



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE ILLUMINA INC. )  
DERIVATIVE LITIGATION ) CONS. C.A. No. 11395-VCL

**STIPULATION OF COMPROMISE AND SETTLEMENT**

This Stipulation of Compromise and Settlement (“Stipulation”), dated October 30, 2017, is entered into, by and through their undersigned attorneys, among and between: Plaintiffs Charles Blackburn and Susan Freedman, individually and derivatively on behalf of Illumina, Inc. (“Illumina” or the “Company”); individual defendants Jay T. Flatley, Francis A. deSouza, William H. Rastetter, A. Blaine Bowman, Roy A. Whitfield, Daniel M. Bradbury, Karin Eastham, Robert S. Epstein, Gerald Möller, David R. Walt, and Jeffrey T. Huber; and nominal defendant Illumina.

This Stipulation is intended by the Settling Parties to fully, finally, and forever compromise, resolve, discharge, and settle all Released Claims against the Released Persons, and to dismiss the Action with prejudice, upon the terms set forth below and subject to the approval of the Court of Chancery of the State of Delaware pursuant to Court of Chancery Rule 23.1.<sup>1</sup>

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<sup>1</sup> All capitalized terms not otherwise defined are defined in Section IV.1, *infra*.

## **I. BACKGROUND OF THE ACTION AND SETTLEMENT NEGOTIATIONS**

Illumina is a life sciences company that is the global leader in sequencing- and array-based solutions for genetic analysis.

On August 17, 2015, Plaintiff Charles Blackburn filed a stockholder derivative complaint on behalf of Illumina against the Individual Defendants and nominal defendant Illumina, captioned *Blackburn v. Flatley, et al.*, C.A. No. 11395-VCL.

On August 25, 2015, Plaintiff Susan Freedman filed a stockholder derivative complaint on behalf of Illumina against the Individual Defendants and nominal defendant Illumina, captioned *Freedman v. Bowman, et al.*, C.A. No. 11431-VCL.

On September 22, 2015, this Court entered an Order of Consolidation and Leadership that had been jointly stipulated to by both Plaintiffs. This Order appointed the law firms of Robbins Arroyo LLP, Barrack, Rodos & Bacine, and Cooch and Taylor, P.A. as co-lead counsel for Plaintiffs in the consolidated action. The Order of Consolidation and Leadership also required Plaintiffs to file a consolidated complaint or designate an operative complaint within thirty days.

On October 22, 2015, Plaintiffs filed their Verified Consolidated Stockholder Derivative Complaint (“Consolidated Complaint”) on behalf of Illumina and against the Individual Defendants. In the Action, Plaintiffs allege that the Individual Defendants breached their fiduciary duties by awarding and/or

receiving excessive and improper compensation in 2013 and 2014 at the expense of the Company. Plaintiffs further allege that the Individual Defendants were unjustly enriched as a result of their purportedly excessive compensation in those years. Plaintiffs also allege that the 2015 Stock and Incentive Plan, which was in effect as of the filing of the Action, contains no limitation on the amount of stock an individual director can receive. On November 23, 2015, the Individual Defendants filed an Answer to the Consolidated Complaint. On March 21, 2016, Illumina filed its Answer.

On February 19, 2016, Plaintiffs commenced discovery, by serving Illumina and the Individual Defendants with requests for documents. On April 26, 2016, this Court entered an Order Governing the Production and Exchange of Confidential and Highly Confidential Information to which the Parties had jointly stipulated. The Defendants thereafter produced documents to Plaintiffs, including minutes of meetings of the Compensation Committee of Illumina's Board of Directors, minutes of meetings of the full Board relating to director compensation, and reports of Radford Consulting, a business unit of Aon plc that serves as the independent consultant to the Compensation Committee, with respect to director compensation.

On July 13, 2016, after review of Defendants' document productions, Plaintiffs' Counsel sent a settlement demand letter to counsel for Defendants that

proposed a framework for settlement that included the adoption of specific limits on non-employee director compensation, including stockholder approved limits; amendments to the 2015 Stock and Incentive Plan; amendments to the Compensation Committee charter; enhanced proxy statement disclosures; and other proposed corporate governance reforms. Between July 2016 and January 2017, counsel for Plaintiffs and counsel for Defendants negotiated potential settlement terms and conditions before coming to agreement on a proposed framework for settling this Action that would be presented to their respective clients for approval.

Plaintiffs approved the terms of the proposed settlement, excluding the attorneys' fee provisions, on January 19, 2017, subject to conducting the deposition of a Board member who served on the Compensation Committee during the relevant period. The substantive terms of the settlement, excluding the attorneys' fee provisions, were approved by the Individual Defendants and the Board in January, 2017.

On May 2, 2017, Plaintiffs' counsel took the deposition of Defendant Whitfield, former chair of the Compensation Committee.<sup>2</sup> In the course of preparing for and taking his deposition, Plaintiffs' counsel determined that the Initial Equity Awards provided to two Illumina directors, Frances Arnold and

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<sup>2</sup> Defendant Whitfield retired from the Illumina Board on May 30, 2017.

Jeffrey Huber, may have been issued erroneously in amounts in excess of the amounts approved by Board resolution. To correct this error, the directors were asked to and agreed to forego these excess awards, and Illumina filed two amended Form 4s with the SEC reflecting the corrected grants on June 16, 2017. The combined grant date fair value of the excess awards that the two directors agreed to forego was \$140,307 (although only a portion of that amount had vested as of the date on which the awards were corrected).

Following approval of the substantive terms of the settlement and the agreement of directors Huber and Arnold to forego the excess awards, the Parties separately negotiated the amount of attorneys' fees and expenses to be paid to Plaintiffs' Counsel and the schedule for such payment. The Parties did not discuss the amount of any attorneys' fees and expenses to be paid to Plaintiffs' Counsel until after the other settlement terms had been established and until after directors Huber and Arnold agreed to forego their excess awards.

The Parties have now reached a definitive agreement to settle the Action upon the terms and subject to the conditions set forth in this Stipulation (the "Settlement").

## **II. PLAINTIFFS' CLAIMS AND THE BENEFITS OF SETTLEMENT**

Plaintiffs and Plaintiffs' Counsel submit that the claims they assert in the Action on behalf of Illumina have merit. Nonetheless, Plaintiffs and Plaintiffs'

Counsel understand that there is uncertainty, risk, cost, and burden inherent in any litigation, especially in complex cases such as this Action. In addition, Plaintiffs and Plaintiffs' Counsel assert that the Settlement set forth in this Stipulation confers substantial benefits upon Plaintiffs, Illumina, and Illumina's stockholders in light of the present circumstances. Based on their evaluation, Plaintiffs and Plaintiffs' Counsel submit that the Settlement set forth in this Stipulation is in the best interests of Plaintiffs, Illumina, and Illumina's stockholders, and that when compared with the uncertainty, risk, cost, and burden inherent in the continued litigation of this Action, it is in the best interests of Plaintiffs, Illumina, and Illumina's stockholders to settle this Action on the terms set forth herein.

As will be set forth fully in Plaintiffs' brief in support of the Settlement, the Settlement's benefits include the adoption of specific limits on non-employee director compensation, including interim limits on equity compensation for 2017 and 2018 that are at levels below certain historical equity awards; proposed amendments to the 2015 Stock and Incentive Plan to set stockholder approved limits on equity compensation applicable in subsequent years; and additional stockholder-approved limits on non-employee directors' total compensation. Further benefits from the Settlement include amendments to the Compensation Committee charter; enhanced proxy statement disclosures; and other proposed corporate governance reforms which Plaintiffs and Plaintiffs' Counsel submit will

provide for a more substantial annual review of non-employee director compensation by a compensation consultant and each director on the Board.

Plaintiffs and Plaintiffs' Counsel assert that the terms of this Settlement, which directly address the claims in the Consolidated Complaint and provide multiple benefits to Illumina and its stockholders, strongly weigh in favor of acceptance of this Settlement especially when compared to the uncertainty, risk, cost, and burden of further litigation.

The Parties have agreed that neither this Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referenced in or attached to this Stipulation, nor any action taken to carry out this Stipulation or in connection with the Settlement, is, may be construed as, or may be used as an admission by or against Plaintiffs that this Action lacked merit when filed or that it currently lacks merit, whatsoever by any Person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative.

### **III. DEFENDANTS' DENIAL OF WRONGDOING AND LIABILITY**

Defendants have denied and continue to deny that they have committed, threatened, or attempted to commit any violations of law or breached any duty owed to Plaintiffs, Illumina, or Illumina's stockholders. Defendants maintain that their conduct was at all times proper, compliant with applicable law, and taken in good faith. Nonetheless, Defendants have concluded that further litigation of the

Action would be protracted and expensive, and that it is desirable and beneficial for the Action to be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. The Board of Directors has approved the Settlement and each of its terms as being in the best interests of Illumina and its stockholders. The Board of Directors acknowledges and agrees that the Settlement is fair, reasonable, and adequate and believes that entering into the Settlement is substantially to the benefit of Illumina and its stockholders.

The Parties have agreed that neither this Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referred to in or attached to this Stipulation, nor any action taken to carry out this Stipulation or in connection with the Settlement, is, may be construed as, or may be used as, evidence of the validity of any of the Released Claims or an admission by or against Defendants of any fault, wrongdoing, or concession of liability whatsoever by any Person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative.

#### **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs (on behalf of themselves and derivatively on behalf of Illumina) and Defendants, each by and through their respective counsel, subject to the approval of the Court pursuant to Court of Chancery Rule 23.1, that the

Released Claims shall be and hereby are compromised, settled, discontinued, and dismissed with prejudice, as to all Parties, upon the terms and subject to the conditions set forth herein as follows:

**1. Definitions**

As used in this Stipulation, the following terms have the meanings specified below:

1.1. “2015 Stock and Incentive Plan” means the Illumina, Inc. 2015 Stock and Incentive Plan.

1.2. “Action” means *In re Illumina Inc. Derivative Litigation*, Consolidated Civil Action No. 11395-VCL.

1.3. “Annual Equity Award” means an award of restricted stock units granted to each Non-Employee Director of Illumina as compensation for their service on the Board of Directors. Annual Equity Awards are typically granted at the time of the Company’s annual meeting of stockholders as compensation for service until the next Annual Meeting, which is typically approximately one year later. However, a new director who first joins the Board on a date other than the date of the annual meeting of stockholders may receive a pro-rated Annual Equity Award as compensation for their service until the next annual meeting of stockholders. The “Annual Equity Award” is separate and distinct from any Initial Equity Award granted to a Non-Employee Director. Annual Equity Awards vest at

the earlier of one year after they are granted to the Non-Employee Directors or the day before the Company's next annual meeting of stockholders. Annual Equity Awards are forfeited if the Non-Employee Director is not a director on the vesting date.

1.4. "Board of Directors" or "Board" means the Board of Directors of Illumina.

1.5. "Compensation Committee" means the Compensation Committee of the Board of Directors of Illumina.

1.6. "Corporate Governance Reforms" means the corporate governance reforms specified in Section IV.2.

1.7 "Corrected Initial Equity Awards" means the Initial Equity Awards provided to Frances Arnold and Jeffrey Huber which were subsequently corrected and which were the subject of the amended Form 4s filed by Illumina with the SEC on June 16, 2017.

1.8. "Court" means the Court of Chancery of the State of Delaware.

1.9. "Current Illumina Stockholder(s)" means any Person or Persons who are record holders or beneficial owners of Illumina stock as of the date of this Stipulation, excluding the Individual Defendants, the officers and directors of Illumina, members of their immediate families, and their legal representatives,

heirs, successors, or assigns, and any entity in which the Individual Defendants have or had a controlling interest.

1.10. “Defendants” means, collectively, nominal defendant Illumina and the Individual Defendants.

1.11. “Effective Date” means the date by which all of the events and conditions specified in paragraph 6.1 herein have been met and have occurred.

1.12. “Final” means the expiration of all time to seek appeal or other review of the Judgment, or if any appeal or other review of such Judgment is filed and not dismissed, after such Judgment is upheld on appeal in all material respects and is no longer subject to appeal, reargument, or review by writ of certiorari or otherwise.

1.13. “Individual Defendants” means Jay T. Flatley, Francis A. deSouza, William H. Rastetter, A. Blaine Bowman, Roy A. Whitfield, Daniel M. Bradbury, Karin Eastham, Robert S. Epstein, Gerald Möller, David R. Walt, and Jeffrey T. Huber.

1.14. “Initial Equity Award” means a one-time award of restricted stock units granted to a Non-Employee Director of Illumina upon first joining the Board of Directors. Initial Equity Awards vest over four years with 25% vesting annually on the anniversary of the grant date, provided that the Non-Employee Director continues to be a director on such date.

1.15. “Judgment” means the [Proposed] Order and Final Judgment entered by the Court dismissing this Action with prejudice, substantially in the form annexed hereto as Exhibit C.

1.16. “Non-Employee Director” means a member of the Board of Illumina who is not and was not an employee of the Company or its subsidiaries and affiliates.

1.17. “Notice” means the Notice of Pendency of Settlement of Action, substantially in the form annexed hereto as Exhibit B.

1.18. “Person” means a natural person, individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, any business or legal entity, and any spouse, heir, legatee, executor, administrator, predecessor, successor, representative, or assign of any of the foregoing.

1.19. “Plaintiffs” means Charles Blackburn and Susan Freedman, individually and derivatively on behalf of Illumina.

1.20. “Plaintiffs’ Counsel” means Cooch and Taylor, P.A., Robbins Arroyo LLP, and Barrack, Rodos & Bacine.

1.21. “Record Date” means close of business on the date that this Stipulation is filed with the Court.

1.22. “Released Claims” means and includes any and all claims for relief or causes of action, debts, demands, rights, liabilities, losses, and claims whatsoever, known or unknown (including Unknown Claims), fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, or matured or unmatured, that have been or could have been or in the future might be asserted by Plaintiffs as stockholders, or any other Illumina stockholder, or any other Person, acting or purporting to act on behalf of Illumina against the Released Persons, arising out of or relating to: (a) the facts, transactions, events, occurrences, acts, disclosures, statements, or omissions alleged in the Action against Defendants, or (b) the payment of compensation to non-employee directors of Illumina, in their capacity as such, before the date of the Settlement, including without limitation the Corrected Initial Equity Awards, any other Initial Equity Award or Annual Equity Award, and any cash compensation; provided, however, that it is understood that “Released Claims” and any release provided by this Settlement shall not include: (i) any claims to enforce the Settlement; and (ii) any claims by Defendants or any other insured to enforce their rights under any contract or policy of insurance.

1.23. “Released Persons” means the Individual Defendants and their legatees, executors, administrators, predecessors, successors, subsidiaries,

affiliates, agents, attorneys, insurers, members of their immediate families, legal representatives, heirs, and assigns. “Released Persons” also includes Illumina and all of its current and former officers, directors, and employees.

1.24. “Releasing Persons” means Plaintiffs (both individually and derivatively on behalf of Illumina), any other current or former Illumina stockholder acting or purporting to act on behalf of Illumina, and Illumina. “Releasing Person” means, individually, any of the Releasing Persons.

1.25. “Scheduling Order” means an order scheduling a hearing on this Stipulation and approving the form of Notice and method of giving notice of the Settlement to Illumina stockholders, substantially in the form annexed hereto as Exhibit A.

1.26. “Settlement Hearing” means the hearing set by the Court to consider final approval of the Settlement.

1.27. “Settling Parties” or “Parties” means, collectively, Plaintiffs (on behalf of themselves and derivatively on behalf of Illumina) and Defendants. “Settling Party” or “Party” means, individually, any of the Settling Parties.

1.28. “Unknown Claims” means any Released Claim(s) that Plaintiffs or Defendants do not know of or suspect to exist at the time of the release of the Released Claims, including without limitation those that, if known, might have affected the decision to enter into the Settlement. With respect to any and all

Released Claims, the Parties agree that upon the Effective Date, the Parties expressly waive, and all Releasing Persons shall be deemed to have waived, the provisions, rights, and benefits conferred by or under California Civil Code section 1542, or any other law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge that they may hereafter discover facts in addition to or different from those now known or believed to be true by them, with respect to the subject matter of the Released Claims, but it is the intention of the Parties to completely, fully, finally, and forever compromise, settle, release, discharge, and extinguish any and all Released Claims, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which do now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge that the foregoing waiver was separately bargained for and is a key

element of this Stipulation of which this release is a part, and was relied upon by each and all of the Parties in entering into the Settlement.

## **2. Terms of the Settlement**

2.1 As a result of the filing, prosecution, and settlement of the Action, Illumina has agreed to implement and maintain in substance the corporate governance reforms, additions, amendments, or formalizations set forth below for a period of no less than four (4) years from January 1, 2017, unless otherwise specified below. In connection with the Settlement and in consideration of the Released Claims set forth herein:

### *2.1.1. Compensation Limits*

(a) Interim 2017 and 2018 Compensation Limits. The Board will adopt an interim policy to govern 2017 and 2018 Non-Employee Director compensation. In 2017, this policy will limit Annual Equity Awards for Non-Employee Directors to a grant date value of \$400,000 and Initial Equity Awards for Non-Employee Directors to a grant date value of \$800,000. In 2018, this policy will limit Annual Equity Awards to Non-Employee Directors to a grant date value of \$500,000 and Initial Equity Awards to Non-Employee Directors to a grant date value of \$1,000,000. In addition, for each of 2017 and 2018, the Board's interim policy will limit aggregate total compensation of new and other Non-Employee Directors to the amounts specified in the proposed amendments to the 2015 Stock and Incentive Plan described in paragraph 2.1.1(c) below.

(b) Amendments to the 2015 Stock and Incentive Plan: Illumina will submit proposed amendments of the 2015 Stock and Incentive Plan to stockholders for approval at the 2018 Annual Meeting of Stockholders. The proposed amendments will establish a limit of a grant date value of \$600,000 for Annual Equity Awards to Non-Employee Directors and a limit of a grant date value of \$1,400,000 for

Initial Equity Awards to new Non-Employee Directors. These limits would remain in effect for two years (2019 to 2020) in the 2015 Stock and Incentive Plan or any replacement plan.

(c) Additional Compensation Cap. The Company will also propose to the stockholders at the 2018 Annual Meeting of Stockholders that they approve a director-specific limit of \$2.0 million on the total compensation awarded to each new Non-Employee Director each year (with any equity components of such compensation to be calculated based on grant date value), and a director-specific limit of \$1.0 million on the total compensation awarded to each other Non-Employee Director (with any equity components of such compensation to be calculated based on grant date value). The proposal would provide that the limit would remain in place from 2019 to 2020.

#### 2.1.2. *Public Disclosures*

The Company will make additional disclosures in its definitive proxy statements for four years beginning with its 2017 definitive proxy statement. These additional disclosures will provide an overview of the Company's compensation philosophy and compensation-setting process for Non-Employee Directors, including (at a minimum): (a) a description of the involvement of an independent compensation consultant in the compensation-setting process; (b) the peer group used by the compensation consultant in its final recommendations for a given year; and (c) a general description, similar in form to disclosures in the Company's 2016 definitive proxy statement concerning the use of benchmarking data in setting executive compensation, of any peer group benchmarking analysis employed by the compensation consultant and communicated to the Compensation Committee in connection with such final recommendations. Illumina's existing policy of disclosing actual Non-Employee Director compensation amounts will be maintained in place during this four-year period.

### 2.1.3. *Compensation Committee Charter*

The Board will amend the charter of the Compensation Committee to include the following provisions by no later than ninety days following approval of the settlement by the Court of Chancery:

(a) The Committee will annually review, formulate a recommendation, and recommend to the Board the amount and form of all compensation, including cash and equity-based compensation, to be paid to the members of the Board, based on various factors deemed appropriate, including the evaluation of the Board's performance by the Nominating/Corporate Governance Committee of the Board.

(b) The Committee will engage an independent compensation consultant to advise it in connection with its annual review and assessment of compensation paid to members of the Board, including with respect to: (i) the amount and type of compensation to be paid in the next fiscal year; (ii) comparative peer group data deemed appropriate by such consultant; (iii) an analysis of the potential equity grants to be awarded to non-employee directors in the next fiscal year; and (iv) an analysis of the potential total compensation to be awarded to each non-employee director in the next fiscal year.

### 2.1.4. *Board Review*

The Board shall continue, for a minimum of four years, to annually review and approve the compensation payable to the Non-Employee Directors, including any recommendation by the Compensation Committee as to changes in the compensation payable to Non-Employee Directors.

### 2.1.5. *Stockholder Votes*

The proposed compensation limits described in paragraphs 2.1.1(b) and 2.1.1(c) above will be submitted to the stockholders for approval at the 2018 Annual Meeting of Stockholders.

### **3. Scheduling Order, Notice, and Approval**

3.1. The Parties shall submit promptly this Stipulation together with its exhibits to the Court, and shall apply for entry of the proposed Scheduling Order, substantially in the form of Exhibit A attached hereto, requesting: (i) the approval of the manner of notice to Illumina stockholders substantially in the form attached hereto as Exhibit B; (ii) the Court's consideration of the Settlement and Plaintiffs' application for attorneys' fees and expenses; and (iii) a date for the Settlement Hearing.

3.2. Notice to Illumina stockholders shall consist of the Notice, substantially in the form attached hereto as Exhibit B, and shall be provided to Illumina stockholders as follows: within ten (10) business days after the entry of the Scheduling Order, Illumina shall commence mailing of the Notice to all record holders of Illumina stock as of the Record Date. All record holders who are not also the beneficial owners of the shares of Illumina stock held by them of record shall be requested to forward the Notice to the beneficial owners of those shares. The Company shall use reasonable efforts to give notice to such beneficial owners by: (i) making additional copies of the Notice available to any record holder who, before the Settlement Hearing, requests the same for distribution to beneficial owners, or (ii) mailing additional copies of the Notice to beneficial owners as

reasonably requested by record holders who provide names and addresses for such beneficial holders.

3.2.1. Within ten (10) business days after the entry of the Scheduling Order, Robbins Arroyo LLP and Barrack, Rodos & Bacine shall post copies of the Notice and this Stipulation on their websites and shall maintain such postings through the date of the Settlement Hearing.

3.3. No later than ten (10) business days before the Settlement Hearing, Defendants' counsel shall serve on counsel in the Action and file with the Court an appropriate affidavit with respect to the preparation and mailing of the Notice, and Plaintiffs' Counsel shall serve on counsel in the Action and file with the Court an appropriate affidavit with respect to the posting of the Notice and Stipulation.

3.4. Illumina, on behalf of the Individual Defendants, shall be responsible for all costs associated with the mailing of the Notice. If additional notice is required by the Court, then the cost and administration of such additional notice will be borne by Illumina on behalf of the Individual Defendants.

3.5. The Parties submit that the content and manner of notice constitutes adequate and reasonable notice to Illumina stockholders pursuant to applicable law and due process.

3.6. Pending the Court's determination as to final approval of the Settlement, the Parties agree not to litigate this Action further and not to initiate any other proceedings other than those incident to the Settlement itself.

3.7. The Parties will request the Court to order (in the Scheduling Order) that, pending final determination of whether the Settlement should be approved, the Parties in the Action are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims against any of the Released Persons.

3.8. The Parties and their counsel agree to use their individual and collective best efforts to obtain Court approval of this Stipulation. The Parties and their counsel further agree to use their individual and collective best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, this Stipulation and the dismissal of the Action. Nothing herein shall be construed as requiring Illumina to agree to any substantive modification to this Stipulation.

#### **4. Attorneys' Fees and Expenses**

4.1. Defendants acknowledge and agree that Plaintiffs' Counsel is entitled to a fee award. Subject to the terms and conditions of the Stipulation and any

Order of the Court, Illumina has agreed to pay an award of attorneys' fees and expenses to Plaintiffs' Counsel not to exceed \$600,000 (the "Fee and Expense Award"). Plaintiff's Counsel will only seek attorneys' fees and expenses in this Court and will not seek any such fees and expenses in any other jurisdiction. The Fee and Expense Award shall be paid to Robbins Arroyo LLP, as receiving agent for Plaintiffs' Counsel, within ten (10) business days after the Court enters the Judgment, subject to Plaintiffs' Counsel's timely provision of the requisite payment information, including wire instructions and a completed Form W-9, and obligation to refund that amount within ten (10) business days if the Settlement is reversed or modified on appeal or by collateral attack. Except as otherwise provided herein, each of the Parties shall bear his, her, or its own fees and costs.

4.2. Approval of Plaintiffs' request for a Fee and Expense Award shall not be a condition of the Settlement. Any order or proceedings related to Plaintiffs' request for the Fee and Expense Award or any appeal from any order relating thereto or any modification thereof shall not operate to terminate or cancel this Stipulation, and shall not affect the Judgment approving this Stipulation or prevent the Settlement from becoming Final.

4.3. No fees or expenses shall be paid to Plaintiffs' Counsel pursuant to the Settlement before entry of Judgment in the Action approving the Settlement,

providing for the dismissal with prejudice of the Action, and approving the release of the Released Claims.

4.4. Except as provided in paragraph 4.1 of this Stipulation, Defendants shall have no obligation to pay or reimburse any fees, expenses, costs, or damages alleged or incurred by Plaintiffs, by Illumina stockholders, or by their attorneys, experts, advisors, or representatives with respect to the Released Claims.

## **5. Releases**

5.1. Upon the Effective Date, the Releasing Persons shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims against the Released Persons; provided, however, that such release shall not affect any claims to enforce the terms of this Stipulation.

5.2. Upon the Effective Date, Defendants shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action against Plaintiff and Plaintiffs' Counsel; provided, however, that such release shall not affect any claims to enforce the terms of this Stipulation.

## **6. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

6.1. The Settlement shall be conditioned on the occurrence of all of the following events:

6.1.1. Court approval of the Settlement following notice to Illumina stockholders and the Settlement Hearing;

6.1.2. entry of the Judgment in the Action approving the Settlement and providing for the dismissal with prejudice of the Action and approving the grant of the release of the Released Claims;

6.1.3. the dismissal with prejudice of the Action without the award of any damages, costs, fees, or the grant of any further relief, except as provided in paragraph 4.1 of this Stipulation; and

6.1.4. the Judgment becoming Final.

6.2. If any of the conditions listed in paragraph 6.1 are not met, this Stipulation and any Settlement documentation shall be null and void and of no force and effect. In the event that any of the conditions listed in paragraph 6.1 are not met, the Settling Parties shall be restored to their positions on the date immediately before the execution date of this Stipulation, this Stipulation shall not be deemed to constitute an admission of fact by any Settling Party, and neither the existence of this Stipulation, nor its contents shall be admissible in evidence or be referred to for any purpose in the Action or in any litigation or judicial proceeding. This Stipulation shall not be deemed to entitle any Party to the recovery of costs or

expenses incurred in connection with the intended implementation of the Settlement. Further, all releases delivered in connection with this Stipulation shall be null and void.

6.3. Each of Defendants shall have the right to withdraw from the Settlement in the event that any claims related to the subject matter of the Action are commenced or prosecuted against any of the Released Persons in any court before final approval of the Settlement and (following a motion by the Defendants) such claims are not dismissed with prejudice or stayed in contemplation of dismissal. In the event such claims are commenced before the entry of Judgment, the Parties agree to cooperate and use their reasonable best efforts to secure the dismissal (or a stay in contemplation of dismissal following final approval of the Settlement) thereof.

## **7. Dismissal of the Action**

7.1. If the Court approves this Stipulation, the Parties shall promptly request the Court to enter the proposed Judgment, substantially in the form annexed hereto as Exhibit C.

## **8. This Stipulation Is Not an Admission**

8.1. This Stipulation reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Stipulation nor the releases given herein, nor any consideration, nor any actions taken to carry

out this Stipulation are intended to be, nor may they be deemed or construed to be, an admission or concession of liability (or lack thereof), or of the validity of any claim, or defense, or of any point of fact or law on the part of any Party hereto regarding those facts that have been or might have been alleged in the Action or in any other proceeding. The Parties and all Released Persons may file this Stipulation and/or the Judgment in any action that has been or may be brought against them in order to support a claim or defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

## **9. Miscellaneous Provisions**

9.1. The Settling Parties agree that the terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Action was brought or defended in bad faith or without a reasonable basis.

9.2. This Stipulation shall be deemed to have been mutually prepared by the Settling Parties hereto and shall not be construed against any of them by reason of authorship.

9.3. This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document. Any signature to this Stipulation by means of facsimile or electronically scanned and sent via email shall be treated in all manner and respects as an original signature and shall be considered to have the same binding legal effect as if it were the original signed version thereof.

9.4. All Persons executing this Stipulation thereby represent that they have been authorized and empowered to do so.

9.5. Plaintiffs and Plaintiffs' Counsel represent and warrant that (i) none of Plaintiffs' claims referred to in this Stipulation or that could have been alleged in the Action have been assigned, pledged, encumbered, or in any manner transferred in whole or in part, and (ii) each of the Plaintiffs has been an Illumina stockholder at all relevant times and continued to hold their stock in Illumina as of the date of the execution of this Stipulation.

9.6. This Stipulation embodies and represents the full agreement of the Parties and supersedes any and all prior agreements and understandings relating to the subject matter hereof between or among any of the Parties hereto. This Stipulation shall not be modified or amended, nor shall any provision of this Stipulation be deemed waived, unless such modification, amendment, or waiver is in writing and executed by or on behalf of the Parties. The waiver by any Party of

any provision or the breach of this Stipulation shall not be deemed a waiver of any other provision or breach of this Stipulation.

9.7. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

9.8. Notwithstanding the entry of the Judgment, the Court shall retain jurisdiction with respect to the implementation, enforcement, and interpretation of the terms of this Stipulation, and all Parties submit to the jurisdiction of the Court for purposes of implementing, enforcing, and interpreting this Stipulation.

9.9. The construction and interpretation of this Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware and without regard to the laws that might otherwise govern under principles of conflicts of law applicable hereto. Any action involving this Stipulation shall be brought and maintained solely in the Delaware Court of Chancery, or to the extent the Court of Chancery does not have jurisdiction, any other Delaware state court. The Parties: (a) irrevocably and unconditionally consent and submit to the *in personam* jurisdiction of such courts in any such action; (b) consent to service of process by express mail made upon such party and/or such party's agent at the address(es) set forth in paragraph 9 of the Scheduling Order; and (c) waive any objection to venue in any such Delaware court and any claim that any such Delaware court is an inconvenient forum.

9.10. Without further order of the Court, the Parties hereto may agree to reasonable extensions of time to carry out any of the provisions in Section IV.4, *supra*, of this Stipulation.

9.11. The following exhibits are annexed hereto and incorporated herein by reference:

- (a) Exhibit A: [Proposed] Scheduling Order with Respect to Notice and Settlement Hearing;
- (b) Exhibit B: Notice of Pendency of Settlement of Action; and
- (c) Exhibit C: [Proposed] Order and Final Judgment.

**IN WITNESS WHEREOF, IT IS HEREBY AGREED** by the undersigned as of the date noted above.

[remainder of page left blank intentionally]

OF COUNSEL:

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New York, NY 10018-1405  
(212) 841-1081

/s/ A. Thompson Bayliss  
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ABRAMS & BAYLISS LLP  
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(302) 778-1000

*Attorneys for Individual Defendants*

/s/ T. Brad Davey  
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-and-

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Chad A. Carder  
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2001 Market Street, Suite 3300  
Philadelphia, PA 19103  
(215) 963-0600

Dated: October 30, 2017

/s/ Blake A. Bennett

Blake A. Bennett (#5133)  
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The Brandywine Building  
1000 West Street, 10th Floor  
P.O. Box 1680  
Wilmington, DE 19899  
(302) 984-3800

*Attorneys for Plaintiffs*



**EXHIBIT**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE ILLUMINA INC. )  
DERIVATIVE LITIGATION ) CONS. C.A. No. 11395-VCL )

**[PROPOSED] SCHEDULING ORDER WITH  
RESPECT TO NOTICE AND SETTLEMENT HEARING**

WHEREAS, the Parties to the above-captioned action (the “Action”) have entered into a Stipulation of Compromise and Settlement dated October 30, 2017 (the “Stipulation”), which sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the Action (the “Settlement”), subject to review and approval by this Court pursuant to Court of Chancery Rule 23.1 and upon notice to the current stockholders of nominal defendant Illumina, Inc. (“Illumina” or the “Company”);

WHEREAS, the Court has read and considered the Stipulation and the accompanying documents; and

WHEREAS, all Parties have consented to the entry of this order.

NOW, upon application of the Parties, after review and consideration of the Stipulation filed with the Court and the exhibits annexed thereto,

IT IS HEREBY ORDERED this \_\_\_ day of \_\_\_\_\_,

2017 as follows:

1. For purposes of this Scheduling Order, the Court incorporates by reference the definitions in the Stipulation and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation unless otherwise defined herein.

2. A hearing (the “Settlement Hearing”) shall be held on \_\_\_\_\_, 2017, at \_\_\_\_\_ a.m. / p.m. in the Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801, to: (a) determine whether the Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate and in the best interests of Illumina and its current stockholders; (b) determine whether the Court should finally approve the Stipulation and enter the Order and Final Judgment (the “Judgment”) as provided in the Stipulation, dismissing the Action with prejudice and extinguishing and releasing the Released Claims; (c) hear and determine any objections to the Settlement; (d) determine whether the Court should approve Plaintiffs’ application for approval of the Fee and Expense Award; and (e) rule on such other matters as the Court may deem appropriate.

3. The Settlement Hearing may be adjourned by the Court from time to time without further notice to anyone other than the Parties to the Action and any Objectors (as defined herein).

4. The Court reserves the right to approve the Stipulation at or after the Settlement Hearing with such modifications as may be consented to by the Parties and without further notice.

5. The Court approves, in form and content, the Notice of Pendency of Settlement of Action filed by the Parties with the Stipulation as Exhibit B and finds that the giving of notice substantially in the form and manner set forth therein (the “Notice”) meets the requirement of Court of Chancery Rule 23.1 and due process, and is the best notice practicable under the circumstances.

6. Within ten (10) business days after the entry of this Scheduling Order, Illumina shall commence mailing of the Notice to all record holders of Illumina stock as of the Record Date. All record holders of Illumina’s stock will receive the Notice in hardcopy form. In addition, the Company shall use reasonable efforts to give notice to beneficial owners by: (i) making additional copies of the Notice available to any record holder who, before the Settlement Hearing, requests the same for distribution to beneficial owners, or (ii) mailing additional copies of the Notice to beneficial owners as reasonably requested by record holders who provide names and addresses for such beneficial holders. Illumina, on behalf of the Individual Defendants, shall be responsible for all costs associated with the distribution of the Notice. If additional notice is required by

the Court, then the cost and administration of such additional notice will be borne by Illumina on behalf of the Individual Defendants.

7. Within ten (10) business days after the entry of this Scheduling Order, Robbins Arroyo LLP and Barrack, Rodos & Bacine shall post copies of the Notice and the Stipulation on their websites and shall maintain such postings through the date of the Settlement Hearing.

8. Ten (10) business days before the Settlement Hearing, Defendants' counsel shall serve on counsel in the Action and file with the Court an appropriate affidavit with respect to the preparation and distribution of the Notice, and Plaintiffs' Counsel shall serve on counsel in the Action and file with the Court an appropriate affidavit with respect to the posting of the Notice and Stipulation.

9. As set forth in the Notice, any record holder or beneficial owner of Illumina stock who objects to the Settlement, the proposed Judgment to be entered, the Fee and Expense Award, and/or who otherwise wishes to be heard (an "Objector"), may appear in person or by his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; provided, however, that no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon, unless he, she, or it has, no later than ten (10) calendar days before the Settlement Hearing (unless the Court in its discretion shall

thereafter otherwise direct, upon application of such person and for good cause shown), filed with the Register in Chancery, Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801, and served (by hand or by overnight mail) on Plaintiffs' Counsel and Defendants' counsel, at the addresses below, the following: (i) proof of current ownership of Illumina stock; (ii) a written notice of the Objector's intention to appear; (iii) a detailed statement of the objections to any matter before the Court; and (iv) a detailed statement of all of the grounds thereon and the reasons for the Objector's desire to appear and to be heard, as well as all documents or writings which the Objector desires the Court to consider. In addition to the aforementioned Court address, the addresses to which such information should be sent (by hand or by overnight mail) are as follows:

A. Thompson Bayliss  
ABRAMS & BAYLISS LLP  
20 Montchanin Road, Suite 200  
Wilmington, DE 19807  
(302) 778-1000

C. William Phillips  
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Alexander Arnold Gershon  
Michael A. Toomey  
BARRACK, RODOS & BACINE  
11 Times Square  
640 8th Avenue, 10th Floor  
New York, NY 10016  
(212) 688-0782

*Attorneys for Plaintiffs*

10. Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection (including the right to appeal), unless the Court in its discretion allows such objection to be heard

at the Settlement Hearing, and shall forever be barred from raising such objection in the Action or any other action or proceeding or otherwise contesting the Settlement or the Fee and Expense Award, and will otherwise be bound by the Judgment to be entered and the releases to be given.

11. At least twenty-one (21) calendar days before the Settlement Hearing, Plaintiffs' Counsel shall file with the Court a brief in support of the Settlement, including the fees and expenses sought. Any objections to the Settlement and/or the fees and expenses sought shall be filed and served no later than ten (10) calendar days before the Settlement Hearing.

12. At least five (5) calendar days before the Settlement Hearing, the Parties may serve and file with the Court a response brief to any objections made by an Objector pursuant to paragraph 9, above.

13. In the event that the Stipulation is not approved by the Court, the Settlement and any actions taken in connection therewith shall become null and void for all purposes, and all negotiations, transactions, and proceedings connected with it: (i) shall be without prejudice to the rights of any Party thereto; (ii) shall not be deemed to be construed as evidence of, or an admission by any Party of any fact, matter, or thing; and (iii) shall not be admissible in evidence or be used for any purpose in any subsequent proceedings in the Action or any other action or proceeding. The Parties shall be deemed to have reverted to their respective status

in the Action as of the date and time immediately before the execution of the Stipulation, and the Parties shall proceed in all respects as if the Stipulation and any related orders had not been entered.

14. All proceedings in this Action (except proceedings as may be necessary to carry out the terms and conditions of the Settlement) are hereby stayed and suspended until further order of the Court. Except as provided in the Stipulation, pending final determination of whether the Settlement should be approved, Plaintiffs in the Action are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claim against Defendants or any of the Released Persons.

15. The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further notice to anyone other than the Parties to the Action and any Objectors.

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Vice Chancellor Laster



**EXHIBIT**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE ILLUMINA INC. )  
DERIVATIVE LITIGATION ) CONS. C.A. No. 11395-VCL

**NOTICE OF PENDENCY OF SETTLEMENT OF ACTION**

**TO: ALL CURRENT STOCKHOLDERS OF ILLUMINA, INC.**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS LITIGATION. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE PROPOSED SETTLEMENT, OR PURSUING THE CLAIMS DEFINED HEREIN.**

**THIS ACTION IS NOT A “CLASS ACTION.” THUS, THERE IS NO COMMON FUND UPON WHICH YOU CAN MAKE A CLAIM FOR MONETARY PAYMENT. IF YOU DO NOT OBJECT TO THE TERMS OF THE PROPOSED SETTLEMENT OR THE AMOUNT OF ATTORNEYS’ FEES AND EXPENSES DESCRIBED IN THIS NOTICE, YOU ARE NOT OBLIGATED TO TAKE ANY ACTION. IF YOU HOLD ILLUMINA, INC. STOCK FOR THE BENEFIT OF ANOTHER, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNER.**

**I. WHY ARE YOU RECEIVING THIS NOTICE?**

The purpose of this Notice is to tell you about (i) a lawsuit (the “Action”) in the Court of Chancery of the State of Delaware (the “Court”) brought on behalf of Illumina, Inc. (“Illumina” or the “Company”); (ii) a proposal to settle the Action as provided in a Stipulation of Compromise and Settlement (the “Stipulation”) that sets forth the terms and conditions of the proposed settlement of this Action (“Settlement”); and (iii) your right, among other things, to attend and participate in a hearing to be held on \_\_\_\_\_, 2017 at \_\_\_\_\_ a.m. / p.m., in the Court of Chancery, New Castle County Courthouse, 500 North King Street,

Wilmington, Delaware 19801 (the “Settlement Hearing”).<sup>1</sup>

This Notice describes the rights you may have under the Stipulation and what steps you may, but are not required to, take concerning the proposed Settlement. If the Court approves the Stipulation, the Parties will ask the Court to approve an Order and Final Judgment that would end the Action.

## **II. BACKGROUND: WHAT IS THIS ACTION ABOUT?**

Plaintiffs Charles Blackburn and Susan Freedman are Current Illumina Stockholders.<sup>2</sup> The Action and Settlement address claims alleging that the members of Illumina’s Board of Directors (the “Board”) breached their fiduciary duties by awarding and/or receiving excessive and improper compensation in 2013 and 2014 at the expense of the Company. Plaintiffs further allege that the Individual Defendants were unjustly enriched as a result of their purportedly excessive compensation in those years. Plaintiffs also allege that the 2015 Stock and Incentive Plan, which was in effect as of the filing of the Action, contains no limitation on the amount of stock an individual director can receive. Defendants have denied and continue to deny they have committed, threatened, or attempted to commit any violations of law or breached any duty owed to Plaintiffs, Illumina, or Illumina’s stockholders and maintain that their conduct was at all times proper and in compliance with applicable law and that they acted in good faith.

**THE COURT HAS NOT FINALLY DETERMINED THE MERITS OF PLAINTIFFS’ CLAIMS OR THE DEFENSES THERETO. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW OR THAT RECOVERY COULD BE HAD IF THE ACTION WAS NOT SETTLED.**

## **III. HOW WAS THE SETTLEMENT REACHED?**

During discovery, counsel for all Parties engaged in arm’s-length negotiations concerning a possible settlement of the Action. After those significant

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<sup>1</sup> All capitalized terms are defined in the Stipulation unless otherwise noted. The Stipulation may be inspected on Plaintiffs’ Counsel’s websites at [www.robbinсарroyo.com/notices](http://www.robbinсарroyo.com/notices) and [www.barrack.com](http://www.barrack.com).

<sup>2</sup> Plaintiffs are represented by Cooch and Taylor, P.A.; Robbins Arroyo LLP; and Barrack, Rodos & Bacine (collectively, “Plaintiffs’ Counsel”).

arm's-length negotiations, and based on the investigation of Plaintiffs' Counsel, the Parties reached an agreement on the principal terms reflected in the Stipulation. The Stipulation was later signed by counsel for all parties on October 30, 2017.

#### **IV. WHAT ARE THE TERMS OF THE SETTLEMENT?**

As a result of the filing, prosecution, and settlement of the Action, Illumina has agreed to implement and maintain in substance the corporate governance reforms, additions, amendments, or formalizations set forth below (the "Corporate Governance Reforms") for a period of no less than four (4) years from January 1, 2017, unless otherwise specified below. In connection with the Settlement and in consideration of the Released Claims set forth herein:

##### *Compensation Limits.*

(a) Interim 2017 and 2018 Compensation Limits. The Board will adopt an interim policy to govern 2017 and 2018 Non-Employee Director compensation. In 2017, this policy will limit Annual Equity Awards for Non-Employee Directors to a grant date value of \$400,000 and Initial Equity Awards for Non-Employee Directors to a grant date value of \$800,000. In 2018, this policy will limit Annual Equity Awards to Non-Employee Directors to a grant date value of \$500,000 and Initial Equity Awards to Non-Employee Directors to a grant date value of \$1,000,000. In addition, for each of 2017 and 2018, the Board's interim policy will limit aggregate total compensation of new and other Non-Employee Directors to the amounts specified in the proposed amendments to the 2015 Stock and Incentive Plan described under part "c" below ("Additional Compensation Cap").

(b) Amendments to the 2015 Stock and Incentive Plan: Illumina will submit proposed amendments of the 2015 Stock and Incentive Plan to stockholders for approval at the 2018 Annual Meeting of Stockholders. The proposed amendments will establish a limit of a grant date value of \$600,000 for Annual Equity Awards to Non-Employee Directors and a limit of a grant date value of \$1,400,000 for Initial Equity Awards to new Non-Employee Directors. These limits would remain in effect for two years (2019 to 2020) in the 2015 Stock and Incentive Plan or any replacement plan.

(c) Additional Compensation Cap. The Company will also propose to the stockholders at the 2018 Annual Meeting of Stockholders that they approve

a director-specific limit of \$2.0 million on the total compensation awarded to each new Non-Employee Director each year (with any equity components of such compensation to be calculated based on grant date value), and a director-specific limit of \$1.0 million on the total compensation awarded to each other Non-Employee Director (with any equity components of such compensation to be calculated based on grant date value). The proposal would provide that the limit would remain in place from 2019 to 2020.

*Public Disclosures.*

The Company will make additional disclosures in its definitive proxy statements for four years beginning with its 2017 definitive proxy statement. These additional disclosures will provide an overview of the Company's compensation philosophy and compensation-setting process for Non-Employee Directors, including (at a minimum): (a) a description of the involvement of an independent compensation consultant in the compensation-setting process; (b) the peer group used by the compensation consultant in its final recommendations for a given year; and (c) a general description, similar in form to disclosures in the Company's 2016 definitive proxy statement concerning the use of benchmarking data in setting executive compensation, of any peer group benchmarking analysis employed by the compensation consultant and communicated to the Compensation Committee in connection with such final recommendations. Illumina's existing policy of disclosing actual Non-Employee Director compensation amounts will be maintained in place during this four-year period.

*Compensation Committee Charter.*

The Board will amend the charter of the Compensation Committee to include the following provisions by no later than ninety days following approval of the settlement by the Court of Chancery:

- (a) The Committee will annually review, formulate a recommendation, and recommend to the Board the amount and form of all compensation, including cash and equity-based compensation, to be paid to the members of the Board, based on various factors deemed appropriate, including the evaluation of the Board's performance by the Nominating/Corporate Governance Committee of the Board.

(b) The Committee will engage an independent compensation consultant to advise it in connection with its annual review and assessment of compensation paid to members of the Board, including with respect to: (i) the amount and type of compensation to be paid in the next fiscal year; (ii) comparative peer group data deemed appropriate by such consultant; (iii) an analysis of the potential equity grants to be awarded to non-employee directors in the next fiscal year; and (iv) an analysis of the potential total compensation to be awarded to each non-employee director in the next fiscal year.

*Board Review.*

The Board shall continue, for a minimum of four years, to annually review and approve the compensation payable to the Non-Employee Directors, including any recommendation by the Compensation Committee as to changes in the compensation payable to Non-Employee Directors.

*Stockholder Votes.*

The proposed compensation limits described above (“Amendments to the 2015 Stock and Incentive Plan” and “Additional Compensation Cap”) will be submitted to the stockholders for approval at the 2018 Annual Meeting of Stockholders.

In addition to these terms of the Settlement, the Defendants agreed to correct an error discovered by the Plaintiffs in the amount of the Initial Equity Awards issued to two directors, Frances Arnold and Jeffrey Huber. Specifically, in the course of preparing for and taking the deposition of the former Chairman of Illumina’s Compensation Committee, Plaintiffs’ counsel determined that the Initial Equity Awards provided to two Illumina directors, Frances Arnold and Jeffrey Huber, were issued erroneously in amounts in excess of the amounts approved by Board resolution. To correct this error, these directors were asked to and agreed to forego these excess awards. Illumina filed two amended Form 4s with the SEC reflecting the corrected grants on June 16, 2017. The combined grant date fair value of the excess awards that the two directors agreed to forego was \$140,307 (although only a portion of that amount had vested as of the date on which the awards were corrected). These awards are referred to herein and in the Stipulation as the Corrected Initial Equity Awards.

Because the Action was brought for the benefit of Illumina, any monetary benefit or recovery in the litigation (whether from this or any settlement or through a judgment in favor of the Plaintiffs) would go to Illumina. Illumina stockholders will not receive any direct payment as a result of the Stipulation and will not need to fill out any kind of claims form as a result of the settlement.

The Stipulation is contingent on receiving approval from the Court.

**v. WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

*Under the Stipulation, the following releases will occur upon the Effective Date, except as noted below:*

The Releasing Persons (defined below) shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims (defined below) against the Released Persons (defined below); provided, however, that such release shall not affect any claims to enforce the terms of this Stipulation.

Defendants shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action against Plaintiffs and Plaintiffs' Counsel; provided, however, that such release shall not affect any claims to enforce the terms of this Stipulation.

The "Releasing Persons" means Plaintiffs (both individually and derivatively on behalf of Illumina), any other current or former Illumina stockholder acting or purporting to act on behalf of Illumina, and Illumina. "Releasing Person" means, individually, any of the Releasing Persons.

The "Released Persons" means the Individual Defendants and their legatees, executors, administrators, predecessors, successors, subsidiaries, affiliates, agents, attorneys, insurers, members of their immediate families, legal representatives, heirs, and assigns. "Released Persons" also includes Illumina and all of its current and former officers, directors, and employees.

The "Released Claims" means and includes any and all claims for relief or causes of action, debts, demands, rights, liabilities, losses, and claims whatsoever, known or unknown (including Unknown Claims), fixed or contingent, accrued or

unaccrued, liquidated or unliquidated, at law or in equity, or matured or unmatured, that have been or could have been or in the future might be asserted by Plaintiffs as stockholders, or any other Illumina stockholder, or any other Person, acting or purporting to act on behalf of Illumina against the Released Persons, arising out of or relating to (a) the facts, transactions, events, occurrences, acts, disclosures, statements, or omissions alleged in the Action against Defendants, or (b) the payment of compensation to non-employee directors of Illumina, in their capacity as such, before the date of the Settlement, including without limitation the Corrected Initial Equity Awards, any other Initial Equity Award or Annual Equity Award, and any cash compensation; provided, however, that it is understood that “Released Claims” and any release provided by this Settlement shall not include: (i) any claims to enforce the Settlement; and (ii) any claims by Defendants or any other insured to enforce their rights under any contract or policy of insurance.

## **VI. WHAT ARE THE REASONS FOR SETTLING THE ACTION?**

Plaintiffs and Plaintiffs’ Counsel submit that the claims they assert in the Action on behalf of Illumina have merit. Nonetheless, Plaintiffs and Plaintiffs’ Counsel understand that there is uncertainty, risk, cost, and burden inherent in any litigation, especially in complex cases such as this Action. In addition, Plaintiffs and Plaintiffs’ Counsel assert that the Settlement set forth in this Stipulation confers substantial benefits upon Plaintiffs, Illumina, and Illumina’s stockholders in light of the present circumstances. Based on their evaluation, Plaintiffs and Plaintiffs’ Counsel submit that the Settlement set forth in this Stipulation is in the best interests of Plaintiffs, Illumina, and Illumina’s stockholders, and that when compared with the uncertainty, risk, cost, and burden inherent in the continued litigation of this Action, it is in the best interests of Plaintiffs, Illumina, and Illumina’s stockholders to settle this Action on the terms set forth herein.

As will be set forth fully in Plaintiffs’ brief in support of the Settlement, the Settlement’s benefits include the adoption of specific limits on non-employee director compensation, including interim limits on equity compensation for 2017 and 2018 that are at levels below certain historical equity awards; proposed amendments to the 2015 Stock and Incentive Plan to set stockholder approved limits on equity compensation applicable in subsequent years; and additional stockholder-approved limits on non-employee directors’ total compensation. Further benefits from the Settlement include amendments to the Compensation Committee charter; enhanced proxy statement disclosures; and other proposed corporate governance reforms which Plaintiffs and Plaintiffs’ Counsel submit will

provide for a more substantial annual review of non-employee director compensation by a compensation consultant and each director on the Board.

Plaintiffs and Plaintiffs' Counsel assert that the terms of this Settlement, which directly address the claims in the Consolidated Complaint and provide multiple benefits to Illumina and its stockholders, strongly weigh in favor of acceptance of this Settlement especially when compared to the uncertainty, risk, cost, and burden of further litigation.

The Parties have agreed that neither this Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referenced in or attached to this Stipulation, nor any action taken to carry out this Stipulation or in connection with the Settlement, is, may be construed as, or may be used as an admission by or against Plaintiffs that this Action lacked merit when filed or that it currently lacks merit, whatsoever by any Person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative.

#### **VII. HOW WILL THE ATTORNEYS GET PAID?**

Subject to the terms and conditions of the Stipulation and any Order of the Court, Illumina has agreed to pay an award of attorneys' fees and expenses to Plaintiffs' Counsel not to exceed \$600,000 (the "Fee and Expense Award"). This Fee and Expense Award includes the fees and expenses incurred by Plaintiff's Counsel in connection with the prosecution and settlement of the Action. Plaintiffs' Counsel will not seek fees or expenses from the Court in excess of the agreed-to amount and Plaintiffs' Counsel will not seek attorneys' fees or expenses in any other jurisdiction. Except as otherwise provided herein, each of the Parties shall bear his, her, or its own fees and costs.

#### **VIII. WHEN WILL THE SETTLEMENT HEARING TAKE PLACE?**

The Court has scheduled a Settlement Hearing to be held on \_\_\_\_\_, 2017 at \_\_\_\_\_ a.m. / p.m., in the Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801.

At the Settlement Hearing, the Court will consider whether the Settlement, on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate and in the best interests of Illumina and its current stockholders, and thus should be finally approved, whether the fees and expenses sought by Plaintiffs'

Counsel should be approved, and whether the Action should be dismissed with prejudice by entry of the Judgment pursuant to the Stipulation. The Court will also hear and determine objections, if any, to the Settlement or the Fee and Expense Award sought by Plaintiffs' Counsel and rule on such other matters as the Court may deem appropriate.

The Court may adjourn the Settlement Hearing from time to time without further notice to anyone other than the parties to the Action and any Objectors (as defined below). The Court reserves the right to approve the Stipulation at or after the Settlement Hearing with such modifications as may be consented to by the Parties to the Stipulation and without further notice.

#### **IX. DO I HAVE A RIGHT TO APPEAR AND OBJECT?**

Any record or beneficial stockholder of Illumina who objects to the Settlement, the proposed Judgment to be entered, the Fee and Expense Award, or who otherwise wishes to be heard (an "Objector"), may appear in person or by his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; *provided, however*, that no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon, unless he, she, or it has, no later than ten (10) calendar days before the Settlement Hearing (unless the Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), filed with the Register in Chancery, Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801, and served (by hand or overnight mail) on Plaintiffs' Counsel and Defendants' counsel, at the addresses below, the following: (i) proof of current ownership of Illumina stock; (ii) a written notice of the Objector's intention to appear; (iii) a detailed statement of the objections to any matter before the Court; and (iv) a detailed statement of all of the grounds thereon and the reasons for the Objector's desire to appear and to be heard, as well as all documents or writings which the Objector desires the Court to consider. In addition to the aforementioned Court address, the addresses to which such information should be sent (by hand or by overnight mail) are as follows:

A. Thompson Bayliss  
ABRAMS & BAYLISS LLP  
20 Montchanin Road, Suite 200  
Wilmington, DE 19807

(302) 778-1000

C. William Phillips  
Mark P. Gimbel  
COVINGTON & BURLING LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018-1405  
(212) 841-1081

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1313 North Market Street, 6th Floor  
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The Brandywine Building  
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P.O. Box 1680  
Wilmington, DE 19899  
(302) 984-3800

Shane P. Sanders  
ROBBINS ARROYO LLP  
600 B Street, Suite 1900  
San Diego, CA 92101  
(619) 525-3900

Alexander Arnold Gershon  
Michael A. Toomey  
BARRACK, RODOS & BACINE  
11 Times Square

640 8th Avenue, 10th Floor  
New York, NY 10016  
(212) 688-0782

*Attorneys for Plaintiffs*

Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection (including the right to appeal), unless the Court in its discretion allows such objection to be heard at the Settlement Hearing, and shall forever be barred from raising such objection in the Action or any other action or proceeding or otherwise contesting the Settlement or the Fee and Expense Award, and will otherwise be bound by the Judgment to be entered and the releases to be given. You are not required to appear in person at the Settlement Hearing in order to have your timely and properly filed objection considered.

**X. HOW DO I GET ADDITIONAL INFORMATION ABOUT THE SETTLEMENT?**

This Notice summarizes the Stipulation. It is not a complete statement of the events of the Action or the Stipulation. For additional information about the claims asserted in the Action and the terms of the Settlement, please refer to the documents filed with the Court and the Stipulation available on Plaintiffs' Counsel's website at [www.robbinsarroyo.com/notices](http://www.robbinsarroyo.com/notices) and [www.barrack.com](http://www.barrack.com). You may examine the Court files during regular business hours of each business day at the office of the Register in Chancery, Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801. However, you must appear in person to inspect these documents. The Clerk's office will not mail copies to you. For more information concerning the Settlement, you may also call or write to: Robbins Arroyo LLP, c/o Shane P. Sanders, 600 B Street, Suite 1900, San Diego, California 92101, Telephone: (619) 525-3990 or Barrack, Rodos & Bacine, c/o Michael A. Toomey and A. Arnold Gershon, 11 Times Square, 640 8<sup>th</sup> Ave., 10<sup>th</sup> Floor, New York, New York 10036.

**NOTICE TO PERSONS OR ENTITIES HOLDING RECORD  
OWNERSHIP ON BEHALF OF OTHERS**

Brokerage firms, banks, and/or other persons or entities who hold shares of the stock of Illumina for the benefit of others are hereby requested to promptly send this Notice to all of their respective beneficial owners. If additional copies of

this Notice are needed for forwarding to such beneficial owners, any requests for such copies may be made to:

Broadridge Corporate Issuer Solutions  
c/o Broadridge Investor Communications Solutions, Inc.  
51 Mercedes Way, Edgewood, NY 11717  
Attn: Reorg Dept.,  
Email: ReorgOpsCAMailingService@Broadridge.com

***PLEASE DO NOT WRITE OR CALL THE COURT***

BY ORDER OF THE COURT

Dated: \_\_\_\_\_

\_\_\_\_\_  
Register in Chancery



This Order and Final Judgment (“Judgment”) incorporates the Stipulation by reference and, unless otherwise defined, all capitalized terms shall have the same meanings as set forth in the Stipulation.

IT IS ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2017 that:

1. The Court finds the Settlement as set forth in the Stipulation is fair, reasonable, adequate, and in the best interests of Illumina and its stockholders.

2. This Court approves the Stipulation in all respects, and the Parties are directed to consummate the Settlement in accordance with the terms of the Stipulation. The Register in Chancery is directed to enter and docket this Judgment.

3. The Notice of Pendency of Settlement of Action (the “Notice”) has been given to all stockholders of the Company pursuant to and in the manner directed by the Scheduling Order, proof of mailing, and other dissemination of the Notice was filed with the Court, and full opportunity to be heard has been offered to all Parties, Illumina stockholders, and persons in interest. The Court finds that the form and means of the Notice was the best notice practicable under the circumstances and was given in full compliance with the requirements of Court of Chancery Rule 23.1 and due process of law, and that all stockholders of Illumina are bound by this Judgment.

4. This Court has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Stipulation and this Judgment and over all Parties to the Action, including Plaintiffs, Current Illumina Stockholders, and all Defendants (including Nominal Defendant Illumina).

5. The Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice. As between Plaintiffs and Defendants, the Parties are to bear their own costs, except as otherwise provided in the Stipulation and in this Judgment.

6. Upon the Effective Date, the Releasing Persons shall be deemed to have, and by operation of this Judgment have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims against the Released Persons; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation.

7. Upon the Effective Date, Defendants shall be deemed to have, and by operation of this Judgment have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action against Plaintiffs and Plaintiffs' Counsel; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation.

8. Except as otherwise provided in the Stipulation, Plaintiffs and all Illumina stockholders are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claim against Defendants or any of the Released Persons.

9. Nothing in this Judgment shall in any way impair or restrict the rights of any Party to enforce the terms of the Stipulation.

10. The Court hereby approves fees and expenses of \$\_\_\_\_\_ to Plaintiffs' Counsel and finds that such fees and expenses are fair and reasonable.

11. Neither the Stipulation, nor any of its terms or provisions, nor entry of this Judgment, nor any document or exhibit referred or attached to the Stipulation, nor any action taken to carry out the Stipulation: (a) is, may be construed as, or may be used as evidence of the validity of any of the Released Claims or an admission by or against Defendants of any fault, wrongdoing, or concession of liability whatsoever by any Person in the Action, or any other actions or proceedings, whether civil, criminal, or administrative; or (b) shall be interpreted as an admission of liability or wrongdoing on the part of the Individual Defendants, nor an admission on the part of Plaintiffs of any lack of merit of the claims asserted in the Action. Notwithstanding the foregoing, the Defendants and the Released Persons may file the Stipulation, or any judgment or order of the

Court related hereto, in any action that has been or may be brought against them, in order to support a claim or defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12. Without affecting the finality of this Judgment in any way, the Court retains jurisdiction with respect to the implementation, enforcement, and interpretation of the terms of the Stipulation, and all Parties submit to the jurisdiction of the Court for purposes of implementing, enforcing, and interpreting the Stipulation. Nothing herein dismisses or releases any claim by or against any party to the Stipulation arising out of a breach of the Stipulation or violation of this Judgment.

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Vice Chancellor Laster