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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

_____, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

ILLUMINA, INC., FRANCIS A. DESOUZA,
and JOHN THOMPSON,

Defendant.

Case No. _____

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

1 Plaintiff ____ (“Plaintiff”), individually and on behalf of all others similarly situated,
2 by and through his attorneys, alleges the following upon information and belief, except as to those
3 allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s
4 information and belief is based upon, among other things, his counsel’s investigation, which
5 includes without limitation: (a) review and analysis of regulatory filings made by Illumina, Inc.
6 (“Illumina” or the “Company”) with the United States (“U.S.”) Securities and Exchange
7 Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and
8 disseminated by Illumina; and (c) review of other publicly available information concerning
9 Illumina.

10 NATURE OF THE ACTION AND OVERVIEW

11 1. This is a class action on behalf of persons and entities that purchased or otherwise
12 acquired Illumina securities between May 1, 2023 and October 16, 2023, inclusive (the “Class
13 Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934
14 (the “Exchange Act”).

15 2. Illumina is a genetic and genomic analysis company with a portfolio of integrated
16 sequencing and microarray systems, consumables, and analysis tools designed to accelerate and
17 simplify genetic analysis. In 2015, Illumina formed GRAIL, Inc. (“GRAIL”) as a corporate
18 subsidiary to develop a blood-based cancer detection test. After several capital financing rounds,
19 Illumina spun off GRAIL in February 2017 and retained a stake of approximately 20%.

20 3. After GRAIL raised \$1.9 billion through venture capital and strategic partners,
21 Illumina announced plans to reacquire GRAIL in September 2020. The acquisition was completed
22 on August 18, 2022 over the objection of the European Union’s European Commission.

23 4. On August 10, 2023, after the market closed, Illumina revealed that the SEC was
24 investigating the Company’s statements regarding GRAIL, including “conduct and compensation
25 of certain members of Illumina and GRAIL management.”

26 5. On this news, the Company’s stock price fell \$4.64, or 2.5%, to close at \$180.48 per
27 share on August 11, 2023.

1 substantial part in this Judicial District. In addition, the Company’s principal executive offices are
2 located in this District.

3 13. In connection with the acts, transactions, and conduct alleged herein, Defendants
4 directly and indirectly used the means and instrumentalities of interstate commerce, including the
5 United States mail, interstate telephone communications, and the facilities of a national securities
6 exchange.

7 **PARTIES**

8 14. Plaintiff, as set forth in the accompanying certification, incorporated by reference
9 herein, purchased Illumina securities during the Class Period, and suffered damages as a result of
10 the federal securities law violations and false and/or misleading statements and/or material
11 omissions alleged herein.

12 15. Defendant Illumina is incorporated under the laws of Delaware with its principal
13 executive offices located in San Diego, California. Illumina’s common stock trades on the
14 NASDAQ exchange under the symbol “ILMN.”

15 16. Defendant Francis A. deSouza (“deSouza”) was the Company’s Chief Executive
16 Officer (“CEO”) from 2016 to June 11, 2023.

17 17. Defendant John Thompson (“Thompson”) was the Chairman of the Company’s
18 Board of Directors from May 2021 to May 25, 2023 when he was voted off the Board at the 2023
19 annual stockholder meeting.

20 18. Defendants deSouza and Thompson (collectively the “Individual Defendants”),
21 because of their positions with the Company, possessed the power and authority to control the
22 contents of the Company’s reports to the SEC, press releases and presentations to securities analysts,
23 money and portfolio managers and institutional investors, i.e., the market. The Individual
24 Defendants were provided with copies of the Company’s reports and press releases alleged herein
25 to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to
26 prevent their issuance or cause them to be corrected. Because of their positions and access to
27 material non-public information available to them, the Individual Defendants knew that the adverse
28 facts specified herein had not been disclosed to, and were being concealed from, the public, and that

1 the positive representations which were being made were then materially false and/or misleading.
2 The Individual Defendants are liable for the false statements pleaded herein.

3 SUBSTANTIVE ALLEGATIONS

4 Background

5 19. Illumina is a genetic and genomic analysis company with a portfolio of integrated
6 sequencing and microarray systems, consumables, and analysis tools designed to accelerate and
7 simplify genetic analysis. In 2015, Illumina formed GRAIL, Inc. (“GRAIL”) as a corporate
8 subsidiary to develop a blood-based cancer detection test. After several capital financing rounds,
9 Illumina spun off GRAIL in February 2017 and retained a stake of approximately 20%.

10 20. After GRAIL raised \$1.9 billion through venture capital and strategic partners,
11 Illumina announced plans to reacquire GRAIL in September 2020. The acquisition was completed
12 on August 18, 2022 over the objection of the European Union’s European Commission (“EC”).

13 21. On April 24, 2023, a post on *Nongaap Investing* entitled “Illumina: Malignant
14 Governance” posited that Illumina insiders reaped a financial windfall “in excess of \$500 million”
15 from the divestiture and reacquisition of GRAIL. Tracing the changes in Illumina’s equity stake of
16 GRAIL, the author alleged that “up to 70 million Grail shares went to insiders, right out-of-the-
17 gate.”

18 22. On April 28, 2023, Carl C. Icahn (“Icahn”), who was the beneficial owner of
19 approximately 1.4% of the outstanding shares of the Company as of February 17, 2023, issued an
20 open letter to Illumina shareholders. Therein, he drew attention to the “Malignant Governance” blog
21 post and called for Illumina to conduct an unbiased investigation into the issues, stating:

22 Additionally, we read an interesting piece recently on Illumina, entitled “Malignant
23 Governance,” which asks the question that has been on the mind of virtually every
24 long term shareholder with whom we have spoken: “***How much money did Illumina
25 insiders (past and present) make from splitting-off and subsequently re-acquiring
26 Grail?***” We have no idea if the allegations are true. However, based on what we do
27 know of the past actions and lack of transparency exhibited by Illumina CEO Francis
28 deSouza and the incumbent directors, we would not be surprised at all if some or all
of the assertions turned out to be accurate. We therefore implore the board to bring
in an outside – and demonstrably independent – law firm and forensic accounting
team to investigate and address these questions publicly, with enough time prior to
the upcoming annual meeting to allow shareholders to take the results into account
when casting their votes for directors. We believe that an unbiased investigation into
these murky issues is necessary and appropriate, given the fact that the director

1 election will in effect be a referendum on the entire GRAIL fiasco. Unfortunately,
2 we believe that we will see pigs fly before we see such an investigation conducted
3 by this board.

4 **Materially False and Misleading**

5 **Statements Issued During the Class Period**

6 23. The Class Period begins on May 1, 2023. On that day, Illumina issued a press release
7 and shareholder letter in connection with the annual stockholder meeting to be held on May 25,
8 2023. Therein, the Company stated:¹

9 **2016 GRAIL spin-out from Illumina**

10 An inflammatory blog post, repeated by Icahn, incorrectly suggested that Illumina
11 spun out and reacquired GRAIL in order to enrich Illumina’s directors and
12 executives. Icahn himself, however, admits “We have no idea if the allegations are
13 true.”

14 The allegations are completely false.

15 The facts are as follows:

- 16 • ***None of Illumina’s directors involved in either the decision to sign or the***
17 ***decision to close the GRAIL acquisition*** – including our former CEO and
18 Executive Chairman Jay Flatley, our current CEO Francis deSouza and each
19 of Illumina’s current directors – ***has ever held any equity interests in GRAIL.***
- 20 • ***At the time of Illumina’s various investment rounds in GRAIL, no***
21 ***individuals at Illumina were investors in GRAIL.*** Illumina’s employees,
22 executive officers and Board members were not permitted to participate in
23 GRAIL investment rounds and did not otherwise receive any GRAIL equity.
- 24 • Illumina, Inc. was the founder of GRAIL and individuals employed by
25 Illumina moved to GRAIL as part of the spin-out in 2016. Those who moved
26 to GRAIL terminated their relationship with Illumina at the time of transition
27 and directors and employees who remained at Illumina could not invest in
28 GRAIL nor did they receive any GRAIL equity.
- ***No executive officers of Illumina held GRAIL shares at the signing or***
closing of the GRAIL acquisition, other than Alex Aravanis, who Illumina
had hired from GRAIL, and Mostafa Ronaghi, Illumina’s former CTO, who
received GRAIL shares upon joining GRAIL’s board in May 2020. The
economic interests and relationships of these individuals with GRAIL were
fully disclosed to, and known by, Illumina and its Board, and, consistent with
good corporate governance practices, both were recused from any decisions
to sign and close the GRAIL acquisition.

¹ Unless otherwise stated, all emphasis in bold and italics hereinafter is added.

1 While the exact number of Class members is unknown to Plaintiff at this time and can only be
2 ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or
3 thousands of members in the proposed Class. Millions of Illumina shares were traded publicly
4 during the Class Period on the NASDAQ. Record owners and other members of the Class may be
5 identified from records maintained by Illumina or its transfer agent and may be notified of the
6 pendency of this action by mail, using the form of notice similar to that customarily used in securities
7 class actions.

8 33. Plaintiff's claims are typical of the claims of the members of the Class as all members
9 of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that
10 is complained of herein.

11 34. Plaintiff will fairly and adequately protect the interests of the members of the Class
12 and has retained counsel competent and experienced in class and securities litigation.

13 35. Common questions of law and fact exist as to all members of the Class and
14 predominate over any questions solely affecting individual members of the Class. Among the
15 questions of law and fact common to the Class are:

16 (a) whether the federal securities laws were violated by Defendants' acts as
17 alleged herein;

18 (b) whether statements made by Defendants to the investing public during the
19 Class Period omitted and/or misrepresented material facts about the business, operations, and
20 prospects of Illumina; and

21 (c) to what extent the members of the Class have sustained damages and the
22 proper measure of damages.

23 36. A class action is superior to all other available methods for the fair and efficient
24 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
25 damages suffered by individual Class members may be relatively small, the expense and burden of
26 individual litigation makes it impossible for members of the Class to individually redress the wrongs
27 done to them. There will be no difficulty in the management of this action as a class action.

28

1 **UNDISCLOSED ADVERSE FACTS**

2 37. The market for Illumina’s securities was open, well-developed and efficient at all
3 relevant times. As a result of these materially false and/or misleading statements, and/or failures to
4 disclose, Illumina’s securities traded at artificially inflated prices during the Class Period. Plaintiff
5 and other members of the Class purchased or otherwise acquired Illumina’s securities relying upon
6 the integrity of the market price of the Company’s securities and market information relating to
7 Illumina, and have been damaged thereby.

8 38. During the Class Period, Defendants materially misled the investing public, thereby
9 inflating the price of Illumina’s securities, by publicly issuing false and/or misleading statements
10 and/or omitting to disclose material facts necessary to make Defendants’ statements, as set forth
11 herein, not false and/or misleading. The statements and omissions were materially false and/or
12 misleading because they failed to disclose material adverse information and/or misrepresented the
13 truth about Illumina’s business, operations, and prospects as alleged herein.

14 39. At all relevant times, the material misrepresentations and omissions particularized in
15 this Complaint directly or proximately caused or were a substantial contributing cause of the
16 damages sustained by Plaintiff and other members of the Class. As described herein, during the
17 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
18 statements about Illumina’s financial well-being and prospects. These material misstatements and/or
19 omissions had the cause and effect of creating in the market an unrealistically positive assessment
20 of the Company and its financial well-being and prospects, thus causing the Company’s securities
21 to be overvalued and artificially inflated at all relevant times. Defendants’ materially false and/or
22 misleading statements during the Class Period resulted in Plaintiff and other members of the Class
23 purchasing the Company’s securities at artificially inflated prices, thus causing the damages
24 complained of herein when the truth was revealed.

25 **LOSS CAUSATION**

26 40. Defendants’ wrongful conduct, as alleged herein, directly and proximately caused
27 the economic loss suffered by Plaintiff and the Class.

1 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
2 statements about Illumina's business, prospects, and operations. These material misstatements
3 and/or omissions created an unrealistically positive assessment of Illumina and its business,
4 operations, and prospects, thus causing the price of the Company's securities to be artificially
5 inflated at all relevant times, and when disclosed, negatively affected the value of the Company
6 shares. Defendants' materially false and/or misleading statements during the Class Period resulted
7 in Plaintiff and other members of the Class purchasing the Company's securities at such artificially
8 inflated prices, and each of them has been damaged as a result.

9 45. At all relevant times, the market for Illumina's securities was an efficient market for
10 the following reasons, among others:

11 (a) Illumina shares met the requirements for listing, and was listed and actively
12 traded on the NASDAQ, a highly efficient and automated market;

13 (b) As a regulated issuer, Illumina filed periodic public reports with the SEC
14 and/or the NASDAQ;

15 (c) Illumina regularly communicated with public investors via established
16 market communication mechanisms, including through regular dissemination of press releases on
17 the national circuits of major newswire services and through other wide-ranging public disclosures,
18 such as communications with the financial press and other similar reporting services; and/or

19 (d) Illumina was followed by securities analysts employed by brokerage firms
20 who wrote reports about the Company, and these reports were distributed to the sales force and
21 certain customers of their respective brokerage firms. Each of these reports was publicly available
22 and entered the public marketplace.

23 46. As a result of the foregoing, the market for Illumina's securities promptly digested
24 current information regarding Illumina from all publicly available sources and reflected such
25 information in Illumina's share price. Under these circumstances, all purchasers of Illumina's
26 securities during the Class Period suffered similar injury through their purchase of Illumina's
27 securities at artificially inflated prices and a presumption of reliance applies.

28

1 **FIRST CLAIM**

2 **Violation of Section 10(b) of The Exchange Act and**

3 **Rule 10b-5 Promulgated Thereunder**

4 **Against All Defendants**

5 49. Plaintiff repeats and re-alleges each and every allegation contained above as if fully
6 set forth herein.

7 50. During the Class Period, Defendants carried out a plan, scheme and course of conduct
8 which was intended to and, throughout the Class Period, did: (i) deceive the investing public,
9 including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other
10 members of the Class to purchase Illumina's securities at artificially inflated prices. In furtherance
11 of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the
12 actions set forth herein.

13 51. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue
14 statements of material fact and/or omitted to state material facts necessary to make the statements
15 not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a
16 fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially
17 high market prices for Illumina's securities in violation of Section 10(b) of the Exchange Act and
18 Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal
19 conduct charged herein or as controlling persons as alleged below.

20 52. Defendants, individually and in concert, directly and indirectly, by the use, means or
21 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
22 continuous course of conduct to conceal adverse material information about Illumina's financial
23 well-being and prospects, as specified herein.

24 53. Defendants employed devices, schemes and artifices to defraud, while in possession
25 of material adverse non-public information and engaged in acts, practices, and a course of conduct
26 as alleged herein in an effort to assure investors of Illumina's value and performance and continued
27 substantial growth, which included the making of, or the participation in the making of, untrue
28 statements of material facts and/or omitting to state material facts necessary in order to make the

1 statements made about Illumina and its business operations and future prospects in light of the
2 circumstances under which they were made, not misleading, as set forth more particularly herein,
3 and engaged in transactions, practices and a course of business which operated as a fraud and deceit
4 upon the purchasers of the Company's securities during the Class Period.

5 54. Each of the Individual Defendants' primary liability and controlling person liability
6 arises from the following facts: (i) the Individual Defendants were high-level executives and/or
7 directors at the Company during the Class Period and members of the Company's management team
8 or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities
9 as a senior officer and/or director of the Company, was privy to and participated in the creation,
10 development and reporting of the Company's internal budgets, plans, projections and/or reports;
11 (iii) each of these defendants enjoyed significant personal contact and familiarity with the other
12 defendants and was advised of, and had access to, other members of the Company's management
13 team, internal reports and other data and information about the Company's finances, operations, and
14 sales at all relevant times; and (iv) each of these defendants was aware of the Company's
15 dissemination of information to the investing public which they knew and/or recklessly disregarded
16 was materially false and misleading.

17 55. Defendants had actual knowledge of the misrepresentations and/or omissions of
18 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
19 ascertain and to disclose such facts, even though such facts were available to them. Such defendants'
20 material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose
21 and effect of concealing Illumina's financial well-being and prospects from the investing public and
22 supporting the artificially inflated price of its securities. As demonstrated by Defendants'
23 overstatements and/or misstatements of the Company's business, operations, financial well-being,
24 and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the
25 misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by
26 deliberately refraining from taking those steps necessary to discover whether those statements were
27 false or misleading.

28

1 their ownership and contractual rights, participation in, and/or awareness of the Company's
2 operations and intimate knowledge of the false financial statements filed by the Company with the
3 SEC and disseminated to the investing public, Individual Defendants had the power to influence and
4 control and did influence and control, directly or indirectly, the decision-making of the Company,
5 including the content and dissemination of the various statements which Plaintiff contends are false
6 and misleading. Individual Defendants were provided with or had unlimited access to copies of the
7 Company's reports, press releases, public filings, and other statements alleged by Plaintiff to be
8 misleading prior to and/or shortly after these statements were issued and had the ability to prevent
9 the issuance of the statements or cause the statements to be corrected.

10 62. In particular, Individual Defendants had direct and supervisory involvement in the
11 day-to-day operations of the Company and, therefore, had the power to control or influence the
12 particular transactions giving rise to the securities violations as alleged herein, and exercised the
13 same.

14 63. As set forth above, Illumina and Individual Defendants each violated Section 10(b)
15 and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position
16 as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange
17 Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members
18 of the Class suffered damages in connection with their purchases of the Company's securities during
19 the Class Period.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

22 (a) Determining that this action is a proper class action under Rule 23 of the Federal
23 Rules of Civil Procedure;

24 (b) Awarding compensatory damages in favor of Plaintiff and the other Class members
25 against all defendants, jointly and severally, for all damages sustained as a result of Defendants'
26 wrongdoing, in an amount to be proven at trial, including interest thereon;

27 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this
28 action, including counsel fees and expert fees; and

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(d) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED:
