

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

In the Matter of

**LABORATORY CORPORATION
OF AMERICA**

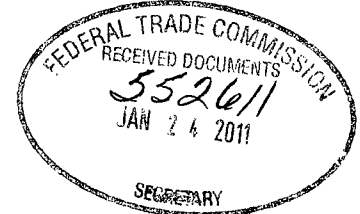
and

**LABORATORY CORPORATION
OF AMERICA HOLDINGS,
corporations.**

Docket No. 9345

PUBLIC

ORIGINAL



**RESPONDENTS' MOTION TO WITHDRAW AND AMEND DEEMED ADMISSIONS
OR IN THE ALTERNATIVE FOR EXTENSION OF TIME TO RESPOND TO
COMPLAINT COUNSEL'S FIRST SET OF REQUESTS FOR ADMISSION (1-38)**

Pursuant to 16 C.F.R. §§ 3.32(c), Respondents Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively "LabCorp") respectfully move to withdraw and amend any of Complaint Counsel's First Set of Requests for Admission (1-38) that LabCorp may be deemed to have admitted because counsel for LabCorp inadvertently failed to answer or object to Complaint Counsel's Requests in the ten days provided by rule. LabCorp regrets and apologizes for this error of counsel and does not ask the Court to condone it, but rather respectfully requests that the Court permit LabCorp to file its Objections and Answers two business days after the original deadline because doing so would promote the presentation of the merits of the proceeding and would not prejudice Complaint Counsel. Specifically, several of the admissions sought by Complaint Counsel are factually incorrect and contrary to the evidence while other Requests are capable of admission but only subject to specific interpretation of terms used in the Requests. LabCorp's brief delay in providing accurate answers has not caused Complaint Counsel to rely on any deemed admissions. Moreover, LabCorp admits the majority

of Complaint Counsel's Requests, either outright or with some clarification. Without such clarifications, the admissions would not be particularly useful to the Court.¹

16 C.F.R. § 3.32(b) states that requests for admission are deemed admitted "unless, within ten (10) days after service of the request, or within such shorter or longer time as the Administrative Law Judge may allow, the party to whom the request is directed serves upon the party requesting the admission, with a copy filed with the Secretary, a sworn written answer or objection addressed to the matter." 16 C.F.R. § 3.32(c) further permits the Court to allow amendment or withdrawal of any admissions under a two part test: (1) "when the presentation of the merits of the proceeding will be subserved thereby," and (2) when "the party who obtained the admission fails to satisfy the Administrative Law Judge that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits." This rule is modeled after Federal Rule of Civil Procedure 36(b) and contains nearly identical language regarding withdrawal and amendment of admissions.² Notably, the purpose of requests for admissions under Federal Rule 36 is predominantly to assist the trier of fact and "to reduce trial time" by "facilitat[ing] proof with respect to issues that cannot be eliminated from the case" and by "narrow[ing] the issues by eliminating those that can be." Comments to 1970 Amendment, Fed.

¹ In the alternative, LabCorp respectfully requests that the Court extend the time for LabCorp to respond to the Requests for Admission by two business days until January 24, 2011 under 16 C.F.R. § 4.3, which allows the Court to permit extensions of any time limit prescribed by the Commission's Rules of Practice for good cause shown. That Rule further permits the Administrative Law Judge to consider a motion for extension of time after the period has run where the untimely filing was the result of excusable neglect. 16 C.F.R. § 4.3. For the reasons set forth herein, LabCorp respectfully submits that good cause exists to permit a very brief extension of time and that the error of LabCorp's counsel was neglect, but excusable neglect. See *Marshall v. Sunshine and Leisure, Inc.*, 496 F. Supp. 354, 355-356 (S.D. Fl. 1980) (granting motion to permit late filing of answers to requests for admission because failing to do so would be "too harsh a penalty to impose" when "neglect or inadvertence of plaintiff's counsel in failing to notice and respond to the request for admission, though not condoned, is certainly understandable").

² Federal Rule of Civil Procedure 36(b) provides in relevant part: "[T]he court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits."

R. Civ. P. 36. Inaccurate admissions or admissions as to ambiguous requests would not provide such assistance to the Court.

Although counsel for LabCorp has not located any decisions in the context of Federal Trade Commission administrative proceedings addressing late-filing of answers to requests for admission,³ Federal courts have held that the proper procedural vehicle when a party seeks to answer requests for admission after the time to do so has expired is a motion to amend or withdraw the deemed admissions resulting from expiration of the time period, and therefore the test to be used is the two-part test contained in both 16 C.F.R. § 3.32(c) and Federal Rule 36(b). *See, e.g., Pleasant Hill Bank v. U.S.*, 60 F.R.D. 1, 3 (W.D. Mo. 1973) (holding that “[t]o allow late filing of answers is the equivalent of allowing a party to withdraw admissions made by operation of Rule 36(a)” and therefore the standard to determine whether late filing of answers should be permitted is two-part withdrawal and amendment standard of Rule 36(b)).⁴ In this case, for the reasons set forth below, permitting LabCorp to file the attached Objections and Answers to Complaint Counsel’s Requests, and permitting LabCorp to withdraw and amend any deemed admissions, will promote the presentation of the merits of this proceeding and will not prejudice Complaint Counsel.

Complaint Counsel sent copies of the First Set of Requests for Admission to counsel for LabCorp by e-mail on the evening of January 10, 2011. Several members of LabCorp’s

³ Counsel for LabCorp located one FTC case in which the Administrative Law Judge granted a motion made by Complaint Counsel to amend a response to a request for admission. However, that case did not involve an issue of late-filing. *See In re TK-7 Corporation, et al.*, Docket No. 9224, 1990 WL 606557 (F.T.C. May 24, 1990).

⁴ *See also Kalis v. Colgate-Palmolive Co.*, 231 F.3d 1049, 1059 (7th Cir. 2000) (“[T]he proper procedural vehicle through which to attempt to withdraw admissions made in these circumstances is a motion under Rule 36(b) to withdraw admissions.”); 8A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2257 (2d ed.1994) (“the admission that would otherwise result from a failure to make timely answer should be avoided when to do so will aid in the presentation of the merits of the action and will not prejudice the party who made the request”).

litigation team, including counsel generally responsible for interrogatories, document requests, and requests for admission, were travelling to California at that time for depositions in the related federal lawsuit.⁵ Counsel with primary responsibility for these items inadvertently overlooked Complaint Counsel's e-mail attaching the Requests for Admission and did not discover the e-mail until Friday January 21, 2011, one day after the date to answer the Requests had run.⁶ Within an hour of discovering this error, LabCorp's counsel contacted Complaint Counsel to determine if Complaint Counsel would agree to a motion for a short extension of time within which to serve and file LabCorp's Objections and Answers. Complaint Counsel declined to agree to an extension. Complaint Counsel subsequently clarified that it reserved the right to argue that its Request for Admission should be deemed admitted as a result of LabCorp's inadvertent error in missing the response deadline, but that Complaint Counsel would not argue that any delay beyond that deadline compounded the error.

LabCorp then prepared its Objections and Answers to the Requests and served them on Complaint Counsel on Monday January 24, 2011, two business days after the time to respond had run and one business day after LabCorp's counsel discovered its inadvertent error and notified Complaint Counsel. LabCorp's Objections and Answers (public version) are attached as Exhibit A.

LabCorp does not seek to excuse the error of its counsel, and sincerely apologizes to the

⁵ *FTC v. Laboratory Corporation of America, et al*, Case No. SACV 10-1873 AG (MLGx) (C.D. Cal.).

⁶ In complete frankness, not all of LabCorp's litigation team was travelling, and another lead counsel did receive and review the e-mail from Complaint Counsel with the Requests for Admission but wrongly believed that objections and answers to such requests were due in 30 days, rather than 10, as they are under the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 36(a)(3), which would have meant that LabCorp could have responded after the January 28 close of briefing and February 3 hearing in the related preliminary injunction proceeding in the United States District Court for the Central District of California.

Court and the Federal Trade Commission for the delay.⁷ However, LabCorp respectfully requests that, to the extent it is deemed to have admitted Complaint Counsel's First Requests for Admission due to an untimely filing, LabCorp be permitted to withdraw and amend those deemed admissions because doing so will (1) subserve the presentation of the merits of this proceeding and (2) will not prejudice Complaint Counsel.

First, withdrawal and amendment will subserve the presentation of the merits because a number of the Requests for Admission are phrased in such a way that LabCorp is unable to admit or deny them without clarification as to certain terms. LabCorp has stated its objections and interpretation of those terms in its attached Objections and Answers. *See, e.g.*, Ex. A, Request Nos. 1, 6, 7, 8. Deemed admissions of these Requests without objection or clarification may not conform to the evidence in this proceeding and therefore would not be useful to the Court because of their ambiguity.⁸ To that end, LabCorp has admitted the bulk of the Requests (some subject to clarification), only denying the Requests that are contrary to the evidence. At least 17 of Complaint Counsel's 38 Requests for Admission seek information that has already been provided in documents and in LabCorp's CID response. *See id.*, Request Nos. 21-27, 29-38. Based on the produced documents and LabCorp's CID response, Complaint Counsel should have been aware that many of the statements included in these Requests are incorrect and an

⁷ Counsel for LabCorp recognizes that the relief requested may appear to be somewhat at odds with LabCorp's earlier position as to Complaint Counsel's late-filing of an opposition brief. In that instance, however, Complaint Counsel did not seek an extension from the Court and did not contact LabCorp to discuss an extension prior to filing its opposition brief eight days late.

⁸ For example, Complaint Counsel's Request No. 1 asks LabCorp to admit that "since 2007, LabCorp is not aware of any Physician Group customer in Southern California switching from purchasing clinical laboratory testing services on a capitated basis to purchasing clinical laboratory testing services on a contracted FFS basis in response to an increase in per-member, per-month ("PMPM") rates, or proposed increase in PMPM rates, of less than 50%." LabCorp is presently aware of Physician Groups who have switched from capitated payment arrangements to FFS payment arrangements, but for reasons other than an increase in PMPM rates. The Request is not clear as to whether it is intended to include such situations. LabCorp's Objections and Answers address this ambiguity in the Request and admit it to the extent it does not include switching for reasons other than an increase in PMPM rates.

admission of such Requests would be directly contrary to the evidence that has long been available to both parties in this case. *See Perez v. Miami-Dade County*, 297 F. 3d 1255, 1266 (11th Cir. 2002) (withdrawal and amendment of deemed admissions proper when doing so would “aid[] in the ascertainment of the truth and the development of the merits”) (internal quotation omitted).

Second, permitting withdrawal and amendment will not prejudice Complaint Counsel. LabCorp’s objections and answers were due on Thursday January 20. LabCorp’s counsel discovered its error the next day and immediately contacted Complaint Counsel. Only two business days have elapsed since LabCorp was due to serve and file its objections and answers, and Complaint Counsel was on notice less than one full day after the due date regarding LabCorp’s intention to seek to extend that time or amend its deemed admissions. In that time period, Complaint Counsel could not have relied on LabCorp’s deemed admissions in any meaningful fashion as no events connected with the Part 3 proceeding occurred in that period. Moreover, the close of discovery in this case is still more than a month away, and the deadline for serving additional discovery requests has not yet passed. Again, LabCorp sincerely regrets its counsel’s inadvertent error and apologizes for the mistake. However, LabCorp respectfully submits that Complaint Counsel has not been – and will not be – prejudiced as a result of that error. *See Kress v. Food Employers Labor Relations Ass’n*, 285 F. Supp. 2d 678, 681 (D. Md. 2003) (permitting withdrawal and amendment when opposing party had not relied on the deemed admissions and explaining that “prejudice” refers to “prejudice stemming from reliance on the binding effect of the admission.”); *Herrin v. Blackman*, 89 F.R.D. 622, 624 (W. D. Tenn. 1981) (no prejudice when trial date had not been set and opposing counsel had been informed that party did not intend to admit all requests for admission). *Cf. Raiser v. Utah County*, 409 F.3d 1243,

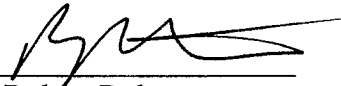
1247 (10th Cir. 2005) (holding that no prejudice existed as a result of a two week delay between due date for response and filing of motion to amend or allow untimely response).

CONCLUSION

For the foregoing reasons, LabCorp respectfully moves the Court for an order permitting LabCorp to amend and withdraw any admissions deemed to have been made as a result of inadvertently missing the deadline for responding to Complaint Counsel's Complaint Counsel's First Set of Requests for Admission (1-38). Alternatively, LabCorp respectfully requests that the Court extend the time for LabCorp to respond to Complaint Counsel's Requests for Admission by two business days until January 24, 2011.

Dated: January 24, 2010

Respectfully Submitted,



J. Robert Robertson
Corey W. Roush
Benjamin F. Holt
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004-1109
(202) 637-5600 (telephone)
(202) 637-5910 (facsimile)
robby.robertson@hoganlovells.com
corey.roush@hoganlovells.com
benjamin.holt@hoganlovells.com

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

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

In the Matter of

**LABORATORY CORPORATION
OF AMERICA**

and

**LABORATORY CORPORATION
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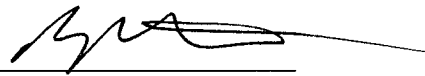
Docket No. 9345

PUBLIC

CERTIFICATE OF CONFERENCE

In accordance with the Court's Scheduling Order, Respondents' Counsel has conferred with Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by Respondents' Motion to Withdraw and Amend Deemed Admissions or in the Alternative for Extension of Time to Respond to Complaint Counsel's First Set of Requests for Admission (1-38) but has been unable to reach agreement on this issue.

Dated: January 24, 2011



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

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

In the Matter of

**LABORATORY CORPORATION
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PUBLIC

[PROPOSED] ORDER

Upon consideration of Respondents' Motion to Withdraw and Amend Deemed Admissions or in the Alternative for Extension of Time to Respond to Complaint Counsel's First Set of Requests for Admission (1-38), any opposition thereto, and the Court being fully informed,

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

IT IS FURTHER ORDERED, that Respondents may file their Objections and Answers to Complaint Counsel's First Set of Requests for Admission, which have already been served on Complaint Counsel and are attached to Respondents' Motion as Exhibit A, with the Secretary of the Commission (1-38) within three days from the date of this Order. Respondents' Objections and Answers to Complaint Counsel's First Set of Requests for Admission (1-38) shall thereafter be deemed to constitute Respondents' response to Complaint Counsel's First Set of Requests for Admission (1-38) for purposes of this proceeding.

D. Michael Chappell
Chief Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that I caused to be filed via hand delivery an original and one paper copy, and via FTC e-file a .PDF copy that is a true and correct copy of the paper original, of the foregoing Motion to Withdraw and Amend Deemed Admissions or in the Alternative for Extension of Time to Respond to Complaint Counsel's First Set of Requests for Admission (1-38) with:

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

I also certify I delivered via electronic mail and hand delivery a copy of the foregoing Motion to Withdraw and Amend Deemed Admissions or in the Alternative for Extension of Time to Respond to Complaint Counsel's First Set of Requests for Admission (1-38) to:

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

I also certify I delivered via electronic mail a copy of the foregoing Motion to Withdraw and Amend Deemed Admissions or in the Alternative for Extension of Time to Respond to Complaint Counsel's First Set of Requests for Admission (1-38) to:

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

Date: January 24, 2011



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

EXHIBIT A

**RESPONDENTS' MOTION TO WITHDRAW AND AMEND
DEEMED ADMISSIONS OR IN THE ALTERNATIVE FOR
EXTENSION OF TIME TO RESPOND TO COMPLAINT
COUNSEL'S FIRST SET OF REQUESTS FOR ADMISSION (1-38)**

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

In the Matter of

**LABORATORY CORPORATION
OF AMERICA**

and

**LABORATORY CORPORATION
OF AMERICA HOLDINGS,
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Docket No. 9345

**PUBLIC REDACTED
VERSION**

**RESPONDENTS' OBJECTIONS AND ANSWERS TO
COMPLAINT COUNSEL'S FIRST SET OF REQUESTS FOR ADMISSION (1-38)**

Pursuant to Rule 3.32 of the Commission's Rules of Practice, 16 C.F.R. § 3.32, Respondents Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively "LabCorp") respectfully provide the following objections and answers in response to Complaint Counsel's First Set of Requests for Admission (1-38):

SPECIFIC OBJECTIONS AND RESPONSES

1. *Admit that, since 2007, LabCorp is not aware of any Physician Group customer in Southern California switching from purchasing clinical laboratory testing services on a capitated basis to purchasing clinical laboratory testing services on a contracted FFS basis in response to an increase in per-member, per-month ("PMPM") rates, or proposed increase in PMPM rates, of less than 50%.*

RESPONSE: LabCorp objects to Request No. 1 on the grounds that it is vague and ambiguous, particularly as to the terms "purchasing," "in response to," and "proposed increase." LabCorp interprets the term "purchasing" to refer to the process by which Physician Groups enter into agreements with providers of clinical laboratory services to provide services to the physician members of the Physician Groups. LabCorp further interprets the terms "in response to" and "proposed increase" to be limited to instances in which the Physician Group in question was notified of an increase or proposed increase in PMPM rates. LabCorp also objects that Request No. 1 is ambiguous as to whether the Request includes instances of Physician Group customers in Southern California switching from purchasing clinical laboratory testing services on a capitated basis to purchasing clinical laboratory testing services on a contracted FFS basis in response to something other than a PMPM rate increase. LabCorp interprets the scope of Request No. 1 to exclude such instances. Subject to and without waiving the foregoing

objections, and subject to the foregoing interpretations, LabCorp admits Request No. 1. LabCorp reserves its right to amend its response to Request No. 1 should it become aware of any such examples in the future.

2. *Admit that, since 2007, LabCorp is not aware of any Physician Group customer in Southern California who stopped purchasing capitated clinical laboratory testing services from LabCorp, and began purchasing clinical laboratory testing services from a laboratory who previously provided clinical laboratory testing services only to customers located outside of Southern California, in response to an increase in PMPM rates, or proposed increase, in PMPM rates.*

RESPONSE: LabCorp objects to Request No. 2 on the grounds that it is vague and ambiguous, particularly as to the terms “purchasing,” “in response to,” and “proposed increase.” LabCorp interprets the term “purchasing” to refer to the process by which Physician Groups enter into agreements with providers of clinical laboratory services to provide services to the physician members of the Physician Groups. LabCorp further interprets the terms “in response to” and “proposed increase” to be limited to instances in which the Physician Group in question was notified of an increase or proposed increase in PMPM rates. Subject to and without waiving the foregoing objections, and subject to the foregoing interpretations, LabCorp admits Request No. 2. LabCorp reserves its right to amend its response to Request No. 2 should it become aware of any such examples in the future.

3. *Admit that, in Southern California, LabCorp's current average price per accession for FFS contracts with Physician Groups is at least three times higher than LabCorp's current average price per accession for capitated clinical laboratory testing services contracts with Physician Groups.*

RESPONSE: LabCorp objects to Request No. 3 on the grounds that it is irrelevant as drafted to any issue in this proceeding. LabCorp further objects that the term “FFS contracts” is ambiguous and that the phrase “average price per accession for capitated clinical laboratory testing contracts with Physician Groups” is ambiguous as to whether it includes various forms of FFS revenue that may be associated with those contracts. Subject to and without waiving its objections, [REDACTED]

4. *Admit that, in Southern California, LabCorp's current average price per accession for FFS contracts with Managed Care Companies is at least three times higher than LabCorp's current average price per accession for capitated clinical laboratory testing contracts with Physician Groups.*

RESPONSE: LabCorp objects to Request No. 4 on the grounds that it is irrelevant as drafted to any issue in this proceeding. LabCorp further objects that the term “Managed Care Companies” is overbroad and ambiguous and that the term “FFS contracts” is ambiguous. LabCorp further objects that the phrase “average price per accession for capitated clinical laboratory testing contracts with Physician Groups” is ambiguous as to whether it includes various forms of FFS revenue that may be associated with those contracts. Subject to and without waiving its objections, [REDACTED]

5. *Admit that, since 2007, LabCorp has won at least 14 capitated clinical laboratory testing services contracts with Physician Groups when competing against Quest in Southern California.*

RESPONSE: LabCorp objects to Request No. 5 on the grounds that it is ambiguous in that it fails to define whether a contract covering multiple Physician Groups would count as a single “contract” or multiple “contracts” for purposes of the Request. Subject to and without waiving its objections, [REDACTED]

LabCorp states that it lacks the information necessary to further admit or deny the request and, after a reasonable inquiry, the information known or readily obtainable by LabCorp is insufficient to enable LabCorp to further admit or deny Request No. 5.

6. *Admit that, in Southern California, Westcliff's current average PMPM rates to Physician Groups for clinical laboratory testing services are lower than LabCorp's current average PMPM rates to Physician Groups for clinical laboratory testing services.*

RESPONSE: [REDACTED]

7. *Admit that, in California, Westcliff's current average PMPM rates to Physician Groups for clinical laboratory testing services are lower than LabCorp's current average PMPM rates to Physician Groups for clinical laboratory testing services.*

RESPONSE: [REDACTED]

8. *Admit that when setting the price for capitated clinical laboratory testing services contracts for Physician Groups in Southern California, LabCorp does not expect that it will obtain referral of tests that are reimbursed under separate FFS agreements from the physicians who are members of the Physician Groups.*

RESPONSE: LabCorp objects to Request No. 8 on the grounds that it is overbroad in that it is not limited to a particular time period. LabCorp further objects to Request No. 8 on the grounds that the phrases “setting the price,” “expect that it will obtain,” and “FFS agreements” are vague and ambiguous. LabCorp states that it interprets the ambiguous term “expect” to imply a specific expectation that certain events will occur in the future and to exclude anticipation or hope that certain events might occur in the future. LabCorp further states that it interprets the phrase “FFS agreements” to include both specific written agreements and FFS reimbursements that are not made under a written agreement. Subject to and without waiving the foregoing objections, and subject to the foregoing interpretations of ambiguous terms, LabCorp admits Request No. 8.

9. *Admit the truth of the following statement made by LabCorp's counsel, J. Robert Robertson in the Prehearing Scheduling Conference in this proceeding on December 17, 2010, as it relates solely to LabCorp: "[I]t's not just Quest, it's not just LabCorp, not just Westcliff, there's a bunch of other labs in this market as well, and what they do, every one of them, when they negotiate what the capitated rate is they want to know what the other business is. That determines what the capitated rate is because you have to make a profit. And so there is a relationship between the amount of that pull-through, meaning the other business they can get, and that capitated, that small bit of capitated business, and that's what determines that price. It rises or falls based on pull-through."* (Tr. at 38).

RESPONSE: LabCorp objects to Request No. 9 on the grounds that it attempts to solicit an admission that the quoted statement is evidence of the truth of the matter asserted. LabCorp further objects to Request No. 9 on the grounds that it is vague and ambiguous and improperly attempts to force LabCorp to construe a statement of counsel made about numerous entities as relating "solely to LabCorp." Subject to and without waiving the foregoing objections, LabCorp admits the first two sentences of the quoted statement. LabCorp can neither admit or deny the third or fourth sentences of the quoted statement because LabCorp does not have an understanding of the meaning of the phrase "small bit of capitated business" and does not believe that the phrase read literally has any meaning in the broader context of the statement. To the extent that the third sentence and fourth sentences of the quoted statement are simply re-stating the content of the first and second sentences, LabCorp admits those sentences.

10. *Admit that Westcliff has not priced below its marginal costs of providing such services when providing clinical laboratory testing services to Physician Groups in Southern California.*

RESPONSE: LabCorp objects to Request No. 10 as overbroad and irrelevant to any issue in the case. LabCorp further objects to Request No. 10 because it improperly seeks to require LabCorp to provide a legal conclusion regarding issues related to potential liability in separate, unrelated proceedings. LabCorp further objects to Request No. 10 as vague and ambiguous, particularly with respect to the terms "priced," "marginal costs," and "such services." LabCorp interprets the term "priced" to refer to the process by which a clinical laboratory determines the pricing it will propose to a customer for clinical laboratory services before entering into a contract with that customer. Subject to and without waiving the foregoing objections, and subject to the foregoing interpretation, LabCorp admits Request No. 10.

11. *Admit that LabCorp has not priced below its marginal cost of providing such services when providing clinical laboratory testing services to Physician Groups in Southern California.*

RESPONSE: LabCorp objects to Request No. 11 as overbroad and irrelevant to any issue in the case. LabCorp further objects to Request No. 11 because it improperly seeks to require LabCorp to provide a legal conclusion regarding issues related to potential liability in separate, unrelated proceedings. LabCorp further objects to Request No. 11 as vague and ambiguous, particularly with respect to the terms "priced," "marginal cost," and "such services." LabCorp interprets the term "priced" to refer to the process by which a clinical laboratory determines the pricing it will propose to a customer for clinical laboratory services before

entering into a contract with that customer. Subject to and without waiving the foregoing objections, and subject to the foregoing interpretation, LabCorp admits Request No. 11.

12. *Admit that the pricing proposal reflected in the document Bates stamped LCA-MCCDe-0692501 was communicated to the customer.*

RESPONSE: LabCorp states that it lacks the information necessary to admit or deny the request and, after a reasonable inquiry, the information known or readily obtainable by LabCorp is insufficient to enable LabCorp to admit or deny Request No. 12. Therefore, LabCorp denies the Request.

13. *Admit that the pricing proposals reflected in the document Bates stamped LCA-MCCD-0001280 was communicated to the customer.*

RESPONSE: LabCorp admits that the PMPM rates reflected in the cited document were communicated to the customer but denies that the PMPM rates constitute the complete pricing proposal communicated to the customer or price paid by the customer.

14. *Admit that the pricing proposal reflected in the document Bates stamped LCA-MCCDe-0943283 was communicated to the customer.*

RESPONSE: LabCorp states that it lacks the information necessary to admit or deny the request and, after a reasonable inquiry, the information known or readily obtainable by LabCorp is insufficient to enable LabCorp to admit or deny Request No. 14. Therefore, LabCorp denies the Request.

15. *Admit that the pricing proposal reflected in the document Bates stamped LCA-MCCD-0000233 was communicated to the customer.*

RESPONSE: LabCorp states that it lacks the information necessary to admit or deny the request and, after a reasonable inquiry, the information known or readily obtainable by LabCorp is insufficient to enable LabCorp to admit or deny Request No. 15. Therefore, LabCorp denies the Request.

16. *Admit that the pricing proposal reflected in the document Bates stamped LCA-HARSe-0040186 was communicated to the customer.*

RESPONSE: LabCorp admits that the PMPM rates reflected in the cited document were communicated to the customer but denies that the PMPM rates constitute the complete pricing proposal communicated to the customer or price paid by the customer.

17. *Admit that the pricing proposal reflected in the document Bates stamped LCA-MANCe-0145981 was communicated to the customer.*

RESPONSE: LabCorp states that it lacks the information necessary to admit or deny the request and, after a reasonable inquiry, the information known or readily obtainable by LabCorp is insufficient to enable LabCorp to admit or deny Request No. 17. Therefore, LabCorp denies the Request.

18. *Admit that the pricing proposal reflected in the document Bates stamped LCA-MCCD-0001058 was communicated to the customer.*

RESPONSE: LabCorp states that it lacks the information necessary to admit or deny the request and, after a reasonable inquiry, the information known or readily obtainable by LabCorp is insufficient to enable LabCorp to admit or deny Request No. 12. Therefore, LabCorp denies the Request.

19. *Admit that the pricing proposal reflected in the document Bates stamped LCA-MCCDe-0200330 was communicated to the customer.*

RESPONSE: LabCorp admits that the PMPM rates reflected in the cited document were communicated to the customer but denies that the PMPM rates constitute the complete pricing proposal communicated to the customer or price paid by the customer.

20. *Admit that the pricing proposal reflected in the document Bates stamped LCA-GUAE-0002208 was communicated to the customer.*

RESPONSE: LabCorp admits that the PMPM rates reflected in the cited document were communicated to the customer but denies that the PMPM rates constitute the complete pricing proposal communicated to the customer or price paid by the customer.

21. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0082513 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 21 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 21.

22. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0038120 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 22 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp admits that the PMPM rates reflected in the cited document were communicated to the customer but denies that the PMPM rates constitute the complete pricing proposal communicated to the customer or price paid by the customer.

23. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0092840 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 23 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp admits that the PMPM rates reflected in the cited document were communicated to the customer but denies that the PMPM rates constitute the complete pricing proposal communicated to the customer or price paid by the customer.

24. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0093472 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 24 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp admits that the PMPM rates reflected in the cited document were communicated to the customer but denies that the PMPM rates constitute the complete pricing proposal communicated to the customer or price paid by the customer. LabCorp further states that alternative pricing proposals were provided to the customer.

25. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0083088 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 25 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 25.

26. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0056801 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 26 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 26.

27. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0076083 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 27 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 27.

28. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0076077 was communicated to the customer.*

RESPONSE: LabCorp states that it lacks the information necessary to admit or deny the request and, after a reasonable inquiry, the information known or readily obtainable by LabCorp is insufficient to enable LabCorp to admit or deny Request No. 28. Therefore, LabCorp denies the Request.

29. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0076074 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 29 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 29.

30. *Admit that the pricing proposal reflected in the document Bates stamped LCA-PREGe-0079386 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 30 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 30.

31. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0067531 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 31 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp admits that the PMPM rates reflected in the cited document were communicated to the customer but denies that the PMPM rates constitute the complete pricing proposal communicated to the customer or price paid by the customer.

32. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0055608 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 32 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp admits that the PMPM rates reflected in the cited document were communicated to the customer but denies that the PMPM rates constitute the complete pricing proposal communicated to the customer or price paid by the customer.

33. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0066351 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 33 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 33.

34. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0093778 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 34 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp admits that the PMPM rates reflected in the cited document were communicated to the customer but denies that the PMPM rates constitute the complete pricing proposal communicated to the customer or price paid by the customer.

35. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0058643 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 35 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 35.

36. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0076080 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 36 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 36.

37. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0094021 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 37 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 37.

38. *Admit that the pricing proposal reflected in the document Bates stamped LCA-VERKe-0094024 was communicated to the customer.*

RESPONSE: LabCorp objects to Request No. 38 on the ground that it calls for information previously provided to Complaint Counsel. Subject to and without waiving the foregoing objection, LabCorp denies Request No. 38.

GENERAL OBJECTIONS

Each of LabCorp's foregoing responses to specific Requests are also subject to the following general objections whether or not restated in response to any particular Request.

1. LabCorp objects to Complaint Counsel's Requests for Admission to the extent that they are overly broad, vague, and ambiguous. LabCorp denies each request, and/or each portion of a request, unless expressly admitted.

2. LabCorp objects to Complaint Counsel's Requests for Admission to the extent that they call for information protected from discovery by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

3. LabCorp objects to Complaint Counsel's Requests for Admission to the extent that they call for information protected from discovery pursuant to sections 3.31(c)(3)-(4) of the Commission's Rules of Practice.

4. LabCorp objects to Complaint Counsel's Requests for Admission to the extent that they call for disclosure of its trade secrets and/or confidential and proprietary commercial and financial information. LabCorp will provide responses containing its confidential and

proprietary information subject to the terms of the Protective Order Governing Discovery Material issued by Judge Chappell on December 20, 2010.

5. LabCorp objects to Complaint Counsel's Requests for Admission to the extent that they call for information previously provided to Complaint Counsel or attempt to obtain admissions that are contrary to the already-produced factual evidence in this case.

6. LabCorp objects to Complaint Counsel's Requests for Admission to the extent they do not relate to statements or opinions of fact or of the application of law to fact, and thereby exceed the scope of Rule 3.32.

7. LabCorp objects to Complaint Counsel's Requests for Admission to the extent that any Request quotes from a document or references a statement and solicits an admission that the quote or statement is evidence of the truth of the matter asserted.

8. LabCorp reserves all of its evidentiary objections or other objections to the introduction or use of any response at any hearing in this action and does not, by any response to any Request, waive any objections to that Request, stated or unstated.

9. LabCorp does not, by any response to any Request, admit to the validity of any legal or factual contention asserted or assumed in the text of any Request.

10. LabCorp objects to Complaint Counsel's Requests on the ground that LabCorp's discovery and analysis are ongoing and reserves the right to assert additional objections as appropriate and to amend or supplement these objections and responses as appropriate.

Dated: January 24, 2010

Respectfully Submitted,



J. Robert Robertson

Corey W. Roush
Benjamin F. Holt
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004-1109
(202) 637-5600 (telephone)
(202) 637-5910 (facsimile)
robby.robertson@hoganlovells.com
corey.roush@hoganlovells.com
benjamin.holt@hoganlovells.com

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

CERTIFICATE OF SERVICE

I hereby certify that I caused to be filed via hand delivery an original and one paper copy, and by FTC e-file one electronic copy that is a true and correct copy of the paper original, of the foregoing **Public** Respondents' Objections and Answers to Complaint Counsel's First Set of Requests for Admission (1-38) with:

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

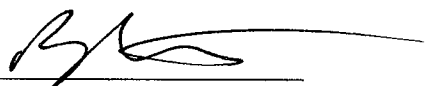
I also certify I delivered via hand delivery and e-mail a copy of the foregoing **Public** Respondents' Objections and Answers to Complaint Counsel's First Set of Requests for Admission (1-38) to:

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

I also certify I delivered via electronic mail a copy of the foregoing **Public** Respondents' Objections and Answers to Complaint Counsel's First Set of Requests for Admission (1-38) to:

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

Date: January 24, 2011


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

CERTIFICATION

I, Kathryn Kyle, declare as follows

1. I serve as Vice President and Director of Litigation for Laboratory Corporation of America and have been authorized to make this verification on behalf of the Respondents in this action.

2. I have read the foregoing Respondents' Answers and Objections to Complaint Counsel's First Set of Requests for Admission (1-38) and know the contents thereof.

3. I am informed and believe the information contained therein is accurate and true.

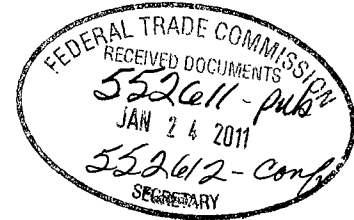
I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Date: January 24, 2011


Kathryn Kyle

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

ORIGINAL



January 24, 2010

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-135
Washington, DC 20580

Re: *In re Laboratory Corporation of America, et al.*, FTC Docket No. 9345

Dear Mr. Clark:

Enclosed please find the following documents for filing in the above reference matter:

1. Respondents' Motion to Withdraw and Amend Deemed Admissions or in the Alternative for Extension of Time to Respond to Complaint Counsel's First Set of Requests for Admission (1-38) and Exhibit A (which is a redacted public version of Respondents Objections and Answers to Complaint Counsel's First Set of Requests for Admission (1-38)).
2. **Confidential** version Respondents Objections and Answers to Complaint Counsel's First Set of Requests for Admission (1-38), and a copy of the ALJ's Protective Order in this matter attached per 16 C.F.R. § 4.2(c)(2).

For each of these documents, we have included the signed original and two paper copies. Please file stamp one of the copies and return it with the waiting messenger.

Per the Commission's rules of procedure, we have also included a CD containing a pdf of the **Confidential** version Respondents Objections and Answers to Complaint Counsel's First Set of Requests for Admission (1-38) that is a true and correct electronic copy of the signed original. The public motion will be submitted electronically by FTC e-file.

Please do not hesitate to contact me with any questions at 202-637-8845.

Sincerely,

Benjamin F. Holt

Attorney at Law
benjamin.holt@hoganlovells.com

Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia. Hogan Lovells refers to the international legal practice comprising Hogan Lovells US LLP, Hogan Lovells International LLP, Hogan Lovells Worldwide Group (a Swiss Verein), and their affiliated businesses with offices in: Abu Dhabi Alicante Amsterdam Baltimore Beijing Berlin Boulder Brussels Caracas Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston London Los Angeles Madrid Miami Milan Moscow Munich New York Northern Virginia Paris Philadelphia Prague Rome San Francisco Shanghai Silicon Valley Singapore Tokyo Ulaanbaatar Warsaw Washington DC Associated offices: Budapest Jeddah Riyadh Zagreb