

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 11-55293

FEDERAL TRADE COMMISSION, Plaintiff-Appellant,

v.

LABORATORY CORPORATION OF AMERICA and
LABORATORY CORPORATION OF AMERICA HOLDINGS,
Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
District Court Case No. 8:10-cv-01873-AG-MLG

**PLAINTIFF-APPELLANT FEDERAL TRADE COMMISSION'S
MOTION FOR VOLUNTARY DISMISSAL OF APPEAL**

Plaintiff-Appellant Federal Trade Commission (“FTC” or “Commission”) hereby moves the Court, pursuant to Fed. R. App. P. 42(b), to dismiss this appeal. In support of this motion, the Commission states as follows:

1. On December 1, 2010, the Commission filed a complaint and motion for a preliminary injunction, pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), seeking to preclude defendants/appellees Laboratory Corporation of America and Laboratory Corporation of America Holdings

(“LabCorp”), from integrating the assets of Westcliff Medical Laboratories, Inc. (“Westcliff”) into its own business, and to require LabCorp to maintain Westcliff as a separate and independently-operated business. The Commission requested that this form of injunction – *i.e.*, a “hold-separate” arrangement – be maintained until the completion of administrative adjudicatory proceedings to determine whether LabCorp’s acquisition of Westcliff on June 16, 2010 violates Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

2. On February 22, 2011, the U.S. District Court for the Central District of California issued an order denying the Commission’s motion for preliminary injunction. The Commission filed a notice of appeal on February 23, 2011.

3. On February 28, 2011, the Commission filed in this Court an emergency motion for an injunction pending appeal, pursuant to Fed. R. App. P. 8(a)(2) and Circuit Rule 27-3. On March 4, 2011, a motions panel of this Court issued a temporary restraining order that re-imposed the “hold-separate” arrangement, pending the Court’s further consideration of the Commission’s emergency motion. On March 14, 2011, the same panel lifted that injunction and denied the Commission’s emergency motion.

4. The March 14, 2011 order leaves LabCorp free to proceed with its integration of the Westcliff assets into its business, during the pendency of this appeal.

Accordingly, the Commission moves to dismiss its appeal from the district court's denial of a preliminary injunction. No appeal briefs have been filed by either side.¹ The Commission requests that the Court grant the voluntary dismissal of this appeal, with each side to bear its own costs. Undersigned counsel has conferred with counsel for appellees and has been informed that this motion is unopposed.

Respectfully submitted,

David L. Sieradzki
Counsel for Plaintiff-Appellant
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, DC 20580

March 23, 2011

Certificate of Service

I certify that Plaintiff-Appellant Federal Trade Commission's Motion for Voluntary Dismissal of Appeal was filed electronically via the Court's ECF system, and accordingly was served upon all parties.

David L. Sieradzki

¹ Appellant's initial brief is due on March 23, 2011. The Court's March 14 order directed that oral argument be scheduled during the week of June 6, 2011.