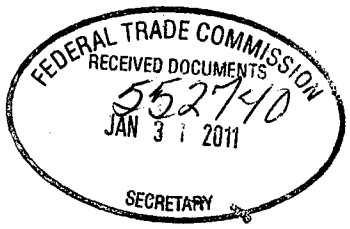
ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	**Docket No. 9345**
LABORATORY CORPORATION OF AMERICA, et al.,	)	**PUBLIC**
	)	
Respondents.	)	

COMPLAINT COUNSEL'S MOTION TO COMPEL DOCUMENT PRODUCTION

Pursuant to Rules 3.37(b) and 3.38(a) of the Commission's Rules of Practice, 16 C.F.R. §§ 3.37(b), 3.38(a) and provision 4 of this Court's December 20, 2010 Scheduling Order, Complaint Counsel respectfully moves to compel Respondents Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively, "Respondents" or "LabCorp"), to respond, unevasively and completely, to Complaint Counsel's First Set of Document Requests to Respondent LabCorp. A proposed order is attached as Exhibit A. Complaint Counsel attempted to confer with counsel for LabCorp on January 30, 2011 but counsel has failed to respond to date.

BACKGROUND

On December 28, 2010, Complaint Counsel served ten document requests on Respondents, seeking materials relevant to Complaint Counsel's allegations and Respondents' defenses. *See* Complaint Counsel's First Set of Document Requests to Respondent LabCorp (Ex. B) ("Document Requests"). On January 28, 2011, Respondent served its Answers and Objections to Complaint Counsel's First Request for Production of Documents to Respondent LabCorp ("Answers and Objections") but failed to produce any responsive documents as

requested or a privilege log describing the withheld documents and the basis of privilege as required by 16 C.F.R. § 3.38A(a). Instead, LabCorp's Answers and Objections to each document request state that "LabCorp will produce on a rolling basis non-privileged documents...." Answers and Objections (Ex. C). In effect, LabCorp has given itself an extension to respond to Complaint Counsel's Document Requests without seeking leave from this Court or requesting such an extension from Complaint Counsel. Prior to receiving LabCorp's Answers and Objections, Complaint Counsel did not know that LabCorp would not produce its documents in a timely manner as required by 16 C.F.R. § 3.37.

LabCorp has now had Complaint Counsel's Document Requests for more than a month. With party depositions scheduled to commence in little more than a week, it is imperative that this Court order LabCorp to produce all documents responsive to the Document Requests within three days of the entry of an order requiring production. 16 C.F.R.§ 3.38. Complaint Counsel will be severely prejudiced if LabCorp continues to withhold its responsive documents as it will be forced to depose LabCorp officials without access to those documents even though it timely served its Document Requests. Each of the categories of documents requested by Complaint Counsel is relevant to the instant dispute; thus, this Court should compel LabCorp to produce those documents.

Complaint Counsel tried to meet and confer with counsel for LabCorp before filing this motion by sending an electronic mail stating our concerns on the morning of January 30, 2011. *See* Email from L. DeMarchi Sleigh to C. Roush and B. Holt dated Jan. 30, 2011 (Ex. D). Counsel for LabCorp has yet to respond. Given the timing of party depositions, Complaint Counsel is compelled to file this motion today so that timely relief may be granted.

ARGUMENT

Pursuant to Rule 3.37(a) of the Commission's Rules of Practice, 16 C.F.R. § 3.37(a), Complaint Counsel served its Document Requests on Respondent on December 28, 2010. These Documents Requests specified that LabCorp produce responsive documents on or before January 28, 2011.[1] LabCorp has yet to produce any documents in response to the Document Requests nor has it produced a privilege log explaining the basis for withholding those documents.[2] Since LabCorp failed to produce documents as requested, Complaint Counsel moves for an order under Rule 3.38(a) requiring LabCorp to produce all documents responsive to the Document Requests.

16 C.F.R. § 3.37(b) expressly provides that the responding party shall respond to requests for documents "[n]o more than 30 days after receiving the request[.]" It further provides that the responding party state that "inspection and related activities will be permitted as requested" or "[i]f objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts." 16 C.F.R. § 3.37(b). Complaint Counsel's Document Requests explicitly requested that LabCorp "produce" responsive documents by January 28,

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[1] 16 C.F.R. § 3.37(b) requires responses to document requests within thirty days. Complaint Counsel provided LabCorp with an additional day for LabCorp to respond.

[2] While Complaint Counsel recognizes that LabCorp produced a number of documents to the Federal Trade Commission in response to a Subpoena *duces tecum* issued on or about June 30, 2010 ("Subpoena") during the Commission's Part Two investigation of the acquisition at issue, the instant Document Requests seek documents that were not specifically requested, or not produced in response to, the Subpoena. Further, LabCorp has not produced any documents to the Commission in the last three months and most of the documents were collected two months earlier. Thus, LabCorp has not produced documents created within the last five months. Moreover, LabCorp modified the earlier Subpoena to produce documents only from certain custodians.

2011.[3] Here, LabCorp completely failed to produce any responsive documents as requested and neglected to explain its failure to follow Complaint Counsel's instructions as to the requested method of inspection as required under 16 C.F.R. § 3.37(b).

Although LabCorp sought to discuss its objections to certain Document Requests with Complaint Counsel, it never raised any objection or concern with its ability to produce responsive documents on the date requested.[4] Not once prior to serving its Answers and Objections did LabCorp request an extension of time to produce the documents. Moreover, LabCorp's Answers and Objections do not explain the basis for the unilateral decision to extend the time for production of documents. LabCorp does not even provide a timeline for its "rolling" production in their Answers and Objections.[5]

Given that LabCorp has had more than a month to locate and produce documents responsive to the Document Requests, it should not be difficult for LabCorp to produce those documents to Complaint Counsel in a timely manner. In particular, Document Request No. 5 seeks "[a]ll testimony (video and transcripts), court filings, interrogatories, interrogatory

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[3] Commission Rules of Practice allow Complaint Counsel to state the time and manner of making the document production. 16 C.F.R. § 3.37(a) (" Each such request shall also specify a reasonable time, place, and manner of making the production or inspection and performing the related acts."). Indeed, LabCorp does not object to producing documents to Complaint Counsel in lieu of inspection and does not specifically object to Complaint Counsel's requested date of production so it is unclear why LabCorp has unilaterally chosen not to produce the requested documents on the requested date.

[4] In fact, in response to those inquiries by LabCorp, Complaint Counsel modified its Document Requests. *See* Answers and Objections at 3-4.

[5] In addition to failing to explain its failure to produce documents as requested, LabCorp's Answers and Objections suggest that they may not conduct a thorough search for responsive documents. In response to 7 of the 10 Document Requests, LabCorp states that it will produce documents from "relevant custodians" but fails to explain what is meant by that term or why they unilaterally refuse to search for all responsive documents regardless of "custodian."

responses, admissions, affidavits/declaration, exhibits, documents production (including documents produced by LabCorp and documents obtained by LabCorp from other person), and expert reports (or expert filings of any type) related to capitated clinical laboratory testing services provided in California in any qui tam litigation." Answers and Objections at 3-4. These documents are likely located in a file at LabCorp so it should not be difficult or time consuming for LabCorp to locate those documents and produce them to Complaint Counsel in a timely manner.[6] Yet, LabCorp has failed to produce any such documents.

Further, LabCorp failed to petition this Court for a protective order allowing it to withhold its production of documents or for an extension of time so that it could produce its documents on a "rolling" basis. *See* 16 C.F.R. § 3.31(d). As such, LabCorp must be required to produce all documents responsive to Complaint Counsel's Document Requests in a timely manner.

LabCorp's failure to timely produce any documents as requested in Complaint Counsel's Document Requests prejudices Complaint Counsel's ability to proceed with discovery in this action. If LabCorp is permitted to continue to withhold responsive documents, Complaint Counsel will be forced to depose party officials without access to the documents it timely sought but that LabCorp unjustifiably failed to produce. LabCorp was fully aware that depositions of its party officials were scheduled to begin the week of February 7, 2011, and was fully aware of the rapid discovery schedule provided by the Court's December 20, 2010 Scheduling Order. Thus, it appears that LabCorp has strategically chosen not to produce the requested documents in the

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[6] Indeed, given LabCorp's repeated references to the ongoing *qui tam* litigation in its filings in the ancillary federal court action, *Federal Trade Commission v. Laboratory Corporation of America, et al.*, Case No. SACV10-1873 AG (MLGx), it is likely that counsel for LabCorp in the instant action has ready access to these documents.

manner set forth in the Part Three rules. LabCorp cannot be permitted to undermine the proceedings before this Court. Therefore, Complaint Counsel respectfully requests that this Court require LabCorp to produce all documents responsive to the Document Requests within three days of entry of the Court's Order so that Complaint Counsel can proceed with party and other depositions without prejudice.

CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully requests that the Court grant its Motion to Compel Document Production and require Respondents to produce all documents responsive to the Document Requests within three days.

Dated: January 31, 2011

Respectfully submitted,

Thomas Greene, Esq.
Michael R. Moiseyev, Esq.
Jonathan S. Klarfeld, Esq.
Stephanie A. Wilkinson, Esq.

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
Tel. (202) 326-2531
Fax. (202) 326-2655
tgreene2@ftc.gov

Complaint Counsel

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	**Docket No. 9345**
LABORATORY CORPORATION OF AMERICA, et al.,	)	
	)	**PUBLIC**
Respondents.	)	

CERTIFICATE OF CONFERENCE

In accordance with the Court's Scheduling Order, Complaint Counsel attempted to confer with Respondents' Counsel in an effort in good faith to resolve by agreement the issues raised by Complaint Counsel's Motion to Compel Document Production but Respondents' Counsel has not responded to the email sent on January 30, 2011 as of the filing of this motion which we are forced to bring immediately because of the time frames involved in the requested relief.

Dated: January 31, 2011

Respectfully submitted,

J. Thomas Greene, Esq.
Michael R. Moiseyev, Esq.
Jonathan S. Klarfeld, Esq.
Stephanie A. Wilkinson, Esq.

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Tel. (202) 326-2531
Fax. (202) 326-2655
tgreene2@ftc.gov

Complaint Counsel

CERTIFICATE OF SERVICE

I certify that I filed via hand delivery an original with signature and one paper copy and a .pdf copy via electronic mail delivery that is a true and correct copy of the paper original of the foregoing **Motion to Compel Document Production with**:

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

I also certify that I delivered via hand delivery one paper copy and one .pdf copy that is a true and correct copy of the paper original via electronic mail of the foregoing **Motion to Compel Document Production** to:

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

I also certify that I delivered via electronic mail one .pdf copy that is a true and correct copy of the paper original of the foregoing **Motion to Compel Document Production** to:

J. Robert Robertson
Corey Roush
Benjamin Holt
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, N.W.
Washington, DC 20004

Counsel for Defendants
Laboratory Corporation of America and
Laboratory Corporation of America Holdings

January 31, 2011

By: 

Erin L. Craig
Federal Trade Commission
Bureau of Competition

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	Docket No. 9345
LABORATORY CORPORATION OF AMERICA, et al.,	)	PUBLIC
	)	
Respondents.	)	
	)	

COMPLAINT COUNSEL'S
MOTION TO COMPEL DOCUMENT PRODUCTION

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	**Docket No. 9345**
LABORATORY CORPORATION OF AMERICA, et al.,	)	
	)	**PUBLIC**
Respondents.	)	

[PROPOSED] ORDER

Upon consideration of Complaint Counsel's Motion to Compel Document Production, any opposition thereto, and the Court being fully informed,

IT IS HEREBY ORDERED, that Complaint Counsel's Motion is GRANTED.

IT IS FURTHER ORDERED, that Respondents produce all documents responsive to Complaint Counsel's First Request for Production of Documents within ____ days of this Order.

Date: February __, 2011

D. Michael Chappell
Chief Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	Docket No. 9345
LABORATORY CORPORATION OF AMERICA, et al.,	)	PUBLIC
	)	
Respondents.	)	
	)	

COMPLAINT COUNSEL'S
MOTION TO COMPEL DOCUMENT PRODUCTION

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **LABORATORY CORPORATION OF AMERICA** **and** **LABORATORY CORPORATION OF AMERICA HOLDINGS,** **Respondents.**	**DOCKET NO. 9345** **PUBLIC**

COMPLAINT COUNSEL'S FIRST SET OF DOCUMENT REQUESTS TO RESPONDENT LABCORP (NUMBERS 1-10)

Pursuant to 16 C.F.R § 3.37 (2010) and the Scheduling Order entered by Chief Administrative Law Judge Chappell on December 20, 2010, Respondents Laboratory Corporation of America and Laboratory Corporation of America Holdings, collectively the "Company", "LabCorp", or "you", are hereby requested to produce the following documents on or before January 28, 2011.

DOCUMENT REQUESTS

1. All documents that are responsive to Specifications 4, 6, 8, and 16 of the Subpoena Duces Tecum that were prepared, created, or received after the last date that you searched for responsive documents in response to the Subpoena Duces Tecum.

2. All final monthly, quarterly, and annual cost and financial statements for LabCorp and Westcliff including, but not limited to, profit and loss statements, income statements, balance sheets, ledger reports, and any other cost and financial statements produced in the ordinary course of business since January 1, 2005.

3. All documents relating to communications that LabCorp or Westcliff has had with any Third Party relating to the Acquisition, the investigation by the Federal Trade Commission of the Acquisition, this proceeding, the Federal Court Proceeding, or the potential sale of any portion of Westcliff's assets.

4. For each product or service that you allege, or intend to allege, is in the relevant market other than capitated clinical laboratory testing services sold to Physician Groups in southern California, all documents related to competition for, or sales of, those products or services.

5. All documents related to any *qui tam* litigation related to capitated or FFS clinical laboratory testing services provided in California, including, but not limited to, testimony (video and transcripts), court filings, affidavits, exhibits, and expert reports.

6. All documents that support any of your arguments that the Acquisition will produce efficiencies or consumer benefits, including, but not limited to, all documents relating to your argument that "annual $2.3 million [in] cost savings . . . will result from moving customers (e.g. United Healthcare) from Westcliff contracts to the existing Labcorp contracts" and that

"LabCorp regularly experiences similar 'price compression' in its acquisitions of other laboratories[.]" *See* Defendant LabCorp's Opposition to Plaintiff's Motion for a Temporary Restraining Order at 33.

7. All documents from any time period, identified in response to the Federal Trade Commission's First Set of Interrogatories to LabCorp or that support your response to those Interrogatories.

8. All documents sufficient to show LabCorp's and Westcliff's policies and procedures related to the creation, retention, and destruction of documents.

9. All documents prepared by, prepared for, sent to, or in the possession of a member of LabCorp's Managed Care Review Committee that relate to the sale of capitated or FFS clinical laboratory testing services in California.

10. All documents relating to communications between Westcliff employees and other LabCorp employees since the Acquisition.

DEFINITIONS

For the purposes of these document requests, the following definitions apply:

A. The terms "Company," "LabCorp," or "you" mean Laboratory Corporation of America Holdings, Laboratory Corporation of America, its domestic and foreign parents,

predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, including the assets and business acquired in the Acquisition that are currently the subject of a hold separate agreement, and all directors, officers, employees, agents and representatives of the foregoing, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary," "affiliate" and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between LabCorp and any other person.

B. The term "Acquisition" means the acquisition of certain assets and business of Westcliff Medical Laboratories, Inc. and BioLabs, Inc. by LabCorp on June 16, 2010.

C. The term "Westcliff" means Westcliff Medical Laboratories, Inc. and BioLabs, Inc., and includes the business and assets being held separate by LabCorp and doing business as LabWest.

D. The terms "Commission" or "FTC" mean the Federal Trade Commission.

E. The term "sales" means net sales, i.e., total sales after deducting discounts, returns, allowances, and excise taxes.

F. The term "Subpoena Duces Tecum" means the Subpoena Duces Tecum issued to you on July 1, 2010.

G. The term "discuss" or "discussing" in relation to a document means that the document, in whole or in part, constitutes, contains, or addresses the designated subject matter, regardless of the length of the treatment or detail or analysis of the subject matter. Documents that "discuss" an agreement or contract include the agreement or contract itself. "Discuss" also includes any operating or financial data about the designated subject matter where such data are separately set out as in a chart, listing, table, or graph.

H. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the Company's possession, custody, or control. The term "documents" includes electronic mail and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody, or control of the Company. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Such computer files should be printed and produced in hard copy (unless otherwise required by a particular specification or subspecification, or agreed to by Commission representatives), together with instructions and all other materials necessary to use or interpret the data.

I. The term "person" means to natural persons, firms, partnerships, associations, joint ventures, corporations, sole proprietorships, and governmental entities, divisions, departments, and agencies, including, but not limited to, LabCorp and Westcliff.

J. The phrase "relate to" or "relating to" means, in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting, in connection with, dealing with, discussing, describing, embodying, evidencing, identifying, pertaining to, referring to, reflecting, reporting, stating or summarizing.

K. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, including, but not limited to, correspondence and meetings.

L. The terms "this proceeding" or "this matter" mean Docket No. 9345 before the Federal Trade Commission.

M. The term "Federal Court Proceeding" means Civil Action No. 10-1873 AG (MLGx) in the United States District Court for the Central District of California.

N. The term "FFS" means fee-for-service.

O. The term "Third Party" means any person, individual, company, industry participant, and any entity other than LabCorp and the Commission.

P. The term "Physician Group" means 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 on a delegated basis.

INSTRUCTIONS

For the purposes of these document requests, the following instructions apply:

A. Documents shall be provided separately for Westcliff and LabCorp in the same manner as your response to the Subpoena Duces Tecum.

B. The Company shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of the Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers or any other Person retained by, consulted by, or working on behalf or under the direction of the Company.

C. The Company shall discuss the form and method of production of responsive documents with the Commission representative identified on the last page of this request. Produce all documents in complete, unredacted form, unless privileged. Submit documents as stored by the Company or individual. Mark each page of each document with corporate, custodian identification and with consecutive Bates numbers. None of the numbers may

be identical to control numbers on documents previously submitted by the Company to the FTC in the course of FTC File Number 101-0152, the investigation which led to the issuance of the complaint in this litigation. Provide a translation of non-English documents into English; submit the foreign language document, with the English translation attached.

1. You may, with prior approval from the FTC, submit copies of original hard copy documents as either hard copies or electronic copies in lieu of original documents, provided that such copies are accompanied by an affidavit stating that the copies are true, correct, and complete copies of the original documents. However, if the coloring of any document communicates any substantive information, or if black-and-white photocopying of any document (e.g., a chart or graph) makes any substantive information contained in the document unintelligible, the Company must submit the original document or a like-colored photocopy.

   a. Hard copies. Submit copies in sturdy cartons not larger than 1.5 cubic feet. Number and mark each box with corporate identification. Produce all documents as they are kept in the ordinary course of business (e.g., produce documents that in their original condition were stapled, clipped, or otherwise fastened in the same form).

   b. Electronic copies. The Company may submit original hard-copy documents as single-page TIFF images, named for the Bates number of the document, and accompanied by OCR and a

Concordance/Opticon load file denoting the appropriate document breaks (document delimitation). OCR may be produced in corresponding files, either by page or by document, or can be produced in ASCII format suitable for loading into Concordance.

2. Electronically Stored Information. Documents, information, or data stored in an electronic format in the ordinary course of business must be submitted in electronic format. Metadata associated with electronically stored information must be produced. The Company may produce electronically stored information in the following forms and formats, provided that such copies are true, correct, and complete copies of the original documents:

   a. Microsoft Excel and Access files must be submitted in native format.

   b. TIFF files. Submit files as single-page, 300 DPI - Group IV TIFF files, with a corresponding file containing the extracted text from the document. Name each file, comprised of both images and text, for the Bates number of the document. Include a Concordance/Opticon load file that preserves all document breaks (document delimitation). Include metadata and other information about the documents in delimited ASCII format. Produce Microsoft PowerPoint presentations in "Notes Pages" format. "Notes Pages" includes a small version of the slide that appears at the top of the page with any notes appearing directly below.

I. Include the following metadata fields for electronic files other than email: creation date/time; modified date/time; last accessed date/time; size; location or path file name; and custodian.

ii. Include the following metadata fields for emails: to; from; cc; bcc; subject; date and time sent; attachment (range or begin attach, end attach); file name of attachments; and custodian.

c. Native format. Electronically stored documents, excluding e-mail other than Microsoft Outlook, may be produced natively. Please discuss logistics of native production with an FTC representative.

d. Data productions as ASCII text files. The Company may submit database files, with prior approval, as delimited ASCII text files, with field names as the first record, or as fixed-length flat files with appropriate record layout. For ASCII text files, provide field-level documentation and ensure that delimiters and quote characters do not appear in the data. All database files should include or be accompanied with the definitions of the field names, codes, and abbreviations used in the database and, upon request from the FTC, the instructions for using the database. The FTC may require that a sample of the data be sent for testing. File and record structures must conform to the following requirements:

I. File structures. The FTC will accept sequential files only. Convert all other file structures into sequential format.

ii. Record structures. The FTC will accept fixed-length records only. Include all data in the record as it would appear in printed format: viz, numbers unpacked, and decimal points and signs printed.

e. Submit electronic files and images in any combination of the following forms:

I. For any production over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data.

ii. For productions under 10 gigabytes, CD-R CD-ROMs formatted to ISO 9660 specifications, DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats.

f. All documents produced in electronic format shall be scanned for and free of viruses. The FTC will return any infected media for replacement.

D. Documents shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted, (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and (iii) if submitted in paper form, the box number containing such documents. If the index exists

as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

E. If any documents are withheld from production based on a claim of privilege, you shall identify each specific request that calls for privileged documents, state this in your response, and provide a privilege log. The Company shall maintain all documents responsive to a discovery request that are withheld pursuant to a claim of privilege or protection. The privilege log shall include, for each claim of privilege, a statement of the claim of privilege, the facts that support the claim, the document's authors, any addressees listed on the document, the date of the document, a description of the document. If the privilege log exists as a computer file(s), provide both the computer file(s) and a printed hard copy of the log. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the claim of privilege shall include the number of pages of each document and shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Complaint Counsel and the Court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts

that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any Third Party, such as internal law firm memoranda, may be omitted from the privilege log.

F. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy, but the Company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

G. Unless otherwise specified, each of the requests calls for documents from January 1, 2007 to the present.

H. The Company need not produce documents that have already been produced to Complaint Counsel in its investigation under FTC File Number 101-0152.

I. This request for production of documents is continuing in nature and, in the event that additional documents responsive to this request are created, prepared, or received between the time of Defendant's initial response and trial, shall be supplemented.

J. Whenever necessary to bring within the scope of one of these document requests that might otherwise be construed to be outside its scope, the following constructions should be applied:

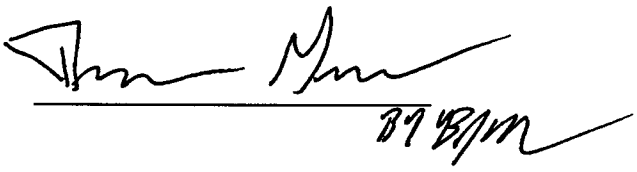
1. Construing the terms "and" and "or" in the disjunctive or conjunctive, as necessary, to make the request more inclusive;
2. Construing the singular form of any word to include the plural and the plural form to include the singular;
3. Construing the past tense of the verb to include the present tense and the present tense to include the past tense;
4. Construing the term "date" to mean the exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters; and
5. Construing negative terms to include the positive and vice versa; and
6. Construing "any" to include "all" and "all" to include "any."

K. To furnish a complete response to this request, the person supervising compliance must submit a sign and a notarized copy of the attached verification form along with the responsive materials.

L. Documents should be produced to Mackenzie Knowling at the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001. All documents should be delivered by messenger or overnight delivery service. Please telephone Ms. Knowling at (202) 326-2431 with any questions about delivery.

Dated: December 28, 2010

Respectfully submitted,

By: 

J. Thomas Greene
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
Telephone: (202) 326-2531
Facsimile: (202) 326-2624
tgreene2@ftc.gov

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Interrogatories has been prepared by me or under my personal supervision from records of LabCorp, and is complete and correct to the best of my knowledge and belief.

_____ _____

(Signature of Official) (Title/Company)

_____ _____

(Typed Name of Above Official) (Office Telephone)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	Docket No. 9345
LABORATORY CORPORATION OF AMERICA, et al.,	)	PUBLIC
	)	
Respondents.	)	
	)	

COMPLAINT COUNSEL'S MOTION TO COMPEL DOCUMENT PRODUCTION

EXHIBIT C

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' ANSWERS AND OBJECTIONS TO COMPLAINT COUNSEL'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO RESPONDENT LABCORP

Pursuant to Rules §§ 3.31 and 3.37 of the Commission's Rules of Practice, 16 C.F.R. §§ 3.31, 3.37, Respondents Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively "LabCorp") hereby state the following answers and objections to Complaint Counsel's First Set of Document Requests to Respondent LabCorp (Numbers 1-10) ("Requests"), dated December 28, 2010. LabCorp's failure to object to any request does not constitute a waiver of any objections or privilege that it may raise and, therefore, LabCorp reserves the right to enter supplemental objections and responses.

Subject to the Specific and General Objections stated below, LabCorp states the following in response to Complaint Counsel's First Set of Document Requests to Respondent LabCorp (Numbers 1-10).

Specific Objections and Answers

Request No. 1

All documents that are responsive to Specifications 4, 6, 8, and 16 of the Subpoena Duces Tecum that were prepared, created, or received after the last date that you searched for responsive documents in response to the Subpoena Duces Tecum.

Response:

LabCorp objects to this request as overly broad and unduly burdensome, specifically with respect to the request for "all" documents. Subject to the foregoing objections, LabCorp will produce on a rolling basis non-privileged documents from relevant custodians that are not already in the FTC's possession and that are responsive to this request.

Request No. 2

All final monthly, quarterly, and annual cost and financial statements for LabCorp and WestCliff including, but not limited to, profit and loss statements, income statements, balance sheets, ledger reports, and any other cost and financial statements produced in the ordinary course of business since January 1, 2005.

Response:

LabCorp objects to this request as overly broad and unduly burdensome, specifically with respect to the request for "any" cost and financial statements produced in the ordinary course of business. LabCorp also objects to the defined time period as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Subject to the foregoing objections, LabCorp will produce on a rolling basis non-privileged documents from relevant custodians that are not already in the FTC's possession and that are responsive to this request.

Request No. 3

All documents relating to communications that LabCorp or Westcliff has had with any Third Party relating to the Acquisition, the investigation by the Federal Trade Commission of the Acquisition, this proceeding, the Federal Court Proceeding, or the potential sale of any portion of Westcliff's assets.

Response:

LabCorp objects to this request as vague and ambiguous, specifically with reference to the term "potential sale of any portion of Westcliff's assets." LabCorp further objects to this request as overly broad and unduly burdensome, specifically with respect to the request for "all" documents and the phrase "any Third Party." LabCorp further objects to this request to the extent it calls for material protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege. Subject to the foregoing objections, LabCorp will produce on a rolling basis non-privileged documents from relevant custodians that are not already in the FTC's possession and that are responsive to this request.

Request No. 4

For each product or service that you allege, or intend to allege, is in the relevant market other than capitated clinical laboratory testing services sold to Physician Groups in southern California, all documents related to competition for, or sales of, those products or services.

Response:

LabCorp objects to this request as vague and ambiguous, specifically with reference to the term "competition for" and the term "sales of." LabCorp further objects that the request improperly imposes a burden on LabCorp to define and allege a relevant market when that burden is solely the FTC's. LabCorp further objects to this request as overly broad and unduly burdensome, specifically with respect to the request for "all" documents. Subject to the foregoing objections, LabCorp will produce on a rolling basis non-privileged documents from relevant custodians that are not already in the FTC's possession and that are responsive to this request.

Request No. 5

All documents related to any qui tam *litigation related to capitated or FFS clinical laboratory testing services provided in California, including, but not limited to, testimony (video and transcripts), court filings, affidavits, exhibits, and expert reports.*

Response:

LabCorp objects to this request to the extent that it conflicts with the revised Request No. 5 submitted by Complaint Counsel to LabCorp by electronic mail on January 6, 2011 ("Revised Request No. 5"). *See* E-mail from Richard Cunningham, Federal Trade Commission, to Corey Roush and Benjamin Holt, Hogan Lovells LLP (Jan. 6, 2011, 10:07 EST) (on file with Hogan Lovells LLP). Specifically, Complaint Counsel agreed to "replace the current language" of Request No. 5 with the following request:

> "All testimony (video and transcripts), court filings, interrogatories, interrogatory responses, admissions, affidavits/declarations, exhibits, document production (including documents produced by LabCorp and documents obtained by LabCorp from other persons), and expert reports (or expert filings of any type) related to capitated clinical laboratory testing services provided in California in any *qui tam* litigation."

With respect to Revised Request No. 5, LabCorp objects to this request as overly broad and unduly burdensome, specifically with reference to the term "any *qui tam* litigation." LabCorp further objects to the request to the extent it seeks documents that are irrelevant to any issue in this proceeding and is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Subject to the foregoing objections, LabCorp will produce on a rolling basis non-privileged documents that are not already in the FTC's possession and that are responsive to this request.

Request No. 6

All documents that support any of your arguments that the Acquisition will produce efficiencies or consumer benefits, including, but not limited to, all documents relating to your argument that "annual $2.3 million [in] cost savings . . . will result from moving customers (e.g., United Healthcare) from Westcliff contracts to the existing LabCorp contracts" and that "LabCorp regularly experiences similar 'price compression' in its acquisitions of other laboratories[.]" See *Defendant LabCorp's Opposition to Plaintiff's Motion for a Temporary Restraining Order at 33.*

Response:

LabCorp objects to this request as overly broad and unduly burdensome, specifically with reference to the request for "all" documents. LabCorp further objects to the request to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege. Subject to the foregoing objections, LabCorp will produce on a rolling basis non-privileged documents from relevant custodians that are not already in the FTC's possession and that are responsive to this request.

Request No. 7

All documents from any time period, identified in response to the Federal Trade Commission's First Set of Interrogatories to LabCorp or that support your response to those Interrogatories.

Response:

LabCorp objects to the defined time period as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Subject to the foregoing objections, LabCorp will produce non-privileged documents responsive to this request on a rolling basis.

Request No. 8

All documents sufficient to show LabCorp's and WestCliff's policies and procedures related to the creation, retention, and destruction of documents.

Response:

LabCorp objects to this request as vague and ambiguous, and internally inconsistent, specifically with respect to its use of both "all documents" and "sufficient to show." To the extent the request in fact calls for all documents, LabCorp objects that it is overly burdensome. Subject to the foregoing objections, LabCorp will produce on a rolling basis non-privileged documents from relevant custodians that are not already in the FTC's possession and that are responsive to this request.

Request No. 9

All documents prepared by, prepared for, sent to, or in the possession of a member of LabCorp's Managed Care Review Committee that relate to the sale of capitated or FFS clinical laboratory testing services in California.

Response:

LabCorp objects to this request as overly broad and unduly burdensome, specifically with reference to the request for "all" documents. Subject to the foregoing objections, LabCorp will produce on a rolling basis non-privileged documents from relevant custodians that are not already in the FTC's possession and that are responsive to this request.

Request No. 10

All documents relating to communications between Westcliff employees and other LabCorp employees since the Acquisition.

Response:

LabCorp objects to this request as overly broad and unduly burdensome, specifically with reference to the request for "all" documents and its scope, which purports to encompass all LabCorp and Westcliff employees. LabCorp further objects that the request is vague and ambiguous in that it fails to define the term "Westcliff employees." LabCorp further objects to this request as seeking documents that are irrelevant to this proceeding and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Subject to the foregoing objections, LabCorp will produce on a rolling basis non-privileged documents from relevant custodians that are not already in the FTC's possession and that are responsive to this request.

General Objections

1. LabCorp objects to the definitions and instructions in the Requests to the extent that they purport to impose obligations in excess of those required under Rules §§ 3.31 and 3.37 of the Commission's Rules of Practice.

2. LabCorp objects to the Requests to the extent that they call for the production of documents that are protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable claim of privilege or legal protection. Inadvertent disclosure of any privileged documents in response to the Requests shall not be deemed a waiver of the applicable privilege.

3. LabCorp objects to the Requests to the extent that they call for the production of confidential or proprietary business materials, the disclosure of which could adversely affect the competitive business position of LabCorp and/or reveal proprietary information of LabCorp. LabCorp will produce any confidential or proprietary information pursuant to the Protective Order agreed to by the parties in this matter dated December 1, 2010, the Order of ALJ Chappell dated December 1, 2010, and the Order Granting Joint Motion for a Stipulated Protective Order in the federal action dated January 4, 2011.

4. LabCorp objects to the Requests to the extent that they call for the production of individually identifiable medical or health related information, the production of which may be governed or limited by federal or state statute, including, but not limited to, the Health Insurance Portability and Accounting Act of 1996. LabCorp also objects to the Requests to the extent that they seek information protected from disclosure by the physician-patient privilege or any other statutory or common law privilege or immunity from discovery relating to patient health records and information. LabCorp will redact or exclude any such information from its production.

5. LabCorp objects to the Requests to the extent they call for documents that have already been produced to the FTC in connection with the FTC's investigation.

6. LabCorp objects to the Requests to the extent that they seek documents

that are not within its possession, custody, or control.

7. LabCorp objects to the Requests to the extent that they are unreasonably cumulative or duplicative, or seek materials obtainable from some other source that is more convenient, less burdensome, or less expensive.

8. Any representation in LabCorp's response that LabCorp will undertake to produce responsive documents is not a representation that any responsive documents exist, but is only a representation that if any such document exist, they will be produced consistent with the General and Specific Objections.

9. LabCorp reserves its right to challenge the competency, relevancy, materiality, and admissibility at trial of any of the materials it provides in response to these Requests.

Dated: January 28, 2011

Respectfully Submitted,

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

CERTIFICATE OF SERVICE

I hereby certify that 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 28, 2010

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

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	Docket No. 9345
LABORATORY CORPORATION OF AMERICA, et al.,	)	PUBLIC
	)	
Respondents.	)	
	)	

COMPLAINT COUNSEL'S
MOTION TO COMPEL DOCUMENT PRODUCTION

EXHIBIT D

Demarchi Sleigh, Lisa

From: Demarchi Sleigh, Lisa
Sent: Sunday, January 30, 2011 9:44 AM
To: 'Roush, Corey W.'; 'benjamin.holt@hoganlovells.com'
Cc: Klarfeld, Jonathan
Subject: In the Matter of Laboratory Corporation of America and Laboratory Corporation of America Holdings, Docket No. 9345

Tracking:

Recipient	Delivery	Read
'Roush, Corey W.'		
'benjamin.holt@hoganlovells.com'		
Klarfeld, Jonathan	Delivered: 1/30/2011 9:44 AM	Read: 1/30/2011 9:44 AM

Corey and Ben,

On January, 28, 2011, I inquired about when you planned to provide us with your responses to Complaint Counsel's First Set of Document Requests. In response, you said we could expect them later that day.

While we did receive your Answers and Objections to our document request, it appears that no documents were produced with those Answers and Objections. Instead, you state that you will be producing documents on a "rolling basis." You had not previously requested an extension to delay your production of documents, nor do your responses state a proposed timeline for the production. At the very least, you should be able to produce immediately the primary documents responsive to Request No. 5, as revised in the email from Rich Cunningham on January 6, 2011, related to the qui tam litigation.

We are available to talk to you about your production at any point this weekend so that we can understand your plans, in particular what production schedule you have in mind. But given the fact that party depositions are set to commence in little more than a week, we will have no choice but to move to compel and, potentially, to seek to reschedule the depositions (which may quickly result, needlessly, in taking and defending multiple depositions on single days), if you can not commit to a concrete and rapid production. The Part 3 scheduling order simply does not enable us to allow for these kinds of delays. I look forward to a timely response.

Kind regards,
Lisa

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