DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
2098 Gaither Road
Rockville MD 20850

WARNING LETTER

OCT 1 1 2007

VIA FEDERAL EXPRESS **{AND FACSIMILE}**

Jeffrey R. Luber
President
EXACT Sciences Corporation
100 Campus Drive
Marlborough, Massachusetts 01752

Dear Mr. Luber,

The Food and Drug Administration (FDA) has reviewed information collected during a CMS inspection of LabCorp's facilities at Research Triangle Park, NC, and Burlington, NC, regarding EXACT Science's PreGen-Plus assay for colorectal screening. This review has revealed serious regulatory problems involving this device manufactured by your firm.

Based on the information collected, FDA has determined that the PreGen-Plus assay is a test that was designed, developed, validated, and marketed by EXACT Sciences rather than a test that was developed and validated by LabCorp. As such, this device is not within the scope of laboratory developed tests over which the agency has traditionally applied enforcement discretion. For example, information collected at LabCorp indicates EXACT has provided instructions for use, validation information, and performance claims to LabCorp for the PreGen-Plus assay. In addition, equipment and reagents that are required for the test are specified by EXACT (and, in some cases, provided *by* EXACT), including the single and double Unit "EXACTORS" for sample preparation.

Therefore, the EXACT Science's PreGen-Plus assay is a medical device as defined by Section 201(h) of the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 321(h), because it is intended for use in the diagnosis and/or treatment of medical conditions. A review of our records shows no clearance or approval for the PreGen-Plus assay, therefore it is adulterated under section 501(f)(1)(B) of the Act, in that it is a class III device under section 513(f) and it is not the subject of an approved premarket approval application under section 515(a) or an approved application for investigational device exemptions under section 520(g). This device is also misbranded under section 502(o), because a notice or other information respecting it was not provided to the FDA as required by section 510(k). For a product requiring premarket approval before marketing, the notification required by section 510(k) of the Act is deemed to be satisfied when a premarket approval application is pending before the agency. 21 CFR 807.81(b)

You should take prompt action to correct the violations addressed in this letter. Failure to promptly correct these violations may result in regulatory action being initiated by the Food and Drug Administration without further notice. These actions include, but are not limited to, seizure, injunction, and/or civil money penalties. Also, federal agencies are advised of the issuance of all Warning Letters about devices so that they may take this information into account when considering the award of contracts.

Please notify this office in writing within fifteen (15) working days from the date you receive this letter of the specific steps you have taken to correct the noted violations, including an explanation of how you plan to prevent these violation(s), or similar violation(s), from occurring again. Include documentation of the corrective action you have taken. If your planned corrections will occur over time, please include a timetable for implementation of those corrections. If corrective action cannot be completed within 15 working days, state the reason for the delay and the time within which the corrections will be completed.

Your response should be sent to: James Woods, Deputy Director of Patient Safety and Product Quality, Office of In Vitro Diagnostic Device Evaluation and Safety, 2098 Gaither Road, HFZ-440, Rockville, Maryland 20850. If you have any questions about the content of this letter please contact: Cecily Jones at 240-276-0995 or by (fax) 240-276-0663.

Finally, you should know that this letter is not intended to be an all-inclusive list of the violation(s) at your facility. It is your responsibility to ensure compliance with applicable laws and regulations administered by FDA. The specific violation(s) noted in this letter and in the Inspectional Observations, Form FDA 483 (FDA 483), issued at the closeout of the inspection may be symptomatic of serious problems in your firm's manufacturing and quality assurance systems. You should investigate and determine the causes of the violation(s), and take prompt actions to correct the violation(s) and to bring your products into compliance.

Sincerely yours,

S. Gutman

Steven I. Gutman
Director
Office of *In Vitro* Diagnostic Device Evaluation
and Safety
Center for Devices and Radiological Health