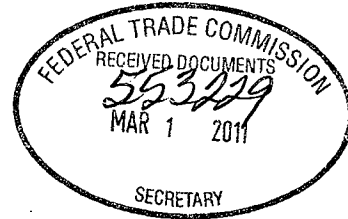


ORIGINAL



1 NIAL P. McCARTHY (#160175)
nmccarthy@cpmlegal.com
2 JUSTIN T. BERGER (#250346)
jberger@cpmlegal.com
3 **COTCHETT, PITRE & McCARTHY,**
LLP
4 San Francisco Airport Office Center
840 Malcolm Road, Suite 200
5 Burlingame, CA 94010
Tel:(650) 697-6000
6 Fax: (650) 692-3606

7 *Attorneys for Third-Party Hunter Laboratories*

8
9 **UNITED STATES OF AMERICA**
10 **FEDERAL TRADE COMMISSION**

11 **In the Matter of Laboratory Corporation**
12 **of America and Laboratory Corporation**
13 **of America Holdings**

Docket No. 9345

(PUBLIC)

**THIRD PARTY HUNTER
LABORATORIES, LLC
RESPONSES TO
RESPONDENTS LABORATORY
CORPORATION OF AMERICA
AND LABORATORY
CORPORATION OF AMERICA
HOLDINGS' SUBPOENA
DUCES TECUM**

1 **PROPOUNDING PARTY: LABORATORY CORPORATION OF AMERICA AND**
2 **LABORATORY CORPORATION OF AMERICA**
3 **HOLDINGS**

4 **RESPONDING PARTY: THIRD PARTY HUNTER LABORATORIES, LLC**

5 **THIRD PARTY HUNTER LABORATORIES PRELIMINARY STATEMENT**

6 Third Party Hunter Laboratories (“Hunter Labs”) has filed a motion to quash the
7 January 27, 2011 subpoena issued by Laboratory Corporation of America and Laboratory
8 Corporation of America Holdings (collectively, “LabCorp”), which was served on Hunter
9 Labs on February 1, 2011. As of this date, the motion to quash has not been ruled upon.
10 It is Hunter Labs’ position that the filing of the motion to quash automatically stays
11 production in response to the subpoena, until such time as the motion to quash is ruled
12 upon. Commission Rule 3.34, however, is silent on that issue. Accordingly, to ensure
13 that its objections are preserved, Hunter Labs submits the following objections to the
14 subpoena, but in doing so, in no way moots, waives, or withdraws its motion to quash.

15 **RESPONSES TO DOCUMENT REQUESTS**

16 **RESPONSE TO REQUEST NO. 1**

17 Third Party Hunter Laboratories objects to this request on the grounds that it
18 violates a discovery ruling in a civil action pending in the State of California.
19 Specifically, this request seeks information LabCorp was denied access to by the Special
20 Master’s September 23, 2010 ruling in the California action. Even assuming the
21 requested information is relevant to its defense of the FTC action, however, there are
22 dozens of laboratories – of similar size to Hunter Labs – in California, from which
23 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
24 Labs’ information is marginal, at best. This *de minimus* probative value is outweighed by
25 the burden, risk of harassment, and waste of time such discovery would cause.

26 Given the prior ruling in the California action, and the risk that LabCorp’s
27 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
28 may otherwise interfere with orderly litigation of the California action, LabCorp should

1 be required to establish that it cannot obtain sufficient relevant information from the
2 dozens of other laboratories in California, prior to obtaining any of the requested
3 information from Hunter Labs.

4 Hunter Labs further objects to this request on the grounds that it is unreasonably
5 cumulative and duplicative, is obtainable from some other source that is more convenient,
6 less burdensome, or less expensive, and that the burden and expense of the proposed
7 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
8 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
9 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
10 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
11 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
12 unquestionably outweighs the *de minimus* likely benefit.

13 Hunter Labs further objects to this request on the grounds that it seeks documents
14 protected by the attorney client privilege, the attorney work product doctrine, the common
15 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
16 request on the grounds that it seeks documents in the possession, custody, or control of, or
17 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
18 request to the extent that it seeks information the production of which may violate a seal
19 (including, but not limited to, the seal of all prior versions of the complaint in this action),
20 order, or requirement imposed by a court, statute, or other law, or may violate a
21 confidentiality agreement with a natural person or an entity other than the propounding
22 parties. Hunter Labs further objects to this request on the grounds that it is vague and
23 ambiguous, and that it seeks protected trade secrets.

24 **RESPONSE TO REQUEST NO. 2**

25 Third Party Hunter Laboratories objects to this request on the grounds that it
26 violates a discovery ruling in a civil action pending in the State of California.
27 Specifically, this request seeks information LabCorp was denied access to by the Special
28 Master's September 23, 2010 ruling in the California action. Even assuming the

1 requested information is relevant to its defense of the FTC action, however, there are
2 dozens of laboratories – of similar size to Hunter Labs – in California, from which
3 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
4 Labs’ information is marginal, at best. This *de minimus* probative value is outweighed by
5 the burden, risk of harassment, and waste of time such discovery would cause.

6 Given the prior ruling in the California action, and the risk that LabCorp’s
7 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
8 may otherwise interfere with orderly litigation of the California action, LabCorp should
9 be required to establish that it cannot obtain sufficient relevant information from the
10 dozens of other laboratories in California, prior to obtaining any of the requested
11 information from Hunter Labs.

12 Hunter Labs further objects to this request on the grounds that it is unreasonably
13 cumulative and duplicative, is obtainable from some other source that is more convenient,
14 less burdensome, or less expensive, and that the burden and expense of the proposed
15 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
16 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
17 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
18 Accordingly, Hunter Labs’ business practices would shed no light on the issues pertinent
19 to the FTC action. The heavy burden and expense of LabCorp’s subpoena thus
20 unquestionably outweighs the *de minimus* likely benefit.

21 Hunter Labs further objects to this request on the grounds that it seeks documents
22 protected by the attorney client privilege, the attorney work product doctrine, the common
23 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
24 request on the grounds that it seeks documents in the possession, custody, or control of, or
25 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
26 request to the extent that it seeks information the production of which may violate a seal
27 (including, but not limited to, the seal of all prior versions of the complaint in this action),
28 order, or requirement imposed by a court, statute, or other law, or may violate a

1 confidentiality agreement with a natural person or an entity other than the propounding
2 parties. Hunter Labs further objects to this request on the grounds that it is vague and
3 ambiguous, and that it seeks protected trade secrets.

4 **RESPONSE TO REQUEST NO. 3**

5 Third Party Hunter Laboratories objects to this request on the grounds that it
6 violates a discovery ruling in a civil action pending in the State of California.
7 Specifically, this request seeks information LabCorp was denied access to by the Special
8 Master's September 23, 2010 ruling in the California action. Even assuming the
9 requested information is relevant to its defense of the FTC action, however, there are
10 dozens of laboratories – of similar size to Hunter Labs – in California, from which
11 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
12 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
13 the burden, risk of harassment, and waste of time such discovery would cause.

14 Given the prior ruling in the California action, and the risk that LabCorp's
15 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
16 may otherwise interfere with orderly litigation of the California action, LabCorp should
17 be required to establish that it cannot obtain sufficient relevant information from the
18 dozens of other laboratories in California, prior to obtaining any of the requested
19 information from Hunter Labs.

20 Hunter Labs further objects to this request on the grounds that it is unreasonably
21 cumulative and duplicative, is obtainable from some other source that is more convenient,
22 less burdensome, or less expensive, and that the burden and expense of the proposed
23 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
24 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
25 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
26 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
27 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
28 unquestionably outweighs the *de minimus* likely benefit.

1 Hunter Labs further objects to this request on the grounds that it seeks documents
2 protected by the attorney client privilege, the attorney work product doctrine, the common
3 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
4 request on the grounds that it seeks documents in the possession, custody, or control of, or
5 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
6 request to the extent that it seeks information the production of which may violate a seal
7 (including, but not limited to, the seal of all prior versions of the complaint in this action),
8 order, or requirement imposed by a court, statute, or other law, or may violate a
9 confidentiality agreement with a natural person or an entity other than the propounding
10 parties. Hunter Labs further objects to this request on the grounds that it is vague and
11 ambiguous, and that it seeks protected trade secrets.

12 **RESPONSE TO REQUEST NO. 4**

13 Third Party Hunter Laboratories objects to this request on the grounds that it
14 violates a discovery ruling in a civil action pending in the State of California.
15 Specifically, this request seeks information LabCorp was denied access to by the Special
16 Master's September 23, 2010 ruling in the California action. Even assuming the
17 requested information is relevant to its defense of the FTC action, however, there are
18 dozens of laboratories – of similar size to Hunter Labs – in California, from which
19 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
20 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
21 the burden, risk of harassment, and waste of time such discovery would cause.

22 Given the prior ruling in the California action, and the risk that LabCorp's
23 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
24 may otherwise interfere with orderly litigation of the California action, LabCorp should
25 be required to establish that it cannot obtain sufficient relevant information from the
26 dozens of other laboratories in California, prior to obtaining any of the requested
27 information from Hunter Labs.

1 Hunter Labs further objects to this request on the grounds that it is unreasonably
2 cumulative and duplicative, is obtainable from some other source that is more convenient,
3 less burdensome, or less expensive, and that the burden and expense of the proposed
4 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
5 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
6 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
7 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
8 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
9 unquestionably outweighs the *de minimus* likely benefit.

10 Hunter Labs further objects to this request on the grounds that it seeks documents
11 protected by the attorney client privilege, the attorney work product doctrine, the common
12 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
13 request on the grounds that it seeks documents in the possession, custody, or control of, or
14 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
15 request to the extent that it seeks information the production of which may violate a seal
16 (including, but not limited to, the seal of all prior versions of the complaint in this action),
17 order, or requirement imposed by a court, statute, or other law, or may violate a
18 confidentiality agreement with a natural person or an entity other than the propounding
19 parties. Hunter Labs further objects to this request on the grounds that it is vague and
20 ambiguous, and that it seeks protected trade secrets.

21 **RESPONSE TO REQUEST NO. 5**

22 Third Party Hunter Laboratories objects to this request on the grounds that it
23 violates a discovery ruling in a civil action pending in the State of California.
24 Specifically, this request seeks information LabCorp was denied access to by the Special
25 Master's September 23, 2010 ruling in the California action. Even assuming the
26 requested information is relevant to its defense of the FTC action, however, there are
27 dozens of laboratories – of similar size to Hunter Labs – in California, from which
28 LabCorp could obtain the same information. Accordingly, the probative value of Hunter

1 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
2 the burden, risk of harassment, and waste of time such discovery would cause.

3 Given the prior ruling in the California action, and the risk that LabCorp's
4 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
5 may otherwise interfere with orderly litigation of the California action, LabCorp should
6 be required to establish that it cannot obtain sufficient relevant information from the
7 dozens of other laboratories in California, prior to obtaining any of the requested
8 information from Hunter Labs.

9 Hunter Labs further objects to this request on the grounds that it is unreasonably
10 cumulative and duplicative, is obtainable from some other source that is more convenient,
11 less burdensome, or less expensive, and that the burden and expense of the proposed
12 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
13 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
14 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
15 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
16 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
17 unquestionably outweighs the *de minimus* likely benefit.

18 Hunter Labs further objects to this request on the grounds that it seeks documents
19 protected by the attorney client privilege, the attorney work product doctrine, the common
20 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
21 request on the grounds that it seeks documents in the possession, custody, or control of, or
22 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
23 request to the extent that it seeks information the production of which may violate a seal
24 (including, but not limited to, the seal of all prior versions of the complaint in this action),
25 order, or requirement imposed by a court, statute, or other law, or may violate a
26 confidentiality agreement with a natural person or an entity other than the propounding
27 parties. Hunter Labs further objects to this request on the grounds that it is vague and
28 ambiguous, and that it seeks protected trade secrets.

1 **RESPONSE TO REQUEST NO. 6**

2 Third Party Hunter Laboratories objects to this request on the grounds that it
3 violates a discovery ruling in a civil action pending in the State of California.
4 Specifically, this request seeks information LabCorp was denied access to by the Special
5 Master's September 23, 2010 ruling in the California action. Even assuming the
6 requested information is relevant to its defense of the FTC action, however, there are
7 dozens of laboratories – of similar size to Hunter Labs – in California, from which
8 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
9 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
10 the burden, risk of harassment, and waste of time such discovery would cause.

11 Given the prior ruling in the California action, and the risk that LabCorp's
12 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
13 may otherwise interfere with orderly litigation of the California action, LabCorp should
14 be required to establish that it cannot obtain sufficient relevant information from the
15 dozens of other laboratories in California, prior to obtaining any of the requested
16 information from Hunter Labs.

17 Hunter Labs further objects to this request on the grounds that it is unreasonably
18 cumulative and duplicative, is obtainable from some other source that is more convenient,
19 less burdensome, or less expensive, and that the burden and expense of the proposed
20 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
21 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
22 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
23 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
24 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
25 unquestionably outweighs the *de minimus* likely benefit.

26 Hunter Labs further objects to this request on the grounds that it seeks documents
27 protected by the attorney client privilege, the attorney work product doctrine, the common
28 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this

1 request on the grounds that it seeks documents in the possession, custody, or control of, or
2 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
3 request to the extent that it seeks information the production of which may violate a seal
4 (including, but not limited to, the seal of all prior versions of the complaint in this action),
5 order, or requirement imposed by a court, statute, or other law, or may violate a
6 confidentiality agreement with a natural person or an entity other than the propounding
7 parties. Hunter Labs further objects to this request on the grounds that it is vague and
8 ambiguous, and that it seeks protected trade secrets.

9 **RESPONSE TO REQUEST NO. 7**

10 Third Party Hunter Laboratories objects to this request on the grounds that it
11 violates a discovery ruling in a civil action pending in the State of California.
12 Specifically, this request seeks information LabCorp was denied access to by the Special
13 Master's September 23, 2010 ruling in the California action. Even assuming the
14 requested information is relevant to its defense of the FTC action, however, there are
15 dozens of laboratories – of similar size to Hunter Labs – in California, from which
16 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
17 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
18 the burden, risk of harassment, and waste of time such discovery would cause.

19 Given the prior ruling in the California action, and the risk that LabCorp's
20 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
21 may otherwise interfere with orderly litigation of the California action, LabCorp should
22 be required to establish that it cannot obtain sufficient relevant information from the
23 dozens of other laboratories in California, prior to obtaining any of the requested
24 information from Hunter Labs.

25 Hunter Labs further objects to this request on the grounds that it is unreasonably
26 cumulative and duplicative, is obtainable from some other source that is more convenient,
27 less burdensome, or less expensive, and that the burden and expense of the proposed
28 discovery outweigh its likely benefit. Moreover, the requests are not reasonably

1 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
2 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
3 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
4 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
5 unquestionably outweighs the *de minimus* likely benefit.

6 Hunter Labs further objects to this request on the grounds that it seeks documents
7 protected by the attorney client privilege, the attorney work product doctrine, the common
8 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
9 request on the grounds that it seeks documents in the possession, custody, or control of, or
10 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
11 request to the extent that it seeks information the production of which may violate a seal
12 (including, but not limited to, the seal of all prior versions of the complaint in this action),
13 order, or requirement imposed by a court, statute, or other law, or may violate a
14 confidentiality agreement with a natural person or an entity other than the propounding
15 parties. Hunter Labs further objects to this request on the grounds that it is vague and
16 ambiguous, and that it seeks protected trade secrets.

17 **RESPONSE TO REQUEST NO. 8**

18 Third Party Hunter Laboratories objects to this request on the grounds that it
19 violates a discovery ruling in a civil action pending in the State of California.
20 Specifically, this request seeks information LabCorp was denied access to by the Special
21 Master's September 23, 2010 ruling in the California action. Even assuming the
22 requested information is relevant to its defense of the FTC action, however, there are
23 dozens of laboratories – of similar size to Hunter Labs – in California, from which
24 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
25 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
26 the burden, risk of harassment, and waste of time such discovery would cause.

27 Given the prior ruling in the California action, and the risk that LabCorp's
28 subpoena is designed simply to punish Hunter Labs for bringing the California action, or

1 may otherwise interfere with orderly litigation of the California action, LabCorp should
2 be required to establish that it cannot obtain sufficient relevant information from the
3 dozens of other laboratories in California, prior to obtaining any of the requested
4 information from Hunter Labs.

5 Hunter Labs further objects to this request on the grounds that it is unreasonably
6 cumulative and duplicative, is obtainable from some other source that is more convenient,
7 less burdensome, or less expensive, and that the burden and expense of the proposed
8 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
9 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
10 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
11 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
12 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
13 unquestionably outweighs the *de minimus* likely benefit.

14 Hunter Labs further objects to this request on the grounds that it seeks documents
15 protected by the attorney client privilege, the attorney work product doctrine, the common
16 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
17 request on the grounds that it seeks documents in the possession, custody, or control of, or
18 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
19 request to the extent that it seeks information the production of which may violate a seal
20 (including, but not limited to, the seal of all prior versions of the complaint in this action),
21 order, or requirement imposed by a court, statute, or other law, or may violate a
22 confidentiality agreement with a natural person or an entity other than the propounding
23 parties. Hunter Labs further objects to this request on the grounds that it is vague and
24 ambiguous, and that it seeks protected trade secrets.

25 **RESPONSE TO REQUEST NO. 9**

26 Third Party Hunter Laboratories objects to this request on the grounds that it
27 violates a discovery ruling in a civil action pending in the State of California.
28 Specifically, this request seeks information LabCorp was denied access to by the Special

1 Master's September 23, 2010 ruling in the California action. Even assuming the
2 requested information is relevant to its defense of the FTC action, however, there are
3 dozens of laboratories – of similar size to Hunter Labs – in California, from which
4 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
5 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
6 the burden, risk of harassment, and waste of time such discovery would cause.

7 Given the prior ruling in the California action, and the risk that LabCorp's
8 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
9 may otherwise interfere with orderly litigation of the California action, LabCorp should
10 be required to establish that it cannot obtain sufficient relevant information from the
11 dozens of other laboratories in California, prior to obtaining any of the requested
12 information from Hunter Labs.

13 Hunter Labs further objects to this request on the grounds that it is unreasonably
14 cumulative and duplicative, is obtainable from some other source that is more convenient,
15 less burdensome, or less expensive, and that the burden and expense of the proposed
16 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
17 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
18 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
19 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
20 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
21 unquestionably outweighs the *de minimus* likely benefit.

22 Hunter Labs further objects to this request on the grounds that it seeks documents
23 protected by the attorney client privilege, the attorney work product doctrine, the common
24 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
25 request on the grounds that it seeks documents in the possession, custody, or control of, or
26 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
27 request to the extent that it seeks information the production of which may violate a seal
28 (including, but not limited to, the seal of all prior versions of the complaint in this action),

1 order, or requirement imposed by a court, statute, or other law, or may violate a
2 confidentiality agreement with a natural person or an entity other than the propounding
3 parties. Hunter Labs further objects to this request on the grounds that it is vague and
4 ambiguous, and that it seeks protected trade secrets.

5 **RESPONSE TO REQUEST NO. 10**

6 Third Party Hunter Laboratories objects to this request on the grounds that it
7 violates a discovery ruling in a civil action pending in the State of California.
8 Specifically, this request seeks information LabCorp was denied access to by the Special
9 Master's September 23, 2010 ruling in the California action. Even assuming the
10 requested information is relevant to its defense of the FTC action, however, there are
11 dozens of laboratories – of similar size to Hunter Labs – in California, from which
12 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
13 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
14 the burden, risk of harassment, and waste of time such discovery would cause.

15 Given the prior ruling in the California action, and the risk that LabCorp's
16 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
17 may otherwise interfere with orderly litigation of the California action, LabCorp should
18 be required to establish that it cannot obtain sufficient relevant information from the
19 dozens of other laboratories in California, prior to obtaining any of the requested
20 information from Hunter Labs.

21 Hunter Labs further objects to this request on the grounds that it is unreasonably
22 cumulative and duplicative, is obtainable from some other source that is more convenient,
23 less burdensome, or less expensive, and that the burden and expense of the proposed
24 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
25 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
26 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
27 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent

28

1 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
2 unquestionably outweighs the *de minimus* likely benefit.

3 Hunter Labs further objects to this request on the grounds that it seeks documents
4 protected by the attorney client privilege, the attorney work product doctrine, the common
5 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
6 request on the grounds that it seeks documents in the possession, custody, or control of, or
7 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
8 request to the extent that it seeks information the production of which may violate a seal
9 (including, but not limited to, the seal of all prior versions of the complaint in this action),
10 order, or requirement imposed by a court, statute, or other law, or may violate a
11 confidentiality agreement with a natural person or an entity other than the propounding
12 parties. Hunter Labs further objects to this request on the grounds that it is vague and
13 ambiguous, and that it seeks protected trade secrets.

14 **RESPONSE TO REQUEST NO. 11**

15 Third Party Hunter Laboratories objects to this request on the grounds that it
16 violates a discovery ruling in a civil action pending in the State of California.
17 Specifically, this request seeks information LabCorp was denied access to by the Special
18 Master's September 23, 2010 ruling in the California action. Even assuming the
19 requested information is relevant to its defense of the FTC action, however, there are
20 dozens of laboratories – of similar size to Hunter Labs – in California, from which
21 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
22 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
23 the burden, risk of harassment, and waste of time such discovery would cause.

24 Given the prior ruling in the California action, and the risk that LabCorp's
25 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
26 may otherwise interfere with orderly litigation of the California action, LabCorp should
27 be required to establish that it cannot obtain sufficient relevant information from the
28

1 dozens of other laboratories in California, prior to obtaining any of the requested
2 information from Hunter Labs.

3 Hunter Labs further objects to this request on the grounds that it is unreasonably
4 cumulative and duplicative, is obtainable from some other source that is more convenient,
5 less burdensome, or less expensive, and that the burden and expense of the proposed
6 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
7 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
8 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
9 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
10 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
11 unquestionably outweighs the *de minimus* likely benefit.

12 Hunter Labs further objects to this request on the grounds that it seeks documents
13 protected by the attorney client privilege, the attorney work product doctrine, the common
14 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
15 request on the grounds that it seeks documents in the possession, custody, or control of, or
16 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
17 request to the extent that it seeks information the production of which may violate a seal
18 (including, but not limited to, the seal of all prior versions of the complaint in this action),
19 order, or requirement imposed by a court, statute, or other law, or may violate a
20 confidentiality agreement with a natural person or an entity other than the propounding
21 parties. Hunter Labs further objects to this request on the grounds that it is vague and
22 ambiguous, and that it seeks protected trade secrets.

23 **RESPONSE TO REQUEST NO. 12**

24 Third Party Hunter Laboratories objects to this request on the grounds that it
25 violates a discovery ruling in a civil action pending in the State of California.
26 Specifically, this request seeks information LabCorp was denied access to by the Special
27 Master's September 23, 2010 ruling in the California action. Even assuming the
28 requested information is relevant to its defense of the FTC action, however, there are

1 dozens of laboratories – of similar size to Hunter Labs – in California, from which
2 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
3 Labs’ information is marginal, at best. This *de minimus* probative value is outweighed by
4 the burden, risk of harassment, and waste of time such discovery would cause.

5 Given the prior ruling in the California action, and the risk that LabCorp’s
6 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
7 may otherwise interfere with orderly litigation of the California action, LabCorp should
8 be required to establish that it cannot obtain sufficient relevant information from the
9 dozens of other laboratories in California, prior to obtaining any of the requested
10 information from Hunter Labs.

11 Hunter Labs further objects to this request on the grounds that it is unreasonably
12 cumulative and duplicative, is obtainable from some other source that is more convenient,
13 less burdensome, or less expensive, and that the burden and expense of the proposed
14 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
15 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
16 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
17 Accordingly, Hunter Labs’ business practices would shed no light on the issues pertinent
18 to the FTC action. The heavy burden and expense of LabCorp’s subpoena thus
19 unquestionably outweighs the *de minimus* likely benefit.

20 Hunter Labs further objects to this request on the grounds that it seeks documents
21 protected by the attorney client privilege, the attorney work product doctrine, the common
22 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
23 request on the grounds that it seeks documents in the possession, custody, or control of, or
24 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
25 request to the extent that it seeks information the production of which may violate a seal
26 (including, but not limited to, the seal of all prior versions of the complaint in this action),
27 order, or requirement imposed by a court, statute, or other law, or may violate a
28 confidentiality agreement with a natural person or an entity other than the propounding

1 parties. Hunter Labs further objects to this request on the grounds that it is vague and
2 ambiguous, and that it seeks protected trade secrets.

3 **RESPONSE TO REQUEST NO. 13**

4 Third Party Hunter Laboratories objects to this request on the grounds that it
5 violates a discovery ruling in a civil action pending in the State of California.
6 Specifically, this request seeks information LabCorp was denied access to by the Special
7 Master's September 23, 2010 ruling in the California action. Even assuming the
8 requested information is relevant to its defense of the FTC action, however, there are
9 dozens of laboratories – of similar size to Hunter Labs – in California, from which
10 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
11 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
12 the burden, risk of harassment, and waste of time such discovery would cause.

13 Given the prior ruling in the California action, and the risk that LabCorp's
14 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
15 may otherwise interfere with orderly litigation of the California action, LabCorp should
16 be required to establish that it cannot obtain sufficient relevant information from the
17 dozens of other laboratories in California, prior to obtaining any of the requested
18 information from Hunter Labs.

19 Hunter Labs further objects to this request on the grounds that it is unreasonably
20 cumulative and duplicative, is obtainable from some other source that is more convenient,
21 less burdensome, or less expensive, and that the burden and expense of the proposed
22 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
23 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
24 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
25 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
26 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
27 unquestionably outweighs the *de minimus* likely benefit.

1 Hunter Labs further objects to this request on the grounds that it seeks documents
2 protected by the attorney client privilege, the attorney work product doctrine, the common
3 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
4 request on the grounds that it seeks documents in the possession, custody, or control of, or
5 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
6 request to the extent that it seeks information the production of which may violate a seal
7 (including, but not limited to, the seal of all prior versions of the complaint in this action),
8 order, or requirement imposed by a court, statute, or other law, or may violate a
9 confidentiality agreement with a natural person or an entity other than the propounding
10 parties. Hunter Labs further objects to this request on the grounds that it is vague and
11 ambiguous, and that it seeks protected trade secrets.

12 **RESPONSE TO REQUEST NO. 14**

13 Third Party Hunter Laboratories objects to this request on the grounds that it
14 violates a discovery ruling in a civil action pending in the State of California.
15 Specifically, this request seeks information LabCorp was denied access to by the Special
16 Master's September 23, 2010 ruling in the California action. Even assuming the
17 requested information is relevant to its defense of the FTC action, however, there are
18 dozens of laboratories – of similar size to Hunter Labs – in California, from which
19 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
20 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
21 the burden, risk of harassment, and waste of time such discovery would cause.

22 Given the prior ruling in the California action, and the risk that LabCorp's
23 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
24 may otherwise interfere with orderly litigation of the California action, LabCorp should
25 be required to establish that it cannot obtain sufficient relevant information from the
26 dozens of other laboratories in California, prior to obtaining any of the requested
27 information from Hunter Labs.

1 Hunter Labs further objects to this request on the grounds that it is unreasonably
2 cumulative and duplicative, is obtainable from some other source that is more convenient,
3 less burdensome, or less expensive, and that the burden and expense of the proposed
4 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
5 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
6 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
7 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
8 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
9 unquestionably outweighs the *de minimus* likely benefit.

10 Hunter Labs further objects to this request on the grounds that it seeks documents
11 protected by the attorney client privilege, the attorney work product doctrine, the common
12 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
13 request on the grounds that it seeks documents in the possession, custody, or control of, or
14 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
15 request to the extent that it seeks information the production of which may violate a seal
16 (including, but not limited to, the seal of all prior versions of the complaint in this action),
17 order, or requirement imposed by a court, statute, or other law, or may violate a
18 confidentiality agreement with a natural person or an entity other than the propounding
19 parties. Hunter Labs further objects to this request on the grounds that it is vague and
20 ambiguous, and that it seeks protected trade secrets.

21 **RESPONSE TO REQUEST NO. 15**

22 Third Party Hunter Laboratories objects to this request on the grounds that it
23 violates a discovery ruling in a civil action pending in the State of California.
24 Specifically, this request seeks information LabCorp was denied access to by the Special
25 Master's September 23, 2010 ruling in the California action. Even assuming the
26 requested information is relevant to its defense of the FTC action, however, there are
27 dozens of laboratories – of similar size to Hunter Labs – in California, from which
28 LabCorp could obtain the same information. Accordingly, the probative value of Hunter

1 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
2 the burden, risk of harassment, and waste of time such discovery would cause.

3 Given the prior ruling in the California action, and the risk that LabCorp's
4 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
5 may otherwise interfere with orderly litigation of the California action, LabCorp should
6 be required to establish that it cannot obtain sufficient relevant information from the
7 dozens of other laboratories in California, prior to obtaining any of the requested
8 information from Hunter Labs.

9 Hunter Labs further objects to this request on the grounds that it is unreasonably
10 cumulative and duplicative, is obtainable from some other source that is more convenient,
11 less burdensome, or less expensive, and that the burden and expense of the proposed
12 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
13 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
14 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
15 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
16 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
17 unquestionably outweighs the *de minimus* likely benefit.

18 Hunter Labs further objects to this request on the grounds that it seeks documents
19 protected by the attorney client privilege, the attorney work product doctrine, the common
20 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this
21 request on the grounds that it seeks documents in the possession, custody, or control of, or
22 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
23 request to the extent that it seeks information the production of which may violate a seal
24 (including, but not limited to, the seal of all prior versions of the complaint in this action),
25 order, or requirement imposed by a court, statute, or other law, or may violate a
26 confidentiality agreement with a natural person or an entity other than the propounding
27 parties. Hunter Labs further objects to this request on the grounds that it is vague and
28 ambiguous, and that it seeks protected trade secrets.

1 **RESPONSE TO REQUEST NO. 16**

2 Third Party Hunter Laboratories objects to this request on the grounds that it
3 violates a discovery ruling in a civil action pending in the State of California.
4 Specifically, this request seeks information LabCorp was denied access to by the Special
5 Master's September 23, 2010 ruling in the California action. Even assuming the
6 requested information is relevant to its defense of the FTC action, however, there are
7 dozens of laboratories – of similar size to Hunter Labs – in California, from which
8 LabCorp could obtain the same information. Accordingly, the probative value of Hunter
9 Labs' information is marginal, at best. This *de minimus* probative value is outweighed by
10 the burden, risk of harassment, and waste of time such discovery would cause.

11 Given the prior ruling in the California action, and the risk that LabCorp's
12 subpoena is designed simply to punish Hunter Labs for bringing the California action, or
13 may otherwise interfere with orderly litigation of the California action, LabCorp should
14 be required to establish that it cannot obtain sufficient relevant information from the
15 dozens of other laboratories in California, prior to obtaining any of the requested
16 information from Hunter Labs.

17 Hunter Labs further objects to this request on the grounds that it is unreasonably
18 cumulative and duplicative, is obtainable from some other source that is more convenient,
19 less burdensome, or less expensive, and that the burden and expense of the proposed
20 discovery outweigh its likely benefit. Moreover, the requests are not reasonably
21 calculated to lead to the discovery of admissible and relevant evidence. Significantly,
22 Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts.
23 Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent
24 to the FTC action. The heavy burden and expense of LabCorp's subpoena thus
25 unquestionably outweighs the *de minimus* likely benefit.

26 Hunter Labs further objects to this request on the grounds that it seeks documents
27 protected by the attorney client privilege, the attorney work product doctrine, the common
28 interest doctrine, and the joint prosecution privilege. Hunter Labs further object to this

1 request on the grounds that it seeks documents in the possession, custody, or control of, or
2 otherwise equally accessible to, the requesting party. Hunter Labs further object to this
3 request to the extent that it seeks information the production of which may violate a seal
4 (including, but not limited to, the seal of all prior versions of the complaint in this action),
5 order, or requirement imposed by a court, statute, or other law, or may violate a
6 confidentiality agreement with a natural person or an entity other than the propounding
7 parties. Hunter Labs further objects to this request on the grounds that it is vague and
8 ambiguous, and that it seeks protected trade secrets.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: February 28, 2011

COTCHETT, PITRE & McCARTHY

By: Justin Meyer / by SDB

NIALL P. McCARTHY
JUSTIN T. BERGER
*Attorneys for Qui Tam Plaintiffs Hunter
Laboratories, LLC and Chris Riedel*

1 **PROOF OF SERVICE**

2 I am employed in the County of San Mateo; I am over the age of 18 years and not a party
3 to the within cause. My business address is the Law Offices of Cotchett, Pitre & McCarthy, San
4 Francisco Airport Office Center, 840 Malcolm Road, Suite 200, Burlingame, California, 94010.
5 On this day, I served the following document(s) in the manner described below:

6 **THIRD PARTY HUNTER LABORATORIES, LLC RESPONSES TO RESPONDENTS
7 LABORATORY CORPORATION OF AMERICA AND LABORATORY
8 CORPORATION OF AMERICA HOLDINGS SUBPOENA DUCES TECUM**

9 **X** **VIA FIRST CLASS MAIL:** I am readily familiar with this firm's practice for collection
10 and processing of correspondence for mailing. Following that practice, I placed a true
11 copy of the aforementioned document(s) in a sealed envelope, addressed to each
12 addressee, respectively, as specified below. The envelope was placed in the mail at my
13 business address, with postage thereon fully prepaid, for deposit with the United States
14 Postal Service on that same day in the ordinary course of business.

15 Claude Vanderwold, Supervising Deputy
16 Attorney General
17 Vincent DiCarlo, Deputy Attorney General
18 Brian Keats, Deputy Attorney General
19 Alissa Gire, Deputy Attorney General
20 **California Department of Justice**
21 Bureau of Medi-Cal Fraud & Elder Abuse
22 1425 River Park Drive, Suite 300
23 Sacramento, CA 95815
24 Tel: (916) 274-2909
25 Fax: (916) 274-2929
26 Claude.Vanderwold@doj.ca.gov
27 Vincent.DiCarlo@doj.ca.gov
28 Brian.Keats@doj.ca.gov
Jennifer.Gregory@doj.ca.gov

Attorneys for Plaintiff:
The State of California

19 Martha Boersch
20 Lara Kollios
21 **Jones Day**
22 555 California Street, 26th Floor
23 San Francisco, CA 94104
24 Tel: (415) 626-3939
25 Fax: (415) 875-5700
26 mboersch@jonesday.com
27 lkollios@jonesday.com

Attorneys for Defendants:
Laboratory Corporation (including Laboratory
Corporation of America, A Delaware Corp.,
and Laboratory Corporation of America
Holdings)

24 Shawn Hanson
25 **Akin Gump Strauss Hauer & Feld LLP**
26 580 California Street, 15th Floor
27 San Francisco, CA 94104
28 (415) 765-9500
(415) 765-9501
shanson@akingump.com

Attorneys for Defendants:
Laboratory Corporation (including Laboratory
Corporation of America, A Delaware Corp.,
and Laboratory Corporation of America
Holdings)

1 **VIA FACSIMILE:** I am readily familiar with this firm's practice for causing documents to
2 be served by facsimile. Following that practice, I caused the aforementioned document(s)
to be transmitted to the telephone number(s) of the addressee(s) specified below.

3 **X** **VIA OVERNIGHT COURIER SERVICE:** I am readily familiar with this firm's
4 practice for causing documents to be served by overnight courier. Following that
5 practice, I caused the sealed envelope containing the aforementioned document(s) to be
delivered via overnight courier service to the addressee(s) specified below.

6 Office of the Secretary
7 **Federal Trade Commission**
8 Room H-135
9 600 Pennsylvania Avenue, NW
10 Washington, D.C. 20580

Federal Trade Commission
Office of the Secretary

11 Donald S. Clark
12 Secretary
13 **Federal Trade Commission**
14 Room H-159
15 600 Pennsylvania Avenue, NW
16 Washington, D.C. 20580
17 secretary@ftc.gov

Federal Trade Commission
Office of the Secretary

18 The Honorable D. Michael Chappell
19 Administrative Law Judge
20 **Federal Trade Commission**
21 Room H-113
22 600 Pennsylvania Avenue, NW
23 Washington, D.C. 20580
24 oalj@ftc.gov

Federal Trade Commission
Administrative Law Judge

25 Lisa D. DeMarchi Sleight
26 **Federal Trade Commission**
27 Bureau of Competition - Mergers I
28 600 Pennsylvania Avenue, N.W.
Washington, DC 20580
Tel: (202) 326-2535
ldemarchisleigh@ftc.gov

Federal Trade Commission
Bureau of Competition -
Mergers I

J. Robert Robertson
Corey Roush
Benjamin Holt
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004

Attorneys for Respondents:
Laboratory Corporation
(including Laboratory
Corporation of America, A
Delaware Corp., and Laboratory
Corporation of America
Holdings)

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

_____ **VIA HAND DELIVERY:** I am readily familiar with this firm's practice for causing documents to be served by hand delivery. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

_____ **VIA E-MAIL:** My e-mail address is etownsend@cpmlegal.com. I am readily familiar with this firm's practice for causing documents to be served by e-mail. Following that practice, I caused the aforementioned document(s) to be emailed to the addressee(s) specified below.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on February 28, 2011.



EMANUEL TOWNSEND