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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

The Scripps Research Institute,
Plaintiff,
v.
Illumina, Inc.,
Defendant.

Case No.: 16-cv-00661-JLS-BGS

**ORDER GRANTING JOINT
MOTION FOR ENTRY OF
PROTECTIVE ORDER**

[ECF No. 48]

On July 12, 2017, the parties filed a Joint Motion for Entry of Protective Order and a proposed Protective Order. (ECF Nos. 48, 48-1.) Having reviewed and considered the motion, and good cause appearing, the Court **GRANTS** the Joint Motion for Entry of Protective Order (ECF No. 48) as follows:

The Court recognizes that at least some of the documents and information being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in the above-titled action.

The Materials to be exchanged throughout the course of the litigation between the

1 parties may contain trade secret or other confidential research, technical, cost, price,
2 marketing or other commercial information, as is contemplated by Federal Rule of Civil
3 Procedure 26(c)(7). The purpose of this Order is to protect the confidentiality of such
4 Materials as much as practical during the litigation. THEREFORE:

5 DEFINITIONS

6 1. The term “Confidential Information” will mean and include information contained
7 or disclosed in any Materials, including documents, portions of documents, answers to
8 interrogatories, responses to requests for admissions, trial testimony, deposition testimony,
9 court hearings, expert reports, and transcripts of trial testimony, depositions, and court
10 hearings, including data, summaries, and compilations derived therefrom that is deemed to
11 be Confidential Information by any party to which it belongs.

12 2. The term “Materials” will include, but is not be limited to: documents;
13 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
14 material that identify customers or potential customers; price lists or schedules or other
15 matter identifying pricing; minutes; telegrams; emails; letters; statements; cancelled
16 checks; contracts; invoices; drafts; books of account; worksheets; notes of conversations;
17 desk diaries; appointment books; expense accounts; recordings; photographs; motion
18 pictures; compilations from which information can be obtained and translated into
19 reasonably usable form through detection devices; sketches; drawings; notes (including
20 laboratory notebooks and records); reports; instructions; disclosures; other writings;
21 models and prototypes and other physical objects.

22 3. The term “Outside Counsel” will mean outside counsel of record, and other
23 attorneys, paralegals, secretaries, and other support staff employed in the law firms
24 identified below: Nix Patterson & Roach LLP, Thompson & Knight LLP, and Fish &
25 Richardson P.C. The term “In-House Counsel” will mean in-house attorneys LaShanta
26 Racquel Raymond, Douglas Bingham, and Thomas Fitting for The Scripps Research
27 Institute and in-house attorneys Amy McCourt and Roland Schwillinski for Illumina, Inc.
28 The term “Counsel” will mean both Outside Counsel and In-House Counsel.

1 GENERAL RULES

2 4. Each party to this litigation that produces or discloses any Materials, answers to
3 interrogatories, responses to requests for admission, trial testimony, deposition testimony,
4 Confidential Information at court hearings, expert reports, and transcripts of trial
5 testimony, depositions, and court hearings, or other information that the producing party
6 believes should be subject to this Protective Order may designate the same as
7 “CONFIDENTIAL”, “CONFIDENTIAL - FOR COUNSEL ONLY”, or
8 “CONFIDENTIAL—OUTSIDE COUNSEL ONLY.”

9 a. Designation as “CONFIDENTIAL”: Any party may designate information as
10 “CONFIDENTIAL” only if, in the good faith belief of such party and its
11 Counsel, the unrestricted disclosure of such information could be potentially
12 prejudicial to the business or operations of such party or of another party to
13 which a duty of confidentiality is owed.

14 b. Designation as “CONFIDENTIAL - FOR COUNSEL ONLY”: Any party
15 may designate information as “CONFIDENTIAL - FOR COUNSEL ONLY”
16 only if, in the good faith belief of such party and its Counsel, the information
17 is among that considered to be most sensitive by the party or of another party
18 to which a duty of confidentiality is owed, including but not limited to trade
19 secret or other confidential research, development, financial or other
20 commercial information.

21 c. Designation as “CONFIDENTIAL—OUTSIDE COUNSEL ONLY”: Any
22 party may designate technical information as “CONFIDENTIAL - OUTSIDE
23 COUNSEL ONLY” only if, in the good faith belief of such party and its
24 Counsel, the information is among that considered to be most sensitive by the
25 party, or of another party to which a duty of confidentiality is owed, including
26 but not limited to trade secret or other confidential research, development, or
27 other commercial and non-commercial information.

28 5. In the event the producing party elects to produce Materials for inspection, no

1 marking need be made by the producing party in advance of the initial inspection. For
2 purposes of the initial inspection, all Materials produced will be considered as
3 “CONFIDENTIAL - OUTSIDE COUNSEL ONLY” and must be treated as such pursuant
4 to the terms of this Order. Thereafter, upon selection of specified Materials for copying by
5 the inspecting party, the producing party must, within a reasonable time prior to producing
6 those Materials to the inspecting party, mark the copies of those Materials that contain
7 Confidential Information with the appropriate confidentiality marking.

8 6. Whenever a deposition taken on behalf of any party involves a disclosure of
9 Confidential Information of any party:

- 10 a. the deposition or portions of the deposition must be designated as containing
11 Confidential Information subject to the provisions of this Order; such
12 designation must be made on the record whenever possible, but a party may
13 designate portions of depositions as containing Confidential Information after
14 transcription of the proceedings; A party will have until fourteen (14) days
15 after receipt of the final deposition transcript to inform the other party or
16 parties to the action of the portions of the transcript to be designated
17 “CONFIDENTIAL”, “CONFIDENTIAL - FOR COUNSEL ONLY”, or
18 “CONFIDENTIAL—OUTSIDE COUNSEL ONLY.”
- 19 b. the disclosing party will have the right to exclude from attendance at the
20 deposition, during such time as the Confidential Information is to be
21 disclosed, any person other than the deponent, Counsel (including their staff
22 and associates), the court reporter, and the person(s) agreed upon pursuant to
23 Paragraphs 8-11 below; and
- 24 c. the originals of the deposition transcripts and all copies of the deposition must
25 bear the legend “CONFIDENTIAL”, “CONFIDENTIAL - FOR COUNSEL
26 ONLY”, or “CONFIDENTIAL—OUTSIDE COUNSEL ONLY”, as
27 appropriate, and the original or any copy ultimately presented to a court for
28 filing must not be filed unless it can be accomplished under seal, identified as

1 being subject to this Order, and protected from being opened except by order
2 of this Court.

3 7. All Confidential Information designated as “CONFIDENTIAL”,
4 “CONFIDENTIAL - FOR COUNSEL ONLY” , or “CONFIDENTIAL—OUTSIDE
5 COUNSEL ONLY”, must not be disclosed by the receiving party to anyone other than
6 those persons designated within this Order and must be handled in the manner set forth
7 below and, in any event, must not be used for any purpose other than in connection with
8 this litigation, unless and until such designation is removed either by agreement of the
9 parties, or by order of the Court.

10 8. Information designated “CONFIDENTIAL—OUTSIDE COUNSEL ONLY” must
11 be viewed only by Nix Patterson & Roach LLP, Thompson & Knight LLP, and Fish &
12 Richardson P.C., and by experts retained by the Parties (“Expert” or “Experts”) under the
13 conditions set forth in this Paragraph. Information designated “CONFIDENTIAL—
14 OUTSIDE COUNSEL ONLY” must not be viewed by any In-House Counsel listed in
15 Paragraph 3 of this Order. The right of any Expert to receive any Confidential Information
16 will be subject to the advance approval of such Expert by the producing party or by
17 permission of the Court. The party seeking approval of an Expert must provide the
18 producing party with the name and curriculum vitae of the proposed Expert, and an
19 executed copy of the “Acknowledgement To Be Bound by Protective Order” attached as
20 Exhibit A to this Order, in advance of providing any Confidential Information of the
21 producing party to the Expert. Any objection by the producing party to an Expert receiving
22 Confidential Information must be made in writing within ten (10) business days following
23 receipt of the identification of the proposed Expert. Confidential Information may be
24 disclosed to an Expert if the ten (10) business day period has passed and no objection has
25 been made. The approval of Experts must not be unreasonably withheld.

26 9. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY” must be
27 viewed only by Counsel (as defined in Paragraph 3 of this Order) of the receiving party,
28 and by Experts (pursuant to the terms of Paragraph 8 of this Order).

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