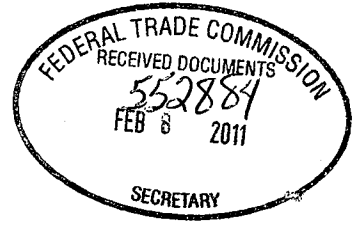


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6 *Attorneys for Third-Party Hunter Laboratories*

7
8 **UNITED STATES OF AMERICA**
9 **FEDERAL TRADE COMMISSION**

10
11
12 In the Matter of Laboratory Corporation
of America and Laboratory Corporation of
13 America Holdings

Docket No. 9345

14 **HUNTER LABORATORIES'**
15 **MOTION TO QUASH SUBPOENA;**
16 **MEMORANDUM OF POINTS AND**
17 **AUTHORITIES**
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1 **MOTION TO QUASH**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 Please take notice that third-party Hunter Laboratories hereby moves to quash the
4 subpoena served on it on February 1, 2011, by Respondents Laboratory Corporation of
5 America and Laboratory Corporation of America Holdings (collectively, "LabCorp").

6 This motion is made on the grounds that the subpoena violates a discovery ruling
7 in a civil action pending in the State of California, and that the discovery sought is
8 unreasonably cumulative or duplicative, is obtainable from some other source that is more
9 convenient, less burdensome, and less expensive, and the burden and expense of the
10 proposed discovery outweigh its likely benefit. The motion is based on this notice of
11 motion and motion, the memorandum of points and authorities, the Declaration of Justin
12 T. Berger, and the Court's entire file in this matter.

13 Dated: February 7, 2011

COTCHETT, PITRE & McCARTHY, LLP

14
15 By:


16 NIALL P. McCARTHY
17 JUSTIN T. BERGER
18 *Attorneys for Hunter Laboratories*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Third-party Hunter Laboratories (“Hunter Labs”) seeks to quash the subpoena
4 served on February 1, 2011, by Respondents Laboratory Corporation of America and
5 Laboratory Corporation of America Holdings (collectively, “LabCorp”).

6 In addition to being extremely burdensome and overbroad, the LabCorp subpoena
7 **violates a discovery ruling in a civil action pending in the State of California.** In that
8 action under the California False Claims Act, the State of California, together with Hunter
9 Labs (one of the *Qui Tam* Plaintiffs, a/k/a Relators), seeks the return from LabCorp of
10 tens of millions of dollars in government money, representing overbillings of the Medi-
11 Cal program by LabCorp. The California action was filed in November 2005, and has
12 been unsealed and actively litigated for almost three years.

13 Among the extensive discovery requests exchanged by the parties in the California
14 action, LabCorp has sought discovery into the business practices of Hunter Labs. Hunter
15 Labs objected to those discovery requests, and on September 23, 2010, the Court-
16 appointed Special Master upheld those objections.

17 Despite this ruling, the instant LabCorp subpoena seeks an even broader swath of
18 information related to Hunter Labs’ business practices. Hunter Labs has requested that
19 LabCorp withdraw the subpoena in light of the Special Master’s prior ruling. LabCorp
20 has refused. Accordingly, Hunter Labs is forced to bring this motion to quash.

21 **II. PROCEDURAL BACKGROUND**

22 **A. The California Action**

23 In 2005, Hunter Laboratories, and its C.E.O. Chris Riedel, became aware that certain
24 laboratories were engaged in the overbilling of Medi-Cal, and the provision of below-cost
25 kickbacks, and became aware that these activities were illegal. Consequently, on November 7,
26 2005, Hunter Laboratories filed a *qui tam* action against LabCorp and other defendants for
27 violation of the California False Claims Act. After extensive investigation, the California
28 Attorney General’s office intervened on behalf of the State on October 28, 2008.

1 California and Hunter Labs allege in the California action that the State of
2 California, and its taxpayers, have paid over **\$79 million** in overcharges to LabCorp.
3 Because LabCorp's overcharges violated the California False Claims Act, California is
4 entitled to treble damages on the \$79 million, and a penalty of up to \$10,000 for every
5 one of LabCorp's over 7 million overcharges, and statutory fees and costs of suit.

6 Trial against LabCorp is set for January 30, 2012.

7 **B. The Discovery Requests At Issue**

8 On September 23, 2010, the court-appointed Special Master in the California
9 action denied LabCorp's motion to compel responses to the following discovery requests
10 (among others):

- 11 • IDENTIFY each person or entity to whom YOU offered or charged prices
12 for laboratory testing services that were different from YOUR fee schedules
13 for laboratory testing services. (LabCorp Holdings' Special Interrogatory
14 No. 1.)
- 15 • State when YOU offered or charged prices for laboratory testing services
16 that were lower than amounts allowed to be charged under the MediCal
17 regulations. (LabCorp Holdings' Special Interrogatory No. 2.)
- 18 • IDENTIFY each occasion where MediCal reimbursed YOU at a rate that
19 was different than the rate published in the MediCal fee schedule for a
20 given CPT code. If the response is too voluminous, IDENTIFY ten
21 examples of such occasions. (LabCorp Holdings' Special Interrogatory No.
22 5.)
- 23 • Identify, by name, each Independent Physicians Organization ("IPA") for
24 which YOU are contracted to provide laboratory testing services.
25 (LabCorp Holdings' Special Interrogatory No. 6.)
- 26 • For each IPA IDENTIFIED in response to Interrogatory No. 6, state
27 whether YOU have a capitated rate contract. (LabCorp Holdings' Special
28 Interrogatory No. 7.)

- 1 • For each IPA IDENTIFIED in response to Interrogatory No. 6, state
2 whether YOU have ever calculated the pull-through or discretionary
3 business received from each IPA. (LabCorp Holdings' Special
4 Interrogatory No. 8.)
- 5 • All DOCUMENTS sufficient to show HUNTER LABS' fee schedules to
6 MediCal and non-MediCal purchasers for laboratory tests. (LabCorp's
7 Request for Production No. 17.)
- 8 • All DOCUMENTS sufficient to show prices for laboratory tests offered by
9 HUNTER LABS that differ from HUNTER LABS' fee schedules or that are
10 lower than amounts on MediCal's published fee schedules from 1995
11 through the present. (LabCorp's Request for Production No. 18.)
- 12 • All DOCUMENTS showing the amounts MediCal reimbursed YOU for
13 laboratory testing services. (LabCorp's Request for Production No. 19.)
- 14 • All DOCUMENTS RELATING TO YOUR calculation of pull-through or
15 discretionary business. (LabCorp's Request for Production No. 20.)
- 16 • All DOCUMENTS RELATING TO YOUR compliance with state and
17 federal regulations, statutes or other authority RELATING TO pricing of
18 laboratory testing services provided to MediCal or to billing MediCal.
19 (LabCorp's Request for Production No. 21.)
- 20 • All DOCUMENTS RELATING TO how YOU price YOUR lab tests,
21 including any pricing guidelines. (LabCorp's Request for Production No.
22 22.)

23 A copy of the Special Master's ruling is attached as **Exhibit A** to the Declaration
24 of Justin T. Berger ("Berger Dec.") filed in support of this motion. The pertinent
25 discovery requests are attached as **Exhibits B** and **C**.

26 The subpoena duces tecum at issue, served by LabCorp on February 1, 2011, in
27 connection with these proceedings, seeks, among other information:
28

- 1 • All Documents discussing or analyzing your Business Plans with respect to
2 the provision of clinical laboratory services to physicians in California,
3 including but no limited to your Business Plans with respect to providing
4 clinical laboratory services to Physician Groups and/or Health Plans
5 pursuant to capitated or fee-for-service billing arrangements. (No. 4.)
6 • For each month since January 1, 2008, Documents or data sufficient to
7 identify and describe, with respect to the provision of clinical laboratory
8 services to physicians in California: (1) your average number of accessions
9 per day; (2) your average price per accession (“PPA”); (3) your revenue; (4)
10 your total number of covered patient lives; (5) your average costs per
11 accession (“CPA”); (6) your supply costs (or other measure of marginal
12 cost); and (7) your total average costs. State items (1) through (4) above
13 separately for each payment source, including but not limited to: Medicare;
14 Medicaid; patient (out-of-pocket); client (direct-bill physicians, hospitals,
15 laboratories, etc.); capitated Health Plans or Physician Groups; fee-for-
16 service Health Plans or Physician Groups; or any other source (identify each
17 source). (No. 5.)
18 • Each contract and/or agreement with any Physician Group or Health Plan
19 related to the provision of clinical laboratory services in California executed
20 and/or agreed upon after June 1, 2001, including any amendments to
21 modifications thereto. (No. 6.)
22 • Documents or data sufficient to identify and describe every instance in
23 which you have submitted a bid or proposal on a contract or agreement with
24 a Physician Group or Health Plan related to the provision of clinical
25 laboratory services in California since January 1, 2005 (No. 7.)

26 **C. Meet And Confer Efforts**

27 Upon receiving LabCorp’s subpoena, counsel for *Qui Tam* Plaintiffs promptly
28 wrote LabCorp’s counsel, asking them to withdraw the subpoena in light of the Special

1 Master's report and recommendation in this action. *See* Berger Dec., Ex. D. LabCorp's
2 counsel refused to do so. *See* Berger Dec., Ex. E.

3 **II. ARGUMENT**

4 **A. LabCorp's Subpoena is an Improper Attempt to Evade the Report and**
5 **Recommendation of the Special Master**

6 LabCorp's subpoena covers all of the information LabCorp was denied access to
7 by the Special Master's September 23, 2010 ruling in the California action – and then
8 some. LabCorp should not be permitted to evade the ruling in the California action in this
9 manner.

10 As was correctly ruled in the California action, in *qui tam* lawsuits, the conduct of
11 *qui tam* plaintiffs (a/k/a, relators), who are also competitors in the industry, is generally
12 irrelevant. Moreover, discovery directed at *qui tam* plaintiff competitors can be subject to
13 abuse. As well-stated by the District Court in a case under the federal False Claims Act,
14 *United States ex rel. Singh v. Nadella* (W.D. Penn. May 31, 2007) 2007 U.S. Dist. LEXIS
15 39662, at *9 - *12 ("*Singh*"), in which the defendant sought discovery into the business
16 practices of the *qui tam* Plaintiffs:

17 It is transparent that [defendant] seeks to compel this information in
18 order to argue that the Relators engaged in the same conduct as
19 Defendants did, and thus further argue that either (1) the Relators are
20 opportunistic hypocrites that engaged in the same illegal conduct that
21 Defendants did, or (2) if the Relators conduct is legal, then so is the
22 Defendants. But that is not what is at issue here.

23

24 To permit such discovery would tend to shift the focus of this action
25 to the Relators' irrelevant conduct, and we see no basis upon which
26 to allow that to happen. The Relators' conduct is not an issue in this
27 case and [defendant]'s motion to compel this information appears
28 solely aimed at punishing the Relators for bringing this *qui tam*
action.

25 LabCorp will undoubtedly argue that it is simply seeking information related to the
26 market and competition for laboratory services in California, as pertinent to the FTC
27 action. Even assuming the information LabCorp seeks is relevant to its defense of the
28 FTC action, however, there are dozens of laboratories – of similar size to Hunter Labs –

1 in California, from which LabCorp could obtain the same information. Accordingly, the
2 probative value of Hunter Labs' information is marginal, at best. Against this *de minimus*
3 probative value, the Court must weigh, as was done in the California action, the burden,
4 risk of harassment, and waste of time such discovery would cause.

5 Indeed, according to LabCorp, the subpoena served on Hunter Labs is "similar to
6 those served on other labs . . ." Berger Dec., Ex. F. Counsel for the FTC has further
7 confirmed that LabCorp has issued over 20 subpoenas to laboratories in California that
8 are similar to the subpoena issued to Hunter Labs. *See* Berger Dec. ¶ 7. Given the prior
9 ruling in the California action, and the risk that LabCorp's subpoena is designed simply to
10 punish *Qui Tam* Plaintiffs for bringing this action, or may otherwise interfere with orderly
11 litigation of this action, LabCorp should be required to establish that it cannot obtain
12 sufficient relevant information from the dozens of other laboratories in California, prior
13 to obtaining any of the requested information from *Qui Tam* Plaintiffs.

14 **B. Even Setting Aside The California Action, The Subpoena's Requests**
15 **Are Overbroad, Unduly Burdensome, And Harassing**

16 Under the provisions of the Code that govern this subpoena, the Administrative
17 Law Judge may limit discovery if:

18 (I) The discovery sought is unreasonably cumulative or duplicative,
19 or is obtainable from some other source that is more convenient, less
burdensome, or less expensive;

20 ; or

21 (iii) The burden and expense of the proposed discovery outweigh its
22 likely benefit.

23 16 CFR 3.31(c)(2).

24 The subpoena merits quashing under both of these provisions. Simply put, the
25 requests contained in the subpoena would take months, and tens or even hundreds of
26 thousands of dollars to comply with. Request Number 5, for example, seeks:

27 For each month since January 1, 2008, Documents or data sufficient
28 to identify and describe, with respect to the provision of clinical
laboratory services to physicians in California: (1) your average
number of accessions per day; (2) your average price per accession

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("PPA"); (3) your revenue; (4) your total number of covered patient lives; (5) your average costs per accession ("CPA"); (6) your supply costs (or other measure of marginal cost); and (7) your total average costs. State items (1) through (4) above separately for each payment source, including but not limited to: Medicare; Medicaid; patient (out-of-pocket); client (direct-bill physicians, hospitals, laboratories, etc.); capitated Health Plans or Physician Groups; fee-for-service Health Plans or Physician Groups; or any other source (identify each source).

In other words, LabCorp seeks every minute detail of Hunter Labs' business over the past three years.

Not only are the requests burdensome, but it is unclear what, if any, relevance they have to the FTC action. Hunter Labs' understanding is that the FTC action alleges that the LabCorp-Westcliff integration would decrease competition in the **Southern California** market, specifically in the market for **capitated** contracts. Significantly, Hunter Labs is a **Northern California** lab, and does **not** offer capitated contracts. Accordingly, Hunter Labs' business practices would shed no light on the issues pertinent to the FTC action. The heavy burden and expense of LabCorp's subpoena thus unquestionably outweighs the *de minimus* likely benefit.


III. CONCLUSION

For the foregoing reasons, Hunter Labs respectfully requests that LabCorp's subpoena be stricken. In the alternative, LabCorp's subpoena should be stayed until the California action is fully resolved.

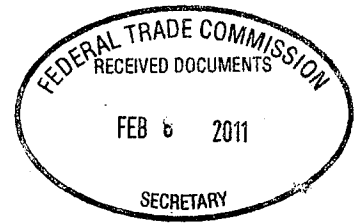
Dated: February 7, 2011

COTCHETT, PITRE & McCARTHY, LLP

By:


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JUSTIN T. BERGER
Attorneys for Hunter Laboratories

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Laboratories

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

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

Docket No. 9345

**DECLARATION OF JUSTIN T.
BERGER IN SUPPORT OF
HUNTER LABORATORIES'
MOTION TO QUASH
SUBPOENA**

1 I, Justin Berger, declare as follows:

2 1. I am an attorney at the law firm of Cotchett, Pitre & McCarthy, LLP, and I
3 am one of the counsel of record for Chris Riedel and Hunter Laboratories, LLC. Except
4 where specified, I have personal knowledge of the facts set forth below, and if called
5 upon to testify, I could and would competently testify to them.

6 2. Attached hereto as **Exhibit A** is a true and correct copy of the Report and
7 Recommendation of Special Master regarding Labcorp Defendants' Motion to Compel
8 further Responses and Documents from *Qui Tam* Plaintiffs Hunter laboratories, LLC and
9 Chris Riedel in the matter of *State of California ex rel Hunter Laboratories, LLC and*
10 *Chris Riedel v. Laboratory Corporation of America, Laboratory Corporation of America*
11 *Holdings, et al.*, Superior Court of the State of California, County of Sacramento, Case
12 No. 34-2009-00066517, issued by Honorable Fred K. Morrison (Ret.), Special Master and
13 Discovery Referee.

14 3. Attached hereto as **Exhibit B** is a true and correct copy of Defendant
15 Laboratory Corporation of America Holding's First Set of Special Interrogatories to *Qui*
16 *Tam* Plaintiffs Hunter Laboratories, LLC and Chris Riedel.

17 4. Attached hereto as **Exhibit C** is a true and correct copy of Defendant
18 Laboratory Corporation of America's First Requests for Production for Documents and
19 Things Pursuant to CCP § 2031.010 to *Qui Tam* Plaintiffs Hunter Laboratories, LLC and
20 Chris Riedel.

21 5. Attached hereto as **Exhibit D** is a true and correct copy of a letter dated
22 February 1, 2011 from Niall P. McCarthy addressed to Martha Boersch.


23 6. Attached hereto as **Exhibit E** is a true and correct copy of a letter dated
24 February 2, 2011 from Lara Kollios addressed to Niall P. McCarthy.

25 7. Lisa Demarchi Sleigh, counsel for the FTC in this action, indicated to me
26 that LabCorp has served at least approximately 20 subpoenas on laboratories other than
27 Hunter Labs, that are similar, if not identical, to the subpoena served on Hunter Labs.
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8. Hunter Labs is a Northern California lab, and does not offer capitated contracts.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of February, 2011 at Burlingame, California.



JUSTIN BERGER

EXHIBIT A

Honorable Fred K. Morrison (Retired)
Special Master and Discovery Referee
JAMS
2520 Venture Oaks Way
Sacramento, California 95833

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

CASE NO. 34-2009-00066517

STATE OF CALIFORNIA *ex rel* HUNTER
LABORATORIES, LLC and CHRIS RIEDEL,
an individual,
Plaintiffs

vs.

LABORATORY CORPORATION OF
AMERICA, LABORATORY
CORPORATION OF AMERICA
HOLDINGS and DOES 1 through 100,
Inclusive,
Defendants.

**REPORT AND RECOMMENDATION OF SPECIAL MASTER
REGARDING LABCORP DEFENDANTS' MOTION TO
COMPEL FURTHER RESPONSES AND DOCUMENTS
FROM QUI TAM PLAINTIFFS HUNTER LABORATORIES, LLC
AND CHRIS RIEDEL**

Pursuant to the April 14, 2010 order of the Honorable Raymond M. Cadei and the April 26, 2010 tentative ruling of the Honorable Shelleyanne Chang, the Honorable Fred K. Morrison (Ret.), acting as Special Master in the above captioned cases, heard Defendants Laboratory Corporation of America's and Laboratory Corporation of America Holdings' (LabCorp) Motion to compel further responses from the State of California and from *Qui Tam* Plaintiffs Hunter Laboratories, LLC and Chris Reidel on September 14, 2010. Having considered the arguments of the parties, and the papers submitted, the Special Master makes the following report and recommendation regarding LabCorp's Motion to Compel Further Responses from *Qui Tam* Plaintiffs, and RECOMMENDS AS FOLLOWS:

1. Laboratory Corporations of America's First Set of Special Interrogatories to *Qui Tam* Plaintiffs:

Special Interrogatory No. 14: DENIED, this interrogatory seeks a description of each alleged false claim knowingly made by LabCorp.

As with many of the special interrogatories contained in this motion, the decision on the motion is based on the content and utility of the replacement damages disc ("damages disc") provided to defendants on August 12, 2010. The disc, labeled DOJ.EXP.WV-000001 is described in the declaration of Vincent DiCarlo in Opposition to Motion to Compel ("DiCarlo Decl.") dated August 31, 2010. The disc

was thoroughly discussed at oral argument and according to the DiCarlo declaration contains: all the data and all the code used by California to make the current damage calculations; detailed instruction describing how to replicate the damage calculations and how to modify the code to calculate damages using an indefinite number of alternative scenarios and theories; instructions for creating reports; copies of reports already generated; and a list of CPT codes, "legacy MediCal provider numbers," "National Provider Identifier Standard numbers" and other information sought by the interrogatories.

Special Interrogatory No. 15: DENIED, the requested information is on the "damages disc." See, the DiCarlo Decl.

Special Interrogatory No. 18: DENIED, based on statements made in argument, *Qui Tam* Plaintiff's response to this interrogatory and opposition to the motion to compel, it is the *Qui Tam* Plaintiff's position that certification is not required and, in any event, each false claim constituted an express certification the LabCorp was entitled to the amount claimed pursuant to the applicable law and contractual requirements. Other than each false claim itself constituting a false certification, *Qui Tam* Plaintiffs do not contend that there were other express certifications.

Special Interrogatory No. 20: DENIED, based on statements made in argument and *Qui Tam* Plaintiff's response to this interrogatory and opposition to the motion to compel, it is the *Qui Tam* Plaintiff's position that each false claim constituted an implied certification the LabCorp was entitled to the amount claimed pursuant to the applicable law and contractual requirements.

Special Interrogatory No. 21: DENIED, this information is contained on the "damages disc." See, DiCarlo Decl., paragraph 7., and California's response to Special Interrogatory No. 23.

Special Interrogatory No. 22: DENIED, this information is contained on the "damages disc." See, DiCarlo Decl., paragraph 7., and California's response to Special Interrogatory No. 23.

Special Interrogatory No. 25: DENIED, based on statements made in argument, *Qui Tam* Plaintiff's response to this interrogatory and opposition to the motion to compel, it is the *Qui Tam* Plaintiff's position that certification is not required and, in any event, each false claim, including those for business obtained by illegal kickbacks, constituted an express certification that LabCorp was entitled to the amount claimed pursuant to the applicable law and contractual requirements. Other than each false claim itself constituting a false certification, *Qui Tam* Plaintiffs do not contend that there were other express certifications.

Special Interrogatory No. 27: DENIED, based on statements made in argument and *Qui Tam* Plaintiff's response to this interrogatory and opposition to the motion to compel, it is the *Qui Tam* Plaintiff's position that each false claim, including those for business obtained by illegal kickbacks, constituted an implied certification that LabCorp was entitled to the amount claimed pursuant to the applicable law and contractual requirements.

2. Laboratory Corporation of America Holdings' First Set of Special Interrogatories to *Qui Tam* Plaintiffs:

Special Interrogatory No. 1: DENIED, *Qui Tam* Plaintiff's billing practices are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of

unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

Special Interrogatory No. 2: DENIED, *Qui Tam* Plaintiff's billing practices are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

Special Interrogatory No. 5: DENIED, *Qui Tam* Plaintiff's billing practices are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

Special Interrogatory No. 6: DENIED, , *Qui Tam* Plaintiff's billing practices are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

Special Interrogatory No. 7: DENIED, *Qui Tam* Plaintiff's billing practices are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

Special Interrogatory No. 8: DENIED, *Qui Tam* Plaintiff's billing practices are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims

Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

3. Laboratory Corporation of America's First set of Requests for Documents to *Qui Tam* Plaintiffs:

Request for Production No. 10: GRANTED, as to communications between LabCorp employees, including former employees Richard Prendergast and May Visperian, and *Qui Tam* Plaintiffs relating to the amount LabCorp charged MediCal for laboratory testing services.

Request for Production No. 17: DENIED, *Qui Tam* Plaintiff's fee schedules are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

Request for Production No. 18: DENIED, *Qui Tam* Plaintiff's prices and fee schedules are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

Request for Production No. 19: DENIED, *Qui Tam* Plaintiff's MediCal reimbursement rates are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

Request for Production No. 20: DENIED, *Qui Tam* Plaintiff's business practices are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

Request for Production No. 21: DENIED, *Qui Tam* Plaintiff's business practices are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law

defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

Request for Production No. 22: DENIED, *Qui Tam* Plaintiff's business practices are not relevant. The statutory unclean hands defense is limited to present or former employees (Government Code § 12652(g)) and the Defendant's have not provided any authority for the proposition that a common law defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the comprehensive nature of the federal act which is similar to the California False Claims Act. Any discretionary reduction of the qui tam plaintiff's recovery reverts to the state and not the Defendant. [Government Code § 12652(g)(6)]

The motion for further responses to Special Interrogatories Nos. 14, 15, 21 and 22 were denied based on information contained in the "damages disc" supplied by the Plaintiff State of California. If Defendants encounter problems obtaining relevant data from the "damages disc," further interrogatories should focus on obtaining data from the "damages disc."

IT IS SO RECOMMENDED

Dated: 9/23/10



Honorable Fred K. Morrison (Retired)
Special Master and Discovery Referee

Having considered the foregoing Report and Recommendation of Special Master, The Court hereby adopts the Report and Recommendation of Special Master in its entirety.

IT IS SO ORDERED

Dated: _____

Honorable Shelleyanne W. L. Chang
Judge of the Superior Court of California
Sacramento County

IT IS SO ORDERED

Dated: _____

Honorable Raymond M. Cadei
Judge of the Superior Court of California
Sacramento County

PROOF OF SERVICE BY FACSIMILE & U.S. MAIL

Re: State of California ex rel. Hunter Laboratories, LLC, et al. vs. Quest Diagnostics, Inc., et al.

Reference No. 1130004761

I, Jan Murray, not a party to the within action, hereby declare that on September 23, 2010 I served the attached REPORT AND RECOMMENDATION OF SPECIAL MASTER REGARDING LABCORP DEFENDANTS' MOTION TO COMPEL FURTHER RESPONSES AND DOCUMENTS FROM QUI TAM PLAINTIFFS HUNTER LABORATORIES, LLC AND CHRIS RIEDEL on the parties in the within action by facsimile and depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Sacramento, CALIFORNIA, addressed as follows:

Vincent Di Carlo Esq.
Office of The Attorney General
BMFEA
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Sacramento, CA 95815

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Jill Kopeikin Esq.
Dechert LLP
2440 W. El Camino Real
Suite 700
Mountain View, CA 94040
Fax: 650-813-4848

Hon. Shelleyanne Chang *MAIL ONLY*
Sacramento Superior Court
Department 54
800 9th St.
Sacramento, CA 95814

I declare under penalty of perjury the foregoing to be true and correct. Executed at Sacramento,
CALIFORNIA on September 23, 2010.

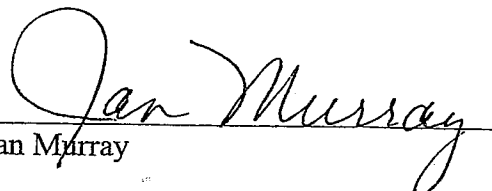

Jan Murray

EXHIBIT B

1 Shawn Hanson (State Bar No. 109321).
Martha A. Boersch (State Bar No. 126569)
2 Lara T. Kollios (State Bar No. 235395)
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3 555 California Street, 26th Floor
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4 Telephone: (415) 626-3939
Facsimile: (415) 875-5700
5 shanson@jonesday.com

6 Attorneys for Defendants
LABORATORY CORPORATION OF AMERICA and
7 LABORATORY CORPORATION OF AMERICA
HOLDINGS
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11
12 STATE OF CALIFORNIA *ex rel.* HUNTER
LABORATORIES, LLC and CHRIS
13 RIEDEL, an individual,

14 Plaintiffs,

15 v.

16 LABORATORY CORPORATION OF
AMERICA, LABORATORY
17 CORPORATION OF AMERICA
HOLDINGS, and DOES 1 through 100,
18 inclusive,

19 Defendants.
20

CASE NO. 34-2009-00066517

**DEFENDANT LABORATORY
CORPORATION OF AMERICA
HOLDINGS' FIRST SET OF
SPECIAL INTERROGATORIES TO
QUI TAM PLAINTIFFS HUNTER
LABORATORIES, LLC AND CHRIS
RIEDEL**

21
22 PROPOUNDING PARTY: DEFENDANT LABORATORY CORPORATION OF AMERICA
23 HOLDINGS

24 RESPONDING PARTY: PLAINTIFFS HUNTER LABORATORIES and CHRIS RIEDEL

25 SET NUMBER: ONE (NOS. 1-12)
26
27
28

1 Pursuant to California Code of Civil Procedure (“CCP”) section 2030.010 et seq.,
2 Defendant LABORATORY CORPORATION OF AMERICA HOLDINGS propounds the
3 following special interrogatories to Plaintiffs HUNTER LABORATORIES LLP and CHRIS
4 RIEDEL.

5 **DEFINITIONS**

6 The following words and phrases have the meanings given:

7 “HUNTER LABS,” “*QUI TAM* PLAINTIFFS,” “RIEDEL,” “PLAINTIFF,”
8 “PLAINTIFFS,” “YOU,” and “YOUR” means plaintiffs Chris Riedel and Hunter Laboratories,
9 LLC, as well their subsidiaries, divisions, affiliates, assigns, present and former officers,
10 directors, employees, related corporations, and agents, including any and all predecessors under
11 any other names.

12 “STATE” means plaintiff State of California, as well as its present and former officials
13 and employees, agencies, departments (including the Department of Health Care Services f/k/a
14 Department of Health Services and Department of Justice, Bureau of MediCal Fraud & Elder
15 Abuse), and agents.

16 “DHCS” means the California Department of Health Care Services as well as its present
17 and former officials and employees, fiscal intermediaries, agents and any and all predecessors of
18 it under any other names.

19 “LABCORP” and “DEFENDANTS” means defendants Laboratory Corporation of
20 America and Laboratory Corporation of America Holdings, as well as their subsidiaries,
21 divisions, affiliates, assigns, present and former officers, directors, employees, related
22 corporations, and agents, including any and all predecessors under any other names, including but
23 not limited to, National Health Laboratories, Physicians & Surgeons Laboratories, Inc., and
24 Pathology Medical Laboratories.

25 “DOCUMENT” is used in the broadest possible sense and shall mean any “writing,” as
26 that term is defined in California Evidence Code section 250, of any nature, whether on paper,
27 magnetic tape or other information storage means, including film and computer memory and
28 storage devices, and includes, without limitation, all written, typed, printed, drawn, charted,

1 recorded, graphic, photographic, electronically stored or otherwise preserved communications
2 including any letter, correspondence, note, e-mail, book, pamphlet, article, bulletin, directive,
3 review, publication, memorandum, diary, log, test, analysis, study, projection, check, invoice,
4 receipt, bill, purchase order, shipping order, contract, lease, agreement, work paper, calendar,
5 envelope, paper, telephone message, tape, computer tape, computer disc, computer card,
6 recording, videotape, film, microfilm, microfiche drawing, account, ledger, statement, financial
7 data, and all other writings or communications including all non-identical copies, drafts, and
8 preliminary sketches, no matter how produced or maintained in Plaintiff's actual or constructive
9 possession, custody, or control or of which Plaintiff has knowledge of the existence. Without
10 limiting the foregoing, the term "DOCUMENT" includes any copy that differs in any respect
11 from the original or other versions of the DOCUMENT, including but not limited to copies
12 containing notations, insertions, corrections, marginal notes, or any other variations.

13 "COMMUNICATION" means all inquiries, discussions, conversations, negotiations,
14 agreements, understandings, meetings, conferences, telephone conversations, interviews, cards,
15 letters, notes, correspondence, telegrams, telexes, cables, or other forms of interpersonal
16 discourse, whether oral or written, however transmitted, whether orally or by DOCUMENT, and
17 whether face to face, by telephone, mail, e-mail, facsimile, personal delivery or otherwise.

18 "RELATED TO" or "RELATING TO" means directly or indirectly supporting,
19 reflecting, evidencing, describing, mentioning, referring to, contradicting, comprising or
20 concerning.

21 "DESCRIBE" with respect to (a) a document means to state the type of document, date,
22 author or parties signatory, addressee or recipients, number of pages, subject matter, and name
23 and address of each person having possession of the original or any copy; or (b) information
24 means to describe the content and substantive nature of the information, identify and person(s)
25 providing and receiving the information, and when the information was transmitted.

26 "IDENTIFY" with respect to (a) a person, means to list the person's full name (if YOU
27 do not know the person's full name provide as much of the name and any other identifying
28 characteristics as possible), the person's title or professional affiliation (if any), and the person's

1 last known address and telephone number; (b) a payor or business entity means to specify the
2 name of the payor or business entity; the type of payor or business entity it is (*e.g.*, hospital, IPA,
3 HMO, etc.); its address; and any persons YOU are aware of who acted on behalf of that
4 corporation or other business entity with respect to the events at issue in the interrogatory; (c) a
5 federal, state or local regulatory, investigative, or administrative agency or department, means to
6 specify the name of such agency or department; the type of agency or department it is (*e.g.*,
7 federal, state, local); its address; and any persons YOU are aware of who acted on behalf of that
8 agency or department with respect to the events at issue in the interrogatory; or (d) occasion
9 where MediCal reimbursed YOU means to specify the date of the reimbursement, the CPT code
10 for which MediCal reimbursed YOU, and the amount for which MediCal reimbursed YOU.

11 **“IDENTIFY THE SOURCE”** means to IDENTIFY the person, DOCUMENT, or other
12 basis YOU have for knowing or believing the information YOU provide in response to the
13 interrogatory. If information is provided to YOU by your attorney, IDENTIFY the person,
14 DOCUMENT, or other basis YOUR attorney has for knowing or believing the information.

15 INSTRUCTIONS

16 1. Each interrogatory shall be answered separately for each PLAINTIFF and fully in
17 writing under oath, unless it is objected to, in which event the objecting party shall state the
18 reasons for objection and shall answer to the extent the interrogatory is not objectionable.
19 PLAINTIFFS may provide one document in response to these interrogatories. If YOU provide a
20 substantive response to an interrogatory, IDENTIFY each PLAINTIFF who has knowledge about
21 the matters contained in the response.

22 2. The answers are to be signed by the person making them, and the objections
23 signed by the attorney making them.

24 3. All responses shall be as complete and straightforward as the information in
25 PLAINTIFFS' possession, custody or control permits. PLAINTIFFS must produce all
26 information in their possession, custody or control or otherwise available to them or any one
27 acting as their agent or on their behalf, including their attorneys. If an interrogatory cannot be
28 answered completely, it shall be answered to the extent possible. If a PLAINTIFF does not have

1 personal knowledge sufficient to respond fully to an interrogatory, provide the information
2 PLAINTIFF does have available to him/her, and PLAINTIFF shall make a reasonable and good
3 faith effort to obtain the information by inquiry to other natural persons or organizations.

4 4. All responses in which the PLAINTIFF chooses to exercise the option to produce
5 DOCUMENTS or other writings shall require the PLAINTIFF to provide a copy of that
6 DOCUMENT or make it available for inspection, provide a description of the location where the
7 DOCUMENT was found and to indicate to which interrogatory it is responsive. If the
8 DOCUMENT is made available for inspection, PLAINTIFFS shall afford the Defendants a
9 reasonable opportunity to examine, audit, or inspect the DOCUMENT and to make copies,
10 compilations, abstracts, or summaries of it.

11 5. If only a part of an interrogatory is objectionable, the remainder of the
12 interrogatory shall be answered. If an objection is made to an interrogatory or to a part of an
13 interrogatory, the specific ground for the objection shall be set forth clearly in the response.

14 6. YOUR answer to each interrogatory shall IDENTIFY each individual who
15 supplied information for or participated in the preparation of YOUR answers to these
16 Interrogatories, and each DOCUMENT to which YOU referred or upon which YOU relied in the
17 preparation of YOUR answers to these Interrogatories.

18 **SPECIAL INTERROGATORIES**

19 **SPECIAL INTERROGATORY NO. 1:**

20 IDENTIFY each person or entity to whom YOU offered or charged prices for laboratory
21 testing services that were different from YOUR fee schedules for laboratory testing services.

22 **SPECIAL INTERROGATORY NO. 2:**

23 State when YOU offered or charged prices for laboratory testing services that were lower
24 than amounts allowed to be charged under the MediCal regulations.

25 **SPECIAL INTERROGATORY NO. 3:**

26 IDENTIFY each payor that YOU do not bill by individual CPT codes, but bill at some
27 other unit, such a bundle of CPT codes.

28

1 **SPECIAL INTERROGATORY NO. 4:**

2 For each payor IDENTIFIED in response to Interrogatory No. 3, DESCRIBE why YOU
3 do not bill by individual CPT codes.

4 **SPECIAL INTERROGATORY NO. 5:**

5 IDENTIFY each occasion where MediCal reimbursed YOU at a rate that was different
6 than the rate published in the MediCal fee schedule for a given CPT code. If the response is too
7 voluminous, IDENTIFY ten examples of such occasions.

8 **SPECIAL INTERROGATORY NO. 6:**

9 Identify, by name, each Independent Physicians Organization ("IPA") for which YOU are
10 contracted to provide laboratory testing services.

11 **SPECIAL INTERROGATORY NO. 7:**

12 For each IPA IDENTIFIED in response to Interrogatory No. 6, state whether YOU have a
13 capitated rate contract.

14 **SPECIAL INTERROGATORY NO. 8:**

15 For each IPA IDENTIFIED in response to Interrogatory No. 6, state whether YOU have
16 ever calculated the pull-through or discretionary business received from each IPA.

17 **SPECIAL INTERROGATORY NO. 9:**

18 Identify each DOCUMENT, by exhibit, page or bates number, that is attached as an
19 exhibit to YOUR complaint that YOU had in YOUR possession, custody or control prior to
20 November 7, 2005.

21 **SPECIAL INTERROGATORY NO. 10:**

22 IDENTIFY THE SOURCE of each DOCUMENT identified in response to Interrogatory
23 No. 9.

24 **SPECIAL INTERROGATORY NO. 11:**

25 Identify each DOCUMENT, by bates number, RELATING TO the fees LABCORP
26 charged for any laboratory test to any payor, including MediCal, that YOU did not receive from
27 the STATE at any time or that was in YOUR possession prior to November 7, 2005.

28

1 **SPECIAL INTERROGATORY NO. 12:**


2 Identify the CPT codes for which YOU allege LABCORP overcharged the STATE for
3 MediCal reimbursement.

4
5 Dated: March 16, 2010

Jones Day

6

7

By: 
Shawn Hanson

8

9

Attorneys for Defendants
LABORATORY CORPORATION OF
AMERICA and LABORATORY
CORPORATION OF AMERICA HOLDINGS

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PROOF OF SERVICE

I, Sandra Altamirano, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On **March 16, 2010**, I served copies of the within document:

DEFENDANT LABORATORY CORPORATION OF AMERICA HOLDINGS' FIRST SET OF SPECIAL INTERROGATORIES TO *QUI TAM* PLAINTIFFS HUNTER LABORATORIES, LLC AND CHRIS RIEDEL

- by placing the document(s) listed above in sealed envelopes with postage thereon fully prepaid, in the United States mail at San Francisco, California, each envelope addressed as set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.
- by placing the document(s) listed above in sealed envelopes and arranging for such envelopes to be delivered by hand, with delivery time prior to 5:00 p.m. on the date specified above, to the person(s) and address(es) as set forth below.
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

[SEE ATTACHED SERVICE LIST]

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **March 16, 2010**, at San Francisco, California.


Sandra Altamirano

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SERVICE LIST

State of California ex rel. Hunter Laboratories, et al. v. Laboratory Corp. of America, et al.
Sacramento County Superior Court Case No. Civ 34-2009-00066517

Dennis Fenwick, Deputy Attorney General Vincent DiCarlo, Deputy Attorney General California Department of Justice Bureau of Medi-Cal Fraud & Elder Abuse 1425 River Park Drive, Suite 300 Sacramento, CA 95815 VIA HAND DELIVERY	<u>Attorneys for the State of California</u>
Niall P. McCarthy Justin T. Berger Cotchett, Pitre & McCarthy San Francisco Airport Office Center 840 Malcolm Road, Suite 200 Burlingame, CA 94010 VIA HAND DELIVERY	Attorneys for <i>Qui Tam</i> Plaintiffs: Chris Riedel and Hunter Laboratories, LLC

SFI-606246v1

EXHIBIT C

1 Shawn Hanson (State Bar No. 109321)
Martha A. Boersch (State Bar No. 126569)
2 Lara T. Kollios (State Bar No. 235395)
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5 shanson@jonesday.com

6 Attorneys for Defendants
LABORATORY CORPORATION OF AMERICA and
7 LABORATORY CORPORATION OF AMERICA
HOLDINGS
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11
12 STATE OF CALIFORNIA *ex rel.* HUNTER
LABORATORIES, LLC and CHRIS
13 RIEDEL, an individual,

14 Plaintiffs,

15 v.

16 LABORATORY CORPORATION OF
AMERICA, LABORATORY
17 CORPORATION OF AMERICA
HOLDINGS, and DOES 1 through 100,
18 inclusive,

19 Defendants.
20

CASE NO. 34-2009-00066517

LABORATORY CORPORATION OF
AMERICA'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS
AND THINGS PURSUANT TO CCP §
2031.010 TO *QUI TAM* PLAINTIFFS
HUNTER LABORATORIES, LLC
AND CHRIS RIEDEL

21
22 PROPOUNDING PARTY: DEFENDANT LABORATORY CORPORATION OF AMERICA

23 RESPONDING PARTY: PLAINTIFFS HUNTER LABORATORIES and CHRIS RIEDEL

24 SET NUMBER: ONE (NOS. 1-22)
25
26
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LABORATORY CORPORATION OF AMERICA'S FIRST SET OF REQUESTS FOR PRODUCTION
TO *QUI TAM* PLAINTIFFS

1 Pursuant to California Code of Civil Procedure (“CCP”) section 2031.010 *et seq.*,
2 Defendant LABORATORY CORPORATION OF AMERICA hereby demands that Plaintiffs
3 HUNTER LABORATORIES, LLP and CHRIS RIEDEL produce and permit inspection and
4 copying of the documents or other tangible things described below. Such production is to be
5 made within 30 days of service of this request, at the offices of Jones Day, 555 California Street,
6 26th Floor, San Francisco, CA 94104.

7 **DEFINITIONS**

8 The following words and phrases have the meanings given:

9 “HUNTER LABS,” “*QUI TAM* PLAINTIFFS,” “RIEDEL,” “YOU,” and “YOUR”
10 means plaintiffs Chris Riedel and Hunter Laboratories, LLC, as well their subsidiaries, divisions,
11 affiliates, assigns, present and former officers, directors, employees, related corporations, and
12 agents, including any and all predecessors under any other names.

13 “STATE” means plaintiff State of California, as well as its present and former officials
14 and employees, agencies, departments (including the Department of Health Care Services f/k/a
15 Department of Health Services and Department of Justice, Bureau of MediCal Fraud & Elder
16 Abuse), and agents.

17 “DHCS” means the California Department of Health Care Services as well as its present
18 and former officials and employees, fiscal intermediaries, agents and any and all predecessors of
19 it under any other names.

20 “LABCORP” and “DEFENDANTS” means defendants Laboratory Corporation of
21 America and Laboratory Corporation of America Holdings, as well as their subsidiaries,
22 divisions, affiliates, assigns, present and former officers, directors, employees, related
23 corporations, and agents, including any and all predecessors under any other names including but
24 not limited to, National Health Laboratories, Physicians & Surgeons Laboratories, Inc., and
25 Pathology Medical Laboratories.

26 “DOCUMENT” is used in the broadest possible sense and shall mean any “writing,” as
27 that term is defined in California Evidence Code section 250, of any nature, whether on paper,
28 magnetic tape or other information storage means, including film and computer memory and

1 storage devices, and includes, without limitation, all written, typed, printed, drawn, charted,
2 recorded, graphic, photographic, electronically stored or otherwise preserved communications
3 including any letter, correspondence, note, e-mail, book, pamphlet, article, bulletin, directive,
4 review, publication, memorandum, diary, log, test, analysis, study, projection, check, invoice,
5 receipt, bill, purchase order, shipping order, contract, lease, agreement, work paper, calendar,
6 envelope, paper, telephone message, tape, computer tape, computer disc, computer card,
7 recording, videotape, film, microfilm, microfiche drawing, account, ledger, statement, financial
8 data, and all other writings or communications including all non-identical copies, drafts, and
9 preliminary sketches, no matter how produced or maintained in Plaintiff's actual or constructive
10 possession, custody, or control or of which Plaintiff has knowledge of the existence. Without
11 limiting the foregoing, the term "DOCUMENT" includes any copy that differs in any respect
12 from the original or other versions of the DOCUMENT, including but not limited to copies
13 containing notations, insertions, corrections, marginal notes, or any other variations.

14 "COMMUNICATION" means all inquiries, discussions, conversations, negotiations,
15 agreements, understandings, meetings, conferences, telephone conversations, interviews, cards,
16 letters, notes, correspondence, telegrams, telexes, cables, or other forms of interpersonal
17 discourse, whether oral or written, however transmitted, whether orally or by DOCUMENT, and
18 whether face to face, by telephone, mail, e-mail, facsimile, personal delivery or otherwise.

19 "RELATED TO" or "RELATING TO" means directly or indirectly supporting,
20 reflecting, evidencing, describing, mentioning, referring to, contradicting, comprising or
21 concerning.

22 GENERAL INSTRUCTIONS

23 The relevant time period herein is from January 1, 1995 to the date of YOUR responses to
24 these requests, unless otherwise noted.

25 The following rules of construction shall be applied herein: (1) the words "and" or "or"
26 shall be construed conjunctively or disjunctively as necessary to make the requests inclusive
27 rather than exclusive; (2) the singular includes the plural and vice-versa; and (3) the words "any,"
28 "all," "each" and "every" all include any, all, each and every.

1 All DOCUMENTS shall be produced in the booklet, binder, file, folder, envelope, or
2 other container in which the DOCUMENTS are kept or maintained by Plaintiff. If for any reason
3 the container cannot be produced, please produce copies of all labels or other identifying
4 marking. DOCUMENTS attached to each other should not be separated.

5 If a DOCUMENT once existed, but has been lost, destroyed, erased or otherwise is no
6 longer in Plaintiff's possession, identify the DOCUMENT and state the details concerning the
7 loss or destruction of such DOCUMENT, including the name and address of the present custodian
8 of any such DOCUMENT known to Plaintiff.

9 In the event any DOCUMENT is withheld on a claim of attorney/client privilege, work
10 product immunity, or any other privilege, provide a detailed privilege log that describes the nature
11 and basis for Plaintiffs' claim and the subject matter of the DOCUMENT withheld, in a manner
12 sufficient to disclose facts upon which the party relies in asserting such claim, and to permit the
13 grounds and reasons for withholding the DOCUMENT to be identified. Such description should,
14 at a minimum, state: the date of the DOCUMENT; the author of the DOCUMENT; each
15 PERSON who participated in the preparation of the DOCUMENT; each PERSON identified on
16 the DOCUMENT as a recipient or copy; the general subject matter of the DOCUMENT; the
17 name of the privilege that Plaintiffs contend apply to the documents; and sufficient further
18 information to explain the claim of privilege or immunity to permit the adjudication of the
19 propriety of that claim.

20 Most forms of electronically stored information (e.g., emails, word processing documents,
21 etc.) should be produced in single-page Group IV Tiffs, at least 300 dpi accompanied by text
22 files, which includes the full text extracted directly from the native file such that the resulting file
23 is full-text searchable. Parent/child relationships shall be maintained.

24 Spreadsheets, databases, and multimedia files, however, shall be produced in native
25 format with embedded data intact. Parent/child relationships shall be maintained. In the situation
26 where an email is produced in Tiff format and the attachment is produced in native format (e.g.,
27 email with an Excel attachment), a load file shall be provided that cross references the email to
28 the attachment so that a reviewer can review the email and attachment together.

1 LABCORP specifically reserve the right to seek any ESI in their native format.

2 **REQUESTS FOR PRODUCTION**

3 **REQUEST FOR PRODUCTION NO. 1:**

4 All DOCUMENTS provided by YOU to the STATE RELATING TO the allegations
5 against LABCORP in this lawsuit.

6 **REQUEST FOR PRODUCTION NO. 2:**

7 All DOCUMENTS provided by the STATE to YOU RELATING TO the allegations
8 against LABCORP in this lawsuit.

9 **REQUEST FOR PRODUCTION NO. 3:**

10 All DOCUMENTS RELATING TO COMMUNICATIONS concerning the allegations in
11 this lawsuit against LABCORP between YOU and any federal, state or local regulatory,
12 investigative, or administrative agency or department, including but not limited to DHCS, the
13 California Department of Justice, Bureau of MediCal Fraud & Elder Abuse, and MediCal.

14 **REQUEST FOR PRODUCTION NO. 4:**

15 All DOCUMENTS RELATING TO COMMUNICATIONS concerning the MediCal
16 billing practices or conduct of any laboratory service provider between YOU and any federal,
17 state or local regulatory, investigative, or administrative agency or department, including but not
18 limited to DHCS, the California Department of Justice, Bureau of MediCal Fraud & Elder Abuse,
19 and MediCal.

20 **REQUEST FOR PRODUCTION NO. 5:**

21 All DOCUMENTS RELATING TO COMMUNICATIONS between YOU and the
22 STATE discussing or RELATING TO any of the following terms, regulations, statutes or
23 opinions:

- 24 • California Code of Regulations, title 22, section 51501, including but not limited to
25 the terms "comparable services" and "comparable circumstances";
- 26 • California Code of Regulations, title 22, section 51529;
- 27 • California Code of Regulations, title 22, section 51480;
- 28 • Welfare & Institutions Code section 14107.2;

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- Business & Professions Code section 650;
- *Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal. App. 4th 968 (or related audits, administrative proceedings or court proceedings);
- *People v. Duz-Mor Diagnostic Laboratory, Inc.* (1998) 68 Cal. App. 4th 654 (or related audits, administrative proceedings or court proceedings);
- *Sharp Coronado Hospital, et al. v. Bonta*, 2004 Cal. App. Unpub. LEXIS 7788 (2004) (or related audits, administrative proceedings or court proceedings); or
- Dual pricing.

REQUEST FOR PRODUCTION NO. 6:

All DOCUMENTS RELATING TO the amounts charged by LABCORP to payors other than DHCS for laboratory tests at rates that exceed the maximum amounts permitted by law and that exceeded the amounts LABCORP offered and charged for the same services to other purchasers of comparable services, under comparable circumstances, including but not limited to contracts, agreements, fee schedules or price lists.

REQUEST FOR PRODUCTION NO. 7:

All DOCUMENTS RELATING TO the amounts charged by LABCORP to payors other than DHCS or collected by LABCORP from payors other than DHCS for laboratory tests within the 80000 to 89999 range of CPT codes, including but not limited to contracts, agreements, fee schedules or price lists.

REQUEST FOR PRODUCTION NO. 8:

All DOCUMENTS RELATING TO the fees LABCORP charged for any laboratory test to any payor, including MediCal, that YOU did not receive from the STATE at any time or that was in YOUR possession prior to November 7, 2005.

REQUEST FOR PRODUCTION NO. 9:

All Complaints filed in this action, or in *State of California ex rel. v. Quest Diagnostics, et al.*, No. CIV 450691 (San Mateo County Superior Court), or *State of California ex rel. v. Quest Diagnostics, et al.*, No. CIV 34-2009-00048046 (Sacramento County Superior Court) in which LABCORP is named as a defendant.

1 **REQUEST FOR PRODUCTION NO. 10:**

2 All DOCUMENTS RELATING TO COMMUNICATIONS between YOU and
3 LABCORP, including but not limited to COMMUNICATIONS with any present or former
4 employee or agent of LABCORP.

5 **REQUEST FOR PRODUCTION NO. 11:**

6 All internal LABCORP DOCUMENTS in YOUR possession, custody or control.

7 **REQUEST FOR PRODUCTION NO. 12:**

8 All DOCUMENTS provided to YOU by Richard H. Prendergast RELATING TO
9 LABCORP.

10 **REQUEST FOR PRODUCTION NO. 13:**

11 All "false records and statements," as that term is used in paragraphs 89 and 95 of the
12 Complaint, made, used or caused to be made by LABCORP.

13 **REQUEST FOR PRODUCTION NO. 14:**

14 All "false certifications," as that term is used in paragraphs 91, 97 and 103 of the
15 Complaint, made, used or caused to be made by LABCORP.

16 **REQUEST FOR PRODUCTION NO. 15:**

17 All "false claims," as alleged in the Complaint, submitted by LABCORP.

18 **REQUEST FOR PRODUCTION NO. 16:**

19 All DOCUMENTS showing, RELATING TO, or supporting YOUR damages
20 calculations.

21 **REQUEST FOR PRODUCTION NO. 17:**

22 All DOCUMENTS sufficient to show HUNTER LABS' fee schedules to MediCal and
23 non-MediCal purchasers for laboratory tests.

24 **REQUEST FOR PRODUCTION NO. 18:**

25 All DOCUMENTS sufficient to show prices for laboratory tests offered by HUNTER
26 LABS that differ from HUNTER LABS' fee schedules or that are lower than amounts on
27 MediCal's published fee schedules from 1995 through the present.

28

1 **REQUEST FOR PRODUCTION NO. 19:**

2 All DOCUMENTS showing the amounts MediCal reimbursed YOU for laboratory testing
3 services.

4 **REQUEST FOR PRODUCTION NO. 20:**

5 All DOCUMENTS RELATING TO YOUR calculation of pull-through or discretionary
6 business.

7 **REQUEST FOR PRODUCTION NO. 21:**

8 All DOCUMENTS RELATING TO YOUR compliance with state and federal regulations,
9 statutes or other authority RELATING TO pricing of laboratory testing services provided to
10 MediCal or to billing MediCal.

11 **REQUEST FOR PRODUCTION NO. 22:**

12 All DOCUMENTS RELATING TO how YOU price YOUR lab tests, including any
13 pricing guidelines.

14

15 Dated: March 16, 2010

Jones Day

16

17

By: 

Shawn Hanson

18

19

Attorneys for Defendants
LABORATORY CORPORATION OF
AMERICA and LABORATORY
CORPORATION OF AMERICA HOLDINGS

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SFI-631143v1

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PROOF OF SERVICE

I, Sandra Altamirano, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On **March 16, 2010**, I served copies of the within document:

LABORATORY CORPORATION OF AMERICA'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS PURSUANT TO CCP § 2031.010 TO QUI TAM PLAINTIFFS HUNTER LABORATORIES, LLC AND CHRIS RIEDEL

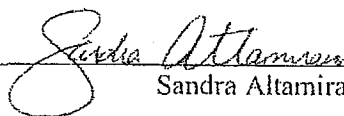
- by placing the document(s) listed above in sealed envelopes with postage thereon fully prepaid, in the United States mail at San Francisco, California, each envelope addressed as set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.
- by placing the document(s) listed above in sealed envelopes and arranging for such envelopes to be delivered by hand, with delivery time prior to 5:00 p.m. on the date specified above, to the person(s) and address(es) as set forth below.
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

[SEE ATTACHED SERVICE LIST]

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **March 16, 2010**, at San Francisco, California.



Sandra Altamirano

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SERVICE LIST

State of California ex rel. Hunter Laboratories, et al. v. Laboratory Corp. of America, et al.
Sacramento County Superior Court Case No. Civ 34-2009-00066517

Dennis Fenwick, Deputy Attorney General Vincent DiCarlo, Deputy Attorney General California Department of Justice Bureau of Medi-Cal Fraud & Elder Abuse 1425 River Park Drive, Suite 300 Sacramento, CA 95815 VIA HAND DELIVERY	<u>Attorneys for the State of California</u>
Niall P. McCarthy Justin T. Berger Cotchett, Pitre & McCarthy San Francisco Airport Office Center 840 Malcolm Road, Suite 200 Burlingame, CA 94010 VIA HAND DELIVERY	<u>Attorneys for Qui Tam Plaintiffs:</u> Chris Riedel and Hunter Laboratories, LLC

SFI-606246v1

EXHIBIT D

LAW OFFICES
COTCHETT, PITRE & MCCARTHY, LLP
SAN FRANCISCO AIRPORT OFFICE CENTER

LOS ANGELES OFFICE
9454 WILSHIRE BOULEVARD, SUITE 907
BEVERLY HILLS, CA 90212
(310) 247-9247

840 MALCOLM ROAD
BURLINGAME, CALIFORNIA 94010
TELEPHONE (650) 697-6000
FAX (650) 697-0577

WASHINGTON, DC OFFICE
1025 CONNECTICUT AVENUE NW, SUITE 1000
WASHINGTON, DC 20036
(202) 296-4515

NEW YORK OFFICE
ONE LIBERTY PLAZA, 23RD FLOOR
NEW YORK, NY 10006
(212) 682-3198

February 1, 2011

Via U.S. Mail & E-Mail

Martha Boersch

JONES DAY

555 California Street, 26th Floor

San Francisco, CA 94104

mboersch@jonesday.com

**Re: *State of California ex rel. Hunter Laboratories, LLC, et al.*
v. Laboratory Corporation of America, et al.
Sacramento Superior Court Case No. 34-2009-00066517**

Dear Martha:

As you may know, this morning my client was served by LabCorp with an extremely broad subpoena in the Federal Trade Commission v. LabCorp matter pending in Washington, D.C. LabCorp requests documents that the Court ordered were not subject to discovery in the Hunter v. LabCorp matter. The subpoena is a blatant attempt to evade the order of Justice Morrison. Moreover, Hunter's business records have nothing to do with the LabCorp/FTC dispute.

Please confirm no later than Thursday, February 3rd, that the subpoena will be withdrawn.

Very truly yours,


NIALL F. MCCARTHY

cc: Benjamin F. Holt
Lara Kollios
Vincent DiCarlo (via E-Mail only)
Justin T. Berger (via E-Mail only)

EXHIBIT E

JONES DAY

555 CALIFORNIA STREET • 26TH FLOOR • SAN FRANCISCO, CALIFORNIA 94104-1500
TELEPHONE: 415-626-3939 • FACSIMILE: 415-875-5700

Direct Number: (415) 875-5837
lkollios@jonesday.com

February 2, 2011

RECEIVED

FEB 04 2011

COTCHETT, PITRE & MCCARTHY

VIA E-MAIL AND U.S. MAIL

Niall P. McCarthy, Esq.
Cotchett, Pitre & McCarthy
840 Malcolm Road, Suite 200
Burlingame, CA 94010

Re: **State of California v. Laboratory Corporation of America, et al.,
Sacramento County Superior Court Case No. 34-2009-00066517**

Dear Niall,

It is our understanding that Mr. Riedel provided a declaration to the FTC and is on the FTC's preliminary witness list. Hunter Labs was served with a subpoena similar to those served on other labs that were also identified as witnesses by FTC. Given this relevance, LabCorp will not agree to withdraw the subpoena in the FTC action. If you have further questions relating to this subpoena please direct them to Mr. Roush or Mr. Holt at Hogan Lovells.

Very truly yours,



Lara Kollios

cc: Benjamin F. Holt, Esq.
Corey W. Roush, Esq.
Hogan Lovells

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

*Attorneys for Third-Party Hunter
Laboratories*

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of Laboratory Corporation of
America and Laboratory Corporation of America
Holdings

Docket No. 9345

**[PROPOSED] ORDER
GRANTING HUNTER
LABORATORIES' MOTION TO
QUASH SUBPOENA**

[PROPOSED] ORDER

1
2 The Court has reviewed Third Party Hunter Laboratories, LLC's Motion to Quash
3 Laboratory Corporation of America and Laboratory Corporation of America Holdings'
4 Subpoena Duces Tecum and related papers in support. Having considered the papers
5 submitted, for good cause shown, the Court hereby GRANTS Plaintiffs' Motion to Quash,
6 in its entirety.

7
8 IT IS SO ORDERED.

9
10
11 DATED: _____

12 HON. D. MICHAEL CHAPPELL
13 *Chief Administrative Law Judge*

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

6 *Attorneys for Third-Party Hunter Laboratories*

7
8 **UNITED STATES OF AMERICA**
9 **FEDERAL TRADE COMMISSION**

10 In the Matter of Laboratory Corporation of
11 America and Laboratory Corporation of
12 America Holdings

Docket No. 9345

PROOF OF SERVICE

28

1 **PROOF OF SERVICE**

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

- 6 1. **HUNTER LABORATORIES' MOTION TO QUASH SUBPOENA;
7 MEMORANDUM OF POINTS AND AUTHORITIES**
- 8 2. **DECLARATION OF JUSTIN T. BERGER IN SUPPORT OF
9 HUNTER LABORATORIES' MOTION TO QUASH SUBPOENA**
- 10 3. **[PROPOSED] ORDER GRANTING HUNTER LABORATORIES'
11 MOTION TO QUASH SUBPOENA**

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

16 Office of the Secretary
17 **Federal Trade Commission**
18 Room H-135
19 600 Pennsylvania Avenue, NW
20 Washington, D.C. 20580

Federal Trade Commission
Office of the Secretary

21 Donald S. Clark
22 Secretary
23 **Federal Trade Commission**
24 Room H-159
25 600 Pennsylvania Avenue, NW
26 Washington, D.C. 20580
27 secretary@ftc.gov

Federal Trade Commission
Office of the Secretary

28 The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H-113
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
oalj@ftc.gov

Federal Trade Commission
Administrative Law Judge

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

Federal Trade Commission
Bureau of Competition -
Mergers I

///

1 J. Robert Robertson
2 Corey Roush
3 Benjamin Holt
4 **Hogan Lovells US LLP**
5 Columbia Square
6 555 Thirteenth Street, NW
7 Washington, D.C. 20004

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

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

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

28 Martha Boersch
Lara Kollios
Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104
Tel: (415) 626-3939
Fax: (415) 875-5700
mboersch@jonesday.com
lkollios@jonesday.com

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

I declare under penalty of perjury, under the laws of the State of California, that the
foregoing is true and correct. Executed at Burlingame, California, on February 7, 2011.


MALLORY BARR