

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



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

DOCKET NO. 9357

**ORDER GRANTING IN PART AND DENYING IN PART JOINT MOTION FOR  
EXTENSION OF TIME TO RESPOND TO MOTIONS**

On December 23, 2013, the parties filed a Joint Motion for Extension of Time (“Joint Motion”) requesting, as to any motions filed between December 23 and December 26, 2013, that the filing deadline for any response to such motions be set as January 7, 2014. The parties further requested that the deadline for filing “any permitted reply” to a response to such motion be set as January 14, 2014. As set forth below, the Joint Motion is GRANTED IN PART AND DENIED IN PART.

The parties state that both Complaint Counsel and Respondent anticipate filing motions related to discovery, and that Complaint Counsel and Respondent’s counsel have personal commitments during the winter holiday period that would make it difficult to respond fully to these motions. The parties further state that extending the time to respond to motions, as requested, will not impact any other deadlines related to this case, and that the requested time extension is warranted to ensure that all relevant issues are fully addressed. Accordingly, the parties assert, good cause exists for an extension of time.

On December 24, 2013, Complaint Counsel filed a Motion to Compel Respondent’s Responses to Certain Requests in Complaint Counsel’s First Set of Interrogatories and Requests for Production of Documents (“Complaint Counsel’s Motion to Compel”). Pursuant to Rule 3.38(a) of the Commission’s Rules of Practice and Procedure, “[a]ny response to [a] motion [to compel] by the opposing party must be filed within 5 days of receipt of service of the motion . . .” 16 C.F.R. § 3.38(a). Absent an extension of time, Respondent’s response to Complaint Counsel’s Motion to Compel would be due no later than January 2, 2014. See Rule 4.3(a).<sup>1</sup>

Pursuant to Rule 4.3(b), the Administrative Law Judge may extend the time to respond to a motion, upon a showing of good cause. 16 C.F.R. § 4.3(b). Based on the representations of the parties in the Joint Motion, good cause exists to extend the time for Respondent to respond to Complaint Counsel’s Motion to Compel to January 7, 2014, as requested by the parties.


<sup>1</sup> Rule 4.3(a) provides that when a response period is “seven (7) days or less, each of the Saturdays, Sundays, and such holidays shall be excluded from the computation” of the response date.

Accordingly, the Joint Motion is GRANTED with respect to the requested extension of time for filing a response.

However, the parties' request to extend the time to file any "permitted reply" to a response to a motion is untimely. As the parties' request recognizes, filing a reply is not a matter of right but must first be permitted by leave of court. *See* Rule 3.22(d) ("The moving party shall have no right to reply, except . . . as otherwise permitted by the Administrative Law Judge or the Commission."). In the instant case, there is no pending request by a party to file a reply, nor can it be determined on the present record whether a request for permission to file any such reply would be granted. *See id.* ("Repl[ies] and surreply briefs to motions other than dispositive motions shall be permitted only in circumstances where the parties wish to draw the Administrative Law Judge's . . . attention to recent important developments or controlling authority that could not have been raised earlier in the party's principal brief."). Therefore, the Joint Motion to extend or otherwise set a date certain for filing a reply brief is premature and is DENIED WITHOUT PREJUDICE.

For all the foregoing reasons, the Joint Motion is GRANTED IN PART AND DENIED IN PART WITHOUT PREJUDICE, and it is hereby ORDERED that the date by which Respondent shall file a response, if any, to Complaint Counsel's Motion to Compel shall be January 7, 2014.

ORDERED:

  
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D. Michael Chappell  
Chief Administrative Law Judge

Date: December 27, 2013