

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

Plaintiffs,

v.

ILLUMINA, INC., FRANCIS A.
DESOUZA, and MARC A.
STAPLEY,

Defendants.

Case No.:

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

JURY TRIAL DEMANDED

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

11 **NATURE OF THE ACTION AND OVERVIEW**

12 1. This is a class action on behalf of persons and entities that acquired
13 Illumina securities between July 26, 2016, and October 10, 2016, inclusive (the
14 “Class Period”), against Defendants,¹ seeking to pursue remedies under the
15 Securities Exchange Act of 1934 (the “Exchange Act”).

16 2. Illumina purportedly provides sequencing- and array-based solutions
17 for genetic analysis. The Company claims that its customers include genomic
18 research centers, academic institutions, government laboratories, hospitals,
19 pharmaceutical, biotechnology, agrigenomics, commercial molecular diagnostic
20 laboratories, and consumer genomics companies.

21 3. On October 10, 2016, Illumina issued a press release entitled “Illumina
22 Announces Preliminary Revenue for Third Quarter of Fiscal Year 2016.” Therein,
23 the Company announced estimated third quarter revenue of approximately \$607
24 million, which was lower than the Company’s third quarter revenue guidance of
25 \$625 million to \$630 million. The Company attributed the shortfall to “larger than
26 anticipated year-over-year decline in high throughput sequencing instruments.” The
27

28

¹ “Defendants” refers collectively to Opus, Francis A. deSouza, and Marc A. Stapley

1 Company also announced that it expected fourth quarter revenue to be flat to
2 slightly up sequentially.

3 4. On this news, Illumina's stock price fell \$45.86 per share, or 24.8%, to
4 close at \$138.99 per share on October 11, 2016, on unusually heavy trading volume.

5 5. On November 1, 2016, Illumina announced third quarter 2016 revenue
6 of \$607 million and reiterated that the Company expected fourth quarter revenue to
7 be flat to slightly up. On an investor conference call held the same day, Defendant
8 deSouza stated that the third quarter shortfall was partly attributable to "lower-than-
9 anticipated HiSeq 2500 and 4000 orders, which we believe was driven by legacy
10 HiSeq customers favoring the HiSeq X and NextSeq platforms." deSouza also
11 stated that "some high-throughput customers have been adopting NextSeq, given its
12 flexible workflow, which enables batching fewer samples and attractive operating
13 costs. As a result, we will not see the second half uptick in high-throughput
14 instrument placements we had previously expected." deSouza also stressed the
15 Company was taking steps to improve its forecasts, stating "to better identify trends
16 like this earlier, we have initiated a global forecast improvement project, which I
17 have asked Marc to lead, that will enhance both our visibility and forecast
18 accuracy." On the same call, Defendant Stapley backed up deSouza's remarks,
19 stating "I would like to spend a minute on the forecast process improvement project
20 that Francis mentioned. We have already started the initial phase, which is expected
21 to run until mid-December, and we'll identify key opportunities for improvement
22 including any immediate changes that we can make to enhance our visibility."

23 6. Throughout the Class Period, Defendants made false and/or misleading
24 statements, as well as failed to disclose material adverse facts about the Company's
25 business, operations, and prospects. Specifically, Defendants made false and/or
26 misleading statements and/or failed to disclose: (1) that the Company was
27 experiencing a large decline in high throughput sequencing instrument sales; (2) that
28 the decline was negatively impacting the Company's revenue; (3) that the Company

1 lacked visibility into trends that could have a substantial impact on the Company's
2 financial results; (4) that, as such, the Company's revenue guidance was unreliable
3 and overstated; and (5) that, as a result of the foregoing, Defendants' positive
4 statements about Illumina's business, operations, and prospects, were false and
5 misleading and/or lacked a reasonable basis.

6 7. As a result of Defendants' wrongful acts and omissions, and the
7 precipitous decline in the market value of the Company's securities, Plaintiffs and
8 other Class members suffered significant losses and damages.

9 **JURISDICTION AND VENUE**

10 8. The claims asserted herein arise under Sections 10(b) and 20(a) of the
11 Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated
12 thereunder by the SEC (17 C.F.R. § 240.10b-5).

13 9. This Court has jurisdiction over the subject matter of this action
14 pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §
15 78aa).

16 10. Venue is proper in this Judicial District pursuant to 28 U.S.C. §
17 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts
18 in furtherance of the alleged fraud or the effects of the fraud have occurred in this
19 Judicial District. Many of the acts charged herein, including the dissemination of
20 materially false and/or misleading information, occurred in substantial part in this
21 Judicial District. In addition, the Company's headquarters are located in this
22 Judicial District.

23 11. In connection with the acts, transactions, and conduct alleged herein,
24 Defendants directly and indirectly used the means and instrumentalities of interstate
25 commerce, including the United States mail, interstate telephone communications,
26 and the facilities of a national securities exchange.

1 **PARTIES**

2 12. Plaintiff _____, as set forth in the accompanying certification,
3 incorporated by reference herein, purchased Illumina securities during the Class
4 Period, and suffered damages as a result of the federal securities law violations
5 and false and/or misleading statements and/or material omissions alleged herein.

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

10 _____ is the President of _____.

11 14. Defendant Illumina, Inc. is a Delaware corporation with its principal
12 executive offices located at 5200 Illumina Way, San Diego, California 92122.
13 During the Class Period, the Company’s common stock traded on the NASDAQ
14 Stock Market (the “NASDAQ”) under the symbol “ILMN.”

15 15. Defendant Francis A. deSouza (“deSouza”) was, at all relevant times,
16 the President and Chief Executive Officer (“CEO”) of Illumina.

17 16. Defendant Marc A. Stapley (“Stapley”) was, at all relevant times, the
18 Executive Vice President, Chief Administrative Officer and Chief Financial Officer
19 (“CFO”) of Illumina.

20 17. Defendants deSouza and Stapley are collectively referred to hereinafter
21 as the “Individual Defendants.” The Individual Defendants, because of their
22 positions with the Company, possessed the power and authority to control the
23 contents of Illumina’s reports to the SEC, press releases and presentations to
24 securities analysts, money and portfolio managers and institutional investors, *i.e.*,
25 the market. Each defendant was provided with copies of the Company’s reports and
26 press releases alleged herein to be misleading prior to, or shortly after, their issuance

1 and had the ability and opportunity to prevent their issuance or cause them to be
2 corrected. Because of their positions and access to material non-public information
3 available to them, each of these defendants knew that the adverse facts specified
4 herein had not been disclosed to, and were being concealed from, the public, and
5 that the positive representations which were being made were then materially false
6 and/or misleading. The Individual Defendants are liable for the false statements
7 pleaded herein, as those statements were each “group-published” information, the
8 result of the collective actions of the Individual Defendants.

9 **SUBSTANTIVE ALLEGATIONS**

10 18. Illumina purportedly provides sequencing- and array-based solutions
11 for genetic analysis. The Company claims that its customers include genomic
12 research centers, academic institutions, government laboratories, hospitals,
13 pharmaceutical, biotechnology, agrigenomics, commercial molecular diagnostic
14 laboratories, and consumer genomics companies.

15 **Materially False and Misleading**
16 **Statements Issued During the Class Period**

17 19. The Class Period begins on July 26, 2016. On that day, Illumina issued
18 a press release entitled “Illumina Reports Financial Results for Second Quarter of
19 Fiscal Year 2016.” Therein, the Company, in relevant part, stated:

20 SAN DIEGO--(BUSINESS WIRE)--Jul. 26, 2016-- Illumina,
21 Inc. (NASDAQ:ILMN) today announced its financial results for the
22 second quarter of fiscal year 2016.

23 **Second quarter 2016 results:**

- 24 • Revenue of \$600 million, an 11% increase compared to \$539
25 million in the second quarter of 2015
- 26 • GAAP net income attributable to Illumina stockholders for the
27 quarter of \$120 million, or \$0.82 per diluted share, compared
28 to \$102 million, or \$0.69 per diluted share, for the second quarter
of 2015
- Non-GAAP net income attributable to Illumina stockholders for
the quarter of \$127 million, or \$0.86 per diluted share, compared
to \$120 million, or \$0.80 per diluted share, for the second quarter
of 2015 (see the table entitled “Itemized Reconciliation Between

1 GAAP and Non-GAAP Net Income Attributable to Illumina
2 Stockholders” for a reconciliation of these GAAP and non-
GAAP financial measures)

- 3 • Cash flow from operations of \$217 million and free cash flow
4 of \$149 million for the quarter, compared to \$171
million and \$130 million in the prior year period

5 Gross margin in the second quarter of 2016 was 70.6% compared to
6 69.8% in the prior year period. Excluding the effect of non-cash stock
7 compensation expense and amortization of acquired intangible assets,
non-GAAP gross margin was 72.8% for the second quarter of 2016
compared to 72.4% in the prior year period.

8 Research and development (R&D) expenses for the second quarter of
9 2016 were \$124.6 million compared to \$96.2 million in the prior year
10 period. R&D expenses included \$10.7 million of non-cash stock
11 compensation expense in the second quarters of 2016 and 2015.
Excluding these charges and contingent compensation, R&D expenses
as a percentage of revenue were 19.0%, including 1.4% attributable to
GRAIL and Helix. This compares to 15.8% in the prior year period.

12 Selling, general and administrative (SG&A) expenses for the second
13 quarter of 2016 were \$148.5 million compared to \$124.4 million in the
14 prior year period. SG&A expenses included \$18.9 million and \$19.6
15 million of non-cash stock compensation expense in the second quarters
16 of 2016 and 2015, respectively. Excluding these charges, amortization
of acquired intangible assets, and contingent compensation, SG&A
expenses as a percentage of revenue were 21.2%, including 1.1%
attributable to GRAIL and Helix. This compares to 19.2% in the prior
year period.

17 Depreciation and amortization expenses were \$34.4 million and capital
18 expenditures for free cash flow purposes were \$67.8 million during the
19 second quarter of 2016, which excludes a \$75.4 million increase in
20 property & equipment recorded under build-to-suit lease accounting
21 since such expenses were paid for by the landlord. The company
repurchased \$100.0 million of common stock under the previously
announced discretionary program. At the close of the quarter, the
company held \$1.43 billion in cash, cash equivalents and short-term
investments, compared to \$1.39 billion as of January 3, 2016.

22 “We delivered solid second quarter financial results with notable
23 strength across our sequencing consumable and array portfolios,” stated
24 Francis deSouza, President and CEO. “We will continue to focus on
25 our execution to deliver the sequential growth we are forecasting in the
26 second half of the year. I would like to thank Jay Flatley for his
leadership and strategic vision as CEO for the past 17 years and I look
forward to his continued contribution in his new role as Executive
Chairman of the Board of Directors.”

27 **Updates since our last earnings release:**

- 28 • Received orders for more than 3 million samples of the
new Infinium® Global Screening Array, a highly economical

1 tool for genetic risk screening of large global populations

- 2 • Received a product approval certificate for the MiSeqDx®
3 Instrument and the MiSeqDx Universal Kit with the Ministry of
4 Food and Drug Safety (MFDS) in South Korea
- 5 • Appointed Jay Flatley Executive Chairman of the Board of
6 Directors of Illumina and Francis deSouza President and CEO
- 7 • Appointed Paula Dowdy Senior Vice President and General
8 Manager of commercial operations for Europe, the Middle
9 East and Africa

10 **Financial outlook and guidance**

11 The non-GAAP financial guidance discussed below reflects certain pro
12 forma adjustments to assist in analyzing and assessing our core
13 operational performance. Please see our Reconciliation of Non-GAAP
14 Financial Guidance included in this release for a reconciliation of the
15 GAAP and non-GAAP financial measures.

16 For fiscal 2016, the company continues to project
17 approximately 12% revenue growth and non-GAAP earnings per
18 diluted share attributable to Illumina stockholders of \$3.48 to \$3.58.
19 For the third quarter 2016, the company is projecting revenue of \$625
20 million to \$630 million.

21 20. On August 2, 2016, Illumina filed its Quarterly Report with the SEC on
22 Form 10-Q for the fiscal quarter ended July 3, 2016. The Company's Form 10-Q
23 was signed by Defendant Stapley, and reaffirmed the Company's financial results
24 announced in the press release issued on July 26, 2016.

25 21. The above statements contained in ¶¶19-20 were materially false and/or
26 misleading, and failed to disclose material adverse facts about the Company's
27 business, operations, and prospects. Specifically, these statements were false and/or
28 misleading and/or failed to disclose: (1) that the Company was experiencing a large
decline in high throughput sequencing instrument sales; (2) that the decline was
negatively impacting the Company's revenue; (3) that the Company lacked visibility
into trends that could have a substantial impact on the Company's financial results;
(4) that, as such, the Company's revenue guidance was unreliable and overstated;
and (5) that, as a result of the foregoing, Defendants' positive statements about
Illumina's business, operations, and prospects, were false and misleading and/or

1 lacked a reasonable basis.

2 **Disclosures at the End of the Class Period**

3 22. On October 10, 2016, Illumina issued a press release entitled “Illumina
4 Announces Preliminary Revenue for Third Quarter of Fiscal Year 2016.” Therein,
5 the Company disclosed:

6 San Diego -- (BUSINESS WIRE) - October 10, 2016 - Illumina, Inc.
7 (NASDAQ: ILMN) today announced estimated third quarter revenue of
8 approximately \$607 million, a 10% increase compared to \$550
9 million in the third quarter of 2015. This unaudited estimate, based on
management’s preliminary financial analysis, is lower than the third
quarter revenue guidance of \$625 million to \$630 million.

10 The shortfall in quarterly revenue was driven by a larger than
11 anticipated year-over-year decline in high throughput sequencing
instruments. As a result, the company expects fourth quarter revenue
will be flat to slightly up sequentially.

12 23. On this news, Illumina’s stock price fell \$45.86 per share, or 24.8%, to
13 close at \$138.99 per share on October 11, 2016, on unusually heavy trading volume.

14 24. On November 1, 2016, Illumina announced third quarter 2016 revenue
15 of \$607 million and reiterated that the Company expected fourth quarter revenue to
16 be flat to slightly up. On an investor conference call held the same day, Defendant
17 deSouza stated:

18 We have identified the factors we believe drove our Q3 miss and lower
19 fourth quarter revenue guidance. . . . The other factor that contributed
20 to the second half shortfall was lower-than-anticipated HiSeq 2500 and
21 4000 orders, which we believe was driven by legacy HiSeq customers
22 favoring the HiSeq X and NextSeq platforms. The introduction of
23 HiSeq X Ten – HiSeq X in January 2014 enabled whole-genome
24 sequencing to be performed much more economically. And as a result,
25 samples have shifted to whole-genome sequencing at the expense of
26 other applications. Whole-genome sequencing on HiSeq X now
27 represents approximately 15% of all high-throughput runs compared to
2% just two years ago. Additionally, the release of NextSeq’s v2
reagents in 2015 brought the quality on par with HiSeq. As a result,
some high-throughput customers have been adopting NextSeq, given its
flexible workflow, which enables batching fewer samples and attractive
operating costs. As a result, we will not see the second half uptick in
high-throughput instrument placements we had previously expected. To
better identify trends like this earlier, we have initiated a global forecast
improvement project, which I have asked Marc to lead, that will
enhance both our visibility and forecast accuracy.

28 On the same call, Defendant Stapley backed up deSouza’s remarks, stating:

1 In closing, I would like to spend a minute on the forecast process
2 improvement project that Francis mentioned. We have already started
3 the initial phase, which is expected to run until mid-December, and
4 we'll identify key opportunities for improvement including any
5 immediate changes that we can make to enhance our visibility. We will
6 fold the good work already underway in Europe into this process and
7 identify areas for improving global consistency, taking the best of the
8 best practices from each region and adding best-in-class practices
9 where needed. This will inevitably lead to a second stage of the project
10 next year which we anticipate will incorporate longer-term tool and
11 process implementations. I look forward to updating you on our
12 progress periodically.

13 **CLASS ACTION ALLEGATIONS**

14 25. Plaintiffs bring this action as a class action pursuant to Federal Rule of
15 Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and
16 entities that acquired Illumina securities between July 26, 2016, and October 10,
17 2016, inclusive (the "Class Period") and who were damaged thereby (the "Class").
18 Excluded from the Class are Defendants, the officers and directors of the Company,
19 at all relevant times, members of their immediate families and their legal
20 representatives, heirs, successors or assigns and any entity in which Defendants
21 have or had a controlling interest.

22 26. The members of the Class are so numerous that joinder of all members
23 is impracticable. Throughout the Class Period, Illumina's securities were actively
24 traded on the NASDAQ. While the exact number of Class members is unknown to
25 Plaintiffs at this time and can only be ascertained through appropriate discovery,
26 Plaintiffs believe that there are hundreds or thousands of members in the proposed
27 Class. Millions of Illumina shares were traded publicly during the Class Period on
28 the NASDAQ. As of October 21, 2016, Illumina had 146.9 million shares of
common stock outstanding. Record owners and other members of the Class may be
identified from records maintained by Illumina or its transfer agent and may be
notified of the pendency of this action by mail, using the form of notice similar to
that customarily used in securities class actions.

29 27. Plaintiffs' claims are typical of the claims of the members of the Class

1 as all members of the Class are similarly affected by Defendants' wrongful conduct
2 in violation of federal law that is complained of herein.

3 28. Plaintiffs will fairly and adequately protect the interests of the members
4 of the Class and have retained counsel competent and experienced in class and
5 securities litigation.

6 29. Common questions of law and fact exist as to all members of the Class
7 and predominate over any questions solely affecting individual members of the
8 Class. Among the questions of law and fact common to the Class are:

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

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

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

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

22 **UNDISCLOSED ADVERSE FACTS**

23 31. The market for Illumina's securities was open, well-developed and
24 efficient at all relevant times. As a result of these materially false and/or misleading
25 statements, and/or failures to disclose, Illumina's securities traded at artificially
26 inflated prices during the Class Period. Plaintiffs and other members of the Class
27 purchased or otherwise acquired Illumina's securities relying upon the integrity of
28 the market price of the Company's securities and market information relating to

1 market, and/or the effects thereof, were revealed, causing investors' losses.

2 **SCIENTER ALLEGATIONS**

3 36. As alleged herein, Defendants acted with scienter in that Defendants
4 knew that the public documents and statements issued or disseminated in the name
5 of the Company were materially false and/or misleading; knew that such statements
6 or documents would be issued or disseminated to the investing public; and
7 knowingly and substantially participated or acquiesced in the issuance or
8 dissemination of such statements or documents as primary violations of the federal
9 securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of
10 their receipt of information reflecting the true facts regarding Illumina, his/her
11 control over, and/or receipt and/or modification of Illumina's allegedly materially
12 misleading misstatements and/or their associations with the Company which made
13 them privy to confidential proprietary information concerning Illumina, participated
14 in the fraudulent scheme alleged herein.

15 **APPLICABILITY OF PRESUMPTION OF RELIANCE**
16 **(FRAUD-ON-THE-MARKET DOCTRINE)**

17 37. The market for Illumina's securities was open, well-developed and
18 efficient at all relevant times. As a result of the materially false and/or misleading
19 statements and/or failures to disclose, Illumina's securities traded at artificially
20 inflated prices during the Class Period. On October 5, 2016, the Company's stock
21 closed at a Class Period high of \$186.17 per share. Plaintiffs and other members of
22 the Class purchased or otherwise acquired the Company's securities relying upon
23 the integrity of the market price of Illumina's securities and market information
24 relating to Illumina, and have been damaged thereby.

25 38. During the Class Period, the artificial inflation of Illumina's stock was
26 caused by the material misrepresentations and/or omissions particularized in this
27 Complaint causing the damages sustained by Plaintiffs and other members of the
28 Class. As described herein, during the Class Period, Defendants made or caused to

1 be made a series of materially false and/or misleading statements about Illumina's
2 business, prospects, and operations. These material misstatements and/or omissions
3 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
5 artificially inflated at all relevant times, and when disclosed, negatively affected the
6 value of the Company stock. Defendants' materially false and/or misleading
7 statements during the Class Period resulted in Plaintiffs and other members of the
8 Class purchasing the Company's securities at such artificially inflated prices, and
9 each of them has been damaged as a result.

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

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

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

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

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

26 40. As a result of the foregoing, the market for Illumina's securities
27 promptly digested current information regarding Illumina from all publicly available
28 sources and reflected such information in Illumina's stock price. Under these

1 circumstances, all purchasers of Illumina’s securities during the Class Period
2 suffered similar injury through their purchase of Illumina’s securities at artificially
3 inflated prices and a presumption of reliance applies.

4 41. A Class-wide presumption of reliance is also appropriate in this action
5 under the Supreme Court’s holding in *Affiliated Ute Citizens of Utah v. United*
6 *States*, 406 U.S. 128 (1972), because the Class’s claims are, in large part, grounded
7 on Defendants’ material misstatements and/or omissions. Because this action
8 involves Defendants’ failure to disclose material adverse information regarding the
9 Company’s business operations and financial prospects—information that
10 Defendants were obligated to disclose—positive proof of reliance is not a
11 prerequisite to recovery. All that is necessary is that the facts withheld be material
12 in the sense that a reasonable investor might have considered them important in
13 making investment decisions. Given the importance of the Class Period material
14 misstatements and omissions set forth above, that requirement is satisfied here.

15 **NO SAFE HARBOR**

16 42. The statutory safe harbor provided for forward-looking statements
17 under certain circumstances does not apply to any of the allegedly false statements
18 pleaded in this Complaint. The statements alleged to be false and misleading herein
19 all relate to then-existing facts and conditions. In addition, to the extent certain of
20 the statements alleged to be false may be characterized as forward looking, they
21 were not identified as “forward-looking statements” when made and there were no
22 meaningful cautionary statements identifying important factors that could cause
23 actual results to differ materially from those in the purportedly forward-looking
24 statements. In the alternative, to the extent that the statutory safe harbor is
25 determined to apply to any forward-looking statements pleaded herein, Defendants
26 are liable for those false forward-looking statements because at the time each of
27 those forward-looking statements was made, the speaker had actual knowledge that
28 the forward-looking statement was materially false or misleading, and/or the

1 forward-looking statement was authorized or approved by an executive officer of
2 Illumina who knew that the statement was false when made.

3 **FIRST CLAIM**
4 **Violation of Section 10(b) of The Exchange Act and**
5 **Rule 10b-5 Promulgated Thereunder**
6 **Against All Defendants**

7 43. Plaintiffs repeat and reallege each and every allegation contained above
8 as if fully set forth herein.

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

16 45. Defendants (i) employed devices, schemes, and artifices to defraud; (ii)
17 made untrue statements of material fact and/or omitted to state material facts
18 necessary to make the statements not misleading; and (iii) engaged in acts, practices,
19 and a course of business which operated as a fraud and deceit upon the purchasers of
20 the Company's securities in an effort to maintain artificially high market prices for
21 Illumina's securities in violation of Section 10(b) of the Exchange Act and Rule
22 10b-5. All Defendants are sued either as primary participants in the wrongful and
23 illegal conduct charged herein or as controlling persons as alleged below.

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

28 47. These defendants employed devices, schemes and artifices to defraud,
while in possession of material adverse non-public information and engaged in acts,

1 practices, and a course of conduct as alleged herein in an effort to assure investors of
2 Illumina's value and performance and continued substantial growth, which included
3 the making of, or the participation in the making of, untrue statements of material
4 facts and/or omitting to state material facts necessary in order to make the
5 statements made about Illumina and its business operations and future prospects in
6 light of the circumstances under which they were made, not misleading, as set forth
7 more particularly herein, and engaged in transactions, practices and a course of
8 business which operated as a fraud and deceit upon the purchasers of the Company's
9 securities during the Class Period.

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

24 49. The defendants had actual knowledge of the misrepresentations and/or
25 omissions of material facts set forth herein, or acted with reckless disregard for the
26 truth in that they failed to ascertain and to disclose such facts, even though such
27 facts were available to them. Such defendants' material misrepresentations and/or
28 omissions were done knowingly or recklessly and for the purpose and effect of

1 concealing Illumina's financial well-being and prospects from the investing public
2 and supporting the artificially inflated price of its securities. As demonstrated by
3 Defendants' overstatements and/or misstatements of the Company's business,
4 operations, financial well-being, and prospects throughout the Class Period,
5 Defendants, if they did not have actual knowledge of the misrepresentations and/or
6 omissions alleged, were reckless in failing to obtain such knowledge by deliberately
7 refraining from taking those steps necessary to discover whether those statements
8 were false or misleading.

9 50. As a result of the dissemination of the materially false and/or
10 misleading information and/or failure to disclose material facts, as set forth above,
11 the market price of Illumina's securities was artificially inflated during the Class
12 Period. In ignorance of the fact that market prices of the Company's securities were
13 artificially inflated, and relying directly or indirectly on the false and misleading
14 statements made by Defendants, or upon the integrity of the market in which the
15 securities trades, and/or in the absence of material adverse information that was
16 known to or recklessly disregarded by Defendants, but not disclosed in public
17 statements by Defendants during the Class Period, Plaintiffs and the other members
18 of the Class acquired Illumina's securities during the Class Period at artificially high
19 prices and were damaged thereby.

20 51. At the time of said misrepresentations and/or omissions, Plaintiffs and
21 other members of the Class were ignorant of their falsity, and believed them to be
22 true. Had Plaintiffs and the other members of the Class and the marketplace known
23 the truth regarding the problems that Illumina was experiencing, which were not
24 disclosed by Defendants, Plaintiffs and other members of the Class would not have
25 purchased or otherwise acquired their Illumina securities, or, if they had acquired
26 such securities during the Class Period, they would not have done so at the
27 artificially inflated prices which they paid.

28 52. By virtue of the foregoing, Defendants have violated Section 10(b) of

1 the Exchange Act and Rule 10b-5 promulgated thereunder.

2 53. As a direct and proximate result of Defendants' wrongful conduct,
3 Plaintiffs and the other members of the Class suffered damages in connection with
4 their respective purchases and sales of the Company's securities during the Class
5 Period.

6 **SECOND CLAIM**
7 **Violation of Section 20(a) of The Exchange Act**
8 **Against the Individual Defendants**

9 54. Plaintiffs repeat and reallege each and every allegation contained above
10 as if fully set forth herein.

11 55. The Individual Defendants acted as controlling persons of Illumina
12 within the meaning of Section 20(a) of the Exchange Act as alleged herein. By
13 virtue of their high-level positions, and their ownership and contractual rights,
14 participation in and/or awareness of the Company's operations and/or intimate
15 knowledge of the false financial statements filed by the Company with the SEC and
16 disseminated to the investing public, the Individual Defendants had the power to
17 influence and control and did influence and control, directly or indirectly, the
18 decision-making of the Company, including the content and dissemination of the
19 various statements which Plaintiffs contend are false and misleading. The
20 Individual Defendants were provided with or had unlimited access to copies of the
21 Company's reports, press releases, public filings and other statements alleged by
22 Plaintiffs to be misleading prior to and/or shortly after these statements were issued
23 and had the ability to prevent the issuance of the statements or cause the statements
24 to be corrected.

25 56. In particular, each of these Defendants had direct and supervisory
26 involvement in the day-to-day operations of the Company and, therefore, is
27 presumed to have had the power to control or influence the particular transactions
28 giving rise to the securities violations as alleged herein, and exercised the same.

57. As set forth above, Illumina and the Individual Defendants each

1 violated Section 10(b) and Rule 10b-5 by their acts and/or omissions as alleged in
2 this Complaint. By virtue of their positions as controlling persons, the Individual
3 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct
4 and proximate result of Defendants' wrongful conduct, Plaintiffs and other members
5 of the Class suffered damages in connection with their purchases of the Company's
6 securities during the Class Period.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

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

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

15 (c) Awarding Plaintiffs and the Class their reasonable costs and expenses
16 incurred in this action, including counsel fees and expert fees; and

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

18 **JURY TRIAL DEMANDED**

19 Plaintiffs hereby demand a trial by jury.
20
21
22
23
24
25
26
27
28