

ORIGINAL

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**



In the Matter of

**LABORATORY CORPORATION OF
AMERICA**

and

**LABORATORY CORPORATION OF
AMERICA HOLDINGS,**

corporations.

Docket No. 9345

PUBLIC REDACTED VERSION

**COMPLAINT COUNSEL'S SUPPLEMENTAL OPPOSITION
TO RESPONDENTS' MOTION TO COMPEL DOCUMENT PRODUCTION**

Complaint Counsel submits this supplemental opposition to Respondents' Motion to Compel ("Mot."), along with the Supplemental Declaration of Richard Feinstein (attached hereto as Exhibit 1) and a Revised Privilege Log (attached hereto as Exhibit 2), in compliance with this Court's Order of February 24, 2011.

Complaint Counsel has conducted a further review of the documents that Respondents seek in their motion, including a personal review by Mr. Feinstein of the subset of those documents subject to the deliberative process privilege (*see* Exh. 1). In accordance with those reviews, Complaint Counsel has revised its privilege log to provide more detailed specifications, and the basis for claiming the relevant privilege, for each of those documents. Complaint Counsel maintains its position that all of the documents sought by Respondents are privileged,¹

¹ In an effort to speed the resolution of the Motion, and after reviewing each relevant document, Mr. Feinstein decided to withdraw his prior assertions of deliberative process privilege over a portion of the withheld documents, although those documents remain subject to the attorney work product privilege. The Supplemental Declaration and the Revised Privilege Log discuss the subset of documents for which that privilege remains applicable.

and that Respondents have offered neither a valid basis to deny Complaint Counsel those privileges, nor the necessary showing of substantial need to overcome them. The Motion should, therefore, be denied.

ARGUMENT

I. The Work Product Privilege Applies to Each of the Withheld Documents

A. Documents Relating to CAAG

As detailed in the Commission's Opposition, Commission staff and the office of the Attorney General of California ("CAAG") coordinated their investigations of the acquisition at issue here, and any communications between them were for the purpose of conducting those investigations, which culminated in this litigation and may or may not result in other litigation brought by CAAG. *See* Feinstein Decl. ¶22. As shown in the Revised Privilege Log's "Description" and "Basis of Claim" columns, the withheld documents concerning communications with CAAG, including any documents shared with CAAG, reflect notes, impressions, or analyses prepared in anticipation of, or in preparation for, the instant litigation (or the related preliminary injunction proceeding in federal court, and potential litigation by CAAG). These documents, thus, represent Complaint Counsel's work product, and accordingly are privileged.

Respondents argue that the privilege was nonetheless waived because CAAG's interests are "at odds" with the Commission. Mot. 7. But Respondents present no evidence to support this assertion beyond unfounded suppositions about the qui tam action brought by CAAG against them. As Ms. Nagler testified, CAAG's investigation is ongoing, so no decision on an enforcement action against Respondents has been made. Nagler Decl. ¶5. Furthermore, CAAG has no pending case whose fundamental goals are at odds with the Commission. *Id.* ¶6. The

CAAG's qui tam action to which Respondents allude does not contravene its investigation of this transaction. *See* Nagler Decl. ¶6; CC's Opp. to Mot. 4 n.2. That action alleges that Respondents are not offering Medi-Cal the lowest rate that they offer to other customers, as required by California law, and does not turn on whether those rates are too high or too low. Thus, it is hardly at odds with the instant action in which the transaction at issue is challenged, with the fundamental goal being to preserve market competition for clinical laboratory testing services.²

False suppositions also undermine Respondents' claimed need for the withheld documents.³ Respondents' only stated need for these documents is that they may contain exculpatory materials, based on the unfounded assumption that CAAG has declined to pursue an enforcement action over the acquisition at issue. Mot. 7-8. As discussed above, this is simply not the case. *See* Nagler Decl. ¶5. Furthermore, Respondents have failed to show that they could not just as easily retrieve the needed information from other sources, as required by 16 C.F.R. § 3.31(c)(5). Respondents have had ample opportunity to gather evidence from CAAG,

² The lone case cited by Respondents to support their waiver theory in fact supports Complaint Counsel's position. In *Ricoh Co. Ltd. v. Aeroflex, Inc.*, the court concluded that defendants waived their work product privilege over materials shared with a third party because the court found no evidence that defendants "could reasonably expect that information revealed [to the third party] would not be disclosed to their adversary." 219 F.R.D. 66, 70 (S.D.N.Y. 2003). Here, in contrast, CAAG (as well as the Interim Monitor and the Interim Manager) signed strict confidentiality letters agreeing not to disclose any information learned from the Commission. *See* Feinstein Decl. ¶¶17, 21.

³ The Commission's rules permit discovery of Complaint Counsel's confidential work product only if Respondents can demonstrate that they "ha[ve] substantial need of the materials in preparation of its case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." 16 C.F.R. § 3.31(c)(5); *see Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 134, *11 (Aug. 18, 2000) ("The well recognized rule of *Hickman v. Taylor* protects the work product of lawyers from discovery unless a substantial showing of necessity or justification is made").

and, in fact, attempted to subpoena Ms. Nagler for deposition in this matter, but failed to follow through with that effort.⁴

B. Documents Relating to the Interim Monitor and Interim Manager

The Hold Separate Agreement (“HSA”) established an Interim Monitor (Mr. Kane), and an Interim Manager (Mr. Shoemaker), to oversee the operations of the held separate entity and report to the Commission on issues relating to those operations. Feinstein Decl. ¶¶10-14. As shown in the Revised Privilege Log, the withheld documents concerning the Interim Monitor and Interim Manager all relate to the HSA and to Respondents’ compliance therewith. In preserving divestiture as a remedy, the HSA itself is an integral part of the Commission’s investigation, and indeed an integral part of these proceedings. The withheld documents concerning the Interim Monitor and Manager, thus, constitute attorney work product and, accordingly, are privileged.

Respondents claim no such privilege applies to those documents, because Mr. Kane and Mr. Shoemaker are independent of, and do not share a common interest with, the Commission, and thus disclosure of those documents to them effects a waiver of the work product privilege.⁵

That claim is unfounded. The HSA provides explicitly that Mr. Kane [REDACTED]

[REDACTED] Feinstein Decl. ¶14. Indeed, it requires Mr. Kane [REDACTED]

⁴ Respondents failed to follow the Commission’s proper procedures in issuing the subpoena to Ms. Nagler, but that is no reason to invade the Commission’s work product privilege.

⁵ Respondents’ counsel claim that they represent the Interim Manager. The claim is, at best, over-broad; while it is possible that Respondents’ counsel could represent the Interim Manager for some purposes, the claim that such representation covers all aspects of this controversy is not tenable. To the extent that claim is correct, moreover, it does not render the Interim Manager’s interests independent of, much less at odds with, the Commission’s interests (notwithstanding any ethical concerns for Respondents’ counsel arising from any potential conflict of interests amongst *its* clients). At any rate, the HSA requires that Mr. Kane pre-approve any legal representation for Mr. Shoemaker, and to Complaint Counsel’s knowledge, he has not done so.

[REDACTED]

[REDACTED] The HSA also requires that Mr.

Shoemaker [REDACTED] Mr. Kane. Feinstein Decl. ¶14. Mr.

Shoemaker, therefore, [REDACTED] Moreover, both

Mr. Kane and Mr. Shoemaker have signed non-disclosure agreements requiring them to keep all

information shared with the Commission in confidence. Feinstein Decl. ¶17. Respondents do

not (and cannot) explain how Mr. Kane's or Mr. Shoemaker's interests supposedly diverge from

those of the Commission, [REDACTED]

Thus, Respondents have not shown that Complaint Counsel has waived any work product

privilege over its communications with the Interim Monitor or the Interim Manager.

Nor have Respondents articulated any substantial need for Complaint Counsel's documents concerning the Interim Monitor and Interim Manager. Indeed, it would be exceedingly difficult for them to do so. Mr. Shoemaker was deposed in connection with the associated federal court proceeding, and Respondents submitted two declarations from him in that proceeding. Thus, Respondents have had an opportunity to question Mr. Shoemaker directly and cannot now claim substantial need for the communications involving him. Likewise, Respondents cannot identify any substantial need for documents shared with Mr. Kane.

Respondents were free to depose him in either this action or the associated federal proceeding but chose not to do so. Having not taken advantage of the discovery methods available to them, Respondents cannot now invade Complaint Counsel's work product privilege.

II. Complaint Counsel Properly Invoked the Government Deliberative Process Privilege

In addition to the protection afforded by the attorney work product privilege, a subset of the withheld documents is also protected by the government's deliberative process privilege. "The deliberative process privilege protects communications that are part of the decision-making process of a governmental agency" including any documents that "reflect advisory opinions, recommendations and deliberations comprising part of a process by which government decisions and policies are formulated." *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 134, at *8-9 (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-52 (1975); *FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984)). As detailed in the Revised Privilege Log's "Description" and "Basis of Claim" entries for the documents withheld under the deliberative process privilege, each of those documents is withheld because Mr. Feinstein has determined (after personally reviewing each portion of each page of each document) that the document reflects deliberation, analysis, or opinion regarding the Commission's decision to initiate litigation against Respondents (administratively and in the associated federal court proceeding), or the Commission's decision to initiate enforcement proceedings regarding compliance with the HSA. *See* Feinstein Supp. Decl. ¶¶6-7. Further, every portion of every page of the withheld documents "relates to either an official agency decision that requires a majority vote of the Commission or a decision typically made by FTC managers." *Id.* ¶6.

Respondents argue that the deliberative process privilege does not apply because CAAG and the Interim Monitor and Interim Manager are not acting as unbiased consultants. Mot. 5. But the cases relied on by Respondents are inapposite, as they relate to whether Exemption 5 of the Freedom of Information Act (FOIA) can shield documents shared with a non-federal

agency.⁶ These cases do not determine whether the deliberative process privilege is waived by sharing information with state enforcement agencies or with government fiduciaries, which could be protected by other FOIA exceptions. Indeed, if these cases stand for anything, they make clear that the deliberative process protection is broader than that of FOIA's Exemption 5. *See Dep't of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1 (2001) (holding that tribal communications with government are not intra-agency communications and so do not fall within Exemption 5); *People for the Am. Way Found. v. U.S. Dep't of Educ.*, 516 F. Supp. 2d 28, 37 (D.D.C. 2007) (documents shared with a non-federal agency can only be deemed "intra-agency documents" for the purposes of Exemption 5 of FOIA if the agency serves as a consultant to the government). As such, these cases do not support Respondents' claims.

As noted above, and detailed on the Revised Privilege Log, all of the withheld documents concerning CAAG, and the communications reflected therein, were made as part of the agencies' coordinated investigations into the acquisition at issue, leading up to the Commission's decision to issue its Complaint and seek a preliminary injunction in federal court. Feinstein Decl. ¶¶25-26; *see* Feinstein Supp. Decl. ¶7(b) (documents relating to CAAG "informed the Commission's decision to commence the instant litigation, as well as related proceedings in federal district court. Each of these documents expresses analyses, opinions, and/or recommendations of FTC staff and/or the AG regarding the Commission's decision to challenge LabCorp's acquisition of Westcliff."). To the extent the withheld documents contain factual information, that information is protected because it is inextricably interwoven with the deliberative material in each document

⁶ Under Exemption 5 of FOIA, an agency need not disclose "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5)(2006).

and its disclosure may expose the deliberative process within the Commission. *See* Feinstein Supp. Decl. ¶7(b) (“Any factual information contained in these documents is so tightly intertwined with these analyses, opinions, and recommendations that disclosure would indirectly reveal the Commission’s deliberative process.”); *see Warner*, 742 F.2d at 1161. Thus, Complaint Counsel has properly asserted the deliberative process privilege over the documents exchanged with CAAG.

Similarly, Commission staff’s communications with the Interim Monitor and Interim Manager are used to monitor Respondents’ ongoing compliance with the HSA, and thus to decide whether any enforcement action is necessary to ensure such compliance. Feinstein Decl. ¶15; *see* Feinstein Supp. Decl. ¶7(a) (documents relating to the Interim Monitor and Interim Manager “inform the Commission’s decision to enforce the HSA . . . Any factual information contained in these documents is so tightly intertwined with these analyses, opinions, and recommendations that disclosure would indirectly reveal the Commission’s deliberative process.”). Thus, the deliberative process privilege applies to each of the documents withheld on this basis as set forth in the Revised Privilege Log.

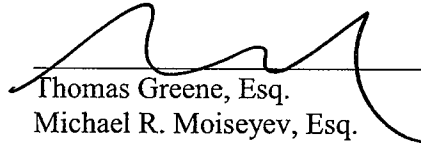
Finally, nothing in Respondents’ Motion supports the piercing of the deliberative process privilege. Respondents do not claim any need for the documents relating to the Interim Monitor and Interim Manager, and merely repeat their unsubstantiated assertions that CAAG has declined to pursue litigation against them, and that CAAG is pursuing a case that “appears to be at odds” with the instant action. Mot. 6. As discussed above and in Ms. Nagler’s declaration, both of these assertions are false. *See* Nagler Decl. ¶¶5-6. Moreover, Respondents have not used any discovery methods available to them to retrieve any information that they seek from Complaint Counsel. Their assertions for substantial need cannot, therefore, be substantiated.

CONCLUSION

For the reasons set forth above, in the accompanying Supplemental Declaration and Revised Privilege Log, and in Complaint Counsel's Opposition to Respondents' Motion and accompanying declarations, Respondents' Motion should be denied.

Dated: March 7, 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

LABORATORY CORPORATION OF
AMERICA, et al.,

Respondents.

)
)
)
)
)
)
)
)
)
)

Docket No. 9345

PUBLIC REDACTED VERSION

COMPLAINT COUNSEL'S OPPOSITION TO
RESPONDENTS' MOTION TO COMPEL DOCUMENT PRODUCTION

EXHIBIT 1

Supplemental Declaration of Richard A. Feinstein

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

**LABORATORY CORPORATION OF
AMERICA**

and

**LABORATORY CORPORATION OF
AMERICA HOLDINGS,**

corporations.

Docket No. 9345

SUPPLEMENTAL DECLARATION OF RICHARD A. FEINSTEIN

I, Richard A. Feinstein, declare as follows:

1. I am Director of the Bureau of Competition (the "Bureau") of the Federal Trade Commission ("FTC" or "Commission"). I have authority to assert the government deliberative process privilege over documents in the custody and control of the Bureau.

2. I submit this supplemental declaration in response to the Order Regarding Respondents' Motion to Compel Document Production, which orders further evidence in support of Complaint Counsel's assertion that it properly withheld documents based on the government deliberative process privilege.

3. This declaration supplements my initial declaration, dated February 18, 2011 ("Initial Declaration"), which Complaint Counsel submitted as Appendix A to its Opposition to Respondents' Motion to Compel Document Production. Each defined term used in this supplemental declaration has the same meaning as in my Initial Declaration.

4. This supplemental declaration is based on my personal knowledge, my professional experience, and information that I have received in my official capacity as Bureau Director. I have now personally reviewed each document (including each page and portion thereof) withheld by Complaint Counsel on the basis of the government deliberative process privilege, as identified in the Revised Privilege Log attached as Exhibit 2 to Complaint Counsel's Supplemental Opposition to Respondents' Motion to Compel Document Production ("Revised Privilege Log").

5. I formally assert the government deliberative process privilege to prevent the production to Respondents of each document identified as being withheld on the basis of the government deliberative process privilege in the Revised Privilege Log.

6. Each document for which I assert the government deliberative process privilege is predecisional and deliberative in nature. Each contains analyses, opinions, and/or recommendations that were considered as part of a decision making process at the Commission. Each document relates to either an official agency decision that requires a majority vote of the Commission or a decision typically made by FTC managers.

7. Specifically, all of documents for which I assert the government deliberative process privilege fit into one of the two following categories:

a. Documents relating to communications between or among FTC staff, the Interim Monitor, and/or the Manager that inform the Commission's decision to enforce the HSA. Each of these documents conveys analyses, opinions, and/or recommendations of FTC staff, the Interim Monitor, and/or the Manager regarding the need for enforcement of the HSA. Any factual information contained in these documents is so tightly intertwined with these analyses,

opinions, and recommendations that disclosure would indirectly reveal the Commission's deliberative process.

b. Documents relating to communications between FTC staff and the AG that informed the Commission's decision to commence the instant litigation, as well as related proceedings in federal district court. Each of these documents expresses analyses, opinions, and/or recommendations of FTC staff and/or the AG regarding the Commission's decision to challenge LabCorp's acquisition of Westcliff. Any factual information contained in these documents is so tightly intertwined with these analyses, opinions, and recommendations that disclosure would indirectly reveal the Commission's deliberative process.


8. In my judgment, the effective functioning of the Commission requires that the confidentiality of the documents for which I assert the government deliberative process privilege be preserved. The disclosure of these documents would inhibit open and frank discussion necessary for the Commission to perform its law enforcement duties effectively. These documents, which express the candid and confidential analyses, opinions, and recommendations of their authors, constitute an essential part of the Commission's and Commission staff's predecisional deliberative process. These documents reflect communications which advise and assist the appropriate decision makers at the agency.

9. The Commission has a duty to detect, investigate, and challenge violations of the federal antitrust laws. The Commission must, at times, have the ability to enforce hold separate agreements and to coordinate its law enforcement efforts with state attorneys general to carry out its mission effectively. The Commission and its staff must have the ability to exchange their views freely and candidly with those tasked to monitor and manage the enforcement of hold separate agreements and staff at state antitrust law enforcement agencies. The disclosure of the

documents for which I assert the government deliberative process privilege would severely restrict such free and candid exchange of views, hindering the Commission's efforts to fulfill its law enforcement mission.

10. Based on my review of all of the documents withheld on the basis of the government deliberative process privilege in the Revised Privilege Log, I have determined that the confidentiality of these documents must be preserved. Considering the predecisional, deliberative nature of the documents, as well as my personal judgment that their disclosure would injure the Commission's ability to discharge its duties effectively, I assert a formal claim of government deliberative process privilege with respect to the contents of these documents.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.


Richard A. Feinstein
Director Bureau of Competition
Federal Trade Commission

Signed this 7th day of March, 2011,
in Washington, D.C.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

COMPLAINT COUNSEL'S OPPOSITION TO
RESPONDENTS' MOTION TO COMPEL DOCUMENT PRODUCTION

EXHIBIT 2

Complaint Counsel's Revised Privilege Log

| Complaint Counsel's Revised Privilege Log Pursuant to ALJ's Order of February 24, 2011 | | | | | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| No. | Date Range | Title | AUTHOR/RECIPIENT | CUSTODIANS | DESCRIPTION | FILETYPE | PRIVILEGE | BASIS OF CLAIM |
| This privilege log does not contain communications within the Federal Trade Commission. The Federal Trade Commission has not required Hogan Lovells US LLP to produce a privilege log containing internal correspondence and will not require one in the future during the pendency of this action. Plaintiff reserves the right to supplement this privilege log as necessary. | | | | | | | | |
| 1 | 6/10/2010 - 6/16/2010, 9/25/2010, 9/27/2010 | emails and voicemail (approx. 10) | Vincent DiCarlo*, Jonathan Klarfeld*, Michael Moseyev*, Stephanie Wilkinson*, Brian Keats, Dennis Fenwick, and/or Lisa DeMarchi Sleight* | J. KLARFELD, S. WILKINSON, L. DIMARCHISLEIGH, and/or Network_Data | Emails and voicemail concerning the qui tam lawsuit and the LabCorp/Westcliff investigation | HyperText Markup Language; MS Outlook Message, or MS Windows Wave Sound (Inte) | DP, WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 2 | 6/10/2010 - 6/17/2010 | emails with attachments (approx. 15) | Michael Moseyev*, Jonathan Klarfeld*, Randall Long*, Stephanie Wilkinson*, Kathleen Foote*, and/or Natalie Manzo* | S. WILKINSON and/or Network_Data | Emails with attachments concerning the LabCorp/Westcliff investigation including analysis of Westcliff bankruptcy and FTC legal analysis | HyperText Markup Language or Adobe Portable Document Format | WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 3 | 6/14/2010 - 6/17/2010 | emails with attachments (approx. 10) | Natalie Manzo*, Stephanie Wilkinson* | S. WILKINSON | Emails with attachments concerning the LabCorp/Westcliff investigation including opinions of Westcliff bankruptcy and FTC procedures | HyperText Markup Language or Adobe Portable Document Format | DP (emails only), WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 4 | 6/21/2010 | emails with attachments (approx. 3) | Natalie Manzo*, Stephanie Wilkinson* | S. WILKINSON | Emails and attachments concerning LabCorp/Westcliff investigation including legal analysis of bankruptcy and antitrust issues | HyperText Markup Language or WordPerfect Document | DP, WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 5 | 6/22/2010 | emails (approx. 3) | Stephanie Wilkinson*, Natalie Manzo* | S. WILKINSON | Emails concerning LabCorp/Westcliff investigation including legal analysis of transaction and enforcement/investigation procedures | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 6 | 6/24/2010 - 6/25/2010, 6/29/2010 | emails with attachments (approx. 9) | Stephanie Wilkinson*, Natalie Manzo*, Karen Berg*, William Golden*, and/or Jonathan Klarfeld* | S. WILKINSON and/or Network_Data | Emails with attachments concerning LabCorp/Westcliff investigation including coordination of investigations | HyperText Markup Language or Adobe Portable Document Format | WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 7 | 6/30/2010 | email | Stephanie Wilkinson*, Jonathan Klarfeld*, and/or Natalie Manzo* | S. WILKINSON | Email concerning LabCorp/Westcliff investigation including coordination of investigations | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 8 | 7/2/2010 | email | Natalie Manzo*, Stephanie Wilkinson*, and/or Winston Chen* | S. WILKINSON | Email concerning LabCorp/Westcliff investigation | HyperText Markup Language | WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 9 | 7/6/2010 - 7/7/2010 | emails (approx. 4) | Natalie Manzo*, Lisa DeMarchi Sleight*, Stephanie Boyee*, Stephanie Wilkinson*, Julie Carlson, and/or Winston Chen* | S. BOVEE and/or S. WILKINSON | Emails concerning LabCorp/Westcliff investigation including a discussion of Medi-Cal and entry barriers | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

| No. | Date Range | Title | AUTHOR/RECIPIENT | CUSTODIANS | DESCRIPTION | FILETYPE | PRIVILEGE | BASIS OF CLAIM |
|-----|-----------------------------------------------------------------------------------------------------------------|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10 | 7/15/2010 | emails and attachment (approx. 5) | Stephanie Wilkinson*, Winston Chen*, Natalie Manzo* | S. WILKINSON and/or Network_Data | Email and attachment concerning LabCorp/Westcliff investigation including discussion of customer segment | HyperText Markup Language or Adobe Portable Document Format | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 11 | 8/19/2010 | email | Natalie Manzo*, Lisa DeMarchi Sleight*, Stephanie Bovee*, Stephanie Wilkinson*, Penny Nagler*, and/or Winston Chen* | S. BOVEE, S. WILKINSON and/or L. DIMARCHISLEIGH | Emails concerning the LabCorp/Westcliff investigation including interpretation of witness statement | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 12 | 7/2010 - 8/2010 | emails and voicemails (approx. 42) | Natalie Manzo*, Lisa DeMarchi Sleight*, Stephanie Bovee*, Stephanie Wilkinson*, Penny Nagler*, Julie Carlson, and/or Winston Chen* | S. BOVEE and/or S. WILKINSON | Miscellaneous emails and voicemails concerning the LabCorp/Westcliff investigation including third party interviews | HyperText Markup Language, MS Outlook Message, or MS Windows Wave Sound (Intel) | WP, Government Informant Privilege | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation and identifies informants |
| 13 | 7/15/2010 - 7/16/2010, 8/8/2010 - 8/9/2010, 8/23/2010 | emails (approx. 13) | Natalie Manzo*, Lisa DeMarchi Sleight*, Stephanie Bovee*, Stephanie Wilkinson*, Penny Nagler*, and/or Winston Chen* | S. BOVEE and/or S. WILKINSON | Emails and voicemails concerning the LabCorp/Westcliff investigation including discussion of meeting with LabCorp | HyperText Markup Language, MS Outlook Message, or MS Windows Wave Sound (Intel) | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 14 | 7/13/2010 - 7/14/2010, 8/6/2010 - 8/11/2010 | emails (approx. 20) | Natalie Manzo*, Lisa DeMarchi Sleight*, Stephanie Bovee*, Stephanie Wilkinson*, Penny Nagler*, and/or Winston Chen* | S. BOVEE, S. WILKINSON and/or L. DIMARCHISLEIGH | Emails concerning the LabCorp/Westcliff investigation including sharing of legal analysis of evidence | HyperText Markup Language | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 15 | 7/16/2010, 8/13/2010, 8/24/2010, 9/23/2010, 9/24/2010, 9/27/2010, 10/14/2010, 10/28/2010, 10/29/2010, 11/2/2010 | emails and attachments (approx. 5) | Stephanie Wilkinson*, Winston Chen*, Natalie Manzo*, and/or Lisa DeMarchi Sleight* | S. WILKINSON and/or L. DIMARCHISLEIGH | Emails and attachments concerning LabCorp/Westcliff investigation including disclosure of non-public documents | HyperText Markup Language, Adobe Portable Document Format | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 16 | 8/16/2010 - 8/17/2010 | emails (approx. 12) | Matthew Teich, Stephanie Wilkinson*, and/or Natalie Manzo* | M. TEICH and/or S. WILKINSON | Miscellaneous emails concerning LabCorp/Westcliff investigation | HyperText Markup Language | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 17 | 8/16/2010 - 8/17/2010 | emails with attachments (approx. 16) | Stephanie Wilkinson*, Stephanie Bovee*, Natalie Manzo*, and/or Winston Chen* | S. BOVEE, S. WILKINSON and/or L. DIMARCHISLEIGH | Emails with attachments concerning the LabCorp/Westcliff investigation including analysis of overlaps, legal analysis of qui tam litigation and Med-Cal, and discussion of FTC investigatory procedures | HyperText Markup Language or Adobe Portable Document Format | DP (emails only), WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 18 | 8/27/2010 | emails with attachments (approx. 3) | Winston Chen*, Lisa DeMarchi Sleight*, Stephanie Bovee*, and/or Stephanie Wilkinson* | S. BOVEE and/or S. WILKINSON | Emails and attachments concerning the LabCorp/Westcliff investigation including documents to assist in evaluating geographic market for a specific customer and also generally | HyperText Markup Language or Adobe Portable Document Format | DP (emails only), WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 19 | 9/7/2010 - 9/9/2010 | emails (approx. 5) | Natalie Manzo*, Stephanie Wilkinson*, Penny Nagler*, and/or Winston Chen* | S. WILKINSON | Emails concerning LabCorp/Westcliff investigation including FTC investigational hearings | HyperText Markup Language | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 20 | 9/13/2010, 9/22/2010 - 9/23/2010, 10/14/2010 - 11/2/2010 | emails (approx. 16) | Stephanie Wilkinson*, Natalie Manzo*, Winston Chen*, Penny Nagler*, Mackenzie Knowing, Matthew Teich, Frank Banueloz, Lisa DeMarchi Sleight*, and/or Igor Veikson | S. WILKINSON and/or L. DIMARCHISLEIGH | Emails concerning LabCorp/Westcliff investigation including legal analysis of evidence | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

| No. | Date Range | Title | AUTHOR/RECIPIENT | CUSTODIANS | DESCRIPTION | FILETYPE | PRIVILEGE | BASIS OF CLAIM |
|-----|------------------------|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 21 | 9/14/2010 | emails with attachments (approx. 11) | LabCorp/Westcliff Investigatory Team, Antitrust Law Section of the California Department of Justice, Office of Attorney General | S. BOVEE, S. WILKINSON and/or L. DIMARCHISLEIGH | Miscellaneous emails and attachments concerning the LabCorp/Westcliff investigation including documents to assist in evaluating geographic market | HyperText Markup Language or Adobe Portable Document Format | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 22 | 9/24/2010 - 9/27/2010 | emails with attachment (approx. 6) | Stephanie Wilkinson*, Natalie Manzo*, Winston Chen*, Penny Nagler*, and/or Tom Greene* | S. WILKINSON and/or Network_Data | Email concerning LabCorp/Westcliff investigation including Medi-Cal issues | HyperText Markup Language or Adobe Portable Document Format | DP (emails only), WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 23 | 10/6/2010 - 10/12/2010 | emails and voicemail (approx. 12) | Winston Chen*, Lisa DeMarchi Sleigh*, Stephanie Wilkinson*, Natalie Manzo*, Penny Nagler*, and/or Stephanie Bovee* | S. BOVEE, S. WILKINSON and/or L. DIMARCHISLEIGH | Emails and voicemail concerning the LabCorp/Westcliff investigation including legal analysis of overlaps | HyperText Markup Language, MS Outlook Message, or MS Windows Wave Sound (Intel) | DP, WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 24 | 10/15/2010 | email | Stephanie Wilkinson*, Natalie Manzo*, Winston Chen*, Mackenzie Knowling, Penny Nagler*, and Matthew Teich | S. WILKINSON | Email concerning LabCorp/Westcliff investigation including legal analysis of evidence | HyperText Markup Language | WP | Reflects notes, impressions, or analyses prepared in anticipation of Commission litigation |
| 25 | 10/13/2010 | emails with attachment (approx. 6) | Sandra Tinson, Natalie Manzo*, Penny Nagler*, Winston Chen*, Lisa DeMarchi Sleigh*, and/or Stephanie Wilkinson* | S. WILKINSON, L. DIMARCHISLEIGH and/or Network_Data | Emails with attachments concerning LabCorp/Westcliff investigation including legal analysis of Medi-Cal on entry | HyperText Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 26 | 10/13/2010 | emails with attachment (approx. 5) | Sandra Tinson, Natalie Manzo*, Penny Nagler*, Winston Chen*, Lisa DeMarchi Sleigh*, and/or Stephanie Wilkinson* | S. WILKINSON, L. DIMARCHISLEIGH and/or Network_Data | Emails with attachments concerning LabCorp/Westcliff investigation including legal explanation of Medi-Cal Meratorium | HyperText Markup Language or Adobe Portable Document Format | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 27 | 11/18/2010 | emails with attachment (approx. 3) | Stephanie Wilkinson*, Natalie Manzo*, Winston Chen* | S. WILKINSON | Emails with attachments concerning LabCorp/Westcliff investigation including legal analysis of enforcement procedures and investigation | HyperText Markup Language or Adobe Portable Document Format | DP (emails only), WP | Reflects agency deliberations, legal analysis, or opinion regarding decision to commence litigation and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 28 | 12/7/2010 - 12/13/2010 | emails (approx. 12) | Stephanie Wilkinson*, Natalie Manzo*, Winston Chen*, and/or Penny Nagler* | S. WILKINSON | Emails with attachments concerning LabCorp/Westcliff investigation including legal analysis of TRO/PI process | HyperText Markup Language | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 29 | 2/11/2011 | voicemail (approx. 2) | Vincent DiCarlo*, Lisa DeMarchi Sleigh* | L. DIMARCHISLEIGH | Voicemail concerning the qui tam lawsuit and the LabCorp/Westcliff litigation | HyperText Markup Language or MS Outlook Message | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 30 | 2/16/2011 - 2/18/2011 | emails and attachment and voicemails (approx. 11) | Natalie Manzo*, Penny Nagler*, Lisa DeMarchi Sleigh* | L. DIMARCHISLEIGH | Emails with attachments and voicemails concerning LabCorp/Westcliff litigation including legal analysis of privileges | HyperText Markup Language, MS Outlook Message, or Adobe Portable Document Format | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

| No. | Title | Date Range | CUSTODIANS | DESCRIPTION | AUTHOR/RECIPIENT | FILETYPES | PRIVILEGE | BASIS OF CLAIM |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------------------------------|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Complaint Counsel's Revised Privilege Log Pursuant to ALJ's Order of February 24, 2011 | | | | | | | | |
| This privilege log does not contain communications within the Federal Trade Commission. The Federal Trade Commission has not required Hogan Lovells US LLP to produce a privilege log containing internal correspondence and will not require one in the future during the pendency of this action. Plaintiff reserves the right to supplement this privilege log as necessary. | | | | | | | | |
| 1 | emails (approx. 66) | 7/23/2010 - 2/10/2011 | S_WILKINSON, K_LIBBY, or Network_Data | Miscellaneous emails between Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity | Emmett Kane <eck@kanehealthcaresolutions.com>; Wilkinson, Stephanie A. <SWILKINSON@ftc.gov>; Klarfeld, Jonathan <JKLARFELD@ftc.gov>; Dagen, H. Gabriel <GDAGEN@ftc.gov>; Piotrowski, Elizabeth A. <EPIOTROWSKI@ftc.gov>; and/or Seidman, Mark <MSEIDMAN@ftc.gov> | HyperText Markup Language, Adobe Portable Document Format, MS Outlook Message, MS Windows Wave Sound (mrl), MS Word for Windows Document (OLE), and/or MS Excel Worksheet/Template (OLE) | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 2 | emails (approx. 25) | 1/04/2011 - 2/16/2011 | K_LIBBY; Network_Data; and/or E_POTROWSKI | Miscellaneous emails among FTC staff, Emmett Kane, and counsel for Emmett Kane concerning hold separate agreement and hold separate entity | Piotrowski, Elizabeth A. <EPIOTROWSKI@ftc.gov>; Libby, Kenneth A. <KLIBBY@ftc.gov>; David Gee <dgee@gslaw.com>; Dick Siefert <rsiefert@gslaw.com>; Sieradzki, David L. <dsieradzki@ftc.gov>; Greene, Tom <tgreene2@ftc.gov>; Emmett Kane <eck@kanehealthcaresolutions.com>; Shonka, David C. <DSHONKA@ftc.gov>; and/or Seidman, Mark <MSEIDMAN@ftc.gov> | HyperText Markup Language, Adobe Portable Document Format, MS Word for Windows Document (OLE), and/or Microsoft Excel Worksheet/Template | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 3 | emails (approx. 28) | 7/29/2010 - 12/6/2010 | K_LIBBY; Network_Data; or E_POTROWSKI | Miscellaneous emails among Emmett Kane and Danny Shoemaker and FTC staff concerning hold separate agreement and hold separate entity | Emmett Kane <eck@kanehealthcaresolutions.com>; Danny Shoemaker <shoemnd@bellsouth.net>; Tom Greene <tgreene2@ftc.gov>; Wilkinson, Stephanie A. <SWILKINSON@ftc.gov>; Klarfeld, Jonathan <JKLARFELD@ftc.gov>; Libby, Kenneth A. <KLIBBY@ftc.gov>; Dagen, H. Gabriel <GDAGEN@ftc.gov>; Piotrowski, Elizabeth A. <EPIOTROWSKI@ftc.gov>; and/or Seidman, Mark <MSEIDMAN@ftc.gov> | HyperText Markup Language or Adobe Portable Document Format | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 4 | emails (approx. 10) | 8/5/2010; 8/19/2010; 11/2/2010 | K_LIBBY; Network_Data; or E_POTROWSKI | Miscellaneous emails between Danny Shoemaker and FTC staff concerning hold separate agreement and hold separate entity | Danny Shoemaker <shoemnd@bellsouth.net>; Wilkinson, Stephanie A. <SWILKINSON@ftc.gov>; Libby, Kenneth A. <KLIBBY@ftc.gov>; Klarfeld, Jonathan <JKLARFELD@ftc.gov>; and/or Piotrowski, Elizabeth A. <EPIOTROWSKI@ftc.gov> | HyperText Markup Language or Adobe Portable Document Format | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 5 | emails (approx. 71) | 12/29/2010 - 2/4/2011 | K_LIBBY; Network_Data; and/or E_POTROWSKI | Miscellaneous emails between FTC staff and counsel for Emmett Kane concerning hold separate agreement and hold separate entity | Piotrowski, Elizabeth A. <EPIOTROWSKI@ftc.gov>; Libby, Kenneth A. <KLIBBY@ftc.gov>; David Gee <dgee@gslaw.com>; Siefert, Dick <rsiefert@gslaw.com>; David Gee <dgee@gslaw.com>; Sieradzki, David L. <dsieradzki@ftc.gov>; Greene, Tom <tgreene2@ftc.gov>; Shonka, David C. <DSHONKA@ftc.gov>; Seidman, Mark <MSEIDMAN@ftc.gov>; Wilkinson, Stephanie A. <SWILKINSON@ftc.gov>; and/or White, Christian S. <CWWHITE@ftc.gov> | HyperText Markup Language, Adobe Portable Document Format | WP | Reflects notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 6 | emails (approx. 8) | 7/29/2010 | K_LIBBY and/or E_POTROWSKI | Email among Emmett Kane, Danny Shoemaker, and FTC staff concerning hold separate agreement and hold separate entity including issue relating to Westcliff's viability | Stephanie Wilkinson*, Emmett Kane, Danny Shoemaker, Elizabeth Piotrowski*, Jonathan Klarfeld*, Gabriel Dagen, and Kenneth Libby* | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

| No. | TITLE | Date Range | CUSTODIANS | DESCRIPTION | AUTHOR/RECIPIENT | FILETYPES | PRIVILEGE | BASIS OF CLAIM |
|-----|-------------------------------------|---------------------|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 | emails (approx. 6) | 8/5/2010 - 8/6/2010 | K. LIBBY and/or E. PIOTROWSKI | Email among Emmett Kane, Danny Shoemaker, and FTC staff concerning hold separate agreement and hold separate entity including disposition of Westcliff network | Stephanie Wilkinson*, Emmett Kane, Danny Shoemaker, Elizabeth Piotrowski*, Jonathan Klarfeld*, and Kenneth Libby* | Hypertext markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 8 | emails with attachment, (approx. 7) | 9/10/2010 | K. LIBBY and/or E. PIOTROWSKI | Email among Emmett Kane, Danny Shoemaker, and FTC staff concerning hold separate agreement and hold separate entity including disposition of PSC network | Stephanie Wilkinson*, Emmett Kane, Danny Shoemaker, Elizabeth Piotrowski*, and Kenneth Libby* | HyperText Markup Language or Adobe Portable Document Format | DP (emails only), WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 9 | email with attachment | 9/13/2010 | K. LIBBY and/or E. PIOTROWSKI | Email among Emmett Kane, Danny Shoemaker, and FTC staff concerning hold separate agreement and hold separate entity including employee status | Stephanie Wilkinson*, Emmett Kane, Danny Shoemaker, Elizabeth Piotrowski*, Kenneth Libby*, and Jonathan Klarfeld* | HyperText Markup Language or Adobe Portable Document Format | DP (email only), WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 10 | emails (approx. 9) | 9/30/2010 | K. LIBBY and/or E. PIOTROWSKI | Emails among Emmett Kane and Danny Shoemaker and FTC staff concerning hold separate agreement and hold separate entity including analysis of contract with LabCorp | Emmett Kane, Kenneth Libby*, Danny Shoemaker, and Elizabeth Piotrowski* | Hypertext markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 11 | emails (approx. 9) | 10/7/2010 | K. LIBBY and/or E. PIOTROWSKI | Emails between Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including analysis of contract with LabCorp | Emmett Kane, Kenneth Libby*, and Elizabeth Piotrowski* | Hypertext markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

| No. | TITLE | Date Range | CUSTODIANS | DESCRIPTION | AUTHOR/RECIPIENT | FILETYPES | PRIVILEGE | BASIS OF CLAIM |
|-----|------------------------------------|------------------------|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12 | emails (approx. 8) | 10/14/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane, Danny Shoemaker, and FTC staff concerning hold separate agreement and hold separate entity including analysis of contract with LabCorp | Emmett Kane, Kenneth Libby*, Danny Shoemaker, and Elizabeth Piotrowski* | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 13 | emails and attachments (approx. 6) | 10/27/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane, Danny Shoemaker, and FTC staff concerning hold separate agreement and hold separate entity including monitor report | Emmett Kane, Kenneth Libby*, Danny Shoemaker, and Elizabeth Piotrowski* | HyperText Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 14 | emails (approx. 34) | 10/27/2010 - 11/5/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and Danny Shoemaker and FTC staff concerning hold separate agreement and hold separate entity including analysis of contracts with third party payers | Emmett Kane, Kenneth Libby*, Danny Shoemaker, and Elizabeth Piotrowski* | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 15 | emails (approx. 6) | 11/3/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and Danny Shoemaker and FTC staff concerning hold separate agreement and hold separate entity including site visits by outside counsel | Emmett Kane, Kenneth Libby*, Danny Shoemaker, and Elizabeth Piotrowski* | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 16 | emails (approx. 6) | 11/8/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and Danny Shoemaker and FTC staff concerning hold separate agreement and hold separate entity including analysis of third party payer contracts | Emmett Kane, Kenneth Libby*, Danny Shoemaker, and Elizabeth Piotrowski* | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

| No. | TITLE | Date Range | CUSTODIANS | DESCRIPTION | AUTHOR/RECIPIENT | FILETYPES | PRIVILEGE | BASIS OF CLAIM |
|-----|--------------------------------------|-------------------------|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 17 | emails with attachments (approx. 13) | 11/10/2010 - 11/11/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and Danny Shoemaker and FTC staff concerning hold separate agreement and hold separate entity including financial analysis of Westcliff | Emmett Kane, Kenneth Libby*, Danny Shoemaker, and Elizabeth Piotrowski* | HyperText Markup Language or Adobe Portable Document Format | DP (emails only), WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 18 | email with attachments | 11/22/2010 | K_LIBBY | Emails between Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including interim monitor report | Emmett Kane, Kenneth Libby*, and Elizabeth Piotrowski* | HyperText Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 19 | emails (approx. 5) | 11/23/2010 - 11/24/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including impact of investigation's outcome | Emmett Kane, Kenneth Libby*, and Elizabeth Piotrowski* | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 20 | emails with attachment (approx. 4) | 11/24/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including analysis of key employees | Emmett Kane, Kenneth Libby*, and Elizabeth Piotrowski* | HyperText Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 21 | emails with attachment (approx. 16) | 11/29/2010 - 12/3/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including analysis of key employees | Emmett Kane, Kenneth Libby*, and Elizabeth Piotrowski* | HyperText Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

| No. | TITLE | Date Range | CUSTODIANS | DESCRIPTION | AUTHOR/RECIPIENT | FILETYPES | PRIVILEGE | BASIS OF CLAIM |
|-----|-------------------------------------|-----------------------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 22 | emails (approx. 14) | 12/9/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including analysis of financial performance | Emmett Kane, Kenneth Libby*, Gabriel Dagen, and Danny Shoemaker | Hypertext markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 23 | emails (approx. 3) | 12/3/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including analysis of financial performance | Emmett Kane, Kenneth Libby*, Gabriel Dagen, and Elizabeth Piotrowski* | Hypertext markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 24 | emails (approx. 19) | 12/3/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and Danny Shoemaker and FTC staff concerning hold separate agreement and hold separate entity including analysis of TRO and Westcliff bankruptcy issues | Emmett Kane, Kenneth Libby*, Danny Shoemaker, Gabriel Dagen, Mark Seidman*, and Elizabeth Piotrowski* | Hypertext markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 25 | emails with attachments (approx. 5) | 12/5/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including analysis of Westcliff bankruptcy | Emmett Kane, Kenneth Libby*, and Elizabeth Piotrowski* | HyperText Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 26 | emails (approx. 6) | 12/7/2010 - 12/8/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including analysis of LabCorp's conduct | Emmett Kane, Kenneth Libby*, and Elizabeth Piotrowski* | Hypertext markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

| No. | TITLE | Date Range | CUSTODIANS | DESCRIPTION | AUTHOR/RECIPIENT | FILETYPES | PRIVILEGE | BASIS OF CLAIM |
|-----|--------------------------------------|------------------------------------------|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 27 | emails (approx. 4) | 12/8/2010 | K_LIBBY and/or E_PIOTROWSKI | Emails among Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including analysis of PSC availability | Emmett Kane, Kenneth Libby*, and Elizabeth Piotrowski* | Hypertext markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 28 | emails (approx. 3) | 12/10/2010 | K_LIBBY | Emails among Emmett Kane and FTC staff concerning hold separate agreement and hold separate entity including legal analysis of TRO on bankruptcy extensions | Emmett Kane, Kenneth Libby*, and Elizabeth Piotrowski* | Hypertext markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 29 | emails with attachments (approx. 23) | 12/13/2010, 1/4/2011-1/6/2011, 1/11/2011 | K_LIBBY and/or E_PIOTROWSKI | Emails among FTC staff, Emmett Kane, and counsel for Emmett Kane concerning hold separate agreement and hold separate entity including analysis of monitor's independent legal representation | Emmett Kane, Elizabeth Piotrowski*, Richard Siefert*, David Gee*, David Sieradzki*, Tom Greene*, and/or Kenneth Libby* | Hypertext Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 30 | emails with attachments (approx. 7) | 12/16/2011 | K_LIBBY and/or E_PIOTROWSKI | Emails among FTC staff and Emmett Kane concerning hold separate agreement and hold separate entity including analysis of third party payers | Emmett Kane, Elizabeth Piotrowski*, Mark Saldman*, Gabriel Dagen, and/or Kenneth Libby* | Hypertext Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 31 | email | 12/16/2010 | K_LIBBY | Email among FTC staff and Emmett Kane concerning hold separate agreement and hold separate entity including legal analysis of operations | Emmett Kane, Kenneth Libby* | Hypertext Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

| No. | TITLE | Date Range | CUSTODIANS | DESCRIPTION | AUTHOR/RECIPIENT | FILETYPES | PRIVILEGE | BASIS OF CLAIM |
|-----|--------------------------------------|---------------------------------|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 32 | email with attachments (approx. 2) | 1/6/2011 | K_LIBBY | Email between FTC staff and counsel for Emmett Kane concerning hold separate agreement and hold separate entity including analysis of relevant documents | Kenneth Libby*, David Gee*, and Richard Siefert* | HyperText Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 33 | emails (approx. 2) | 1/19/2011 | K_LIBBY and/or E_PIOTROWSKI | Emails among FTC staff, Emmett Kane, and counsel for Emmett Kane concerning hold separate agreement and hold separate entity including analysis of financial performance under HAS | Emmett Kane, Elizabeth Piotrowski*, Richard Siefert*, and Kenneth Libby* | HyperText Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 34 | emails (approx. 2) | 1/19/2011 | K_LIBBY and/or E_PIOTROWSKI | Emails among FTC staff, Emmett Kane, and counsel for Emmett Kane concerning hold separate agreement and hold separate entity including analysis of third party payer contracts | Emmett Kane, Elizabeth Piotrowski*, Richard Siefert*, and Kenneth Libby* | HyperText Markup Language | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 35 | emails with attachments (approx. 11) | 1/17/2011, 1/31/2011, 2/10/2011 | K_LIBBY and/or E_PIOTROWSKI | Emails among FTC staff, Emmett Kane, and counsel for Emmett Kane concerning hold separate agreement and hold separate entity including analysis of third party payers | Emmett Kane, Elizabeth Piotrowski*, Richard Siefert*, David Gee*, Mark Seidman*, Tom Greene*, and/or Kenneth Libby* | HyperText Markup Language or Adobe Portable Document Format | DP, WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 36 | emails with attachments (approx. 19) | 1/17/2011, 1/31/2011, 2/10/2011 | K_LIBBY, M_SEIDMAN, and/or E_PIOTROWSKI | Emails among FTC staff, Emmett Kane, and counsel for Emmett Kane concerning hold separate agreement and hold separate entity including analysis of third party supplier contracts | Emmett Kane, Elizabeth Piotrowski*, Richard Siefert*, David Gee*, Mark Seidman*, and/or Kenneth Libby* | HyperText Markup Language or Adobe Portable Document Format | DP (emails only), WP | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

| No. | TITLE | Date Range | CUSTODIANS | DESCRIPTION | AUTHOR/RECIPIENT | FILETYPES | PRIVILEGE | BASIS OF CLAIM |
|-----|-------------------------------------|------------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 37 | emails with attachments (approx. 6) | 1/20/2011 | K_LIBBY and/or E_PIOTROWSKI | Emails among FTC staff, Emmett Kane, and counsel for Emmett Kane concerning hold separate agreement and hold separate entity including analysis of Westcliff operations | Emmett Kane, Elizabeth Piotrowski*, Richard Siefert*, David Gee*, Mark Seidman*, Tom Greene*, and Kenneth Libby* | Hypertext markup Language or MS Excel Worksheet/Template (OLE) | DP (emails only), W/P | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 38 | emails (approx. 5) | 2/4/2011 | K_LIBBY and/or E_PIOTROWSKI | Emails among FTC staff, Emmett Kane, and counsel for Emmett Kane concerning hold separate agreement and hold separate entity including analysis of potential violations of hold separate agreement | Emmett Kane, Elizabeth Piotrowski*, Richard Siefert*, David Gee*, Tom Greene*, David Sieradzki*, David Shonka*, and/or Kenneth Libby* | Hypertext markup Language | DP, W/P | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |
| 39 | emails (approx. 3) | 2/15/2011 | K_LIBBY and/or E_PIOTROWSKI | Emails among FTC staff, Emmett Kane, and counsel for Emmett Kane concerning hold separate agreement and hold separate entity including analysis of changes to Westcliff | Emmett Kane, Elizabeth Piotrowski*, Richard Siefert*, David Gee*, and Kenneth Libby* | Hypertext markup Language | DP, W/P | Reflects agency deliberations, legal analysis, or opinion concerning decision whether to enforce hold separate agreement and/or notes, impressions, or analyses prepared in anticipation of or in preparation for Commission litigation |

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

[PROPOSED] ORDER

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

IT IS HEREBY ORDERED, that Respondents' Motion is DENIED.

Date: March __, 2011

D. Michael Chappell
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I filed via hand delivery an original with signature and one paper copy and a .pdf via electronic mail that is a true and correct copy of the paper original of the foregoing **PUBLIC Complaint Counsel's Supplemental Opposition to Respondents' 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 **PUBLIC Complaint Counsel's Supplemental Opposition to Respondents' 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

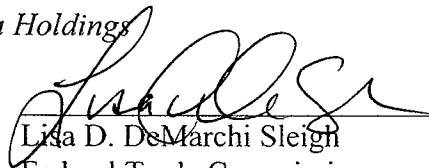
I also certify that I delivered via electronic mail one .pdf copy that is a true and correct copy of the paper original of the foregoing **PUBLIC Complaint Counsel's Supplemental Opposition to Respondents' Motion to Compel Document Production** to:

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*

March 7, 2011

By:


Lisa D. DeMarchi Sleight
Federal Trade Commission
Bureau of Competition