

1 BILL LOCKYER, Attorney General
 of the State of California
 2 RICHARD M. FRANK
 Chief Assistant Attorney General
 3 KATHLEEN FOOTE, Acting Senior Assistant
 Attorney General
 4 BARBARA M. MOTZ, (State Bar No. 66933)
 Supervising Deputy Attorney General
 5 NATALIE S. MANZO, (State Bar No. 155655)
 Deputy Attorney General
 6 300 South Spring Street, Suite 1702
 Los Angeles, California 90013
 7 Telephone: (213) 897-2707
 Facsimile: (213) 897-2807

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 APR 25 2003
 CENTRAL DISTRICT OF CALIFORNIA
 DEPUTY

8 Attorneys for Plaintiff
 9 State of California

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 STATE OF CALIFORNIA,
 13 Plaintiff,

14 v.

15 QUEST DIAGNOSTICS
 16 INCORPORATED, a Delaware
 17 corporation, and UNILAB
 18 CORPORATION, a Delaware
 19 corporation,
 20 Defendants.

CIVIL ACTION NO. ✓
 CIV- 03-1385 () mmm(RCX)

CONSENT DECREE AND FINAL
 JUDGMENT

21
 22 Defendants were furnished with a copy of the Complaint that Plaintiff
 23 intends to file in this matter, alleging violations of Section 7 of the Clayton Act as
 24 amended, (15 U.S.C. § 18), Section 1 of the Sherman Act (15 U.S.C. § 1), and
 25 California Business and Professions Code § 17200 et seq. Defendants, by and
 26 through their attorneys, have consented to the entry of this Consent Decree and Final
 27 Judgment without trial or adjudication of any issue of fact or law herein and have
 28 waived notice of presentation of this Consent Decree and Final Judgment and service

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1 of summons. This Consent Decree and Final Judgment does not constitute any
2 evidence against or an admission by any party with respect to any issue of law or
3 fact herein.

4 WHEREAS, Defendants have agreed to be bound by the provisions of
5 this Consent Decree and Final Judgment and there is no just reason for delay in its
6 entry; and

7 WHEREAS, prompt and certain divestiture of assets and the assignment
8 of contracts are the essence of this agreement. The parties intend to require
9 Defendants to divest or assign, as viable lines of business or contractual rights,
10 certain assets so as to ensure that the assets will be maintained as competitive, viable
11 and ongoing. Defendants have represented to Plaintiff that the divestitures and
12 assignments required below can and will be made as provided in this Consent Decree
13 and Final Judgment; and

14 WHEREAS, Defendants have represented to Plaintiff that they can
15 comply with the obligations set forth in this Consent Decree and Final Judgment and
16 that full relief as provided in this Consent Decree and Final Judgment can be
17 accomplished;

18 NOW, THEREFORE, before the taking of any testimony, and without
19 trial or adjudication of any issue of fact or law herein, and upon consent of the
20 parties hereto, it is hereby

21 ORDERED, ADJUDGED, AND DECREED as follows:

22 I.
23 JURISDICTION

24 This Court has jurisdiction over the subject matter of this action and
25 over each of the parties hereto. The Complaint states a claim upon which relief may
26 be granted against the Defendants under Section 7 of the Clayton Act, as amended
27 (15 U.S.C. § 18), Section 1 of the Sherman Act (15 U.S.C. § 1), and California
28 Business and Professions Code section 17200 et seq. The Attorney General for the

1 State of California, Bill Lockyer, has authority to bring this action pursuant to
2 Section 16 of the Clayton Act (15 U.S.C. § 26) and California Business and
3 Professions Code sections 17204 and 17206.

4 **II.**

5 **DEFINITIONS**

6 As used in this Consent Decree and Final Judgment:

- 7 A. "Quest Diagnostics" means Quest Diagnostics Incorporated, its
8 directors, officers, employees, agents, representatives, predecessors,
9 successors, and assigns; its joint ventures, subsidiaries, divisions,
10 groups and affiliates controlled by Quest Diagnostics Incorporated, and
11 the respective directors, officers, employees, agents, representatives,
12 successors, and assigns of each.
- 13 B. "Unilab" means Unilab Corporation, its directors, officers, employees,
14 agents, representatives, predecessors, successors, and assigns; its joint
15 ventures, subsidiaries, divisions, groups and affiliates controlled by
16 Unilab Corporation, and the respective directors, officers, employees,
17 agents, representatives, successors, and assigns of each.
- 18 C. "Acquisition" means the exchange offer contemplated by Agreement
19 and Plan of Merger dated April 2, 2002, and all amendments thereto,
20 whereby Quest Diagnostics agreed to acquire all of the issued and
21 outstanding voting securities of Unilab in exchange for cash, stock of
22 Quest Diagnostics, or a combination of cash and stock of Quest
23 Diagnostics.
- 24 D. "Acquisition Date" means the date the Acquisition is consummated.
- 25 E. "Agency(ies)" means any governmental regulatory authority or
26 authorities in the United States responsible for granting approval(s),
27 clearance(s), qualification(s), license(s) or permit(s) for any aspect of
28 the research, development, manufacture, marketing, distribution or sale

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of Clinical Laboratory Testing Services .

F. "Agreement Containing Consent Orders" means the agreement between the Defendants and the Commission concerning this matter, which includes the Commission's Decision and Order and its Order to Maintain Assets.

G. "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.

H. "Clinical Laboratory Testing Services Managerial Employees" means the current senior managers of Defendant Quest Diagnostics, identified in non-public Appendix I.

I. "Closing Date" means the date on which Defendants and the Plaintiff-approved Acquirer consummate the transactions contemplated by the Divestiture Agreement.

J. "Commission" means the Federal Trade Commission.

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

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Testing Services.

- M. "Decision and Order" means the Decision and Order issued with respect to this matter by the Commission.
- N. "Defendants" means Quest Diagnostics and Unilab, individually and collectively.
- O. "Divestiture Agreement" means any agreement between Defendants and a Plaintiff-approved Acquirer (or between Divestiture Trustee and a Plaintiff -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 Plaintiff to accomplish the requirements of this Consent Decree and Final Judgment.
- P. "Divestiture Trustee" means the trustee appointed by Plaintiff pursuant to Paragraph VI. of this Consent Decree and Final Judgment.
- Q. "Firewalled Employees" means all employees of Defendants that remain in the employment of Defendants 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.
- R. "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.
- S. "LabCorp Purchase Agreement" means the Asset Purchase Agreement

1 entered into between Quest Diagnostics Clinical Laboratories, Inc. and
2 Laboratory Corporation of America Holdings, as well as all
3 amendments, exhibits, attachments, agreements, and schedules thereto,
4 dated February 3, 2003. The LabCorp Purchase Agreement is attached
5 to this Consent Decree and Final Judgment as non-public Appendix II.

6 T. "Northern California" means all counties in California north of, but not
7 including, San Luis Obispo, Kern, and San Bernardino counties.

8 U. "Outpatient Clinical Laboratory Testing Services Assets" means the
9 following:

10 1. at the option of the Plaintiff-approved Acquirer, any or all of
11 Quest Diagnostics' assets, tangible and intangible, relating to
12 Quest Diagnostics' Northern California Outpatient Clinical
13 Laboratory Testing Services Business, including, without
14 limitation, the following:

15 a. all PSCs and Stat Labs, and the full-service clinical
16 laboratory located in Dublin, California, and all related
17 assets, including, without limitation, all:

18 (1) real property interests (including fee simple
19 interests and real property leasehold interests),
20 together with all buildings and other structures,
21 facilities, or improvements, currently or hereafter
22 located thereon;

23 (2) easements, rights, and appurtenances;

24 (3) to the extent assignable, licenses, permits,
25 registrations, certificates, consents, orders,
26 accreditations, certificates of need, approvals,
27 franchises and similar authorizations required under
28 applicable law or by applicable Agencies for the

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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 Plaintiff-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;

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- (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 H.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. Defendants' Medicare and Medicaid licenses and provider agreements;
- d. the Nichols Institute;

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- 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 Defendants or their affiliates, including without limitation Quest Diagnostics' laboratory information systems and billing system; *provided, however,* that Defendants shall convey to the Plaintiff-approved Acquirer (to the extent permitted by the third-party licensee, if Defendants 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 Plaintiff-approved Acquirer and that the Plaintiff-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 Consent Decree and Final Judgment, Defendants need not divest assets that the Plaintiff-approved Acquirer chooses not to acquire only if the acquirer chooses not to acquire such assets and Plaintiff approves the divestiture without such assets.

V. "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.

W. "Payer" means any Person that pays for Clinical Laboratory

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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.

- X. "Person" means any natural person, partnership, association, or corporate or governmental organization or entity.
- Y. "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.
- Z. "Plaintiff-approved Acquirer" means the Person approved by Plaintiff to acquire assets pursuant to this Consent Decree and Final Judgment, including LabCorp as the acquirer of the Purchased Assets pursuant to the LabCorp Purchase Agreement, if the Commission does not require that, pursuant to Paragraph II.C. or II.D. of its Decision and Order, Defendants rescind the divestiture and transfer of the Purchased Assets.
- AA. "Purchased Assets" means the assets described in the LabCorp Purchase Agreement.
- BB. "Quest Diagnostics Firewalled Employees" means the employees of Defendant Quest Diagnostics who, at the time Defendants 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

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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.

CC. "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.

DD. "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.

EE. "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

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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. Defendants’ 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 Defendants or their affiliates, including without limitation Quest Diagnostics’ laboratory information systems and billing system; *provided, however,* that Defendants shall convey to the Plaintiff-approved Acquirer (to the extent permitted by the third-party licensee, if Defendants 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 Plaintiff-approved Acquirer and that the Plaintiff-approved Acquirer is unable, using commercially-reasonable efforts, to obtain from other third parties on commercially-reasonable terms and conditions.

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FF. "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).

III.

APPLICABILITY

- A. The provisions of this Consent Decree and Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who have received actual notice of this Consent Decree and Final Judgment Decree by personal service or otherwise.
- B. Nothing herein shall suggest that any portion of this Consent Decree and Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to third parties.

IV.

DIVESTITURE OF ASSETS

- A. Not later than ten (10) days after the Acquisition Date, Defendants shall cause the closing to occur pursuant to the LabCorp Purchase Agreement, and, not later than six (6) months after the Acquisition Date, Defendants 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 Consent Decree and Final Judgment, it being understood that nothing in this Consent Decree and Final Judgment shall be construed to reduce any rights or benefits

1 of LabCorp pursuant to the LabCorp Purchase Agreement or to reduce
2 any obligations of Defendants under such agreement). Failure by
3 Defendants to comply with any material term of the LabCorp Purchase
4 Agreement, if approved by Plaintiff, shall constitute a failure to comply
5 with this Consent Decree and Final Judgment

6 B. If Defendants do not consummate the closing pursuant to the LabCorp
7 Purchase Agreement pursuant to and in accordance with that agreement
8 no later than ten (10) days after the Acquisition Date, then Plaintiff may
9 request that the Court appoint a Divestiture Trustee pursuant to
10 Paragraph VI. of this Consent Decree and Final Judgment to divest
11 either the Outpatient Clinical Laboratory Testing Services Assets or
12 Quest Diagnostics' Northern California Clinical Laboratory Testing
13 Services Assets, at no minimum price, to an acquirer that receives the
14 prior approval of Plaintiff and in a manner that receives the prior
15 approval of Plaintiff, and subject to the requirements of this Consent
16 Decree and Final Judgment.

17 C. If, at the time the Commission determines to make its Decision and
18 Order final, the Commission notifies Defendants in writing that
19 LabCorp is not an acceptable purchaser of the Purchased Assets or that
20 the manner in which the divestiture was accomplished is not
21 acceptable, then, after receipt of such written notification:

22 1. Defendants shall immediately notify LabCorp and Plaintiff of the
23 notice received from the Commission and shall as soon as
24 practicable effect the rescission of the acquisition and transfer of
25 the Purchased Assets as provided in the LabCorp Purchase
26 Agreement (to the extent any of the Purchased Assets have been
27 transferred to LabCorp);

28 2. Defendants shall divest the Outpatient Clinical Laboratory

1 Testing Services Assets pursuant to a Divestiture Agreement, at
2 no minimum price, to an acquirer that receives the prior approval
3 of Plaintiff and in a manner that receives the prior approval of
4 Plaintiff no later than six (6) months from the date the
5 Commission notifies Defendants that they are required to rescind
6 the transaction with LabCorp; and

7 3. If Defendants do not divest the Outpatient Clinical Laboratory
8 Testing Services Assets in the time period required by
9 subparagraph IV.C.2., above, Plaintiff may request that the Court
10 appoint a Divestiture Trustee pursuant to Paragraph VI. of this
11 Consent Decree and Final Judgment to divest either the
12 Outpatient Clinical Laboratory Testing Services Assets or Quest
13 Diagnostics' Northern California Clinical Laboratory Testing
14 Services Assets, at no minimum price, to an acquirer that
15 receives the prior approval of Plaintiff and in a manner that
16 receives the prior approval of Plaintiff, and subject to the
17 requirements of this Consent Decree and Final Judgment.

18 D. If, after Defendants have closed on the LabCorp Purchase Agreement
19 pursuant to and in accordance with that agreement, but before
20 Defendants have divested and transferred all of the Purchased Assets
21 to LabCorp pursuant to the LabCorp Purchase Agreement, an Interim
22 Monitor appointed by the Court at Plaintiff's request pursuant to
23 Paragraph V. of this Consent Decree and Final Judgment determines
24 that LabCorp has abandoned its efforts to acquire and operate the
25 Purchased Assets in a manner consistent with the purposes of this
26 Consent Decree and Final Judgment and reports such determination to
27 Plaintiff, and Plaintiff agrees with such determination and so notifies
28 Defendants and LabCorp, then:

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1. Defendants 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. Defendants 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 Plaintiff in a manner that receives the prior approval of Plaintiff no later than six (6) months from the date the Commission notifies Defendants and LabCorp that they are required to rescind the transaction with LabCorp; and
 3. If Defendants do not divest the Outpatient Clinical Laboratory Testing Services Assets in the time period required by subparagraph IV. D.2. above, then Plaintiff may request that the Court appoint a Divestiture Trustee pursuant to Paragraph VI. of this Consent Decree and Final Judgment 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 Plaintiff and in a manner that receives the prior approval of Plaintiff and subject to the requirements of this Consent Decree and Final Judgment.
- E. Any Divestiture Agreement that has been approved by Plaintiff shall be incorporated by reference into this Consent Decree and Final Judgment, and any failure by Defendants to comply with the material terms of such Divestiture Agreement shall constitute a failure to comply with this Consent Decree and Final Judgment.
- F. No later than the Closing Date, Defendants shall, at the option of the Plaintiff-approved Acquirer, create and transfer to the Plaintiff-

1 approved Acquirer a database, in a format acceptable to the Plaintiff-
2 approved Acquirer, that includes information relating to each physician
3 who has referred specimens to the PSCs to be divested to the Plaintiff-
4 approved Acquirer any time during the most recently completed three
5 months for which such information is available and to the extent such
6 information is maintained in any of the Defendants' applicable systems.
7 Such information shall include, without limitation: (1) name, address,
8 and phone number of account, (2) name of physician, (3) billing name
9 and address, if different, (4) office contact, (5) UPIN, (6) licenses, (7)
10 pick-up times, (8) custom panels, if any, (9) client-specific alert values,
11 (10) requirements regarding delivery of test results, (11) same-day
12 testing requirements, (12) special services, (13) pre-printed test names,
13 (14) special supply requirements, (15) form of requisition, (16) net
14 discounted and all special fees for all clinical laboratory services billed
15 to the Customer during such three-month period, (17) special service
16 fees, and (18) special billing agreements; *provided, however*, that if
17 Defendants create and transfer to LabCorp a database as described in
18 the LabCorp Purchase Agreement, and if Plaintiff does not require
19 rescission of the divestiture and transfer of the Purchased Assets, then
20 the Defendants shall have no further obligation pursuant to this
21 Paragraph IV.F.

22 G. From the Closing Date through the date six (6) months following the
23 last transfer of the Purchased Assets (or the Outpatient Clinical
24 Laboratory Testing Services Assets or Quest Diagnostics' Northern
25 California Clinical Laboratory Testing Services Assets, if divested):

26 1. Defendants shall not disclose or convey, directly or indirectly, to
27 Firewalled Employees any Confidential Business Information
28 relating to the assets divested and transferred to the Plaintiff-

1 approved Acquirer pursuant to this Consent Decree and Final
2 Judgment; and

3 2. Firewalled Employees shall not solicit or access any Confidential
4 Business Information relating to the assets divested and
5 transferred to the Plaintiff-approved Acquirer pursuant to this
6 Consent Decree and Final Judgment from any other of
7 Defendants' employees;

8 *provided, however,* that nothing contained herein shall prohibit
9 Defendants' employees from using Confidential Business Information
10 to respond to inquiries from Customers requesting information relating
11 to that Customer's own account; and *provided, further,* that only for
12 purposes of the divestiture of the Purchased Assets, nothing contained
13 herein shall prohibit Quest Diagnostics Firewalled Employees (and,
14 following the completion of the divestiture and transfer of all of the
15 Purchased Assets, all other Firewalled Employees) from using,
16 soliciting, or having access to Confidential Business Information
17 relating to any physician not included in the database that Defendants
18 are required to create and transfer to LabCorp pursuant to the LabCorp
19 Purchase Agreement as contemplated by Paragraph IV.F. of this
20 Consent Decree and Final Judgment.

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

27 H. Defendants shall, promptly following the Closing Date, provide written
28 or electronic notification to the Firewalled Employees and all of

1 Defendants' employees who have access to Confidential Business
2 Information relating to the assets divested to the Plaintiff-approved
3 Acquirer pursuant to this Consent Decree and Final Judgment of the
4 restrictions on the disclosure and solicitation of Confidential Business
5 Information relating to the Purchased Assets (or the Outpatient Clinical
6 Laboratory Testing Services Assets or Quest Diagnostics' Northern
7 California Clinical Laboratory Testing Services Assets, if divested) by
8 Defendants' personnel. At the same time, if not provided earlier,
9 Defendants shall provide a copy of the form of such notification to
10 employees by e-mail with return receipt requested or similar
11 transmission and keep an electronic file of such receipts for one (1)
12 year after the Closing Date. Defendants shall provide a copy of such
13 notification to the Plaintiff-approved Acquirer, the Interim Monitor,
14 and Plaintiff. Defendants shall also obtain from the Firewalled
15 Employees an agreement to abide by the applicable restrictions. Such
16 agreement and notification shall be in substantially the form set forth
17 in the "Notice of the Divestiture and Employee Agreement to Maintain
18 Confidential Business Information" attached as Exhibit A to Appendix
19 III, the Asset Maintenance Provisions.

- 20 I. Defendants shall not, in connection with divestiture and transfer of the
21 Purchased Assets (or the Outpatient Clinical Laboratory Testing
22 Services Assets or Quest Diagnostics' Northern California Clinical
23 Laboratory Testing Services Assets, if divested) interfere with the
24 employment by the Plaintiff-approved Acquirer of any employee of
25 Defendants with responsibilities relating primarily to the Purchased
26 Assets (or the Outpatient Clinical Laboratory Testing Services Assets
27 or Quest Diagnostics' Northern California Clinical Laboratory Testing
28 Services Assets, if divested), shall not offer any incentive to such

1 employees to decline employment with the Plaintiff-approved Acquirer
2 or to accept other employment with Defendants in lieu of accepting
3 employment with the Plaintiff-approved Acquirer, and shall remove
4 any other impediments that may deter such employees from accepting
5 employment with the Plaintiff-approved Acquirer, including, but not
6 limited to, any confidentiality provisions relating to the Purchased
7 Assets (or the Outpatient Clinical Laboratory Testing Services Assets
8 or Quest Diagnostics' Northern California Clinical Laboratory Testing
9 Services Assets, if divested) or any non-compete or confidentiality
10 provisions of employment or other contracts with Defendants that
11 would affect the ability of those individuals to be employed by the
12 Plaintiff-approved Acquirer; *provided, however*, that if Defendants
13 comply with the terms of the LabCorp Purchase Agreement relating to
14 the solicitation and employment by LabCorp of employees of the
15 Defendants, and if the Commission does not require rescission of the
16 divestiture and transfer of the Purchased Assets, then the Defendants
17 shall have no further obligations pursuant to this Paragraph IV. I.; and
18 *provided, further*, that nothing in this Paragraph shall be construed to
19 require the Defendants to terminate the employment of any employee.

20 J. For a period of one (1) year following the date the divestiture and
21 transfer are completed, Defendants shall not, directly or indirectly,
22 solicit, induce, or attempt to solicit or induce any employees of
23 Defendant who have accepted offers of employment with the Plaintiff-
24 approved Acquirer to terminate their employment relationship with the
25 Plaintiff-approved Acquirer unless the individual has been terminated
26 by the Plaintiff-approved Acquirer; *provided, however*, a violation of
27 this provision will not occur if: (1) Defendants advertise for employees
28 in newspapers, trade publications, or other media not targeted

1 specifically at the employees, or (2) Defendants hire employees who
2 apply for employment with Defendants, as long as such employees
3 were not solicited by Defendants in violation of this Paragraph IV.J.

4 K. Defendants shall provide all Clinical Laboratory Testing Services
5 Managerial Employees with reasonable financial incentives to continue
6 in their positions until the Closing Date. Such incentives shall include
7 a continuation of all employee benefits offered by Defendants until the
8 Closing Date for the divestiture of the Purchased Assets (or the
9 Outpatient Clinical Laboratory Testing Services Assets or Quest
10 Diagnostics' Northern California Clinical Laboratory Testing Services
11 Assets, if divested), including regularly scheduled raises and bonuses,
12 and a vesting of all pension benefits (as permitted by law). In addition,
13 Defendants shall provide a retention incentive to the Clinical
14 Laboratory Testing Services Managerial Employees who accept
15 employment with the Plaintiff-approved Acquirer equal to ten (10)
16 percent of such employee's total annual cash compensation for the year
17 2002 under the following terms:

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

24 L. Defendants shall, consistent with all applicable federal and state laws
25 and regulations, secure all actual or constructive consents and waivers
26 from all entities that are necessary for the divestiture of, or for the
27 continued operation or use of, the Purchased Assets (or the Outpatient
28 Clinical Laboratory Testing Services Assets or Quest Diagnostics'

1 Northern California Clinical Laboratory Testing Services Asset, if
2 divested) by the Plaintiff-approved Acquirer. In the event that
3 Defendants are unable to obtain all consents and waivers, Defendants
4 may substitute equivalent assets, subject to Plaintiff's approval;
5 *provided, however*, that Defendants shall not be required to divest
6 substitute assets for an asset that Defendants are unable to convey
7 because of a failure to obtain all applicable consents and waivers if the
8 failure to obtain the necessary consents and waivers is a direct result of
9 a refusal by the Plaintiff-approved Acquirer to agree to commercially
10 reasonable terms, including an extension of a lease reasonably
11 requested by a landlord, or any other inaction by or action by the
12 Plaintiff-approved Acquirer inconsistent with customary industry
13 practice. A substituted asset will not be deemed to be equivalent unless
14 it enables the Plaintiff-approved Acquirer to operate the Purchased
15 Assets (or the Outpatient Clinical Laboratory Testing Services Assets
16 or Quest Diagnostics' Northern California Clinical Laboratory Testing
17 Services Assets, if divested) at commercially reasonable terms.

18 M. From the date Defendants execute the Agreement Containing Consent
19 Orders, until such time as the Plaintiff-approved Acquirer has
20 completed its transition, including installation of all necessary software
21 and hardware (but in no event later than six (6) months after the
22 Outpatient Clinical Laboratory Testing Services Assets (or Quest
23 Diagnostics' Northern California Clinical Laboratory Testing Services
24 Assets, if divested) are divested and transferred), Defendants shall
25 provide to the Plaintiff-approved Acquirer such personnel, services,
26 assistance, and training as the Plaintiff-approved Acquirer reasonably
27 needs to transfer the Outpatient Clinical Laboratory Testing Services
28 Assets (or Quest Diagnostics' Northern California Clinical Testing

1 Services Assets, if divested) or conduct the business (including billing
2 support). Defendants shall not require the Plaintiff-approved Acquirer
3 to pay compensation for the personnel, services, assistance, or training
4 in excess of Defendants' direct costs of providing such services;
5 *provided, however,* that if Defendants provide assistance pursuant to
6 the LabCorp Purchase Agreement, and if the Commission does not
7 require rescission of the divestiture and transfer of the Purchased
8 Assets, then the Defendants shall have no further obligation pursuant
9 to this Paragraph IV.M.

10 N. Pending divestiture and transfer of the Purchased Assets (or the
11 Outpatient Clinical Laboratory Testing Services Assets or Quest
12 Diagnostics' Northern California Clinical Laboratory Testing Services
13 Assets, if divested), Defendants shall take such actions as are necessary
14 to maintain the viability, marketability, and competitiveness of Quest
15 Diagnostics' Northern California Clinical Laboratory Testing Services
16 Assets and to prevent the destruction, removal, wasting, deterioration,
17 sale, disposition, transfer, or impairment of any of Quest Diagnostics'
18 Northern California Clinical Laboratory Testing Services Assets except
19 for ordinary wear and tear.

20 O. The purpose of the divestiture and transfer of the Purchased Assets (or
21 the Outpatient Clinical Laboratory Testing Services Assets or Quest
22 Diagnostics' Clinical Laboratory Testing Services Assets, if divested)
23 is to ensure the continued use of the Purchased Assets (or the
24 Outpatient Clinical Laboratory Testing Services Assets or Quest
25 Diagnostics' Clinical Laboratory Testing Services Assets, if divested)
26 in the same business in which the Purchased Assets (or the Outpatient
27 Clinical Laboratory Testing Services Assets or Quest Diagnostics'
28 Clinical Laboratory Testing Services Assets, if divested) were engaged

1 at the time of the announcement of the Acquisition, and to remedy the
2 lessening of competition resulting from the Acquisition as alleged in
3 Plaintiff's complaint.

4 V.

5 **APPOINTMENT OF INTERIM MONITOR**

- 6 A. At any time after Defendants sign the Consent Decree and Final
7 Judgment, Plaintiff may request that the Court appoint an Interim
8 Monitor to assure that Defendants expeditiously comply with all of
9 their obligations and perform all of their responsibilities as required by
10 this Consent Decree and Final Judgment, including the Asset
11 Maintenance Provisions attached as Appendix III, and to monitor the
12 Plaintiff-approved Acquirer's reasonable diligence in effectuating the
13 divestiture and transfer of assets pursuant to a Divestiture Agreement.
- 14 B. If an Interim Monitor is appointed pursuant to Paragraph V.A. of this
15 Consent Decree and Final Judgment or Paragraph III.A of Appendix III,
16 the Asset Maintenance Provisions, Defendants shall consent to the
17 following terms and conditions regarding the powers, duties,
18 authorities, and responsibilities of the Interim Monitor:
- 19 1. Plaintiff shall select the Interim Monitor, subject to the consent
20 of Defendants, which consent shall not be unreasonably
21 withheld. If neither Defendant has opposed, in writing,
22 including the reasons for opposing, the selection of a proposed
23 Interim Monitor within ten (10) days after notice by Plaintiff to
24 Defendants of the identity of any proposed Interim Monitor,
25 Defendants shall be deemed to have consented to the selection
26 of the proposed Interim Monitor.
 - 27 2. The Interim Monitor shall have the power and authority to
28 monitor the Defendants' compliance with the terms of the

- 1 Consent Decree and Final Judgment, including Appendix III, the
2 Asset Maintenance Provisions, and the Plaintiff-approved
3 Acquirer's reasonable diligence in effectuating the divestiture
4 and transfer of assets pursuant to the Divestiture Agreement, and
5 shall exercise such power and authority and carry out the duties
6 and responsibilities of the Interim Monitor in a manner
7 consistent with the purpose of the Consent Decree and Final
8 Judgment, including Appendix III, the Asset Maintenance
9 Provisions, and in consultation with Plaintiff.
- 10 3. Not later than ten (10) days after appointment of the Interim
11 Monitor, Defendants shall execute an agreement that, subject to
12 the prior approval of Plaintiff, confers on the Interim Monitor all
13 the rights and powers necessary to permit the Interim Monitor to
14 monitor Defendants' compliance with the relevant terms of the
15 Consent Decree and Final Judgment, including Appendix III, the
16 Asset Maintenance Provisions, and the Plaintiff-approved
17 Acquirer's reasonable diligence in effectuating the divestiture
18 and transfer of assets pursuant to the Divestiture Agreement in
19 a manner consistent with the purpose of the Consent Decree and
20 Final Judgment, including Appendix III, the Asset Maintenance
21 Provisions.
- 22 4. The Interim Monitor shall serve until the last obligation under
23 the Consent Decree and Final Judgment, including Appendix III,
24 the Asset Maintenance Provisions, pertaining to the Interim
25 Monitor's service has been fully performed; *provided, however,*
26 that Plaintiff may seek to extend or modify this period as may be
27 necessary or appropriate to accomplish the purpose of the
28 Consent Decree and Final Judgment, including Appendix III, the

- 1 Asset Maintenance Provisions.
- 2 5. Subject to any legally recognized privilege, the Interim Monitor
- 3 shall have full and complete access to Defendants' personnel,
- 4 books, documents, or records kept in the normal course of
- 5 business, facilities and technical information, and any other
- 6 relevant information as the Interim Monitor may reasonably
- 7 request, relating to Defendants' compliance with their
- 8 obligations under the Consent Decree and Final Judgment,
- 9 including Appendix III, the Asset Maintenance Provisions,
- 10 including, but not limited to, their obligations relating to the
- 11 Purchased Assets (or the Outpatient Clinical Laboratory Testing
- 12 Services Assets or Quest Diagnostics' Northern California
- 13 Clinical Laboratory Testing Services Assets, if divested).
- 14 Defendants shall cooperate with any reasonable request of the
- 15 Interim Monitor and shall take no action to interfere with or
- 16 impede the Interim Monitor's ability to monitor Defendants'
- 17 compliance with the Consent Decree and Final Judgment,
- 18 including Appendix III, the Asset Maintenance Provisions.
- 19 6. The Interim Monitor shall serve, without bond or other security,
- 20 at the expense of Defendants on such reasonable and customary
- 21 terms and conditions as the Court may set. The Interim Monitor
- 22 shall have authority to employ, at the expense of the Defendants,
- 23 such consultants, accountants, attorneys and other
- 24 representatives and assistants as are reasonably necessary to
- 25 carry out the Interim Monitor's duties and responsibilities. The
- 26 Interim Monitor shall account for all expenses incurred,
- 27 including fees for services rendered, and shall provide Plaintiff
- 28 with such accounting. Plaintiff shall have fifteen (15) business

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days to file with the Court any objections to such accounting. The Interim Monitor's accounting shall be subject to the approval of the Court. Plaintiff 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 Plaintiff's materials and information received in connection with the performance of the Interim Monitor's duties.

- 7. Defendants 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 Plaintiff determines that the Interim Monitor has ceased to act or failed to act diligently, Plaintiff may seek appointment of a substitute Interim Monitor in the same manner as provided in Paragraph V.A. of this Consent Decree and Final Judgment or Paragraph III.A. of Appendix III, the Asset Maintenance Provisions.
- 9. Plaintiff may on its own initiative, or at the request of the Interim Monitor, request that the Court issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Consent Decree and

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Final Judgment, including Appendix III, the Asset Maintenance Provisions.

10. Defendants shall report to the Interim Monitor in accordance with the requirements of Paragraph VII. of this Consent Decree and Final Judgment and Paragraph IV. of the Asset Maintenance Provisions and/or as otherwise provided in any agreement approved by Plaintiff. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Defendants, and any reports submitted by the Plaintiff-approved Acquirer with respect to the performance of its or Defendants' obligations under the Consent Decree and Final Judgment, including Appendix III, the Asset Maintenance Provisions, 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 Plaintiff concerning compliance by Defendants with the provisions of the Consent Decree and Final Judgment, including Appendix III, the Asset Maintenance Provisions.

11. Defendants 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 Plaintiff.

VI.

APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not fully complied with the obligations specified in Paragraph IV.A., B., C., or D as applicable, of this Consent Decree and Final Judgment, Plaintiff may request that the Court appoint a

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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 IV of this Consent Decree and Final Judgment. Neither the decision to request the appointment of a Divestiture Trustee nor a decision not to request the appointment of a Divestiture Trustee under this Paragraph shall preclude Plaintiff from seeking civil penalties or any other relief available to it under any statute enforced by Plaintiff, for any failure by the Defendants to comply with this Consent Decree and Final Judgment.

B. If a Divestiture Trustee is appointed by the Court pursuant to Paragraph VI.A. of this Consent Decree and Final Judgment, Defendants shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Plaintiff shall select the Divestiture Trustee, subject to the consent of Defendants, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Defendants have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by Plaintiff to Defendants of the identity of any proposed Divestiture Trustee, Defendants shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
2. Subject to the prior approval of Plaintiff, the Divestiture Trustee shall have the exclusive power and authority to divest or transfer the relevant assets that are required by this Consent Decree and Final Judgment to be divested or transferred.

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3. Within ten (10) days after appointment of the Divestiture Trustee, Defendants shall execute a trust agreement that, subject to the prior approval of Plaintiff and 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 Consent Decree and Final Judgment.
4. The Divestiture Trustee shall have twelve (12) months from the date the Court approves the trust agreement described in Paragraph VI.B.3. to accomplish the divestiture(s), which shall be subject to the prior approval of Plaintiff. 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 Court upon Plaintiff's request ; *provided, however,* the Court may extend the divestiture period only two (2) times.
5. The Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the relevant assets that are required to be divested by this Consent Decree and Final Judgment or to any other relevant information, as the Divestiture Trustee may request. Defendants shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Defendants shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Defendants shall extend the time for divestiture under this Paragraph in an amount equal to the delay as determined by the Court.

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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 Plaintiff, subject to Defendants' 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 Consent Decree and Final Judgment; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if Plaintiff determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Defendants from among those approved by Plaintiff; *provided further, however*, that Defendants shall select such entity within five (5) days of receiving notification of Plaintiff's approval.

7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Defendants, on such reasonable and customary terms and conditions as the Court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Defendants, 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 and shall provide Plaintiff with such accounting. Plaintiff shall have fifteen (15) business days to file with the Court any objections to such accounting. After approval 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

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of the Defendants, 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 Consent Decree and Final Judgment.

8. Defendants 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 VI. of this Consent Decree and Final Judgment.
10. The Court may on its own initiative or at the request of Plaintiff issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Consent Decree and Final Judgment.
11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Consent Decree and Final Judgment.
12. The Divestiture Trustee shall report in writing to Defendants and

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Plaintiff every sixty (60) days concerning the Divestiture
Trustee's efforts to accomplish the divestiture(s).

VII.

SUBMISSION OF REPORTS

- A. Beginning thirty (30) days after the initial report is required to be filed pursuant to the Agreement Containing Consent Orders with the Commission regarding this merger, and every sixty (60) days thereafter until Defendants have fully complied with these obligations pursuant to this Consent Decree and Final Judgment, Defendants shall submit to Plaintiff 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 IV.A., (or Paragraphs IV.B., C., or D., or Paragraph VI., if applicable), and Paragraphs IV.F., G., H., I., L., M., and N.
- B. Beginning six (6) months after the initial report is required to be filed, and every six (6) months thereafter, for the duration of Defendants' obligation, Defendants shall submit to Plaintiff verified written reports setting forth in detail the manner and form in which they are complying and have complied with Paragraphs IV.J. and K. of this Consent Decree and Final Judgment.
- C. Defendants 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 Consent Decree and Final Judgment, 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 completion of such obligations.

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VIII.

NOTIFICATION OF CHANGES IN CORPORATE FORM

Defendants shall notify Plaintiff at least thirty (30) days prior to any proposed change in either corporate Defendant 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 Consent Decree and Final Judgment.

IX.

TOLLING OF TIME

In the event that (1) Defendants enter into the Agreement Containing Consent Orders with the Commission regarding this merger; (2) Defendants, within the time period required under this Consent Decree and Final Judgment, have submitted a complete application for approval of the divestiture of the Outpatient Clinical Laboratory Testing Services Assets; (3) Plaintiff has approved the divestiture of the Outpatient Clinical Laboratory Testing Services Assets and has not withdrawn its approval; (4) Defendants have submitted a timely and complete application for approval of the divestiture of the Outpatient Clinical Laboratory Testing Services Assets to the Commission; but (5) the Commission has failed or refused to approve the proposed divestiture, then the time in which the divestiture shall be completed shall be extended (a) for ninety (90) days or (b) until the Commission has made a determination pertaining to the proposed divestiture or other relief, whichever is later. During such period of extension, the Defendants shall exercise good faith and best efforts to resolve the concerns of the Commission.

X.

COMPLIANCE WITH ASSET MAINTENANCE PROVISIONS

Defendants shall comply with all the terms of the State's Asset Maintenance Provisions, attached to this Consent Decree and Final Judgment and made a part hereof, as Appendix III., until such time as those provisions terminate

1 in accordance with paragraph VII. of the Asset Maintenance Provisions. Defendants
2 will comply with such terms of the Asset Maintenance Provisions regardless of
3 whether the Commission enters an order finally approving the merger.

4 **XI.**

5 **COMPLIANCE INSPECTION**

6 For the purpose of determining or securing compliance with this
7 Consent Decree and Final Judgment, and subject to any legally recognized
8 privilege, and upon written request with reasonable notice to Defendants,
9 Defendants shall permit any duly authorized representative of Plaintiff, including
10 consultants:

- 11 A. Access, during office hours of Defendants and in the presence of
12 counsel, to all facilities and access to inspect and copy all books,
13 ledgers, accounts, correspondence, memoranda, and all other records
14 and documents in the possession or under the control of Defendants
15 relating to compliance with this Consent Decree and Final Judgment;
16 and
- 17 B. Upon five (5) days' notice to Defendants and without restraint or
18 interference from Defendants, to interview officers, directors, or
19 employees of Defendants, who may have counsel present, regarding
20 such matters.

21 **XII.**

22 **NOTICES**

23 Any notices required by this Consent Decree and Final Judgment
24 shall be delivered to the parties at the following addresses:

- 25 A. For Quest :

26 Michael E. Prevoznik
27 Corporate Vice President
28 Legal and Compliance & General Counsel
Quest Diagnostics Incorporated
One Malcolm Avenue

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Teterboro, New Jersey 07608

Michael Antalics
O'Melveny & Myers, LLP
555 West 13th St., N.W.
Washington, D.C. 20004

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(S)

B. For Unilab:

Michael E. Prevoznik
Corporate Vice President
Legal and Compliance & General Counsel
Quest Diagnostics Incorporated
One Malcolm Avenue
Teterboro, New Jersey 07608

Michael Antalics
O'Melveny & Myers, LLP
555 West 13th St., N.W.
Washington, D.C. 20004

C. For Plaintiff:

Natalie S. Manzo, Esq.
Deputy Attorney General
300 South Spring St., Suite 1702 N
Los Angeles, CA 90013.

XIII.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree and Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Consent Decree and Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV.

COMMISSION ORDER

Any failure to divest as a result of the Commission's failure to approve an application for divestiture shall not violate this Consent Decree and Final

1 Judgment.

2 **XV.**

3 **STATE FEDERAL CONSULTATION**

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4 Plaintiff will consult with the Commission on all decisions relating to the
5 divestiture of assets, the appointment of an Interim Monitor, and the appointment
6 of a Divestiture Trustee under this Consent Decree and Final Judgment and will
7 further exercise best efforts to resolve any and all inconsistent enforcement
8 positions between the two agencies relating to such divestiture, such
9 appointments, and the implementation of the Asset Maintenance Provisions.

10 **XVI.**

11 **ATTORNEYS FEES AND COSTS**

12 A. Plaintiff is awarded its attorneys' fees and costs in the amount of
13 \$20,000.00 for reimbursement of fees and costs incurred by Plaintiff in this
14 matter for all work performed up to entry of this Consent Decree and Final
15 Judgment. Defendants shall pay this sum to Plaintiff within ten (10) business
16 days of entry of this Consent Decree and Final Judgment.

17 B. Defendants shall pay to Plaintiff reimbursement of fees and costs
18 incurred by Plaintiff for work necessarily performed after entry of this Consent
19 Decree and Final Judgment in order to review, evaluate, and approve any acquire
20 of the assets to be divested other than LabCorp.

21 C. If Plaintiff successfully brings an action to enforce the provisions of
22 this Consent
23 Decree and Final Judgment, Defendants shall reimburse Plaintiff for all
24 reasonable costs and attorneys' fees associated with bringing such enforcement
25 action.

26 **XVII.**

27 **TERMINATION**

28 This Consent Decree and Final Judgment will expire and terminate seven

1 (7) years from the date of its entry.

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XVIII.

PUBLIC INTEREST

Entry of this Consent Decree and Final Judgment is in the public interest.

DATED this 25th day of April, 2003.

Margaret M. Morrow
UNITED STATES DISTRICT JUDGE

Presented by:

BILL LOCKYER, Attorney General
of the State of California
RICHARD M. FRANK, Chief Assistant
Attorney General
KATHLEEN FOOTE, Acting Senior Assistant
Attorney General
BARBARA M. MOTZ,
Supervising Deputy Attorney General
NATALIE S. MANZO,
Deputy Attorney General

Natalie S. Manzo
Natalie S. Manzo
Deputy Attorney General
for Plaintiff, State of
California

QUEST DIAGNOSTICS INCORPORATED
UNILAB CORPORATION

Richard Parker

Richard Parker
O'Melveny & Myers, LLP
555 West 13th St., N.W.
Washington, D.C. 20004