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 ILLUMINA, INC., SOLEXA, INC., AND
 STEPHEN C. MACEVICZ

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 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

19 APPLERA CORPORATION – APPLIED
 BIOSYSTEMS GROUP, a Delaware corporation,
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 Plaintiff,
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 v.
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 ILLUMINA, INC., a Delaware corporation,
 23 SOLEXA, INC., a Delaware corporation, and
 24 STEPHEN C. MACEVICZ, an individual,
 Defendants.
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Case No. C07 02845 WHA
**[JOINT PROPOSED] ORDER RE
 RULINGS ON MOTIONS IN
 LIMINE AT FINAL PRETRIAL
 CONFERENCE**

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1 This order summarizes the Court's rulings on the parties' motions *in limine* at the Final
2 Pretrial Conference held on September 8, 2008 as follows:

3 **AB MOTION *IN LIMINE* NO. 1 (ONE-BASE DAMAGES)**

4 **GRANTED.** Defendants will not be permitted to seek damages for any alleged
5 infringement of the '341 or '597 patents by the one-base encoding system or process.

6 **AB MOTION *IN LIMINE* NO. 2 (WILLFULNESS)**

7 **WITHDRAWN.** AB withdrew this motion at the pretrial conference after Defendants
8 stipulated that their allegation of willful infringement is directed only at the conduct of Agencourt
9 Personal Genomics ("APG") before it was acquired by AB, not at AB's conduct.

10 **AB MOTION *IN LIMINE* NO. 3 (TWO HYPOTHETICAL NEGOTIATIONS)**

11 The Court reserves judgment on this motion. Dr. Siuta may submit a supplemental report
12 of 5 pages or less by **FRIDAY, SEPTEMBER 12, 2008**, solely on infringement damages for the '119
13 patent against APG. AB may take a 2-hour deposition of Dr. Siuta, and AB may submit a rebuttal
14 report of 5 pages or less.

15 **DEFENDANTS' MOTION *IN LIMINE* NO. 1 (DISGORGEMENT DAMAGES)**

16 **DENIED IN PART, GRANTED IN PART.** AB may not recover damages or restitution from
17 Macevicz. AB will not be permitted to seek attorneys' fees as part of a damages award by the
18 jury. All other damages theories with respect to stock options or punitive damages remain for
19 trial.

20 **DEFENDANTS' MOTION *IN LIMINE* NO. 2 (MACEVICZ AS FIDUCIARY OF AB)**

21 **DENIED.** AB will be permitted to refer to Macevicz as a fiduciary of AB.

22 **DEFENDANTS' MOTION *IN LIMINE* NO. 3 (NON-INFRINGEMENT ALTERNATIVES)**

23 **GRANTED IN PART.** Kevin McKernan's testimony regarding non-infringing alternatives
24 will be limited to the two-base encoding system. Dr. Cox may rely only on the two-base
25 encoding system as an alternative that does not infringe the '341 and '597 patents.

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DEFENDANTS' MOTION IN LIMINE NO. 4 (CARR PATENT)

GRANTED IN PART. The Carr patent may not be shown to the jury. The Court reserves judgment on whether it will consider the Carr patent as a legal limitation on the doctrine of equivalents for the '119 patent.

DEFENDANTS' MOTION IN LIMINE NO. 5 (MAG + BRENNAN)

The Court reserves judgment on this motion. Each side may file a supplemental brief of 5 pages or less by **NOON ON FRIDAY, SEPTEMBER 12, 2008** on whether nondisclosure in AB's invalidity contentions of the combination of the Mag and Brennan references as rendering obvious claim 1 of the '119 patent was harmless, pursuant to FRCP 37(c).

Dated: September 19, 2008

MORRISON & FOERSTER LLP

By: /s/ Bryan Wilson
Bryan Wilson
Attorneys for Plaintiff
APPLERA CORPORATION –
APPLIED BIOSYSTEMS GROUP

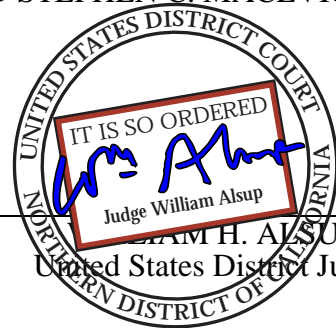
Dated: September 19, 2008

MARSHALL, GERSTEIN & BORUN LLP

By: /s/ John R. Labbé
John R. Labbé
Attorneys for Defendants
ILLUMINA, INC., SOLEXA, INC.,
AND STEPHEN C. MACEVICZ

IT IS SO ORDERED.

Dated: September 23, 2008.



WILLIAM H. ALSUP
United States District Judge

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I, Bryan Wilson, am the ECF User whose ID and password are being used to file this [JOINT PROPOSED] ORDER RE RULINGS ON MOTIONS IN LIMINE AT FINAL PRETRIAL CONFERENCE. In compliance with General Order 45, X.B., I hereby attest that John R. Labbé has concurred in this filing.

Dated: September 19, 2008

/s/ Bryan Wilson
Bryan Wilson