

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of)
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)
 QUEST DIAGNOSTICS)
 INCORPORATED,)
 a corporation;)
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 and)
)
 UNILAB CORPORATION,)
 a corporation.)
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Docket No. C-4074

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Quest Diagnostics Incorporated (“Quest Diagnostics”) of Respondent Unilab Corporation (“Unilab”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts

as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Quest Diagnostics is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Malcolm Avenue, Teterboro, New Jersey, 07608.

2. Respondent Unilab is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 18448 Oxnard Street, Tarzana, California, 91356.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Quest Diagnostics" means Quest Diagnostics Incorporated, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Quest Diagnostics Incorporated, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Unilab" means Unilab Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Unilab Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. “Acquisition” means the exchange offer contemplated by Agreement and Plan of Merger dated April 2, 2002, and all amendments thereto, whereby Quest Diagnostics agreed to acquire all of the issued and outstanding voting securities of Unilab in exchange for cash, stock of Quest Diagnostics, or a combination of cash and stock of Quest Diagnostics.
- D. “Acquisition Date” means the date the Acquisition is consummated.
- E. “Agency(ies)” means any governmental regulatory authority or authorities in the United States responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, development, manufacture, marketing, distribution, or sale of Clinical Laboratory Testing Services.
- F. “Clinical Laboratory Testing Services” means the full range of products and services provided by a clinical laboratory, including, but not limited to, the drawing, collection, and transportation of specimens over a coordinated courier route system; stat, routine, and esoteric clinical testing; the computerized tracking of specimens for testing, record-keeping, and billing functions; and the electronic communication of test results and other necessary data to Customers.
- G. “Clinical Laboratory Testing Services Managerial Employees” means the current senior managers of Respondent Quest Diagnostics, identified in non-public Appendix A, attached to this Order.
- H. “Closing Date” means the date on which Respondents and the Commission-approved Acquirer consummate the transactions contemplated by the Divestiture Agreement.
- I. “Commission” means the Federal Trade Commission.
- J. “Commission-approved Acquirer” means the Person approved by the Commission to acquire assets pursuant to this Order, including LabCorp as the acquirer of the Purchased Assets pursuant to the LabCorp Purchase Agreement, if the Commission does not require that, pursuant to Paragraphs II.C. or II.D. of this Order, Respondents rescind the divestiture and transfer of the Purchased Assets.
- K. “Confidential Business Information” means all customer-specific pricing information, customer-specific discounts, and customer-specific supply or service requirements or preferences relating to the provision of Clinical Laboratory Testing Services by Quest Diagnostics in Northern California prior to the Acquisition Date (or the Closing Date as applicable if either the Outpatient Clinical Laboratory Testing Services Assets or Quest

Diagnostics' Northern California Clinical Laboratory Testing Services Assets are divested).

- L. "Customer" means any Person who orders or refers Clinical Laboratory Testing Services.
- M. "Divestiture Agreement" means any agreement between Respondents and a Commission-approved Acquirer (or between Divestiture Trustee and a Commission-approved Acquirer), as well as all amendments, exhibits, attachments, agreements, and schedules thereto, related to the divestiture of the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested) that has been approved by the Commission to accomplish the requirements of this Order.
- N. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV. of this Order.
- O. "Firewalled Employees" means all employees of Respondents that remain in the employment of Respondents after the Acquisition Date who, after the Acquisition Date, directly participate (irrespective of the portion of working time involved) in the marketing, contracting, or sales of Clinical Laboratory Testing Services to Customers or Payers in Northern California.
- P. "LabCorp" means Laboratory Corporation of America Holdings, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 358 South Main Street, Burlington, North Carolina 27215.
- Q. "LabCorp Purchase Agreement" means the Asset Purchase Agreement entered into between Quest Diagnostics Clinical Laboratories, Inc. and Laboratory Corporation of America Holdings, as well as all amendments, exhibits, attachments, agreements, and schedules thereto, dated February 3, 2003. The LabCorp Purchase Agreement is attached to this Order as non-public Appendix B.
- R. "Northern California" means all counties in California north of, but not including, San Luis Obispo, Kern, and San Bernardino counties.
- S. "Outpatient Clinical Laboratory Testing Services Assets" means the following:
 - 1. at the option of the Commission-approved Acquirer, any or all of Quest Diagnostics' assets, tangible and intangible, relating to Quest Diagnostics'

Northern California Outpatient Clinical Laboratory Testing Services Business, including, without limitation, the following:

- a. all PSCs, Stat Labs, and the full-service clinical laboratory located in Dublin, California, and all related assets, including, without limitation, all:
 - (1) real property interests (including fee simple interests and real property leasehold interests), together with all buildings and other structures, facilities, or improvements, currently or hereafter located thereon;
 - (2) easements, rights, and appurtenances;
 - (3) to the extent assignable, licenses, permits, registrations, certificates, consents, orders, accreditations, certificates of need, approvals, franchises, and similar authorizations required under applicable law or by applicable Agencies for the operation of the PSCs, Stat Labs, and the full-service clinical laboratory as currently operated by Quest Diagnostics;
 - (4) equipment and instruments related to providing Clinical Laboratory Testing Services; and
 - (5) other equipment, supplies, furniture, fixtures, vehicles, and other tangible personal property;
- b. all assets relating to the provision of courier services;
- c. all agreements with Payers (except hospital clinical laboratories and independent clinical laboratories) in effect as of the Acquisition Date, and all rights related thereto, to the extent such agreements are assignable;
- d. a copy of all books, records, and files (electronic and hard-copy) related to the foregoing; and

2. at the option of the Commission-approved Acquirer, the Managed Care Laboratory Services Agreement between Unilab and Sutter Medical Foundation-North Bay, dated November 1, 2002, and all of Unilab's assets, tangible and intangible, relating to that agreement, including, without limitation, the following:

- a. all PSCs and Stat Labs relating to that agreement located in Sonoma County, California; and all related assets, including, without limitation, all:
 - (1) real property interests (including fee simple interests and real property leasehold interests), together with all buildings and other structures, facilities, or improvements, currently or hereafter located thereon;
 - (2) easements, rights, and appurtenances;
 - (3) to the extent assignable, licenses, permits, registrations, certificates, consents, orders, accreditations, certificates of

need, approvals, franchises, and similar authorizations required under applicable law or by applicable Agencies for the operation of such PSCs and Stat Labs;

- (4) equipment and instruments related to providing Clinical Laboratory Testing Services; and
- (5) other equipment, supplies, furniture, fixtures, vehicles, and other tangible personal property;

provided, however, that, for purposes of this subparagraph I.S.2.a. only, “Outpatient Clinical Laboratory Testing Services Assets” does not include any PSCs or Stat Labs located outside of Sonoma County, California;

- b. all assets relating to the provision of courier services to such PSCs and Stat Labs; and
- c. a copy of all books, records, and files (electronic and hard-copy) related to the foregoing.

“Outpatient Clinical Laboratory Testing Services Assets” does not include:

- a. rights to the name Quest Diagnostics, SmithKline Beecham Clinical Laboratories, Unilab, or any variations of the foregoing names;
- b. any tangible personal property located outside of Northern California or in the offices of Customers;
- c. Respondents’ Medicare and Medicaid licenses and provider agreements;
- d. the Nichols Institute;
- e. any computers, servers, or other hardware that are used throughout Quest Diagnostics; and
- f. any computer programs and other software, patents, trade secrets, know-how, or proprietary information owned or licensed by the Respondents or their affiliates, including without limitation Quest Diagnostics’ laboratory information systems and billing system;
provided, however, that Respondents shall convey to the Commission-approved Acquirer (to the extent permitted by the third-party licensee if Respondents license the computer programs and other software, patents, trade secrets, know-how, or proprietary information from a third party) the right to use any software, patents, trade secrets, know-how, or proprietary information that is needed to operate the assets divested to the Commission-approved Acquirer and that the Commission-approved Acquirer is unable, using commercially-reasonable efforts, to obtain from other third parties on commercially-reasonable terms and conditions.

Provided, however, that, with respect to assets that are to be divested pursuant to this Order, Respondents need not divest assets that the Commission-approved Acquirer chooses not to acquire only if the acquirer chooses not to acquire such assets and the Commission approves the divestiture without such assets.

- T. “PSC” means a patient service center or any other facility where specimens are drawn and collected for the purpose of providing Clinical Laboratory Testing Services.
- U. “Payer” means any Person that pays for Clinical Laboratory Testing Services including, without limitation, the following: (1) the Customer; (2) the patient; (3) Medicare or Medicaid; or (4) a third party who pays the bill on behalf of the patient, such as an insurance company, employer, or managed-care provider, including Physician Groups.
- V. “Person” means any natural person, partnership, association, or corporate or governmental organization or entity.
- W. “Physician Group” means any group medical practice, individual practice association, physician service organization, management service organization, medical foundation, or physician/hospital organization, that provides, or through which physicians contract to provide, physician services to enrollees of pre-paid health plans.
- X. “Purchased Assets” means the assets described in the LabCorp Purchase Agreement.
- Y. “Quest Diagnostics Firewalled Employees” means the employees of Respondent Quest Diagnostics who, at the time Respondents executed the Agreement Containing Consent Orders, directly participated (irrespective of the portion of working time involved) in the marketing, contracting, or sales of Clinical Laboratory Testing Services to Customers or Payers in Northern California and who have not been or who are not being offered employment by LabCorp pursuant to the LabCorp Purchase Agreement and who, after the Acquisition Date, will directly participate (irrespective of the portion of working time involved) in the marketing, contracting, or sales of Clinical Laboratory Testing Services to Customers or Payers in Northern California.
- Z. “Quest Diagnostics’ Northern California Outpatient Clinical Laboratory Testing Services Business” means Quest Diagnostics’ business of providing Clinical Laboratory Testing Services (regardless of type of Payer) in Northern California to Customers, other than hospital clinical laboratories and independent clinical laboratories, as that business existed prior to the Acquisition Date.
- AA. “Quest Diagnostics’ Northern California Clinical Laboratory Testing Services Business” means Quest Diagnostics’ business of providing Clinical Laboratory Testing Services

(regardless of type of Payer) in Northern California to Customers, including hospital clinical laboratories and independent clinical laboratories, as that business existed prior to the Acquisition Date.

BB. “Quest Diagnostics’ Northern California Clinical Laboratory Testing Services Assets” means:

1. all of the Outpatient Clinical Laboratory Testing Services Assets, and
2. other assets, tangible and intangible, relating to Quest Diagnostics’ Northern California Clinical Laboratory Testing Services Business.

“Quest Diagnostics’ Northern California Clinical Laboratory Testing Services Assets” does not include:

- a. rights to the name Quest Diagnostics, SmithKline Beecham Clinical Laboratories, Unilab, or any variations of the foregoing names;
- b. any tangible personal property located outside of Northern California or in the offices of Customers;
- c. Respondents’ Medicare and Medicaid licenses and provider agreements;
- d. the Nichols Institute;
- e. any computers, servers, or other hardware that are used throughout Quest Diagnostics; and
- f. any computer programs and other software, patents, trade secrets, know-how, or proprietary information owned or licensed by the Respondents or their affiliates, including without limitation Quest Diagnostics’ laboratory information systems and billing system; *provided, however*, that Respondents shall convey to the Commission-approved Acquirer (to the extent permitted by the third-party licensee if Respondents license the computer programs and other software, patents, trade secrets, know-how, or proprietary information from a third party) the right to use any software, patents, trade secrets, know-how, or proprietary information that is needed to operate the assets divested to the Commission-approved Acquirer and that the Commission-approved Acquirer is unable, using commercially-reasonable efforts, to obtain from other third parties on commercially-reasonable terms and conditions.

CC. “Respondents” means Quest Diagnostics and Unilab, individually and collectively.

- DD. “Stat Lab” means a clinical laboratory testing facility with rapid response capability, in which clinical laboratory tests can be quickly performed for Customers that require rapid turn-around (less than 24 hours).

II.

IT IS FURTHER ORDERED that:

- A. Not later than ten (10) days after the Acquisition Date, Respondents shall cause the closing to occur pursuant to the LabCorp Purchase Agreement, and, not later than six (6) months after the Acquisition Date, Respondents shall divest and complete the transfer of, absolutely and in good faith and at no minimum price, the Purchased Assets to LabCorp, pursuant to and in accordance with the LabCorp Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of LabCorp pursuant to the LabCorp Purchase Agreement or to reduce any obligations of Respondents under such agreement). Failure by Respondents to comply with any term of the LabCorp Purchase Agreement, if approved by the Commission, shall constitute a failure to comply with this Order.
- B. If Respondents do not consummate the closing pursuant to the LabCorp Purchase Agreement pursuant to and in accordance with that agreement no later than ten (10) days after the Acquisition Date, then the Commission may appoint a Divestiture Trustee pursuant to Paragraph IV. of this Order to divest either the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics’ Northern California Clinical Laboratory Testing Services Assets, at no minimum price, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, and subject to the requirements of this Order.
- C. If, at the time the Commission determines to make this Order final, the Commission notifies Respondents in writing that LabCorp is not an acceptable purchaser of the Purchased Assets or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:
1. Respondents shall immediately notify LabCorp of the notice received from the Commission and shall as soon as practicable effect the rescission of the acquisition and transfer of the Purchased Assets as provided in the LabCorp Purchase Agreement (to the extent any of the Purchased Assets have been transferred to LabCorp);

2. Respondents shall divest the Outpatient Clinical Laboratory Testing Services Assets pursuant to a Divestiture Agreement, at no minimum price, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission no later than six (6) months from the date the Commission notifies Respondents that they are required to rescind the transaction with LabCorp; and
 3. If Respondents do not divest the Outpatient Clinical Laboratory Testing Services Assets in the time period required by subparagraph II.C.2., above, the Commission may appoint a Divestiture Trustee pursuant to Paragraph IV. of this Order to divest either the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, at no minimum price, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, and subject to the requirements of this Order.
- D. If, after Respondents have closed on the LabCorp Purchase Agreement pursuant to and in accordance with that agreement, but before Respondents have divested and transferred all of the Purchased Assets to LabCorp pursuant to the LabCorp Purchase Agreement, an Interim Monitor appointed by the Commission pursuant to Paragraph III. of this Order determines that LabCorp has abandoned its efforts to acquire and operate the Purchased Assets in a manner consistent with the purposes of this Order and reports such determination to the Commission, and the Commission agrees with such determination and so notifies Respondents and LabCorp, then:
1. Respondents shall as soon as practicable effect the rescission of the acquisition and transfer of the Purchased Assets as provided in the LabCorp Purchase Agreement;
 2. Respondents shall divest the Outpatient Clinical Laboratory Testing Services Assets pursuant to a Divestiture Agreement, at no minimum price, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission no later than six (6) months from the date the Commission notifies Respondents and LabCorp that Respondents are required to rescind the transaction with LabCorp; and
 3. If Respondents do not divest the Outpatient Clinical Laboratory Testing Services Assets in the time period required by subparagraph II.D.2. above, then the Commission may appoint a Divestiture Trustee pursuant to Paragraph IV. of this Order to divest either the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory

Testing Services Assets, at no minimum price, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission and subject to the requirements of this Order.

- E. Any Divestiture Agreement that has been approved by the Commission shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.

- F. No later than the Closing Date, Respondents shall, at the option of the Commission-approved Acquirer, create and transfer to the Commission-approved Acquirer a database, in a format acceptable to the Commission-approved Acquirer, that includes information relating to each physician who has referred specimens to the PSCs to be divested to the Commission-approved Acquirer any time during the most recently completed three months for which such information is available and to the extent such information is maintained in any of the Respondents' applicable systems. Such information shall include, without limitation: (1) name, address, and phone number of account, (2) name of physician, (3) billing name and address, if different, (4) office contact, (5) UPIN, (6) licenses, (7) pick-up times, (8) custom panels, if any, (9) client-specific alert values, (10) requirements regarding delivery of test results, (11) same-day testing requirements, (12) special services, (13) pre-printed test names, (14) special supply requirements, (15) form of requisition, (16) net discounted and all special fees for all clinical laboratory services billed to the Customer during such three-month period, (18) special service fees, and (19) special billing agreements; *provided, however,* that if Respondents create and transfer to LabCorp a database as described in the LabCorp Purchase Agreement, and if the Commission does not require rescission of the divestiture and transfer of the Purchased Assets, then the Respondents shall have no further obligation pursuant to this Paragraph II.F.

- G. From the Closing Date through the date six (6) months following the last transfer of the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested):
 - 1. Respondents shall not disclose or convey, directly or indirectly, to Firewalled Employees any Confidential Business Information relating to the assets divested and transferred to the Commission-approved Acquirer pursuant to this Order; and

 - 2. Firewalled Employees shall not solicit or access any Confidential Business Information relating to the assets divested and transferred to the Commission-

approved Acquirer pursuant to this Order from any other of Respondents' employees;

provided, however, that nothing contained herein shall prohibit Respondents' employees from using Confidential Business Information to respond to inquiries from Customers requesting information relating to that Customer's own account; and *provided, further*, that only for purposes of the divestiture of the Purchased Assets, nothing contained herein shall prohibit Quest Diagnostics Firewalled Employees (and, following the completion of the divestiture and transfer of all of the Purchased Assets, all other Firewalled Employees) from using, soliciting, or having access to Confidential Business Information relating to any physician not included in the database that Respondents are required to create and transfer to LabCorp pursuant to the LabCorp Purchase Agreement as contemplated by Paragraph II.F. of this Order.

3. Prior to the Closing Date, Respondents shall develop and implement procedures to assure that such Confidential Business Information is not disclosed or conveyed to Firewalled Employees and that Firewalled Employees do not solicit or access such Confidential Business Information from any other of Respondents' employees consistent with the requirements of this Paragraph II.G.

- H. Respondents shall, promptly following the Closing Date, provide written or electronic notification to the Firewalled Employees and all of Respondents' employees who have access to Confidential Business Information relating to the assets divested to the Commission-approved Acquirer pursuant to this Order of the restrictions on the disclosure and solicitation of Confidential Business Information relating to the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested) by Respondents' personnel. At the same time, if not provided earlier, Respondents shall provide a copy of such notification to employees by e-mail with return receipt requested or similar transmission and keep an electronic file of such receipts for one (1) year after the Closing Date. Respondents shall provide a copy of the form of such notification to the Commission-approved Acquirer, the Interim Monitor, and the Commission. Respondents shall also obtain from the Firewalled Employees an agreement to abide by the applicable restrictions. Such agreement and notification shall be in substantially the form set forth in the "Notice of the Divestiture and Employee Agreement to Maintain Confidential Business Information" attached to the Order to Maintain Assets issued in this matter.
- I. Respondents shall not, in connection with divestiture and transfer of the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest

Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested), interfere with the employment by the Commission-approved Acquirer of any employee of Respondents with responsibilities relating primarily to the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested), shall not offer any incentive to such employees to decline employment with the Commission-approved Acquirer or to accept other employment with Respondents in lieu of accepting employment with the Commission-approved Acquirer, and shall remove any other impediments that may deter such employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any confidentiality provisions relating to the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested) or any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of those individuals to be employed by the Commission-approved Acquirer; *provided, however*, that if Respondents comply with the terms of the LabCorp Purchase Agreement relating to the solicitation and employment by LabCorp of employees of the Respondents, and if the Commission does not require rescission of the divestiture and transfer of the Purchased Assets, then the Respondents shall have no further obligations pursuant to this Paragraph II.I.; and *provided, further*, that nothing in this Paragraph II.I. shall be construed to require the Respondents to terminate the employment of any employee.

- J. For a period of one (1) year following the date the divestiture and transfer are completed, Respondents shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any employees of Respondent who have accepted offers of employment with the Commission-approved Acquirer to terminate their employment relationship with the Commission-approved Acquirer unless the individual has been terminated by the Commission-approved Acquirer; *provided, however*, a violation of this provision will not occur if: (1) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (2) Respondents hire employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph II.J.
- K. Respondents shall provide all Clinical Laboratory Testing Services Managerial Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing Date for the divestiture of the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested), including regularly scheduled raises and bonuses, and a vesting of all pension

benefits (as permitted by law). In addition, Respondents shall provide a retention incentive to the Clinical Laboratory Testing Services Managerial Employees who accept employment with the Commission-approved Acquirer equal to ten (10) percent of such employee's total annual cash compensation for the year 2002 under the following terms:

1. five (5) percent of the incentive to be paid upon the employee's completion of six (6) months of continuous employment with the Commission-approved Acquirer after the Closing Date, and
2. the remaining five (5) percent to be paid upon the employee's completion of one (1) year of continuous employment with the Commission-approved Acquirer after the Closing Date.

L. Respondents shall, consistent with all applicable federal and state laws and regulations, secure all actual or constructive consents and waivers from all entities that are necessary for the divestiture of, or for the continued operation or use of, the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Asset, if divested) by the Commission-approved Acquirer. In the event that Respondents are unable to obtain all consents and waivers, Respondents may substitute equivalent assets, subject to Commission approval; *provided, however*, that Respondents shall not be required to divest substitute assets for an asset that Respondents are unable to convey because of a failure to obtain all applicable consents and waivers if the failure to obtain the necessary consents and waivers is a direct result of a refusal by the Commission-approved Acquirer to agree to commercially reasonable terms, including an extension of a lease reasonably requested by a landlord, or any other inaction by or action by the Commission-approved Acquirer inconsistent with customary industry practice. A substituted asset will not be deemed to be equivalent unless it enables the Commission-approved Acquirer to operate the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested) at commercially reasonable terms.

M. From the date Respondents execute the Agreement Containing Consent Orders, until such time as the Commission-approved Acquirer has completed its transition, including installation of all necessary software and hardware (but in no event later than six (6) months after the Outpatient Clinical Laboratory Testing Services Assets (or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested) are divested and transferred), Respondents shall provide to the Commission-approved Acquirer such personnel, services, assistance, and training as the

Commission-approved Acquirer reasonably needs to transfer the Outpatient Clinical Laboratory Testing Services Assets (or Quest Diagnostics' Northern California Clinical Testing Services Assets, if divested) or conduct the business (including billing support). Respondents shall not require the Commission-approved Acquirer to pay compensation for the personnel, services, assistance, or training in excess of Respondents' direct costs of providing such services; *provided, however*, that if Respondents provide assistance pursuant to the LabCorp Purchase Agreement, and if the Commission does not require rescission of the divestiture and transfer of the Purchased Assets, then the Respondents shall have no further obligation pursuant to this Paragraph II.M.

- N. Pending divestiture and transfer of the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested), Respondents shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets and to prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of any of Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets except for ordinary wear and tear.
- O. The purpose of the divestiture and transfer of the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Clinical Laboratory Testing Services Assets, if divested) is to ensure the continued use of the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Clinical Laboratory Testing Services Assets, if divested) in the same business in which the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Clinical Laboratory Testing Services Assets, if divested) were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Order to Maintain Assets (collectively, "the Orders"), and to monitor the Commission-approved Acquirer's reasonable diligence in effectuating the divestiture and transfer of assets pursuant to a Divestiture Agreement.

- B. If an Interim Monitor is appointed pursuant to Paragraph III.A. of this Order or Paragraph III.A of the Order to Maintain Assets issued in this matter, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
1. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If neither Respondent has opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
 2. The Interim Monitor shall have the power and authority to monitor the Respondents' compliance with the terms of the Orders and the Commission-approved Acquirer's reasonable diligence in effectuating the divestiture and transfer of assets pursuant to the Divestiture Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.
 3. Not later than ten (10) days after appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant terms of the Orders and the Commission-approved Acquirer's reasonable diligence in effectuating the divestiture and transfer of assets pursuant to the Divestiture Agreement in a manner consistent with the purposes of the Orders.
 4. The Interim Monitor shall serve until the last obligation under the Orders pertaining to the Interim Monitor's service has been fully performed; *provided, however,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
 5. Subject to any legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, or records kept in the normal course of business, facilities and technical information, and any other relevant information as the Interim Monitor may reasonably request, relating to Respondents' compliance with their obligations

under the Orders, including, but not limited to, their obligations relating to the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested). Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.

6. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities. The Interim Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
7. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
8. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in Paragraph III.A. of this Order or Paragraph III.A. of the Order to Maintain Assets in this matter.
9. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

10. Respondents shall report to the Interim Monitor in accordance with the requirements of Paragraph V. of this Order and Paragraph IV. of the Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Commission-approved Acquirer with respect to the performance of its or Respondents' obligations under the Orders or the Divestiture Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning compliance by Respondents with the provisions of the Orders.
11. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations specified in Paragraph II.A., B., C., or D, as applicable, of this Order, the Commission may appoint a Divestiture Trustee to divest either the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets in a manner that satisfies the requirements of Paragraph II of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. of this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest or transfer the relevant assets that are required by this Order to be divested or transferred.
3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture(s) or transfer(s) required by the Order.
4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.
5. The Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the relevant assets that are required to be divested by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Respondents shall extend the time for divestiture

under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

6. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

9. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute Divestiture Trustee shall be appointed in the same manner as provided in Paragraph IV. of this Order.
10. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.
11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
12. The Divestiture Trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).

V.

IT IS FURTHER ORDERED that

- A. Beginning thirty (30) days after the initial report is required to be filed pursuant to the Agreement Containing Consent Orders in this matter, and every sixty (60) days thereafter until Respondents have fully complied with these obligations pursuant to this Order, Respondents shall submit to the Commission and the Interim Monitor verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II.A. (or Paragraphs II.B., C., or D., or Paragraph IV., if applicable) and Paragraphs II.F., G., H., I., L., M., and N.; and
- B. Beginning six (6) months after the initial report is required to be filed, and every six (6) months thereafter, for the duration of Respondents' obligation, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they are complying and have complied with Paragraphs II.J. and K. of this Order.
- C. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order, subject to any legally recognized privilege, including copies of all written and electronic communications to and from the parties, all internal memoranda, and all reports and recommendations concerning the completion of such obligations.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in either corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: April 3, 2003

**NON-PUBLIC APPENDIX A
TO THE DECISION AND ORDER**

Management Employees

[Redacted From Public Record Version]

**NON-PUBLIC APPENDIX B
TO THE DECISION AND ORDER**

LabCorp Purchase Agreement

[Redacted From Public Record Version]