

ORIGINAL

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)

LABORATORY CORPORATION)
OF AMERICA)

and)

LABORATORY CORPORATION)
OF AMERICA HOLDINGS,)
corporations.)

Docket No. 9345

PUBLIC

**RESPONDENTS' UNOPPOSED MOTION FOR LEAVE TO FILE A REPLY IN
SUPPORT OF MOTION TO SET HEARING LOCATION**

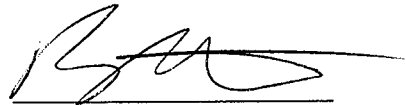
Pursuant to Rule 3.22(d) of the Commission's Rules of Practice, 16 C.F.R. § 3.22(d), Respondents Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively "LabCorp") respectfully move for leave to file a reply in support of LabCorp's December 16, 2010 motion to set hearing location. A proposed order is attached as Exhibit A, and LabCorp's proposed reply brief is attached as Exhibit B. Counsel for LabCorp conferred with Complaint Counsel on January 5, 2010, and Complaint Counsel does not oppose the filing of a reply by LabCorp.

16 C.F.R. § 3.22(d) provides that the Administrative Law Judge may permit a reply on a non-dispositive motion "in circumstances where the parties wish to draw the Administrative Law Judge's or the Commission's attention to recent important developments or controlling authority that could not have been raised earlier in the party's principal brief." 16 C.F.R. § 3.22(d). In this case, the relevant controlling authority is the same regulation, which also provides that a party opposing any written motion must file a response within 10 days of service of that motion "or shall be deemed to have consented to the granting of the relief asked for in the motion." *Id.*

Complaint Counsel failed to adhere to this rule, and instead filed an opposition to LabCorp's December 16, 2010 motion to set hearing location on January 4, 2011, 18 days after LabCorp served and filed its motion. Accordingly, under the Commission's Rules of Practice, Complaint Counsel shall be deemed to have consented to the relief requested in LabCorp's December 16, 2010 motion. LabCorp could not have raised this controlling authority in its principal brief because LabCorp was not aware that Complaint Counsel would not follow the rules of this Court at the time LabCorp filed its motion.

Dated: January 5, 2011

Respectfully Submitted,



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*Attorneys for Laboratory Corporation of
America and Laboratory Corporation of
America Holdings*

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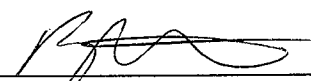
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CERTIFICATE OF CONFERENCE

In accordance with the Court's Scheduling Order, Respondents' Counsel has conferred with Complaint Counsel regarding Respondents' Motion for Leave to File a Reply in Support of Motion to Set Hearing Location and Complaint Counsel does not oppose the filing of a reply brief by Respondents.

Dated: January 5, 2011


Benjamin F. Holt
Hogan Lovells US LLP
*Counsel for Respondents Laboratory
Corporation of America and Laboratory
Corporation of America Holdings*

CERTIFICATE OF SERVICE

I hereby certify that I caused to be filed via hand delivery an original with signature and one paper copy and via FTC e-file a .PDF copy that is a true and correct copy of the paper original of the foregoing *Motion For Leave to File Reply in Support of Motion to Set Hearing Location* with:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-159
Washington, DC 20580
secretary@ftc.gov

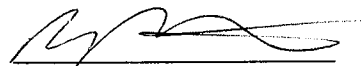
I also certify I delivered via electronic mail and hand delivery a copy of the foregoing to:

D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-113
Washington, DC 20580
oalj@ftc.gov

I also certify I delivered via electronic mail a copy of the foregoing to:

J. Thomas Greene
Michael R. Moiseyev
Jonathan Klarfeld
Stephanie A. Wilkinson
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Date: January 5, 2010



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*Counsel for Respondents Laboratory
Corporation of America and Laboratory
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EXHIBIT A

EXHIBIT B

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BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

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and

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Docket No. 9345

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RESPONDENTS' REPLY IN SUPPORT OF MOTION TO SET HEARING LOCATION

LabCorp filed and served its motion to set hearing location on December 16, 2010.

Complaint Counsel failed to oppose this motion within the time prescribed under the Commission's Rules of Practice. Accordingly, Complaint Counsel must "be deemed to have consented to the granting of the relief asked for in the motion." 16 C.F.R. § 3.22(d).

Prior to filing its motion, LabCorp informed Complaint Counsel of LabCorp's intention to ask the Court to hold portions of the Hearing in California and asked Complaint Counsel whether it would consent to the relief sought in the motion. Complaint Counsel would not agree to such relief. LabCorp then filed its motion on December 16, 2010.¹

Notwithstanding its apparent opposition, Complaint Counsel failed to file a timely opposition to LabCorp's motion. The Commission's Rules state that a party opposing any written motion must file a response within 10 days of service of that motion "or shall be deemed to have consented to the granting of the relief asked for in the motion." 16 C.F.R. § 3.22(d). The

¹ Counsel for LabCorp also mentioned that the motion had been filed at a status conference before the Court on December 17.

Commission's opposition was therefore due on Monday, December 27, 2010.² Complaint Counsel did not file an opposition on or before that date.

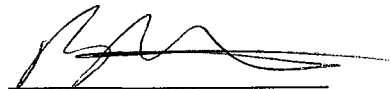
Instead, without seeking an extension from the Court, Complaint Counsel served its opposition to LabCorp's motion on January 4, 2010, eight days late. The Commission staff should not be permitted to ignore the Commission's own Rules in this fashion. Under those rules, Complaint Counsel must "be deemed to have consented to the granting of the relief asked for" in LabCorp's motion, 16 C.F.R. § 3.22(d), and the Court should grant LabCorp's request that those portions of the Hearing involving testimony from witnesses residing or working in or near Southern California shall take place in Santa Ana, California, or another reasonably convenient location in Southern California.

CONCLUSION

For the foregoing reasons, and those set forth in the motion itself, LabCorp respectfully requests that the Court grant LabCorp's motion to set hearing location.

Dated: January 5, 2011

Respectfully Submitted,



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Attorneys for Respondents

² Under 16 C.F.R. § 4.3, any period of time prescribed by the Commission's rules that exceeds seven days shall include intervening Saturdays, Sundays, and national holidays.