

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

**In the Matter of**

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

**and**

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

**DOCKET NO. 9401**

**JOINT MOTION TO CLOSE THE RECORD AND SET BRIEFING SCHEDULE**

Counsel for Respondents and Complaint Counsel (collectively, “Counsel”) jointly move this Court under Rule 3.44(c) to close the hearing record and set a briefing schedule in the above-referenced matter. After the last live witness was presented at the remote hearing, this Court held the record open pending the completion of trial depositions and resolution of an enforcement proceeding relating to {REDACTED}. (Trial Tr. at 4580:12-23). Both issues have now been resolved, pending the Court’s approval of the parties’ Joint Stipulation and Motion to Withdraw discussed below.

First, the final trial deposition took place on November 1, 2021. Second, Counsel have moved this Court through a Joint Stipulation to Exclude {REDACTED}-Related Material From the Record (hereinafter, “Joint Stipulation to Exclude”), effectively resolving the {REDACTED} dispute. As part of that agreement, the Parties agreed to withdraw {REDACTED}-related evidence from the record and not to rely on that evidence during post-trial briefing. Joint Stipulation to Exclude. Respondents have also moved to withdraw their Motion to Certify to the Commission a Request Seeking Court Enforcement of Document and Testimony Subpoenas Issued to {REDACTED} as well as

their pending Motion *in Limine* to Exclude the Investigational Hearing Testimony of { [REDACTED] } and any Evidence from { [REDACTED] }. Respondents' Unopposed Motion to Withdraw Prior Motions Related to { [REDACTED] } (hereinafter, "Motion to Withdraw"). Accordingly, the relief sought in those motions is now moot, and the federal enforcement action is no longer a basis for delaying closure of the record.

Rule 3.44(c) explains that "[u]pon completion of the evidentiary hearing, the Administrative Law Judge shall issue an order closing the hearing record after giving the parties 3 business days to determine if the record is complete or needs to be supplemented." 16 C.F.R. § 3.44(c). The evidentiary hearing is now complete. As such, contingent upon the Court's granting the Joint Stipulation to Exclude and Motion to Withdraw, Counsel respectfully move this Court to close the record.<sup>1</sup>

Counsel have also agreed to a proposed briefing schedule as set forth in the attached proposed order. Counsel respectfully request that this Court set the post-trial briefing schedule as agreed upon by Counsel.

Dated: February 10, 2022

Respectfully submitted,

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<sup>1</sup> Counsel notes that there are still pending disputes regarding exhibits that will need to be resolved at a final hearing prior to the close of the record.

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Complaint*

*Counsel for Respondent  
Illumina, Inc.*

*Counsel for Respondent  
GRAIL, LLC*

### CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2022, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
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The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

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

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**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
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**DOCKET NO. 9401**

**[PROPOSED] ORDER CLOSING HEARING RECORD**

Upon consideration of Counsel's Joint Motion to Close the Record, it is hereby:

**ORDERED**, that pursuant to Rule 3.44(c) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.44(c), the hearing record will close on [February , 2021]. Corrections to the record may still be made, if necessary, pursuant to Rule 3.44(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.44(b).

**ORDERED**, that pursuant to Rule 4.3(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 4.3(b), the deadlines for post-trial filings are as follows:

[25 days after record closes] Deadline for filing concurrent post-trial briefs, proposed findings of fact, and conclusions of law;  
and

[40 days after record closes] Deadline for filing concurrent reply briefs and replies to proposed findings of fact.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: