

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of)	
)	
Laboratory Corporation of America)	Docket No. 9345
)	
and)	
)	
Laboratory Corporation of America Holdings,)	
corporations.)	
)	

COMPLAINT
[Public Version]

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Respondent Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively “LabCorp”) acquired substantially all the business assets of Westcliff Medical Laboratories, Inc. (“Westcliff”), in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

SUMMARY

1. LabCorp’s \$57.5 million acquisition of Westcliff (the “Acquisition”) will have the effect of substantially lessening competition for the sale of clinical laboratory testing services to physician groups in Southern California. LabCorp and Westcliff are two of only three vendors of clinical laboratory testing services for the vast majority of physician groups in Southern California, with the other being Quest Diagnostics Incorporated (“Quest”). By eliminating one of only three significant alternatives for most physician groups, the Acquisition will result in higher prices and inferior service for physician groups who contract with health plans to provide healthcare services to their members.

2. Clinical laboratory testing services are critical to the diagnosis and treatment of patients. These services are performed for patients pursuant to requisitions by their physicians, but the ultimate payer for clinical laboratory testing services varies depending on the type of health plan in which patients are enrolled. For tests performed on patients who belong to health maintenance organizations (“HMOs”) in California, the payer is routinely a physician group due to the structure of the California healthcare market. Physician groups are not synonymous with individual physicians, but rather are entities such as independent practice associations that exist to contract with health plans and vendors of ancillary services. Specifically, health plans in California usually contract with physician groups to provide healthcare services for the health plans’ HMO enrollees, including laboratory testing services, on a per-member per-month (or “capitated”) basis, regardless of actual utilization. This arrangement is called the “delegated managed care model” because health plans delegate to physician groups the financial risk and responsibility of providing healthcare and ancillary services for their HMO enrollees. Physician groups, in turn, routinely contract with clinical laboratory vendors, and pay them to provide those services on similar capitated terms, thereby shifting that portion of the risk to the clinical laboratory vendor.

3. Physician groups contract on a capitated basis for clinical laboratory testing services because it defrays the financial risk for services that they do not perform themselves, minimizes administrative costs, and, most importantly, is significantly less expensive than purchasing clinical laboratories on a fee-for-service basis. All physician groups prefer purchasing laboratory services on a capitated basis, and the overwhelming majority do so. A very small number, however, have to purchase laboratory services on a fee-for-service basis, as the laboratory vendors deem them too small or unattractive to extend capitated terms. In addition, some are affiliated with hospitals that require, or strongly encourage, them to purchase services from the hospitals’ laboratories at significantly higher fee-for-service prices. Thus, even if the market is expanded to include the sale of all laboratory services to physician groups, both on a fee-for-service and capitated basis, the competitive analysis does not change. In order to compete effectively for physician group business, a laboratory must be able to offer competitive capitated rates. Competition for the limited physician group business that is contracted on a fee-for-service basis does not affect capitated rates or the attractiveness of capitated contracting.

4. The Acquisition, if completed, will significantly reduce competition by eliminating Westcliff as an important independent competitor. Westcliff has been one of only three viable alternatives for most physician groups in Southern California, and has been particularly beneficial to consumers as a low-priced competitor that competed head-to-head with LabCorp. In fact, Westcliff has been willing to extend low-priced capitated contracts to customers that LabCorp and Quest have been unwilling to service in that manner. An immediate impact of the integration of the Westcliff assets is that LabCorp intends to increase prices to Westcliff customers. Further, the elimination of a price-cutting maverick competitor means that the Acquisition, if completed, will allow LabCorp to exercise market power both unilaterally by increasing prices on its own, or in coordination with its only remaining significant competitor,

Quest. The Acquisition therefore increases the likelihood that customers will pay higher prices and receive inferior service.

5. Substantial and effective expansion by smaller clinical laboratory vendors or the entry of new firms into the market sufficient to deter or counteract the substantial anticompetitive effects of the Acquisition is unlikely to occur. Any efficiencies resulting from the Acquisition will not offset the Acquisition's anticompetitive effects.

THE RESPONDENT

6. LabCorp is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 358 South Main Street, Burlington, North Carolina 27215.

7. LabCorp is, and at all relevant times has been, engaged in "commerce" as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is an entity whose business is in or affects "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

THE ACQUISITION

8. Pursuant to an Asset Purchase Agreement (the "Agreement") dated May 17, 2010, Westcliff agreed to sell substantially all of its business assets to LabCorp for \$57.5 million. To facilitate the sale, the Agreement required Westcliff to file a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the "Bankruptcy Court").

THE RELEVANT MARKET

9. The sale of capitated clinical laboratory testing services to physician groups operating under the delegated managed care model is a relevant product market for the purpose of analyzing the competitive effects of the Acquisition. The sale of clinical laboratory testing services to physician groups operating under the delegated managed care model is another relevant product market for the purpose of analyzing the competitive effects of the Acquisition. "Clinical laboratory testing services" encompass the full range of products and services provided by a clinical laboratory, including, but not limited to, the drawing and collection of specimens at patient service centers, as well as the transportation of specimens over a coordinated courier route system; a comprehensive menu of routine and esoteric clinical diagnostic tests; STAT testing capability; computerized tracking of specimens, record-keeping, and billing functions; and the electronic communication of test results, patient encounter data, and other data required by customers, including the ability to interface with physicians' electronic medical records. "Physician group" refers to any group medical practice, independent practice association (sometimes referred to as independent physician association), physician service organization, management service organization, medical foundation, or physician/hospital organization, that

provides, or through which physicians contract to provide, healthcare services to enrollees of HMO health plans.

10. Clinical laboratory testing involves the analysis of body fluids, tissue, and other specimens to detect and evaluate the presence, concentrations, or composition of chemical, biological, or cellular components. Clinical laboratory tests are ordered by physicians to help manage a wide variety of patient medical conditions, and are essential to delivering quality healthcare. Physicians rely on clinical laboratories to provide accurate and timely testing information used to diagnose, monitor, and treat their patients' health conditions. No other products or services are viable substitutes for clinical laboratory testing services. Physician groups, which routinely operate under the delegated managed care model in Southern California, contract with clinical laboratories to purchase these services.

11. Physician groups do not regard the internal performance of clinical laboratory testing services as a competitively viable or cost-effective substitute for having those services provided by an independent clinical laboratory. Although physicians can perform a limited number of simple diagnostic tests in their own offices, this is not a substitute for the broad range of testing services provided by clinical laboratories, and would not be a viable substitute even in the event of a significant increase in the price of clinical laboratory testing services.

12. Physician groups are separate, distinct and readily identifiable purchasers of clinical laboratory testing services. Clinical laboratories always know when they are contracting with physician groups and provide services to them on markedly different terms than they do to other customer groups. Physician groups routinely require a clinical laboratory that offers, among other things, competitive capitation rates; an extensive specimen collection and distribution system that includes conveniently located patient service centers and courier networks across the groups' entire geographic coverage area; a comprehensive menu of clinical diagnostic tests; STAT testing capabilities; and advanced electronic data reporting and electronic medical record interfacing capabilities. Because physician groups are easily identified and have broader requirements for clinical laboratory vendors, the sale of clinical laboratory testing services to physician groups constitutes a relevant antitrust market.

13. The vast majority of physician groups operating under the delegated managed care model in Southern California contract with clinical laboratory vendors on a capitated basis. Capitated contracts allow physician groups to delegate the risk of uncertain testing utilization to clinical laboratories and allow physician groups to predict with certainty their clinical laboratory testing services expenses. Capitated contracts also save administrative costs for physicians because they allow the groups to avoid the burdensome process of billing and tracking every test. Finally, capitated testing is provided at deep discounts to fee-for-service testing because large clinical laboratory vendors consider capitated business to be an important part of their business model. Indeed, physician groups can achieve 50% or more in total cost savings by contracting on a capitated basis versus a fee-for-service basis. Thus, capitated contracts are much more advantageous to physician groups that operate under the delegated model than the purchasing of clinical laboratory testing services on a fee-for-service basis, and would remain so even if capitated prices increased significantly. The absence of economic substitutes for

capitated contracts means that the sale of clinical laboratory testing services under capitated contracts to physician groups constitutes a relevant antitrust market.

14. Despite the significant advantages of capitated contracts, a very small number of physician groups operating under the delegated model purchase clinical laboratory testing services on a fee-for-service basis. For the most part, these groups do so because they cannot obtain capitated contracts. Clinical laboratories often refuse to provide testing services to physician groups they deem too small or otherwise unattractive. In addition, some physician groups are affiliated with hospitals that they are required to support by purchasing clinical laboratory services from the hospitals' laboratories on significantly higher priced fee-for-service terms. The number of physician groups operating under the delegated model that purchase laboratory services on a fee-for-service basis, and the number of covered lives they represent, is extremely small. In contrast, for virtually all physician groups, the ability and willingness of a clinical laboratory vendor to sell its testing services on a capitated basis is the single most important criterion they consider when evaluating a laboratory services contract. Because so few physician groups purchase testing services on a fee-for-service basis, the inclusion of fee-for-service testing sold to physician groups in the relevant market would not affect the assessment of the Acquisition's impact on competition.

15. For the purposes of this Complaint, the relevant geographic market in which to assess the competitive effects of the Acquisition is no broader than Southern California, consisting of the counties in California south of, and including, San Luis Obispo, Kern and San Bernardino counties. LabCorp and Westcliff, together with Quest, compete for and serve physician groups throughout the Southern California region by virtue of their extensive networks of patient service centers and STAT laboratories, and their high-volume testing facilities in the region. Firms outside the region, including those operating in Northern California (other than LabCorp, Westcliff and Quest) cannot and do not compete for physician group business in Southern California. Physician groups in Southern California require networks of patient service centers to provide convenient access for their managed care patients. For the largest physician groups, coverage across large parts of Southern California is required.

MARKET STRUCTURE

16. LabCorp is the second-largest independent clinical laboratory in the United States with total revenues of \$4.69 billion, of which [REDACTED] was derived from its Southern California operations. In Southern California, LabCorp is the second-most significant vendor of laboratory services to physician groups operating under the delegated model. With its extensive network of [REDACTED] patient service centers and [REDACTED] STAT laboratories throughout Southern California, LabCorp has the necessary scale to meet all of the requirements of physician groups that contract on a capitated basis. LabCorp has capitated contracts with [REDACTED] physician groups in Southern California covering nearly [REDACTED] patient lives. Although LabCorp's capitated business represents only [REDACTED]% of its Southern California revenues, it represents [REDACTED]% of its total testing volume.

17. Prior to the Acquisition, Westcliff was the third-largest independent clinical laboratory in Southern California, which was the primary focus of its operations, with

approximately [REDACTED] in total revenues, including [REDACTED] derived from its Southern California operations. Similar to LabCorp, Westcliff has an extensive network of [REDACTED] patient service centers and [REDACTED] STAT laboratories throughout Southern California. Besides Quest and LabCorp, Westcliff is the only other clinical laboratory that routinely competes for, and wins, capitated contracts with physician groups throughout Southern California and is viewed by the vast majority of physician groups as the only competitive alternative to Quest and LabCorp in the region. Currently, Westcliff has capitated contracts with [REDACTED] physician groups in Southern California covering nearly [REDACTED] patient lives. Westcliff's capitated business represents [REDACTED]% of its Southern California revenues, but [REDACTED]% of its total testing volume.

18. Quest is the leading national provider of clinical laboratory testing services and the leading vendor in Southern California, with a substantial share of the Southern California market. With [REDACTED] patient service centers and [REDACTED] STAT laboratories, Quest services about [REDACTED] capitated contracts with physician groups in Southern California covering approximately [REDACTED] patient lives. Although it has had operations in Southern California for many years, Quest expanded to its current size largely through its acquisition of Unilab Corporation in 2003.

19. Prior to the Acquisition, LabCorp, Westcliff and Quest together accounted for approximately [REDACTED]% of the delegated HMO lives covered by capitated contracts. Quest's share of capitated patient lives is approximately [REDACTED]% and LabCorp's share of capitated patient lives is approximately [REDACTED]%. Westcliff, which only began competing for capitated contracts a little more than three years ago, covers approximately [REDACTED]% of capitated patient lives in Southern California.

20. The remaining [REDACTED]% of the market is accounted for by several minor clinical laboratories. The largest of these, [REDACTED] is one-third the size of Westcliff in terms of capitated patient lives under contract, most of which it has had for years. Unlike LabCorp, Quest and Westcliff, [REDACTED] competes only in a limited geographic area in [REDACTED] rather than throughout the Southern California market, [REDACTED]. The remaining laboratories are even smaller and more localized in their focus. For example, [REDACTED] is a local laboratory in [REDACTED] that has serviced several small physician groups on a capitated basis for years. [REDACTED] has only been awarded [REDACTED] since 2007 and [REDACTED].

21. The market for the sale of capitated clinical laboratory testing services to physician groups in Southern California is highly concentrated today. The Acquisition increases concentration in the relevant market by [REDACTED] points to a Herfindahl-Hirschman Index level of [REDACTED], creating a substantially more concentrated market. This post-merger market concentration level, as well as the increase in concentration produced by the Acquisition, is well above the range where a transaction is presumed to produce anticompetitive effects.

22. These market concentration figures, as well as Westcliff's market share, likely understate the competitive significance of Westcliff in the relevant market as Westcliff did not enter the market until 2007, and has been growing rapidly since that time. Even though physician groups request bids for their business, or otherwise evaluate their clinical laboratory vendor options, relatively infrequently, LabCorp admits that Westcliff has been able to secure

over [redacted] physician group contracts in Southern California in just over three years and that in the same time frame, LabCorp has won [redacted]. Westcliff's impressive success rate demonstrates that it has a much greater chance of winning upcoming business than would be implied by its current market share.

23. The market for the sale of all clinical laboratory testing services to physician groups is also highly concentrated and would become more so with the acquisition. Very few physician groups purchase clinical laboratory testing services on a fee-for-service basis, rather than on a capitated basis, and those that do are far smaller than the ones that are able to contract on a capitated basis. Thus, the market shares accounted for by Quest, LabCorp and Westcliff would not change materially if the lives delegated to physician groups that purchase clinical laboratory testing services on a fee-for-service basis were included in the relevant market.

ANTICOMPETITIVE EFFECTS

24. The Acquisition may substantially lessen competition in Southern California for the sale of clinical laboratory services to physician groups by eliminating an aggressive competitor, one of only three principal firms that compete for physician groups' capitated contracts. [redacted]

According to LabCorp's Managed Care Executive for Southern California, [redacted]

25. The Acquisition eliminates actual, substantial and direct competition between LabCorp and Westcliff in the sale of clinical laboratory testing services to physician groups in Southern California. [redacted]

[redacted] Numerous physician groups have leveraged the competition between LabCorp and Westcliff, and in the process have obtained lower prices. In several instances, LabCorp attempted to impose price increases on physician groups only to find its efforts thwarted when Westcliff offered capitated rates that were lower than those sought by LabCorp.

26. The Acquisition eliminates a price-cutting maverick. As an upstart competitor seeking to expand its share of physician group business, Westcliff had the incentive to win business by pricing capitated contracts aggressively, and did so. LabCorp believed that [redacted]

[redacted] Westcliff also extended capitated contracts to physician groups that LabCorp and Quest would only service on significantly higher fee-for-service terms. In contrast, both LabCorp and Quest were seeking to increase prices and reduce services to physician groups in Southern California over the same time period. According to a 2009 LabCorp document, [redacted]

[redacted] Likewise, as recently as May 2010, LabCorp documents note that [redacted]

[REDACTED]

27. The Acquisition will enhance the likelihood of collusion or coordinated interaction between Quest and LabCorp, the only two remaining significant vendors of clinical laboratory testing services to physician groups in Southern California. A substantial increase in concentration in an already highly concentrated market facilitates coordinated interaction. Furthermore, the Acquisition eliminates a maverick firm in a market that is vulnerable to coordinated conduct, which enhances the remaining firms' ability to collude and/or compete less vigorously for each other's customers, and increases their incentives to do so.

28. The Acquisition will also increase the likelihood that the loss of direct competition between LabCorp and Westcliff will lead to higher prices for clinical laboratory testing services in Southern California. LabCorp's due diligence documents prepared to evaluate the potential acquisition of Westcliff make it clear that [REDACTED]

[REDACTED]. LabCorp noted that [REDACTED]

Thus, among LabCorp's planned [REDACTED]

Indeed, a LabCorp executive stated that [REDACTED]

BARRIERS TO ENTRY AND EXPANSION

29. Entry into the market for the sale of capitated clinical laboratory testing services to physician groups, or expansion by small fringe firms, is unlikely to alleviate the anticompetitive effects of the Acquisition. Smaller, fringe clinical laboratories, even those that already have some physician group business, have not grown significantly in the last ten years. In order to compete effectively for capitated physician group contracts, a clinical laboratory must have the scale necessary to offer deeply discounted capitated rates and an extensive network of patient service centers that provides convenient access for the physician group's entire patient membership. Only Quest, LabCorp and Westcliff have the scale necessary to compete for most capitated physician group contracts in Southern California. Smaller firms and new entrants would have to expand significantly in order to replicate the competition that will be lost with the elimination of Westcliff.

30. LabCorp recognizes that economies of scale create significant advantages for larger laboratories and limit the entry and expansion of smaller laboratories. One LabCorp business planning document states: [REDACTED]

The document elaborates that [REDACTED]

31. LabCorp also recognizes that the clinical laboratory testing business is characterized by high fixed costs. Larger laboratories have significantly lower costs than smaller laboratories because they process a larger volume of tests through their existing infrastructure. Larger laboratories are also able to reduce incremental costs by negotiating volume discounts on supplies used to perform clinical laboratory testing. Finally, larger laboratories process far more tests in-house than smaller laboratories, and thereby are able to minimize the costly outsourcing of low volume tests. The cost advantages of larger laboratories are essential to effectively compete for low-priced physician group business, and cannot be matched by smaller, more local clinical laboratories.

32. Clinical laboratories assume substantial financial risk when contracting with physician groups on a capitated basis. Larger laboratories have experience predicting patient utilization with sufficient accuracy to determine the appropriate capitated rate, have the volume and cost structure to absorb any mistakes made in those predictions, and a large pool of capitated contracts over which to spread the risk. Smaller laboratories generally have experience in a limited geographic area, and consequently they lack sufficient information about the patient populations in areas outside their traditional vicinities to accurately predict utilization rates for a capitated contract. Smaller laboratories do not have the cost structure or capital resources to absorb mistakes, nor the volume of capitated contracts over which to spread the risk of error. A mistake in estimating the proper rate or a significant variance in utilization can be financially catastrophic for a small laboratory.

33. Expansion into new localities is risky even for larger firms that already have a presence in adjacent areas and a low cost, high volume testing infrastructure. For smaller firms, the risk is enhanced because they have far fewer patient service centers to meet the needs of any given physician group, and therefore are faced with the added cost of building out their patient service center network when competing for capitated sales to physician groups. The risks associated with such a build-out are substantial, as it can take a significant amount of time for a new patient service center to become profitable and opening new patient service centers can rarely be justified on physician group business alone. The more patient service centers a laboratory is required to open to service a particular physician group contract, the more likely it is that the laboratory will not be able to offer a competitive capitated rate. Accordingly, smaller, more local laboratories rarely compete for capitated physician group business beyond their immediate vicinities, and would not be able to do so successfully even in the face of a significant increase in capitation rates.

34. Beyond the challenges that smaller laboratories face in assuming the delegated risk of physician group contracts, most smaller laboratories would have to significantly enhance their electronic data reporting and electronic medical record (“EMR”) interfacing technologies in order to compete more broadly for physician group business. Although not all physician groups require advanced electronic reporting and EMR capabilities, it is becoming increasingly important in light of recent healthcare reforms. Developing these capabilities is a capital-intensive endeavor that is relatively difficult for small laboratories to undertake. Prevailing capitation rates would have to increase dramatically before it would be economically feasible for small laboratories to make the investment necessary to meet this competitive requirement in the relevant market.

35. De novo entry (and expansion by out-of-state laboratories) effectively is blocked by a moratorium issued by the state of California on the issuance of new Medi-Cal provider numbers. A laboratory is required to have a provider number in order to bill Medi-Cal, which is California's Medicaid program, for laboratory services provided to Medi-Cal patients. An inability to bill Medi-Cal limits the market opportunity for a clinical laboratory, especially in areas of Southern California where Medi-Cal covers a large portion of the population. The current moratorium is scheduled to expire on January 26, 2011, but has been regularly renewed since at least 2007. Even if the moratorium were to be lifted, the same difficulties limiting expansion by existing firms in the market for sales to physician groups would apply even more clearly to new entrants.

36. Entry into the market for the sale of all clinical laboratory services to physician groups, or expansion by small fringe firms, is also unlikely to alleviate the anticompetitive effects of the acquisition in that broader market. Because few IPAs contract on a fee-for-service basis, a new entrant would have to offer competitive capitated rates, among other things, in order to make a significant market impact. As smaller fringe firms face considerable barriers to competing for capitated contracts, they cannot expand sufficiently to replicate the competition that will be lost with the elimination of Westcliff.

EFFICIENCIES

37. Extraordinarily significant merger-specific efficiencies would be necessary to justify the Acquisition in light of its potential to harm competition. Such efficiencies are not present in this transaction.

FAILING FIRM

38. LabCorp's acquisition of Westcliff is not immunized by the "failing firm" doctrine. That affirmative defense places the burden firmly on defendants to demonstrate that (1) the allegedly failing firm faced the imminent prospect of business failure at the time of the acquisition; (2) that the firm could not have been successfully restructured under Chapter 11; and (3) that the firm seeking to acquire the failing firm is the only available purchaser. LabCorp cannot meet these strict criteria.

39. At the time of the Acquisition, Westcliff was generating profits from its operations and had _____ in annualized revenue. Its financial difficulties stemmed primarily from approximately _____ in debt generated by a 2006 private equity deal. Despite that debt, Westcliff was an attractive business. It was the third-largest independent clinical laboratory in Southern California, and its revenues had increased _____ percent over the preceding two calendar years. As a result, Westcliff had significant enterprise value, and other firms were willing to acquire Westcliff throughout the time that the LabCorp deal was being negotiated. In these circumstances, LabCorp was not, as it would have to be, "the only available purchaser," and Westcliff cannot be said to have made, as required, "unsuccessful good-faith efforts to elicit reasonable offers that would keep its tangible and intangible assets in the relevant

market and pose a less severe danger to competition than does the proposed merger.” Merger Guidelines §11.

40. The fact that Westcliff was in Chapter 11 bankruptcy at the time the Acquisition closed does not affect the failing firm analysis. The bankruptcy was not an indicator that Westcliff was failing; rather, it was a specific condition imposed by LabCorp as part of the acquisition. Further, the fact that an auction was conducted after LabCorp was installed as the “stalking horse bidder” and that no bids were received shows nothing more than that there were no bidders willing to pay the stalking horse price of \$60 million or more for Westcliff. Even at that late date, there were a number of firms willing to purchase Westcliff for a consideration above liquidation value.

41. Under these circumstances, it is unreasonable to conclude that Westcliff would have been liquidated. Westcliff had “minimal” liquidation value, and virtually all of its value was as a going concern. The secured creditors realized that they would not receive any return on their investments if Westcliff had been liquidated, and therefore believed that even if LabCorp did not purchase the company, Westcliff would have been sold to an alternative purchaser, albeit at a lower price.

VIOLATIONS

COUNT I – ILLEGAL ACQUISITION

42. The allegations of paragraphs 1 through 41 above are incorporated by reference as though fully set forth.

43. The Acquisition, if fully integrated, would substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL MERGER AGREEMENT

44. The allegations of paragraphs 1 through 41 above are incorporated by reference as though fully set forth.

45. Respondent LabCorp, through the Agreement described in paragraph 7, has engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the second day of May, 2011, at 10:00 a.m. is hereby fixed as the time, and the Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Room 532, Washington, DC 20580, as the place, when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade

Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten days after the answer is filed by the last answering respondent. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, DC 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference (but in any event no later than five days after the answer is filed by the last answering respondent). Rule 3.31(b) obligates counsel for each party, within five days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the acquisition challenged in this complaint violates Section 7 of the Clayton Act, as amended, or Section 5 of the FTC Act, as amended, the Commission may order such relief against Respondent as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Divestiture or reconstitution of all associated and necessary assets, in a manner that restores competition between distinct, separate, viable, and independent businesses in the relevant market, with the ability to offer such products and

services as LabCorp and Westcliff were offering and planning to offer prior to the Acquisition.

2. A prohibition against any transaction between LabCorp and Westcliff that combines their businesses in the relevant market, except as may be approved by the Commission.
3. A requirement that, for a period of time, LabCorp and Westcliff provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant market with any other company operating in that market.
4. A requirement to file periodic compliance reports with the Commission.
5. Any other relief appropriate to correct or remedy the anticompetitive effects of the Acquisition or to ensure the creation of one or more viable, independent entities to compete against LabCorp-Westcliff in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, DC, this thirtieth day of November 2010.

By the Commission, Commissioner Rosch dissenting.

Donald S. Clark
Secretary

SEAL