not obtain, use, or disclose (even to its own employees) any Confidential Information of GRAIL (including Confidential Information of third parties received by GRAIL in the ordinary course of business); and
 4. GRAIL does not obtain, use, or disclose (even to its own employees) any Confidential Information of Illumina (including Confidential Information of third parties received by Illumina in the ordinary course of business).

Provided, however, that Respondents may disclose or use such Confidential Information in the course of (a) performing their obligations or as permitted under this Order, a Divestiture Agreement, or pursuant to an ordinary course, arms-length Contract between Illumina and the Hold Separate Business (whether entered before or during the Hold Separate Period) or (b) complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims or investigations, or enforcing actions threatened or brought against Illumina or the Hold Separate Business, or as required by law or regulation, including any applicable securities exchange rules or regulations.

- L. Illumina shall implement written procedures, subject to the approval of the Monitor and consistent with the provisions of this Order, that ensure the operational independence of the Hold Separate Business, the independent management of the Hold Separate Business by the Hold Separate Manager, the Hold Separate Business has adequate funding and working capital, and there are effective restrictions on access and use of Confidential Information. Illumina shall provide notice of these procedures to its employees, and ensure that notice is provided to the employees of the Hold Separate Business, and shall:
1. Provide training on a regular schedule regarding these procedures and obligations to all employees and representatives who may receive or communicate Confidential Information pursuant to this Order;
 2. Provide employees and representatives with the name and contact information of the Monitor;

3. Establish disciplinary action against any employee or representative who violates Section III of this Order; and
4. Provide the Monitor with the materials used in the trainings required by this Paragraph III.L.

IV. Hold Separate Manager

IT IS FURTHER ORDERED that:

- A. In furtherance of the obligations listed in Section III of this Order, a Hold Separate Manager shall be appointed to independently manage and operate the Hold Separate Business during the Hold Separate Period. Within 15 days of the date this Order is issued, Respondents shall nominate one or more qualified candidates to Commission staff for consideration, and Commission staff shall select the Hold Separate Manager, in consultation with the Monitor.

Provided that, if Respondents fail to nominate a candidate that is acceptable to Commission staff, then a Hold Separate Manager shall be selected pursuant to the process identified in Paragraph IV.F of this Section IV.

- B. The Hold Separate Manager shall be responsible for the operation of the Hold Separate Business, shall report directly to the Monitor, and shall manage the Hold Separate Business independently of the management of Illumina. The Hold Separate Manager shall not be involved, in any way, in the operations of the businesses of Illumina during the term of this Order, nor shall the Hold Separate Manager have any financial interest (including stock ownership or options) in Illumina. Following the Divestiture Date, Illumina shall not employ or engage the Hold Separate Manager in any capacity (including as an employee, agent, or consultant) for a period of 5 years.
- C. Illumina shall authorize the Hold Separate Manager to make all decisions necessary (i) to ensure that the Hold Separate Business operates independently of Illumina and maintains its full economic viability, marketability, and competitiveness, and (ii) to prevent the Hold Separate Business's destruction, removal, wasting, deterioration, or impairment. Illumina shall cooperate with the Hold Separate Manager and take no action to interfere with or impede the ability of the Hold Separate Manager to perform his or her duties and responsibilities consistent with the terms of this Order.
- D. No later than 5 days after the Hold Separate Manager has been appointed, Illumina shall enter into a manager agreement with the Hold Separate Manager that, subject to the prior approval of the Monitor and Commission staff, transfers all rights, powers, and authority necessary to permit the Hold Separate Manager to perform his or her duties and responsibilities under this Order. The manager agreement shall provide that:
 1. The Hold Separate Manager shall be responsible for managing the operations of the Hold Separate Business during the Hold Separate Period and shall manage the Hold Separate Business independently of the management of Illumina,

Provided, however, the Hold Separate Manager will have the option to continue receiving any support services that have been provided to the Hold Separate Business by Illumina, and may request, in his or her discretion, additional support services from Illumina;

2. The Hold Separate Manager shall continue the management and operation of the Hold Separate Businesses in the ordinary course of business, pursuant to current and future business plans, and in accordance with the obligations of Section III of this Order;
3. The Hold Separate Manager shall serve, without bond or other security, at the cost and expense of Illumina, on reasonable and customary terms commensurate with the person's experience and responsibilities. The Hold Separate Manager shall have the authority to employ, at Illumina's expense, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Manager's duties and responsibilities;
4. Illumina shall indemnify the Hold Separate Manager and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Manager's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct;
5. The Hold Separate Manager shall be in regular contact with the Monitor. Nothing shall preclude the Hold Separate Manager from contacting or communicating directly with the Monitor or the staff of the Commission, either at the request of the staff of the Commission or the Monitor, or in the discretion of the Hold Separate Manager;
6. The Hold Separate Manager shall have the authority to staff the Hold Separate Business with sufficient employees to maintain and restore the viability and competitiveness of the Hold Separate Business, including:
 - a. Replacing any departing or departed employee with a person who has similar experience and expertise, or determining not to replace such departing or departed employee;
 - b. Removing any employee who ceases to act or fails to act diligently and consistent with the purposes of this Order and replacing such employee with another person of similar experience or skills;
 - c. Deciding to hire new employees, or re-hire former employees, and offering sufficient financial incentives to attract and retain such new or re-hired employees as the Hold Separate Manager shall determine in his or her judgment;

- d. Ensuring that GRAIL Employees are not involved in the operations of Illumina or Illumina's other businesses, and that Illumina's employees are not involved in the operation of the Hold Separate Business, unless allowed or required under this Order; and
 - e. Ensuring that the GRAIL Employees are provided with reasonable financial incentives to continue in their positions, including a continuation of all employee compensation and benefits, regularly scheduled or merit raises and bonuses, regularly scheduled vesting of pension benefits, and additional incentives as may be necessary.
- E. Illumina shall provide the Hold Separate Manager with reasonable financial compensation and incentives to undertake this position and as may be necessary to assure the continuation, and prevent any diminution of, the Hold Separate Business's viability, marketability, and competitiveness until the end of the Hold Separate Period, and as may otherwise be necessary to achieve the purposes of this Order.
- F. If the Hold Separate Manager resigns or the Monitor, in consultation with Commission staff, determines that the Hold Separate Manager has ceased to act, has failed to act diligently, or is otherwise unsuited or unable to continue serving as a Hold Separate Manager, then a substitute Hold Separate Manager shall be appointed. The substitute Hold Separate Manager shall be afforded all rights, powers, and authorities and shall be subject to all obligations of this Order. Commission staff, in consultation with the Monitor, shall select the substitute Hold Separate Manager, subject to the consent of Respondents, which:
- 1. Shall not unreasonably withhold consent to the appointment of the selected substitute Hold Separate Manager; and
 - 2. Shall be deemed to have consented to the selection of the proposed substitute Hold Separate Manager if, within 3 days of notice by staff of the Commission of the identity of the proposed substitute Hold Separate Manager, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Hold Separate Manager.

V. Monitor

IT IS FURTHER ORDERED that:

- A. Mazars LLP shall serve as Monitor in this matter with the responsibility for monitoring the organization of the Hold Separate Business, supervising the management of the Hold Separate Business by the Hold Separate Manager, monitoring the independence of the Hold Separate Business, and monitoring Respondents' compliance with all their other obligations under this Order.
- B. The Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:

1. Shall be subject to the approval of Commission staff;
2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Order and to the extent any provision in the agreement varies from or conflicts with any provision in this Order, Respondents and the Monitor shall comply with this Order; and
3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of this Order, and to the extent any provision in the agreement varies from or conflicts with any provision in this Order, Respondents and the Monitor shall comply with the Order.

C. The Monitor shall:

1. Have the authority to monitor Respondents' compliance with the obligations set forth in this Order;
2. Act in consultation with the Commission or its staff, and the Hold Separate Manager;
3. Serve as an independent third party and not as an employee or agent of Respondents, the Court, or the Commission;
4. Serve without bond or other security;
5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
6. Enter into a nondisclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties, and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants also enter into a nondisclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of executing an arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with the Order on a schedule set by Commission staff and at any other time requested by Commission staff; and

9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until 60 days after Respondents have satisfied their obligations in Sections II and III of this Order.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under the Order, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to the Order;
3. Pay the Monitor's fees and expenses as set forth in an agreement approved by Commission staff, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under the Order, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other person or the substance of written reports submitted to the Commission pursuant to the Orders; and
5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Order, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.

E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with the Order.

F. If the Monitor resigns or the Commission staff determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of this Order. Commission staff shall select the substitute Monitor, subject to the consent of the Respondents. Respondents:

1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;

2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission staff-approved agreement referenced in this Order; or (b) receives approval of Commission staff.

VI. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Illumina has not divested, absolutely and in good faith, the Hold Separate Business pursuant to the requirements of Section II of this Order, within the time and manner required by Section II of this Order, the Commission may at any time appoint one or more persons as Divestiture Trustee to divest the Hold Separate Business, at no minimum price, and pursuant to the requirements of Section II of this Order, in a manner that satisfies the requirements of this Order.
- B. If the Commission or the Attorney General of the United States brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Illumina shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Section VI shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including appointment of a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Illumina to comply with this Order.
- C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Section VI, Illumina shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to accomplish the divestiture pursuant to the requirements of Section II of this Order and in a manner consistent with the purposes of this Order.
 2. Within 10 days after appointment of the Divestiture Trustee, Illumina shall execute an agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to affect the divestiture and perform the requirements of Section II of this Order for which he or she has been appointed.

3. The Divestiture Trustee shall have 12 months from the date the Commission approves the agreement described in Paragraph VI.C.2 of this Order to accomplish the divestiture (“divestiture period”), which shall be subject to the prior approval of the Commission. If, however, at the end of the divestiture period the Divestiture Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court appointed Divestiture Trustee, by the court.
4. Illumina shall provide the Divestiture Trustee with full and complete access to the personnel, books, records, and facilities related to the assets to be divested, or to any other relevant information, as the Divestiture Trustee may request. Illumina shall develop such financial or other information as the Divestiture Trustee may reasonably request and shall cooperate with the Divestiture Trustee. Illumina shall take no action to interfere with or impede the Divestiture Trustee’s accomplishment of the divestiture. Any delays in divestiture caused by Illumina shall extend the divestiture period under this Section VI in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
5. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission but shall divest expeditiously at no minimum price. The divestiture shall be made only to an Acquirer that receives the prior approval of the Commission, and the divestiture shall be accomplished only in a manner that receives the prior approval of the Commission;

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by Illumina from among those approved by the Commission; provided, further, that Illumina shall select such entity within 10 business days of receiving written notification of the Commission’s approval.
6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Illumina, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Illumina, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee’s duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Illumina, and the Divestiture Trustee’s power shall be terminated. The Divestiture Trustee’s compensation may be based in part on a commission arrangement contingent on the Divestiture Trustee’s divesting the assets.

7. Illumina shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Section VI, the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.C.6 of this Order.
 8. If the Divestiture Trustee ceases to act or fails to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Section VI for appointment of the initial Divestiture Trustee.
 9. The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested.
 10. The Divestiture Trustee shall report in writing to the Commission every 60 days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- E. The Divestiture Trustee appointed pursuant to this Section VI may be the same Person appointed as the Monitor pursuant to this Order.

VII. Prior Approval

IT IS FURTHER ORDERED that Illumina shall not, without the prior approval of the Commission, acquire, directly or indirectly, through subsidiaries, partnerships, or otherwise:

- A. Any ownership interest, stock, share capital, equity, or other interest in any business that, in the previous 12 months, engaged in, or had plans to engage in, the business of developing, marketing, or selling MCED tests; or
- B. Following the Divestiture Date, any additional ownership, investment, or management interest in the GRAIL Business.

VIII. Compliance Reporting

IT IS FURTHER ORDERED that, to allow the Commission to monitor Respondents' compliance with the provisions of this Order:

- A. Respondents shall each submit:
 - 1. Interim compliance reports 30 days after this Order is issued, and every 60 days thereafter until Illumina divests the Hold Separate Business to an Acquirer;
 - 2. Annual Compliance Reports one year after the date this Order is issued, and annually thereafter for the next nine years on the anniversary of that date; and
 - 3. Additional Compliance Reports as the Commission or its staff may request.
- B. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are complying with this Order. Conclusory statements that Respondents have complied with their obligations under this Order are insufficient. Each Respondent shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures the Respondent has implemented and plans to implement to comply with each paragraph of the Order.
- C. Verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including submitting the original electronically to the Secretary of the Commission at ElectronicFilings@ftc.gov and an electronic copy to the Compliance Division at bccompliance@ftc.gov.

IX. Change in Respondents

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Illumina, Inc.;
- B. Any proposed acquisition, merger or consolidation of Illumina, Inc.; or
- C. Any other change in Respondents, if such change might affect compliance obligations arising out of this Order.

X. Other Competition Agency Conflicts

IT IS FURTHER ORDERED that:

- A. Respondents shall submit to the Commission the following regarding each legal action challenging Illumina’s acquisition of GRAIL taken by a governmental entity other than the Commission (“other competition agency”):
1. The complaint;
 2. All pleadings, briefs and orders relating to remedial relief (including divestiture, ring fencing and hold separate obligations) sought or opposed in such action; and
 3. All pleading, briefs, reports, and other documents Respondents have submitted to the tribunal having jurisdiction over the legal action that relate to remedial relief;

Respondents shall submit all documents required by this Paragraph X.A electronically to the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov no later than 30 days after this Order is issued, or 5 days after the date such information is received or submitted, whichever is later.

- B. To the extent Respondents are subject to any remedial provision or requirement imposed pursuant to a legal action brought by another competition agency that conflicts with any provision in this Order (“potentially conflicting provisions”) such that Respondents cannot fully comply with both:
1. Respondents shall notify Commission staff, in writing, within 10 days of the date Respondents identify the potential conflict, specifying the other competition agency, the conflict (including the potentially conflicting provisions), and the reasons why Respondents cannot comply with all the potentially conflicting provisions (“X.B.1 Notification”);
 2. Respondents shall waive all confidentiality agreements and provisions that limit the ability of Commission staff and the other competition agency identified in the X.B.1 notification to communicate and share information, without restrictions;
 3. Respondents are not required to comply with the potentially conflicting provision in the Order identified in the X.B.1 Notification, *so long as*, within 30 days after Commission staff receives the X.B.1 Notification, Commission staff has not notified Respondents, in writing, that that the potentially conflicting provisions do not conflict such that Respondents can comply with both, and the reasons for that conclusion.

XI. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to: (A) remedy the harm to competition the Commission alleged in its Complaint; (B) ensure the Hold Separate Business is maintained in the ordinary course of business, and managed independently of Illumina during

the Hold Separate Period; (C) ensure the Acquirer can operate the Hold Separate Business in a manner equivalent in all material respects to the manner in which GRAIL operated prior to the Acquisition, independent of Illumina; (D) to restore the pre-merger competitive intensity as effectively and expeditiously as possible, and (E) to remedy the competitive impact resulting from the Acquisition as effectively and expeditiously as possible.

XII. Duration of Order

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: March 31, 2023