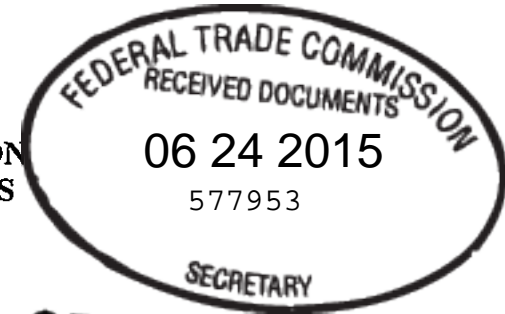


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

_____)
In the Matter of)
)
LabMD, Inc., a corporation)
Respondent.)
_____)
PUBLIC
Docket No. 9357

**MOTION OF NON-PARTIES TIVERSA HOLDING CORP., TIVERSA, INC., AND
ROBERT J. BOBACK FOR LEAVE TO FILE A RESPONSE TO LABMD, INC.’S
MOTION TO REFER TIVERSA, INC., TIVERSA HOLDING CORP., AND
ROBERT BOBACK FOR INVESTIGATION
REGARDING POTENTIAL CRIMINAL VIOLATIONS**

Counsel for non-parties Tiversa Holding Corp., Tiversa, Inc., (collectively, “Tiversa”) and Robert J. Boback (“Mr. Boback”), respectfully moves the Court, for leave to file a Response to LabMD Inc.’s Unopposed Motion to Refer Tiversa, Inc., Tiversa Holding Corp., and Robert Boback for Investigation Regarding Potential Criminal Violations of 42 U.S.C. § 1320D-6(a), 18 U.S.C. §§ 371, 1001, 1030, 1505, and 1519.

In the interests of justice, the Court should grant Tiversa leave to file the attached response addressing the serious yet baseless accusations contained in the Motion, which serve no other purpose than to impugn the reputation of Tiversa and Mr. Boback and create prejudice in the parties’ ongoing litigation in Pennsylvania and Federal Court. As Tiversa is a non-party to this proceeding, granting Tiversa leave to file the attached response will provide this Court with a balanced view of the facts LabMD has attempted to inject into this dispute and illuminate the mischaracterizations and misstatements upon which LabMD has relied in its Motion, including its reliance on the inadmissible staff document from the House Oversight and Government Reform Committee and Mr. Wallace’s unreliable and inconsistent testimony.

Dated: June 23, 2015

Respectfully submitted,

REED SMITH LLP

By:



Jarrod D. Shaw (PA ID No. 93459)
225 Fifth Avenue
Pittsburgh, PA 15222-2716
jshaw@reedsmith.com
lliben@reedsmith.com
Tel: (412) 288-3013
Fax: (412) 288-3063
*Counsel for Non-Parties Tiversa Holding
Corp., Tiversa, Inc., and Robert J. Boback*

public share file available because LabMD downloaded LimeWire. The fact remains that LabMD jeopardized the private health information of more than 9000 individuals and to this day has failed to take responsibility for its conduct. LabMD can blame Tiversa, but the fault has and always will be with LabMD. The Court should not, therefore, allow LabMD to evade its obligations and allow LabMD to continue to make claims against Tiversa in an action where Tiversa is not a party.¹

Finally, Tiversa notes that LabMD is well aware of the falsehoods regarding the testimony of Mr. Wallace. They are clear as day and the evidence in this case undermines him at every turn. To the extent any referral is warranted it should be directed at the false testimony that LabMD put forward.

1. LabMD's motion is startling in several respects. However, most startling is its admission that the staff document prepared for then-Chairman Issa was not "impartial." Tiversa agrees. Tiversa knew from the start that the OGR investigation was tilted cronyism that was unfairly directed at Tiversa. This is shown through the close connection between Cause of Action, LabMD's counsel, and OGR. *See* July 23, 2014 Letter from Senator John D. Rockefeller to the Committee, attached as **Exhibit A** (noting the inappropriate nature and timing of the investigation "are buttressed by the revelation that LabMD is being represented by a former member of your Committee staff").

2. The staff document is not an "official" report because it reflects the opinions of Chairman Issa's staff, and does not purport to be, nor has it been adopted as, an official report of the House Committee on Oversight and Government Reform.

¹ LabMD does not cite any case law or statute to support its motion or the relief sought therein.

3. This is why Courts routinely hold that documents like the one upon which LabMD relies are inadmissible, as demonstrated by numerous federal courts weighing the admissibility of similarly hearsay-based documents. Federal courts have consistently found such reports lack fundamental trustworthiness where they are based on a committee's "subjective comments, criticisms, arguments, and evaluations" and because they are "documents produced by the Congress--a politically-motivated, partisan body." *Pearce v. The E.F. Hutton Group, Inc.*, 653 F. Supp. 810, 813-814 (D.D.C. 1987). A report such as the staff document is inadmissible because there is "too great a danger that political considerations might affect the findings of such a report." *Id.*; see also *Anderson v. City of New York, et al.*, 657 F. Supp. 1571, 1578-1579 (S.D.N.Y. 1987) (finding congressional committee report inadmissible based on the "dubious, highly charged process of essentially 'interviewing' interested parties," . . . and the fact that the report authors "heard, primarily, only one side of the story"). Here, OGR primarily listened to one side of the story to the exclusion of the truth.

4. The staff document is even refuted by the ranking member of the Committee, the Honorable Elijah Cummings. Mr. Cummings stated, in regards to his and others' unwillingness to grant immunity to Mr. Wallace, that after "participat[ing] in the proffer[.]" as well as "view[ing] the video, [and] many documents[.]" it was his opinion that the "Committee has not identified evidence that would substantiate or corroborate the allegations of [Mr. Wallace] against other individuals." Hearing before the Committee on Oversight and Government Reform, House of Representatives, One Hundred Thirteenth Congress, Second Session (July 24, 2014). Ranking member Cummings also pointed out that Mr. Wallace "has engaged in numerous criminal activities that go to credibility, and he failed to disclose [them] to the committee during his proffer And some of these activities were occurring at the same time

that we were speaking with the – that he was speaking with the committee.” *Id.* Ranking member Cummings was directly on point in his assessment, a fact further amplified by the document’s failure to cite to *any* corroborating evidence supporting Mr. Wallace’s disparaging and false comments.

5. On May 5, 2015, Mr. Wallace testified before this Court and made numerous false statements. That testimony has never been challenged and LabMD has taken it as absolute truth to persecute Tiversa. Notwithstanding that effort, LabMD knows or should know that Mr. Wallace presented falsehoods, and LabMD moved forward with the questions that led him to present those falsehoods.

6. There are multiple instances of Mr. Wallace’s misrepresentations to this Court that have gone unchallenged.

7. For example, on October 9, 2014, LabMD’s counsel, Cause of Action, made the following statement to the Court while seeking immunity for Mr. Wallace:

MR. SHERMAN: Here’s what we expect to get out of this, Your Honor. The question will be whether or not in fact [an attorney for Complaint Counsel] . . . was present at Tiversa in Pittsburgh, Pennsylvania, on or about October of 2013, which was shortly before Mr. Boback’s deposition took place. When [the FTC attorney] was at Tiversa in Pittsburgh in October, he was told that the 1718 File, as we refer to it, was only found at LabMD in Atlanta, Georgia, that [the FTC attorney] then indicated, well, it’s got to be found someplace else. Given that information, Mr. Wallace basically wrote four IP addresses, four dates and four times at which the 1718 File was never found. He then gave that information to [the FTC attorney], and that has been the linchpin really of this case as documented in CX19, which contains the four IP addresses which the government alleges is where the 1718 File was found on peer-to-peer networks at various times.

JUDGE CHAPPELL: Mr. Wallace was the person who was told to do something and he did something; is that what you're saying?

MR. SHERMAN: Yes, sir.

8. In sum, the contention was that the FTC told Mr. Wallace to fabricate evidence. Notwithstanding that allegation, when testifying during the FTC proceeding, Mr. Wallace changed his story, and testified that Mr. Boback made him provide false information. *See, e.g.*, Wallace Tr., 1383:18-1384:3. Mr. Boback never directed Mr. Wallace, or anyone else, to fabricate evidence.

9. Further demonstrating LabMD's knowledge of Mr. Wallace's false statements regarding the FTC attorney telling him to fabricate documents, LabMD asked Mr. Boback many questions about that conduct during Mr. Boback's June deposition, such as inquiring whether an FTC attorney told Tiversa the file "needed to be found someplace else." Boback Tr., 68-72, attached as **Exhibit B**. There are no documents to support this allegation, Mr. Boback testified accurately that no such conduct occurred, and Mr. Wallace never even testified that it occurred. *Id.*

10. Remarkably, after recognizing that Mr. Wallace's story did not survive scrutiny, Mr. Wallace's allegation changed and then it was Mr. Boback (not the FTC) who told Mr. Wallace to fabricate the IP addresses. Notwithstanding this change, the testimony regarding Mr. Boback making Mr. Wallace provide false information is also demonstrably false.

11. Specifically, Mr. Wallace testified that in November 2013, when he created CX19 and the IP addresses contained on CX-19. Wallace Tr., 1369-1370. Not only is this testimony demonstrably false because of documentary evidence, but Mr. Wallace himself contradicts the statement during his testimony which LabMD ignored and the FTC elected not to pursue.

12. Mr. Wallace testified that there should be no documents prior to November 2013 which contain any of the IP addresses contained on CX-19 since that was the date Wallace claims he created CX-19. *See* Wallace Transcript., 1406 (“if this was created in 2008, how is the 68.8.250.203 IP address on there *when I believe that was one that I submitted to Bob with the list of four in November 2013*” and further testifying “but like I said, if that was submitted in 2013, how could it be on this document in 2008.”). *Id.* The follow-up question that was never asked was “Mr. Wallace, if the IP Addresses on CX-19 were purportedly fabricated in November 2013, then why did you send two emails in November 2012, a year prior, that contained those very IP addresses?”

13. As LabMD is aware, documents exist which totally refute Mr. Wallace testimony. Specifically, in *November 2012*, Mr. Wallace sent two emails, dated November 6, 2012 and November 9, 2012 (with attachment) (copies of which are attached hereto as **Exhibit C** and **D**), which included, among several others, the IP addresses on CX-19. How then could Mr. Wallace have fabricated the IP Addresses in November 2013, when a year prior he already had the list created? Again, this is left unchallenged, yet LabMD is aware that those documents exist.

14. Further, to overcome this glaring issue, LabMD did not show Mr. Wallace the email communications and now seems to be claiming that they are fabricated. This ignores the affidavit Tiversa submitted at the FTC’s request. *See* Affidavit of Anju Chopra, attached as **Exhibit E**. Specifically, Ms. Chopra set forth in detail the metadata associated with the two emails. Both the FTC and LabMD had Ms. Chopra’s affidavit at the time LabMD questioned Mr. Wallace. *See* email serving Ms. Chopra’s affidavit attached as **Exhibit F**. Again, LabMD elected to ignore evidence in favor of advancing a story it knew was false.

15. Mr. Wallace made additional false statements in his testimony.

16. Another example is the creation of the list that Tiversa provided to the FTC in response to a Civil Investigative Demand. *See* redacted version of August 6, 2014 letter which contains sensitive business information attached as **Exhibit G**. Mr. Wallace testified that Tiversa would tell companies they were going to be on the list and “they need to hire us or face the music, so to speak.” Wallace Tr., 1363. He was then asked if there were companies who met the threshold but were not included on the list. Mr. Wallace responded that “the list was scrubbed of all clients in the past and future clients that we felt that there might be, you know, the prospect of doing business with them. Their information was removed.” *Id.* at 1363-64. This is in stark contrast to the facts and further highlights Mr. Wallace’s desire to say and do anything to obtain retribution against Tiversa. This example also demonstrates the lack of credibility of the staff document. Specifically, Tiversa informed OGR that Tiversa had relationships with 12 of the approximately 85 entities listed on the spreadsheet provided to the FTC. *See Exhibit G*. Of those 12 companies, Tiversa was retained by 11 of them prior to the response to the CID. This directly undermines Mr. Wallace’s “stripping” of names theory or that Tiversa was seeking to have anyone “face the music.” Tiversa provided the information that was requested in the Civil Investigative Demand pursuant to its legal obligations.

17. With respect to the list, Mr. Wallace further testified to Mr. Boback’s reaction to LabMD’s decision not to do business with Tiversa, stating “he basically said f--- them, make sure he’s at the top of the list.” What is left unchallenged is the wide passage of time between LabMD rejecting Tiversa’s business, July 22, 2008 (*see* July 22, 2008 email from J. Boyle to R. Boback attached as **Exhibit H**), and when the list was created and provided to the FTC in September 2009. Once again, the facts undermine the testimony of Mr. Wallace because when

LabMD informed Tiversa it did not want to use Tiversa's services there was no list or Civil Investigative Demand.

18. In addition to the above, there are more statements that are demonstrably false or clearly distorted.

19. For example, Mr. Wallace testified that he prepared the "Incident Record Form" but it was "changed since I would have submitted it to CIGNA." Wallace Tr., 1393. Yet, the metadata for the document reveals that Mr. Wallace was the last person to modify the document. See Chopra Affidavit at **Exhibit E**. Mr. Wallace further tries to suggest that the "date of incident" is the same as the date that Tiversa downloaded the file. It could just as easily mean the date that Tiversa discovered that it had downloaded the file. Indeed, the later explanation is consistent with the documents Tiversa produced in this litigation. Specifically, on April 17, 2008, Mr. Wallace sent an email to several Tiversa employees with the title "LabMD Disclosure." See April 17, 2008 email attached as **Exhibit I**. This is consistent with the timing reflected on the "Incident Record Form."

20. In addition to the evidence undermining Mr. Wallace's testimony, Mr. Wallace himself does plenty to highlight his lack of credibility. For example, Mr. Wallace was recently quoted in the Tribune-Review:

*'I didn't go looking for a fight,' Wallace told the Tribune-Review in his only interview since testifying last month before the Federal Trade Commission. 'I only responded to subpoenas, and I had not said anything to anyone outside of my counsel. I didn't want to say anything, but I didn't have any choice.'*²

² Andrew Conte, *Former Tiversa Employee at Center of House Probe of Pittsburgh Firm*, Tribune-Review, June 1, 2015, available at <http://triblive.com/news/adminpage/8480124-74/tiversa-information-company#ixzz3cClqPU7A> (emphasis added).

21. This statement is directly contradicted by sworn, specific testimony given by Mr. Daugherty, which states that Rick Wallace contacted Mr. Daugherty – contrary to Mr. Wallace’s statement –to discuss various statements made by Mr. Wallace to Mr. Daugherty regarding Tiversa and Mr. Boback, as well as additional communications initiated by Mr. Wallace.³ Thus, Mr. Wallace *did* go looking for this fight, as prior to talking with the Committee Mr. Wallace contacted Mr. Daugherty, and made disparaging and false statements regarding Tiversa and Mr. Boback. To suggest Mr. Wallace didn’t say anything, or had no choice but to make these false statements, is untrue.

22. Another issue LabMD ignores is that Tiversa legally obtained the 1718 File. As the law confirms, downloading documents through a publically available peer-to-peer network is permissible because of the publically available nature of the documents. *See United States v. Conner*, 521 Fed. Appx. 493, 497 (6th Cir. 2013) (“computer programs like LimeWire are expressly designed to make files on a computer available for download by the public.... [p]eer-to-peer software users are not mere intermediaries, but the intended recipients of these files”); *United States v. Borowy*, 595 F.3d 1045, 1048 (9th Cir. 2010) (even where defendant intended to keep files private, sharing on peer-to-peer network eliminated expectation of privacy, and use of software program not available to public to perform search did not render search unlawful); *United States v. Stults*, 575 F.3d 834 , 842-43 (8th Cir. 2009) (no expectation of privacy for files made accessible through file-sharing software); *United States v. Perrine*, 518 F.3d 1196, 1204-05 (10th Cir. 2008) (same); *United States v. Gano*, 538 F.3d 1117 , 1127 (9th Cir. 2008) (same);

³ This information is all provided in an Affidavit Michael J. Daugherty prepared and which has been provided to this Court in camera.

Riding Films, Inc. v. White, No. 2:13-cv-00046, 2014 WL 3900236, at *5 (S.D. Ohio Aug. 11, 2014) (noting presence of files in publically available share folder “calls into question any assertion that Defendants’ computers should be considered private or ‘protected’” and that “no authorization is needed to access files which are available to the general public”); *United States v. Thomas*, No. 5:12-cr-37, 2013 WL 6000484 (D. Vt. Nov. 8, 2013) (making files available via shared folder amounts to conveying files to public, and there is no reasonable expectation of privacy maintained with respect to that information); *State v. Peppin*, 347 P.3d 906, 910 (Wash. App. Div. 3 2015) (noting “[f]ederal circuit courts have consistently held that a person who installs and uses file sharing software does not have a reasonable expectation of privacy in the files to be shared on his or her computer” and listing cases).

23. Accordingly, any suggestion that Tiversa “stole” the file is contrary to law and the undisputed facts in this case. To support the assertion, LabMD cites Wallace’s testimony, yet even Mr. Wallace does not use the word “stole” once in his testimony.

24. To the contrary, and as the undisputed facts show, the 1718 File was downloaded from the peer-to-peer network because LabMD installed LimeWire and made the document public. *See* Joint Stipulations of Fact, Law, and Authenticity, May 14, 2014. LabMD admits this fact, that doing so violated its security protocols, and that LabMD fired the employee that downloaded the program. *See* Daugherty Tr., 88-89 attached as **Exhibit J**. Mr. Wallace even testified that he obtained the 1718 File using LimeWire as a supplement to Tiversa’s Eagle Vision. *See* Wallace Tr., 1372.

25. Moreover, had LabMD exercised due diligence on the claims included in its motion, it would have found them without basis. For example, with respect to the alleged

violation of 18 U.S.C. § 1030, a federal court has held, in a near-identical context, that the required elements of that claim cannot be established where a file was downloaded from a Limewire user's shared folder; because such files are "accessible to the general public," no authorization is required to access them. *Motown Record Co. v. Kovalcik*, 90 U.S.P.Q.2d 1580, 1584 (E.D. Pa. 2009).

26. In addition to failing to perform basic case law research, LabMD appears unwilling to make the effort to substantiate its own claims, often citing for "support" of its mischaracterizations broad, non-specific swaths of its exhibits that simply send readers looking for needles in haystacks. *See, e.g.*, Motion ¶ 5 (citing to Ex. 2 at 1361-1411); ¶ 11 (citing to Ex. 2 at 1361-1444).

27. This effort at misdirection fails to obscure the fact that LabMD relies heavily on mischaracterizations of self-serving testimony, such as the claims that Wallace testified the File was stolen, *id.* at ¶ 15, or that Mr. Boback "approved and ratified the theft." *Id.* at ¶ 3. Even Wallace's testimony does not go so far as to make such inflammatory accusations, which are refuted not only by the facts and case law, but a basic understanding of peer-to-peer filesharing technology.

28. LabMD also ignores the fact that Tiversa testified in June that it had updated information relating to the location of the 1718 File, the proliferation of the 1718 File and the initial download location. Boback Tr., 84-85. The discrepancy does not indicate any nefarious behavior but rather Mr. Wallace's error when he initially created CX-19. As Mr. Boback explained, the updated information came as a result of an analysis performed to "verify the

accuracy of information that was provided to me prior to my deposition by...Richard Wallace.”
Id. at 85.

29. Further, in spite of the bald assertion that “Tiversa/Boback...withheld documents relevant to this case,” there has never been a motion to compel filed in this case or any follow-up on the part of LabMD with respect to documents. Further, it is curious that LabMD makes this claim when it has never reached out to discuss the provision of additional documents from Tiversa nor has it filed a motion to compel any documents it claims Tiversa – a non-party to this litigation – has failed to produce.

Tiversa – a non-party to this litigation – has continued to take the brunt of LabMD’s attacks with allegations of theft. At the end of the day, however, the facts at issue are simple – Tiversa obtained the 1718 File because it was publically available on LimeWire. LabMD failed to protect its patients’ data and it has now fought to place blame elsewhere for its own mistakes. This Court should reject LabMD’s further efforts to attack Tiversa.

Dated: June 23, 2014

REED SMITH LLP


Jarrod D. Shaw

Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
(412) 288-3131
(412) 288-3063 (fax)

Counsel for Tiversa Holding Corp.

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 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, Esq.
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

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

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, D.C. 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Alain Sheer, Esq.
Laura Riposo VanDruff
Megan Cox

Ryan Mehm
John Krebs
Jarad Brown
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Ave., N.W.,
Mail Stop NJ-8122
Washington, D.C. 20580

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

Hallee Morgan
Kent Huntington
Daniel Epstein
Patrick Massari
Prashant K. Khetan
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
halle.morgan@causeofaction.org
kent.huntington@causeofaction.org
daniel.epstein@causeofaction.org
patrick.massari@causeofaction.org
prashant.khetan@causeofaction.org

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.

June 23, 2015

By:



Jarrod D. Shaw
Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
(412) 288-3131
(412) 288-3063 (fax)

Counsel for Tiversa Holding Corp.

EXHIBIT A

BARBARA BOXER, CALIFORNIA
BILL NELSON, FLORIDA
MARIA CANTWELL, WASHINGTON
MARK PRYOR, ARKANSAS
CLAIRE McCASKILL, MISSOURI
AMY KLOBUCHAR, MINNESOTA
MARK BEGICH, ALASKA
RICHARD BLUMENTHAL, CONNECTICUT
BRIAN SCHATZ, HAWAII
EDWARD MARKEY, MASSACHUSETTS
CORY A. BOOKER, NEW JERSEY
JOHN E. WALSH, MONTANA

JOHN THUNE, SOUTH DAKOTA
ROGER F. WICKER, MISSISSIPPI
ROY BLUNT, MISSOURI
MARCO RUBIO, FLORIDA
KELLY AYOTTE, NEW HAMPSHIRE
DEAN HELLER, NEVADA
DAN COATS, INDIANA
TIM SCOTT, SOUTH CAROLINA
TED CRUZ, TEXAS
DEB FISCHER, NEBRASKA
RON JOHNSON, WISCONSIN

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEB SITE: <http://commerce.senate.gov>

ELLEN DONESKI, STAFF DIRECTOR
DAVID SCHWIETERT, REPUBLICAN STAFF DIRECTOR

July 23, 2014

The Honorable Darrell E. Issa
Chairman
U.S. House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear *Chairman Issa,* Chairman Issa:

I am troubled by the impropriety of your ongoing interference with an administrative trial regarding allegations that the medical testing company LabMD, Inc. (LabMD) violated the security and privacy of almost 10,000 consumers. The trial is the result of an enforcement action brought by the Federal Trade Commission (FTC) against LabMD for lax data-security practices after discovering that consumers' sensitive personal and health information was available through a "peer-to-peer" sharing application and was being used by criminals to commit identity theft. Your interference in this legal matter is apparently going to be the subject of an upcoming hearing on July 24 in the House Committee on Oversight and Government Reform.

You purport to be concerned about allegations that a third-party company provided untruthful testimony to the FTC with regard to the LabMD breach. This allegation would be more properly raised by LabMD's defense counsel to the administrative law judge presiding over this trial. The trial process provides defense counsel with ample opportunity to impugn the veracity or integrity of a witness or evidence. It is not the job of Congress to serve as an advocate for one particular side and attempt to sway a judge who makes determinations of fact based on evidence formally presented under well-established rules and procedures.

Instead of allowing the parties in this trial to present evidence and to argue their positions before an independent fact finder, you are instead using heavy-handed, bullying tactics to undermine due process and to inappropriately assist the defendant, LabMD. As a result of your interference – including a June 11, 2014, letter to Chairwoman Edith Ramirez stating that your Committee may "immunize certain future testimony under 18 U.S.C. § 6005" – the administrative law judge presiding over this case has suspended the trial indefinitely. This delay is completely unnecessary; it needlessly forestalls resolution of this important consumer-protection case.

While Congress obviously has an important role in government oversight, I believe you have overstepped your bounds in this instance. It is not appropriate for Congress to intervene in the midst of a trial and to adversely affect its proceedings, as you have done. The inappropriate

timing and nature of your investigation are buttressed by the revelation that LabMD is being represented by a former member of your Committee staff. This raises the question of whether LabMD directly sought your help and intervention in the legal process rather than take the risk of losing on the merits at trial.

Another apparent purpose of your hearing is to express skepticism about the FTC's long-standing and well-established legal authority under Section 5 of the FTC Act to bring an action against companies like LabMD for negligent data-security practices. This skepticism is unfounded, and your public position was recently rejected by a federal judge in the FTC's data security case against Wyndham Corporation. Over the past 13 years, the Commission has initiated dozens of administrative adjudicatory proceedings and cases in federal court challenging practices that compromised the security of consumers' data and that resulted in improper disclosures of personal information collected from consumers.

Indeed, Congress has mandated that the FTC effectively use its authority to protect consumers from "unfair or deceptive acts or practices in or affecting interstate commerce" – the very issues at the heart of the LabMD case. The legislative history of the FTC Act confirms that Congress intended to delegate broad authority "to the [C]ommission to determine what practices were unfair," rather than "enumerating the particular practices to which [the term 'unfair'] was intended to apply... There is no limit to human inventiveness in this field. Even if all known unfair practices were specifically defined and prohibited, it would be at once necessary to begin over again." Against this backdrop, one must conclude that your upcoming hearing and current investigation are nothing more or less than an effort to weaken one of our nation's most important consumer-protection laws, a law that has protected generations of American consumers from scams and rip-offs.

Lastly, it is worth noting that due to Congress's repeated failure to pass strong data-security and breach notification legislation, the FTC stands as the primary federal entity protecting American consumers from harmful data breaches. Recent high-profile, large-scale data breaches – most notably at Target – have once again raised public awareness about the need for companies to adequately secure consumer information. Because Congress remains incapable of passing meaningful data-security legislation that provides American consumers with strong protections, we must continue to rely on the FTC and its organic authority under the FTC Act to bring enforcement actions against companies that break the law. Rather than continuing to pursue your current course of interference, I would urge you to instead work to pass meaningful data-security legislation. I would welcome your assistance.

As Chairman of the Senate Committee on Commerce, Science, and Transportation, I regard the FTC as the premier consumer-protection agency in the nation. The Commission consistently seeks to carry out its mission of protecting consumers and competition, and the agency and its employees serve as an important watchdog for corporate wrongdoing. If the Commission acted improperly or otherwise relied on faulty testimony or evidence in its case against LabMD, a judge would be the proper arbiter of such an allegation at trial, not Members

The Honorable Darrell E. Issa
July 23, 2014
Page 3 of 3

of Congress. I urge you to reconsider your actions and to allow for the American legal system and the rule of law – not political theater – to resolve this case.

Sincerely,

A handwritten signature in blue ink, appearing to read "John D. Rockefeller IV". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John D. Rockefeller IV
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

EXHIBIT B

Transcript of the Testimony of **Robert J. Boback**

Date: June 7, 2014

Case: In the Matter of: LabMD, Inc.



Ace-Federal Reporters, Inc.
Phone: 202-347-3700
Fax: 202-737-3638
Email: info@acefederal.com
Internet: www.acefederal.com

1 A. No. You are mischaracterizing every part of
2 that.

3 Q. Isn't it true that shortly before your deposition
4 in November 2013 you met with [REDACTED] here in
5 Pittsburgh at Tiversa to discuss the location of where
6 the 1718 file was actually found?

7 A. Could you repeat that again?

8 MR. SHERMAN: I'll have her read it back.

9 (The court reporter read back the requested
10 material.)

11 BY MR. SHERMAN:

12 A. I have no recollection of that.

13 Q. Isn't it true that shortly before your deposition
14 in November of 2013, during a meeting with [REDACTED]
15 here in your Pittsburgh office, [REDACTED] was told that
16 the 1718 file was actually only found on a work station
17 at LabMD in Atlanta, Georgia?

18 A. I just testified that I have no recollection of
19 any such meeting that you are putting your premise on,
20 so, therefore, I have no recollection of any of that.

21 Q. So, it is your testimony that [REDACTED] was never
22 told that the 1718 file was actually downloaded from a

1 LabMD work station in Atlanta, Georgia --

2 MR. SHAW: Misstates his testimony.

3 BY MR. SHERMAN:

4 Q. -- by Tiversa?

5 A. I would appreciate it if you don't testify for
6 me. My testimony is exactly as I mentioned, I have no
7 recollection of a meeting with [REDACTED] prior to my
8 deposition, other than the meetings that I've already
9 testified to in Pittsburgh in August of 2009 and in
10 Washington sometime thereafter.

11 Q. To be fair, isn't it true that Tiversa informed
12 [REDACTED] shortly before your deposition in
13 November 2013 that the 1718 file was actually only found
14 on a LabMD work station in Atlanta, Georgia?

15 A. As I testified to, I have no recollection of
16 that. Tiversa's only interaction was pursuant to the
17 subpoena that was issued by the FTC. I do not recall
18 any meeting with [REDACTED]

19 Q. Isn't it true that --

20 A. Other the ones -- other than the ones I've
21 already cited numerous times.

22 MR. SHAW: You are talking about around that

1 time period, so he doesn't have to keep qualifying that
2 he met with them the two other times. Can you just --

3 MR. SHERMAN: We understand that.

4 MR. SHAW: Okay. I just wanted to make
5 sure.

6 MR. SHERMAN: We understand that.

7 MR. SHAW: Very well. Because we are going
8 to read the transcript back.

9 MR. SHERMAN: And I'm not trying to trick
10 him or anything of that nature. I understand what his
11 testimony is about prior meetings.

12 MR. SHAW: Fair enough.

13 BY MR. SHERMAN:

14 Q. Isn't it true that when [REDACTED] was told that
15 the file had only been found on a LabMD work station in
16 Atlanta, Georgia that he informed Tiversa that it needed
17 to be found someplace else?

18 A. The whole premise of your question assumes that,
19 this is what you are trying to continue to articulate.
20 I've already testified numerous times that I had no
21 meeting with [REDACTED] at that time, barring the ones
22 that we already qualified. So, therefore, you are

1 asking me to explain something in a meeting that I did
2 not have, nor authorized.

3 Q. If you could read the question back. I mentioned
4 nothing about a meeting. I mentioned communications.

5 A. Okay.

6 (The court reporter read back the requested
7 material.)

8 BY MR. SHERMAN:

9 A. To my knowledge, that is not true.

10 Q. And isn't it true, then, that after [REDACTED]
11 indicated that the file needed to be found someplace
12 else, he was provided with CX-19, with the four IP
13 addresses, dates and times on them?

14 A. To my knowledge none of that occurred, so,
15 therefore, you are asking me to follow on something that
16 I just told you I have no knowledge of.

17 Q. Isn't it true that the 1718 file was, in fact,
18 not found on any of these IP addresses listed on CX-19?

19 A. To my understanding that is not true. It was
20 found on those.

21 Q. And what do you base that on?

22 A. I base that on information that I have.

1 Q. What information is that?

2 A. Tiversa performed an analysis to find the spread
3 of the file. And we found that it, in fact, the 1718
4 file was found on these IP addresses located on CX-19.

5 Q. Who performed the analysis?

6 A. Keith Tagliaferri, this most recent analysis.

7 Q. No, I'm talking about the analysis for CX-19.

8 A. For CX-19 was Mr. Richard Wallace, is my
9 understanding.

10 Q. Isn't it true that [REDACTED] told you and other
11 employees of Tiversa, after receiving the information on
12 CX-19, not to e-mail him anymore, but to only
13 communicate with him by fax or telephone?

14 A. No, that is not true to my knowledge.

15 Q. Are there security cameras at the new Tiversa
16 facility?

17 A. There are.

18 MR. SHERMAN: All right. I may be finished.
19 If we could go off the record.

20 THE VIDEOGRAPHER: Going off the record.

21 The time is approximately 3:44 p.m.

22 (There was a brief recess in the

1 MR. SHERMAN: Objection. Beyond the scope
2 of the cross and irrelevant. You can answer.

3 MR. SHAW: I want to caution the witness not
4 to disclose conversations with your attorney as to why
5 you responded for supplemented documents, but I will let
6 you answer to the extent that you have information
7 outside of those conversations.

8 BY MS. VANDRUFF:

9 Q. I would be happy to rephrase the question, Mr.
10 Boback, if that would be helpful.

11 A. Okay. Thank you.

12 Q. There were 19 documents that were produced on
13 June 5, 2014.

14 You are familiar with those documents; correct?

15 MR. SHAW: Objection.

16 BY MS. VANDRUFF:

17 Q. I am.

18 MR. SHERMAN: Beyond the scope of the cross.
19 You may answer.

20 BY MS. VANDRUFF:

21 Q. How did Tiversa come to possess the documents
22 that were produced on June 5, 2014?

1 MR. SHAW: Objection. Beyond the scope of
2 the cross.

3 BY MS. VANDRUFF:

4 A. Tiversa performed a, via Keith Tagliaferri. It
5 is my understanding that Keith Tagliaferri performed a
6 search in the data store for all of the spread of the
7 1718 file and any additional LabMD information that
8 resides in our data store to verify the accuracy of
9 information that was provided to me prior to my
10 deposition by -- that is identified as CX-19 by Richard
11 Wallace, which resulted in the files and the additional
12 IP addresses.

13 Q. When you say, the additional IP addresses, to
14 what are you referring?

15 MR. SHERMAN: Objection. Beyond the scope
16 of cross.

17 BY MS. VANDRUFF:

18 A. CX-19 shows four distinct IP addresses and Mr.
19 Tagliaferri's analysis shows 7, inclusive of the four on
20 CX-19.

21 Q. Were the 19 documents that were produced on
22 June 5, 2014, downloaded by Tiversa?

EXHIBIT C

From: Rick Wallace <rwallace@tiversa.com>
Sent: Tuesday, November 06, 2012 4:05 PM
To: Rick Wallace
Subject: IPs

173.16.148.85
68.107.85.250
71.59.18.187
90.215.200.56
201.194.118.82
173.16.83.112
70.173.76.192

Rick Wallace

Director of Special Operations

Tiversa
The Cyberintelligence Experts

606 Liberty Avenue
Pittsburgh, Pennsylvania 15222

| 724-940-9030 Office | 703-232-6415 Mobile |

www.tiversa.com

EXHIBIT D


From: Rick Wallace <rwallace@tiversa.com>
Sent: Friday, November 9, 2012 12:08 PM
To: Robert Boback <rboback@tiversa.com>
Subject: LAB MD Spread
Attach: LAB MD Spread.doc

Rick Wallace
Director of Special Operations
Tiversa
The Cyberintelligence Experts

606 Liberty Avenue
Pittsburgh, Pennsylvania 15222
| 724-940-9030 Office | 703-232-6415 Mobile |
www.tiversa.com


Share this Result

IP Address: [173.16.148.85](#)

Location  UNITED STATES, NEW YORK, MIDDLETOWN
Latitude, Longitude 41.44593, -74.42293 (41°26'45"S -74°25'23"E)
Connection through MEDIACOM COMMUNICATIONS CORP
Local Time 08 Nov, 2012 11:00 PM (UTC -04:00)
Domain MEDIACOMCC.COM
Net Speed DSL
Area Code 845/914
IDD Code 1
ZIP Code 10941
Weather Station MIDDLETOWN (USNY0916)
Mobile Country Code (MCC) -
Mobile Network Code (MNC) -
Carrier Name -


Share this Result

IP Address: [68.107.85.250](#)

Location  UNITED STATES, CALIFORNIA, SAN DIEGO
Latitude, Longitude 32.71533, -117.15726 (32°42'55"S -117°9'26"E)
Connection through COX COMMUNICATIONS INC.
Local Time 09 Nov, 2012 02:00 AM (UTC -07:00)
Domain COX.NET
Net Speed COMP
Area Code 619/858
IDD Code 1
ZIP Code 92101
Weather Station SAN DIEGO (USCA0982)
Mobile Country Code (MCC) -
Mobile Network Code (MNC) -
Carrier Name -

Share this Result

IP Address: [71.59.18.187](#)

Location  UNITED STATES, GEORGIA, ALPHARETTA
Latitude, Longitude 34.07538, -84.29409 (34°4'31"S -84°17'39"E)
Connection through COMCAST CABLE COMMUNICATIONS HOLDINGS


Share this Result

IP Address: 71.59.18.187

	INC
Local Time	08 Nov, 2012 11:00 PM (UTC -04:00)
Domain	COMCAST.NET
Net Speed	DSL
Area Code	404/770
IDD Code	1
ZIP Code	30004
Weather Station	ALPHARETTA (USGA0013)
Mobile Country Code (MCC)	-
Mobile Network Code (MNC)	-
Carrier Name	-

Share this Result

IP Address: 90.215.200.56

Location	 UNITED KINGDOM, ENGLAND, LONDON
Latitude, Longitude	51.50853, -0.12574 (51°30'31"S -0°7'33"E)
Connection through	EASYNET LTD
Local Time	08 Nov, 2012 07:00 PM (UTC +00:00)
Domain	EASYNET.COM
Net Speed	DSL
Area Code	-
IDD Code	44
ZIP Code	-
Weather Station	LONDON (UKXX0085)
Mobile Country Code (MCC)	-
Mobile Network Code (MNC)	-
Carrier Name	-

Share this Result


IP Address: 201.194.118.82

Location	 COSTA RICA, HEREDIA, HEREDIA
Latitude, Longitude	10, -84.11667 (10°0'0"S -84°7'0"E)
Connection through	SAN JOSE


[Share this Result](#) IP Address: 201.194.118.82

Local Time 09 Nov, 2012 01:00 AM (UTC -06:00)
Domain SANJOSECA.GOV
Net Speed DSL
Area Code -
IDD Code 506
ZIP Code -
Weather Station HEREDIA (CSXX0013)
Mobile Country Code (MCC) -
Mobile Network Code (MNC) -
Carrier Name -

[Share this Result](#) IP Address: 173.16.83.112

Location  UNITED STATES, IOWA, DAVENPORT
Latitude, Longitude 41.52364, -90.57764 (41°31'25"S -90°34'40"E)
Connection through MEDIACOM COMMUNICATIONS CORP
Local Time 09 Nov, 2012 12:00 AM (UTC -05:00)
Domain MEDIACOMCC.COM
Net Speed DSL
Area Code 563
IDD Code 1
ZIP Code 52801
Weather Station ROCK ISLAND (USIL1011)
Mobile Country Code (MCC) -
Mobile Network Code (MNC) -
Carrier Name -

[Share this Result](#) IP Address: 70.173.76.192

Location  UNITED STATES, NEVADA, LAS VEGAS
Latitude, Longitude 36.17497, -115.13722 (36°10'30"S -115°8'14"E)
Connection through COX COMMUNICATIONS
Local Time 09 Nov, 2012 02:00 AM (UTC -07:00)
Domain COX.COM
Net Speed COMP

Share this Result

IP Address: 70.173.76.192

Area Code	702
IDD Code	1
ZIP Code	89044
Weather Station	LAS VEGAS (USNV0049)
Mobile Country Code (MCC)	-
Mobile Network Code (MNC)	-
Carrier Name	-

EXHIBIT E

- Proposed Exhibit CX1007 was created using Microsoft Exchange Version 6.5.
- Proposed Exhibit CX1007 was created on November 6, 2012 at 4:05 PM.
- Proposed Exhibit CX1007 was sent from “Rick Wallace”
rwallace@tiversa.com to “Rick Wallace” rwallace@tiversa.com.
- Proposed Exhibit CX1007 is part of a .pst file which was originally stored on Mailstore-Folder-UTF7: rwallace/Exchangerwallace/Sent Items.

Proposed Exhibit CX1008

5. I have reviewed Proposed Exhibit CX1008 and the email contains the following metadata:

- Proposed Exhibit CX1008 was created using Microsoft Exchange Version 6.5.
- Proposed Exhibit CX1008 was created on November 9, 2012 at 12:08 PM.
- Proposed Exhibit CX1008 was sent from “Rick Wallace”
rwallace@tiversa.com to “Robert Boback” rboback@tiversa.com.
- Proposed Exhibit CX1007 is part of a .pst file which was originally stored on MailStore-Folder-UTF7: admin/Exchange rboback/Inbox.
- Proposed Exhibit CX1008 attaches a .doc file named “LAB MD Spread”.

Proposed Exhibit CX1009

6. Proposed Exhibit CX1009 is a Microsoft Word Document entitled “LAB MD Spread.doc”.

7. Proposed Exhibit CX1009 was attached to the e-mail described above as Proposed Exhibit CX 1008, dated November 9, 2012.

8. Proposed Exhibit CX1009 is stored as an attachment to CX1008 and resides in the same location.

9. Proposed Exhibit CX1009 was created on November 8, 2012 and last modified on November 9, 2012.

Proposed Exhibits CX1015 and CX1016

10. Proposed Exhibit CX1015 was bates-labelled “Confidential-For Committee and Staff Use Only” and “Tiversa-OGR0017460” by Tiversa. Proposed Exhibit CX1016 is bates-labelled “Confidential-For Committee and Staff Use Only” and “Tiversa-OGR0017458-59.” Proposed Exhibits CX1015 and CX1016 constitute one document.

11. Proposed Exhibits CX1015 and CX1016 were created by Samuel Hopkins as a .doc file with a file name of “CIGNA_IncidentRecordForm_CIG00081.” The file was created as a template document on November 2, 2007 and was later modified by Richard Wallace on April 17, 2008. The document is stored on a Tiversa server and is mapped to Y:\Client Work\Archived\Inactive\Cigna\Tickets\Ticket_CIG00081.

12. The document has not been modified since April 17, 2008.

Proposed Exhibit CX1017

13. Proposed Exhibit CX1017 was bates-labelled “Confidential-For Committee and Staff Use Only” and “Tiversa-OGR0017461-5” by Tiversa.

14. Proposed Exhibit CX1017 was created by Chris Gormley on August 12, 2008 and last modified by Griffin Schultz on August 12, 2008. The file was a .doc file with a file name of “Forensic Inv Report_Ticket CIG00081_v1”.

15. The document is stored on a Tiversa server and is mapped to Y:\Client Work\Archived\Inactive\Cigna\Tickets\Ticket_CIG00081.

16. Proposed Exhibit CX1017 has not been modified since August 12, 2008.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct based upon information known to me after making reasonable efforts to ascertain the aforesaid information, as described above.

Dated: April ^{17th} 2015



Anju S. Chopra

EXHIBIT F

From: Shaw, Jarrod D.
Sent: Monday, April 20, 2015 3:57 PM
To: 'VanDruff, Laura Riposo'
Cc: William A. Sherman II (william.sherman@dinsmore.com); reed.rubinstein@dinsmore.com; 'jbrown4@ftc.gov'; Liben, Lucas
Subject: RE: FTC Docket No. 9357 -- letter regarding deposition noticed for March 16, 2015
Attachments: 04.20.2015 Letter to FTC (2).pdf; Affidavit of A Chopra 4 2015.pdf; Affidavit of R Boback 4 2015.pdf

All,

Please see attached.

Jarrold

Jarrold D. Shaw
jshaw@reedsmith.com
+1 412 288 3013

Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222-2716
T: +1 412 288 3131
F: +1 412 288 3063
reedsmith.com

From: VanDruff, Laura Riposo [<mailto:lvandruff@ftc.gov>]
Sent: Thursday, March 12, 2015 2:58 PM
To: Shaw, Jarrod D.
Cc: William A. Sherman II (william.sherman@dinsmore.com); reed.rubinstein@dinsmore.com; prashant.khetan@causeofaction.org; patrick.massari@causeofaction.org; hallee.morgan@causeofaction.org
Subject: FTC Docket No. 9357 -- letter regarding deposition noticed for March 16, 2015

Good afternoon, Mr. Shaw.

Attached is a letter that follows our conversation earlier today.

Best regards,

Laura

Laura Riposo VanDruff
Federal Trade Commission
Assistant Director, Division of Privacy and Identity Protection
600 Pennsylvania Avenue, N.W., CC-8232
Washington, DC 20580
202.326.2999 (direct)
202.326.3393 (facsimile)
lvandruff@ftc.gov

EXHIBIT G

WILMERHALE

Reginald J. Brown

+1 202 663 6430 (f)
+1 202 663 6363 (f)
reginald.brown@wilmerhale.com

August 6, 2014

By Electronic and First Class Mail

Chairman Darrell E. Issa
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Re: Tiversa, Inc.'s Business Model

Dear Chairman Issa:

As requested, Tiversa, Inc. is providing the Committee today with additional detail on its business model, particularly with respect to Incident Response Case ("IRC") services.

Tiversa, Inc.'s IRC or "remediation" services assist organizations in the forensic investigation and remediation of a specific, known data breach resulting from a peer-to-peer ("P2P") network data disclosure. With its technology, Tiversa, Inc. can investigate data disclosures to determine the likely source of the breach and assist in mitigation. IRC services were never a core element of Tiversa, Inc.'s business, and Tiversa, Inc. now generally offers such services only as an accommodation to clients with longer-term monitoring and fraud detection contracts.

Between 2005 and June 30, 2014, IRC services have constituted approximately [REDACTED] of Tiversa, Inc.'s [REDACTED] in total revenue (or, approximately 1% of revenue). In response to your specific question, IRC revenue in 2009 [REDACTED]. Moreover, individual IRC contracts have typically been of relatively low value from a revenue and margin perspective. Across the fewer than 35 total IRC clients, IRC revenues have ranged in value from [REDACTED] with an average revenue per client of [REDACTED]. There were 11 IRC clients in 2009, with revenues ranging from [REDACTED] to [REDACTED].


As referenced in our letter of July 23, 2014, Tiversa, Inc. has had business relationships with 12 of the approximately 85 entities listed on the spreadsheet provided by the Privacy Institute to the Federal Trade Commission ("FTC") in response to the Civil Investigative Demand ("CID"), but Tiversa, Inc. was retained by 11 of the entities (including for IRC services) *prior* to the response to the CID. Moreover, the sole business relationship with an entity (also for IRC services) listed on the spreadsheet that was developed *after* the submission to the FTC

WILMERHALE

August 6, 2014
Page 2

was the result of a referral. Tiversa, Inc. does not have and has never had a business practice of retaliating against parties who did not retain it for IRC services by referring them to the FTC or other entities for adverse action.

Very truly yours,

A handwritten signature in black ink that reads "Reginald J. Brown /me". The signature is written in a cursive style.

Reginald J. Brown
Madhu Chugh

cc: Elijah E. Cummings, Ranking Member

EXHIBIT H

From: John Boyle
To: Robert Boback
Subject: Re: Breach notification
Date: Tuesday, July 22, 2008 8:49:44 AM

Thank you for your communications to our organization. Upon further contemplation regarding the seriousness of your endeavours, our attorney would like to further discuss your work with you. In that regard, all future inquiries and communications should only and exclusively be sent to Philippa Ellis, attorney, at Owen Gleaton Egan Jones and Sweeney, 1230 Peachtree Street, NE, Promenade Two, Suite 1400, Atlanta, GA 30309. Contact # 404-688-2600. Please send the name of your legal counsel to Mrs. Ellis as well.

Thank You.
John W. Boyle
LabMD
VP of Operations and General Manager
404-918-8590

-----Original message-----

From: "Robert Boback" rboback@tiversa.com
Date: Tue, 15 Jul 2008 11:28:40 -0400
To: "John Boyle" jboyle@labmd.org
Subject: Breach notification

> John,

>

> I wanted to follow-up with you regarding the breach that we discussed
> several weeks ago. We have continued to see individuals searching for
> and downloading copies of the file that was provided. The longer the
> file is allowed to remain on available to the public, the more difficult
> (and costly) the remediation tends to be. 43 of the 50 states have very
> strict laws requiring the immediate notification of the affected
> individuals. It is very important that you contact the individuals
> affected asap.

>

> I know that this breach is troubling, however it is important to note
> that LabMD is not the only company that has been affected by this type
> of breach. This is widespread problem that affects tens of thousands of
> organizations and millions of individuals. I am not sure if you read
> the Washington Post, but there was an front page article last week
> involving a widely reported file sharing breach of Supreme Court justice
> Stephen Breyer's SSN and personal data. Wagner Resources, the
> investment firm responsible, took immediate action to solve the problem
> which resonated with the affected individuals. In fact, many of the
> individuals whose information was disclosed contacted the owner of the
> firm to say that HE was the victim of this relatively unknown, although
> dangerous, security risk.

>

> Here is a link to the article:

> http://www.washingtonpost.com/wp-dyn/content/article/2008/07/08/AR2008070802997_pf.html
> <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/08/AR2008070802997_pf.html>

>

> If you need a breakdown of the various state laws regarding breach
> notification, I can provide one for you.

>

> Sincerely,

>
> Robert Boback
> Chief Executive Officer
>
> Tiversa, Inc.
> The Leader in Information Containment Management
> 144 Emeryville Drive, Suite 300
> Cranberry Township, Pennsylvania 16066
> | 724-940-9030 Office | 724-940-9033 Fax
>
>

EXHIBIT I

From: [Rick Wallace](#)
To: Katy Everett; Griffin Schultz; Chris Gormley; [Robert Boback](#)
Subject: LAB MD Disclosure
Date: Thursday, April 17, 2008 4:52:20 PM

9,535 SSNs
8,342 Unique Name, Address, Policy#, Group #, DOB, SSNs, Etc.

113 – Cigna
213 – Aetna
279 – United Health

Rick Wallace

Tiversa, Inc.

The Leader in Information Containment Management

144 Emeryville Drive, Suite 300

Cranberry Township, Pennsylvania 16066

| 724-940-9030 Office | 703-232-6415 Mobile |

This e-mail message and any attachments contain confidential information from Tiversa, Inc. If you are not the intended recipient, you are hereby notified that disclosure, printing, copying, distribution, or the taking of any action in reliance on the contents of this electronic information is strictly prohibited. If you have received this e-mail message in error, please immediately notify the sender by reply message and then delete the electronic message and any attachments.

EXHIBIT J

1 I N D E X

2

WITNESS:

3

MICHAEL J. DAUGHERTY

4

5 EXAMINATION:

PAGE

6

BY MR. SHEER

6

7

PREVIOUSLY MARKED EXHIBITS

PAGE

8

CX 319

24

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CX 8

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CX 227

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CX 87

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CX 407

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CX 402

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CX 88

74

15

CX 143

82

16

CX 414

99

17

CX 2

119

18

CX 14

125

19

CX 70

165

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CX 501

185

21

CX 152

200

22

CX 155

202

23

CX 404

210

24

CX 429

224

25

CX 551

225

Daugherty

LabMD, Inc.

3/4/2014

1 when.

2 Q. Did LabMD allow Ms. Garrett to continue
3 working after it learned that she had been arrested
4 for passing a bad check?

5 A. I'm not sure that -- you'd have to go back.
6 I don't believe it was passing a bad check, I thought
7 it was a -- I guess -- I'm going to have to get, I
8 mean I can tell you my general recollection of this,
9 I'm going to have to get specifics from probably
10 Trisha Gilbreth, but she -- we, I can't, I can't
11 remember how we found out about this, it was obscure
12 and we were -- repeat your question, sorry.

13 MR. SHEER: Could you read it back, please.

14 (The reporter read the record as
15 requested.)

16 THE WITNESS: I'm just not sure that we knew
17 exactly why she was arrested, but I could -- but we
18 did, we did, we did not know of any convictions and
19 so, yes, we did let her continue to work, I believe
20 so.

21 BY MR. SHEER:

22 Q. For how long?

23 A. I don't recall. I have to, do you have her
24 records on, I'd have to -- I'd have to refer back to
25 the records.

Daugherty

LabMD, Inc.

3/4/2014

1 Q. What records?

2 A. Her, her personnel file and her dates of
3 hire and the dates that this happened.

4 Q. Why did you fire her, why did LabMD fire
5 her?

6 A. She was sleeping at her desk.

7 Q. Was there any other reason that she was
8 fired?

9 A. Yes, there's a general, general reviews that
10 she had, was breaking the rules as far as I believe
11 unauthorized cell phone usage and she had received the
12 appropriate number of warnings.

13 Q. Anything else besides unauthorized cell
14 phone usage?

15 A. I have to check her personnel file.

16 Q. Would the information be in her personnel
17 file?

18 A. I'm, I'm not totally sure what's in her
19 personnel file.

20 Q. Was it LabMD's practice to record reasons
21 for dismissing employees in the personnel file?

22 A. Not always.

23 Q. Was it then?

24 A. Usually.

25 Q. Under what circumstances wouldn't it be

Notice of Electronic Service

I hereby certify that on June 24, 2015, I filed an electronic copy of the foregoing MOTION OF NON-PARTIES TIVERSA HOLDING CORP., TIVERSA, INC., AND ROBERT J. BOBACK FOR LEAVE TO FILE A RESPONSE TO LAB MD, INC.'S MOTION TO REFER TIVERSA, INC., TIVERSA HOLDING CORP., AND ROBERT BOBACK FOR INVESTIGATION REGARDING POTENTIAL CRIMINAL VIOLATIONS, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on June 24, 2015, I served via E-Service an electronic copy of the foregoing MOTION OF NON-PARTIES TIVERSA HOLDING CORP., TIVERSA, INC., AND ROBERT J. BOBACK FOR LEAVE TO FILE A RESPONSE TO LAB MD, INC.'S MOTION TO REFER TIVERSA, INC., TIVERSA HOLDING CORP., AND ROBERT BOBACK FOR INVESTIGATION REGARDING POTENTIAL CRIMINAL VIOLATIONS, upon:

John Krebs
Attorney
Federal Trade Commission
jkrebs@ftc.gov
Complaint

Hallee Morgan
Cause of Action
cmccoynhunter@ftc.gov
Respondent

Jarad Brown
Attorney
Federal Trade Commission
jbrown4@ftc.gov
Complaint

Kent Huntington
Counsel
Cause of Action
cmccoynhunter@ftc.gov
Respondent

Sunni Harris
Esq.
Dinsmore & Shohl LLP
sunni.harris@dinsmore.com
Respondent

Daniel Epstein
Cause of Action
daniel.epstein@causeofaction.org
Respondent

Patrick Massari

Counsel
Cause of Action
patrick.massari@causeofaction.org
Respondent

Prashant Khetan
Senior Counsel
Cause of Action
prashant.khetan@causeofaction.org
Respondent

Alain Sheer
Federal Trade Commission
asheer@ftc.gov
Complaint

Laura Riposo VanDruff
Federal Trade Commission
lvandruff@ftc.gov
Complaint

Megan Cox
Federal Trade Commission
mcox1@ftc.gov
Complaint

Ryan Mehm
Federal Trade Commission
rmehm@ftc.gov
Complaint

Erica Marshall
Counsel
Cause of Action
erica.marshall@causeofaction.org
Respondent

Jarrod Shaw
Attorney