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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ILLUMINA, INC., et al.,

Plaintiffs,

v.

BGI GENOMICS CO., LTD, et al.,

Defendants.

Case No. [19-cv-03770-WHO](#)

ORDER DENYING MOTION FOR RELIEF

Re: Dkt. No. 243

Plaintiffs (“Illumina”) object to Magistrate Judge Thomas Hixson’s August, 24, 2020 Discovery Order (“Order”), which compels Illumina to enforce contractual rights to make seven former-employee inventors who reside outside of the United States to appear for depositions. Dkt. No. 243. At this point, all witnesses except one have agreed to sit for a video deposition; the remaining inventor is represented by counsel and has not yet indicated how he will respond. *Id.* at 3. Illumina suggests that it could be unfairly sanctioned if this witness does not agree to appear for deposition, or if other witnesses’ health deteriorates and they are unable to appear. *Id.* at 3-4.

Illumina’s Motion is DENIED. Judge Hixson’s Order is thoughtful and well considered, and I adopt it in all respects. Illumina has not been sanctioned yet. All witnesses but one have agreed to depositions via videoconference, and the parties have yet to hear from the remaining inventor. The Order states that “[i]f Plaintiffs can show that despite all diligent efforts to enforce their contractual right to have the inventors testify in this legal proceeding, events beyond their control made that impossible, the Court might not award sanctions.” Dkt. No. 230 at 10. This indicates that if Illumina has acted in good faith and with diligence, it would not be penalized for any inability to enforce its contractual rights. It knows how to appeal if it thinks it is sanctioned unfairly. I am not


United States District Court
Northern District of California

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persuaded by Illumina’s arguments that the Order should be vacated.¹

IT IS SO ORDERED.

Dated: September 9, 2020



William H. Orrick
United States District Judge

United States District Court
Northern District of California

¹ Illumina’s Motion to Seal, Dkt. No. 242, is GRANTED.