

ORIGINAL

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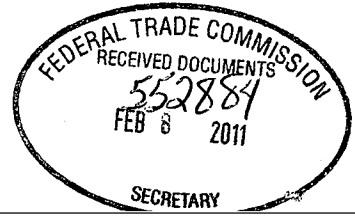


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MOTION TO QUASH

MEMORANDUM OF POINTS AND AUTHORITIES

1

2 I. INTRODUCTION

3

Third party Hunter Laboratories ("Hunter Labs") seeks to crush the subpoena

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

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

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

- 11 • IDENTIFY each person or entity to whom YOU offered or charged prices

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

3 **II. ARGUMENT**

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

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

10

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

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

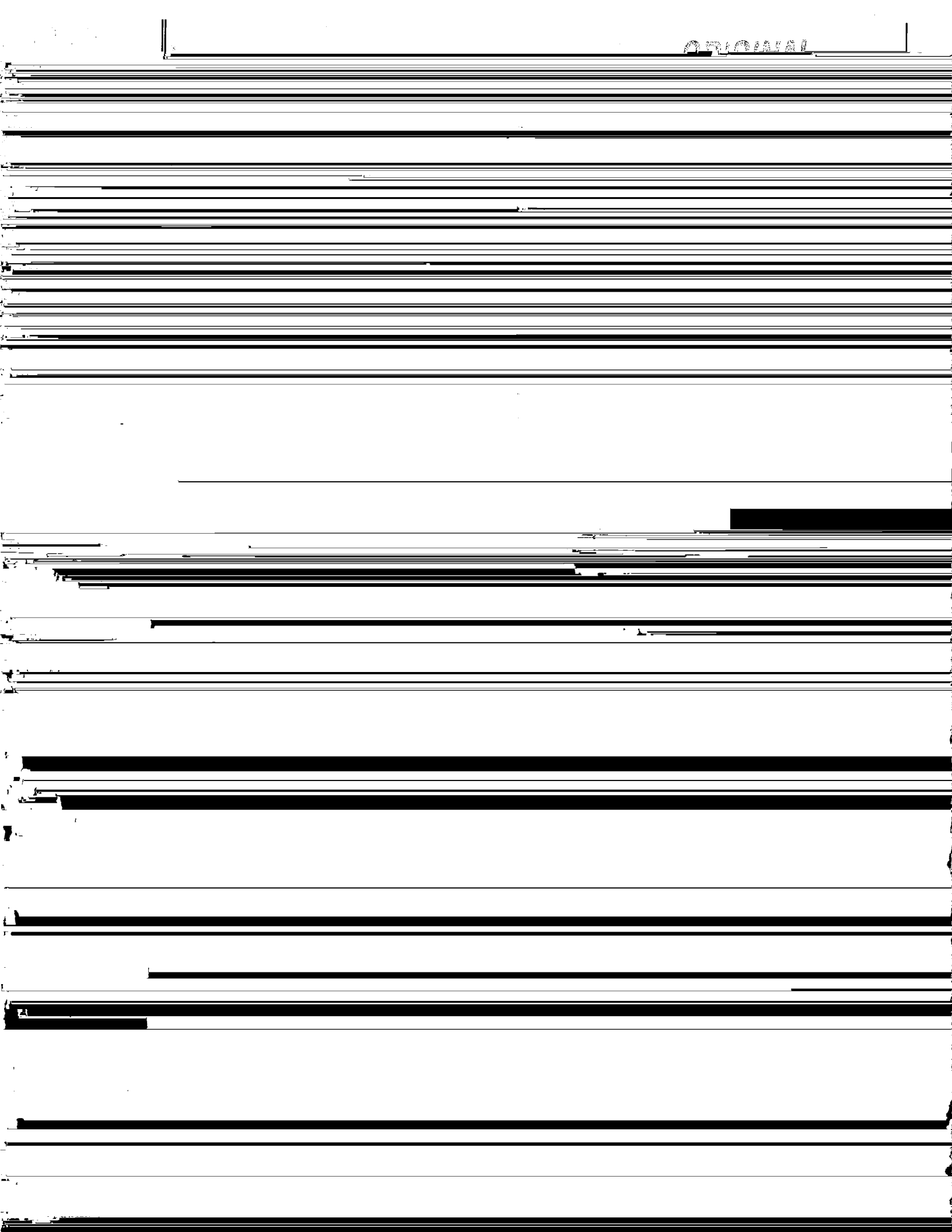
6 In other words, LabCorp seeks every minute detail of Hunter Labs’ business over the past
7 three years.

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

16 **III. CONCLUSION**

17 For the foregoing reasons, Hunter Labs respectfully requests that LabCorp’s

18 subpoena be stricken. In the alternative, LabCorp’s subpoena should be limited to the



1 I, Justin Berger, declare as follows:

2 1. I am an attorney at the law firm of Cotchett, Pitre & McCarthy, LLP, and I

am one of the counsel of record for Chris Biedel and Hunter Laboratories, LLC. Except

EXHIBIT A

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

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

CASE NO. 34-2009-00066517

STATE OF CALIFORNIA *ex rel* HUNTER
LABORATORIES, LLC and CHRIS RIFDEL

an individual,

Plaintiffs

vs.

LABORATORY CORPORATION OF
AMERICA, LABORATORY
CORPORATION OF AMERICA
HOLDINGS and DOES 1 through 100,

Defendants.

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

Pursuant to the April 14, 2010 order of the Honorable Fred K. Morrison

defense of unclean hands is available under California law. In *Mortgages, Inc. v. United States District Court* (9th Cir. 1991) 934 F.2d 209, 213, the court refused to create a federal common law unclean hands defense because of the

PROOF OF SERVICE BY FACSIMILE & U.S. MAIL

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

Reference No. 1130004761

I, Jan Murray, not a party to the within action, hereby declare that on September 23, 2010 I received

the attached REPORT AND RECOMMENDATION OF SPECIAL MASTER REGARDING LABCORP
DEFENDANTS' MOTION TO COMPEL FURTHER RESPONSES AND DOCUMENTS FROM QUI TAM

840 Malcolm Rd.
Suite 200

8200 Wilshire Blvd.

Burlingame CA 94010

D. L. W. CA 94024

EXHIBIT B

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

5 **DEFINITIONS**

6 The following words and phrases have the meanings given:

7 "HUNTER LABS," "QUI TAM PLAINTIFFS," "RIEDEL," "PLAINTIFF,"

8 "PLAINTIFFS," "YOU," and "YOUR" shall have the meanings set forth in the attached exhibits.

1 SPECIAL INTERROGATORY NO. 4:

2 For each name IDENTIFIED in response to Interrogatory No. 3 DESCRIBE why YOU

[REDACTED]

1 **SPECIAL INTERROGATORY NO. 12:**

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

4
5 Dated: March 16, 2010

Jones Day

6

7

By: 

8

Shawn Hanson

9

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

10

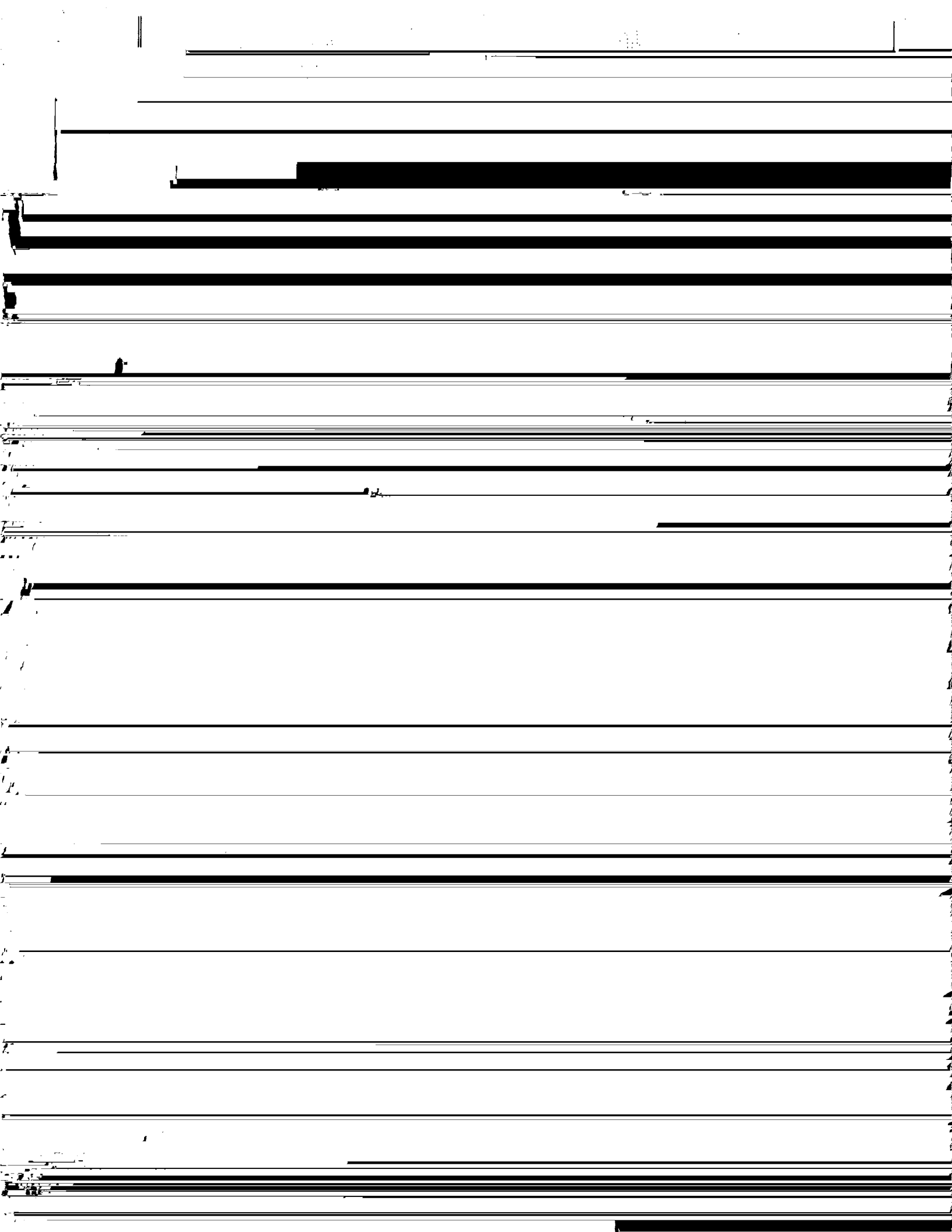
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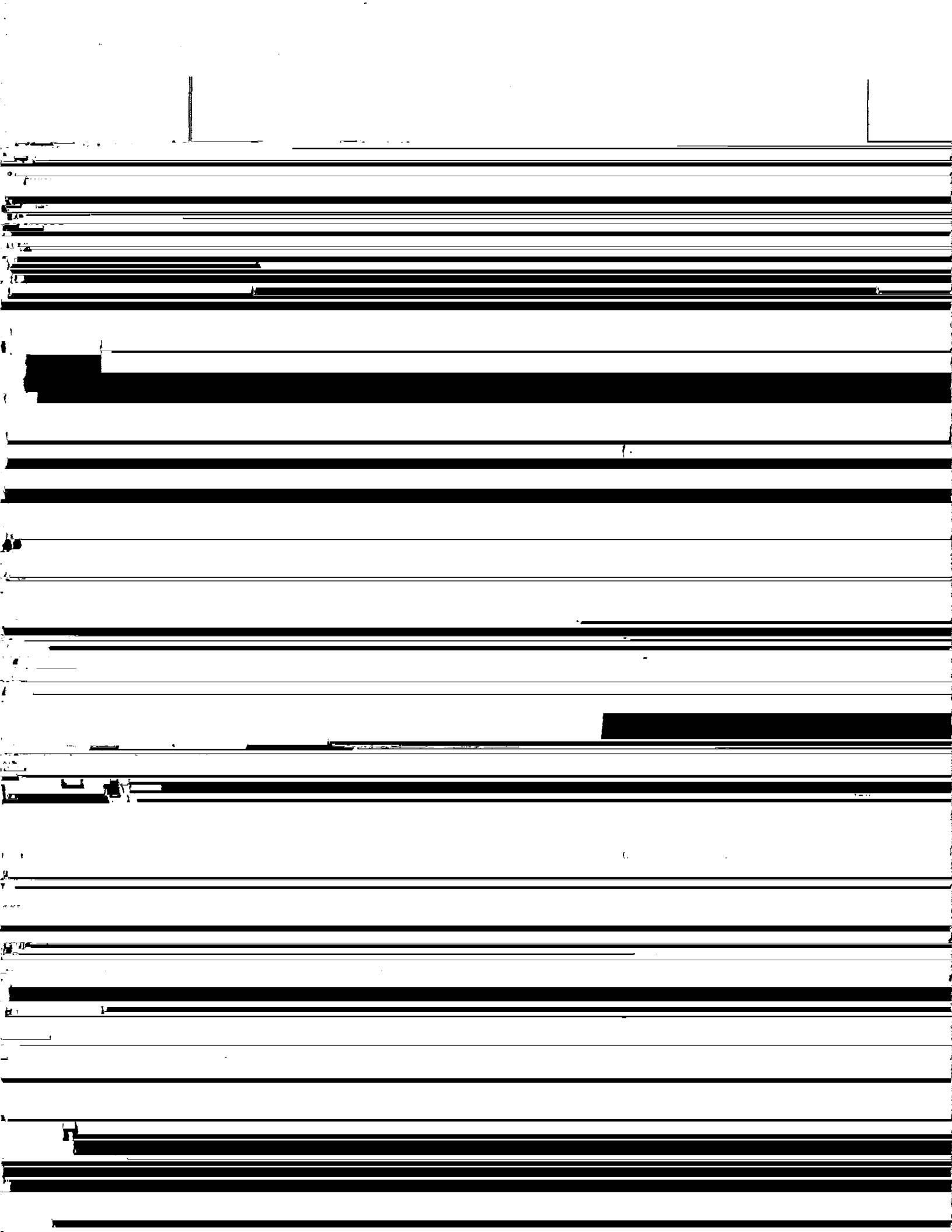
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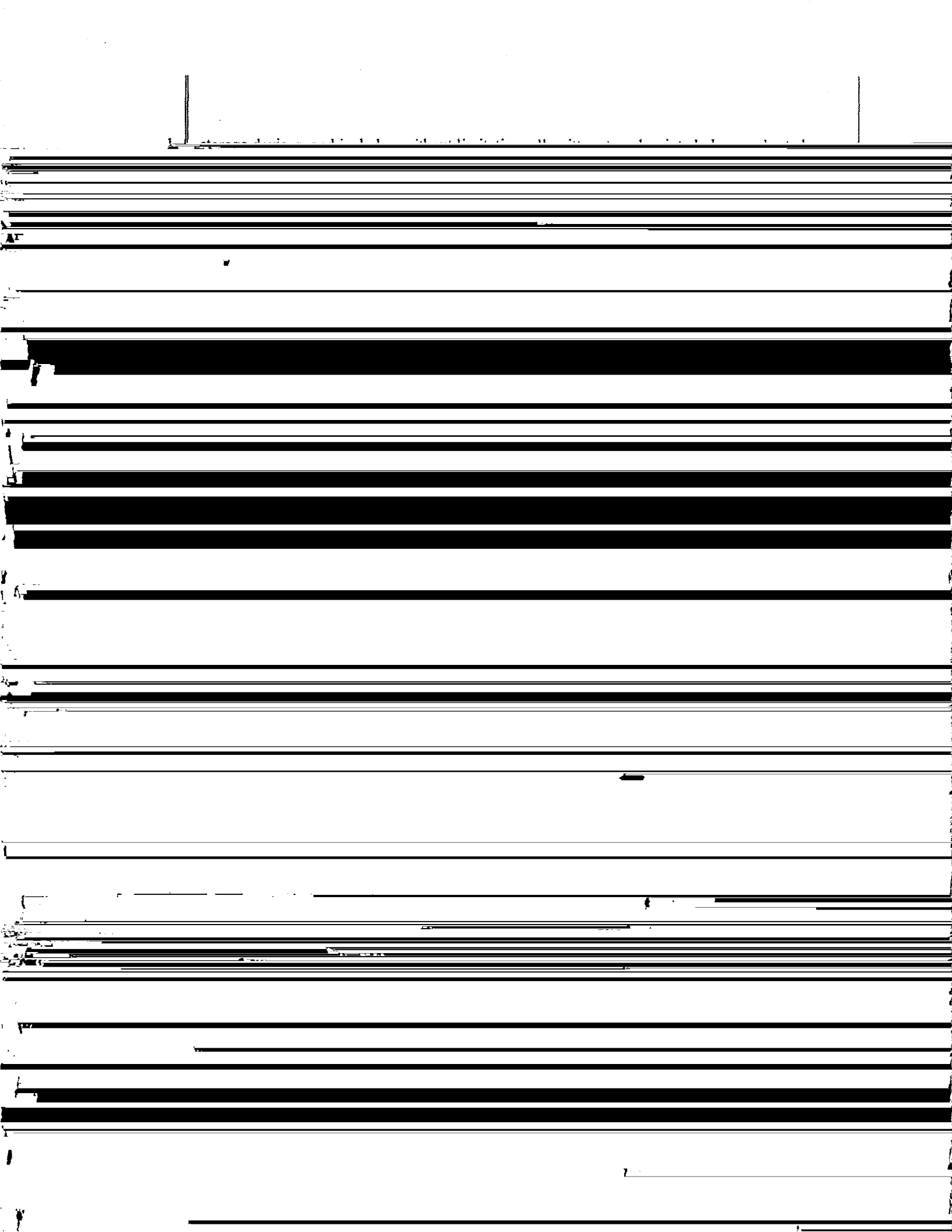
I, Sandra Altamirano, declare:

I am a citizen of the United States and employed in California.

[REDACTED]







All DOCUMENTS shall be produced in the booklet, binder, file, folder, envelope, or

[REDACTED]

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

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

4. DOCUMENTS provided by YOU to the STATE DEPARTMENT OF LABOR

1

- Business & Professions Code section 650;

2

- *Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992)
6 Cal.App. 4th 929 (consolidated judicial administration cases, 1992)

1 REQUEST FOR PRODUCTION NO. 10:

2 ALL DOCUMENTS RELATING TO COMMUNICATIONS BETWEEN YOU AND

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

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

REQUEST FOR PRODUCTION NO. 19

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PROOF OF SERVICE

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SERVICE LIST

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

Dennis Fenwick, Deputy Attorney General
~~Vincent DiCarlo, Deputy Attorney General~~

Attorneys for the State of California

EXHIBIT D

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EXHIBIT E

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February 2, 2011

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[PROPOSED] ORDER

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

7
8 IT IS SO ORDERED.

9
10
11 DATED: _____

HON. D. MICHAEL CHAPPELL
Chief Administrative Law Judge

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San Francisco Airport Office Center

PROOF OF SERVICE

1

2

I am employed in the County of San Mateo; I am over the age of 18 years and not a party to the within cause. My business address is the Law Office of Gatchett, Rine & McCord, LLP

J. Robert Robertson

Attorneys for Respondents

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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