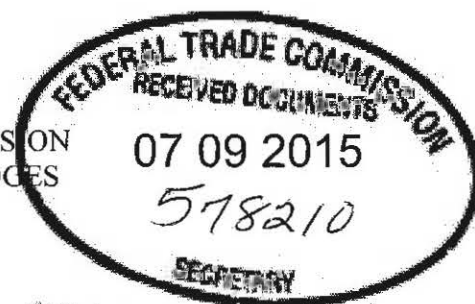


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



_____)
In the Matter of)
)
LabMD, Inc.,)
a corporation,)
Respondent.)
_____)

PUBLIC
Docket No. 9357

ORIGINAL

**JOINT MOTION TO ACCEPT REDACTED,
PUBLIC VERSIONS OF *IN CAMERA* EXHIBITS INTO THE RECORD**

Complaint Counsel and counsel for Respondent LabMD, Inc. hereby move the Court to accept into the public record redacted, public versions of several exhibits that have previously been admitted and been granted *in camera* treatment, due to the inclusion of sensitive personal information. In the public versions of the exhibits, the parties will redact the information for which the Court granted *in camera* treatment.

BACKGROUND

On April 22, 2014, the parties filed a motion requesting *in camera* treatment for a number of exhibits relating to [REDACTED]
[REDACTED]
[REDACTED], arguing that this information should be considered sensitive personal information under the Commission's Rules of Practice. Joint Motion for *In Camera* Treatment of Certain Former Employee Exhibits (Apr. 22, 2014); see 16 C.F.R. § 3.45(b) (defining sensitive personal information). The Court granted this motion on May 6, 2015. Order Granting Joint Motions for *In Camera* Treatment of Certain Exhibits Containing Sensitive Personal

Information (May 6, 2014) (“May 6, 2014 Order”). In the same order, the Court ordered that the parties create redacted, public versions of two exhibits, CX0732 and RX512, that contained social security numbers and other personal information regarding a consumer. *Id.* Both exhibits comprise the transcript of Commission employee Kevin Wilmer’s deposition. The Court ordered the parties to submit public versions with the sensitive personal information redacted, designated CX0732-A and RX512-A. *Id.*

On May 27, 2014, the parties moved for *in camera* treatment of additional exhibits containing information regarding [REDACTED] that were subsequently identified, and for any testimony related to that subject that was elicited during the hearing. Joint Motion for *In Camera* Treatment Related to Former LabMD Employee (May 27, 2015) (“May 27, 2014 Order”). The Court also granted that motion. Order Granting *In Camera* Treatment for Documents Related to a Former LabMD Employee (May 27, 2014).

On July 1, 2014, the parties filed a motion requesting *in camera* treatment for sensitive health information included in the transcript of the June 7, 2014 deposition of Robert Boback, which had been admitted as RX541. Joint Motion for *In Camera* Treatment of RX541 and for Leave of Court (July 1, 2014). The Court granted that motion, and ordered the parties to submit a public version, designated RX541-A, with the sensitive health information redacted, which could be entered into the public record. Order on Joint Motion for *In Camera* Treatment of RX541 and for Leave of Court (July 1, 2014) (“July 1, 2014 Order”).

On July 7, 2015, Respondent LabMD, Inc. (“LabMD”) filed a motion requesting *in camera* treatment for portions of exhibits containing personal information about Michael Daugherty, including his home address. LabMD’s Unopposed Motion to Accord Portions of

Exhibits Containing Michael Daugherty's Home Address, as well as Sensitive Personal Information, *In Camera* Treatment (July 7, 2015) ("Daugherty *In Camera* Motion").

ARGUMENT

The Court has granted *in camera* treatment for several exhibits that include sensitive personal information related to a former LabMD employee. May 6, 2014 Order; May 27, 2014 Order. And the Court is currently considering Respondent's Motion to grant *in camera* treatment to a number of exhibits containing information related to Mr. Daugherty. See Daugherty *In Camera* Motion. However, many of the aforementioned exhibits also contain content that does not reveal or relate to sensitive personal information and is not otherwise confidential. As it stands, the parties must designate as *in camera* proposed findings of fact that cite to these exhibits in their post-trial briefing, even where the proposed findings do not reveal or relate to sensitive personal information. In the interest of economy and transparency to the public, Complaint Counsel and counsel for LabMD believe it best to minimize the redactions from the public versions of the parties' post-trial briefs and proposed findings of fact.

In order to accommodate that goal, the parties request that the Court accept into the record public versions of certain exhibits, listed below, to which the parties may cite for propositions that do not reveal or relate to sensitive personal information. For example, many of the exhibits below were granted *in camera* treatment because they include [REDACTED]

[REDACTED]

[REDACTED]. But these exhibits

also contain extensive testimony regarding LabMD's security practices and other relevant topics. Without a public version to which to cite, the parties would need to redact proposed findings that

rely on the testimony regarding security, even though it does not reveal or relate to the sensitive personal information about [REDACTED].

The Court has previously ordered that the parties create public “-A” versions of exhibits granted *in camera* treatment, in which the sensitive personal information is redacted. *See* May 6, 2014 Order; July 1, 2014 Order. The parties believe similar treatment is appropriate for the exhibits listed below, all of which have been admitted and granted *in camera* treatment. Accordingly, the parties request that the Court accept into the public record the following “-A” versions of these exhibits, in which the sensitive personal information will be redacted.

A. *In Camera* Exhibits that Include Information Related to [REDACTED]

- CX0704-A, RX486-A – Transcript of John Boyle Deposition
- CX0710-A, RX492-A – Transcript of Michael Daugherty Deposition as LabMD Rule 3.33 Designee (also in category below)
- CX0714-A, RX496-A – Transcript of Former LabMD Employee ([REDACTED]) Deposition
- CX0715-A, RX497-A – Transcript of Patricia Gilbreth Deposition
- CX0723-A, RX505-A – Transcript of David Lapidés Deposition

B. *In Camera* Exhibits (Pending Decision of Court) that Include Mr. Daugherty’s Home Address¹

- JX0001-A – Joint Stipulations of Fact, Law, and Authenticity
- CX0705-A, RX-487-A – Transcript of Brandon Bradley Deposition
- CX0710-A, RX492-A – Transcript of Michael Daugherty Deposition as LabMD Rule 3.33 Designee (also in category above)
- CX0713-A, RX495-A – Transcript of Kim Gardner Deposition

¹ The Court is currently considering whether to grant *in camera* treatment to exhibits that include Mr. Daugherty’s home address. If the Court grants that relief, the parties request that the Court accept redacted, public versions of the subset of those exhibits listed in this section.

- CX0725-A, RX507-A – Transcript of Jeff Martin Deposition
- CX0727-A, RX511-A – Transcript of Jennifer Parr Deposition

Dated: July 9, 2015.

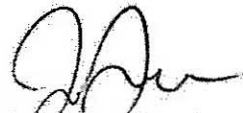
Patrick Massari with permission
RS

Reed Rubinstein
William A. Sherman, II
Sunni Harris
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW, Suite 610
Washington, DC 20004
reed.rubinstein@dinsmore.com
william.sherman@dinsmore.com
sunni.harris@dinsmore.com

Daniel Epstein
Patrick Massari
Prashant K. Khetan
Erica Marshall
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, DC 20006
daniel.epstein@causeofaction.org
patrick.massari@causeofaction.org
prashant.khetan@causeofaction.org
erica.marshall@causeofaction.org

Counsel for Respondent LabMD, Inc.

Respectfully submitted,



Alan Sheer
Laura Riposo VanDruff
Megan Cox
Ryan Mehm
Jarad Brown

Federal Trade Commission
600 Pennsylvania Ave., NW
Room CC-8232
Washington, DC 20580
Telephone: (202) 326-2927 – Brown
Facsimile: (202) 326-3062
Electronic mail: jbrown4@ftc.gov

Complaint Counsel

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

_____)	
In the Matter of)	PUBLIC
)	
LabMD, Inc.,)	Docket No. 9357
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Respondent.)	
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**[PROPOSED] ORDER GRANTING JOINT MOTION TO ACCEPT REDACTED,
PUBLIC VERSIONS OF *IN CAMERA* EXHIBITS INTO THE RECORD**

Upon consideration of the parties' Joint Motion to Accept Redacted, Public Versions of *In Camera* Exhibits into the Record, it is hereby

ORDERED, that the parties shall create and submit to the Court public versions of the exhibits that are the subject of the Motion, designated JX0001-A, CX0704-A, CX0705-A, CX0710-A, CX0713-A, CX0714-A, CX0715-A, CX0723-A, CX0725-A, CX0727-A, RX486-A, RX487-A, RX492-A, RX495-A, RX496-A, RX497-A, RX505-A, RX507-A, RX511-A, that redact the sensitive personal information therein, so that they may be entered into the public record.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2015, I caused the foregoing document to be filed electronically through the Office of the Secretary's FTC E-filing system, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-113
Washington, DC 20580

I also certify that I caused a copy of the foregoing document to be transmitted *via* electronic mail and delivered by hand to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-110
Washington, DC 20580

I further certify that I caused a copy of the foregoing document to be served *via* electronic mail to:

Daniel Epstein
Patrick Massari
Prashant K. Khetan
Erica Marshall
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, DC 20006
daniel.epstein@causeofaction.org
patrick.massari@causeofaction.org
prashant.khetan@causeofaction.org
erica.marshall@causeofaction.org

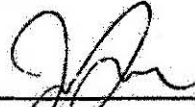
Reed Rubinstein
William A. Sherman, II
Sunni Harris
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW, Suite 610
Washington, DC 20004
reed.rubinstein@dinsmore.com
william.sherman@dinsmore.com
sunni.harris@dinsmore.com
Counsel for Respondent LabMD, Inc.

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

July 9, 2015

By:



Jarad Brown
Federal Trade Commission
Bureau of Consumer Protection