

Complaint

IN THE MATTER OF

QUEST DIAGNOSTICS INCORPORATED, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-4074; File No. 0210140
Complaint, February 21, 2003--Decision, April 3, 2003*

This consent order addresses the acquisition by Respondent Quest Diagnostics Incorporated – the largest supplier of clinical laboratory testing services in the United States,, headquartered in Teterboro, New Jersey – of Respondent Unilab Corporation, the largest supplier of clinical laboratory testing services in California, and headquartered in Tarzana, California. The order, among other things, requires the respondents to divest assets used to provide clinical laboratory testing services to physician groups in Northern California – including in particular 46 patient service centers; five stat laboratories; one Unilab and all Quest capitated contracts with physician groups; and all related assets necessary for the provision of laboratory services to physician groups, including customer lists and information – to Laboratory Corporation of America, or a more extensive package of assets to another acquirer approved by the Commission. The order also requires Respondent Quest to maintain the viability, marketability, and competitiveness of its laboratory services business assets in Northern California pending transfer of the divested assets, and to provide transitional services that the acquirer of the divested assets may need until the assets are completely divested and transferred. In addition, the order prohibits Respondent Quest, for one year, from soliciting any employees of Quest or Unilab that accept offers of employment from the acquirer of the divested assets.

Participants

For the Commission: *Jaqueline Mendel, Jill Frumin, Norris Washington, James Southworth, Goldie Veronica Walker, Shai Littlejohn, Valicia Spriggs-Hutchinson, Elizabeth Vail, Michael G. Cowie, Naomi Licker, Elizabeth A. Piotrowski, Robert Kneuper, Laura Bivins, Leslie Farber and Mary T. Coleman.*

For the Respondents: *Richard Parker, Michael Antalics, and Gregg Vicinanza, O'Melveny & Myers LLP.*

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COMPLAINT

The Federal Trade Commission (“Commission”), having reason to believe that Respondent Quest Diagnostics Incorporated (“Quest”), a corporation subject to the jurisdiction of the Commission, has agreed to merge with Respondent Unilab Corporation (“Unilab”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

1. “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.
2. “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.
3. “Respondents” means Quest and Unilab individually and collectively.

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II. RESPONDENTS

4. Respondent Quest 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. Respondent Quest is engaged in, among other things, the provision of clinical laboratory testing services.

5. 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. Respondent Unilab is engaged in, among other things, the provision of clinical laboratory testing services.

6. Respondents are, and at all times herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED MERGER

7. On April 2, 2002, Quest and Unilab entered into an Agreement and Plan of Merger (“Merger Agreement”) whereby Quest agreed to acquire all of the issued and outstanding voting securities of Unilab in exchange for cash, stock of Quest, or a combination of cash and stock of Quest (“Proposed Merger”). After completion of the Proposed Merger, Quest will be the surviving corporate entity. At the time of the Merger Agreement, the value of the transaction was approximately \$877 million. On January 4, 2003, Quest and Unilab agreed to amend the Merger Agreement to extend the termination date and to reduce the purchase price for the overall transaction by approximately \$60 million.

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IV. THE RELEVANT MARKET

8. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Proposed Merger is the provision of clinical laboratory testing services to physician groups.

9. Clinical laboratory testing services are basic health care services. Physicians rely on clinical laboratories to provide accurate and timely testing information to diagnose, assess, and treat their patients' health conditions. In Northern California, physician groups frequently assume the financial risk for providing clinical laboratory testing services for their patients who are affiliated with pre-paid health plans. For this reason, these physician groups often directly contract with clinical laboratories to purchase such services, usually under a capitated arrangement.

10. Physician groups require a clinical laboratory that offers, among other things, a comprehensive menu of clinical diagnostic tests; stat, or urgent, testing capabilities; as well as an extensive field collection and distribution system that includes conveniently located patient service centers and courier networks.

11. Most physician groups do not regard the internal performance of clinical laboratory testing services as a competitively viable or cost-effective substitute. Although physicians can perform a limited number of simple diagnostic tests in their own offices, this type of testing is generally not a substitute for the testing services provided by clinical laboratories. Physician groups that do not have their own clinical laboratories are unlikely to develop such capabilities, even in the event of a significant increase in the price of clinical laboratory testing services.

12. For the purposes of this Complaint, the relevant geographic market within which to analyze the effects of the Proposed Merger is Northern California, consisting of the counties in California north of, but not including, San Luis Obispo, Kern, and San

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Bernardino counties, where the transaction would reduce competition for the sale of clinical laboratory testing services to physician groups, as alleged below.

V. THE STRUCTURE OF THE MARKET

13. Quest and Unilab are the two leading providers of clinical laboratory testing services to physician groups in Northern California. If the Proposed Merger were to be consummated, Quest would have a market share of more than 70% in a highly concentrated market. Quest's next largest competitor in the relevant market would have a market share of approximately 4%. The Proposed Merger would increase concentration in the relevant market by more than 1,500 points to a Herfindahl-Hirschman Index level above 5,300.

VI. ENTRY CONDITIONS

14. Substantial and effective expansion by smaller competitors in the relevant market sufficient to deter or counteract the anticompetitive effects of the Proposed Merger is unlikely to occur.

15. New entry into the relevant market sufficient to deter or counteract the anticompetitive effects of the Proposed Merger is unlikely to occur.

VII. EFFECTS OF THE MERGER

16. The effects of the Proposed Merger, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Quest and Unilab in the relevant market;

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- b. by increasing the likelihood that the merged firm will unilaterally exercise market power in the relevant market; and
- c. by increasing the likelihood that physician groups would be forced to pay higher prices for clinical laboratory testing services in the relevant section of the country.

VIII. VIOLATIONS CHARGED

17. The Merger Agreement described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

18. The Proposed Merger described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-first day of February, 2003, issues its Complaint against said Respondents.

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DECISION AND ORDER

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”):

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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.

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- 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.

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- 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.

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- 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:

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- 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

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- 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

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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.

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- 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

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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

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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

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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

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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

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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)

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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

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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.

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- 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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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

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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.

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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

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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

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- 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.

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**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]

Order

ORDER TO MAINTAIN ASSETS

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 determined to accept the executed Consent Agreement and to place 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 issues its Complaint, makes the following jurisdictional finding and issues this Order to Maintain Assets:

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.

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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, CA, 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 to Maintain Assets, the following definitions and provisions 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.

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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 to Maintain Assets.

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 the Decision and 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 the Decision and 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

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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 the Decision and Order.

N. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV. of the Decision and 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

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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 to Maintain Assets 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;

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- 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.

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“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.

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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

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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.

AB. "Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets" means:

1. all of the Outpatient Clinical Laboratory Testing Services Assets, and
2. all 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

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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.

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

AD. “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 from the date this Order to Maintain Assets becomes final:

A. 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 shall prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of Quest Diagnostics’ Northern California Clinical Laboratory Testing Services Assets, except for ordinary wear and tear.

B. Respondents shall maintain the operations of Quest Diagnostics’ Northern California Clinical Laboratory Testing Services Assets in the ordinary course of business and in accordance with past practice (including regular repair and maintenance of Quest Diagnostics’ Northern California Clinical Laboratory Testing Services Assets) and shall use their

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best efforts to preserve the existing relationships with physicians, Payers, suppliers, vendors, Customers, employees, and others having business relations with Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets. Respondents' responsibilities shall include, but are not limited to:

1. providing Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets with sufficient working capital to operate Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets at least at current rates of operation, to the extent that those assets have not been transferred, to meet all capital calls with respect to Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets and to carry on, at least at their scheduled pace, to the extent that those assets have not been transferred, all capital projects, business plans and promotional activities for Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets;
2. continuing, at least at their scheduled pace, to the extent that those assets have not been transferred, any additional expenditures for Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets authorized as of the Closing Date;
3. making available for use by Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets funds sufficient to perform all necessary routine maintenance to, and replacements of, Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets;
4. providing Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets with such funds as are necessary to maintain the viability, marketability, and competitiveness of Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets;

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5. providing such support services to Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets as were being provided to this business by Respondents on the Closing Date;
 6. continuing to provide Clinical Laboratory Testing Services, at the same quality and level of service as Respondents provided during the twelve (12) months prior to the date the Consent Agreement was signed by Respondents, satisfying all regulatory requirements and consistent with standard industry practices, until such time as the Interim Monitor, in consultation with Commission staff and the Commission-approved Acquirer, determines that the 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) is complete; and
 7. cooperate with the Interim Trustee in the performance of his or her obligations pursuant to Paragraph III. of this Order to Maintain Assets.
- C. 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 to Maintain Assets; 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 to Maintain Assets from any other of Respondents' employees;

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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 the Decision and 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.C.

D. 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 to Maintain Assets 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

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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 as Appendix C to this Order to Maintain Assets.

E. 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.E.

F. 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:

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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 continuous employment with the Commission-approved Acquirer after the Closing Date.

G. 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.G.; and *provided, further*, that

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nothing in this Paragraph II.G. shall be construed to require the Respondents to terminate the employment of any employee.

H. Respondents shall adhere to and abide by the Divestiture Agreement incorporated by reference into this Order to Maintain Assets and made a part hereof.

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 to Maintain Assets and by the Decision and Order (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 to Maintain Assets or Paragraph III.A. of the Decision and Order 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

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reasonable diligence in effectuating the divestiture and transfer of assets pursuant to a 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 a 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

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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 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 to Maintain Assets or Paragraph III.A. of the Decision and Order in this matter.

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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 IV. of this Order to Maintain Assets and Paragraph V. of the Decision and Order 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 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.
- C. The Interim Monitor appointed pursuant to Paragraph III.A. of this Order to Maintain Assets may be the same Person appointed as Divestiture Trustee pursuant to Paragraph IV. of the Decision and Order in this matter.

IV.

IT IS FURTHER ORDERED that, 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

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with these obligations pursuant to this Order to Maintain Assets, 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 Paragraph II. of this Order. 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 to Maintain Assets, 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.

V.

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 this Order to Maintain Assets.

VI.

IT IS FURTHER ORDERED that, for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representatives 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 to Maintain Assets; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview

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officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. The day after the divestiture and transfer of all of the Purchased Assets (or the Outpatient Clinical Laboratory Testing Services Assets or Quest Diagnostics' Northern California Clinical Laboratory Testing Services Assets, if divested), as described in and required by the attached Decision and Order, is completed and the Interim Monitor, in consultation with Commission staff and the Commission-approved Acquirer, notifies the Commission that the Commission-approved Acquirer's transition is complete.

By the Commission.

Order

**NON-PUBLIC APPENDIX A
TO THE ORDER TO MAINTAIN ASSETS**

Management Employees

[Redacted From Public Record Version]

**NON-PUBLIC APPENDIX B
TO THE ORDER TO MAINTAIN ASSETS**

LabCorp Purchase Agreement

[Redacted From Public Record Version]

Order

APPENDIX C
TO THE ORDER TO MAINTAIN ASSETS
Notice of the Divestiture and Employee Agreement to
Maintain Confidential Business Information

SALES EMPLOYEE NOTICE AND SALES EMPLOYEE
AGREEMENT

On [date], Quest Diagnostics Incorporated and Unilab Corporation entered into an agreement with the Federal Trade Commission in connection with Quest Diagnostics' acquisition of Unilab. Pursuant to that agreement, the Federal Trade Commission will issue a number of Orders imposing obligations on the combined company and its employees. As an employee of the combined company, you must comply with certain provisions of the Orders.

In general, the Orders require Quest Diagnostics to transfer to Laboratory Corporation of America Holdings ("LabCorp"):

- 46 patient service centers ("PSCs"), four of which are rapid response laboratories
- An assignment of three Quest Diagnostics IPA agreements (Alta Bates Medical Group, Brown & Toland Medical Group, and Affinity Medical Group) and one Unilab IPA agreement (Sutter Medical Foundation- North Bay)
- Account information for physicians whose patients have used the PSCs being transferred to LabCorp, as discussed below.

The Orders require that the PSCs and rapid response laboratories and the IPA agreements be transferred to LabCorp during a six-month period, and that during the course of that six-month period, no actions can be taken that detract from the value or the competitive viability of the assets to be transferred or of any remaining assets of Quest Diagnostics in Northern California. In addition, the Orders require Quest Diagnostics to allow LabCorp to make employment offers to certain employees of Quest Diagnostics and Unilab.

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Under the Orders, Quest Diagnostics will be required to provide LabCorp with account set-up information (including pricing, service and logistics) for all physicians who are affiliated with any of the four IPAs listed above and all physicians who referred at least 8 specimens to the 46 patient service centers during either October, November or December 2002. The Orders provide that All Quest Diagnostics employees who are involved with marketing, contracting or sales in Northern California (“sales employees”) may not solicit or have access to any customer-specific pricing information, customer-specific discounts and customer-specific supply or service requirements or preferences with respect to these physician accounts prior to the acquisition of Unilab. There are approximately ____ accounts, including ____ IPA accounts, at Quest Diagnostics that are covered by this restriction, including certain accounts for which you may be currently responsible. All Unilab sales employees are prohibited from soliciting or having access to any of this Quest Diagnostics’ customer-specific information on any customer of Quest Diagnostics (regardless of whether any of the customer’s patients utilized the PSCs), even if the customer is also a customer of Unilab.

All Quest Diagnostics sales employees will be informed of the names of the accounts to which the this prohibition applies. Sales employees will not have access to this customer-specific information on these physician accounts from the company’s computer systems. Note that the prohibition applies to all customer-specific information, whether in paper or electronic format. If you have any documents or electronic files containing any of this information in your possession, please contact _____ so that we may remove that information from your files. Do not attempt to access customer-specific information on these physicians accounts from any source, including the Company’s computer systems or any paper files, or from any non-sales employees who have access to this information as discussed below.

If any of your (or any other) customers have any questions regarding their account, they may continue to call their customer solutions contact or other service personnel as may be appropriate. Customers solutions employees, as well as billing and certain

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other employees, will continue to have access to the above-mentioned customer specific information with respect to these physician accounts for billing purposes, for customer service purposes, or for any other non-sales purpose. However, these employees are prohibited from supplying any customer-specific information to sales employees. Accordingly, please do not request customer-specific information regarding any of the physician accounts covered by the Orders. Instead, if any physician account covered by the Orders has any questions that you cannot answer because of this restriction, please refer the account to a person who has access to the information and may answer their questions.

By receiving this notice, you hereby acknowledge that you have been informed of the above prohibitions. We will notify you when Quest Diagnostics' obligations under the Orders are completed and the prohibitions on certain conduct discussed above come to an end.

Please note that you are not prohibited from making any sales calls on any of the physicians covered by this prohibition or from obtaining from these physician customers any information that is otherwise covered by the Orders. You can turn such information over to [customer solutions] to be input in the Company's information systems.

You must sign this acknowledgment and agree to abide by the above prohibitions.

Any violation of the FTC's Orders may subject Quest Diagnostics, Unilab or the combined company to civil penalties and will lead to disciplinary action, including termination of employment.

CONTACT PERSON

If you have questions regarding the contents of this notice or whether information in your possession should be removed from your files, you should contact

_____ at ____ - ____ - _____,

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e-mail address:_____.

ACKNOWLEDGMENT

I, _____ (print
name), hereby acknowledge that I have read the above notification
and agree to abide by its provisions.

Analysis

**Analysis of Agreement Containing Consent Orders to Aid
Public Comment**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Quest Diagnostics Incorporated (“Quest”) and Unilab Corporation (“Unilab”) (collectively “Respondents”). The Consent Agreement is designed to remedy the anticompetitive effects resulting from Quest’s proposed acquisition of Unilab. The Consent Agreement includes a proposed Decision and Order (the “Order”), which would require the Respondents to divest to Laboratory Corporation of America (“LabCorp”) assets used to provide clinical laboratory testing services to physician groups in Northern California.

The Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated April 2, 2002 (“Merger Agreement”), Quest proposes to acquire all of the issued and outstanding voting securities of Unilab in exchange for cash, stock of Quest, or a combination of cash and stock of Quest. The value of the transaction was approximately \$877 million at the time the Merger Agreement was announced. On January 4, 2003, Quest and Unilab agreed to amend the Merger Agreement to extend the termination date and to reduce the purchase price for the overall transaction by approximately \$60 million. The Commission’s complaint alleges that the proposed acquisition, if consummated, would violate 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, in the market for providing clinical laboratory testing services to physician groups in Northern California.

Analysis

The Merging Parties

Headquartered in Teterboro, New Jersey, Quest is the largest supplier of clinical laboratory testing services in the United States, with a nationwide network of 30 full-service laboratories located in major metropolitan areas throughout the United States, approximately 100 smaller “stat,” or rapid response, laboratories, and approximately 1,350 patient service centers (“PSCs”). Quest had sales of approximately \$4.1 billion in 2002. Quest’s operations in Northern California consist of a full-service testing laboratory located in Dublin, California, 5 stat labs, and approximately 76 PSCs.

Unilab, headquartered in Tarzana, California, is the largest supplier of clinical laboratory testing services in California. Unilab had sales of approximately \$390 million in 2001. It operates 3 full-service laboratories, located in Los Angeles, San Jose, and Sacramento; 39 stat laboratories; and approximately 386 PSCs. About 23 of the stat labs and 230 of the PSCs are located in Northern California.

The Clinical Laboratory Testing Services Market

Clinical laboratory testing services (“Laboratory Services”) are a critical element in the delivery of quality health care in the United States. Clinical laboratory tests are used to detect and analyze the presence, concentrations or composition of chemical, biological or cellular components in human body fluids and tissue in order to help physicians diagnose, monitor, and treat their patients’ health conditions. They include thousands of individual test procedures in the areas of hematology, blood chemistry, urine chemistry, endocrinology, and microbiology, among others. Examples of commonly ordered tests include red and white blood cell counts, blood chemistry panels, urinalyses, microbiology cultures, HIV screening tests, and pregnancy tests. Most of these high-volume, “routine” tests are performed by automated equipment and the results are generally reported electronically to

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the physician within a 24-hour period. Other tests, including most immunological and genetic tests, are performed less frequently and require more sophisticated and specialized knowledge or equipment. Two examples of such “esoteric” tests are immunoelectrophoresis (used for the diagnosis of autoimmune disorders and myelomas) and polymerase chain reaction tests for hepatitis C.

Delivery of health care in California is distinguished by high penetration by managed health care. Under the managed care model prevalent in the state, health plans often delegate the financial risk for providing primary, specialty, and ancillary medical services to physician groups, such as independent practice associations and medical groups, under a capitated arrangement, pursuant to which the physician group receives a prospective payment to care for the enrollees of the health plan. That is, rather than receive payments for each service provided by the physician group, the physician group receives a per member per month (“PMPM”) payment designed to cover the expected costs of care by the physicians. The physicians then bear the risk of whether the capitation payments will cover the actual costs of care -- including, in many cases, the cost of providing Laboratory Services.

Physician groups in Northern California that assume the financial risk for Laboratory Services under this California delegated model constitute a significant category of purchasers of Laboratory Services. Generally, these physician groups pursue exclusive or semi-exclusive contracts with laboratories to purchase such services, most often under a capitated arrangement in which the physician group pays a set amount (PMPM) to the laboratory to perform Laboratory Services for the physician group’s patients who are affiliated with pre-paid health plans.

In general, three types of providers may perform clinical laboratory testing: independent clinical laboratories, such as Quest and Unilab; hospital-affiliated laboratories; and physician office laboratories. While individual physicians can perform a

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limited number of relatively simple diagnostic tests in their own offices, this testing is not a substitute for the clinical testing performed in a laboratory. Physician groups require that a clinical laboratory offer, among other things, a comprehensive menu of routine and esoteric tests; stat testing capabilities; and an extensive field collection and distribution system that includes conveniently located patient service centers and courier networks.

Hospital laboratories that supply physician groups in Northern California are treated as market participants in the proposed complaint. Most acute-care hospitals maintain on-site laboratories to provide quick-response testing for patients in the hospital. In addition, many hospital laboratories have established outreach programs to obtain additional business by providing outpatient Laboratory Services to physicians in the communities surrounding the hospitals. In some instances, hospital laboratory outreach programs in Northern California supply Laboratory Services under capitated arrangements to physician groups. Hospital laboratories have been most successful when competing to supply physician groups that are affiliated with the hospital and whose physicians are located in medical buildings on or near the hospital campus.

The proposed complaint alleges that the relevant market does not include physician office laboratories. Some medical groups operate laboratories that perform many stat and routine tests exclusively for doctors in the medical group. Physician groups do not view these physician office laboratories as viable substitute suppliers of Laboratory Services, because these laboratories do not offer the array of tests, capabilities, and services that are offered by independent clinical laboratories, including convenient patient access through PSCs. Furthermore, physician groups that do not have their own clinical laboratories are unlikely to develop such capabilities, even in the event of a significant increase in the price of Laboratory Services.

The draft complaint alleges that the relevant section of the country (*i.e.*, the geographic market) within which to analyze the effects of the proposed acquisition is Northern California. The

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relevant geographic market is local in nature because physician groups prefer to have specimens collected at PSCs located where they are convenient and accessible to all plan enrollees.

Physicians also require prompt reporting of routine test results, generally within 24 hours. In addition, physicians require even more rapid reporting of results for stat testing, generally within a few hours. For these reasons, a clinical laboratory must have stat testing facilities and PSCs proximate to the physicians' offices. Physician groups in California have service areas that vary from a single town to multiple counties; however, none has a service area that spans both northern and southern California.

Quest and Unilab are the two leading providers of Laboratory Services to physician groups in Northern California, based on the total patient lives covered under physician group capitated contracts. If the proposed merger were to be consummated, Quest would have a market share of more than 70 percent. Quest's next largest competitor in the relevant market is a hospital laboratory that would have a market share of about 4 percent. The proposed acquisition would increase concentration in the relevant market by more than 1,500 points to a Herfindahl-Hirschman Index level above 5,300.

Quest and Unilab compete vigorously against each other for contracts to supply Laboratory Services to physician groups, and this competition has benefitted customers in Northern California. Many physician groups in Northern California regard Quest and Unilab to be the closest competitors bidding for their Laboratory Services business in terms of both price and service offerings. The proposed acquisition would thus allow the combined firm to exercise market power unilaterally by eliminating competition between the two largest, and frequently lowest-cost, providers of Laboratory Services to physician groups in Northern California. As a result, the proposed acquisition would increase the likelihood that physician groups in Northern California would be forced to pay higher prices for Laboratory Services.

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Substantial and effective expansion by smaller competitors, as well as new entry, sufficient to deter or counteract the anticompetitive effects of the proposed acquisition in the market for providing Laboratory Services to physician groups in Northern California, is unlikely. Expansion by hospital laboratories or small independent clinical laboratories located in Northern California is unlikely to be sufficient to avert the anticompetitive effects from the merger. In general, large regional and national independent clinical laboratory companies like Unilab and Quest enjoy significant cost advantages over hospital laboratories and small independent clinical laboratories. As a result, the large independent laboratories are able more effectively to compete for and service price-sensitive customers such as physician groups seeking services under capitated arrangements.

It is also unlikely that new independent clinical laboratories will enter the relevant market. There are significant costs associated with establishing the staffed PSCs, courier routes, and sales force and other infrastructure necessary to serve the needs of a physician group. New entry is unlikely to occur because a new entrant would have significantly higher incremental costs of serving a particular physician group than an independent clinical laboratory that has an existing infrastructure in or near the area served by the physician group. Also, it is difficult to recoup the required incremental investments through a single physician group contract without charging higher than current rates, and opportunities to bid on multiple physician group contracts in the same area do not occur frequently. Thus, bidding at current rates in the hopes of winning future business would be risky for a new entrant.

The risk for an entrant would be further increased because “pull-through” business is an important determinant of the profitability of capitated contracts. Physician groups that participate in capitated plans for some of their customers also frequently participate in fee-for-service plans for other customers. Under fee-for-service plans, physicians are paid for each procedure. When Laboratory Services are needed for a patient

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with a fee-for-service plan, the health plan pays the laboratory directly but the physician chooses which laboratory covered by the plan will be used. The Laboratory Services provider for the capitated business of a physician group frequently has a significant advantage in winning a substantial amount of the “pull-through” fee-for-service business of the group, because physicians are familiar with the laboratory and it is easier to deal with one laboratory for all patients. Laboratory Services providers take into account the potential for pull-through business when determining their bids for capitated contracts. A new entrant to an area would not have a reputation or relationships with the physicians in the group and thus may have difficulty achieving similar pull-through rates as incumbent firms. As a result, because a new entrant would be cost-disadvantaged in competing against independent clinical labs that already have an existing infrastructure, it would be unlikely to secure capitated contracts with physician groups at pre-merger price levels.

The Proposed Order

The proposed Order effectively remedies the Commission’s competitive concerns about the proposed acquisition by requiring the companies to divest Laboratory Services assets in Northern California to LabCorp, including 46 PSCs; 5 stat laboratories; all of Quest’s, and one of Unilab’s, capitated contracts with physician groups; and all related assets necessary for the provision of Laboratory Services to physician groups, including customer lists and information. With these assets and LabCorp’s experience as a provider of Laboratory Services in Southern California and elsewhere in the United States, LabCorp will be able to replicate Quest’s operations, thus replacing the competition that would be lost as a result of the proposed acquisition. The Commission required that the Respondents make all of Quest’s Northern California outpatient Laboratory Services business available to prospective buyers but has approved LabCorp’s proposed acquisition of a smaller package of assets because LabCorp will be able to replicate the competition that Quest represents today with the smaller package of assets. As a result, after the

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divestiture, competition in the market for providing Laboratory Services to physician groups in Northern California will remain virtually unchanged by the proposed acquisition. Furthermore, the proposed Order includes measures designed to help ensure an effective transition of the divested assets to LabCorp.

LabCorp is a well-positioned acquirer of the divested assets for several reasons. As the second largest provider of Laboratory Services in the United States, LabCorp offers an extensive range of more than 4,000 routine and esoteric clinical tests, as well as other services that physician groups require, such as patient encounter data and test result reporting information technology. LabCorp currently provides Laboratory Services throughout most areas of the country, but has a limited presence in Northern California, where its business consists primarily of providing clinical reference testing to hospitals and esoteric HIV-related testing. Due to its operations in Southern California, however, LabCorp has substantial experience satisfying the requirements of physician groups in California's managed care environment. Furthermore, LabCorp has the financial resources to purchase the assets and operate the business in a competitive manner.

Pursuant to the proposed Order, Quest is required to consummate its transaction with LabCorp within ten days of the date that Quest and Unilab consummate the Merger Agreement ("Acquisition Date") and to complete the transfer of the assets to LabCorp within six months of the Acquisition Date. If Quest fails to comply with either of these obligations, the Commission may appoint a trustee to divest Quest's outpatient Laboratory Services business in Northern California or its entire Laboratory Services business in Northern California. In the event that Quest transfers some of the assets to LabCorp, but LabCorp abandons its efforts to complete the transfer of the remaining assets and the interim monitor so notifies the Commission, the Commission may require Quest to rescind the transaction with LabCorp and order Quest to divest its Northern California outpatient Laboratory Services business to a Commission-approved acquirer within six months. Should Quest fail to do so, the Commission may appoint a trustee

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to divest either Quest's outpatient Laboratory Services business in Northern California or its entire Laboratory Services business in Northern California. The purpose of these provisions is to assure the Commission's ability to secure an acceptable buyer – able to maintain and restore competition in the relevant market – in the event that LabCorp does not acquire the divested assets. The provisions require divestiture of a more extensive package of assets consisting of either Quest's outpatient Laboratory Services business or its entire Laboratory Services business in Northern California because a prospective buyer other than LabCorp may require additional assets to fully restore competition in the relevant market.

The proposed Order contains several provisions designed to ensure that the divestiture is successful. The proposed Order requires Quest to maintain the viability, marketability, and competitiveness of its Laboratory Services business assets in Northern California pending transfer of the divested assets. It also requires Quest to provide transitional services that the acquirer of the divested assets may need until the assets are completely divested and transferred. The proposed Order also prohibits Quest from interfering with the employment of any employees relating to the divested assets by the acquirer and requires Quest to provide incentives to certain employees to continue in their positions until the divestiture and to accept employment with the acquirer. For a period of one year following the date that the transfer of the divested assets is accomplished, Quest is prohibited from soliciting any employees of Quest or Unilab that accept offers of employment from the acquirer of the divested assets. Additionally, the proposed Order requires Quest to take steps to maintain the confidentiality of certain confidential information relating to the divested assets.

Pursuant to the terms of the proposed Order, the Commission has approved the appointment of Bruce K. Farley as an interim monitor trustee to ensure that Quest expeditiously transfers the divested assets and complies with its obligations under the proposed Order. Mr. Farley has over 13 years of experience in the

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Laboratory Services industry. In addition, he has significant experience supervising the integration of business operations subsequent to mergers and acquisitions.

Finally, in order to ensure that the Commission remains informed about the status of Quest's clinical laboratory testing business in Northern California pending divestiture, and about efforts being made to accomplish the transfer of the divested assets, the proposed Order requires Quest to report to the Commission within 30 days, and every 30 days thereafter until the divestiture is fully accomplished. In addition, Quest is required to report to the Commission every six months regarding its confidentiality obligations, as well as its obligations regarding non-solicitation of employees of the acquirer of the divested assets.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or proposed Order or to modify the terms of the Consent Agreement or proposed Order in any way.

Complaint

IN THE MATTER OF

QUICKEN LOANS INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 615(A)
OF THE FAIR CREDIT REPORTING ACT

*Docket 9304; File No. 0223103**Complaint, November 5, 2002--Decision, April 8, 2003*

This consent order addresses allegations that Respondent Quicken Loans violated Section 615(a) of the Fair Credit Reporting Act ("FCRA") and Section 5 of the Federal Trade Commission Act. The consent order, among other things, requires the respondent – whenever it takes adverse action with respect to a consumer's application for credit, based either wholly or partly on information in a consumer report – to provide the consumer with a notice that complies with Section 615(a) of the FCRA. The order also provides that the Commission will not view the respondent's failure to grant an online request for preapproval as an adverse action if, among other things, (1) the respondent clearly and conspicuously discloses, in close proximity to the preapproval offer, that preapproval may be granted online or offline; and (2) if the respondent determines that it cannot grant preapproval online because it needs additional information, it notifies the consumer (a) that the request for preapproval has not been denied, but rather that the respondent needs additional information from the consumer, and (b) that if the consumer submits the additional information, the respondent will determine whether to grant the request and will communicate the decision to the consumer.

Participants

For the Commission: *Thomas E. Kane, Sandra Farrington, Bradley H. Blower, Joel Winston, Margaret Patterson, and Susan Braman.*

For the Respondent: *Jonathan D. Jerison, Thomas M. Hefferon, and Jeremiah S. Buckley, Goodwin Procter LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Quicken Loans Inc., a corporation ("respondent"), has violated provisions of the Federal Trade Commission Act, 15 U.S.C. § 41