

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiffs,

v.

LABORATORY CORPORATION OF  
AMERICA, et al.,

Defendants.

CASE NO. SACV 10-1873 AG (MLGx)

ORDER ON PLAINTIFF’S MOTION  
FOR INJUNCTION PENDING  
APPEAL

On February 22, 2011, this Court issued its Order Denying Preliminary Injunction (“Injunction Order”). In 184 numbered findings and conclusions, the Court denied the injunction sought by the Federal Trade Commission (“FTC”) against Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings (together, “LabCorp”). The FTC now seeks to appeal the Court’s ruling and has filed a Motion for Injunction pending Appeal (“Motion”). The Motion is DENIED.

An injunction pending appeal is “an extraordinary remedy that should be granted sparingly.” *Sierra Forest Legacy v. Rey*, 691 F. Supp. 2d 1204, 1207 (E.D. Cal. 2010) (internal

1 quotation and citation omitted). Federal Rule of Civil Procedure 62(c) allows a court to issue an  
2 injunction pending appeal of an order or final judgment “that grants, dissolves, or denies an  
3 injunction.” Fed. R. Civ. P. 62(c). “A party seeking a stay must establish that he is likely to  
4 succeed on the merits, that he is likely to suffer irreparable harm in the absence of relief, that the  
5 balance of equities tip in his favor, and that a stay is in the public interest.” *Humane Society of*  
6 *the U.S. v. Gutierrez*, 558 F.3d 896, 896 (9th Cir. 2009) (citing *Winter v. Natural Resources*  
7 *Defense Council, Inc.*, --- U.S. ---, 129 S.Ct. 365, 374, 172 L.Ed.2d 249 (2008)). The standard  
8 now is higher than for the preliminary injunction previously sought by the FTC because to  
9 obtain the stay, the FTC must demonstrate likelihood of irreparable harm, which is not a  
10 requirement under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

11 Summarizing and somewhat supplementing its Injunction Order, the Court notes the  
12 following findings and conclusions. The Court previously determined that it “cannot conclude  
13 that the FTC is likely to succeed on the merits. Even if the FTC had demonstrated likelihood of  
14 success on the merits, such likelihood is minimal and heavily outweighed by the equities  
15 favoring denial of the injunction.” (Injunction Order at 40:13-16.) Of course, the Court cannot  
16 and need not finally resolve conflicts of evidence or analyze extensively all antitrust issues –  
17 that’s the role of the administrative proceeding. *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156,  
18 1164 (9th Cir. 1984) (per curiam) (“the issue in this action for preliminary relief is a narrow one,  
19 we do not resolve the conflicts in the evidence, compare concentration ratios and effects on  
20 competition in other cases, or undertake an extensive analysis of the antitrust issues.”); *FTC v.*  
21 *Whole Foods* 548 F.3d 1028, 1042, 1048 (Tatel, J., concurring) (D.C. Cir. 2008) (the district  
22 court’s job is not to pick between two expert theories, for when it does so, it “trench[es] on the  
23 FTC’s role when [the court] choose[s] between plausible, well-supported expert studies.”); *FTC*  
24 *v. Lancaster Colony Corp.*, 434 F. Supp. 1088, 1094, 1096 (S.D.N.Y. 1977) (“Surely, we are not  
25 required, on a Section 13(b) application, to examine the economic characteristics of the entire  
26 [market] or to try the case. As a practical matter, a district court can hardly do more at so early a  
27 stage of antitrust litigation than to make a considered estimate of the FTC’s apparent chances of  
28 success based upon what must necessarily be an imperfect, incomplete and fragile factual

1 basis.”).

2 A more thorough review is reserved for the extensive FTC administrative trial set to begin  
3 on May 2, 2011. The Court has found and concluded that an injunction under these  
4 circumstances might very well destroy LabWest (formerly Westcliff), and that such as a result  
5 would be harmful to the public. The Court could not find or conclude that the difficulties of  
6 divesting the companies in the event that the FTC ultimately prevails outweighs the risk of the  
7 injunction. Further, the FTC has presented insufficient evidence and argument in its Motion to  
8 change the Court’s very recent determination that the FTC failed to meet the standard for an  
9 injunction.

10 Considering the Court’s Injunction Order, the FTC has not shown that it meets the  
11 standard for an injunction pending appeal. The Motion is DENIED.

12  
13  
14 IT IS SO ORDERED.

15  
16 DATED: February 25, 2011

17  
18 

19 Andrew J. Guilford  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28