EXHIBIT 10

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MONIB ZIRVI, MATTHEW LUBIN, MARIA KEMPE, and NORMAN GERRY,

Plaintiffs.

v.

JAY T. FLATLEY, ILLUMINA INC., DAVID R. WALT, STEPHEN P.A. FODOR, KEVIN GUNDERSON, JIAN BING FAN, MARK CHEE, AFFYMETRIX, APPLIED BIOSYSTEMS, ROBIN M. SILVA, and JOHN R. STUEPLNAGEL,

Defendants.

Case No.: 1:18-cv-07003-JGK

DECLARATION OF TIMOTHY M. KOLMAN IN SUPPORT OF PLAINTIFFS' RESPONSE TO THE MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS SECOND AMENDED COMPLAINT BY DEFENDANT FODOR

I, Timothy M. Kolman, declare:

- 1. I am the founding partner of the law firm of Kolman Ely P.C., counsel for Plaintiffs Monib Zirvi, Matthew Lubin, Maria Kenpe, and Norman Gerry.
- 2. The matters set forth herein are based upon my personal knowledge and, if called as a witness, I could and would competently testify thereto. This Declaration is submitted in support of Plaintiffs' Response to the Memorandum of Law in support of Motion to Dismiss Second Amended Complaint by Defendant Fodor.
- 3. Attached as <u>Exhibit 1</u> is a true and correct copy of US Patent US6,156,501, filed on behalf of Affymetrix, and claiming McGall and Chee as coinventors, to which highlights have been added under the supervision of the undersigned. This document is publicly available and may be retrieved from the USPTO at <a href="http://patft.uspto.gov/netacgi/nph-parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetahtml%2FPTO%2Fsearch-bool.html&r=1&f=G&l=50&co1=AND&d=PTXT&s1=6156501.PN.&OS=PN/6156501

- <u>&RS=PN/6156501</u> and Google Patents at https://patentimages.storage.googleapis.com/8e/03/00/a9019db31fefbf/US6156501.pdf
- 4. Attached as Exhibit 2 is a true and correct copy of "Enhanced high density oligonucleotide array-based sequence analysis using modified nucleoside triphosphates" paper published in *Nucleic Acids Research* with co-authors McGall and Fodor, to which highlights have been added under the supervision of the undersigned. This document is publicly available and may be retrieved from the National Library of Medicine at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC147927/pdf/264975.pdf
- 5. Attached as Exhibit 3 is a true and correct copy of US Patent US6,582,908 entitled "Oligonucleotides", filed on behalf of Affymetrix and claiming Fodor as the sole inventor, to which highlights have been added under the supervision of the undersigned. This document is publicly available and may be retrieved from the USPTO at http://patft.uspto.gov/netacgi/nph-
 https://patents.google.com/patent/US6582908B2/en?oq=US6582908
 https://patents.google.com/patent/US6582908B2/en?oq=US6582908
- 6. Attached as Exhibit 4 is a true and correct copy of the file wrapper of Provisional Application 10/730771, filed on behalf of Affymetrix and claiming Fan as an inventor, to which highlights have been added under the supervision of the undersigned. This document is publicly available and may be retrieved from the USPTO Public Patent Application Information Retrieval database ("PAIR"), available at https://portal.uspto.gov/pair/PublicPair, after searching by the application number to locate the Image File Wrapper for Provisional Application 10/730771.
- 7. Attached as Exhibit 5 is a true and correct copy of Provisional Application 60/195585 filed on behalf of Affymetrix for "Tag Nucleic Acids and Probe Arrays", to which highlights have been added under the supervision of the undersigned. This document is publicly available and may be retrieved from the USPTO Public Patent Application Information Retrieval database ("PAIR"), available at https://portal.uspto.gov/pair/PublicPair, after searching by the application number to locate the Image File Wrapper for Provisional Application 60/195585.

- 8. Attached as Exhibit 6 is a true and correct copy of Provisional Application 09/394230 entitled "Nucleic Acid N-MER Arrays" filed on behalf of Affymetrix and claiming Gunderson and Chee as coinventors, to which highlights have been added under the supervision of the undersigned. This document is publicly available and may be retrieved from the USPTO Public Patent Application Information Retrieval database ("PAIR"), available at https://portal.uspto.gov/pair/PublicPair, after searching by the application number to locate the Image File Wrapper for Provisional Application 09/394230.
- 9. Attached as Exhibit 7 is a true and correct copy of Exhibit list for Case 1:04-cv-00901-JJF Document 357-2 Filed 02/05/2007, to which highlights have been added under the supervision of the undersigned. This document is publicly available and may be retrieved searching for Case 1:04-cv-00901-JJF Document 357-2 Filed 02/05/2007 from https://www.findforms.com/pdf files/ded/8253/357-2.pdf

I declare under penalty of perjury under the laws of New York that the foregoing is true and correct.

Dated: April 12, 2019 Respectfully Submitted,

s/Timothy M. Kolman

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2019 the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

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Dated: April 12, 2019