

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



COMMISSIONERS: EDITH RAMIREZ, CHAIRWOMAN  
MAUREEN K. OHLHAUSEN  
TERRELL MCSWEENY

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

PUBLIC

Docket No. 9357

**RESPONDENT LABMD, INC.'s RECORD FILING OF EMAIL TRANSMISSIONS  
REGARDING COMPLAINT COUNSEL'S ADMINISTRATIVE APPEAL BETWEEN  
COUNSEL FOR THE PARTIES AND FEDERAL TRADE COMMISSION SECRETARY  
DONALD S. CLARK**

Alfred J. Lechner, Jr.  
Daniel Z. Epstein  
Patrick J. Massari  
Cause of Action Institute  
1919 Pennsylvania Avenue, NW  
Suite 650  
Washington, DC 20006

Dated: March 3, 2016

*Counsel for Respondent*

Respondent LabMD, Inc., by and through Counsel, hereby submits for the Record Email transmissions regarding Complaint Counsel's administrative appeal between Counsel for the parties and Federal Trade Commission Secretary Donald S. Clark. The Record Email transmissions are attached as Exhibit 1.

Dated: March 3, 2016

Respectfully submitted,



Alfred J. Lechner, Jr.

Daniel Z. Epstein

Patrick J. Massari

Cause of Action Institute

1919 Pennsylvania Avenue, NW Suite 650

Washington, DC 20006

Phone: (202) 499-4232

Facsimile: (202) 330-5842

Email: [alfred.lechner@causeofaction.org](mailto:alfred.lechner@causeofaction.org)

Admitted in New Jersey and New York

Applying to District of Columbia Bar

Supervised by Members of the District of  
Columbia Bar

*Counsel for Respondent, LabMD, Inc.*

# EXHIBIT 1

**Patrick Massari**

---

**From:** Clark, Donald S. <DCLARK@ftc.gov>  
**Sent:** Monday, November 16, 2015 4:30 PM  
**To:** Catherine Chae  
**Cc:** Patrick Massari  
**Subject:** RE: Initial Decision Issued in In the Matter of LabMD, Docket No. 9357, To Be Posted on the Commission Website At 5 pm Today, Monday, November 16th

Catherine, I'll add Patrick to my email distribution list; thanks.

Don

---

**From:** Catherine Chae [mailto:catherine.chae@causeofaction.org]  
**Sent:** Monday, November 16, 2015 3:46 PM  
**To:** Clark, Donald S.  
**Cc:** Patrick Massari  
**Subject:** RE: Initial Decision Issued in In the Matter of LabMD, Docket No. 9357, To Be Posted on the Commission Website At 5 pm Today, Monday, November 16th

Secretary Clark,

Can you kindly add Patrick Massari at [patrick.massari@causeofaction.org](mailto:patrick.massari@causeofaction.org) to the recipient list? Thank you.

Best,

**Catherine Chae | Cause of Action**

1919 Pennsylvania Ave, N.W., Suite 650  
 Washington, D.C. 20006  
 Tel: 202.499.2025  
[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)



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---

**From:** Clark, Donald S. [mailto:DCLARK@ftc.gov]  
**Sent:** Monday, November 16, 2015 3:31 PM  
**To:** 'Rubinstein, Reed' <[reed.rubinstein@dinsmore.com](mailto:reed.rubinstein@dinsmore.com)>; Sheer, Alain <[ASHEER@ftc.gov](mailto:ASHEER@ftc.gov)>; VanDruff, Laura Riposo <[lvandruff@ftc.gov](mailto:lvandruff@ftc.gov)>; 'william.sherman@dinsmore.com' <[william.sherman@dinsmore.com](mailto:william.sherman@dinsmore.com)>; Cox, Megan <[mcox1@ftc.gov](mailto:mcox1@ftc.gov)>; Mehm, Ryan <[rmehm@ftc.gov](mailto:rmehm@ftc.gov)>; Daniel Epstein <[daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org)>; Catherine Chae <[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)>; Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>  
**Cc:** Jeter, LaJuan J. <[LJETER@ftc.gov](mailto:LJETER@ftc.gov)>; Tabor, April <[atabor@ftc.gov](mailto:atabor@ftc.gov)>; Frankle, Janice Podoll <[JFRANKLE@ftc.gov](mailto:JFRANKLE@ftc.gov)>; Mack, Julie <[JMACK@ftc.gov](mailto:JMACK@ftc.gov)>  
**Subject:** Initial Decision Issued in In the Matter of LabMD, Docket No. 9357, To Be Posted on the Commission Website At 5 pm Today, Monday, November 16th

Everyone, assuming that I don't receive any requests to redact any material from the attached courtesy copy of the Initial Decision by 4 pm today, it will be posted on the public Commission Website, at the following URL:

<https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter>

at 5 pm today. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary  
Federal Trade Commission Washington, D.C. 20580  
Telephone: (202) 326-2514; FAX: (202) 326-2496

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---

**From:** Clark, Donald S.  
**Sent:** Friday, November 13, 2015 4:33 PM  
**To:** 'Rubinstein, Reed'; Sheer, Alain; VanDruff, Laura Riposo; 'william.sherman@dinsmore.com'; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad  
**Cc:** Jeter, LaJuan J.; Tabor, April; Frankle, Janice Podoll; Mack, Julie  
**Subject:** Initial Decision Issued in In the Matter of LabMD, Docket No. 9357

Everyone, I have attached for your review a courtesy copy of the Initial Decision which Chief Administrative Law Judge Chappell has today issued in *In the Matter of LabMD Inc., Docket No. 9357*. The official service copies of the Initial Decision will be delivered to you next week, and the Initial Decision will not be placed on the public record of the Commission until next week. Therefore, if you believe that any information in the Initial Decision should be redacted before it is placed on the public record, please let me know by return email message, if possible, by 4 pm on Monday, November 16, 2015. Please also let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary  
Federal Trade Commission Washington, D.C. 20580

Telephone: (202) 326-2514; FAX: (202) 326-2496

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**Patrick Massari**

---

**From:** Clark, Donald S. <DCLARK@ftc.gov>  
**Sent:** Tuesday, December 15, 2015 12:23 PM  
**To:** VanDruff, Laura Riposo  
**Cc:** Patrick Massari; Daniel Epstein; Tabor, April  
**Subject:** RE: FTC Docket No. 9357 -- Complaint Counsel's anticipated response to Respondent's Dec. 14, 2015 filing

Ms. VanDruff, thank you for your message advising that Complaint Counsel expects to file a response to Respondent's December 14, 2015 filing.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary  
Federal Trade Commission Washington, D.C. 20580  
Telephone: (202) 326-2514; FAX: (202) 326-2496

CONFIDENTIALITY NOTE: This message is intended only for the individual or entity to whom it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication by mistake, please notify the sender immediately by telephone, and destroy the original message and any copies of it. Thank you.

---

**From:** VanDruff, Laura Riposo  
**Sent:** Monday, December 14, 2015 7:08 PM  
**To:** Clark, Donald S.  
**Cc:** patrick.massari@causeofaction.org; daniel.epstein@causeofaction.org  
**Subject:** FTC Docket No. 9357 -- Complaint Counsel's anticipated response to Respondent's Dec. 14, 2015 filing

Good evening, Secretary Clark.

Respondent LabMD, Inc.'s December 14, 2015 filing in Opposition to Complaint Counsel's Motion to Enforce Limits on Appeal Briefing seeks a variety of relief from the Commission. Consistent with Rule 3.22(d), Complaint Counsel anticipates that it will respond to Respondent's requests for relief. I am writing to advise your office that we will file our response in opposition to Respondent's request for relief without undue delay.

Please do not hesitate to call me with any questions or concerns.

Respectfully submitted,

Laura Riposo VanDruff  
Complaint Counsel

-----

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](mailto:lvandruff@ftc.gov)

**Patrick Massari**

---

**From:** Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>  
**Sent:** Tuesday, December 22, 2015 6:32 PM  
**To:** Clark, Donald S.; Frankle, Janice Podoll; Mack, Julie; Tabor, April  
**Cc:** Daniel Epstein; Patrick Massari; Erica Marshall  
**Subject:** FTC Docket No. 9357 - Complaint Counsel's Appeal Brief  
**Attachments:** 2015.12.22 Complaint Counsel's Appeal to Comm'n.pdf

Dear Secretary Clark,

Please see attached Complaint Counsel's Appeal Brief, filed today.

Best,  
Jarad Brown

**Jarad Brown**

Federal Trade Commission | Bureau of Consumer Protection  
Division of Privacy and Identity Protection  
600 Pennsylvania Ave. NW, CC-8232  
Washington, DC 20580  
[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov) | (202) 326-2927

**Patrick Massari**

---

**From:** Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>  
**Sent:** Thursday, January 14, 2016 5:21 PM  
**To:** Clark, Donald S.; Frankle, Janice Podoll; Mack, Julie; Tabor, April  
**Cc:** Patrick Massari; Erica Marshall; Daniel Epstein  
**Subject:** FTC Docket No. 9357 - Complaint Counsel's Corrected Appeal Brief  
**Attachments:** 2016.01.14 Complaint Counsel's Corrected Appeal Brief.pdf

Dear Secretary Clark,

Please see attached Complaint Counsel's Corrected Appeal Brief, filed today.

Best,  
Jarad Brown

**Jarad Brown**

Federal Trade Commission | Bureau of Consumer Protection  
Division of Privacy and Identity Protection  
600 Pennsylvania Ave. NW, CC-8232  
Washington, DC 20580  
[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov) | (202) 326-2927

**Patrick Massari**

---

**From:** Clark, Donald S. <DCLARK@ftc.gov>  
**Sent:** Friday, January 15, 2016 5:28 PM  
**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Patrick Massari  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie  
**Subject:** Commission Order Issued Today In the Matter of LabMD, Docket No. 9357  
**Attachments:** D09357 LabMD Order Scheduling Oral Argument.pdf

Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

<https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter>

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary  
Federal Trade Commission Washington, D.C. 20580  
Telephone: (202) 326-2514; FAX: (202) 326-2496

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**Patrick Massari**

---

**From:** Catherine Chae  
**Sent:** Friday, February 05, 2016 7:37 PM  
**To:** secretary@ftc.gov  
**Cc:** Alfred J. Lechner, Jr.; Patrick Massari; Daniel Epstein; asheer@ftc.gov; lvandruff@ftc.gov; mcox1@ftc.gov; jkrebs@ftc.gov; jbrown4@ftc.gov; rmehm@ftc.gov  
**Subject:** In the Matter of LabMD, Inc. Docket No. 9357: Respondent LabMD, Inc.'s Notice of Appearance for Alfred J. Lechner, Jr.  
**Attachments:** 02.04.2016 -Notice of Appearance for Judge Lechner.pdf

Dear Secretary Clark:

Attached please find a courtesy copy of Notice of Appearance for Alfred J. Lechner, Jr. which was filed on Thursday, February 4, 2016 using the Federal Trade Commission E-Filing System.

Best,

**Catherine Chae | Cause of Action Institute**

1919 Pennsylvania Ave. NW, Suite 650

Washington, D.C. 20006

(o) 202.499.2025 / (c) 202.603.7372

[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)



Advocates for Government Accountability

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**Patrick Massari**

---

**From:** Catherine Chae  
**Sent:** Friday, February 05, 2016 11:23 PM  
**To:** secretary@ftc.gov  
**Cc:** Alfred J. Lechner, Jr.; Patrick Massari; Daniel Epstein; asheer@ftc.gov; lvandruff@ftc.gov; mcox1@ftc.gov; jkrebs@ftc.gov; jbrown4@ftc.gov; rmehm@ftc.gov  
**Subject:** In the Matter of LabMD, Inc. Docket No. 9357: Respondent LabMD, Inc.'s Corrected Answering Brief  
**Attachments:** 2.5.2016 Respondent LabMD Corrected Answering Brief.pdf

Dear Secretary Clark:

Attached please find a courtesy copy of Respondent LabMD, Inc.'s Corrected Answering Brief which was filed on Friday, February 5, 2016 using the Federal Trade Commission E-Filing System.

Best,

**Catherine Chae | Cause of Action Institute**

1919 Pennsylvania Ave. NW, Suite 650

Washington, D.C. 20006

(o) 202.499.2025 / (c) 202.603.7372

[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)



Advocates for Government Accountability

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**Patrick Massari**

---

**From:** Patrick Massari  
**Sent:** Thursday, February 11, 2016 11:26 AM  
**To:** secretary@ftc.gov  
**Cc:** Alfred J. Lechner, Jr.; Patrick Massari; Daniel Epstein; 'asheer@ftc.gov'; 'lvandruff@ftc.gov'; 'mcox1@ftc.gov'; 'jkrebs@ftc.gov'; 'jbrown4@ftc.gov'; 'rmehm@ftc.gov'; Shannon Thrash; Paulette Porter  
**Subject:** RE: In the Matter of LabMD, Inc., a corporation No. 9357: Errata Sheet Amending Respondent LabMD, Inc.'s Corrected Answering Brief  
**Attachments:** Lab\_MD\_Errata\_Corrected\_Answering\_Brief.pdf  
**Importance:** High

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	secretary@ftc.gov	
	Alfred J. Lechner, Jr.	Delivered: 2/11/2016 11:26 AM
	Patrick Massari	Delivered: 2/11/2016 11:26 AM
	Daniel Epstein	Delivered: 2/11/2016 11:26 AM
	'asheer@ftc.gov'	
	'lvandruff@ftc.gov'	
	'mcox1@ftc.gov'	
	'jkrebs@ftc.gov'	
	'jbrown4@ftc.gov'	
	'rmehm@ftc.gov'	
	Shannon Thrash	Delivered: 2/11/2016 11:26 AM
	Paulette Porter	Delivered: 2/11/2016 11:26 AM

Secretary Clark,

Attached please find a courtesy copy of Errata Sheet Amending Respondent LabMD, Inc.'s Corrected Answering Brief which was filed on Thursday, February 11, 2016 using the Federal Trade Commission E-Filing System.

Thank you.

W/r

/s/

**Patrick J. Massari | Counsel | Cause of Action Institute  
1919 Pennsylvania Avenue NW, Suite # 650**

Washington, D.C. 20006

[Patrick.Massari@causeofaction.org](mailto:Patrick.Massari@causeofaction.org)

Direct: 202.499.4231 | Main: 202.499.4232

Admitted in Maryland and the District of Columbia

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**Patrick Massari**

---

**From:** Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>  
**Sent:** Wednesday, February 17, 2016 4:27 PM  
**To:** Clark, Donald S.; Frankle, Janice Podoll; Mack, Julie; Tabor, April  
**Cc:** Daniel Epstein; Patrick Massari; Erica Marshall; Alfred J. Lechner, Jr.  
**Subject:** FTC Docket No. 9357 - Complaint Counsel's Response to TechFreedom Motion for Leave to File Amicus Curiae Brief  
**Attachments:** 2016.02.17 Compl. Counsel Resp. to TechFreedom Mot. for Leave to File Amicus Brief.pdf

Dear Secretary Clark,

Please see attached Complaint Counsel's Response to TechFreedom's Motion for Leave to File Amicus Curiae Brief, filed today.

Best regards,  
Jarad Brown

**Jarad Brown**

Federal Trade Commission | Bureau of Consumer Protection  
Division of Privacy and Identity Protection  
600 Pennsylvania Ave. NW, CC-8232  
Washington, DC 20580  
[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov) | (202) 326-2927

**Patrick Massari**

---

**From:** Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>  
**Sent:** Tuesday, February 23, 2016 5:07 PM  
**To:** Clark, Donald S.; Frankle, Janice Podoll; Mack, Julie; Tabor, April  
**Cc:** Daniel Epstein; Patrick Massari; Erica Marshall; Alfred J. Lechner, Jr.  
**Subject:** FTC Docket No. 9357 - Complaint Counsel's Reply Brief  
**Attachments:** 2016.02.23 Complaint Counsel's Reply Brief.pdf

Dear Secretary Clark,

Please see attached Complaint Counsel's Reply Brief, filed today.

Best regards,  
Jarad Brown

**Jarad Brown**

Federal Trade Commission | Bureau of Consumer Protection  
Division of Privacy and Identity Protection  
600 Pennsylvania Ave. NW, CC-8232  
Washington, DC 20580  
[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov) | (202) 326-2927

**Patrick Massari**

---

**From:** Clark, Donald S. <DCLARK@ftc.gov>  
**Sent:** Wednesday, February 24, 2016 2:47 PM  
**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Patrick Massari  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert  
**Subject:** Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

Everyone, just a reminder that the Order Scheduling Oral Argument at the following URL:

<https://www.ftc.gov/system/files/documents/cases/160119labmdorder.pdf> --

provides:

If either side wishes to provide the Commission with a short written or electronic compilation of material to facilitate its presentation during the Oral Argument, any such compilation may contain only public information that is already in the record of the proceeding, and copies must be filed with the Secretary of the Commission and provided to opposing counsel **no later than Tuesday, March 1, 2016, at 5:00 p.m.**

In addition, please let me know as soon as possible, by return email message, who will be presenting the argument for each side. Thanks very much.

Best regards,

Don Clark

---

**From:** Clark, Donald S.  
**Sent:** Friday, January 15, 2016 5:28 PM  
**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie  
**Subject:** Commission Order Issued Today In the Matter of LabMD, Docket No. 9357

Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

<https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter>

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary  
Federal Trade Commission Washington, D.C. 20580  
Telephone: (202) 326-2514; FAX: (202) 326-2496

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**Patrick Massari**

---

**From:** Patrick Massari  
**Sent:** Friday, February 26, 2016 1:13 PM  
**To:** 'VanDruff, Laura Riposo'; Clark, Donald S.; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Alfred J. Lechner, Jr.  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash; Paulette Porter  
**Subject:** RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

**Importance:** High

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	'VanDruff, Laura Riposo'	
	Clark, Donald S.	
	Sheer, Alain	
	Cox, Megan	
	Mehm, Ryan	
	Daniel Epstein	Delivered: 2/26/2016 1:14 PM
	Catherine Chae	Delivered: 2/26/2016 1:14 PM
	Brown, Jarad	
	Alfred J. Lechner, Jr.	Delivered: 2/26/2016 1:14 PM
	Tabor, April	
	Frankle, Janice Podoll	
	Mack, Julie	
	Swenson, Robert	
	Shannon Thrash	Delivered: 2/26/2016 1:14 PM
	Paulette Porter	Delivered: 2/26/2016 1:14 PM

Secretary Clark,

Alfred J. Lechner, Jr. will present argument on behalf of Respondent.

Thank you.

W/r

/s/

**Patrick J. Massari | Counsel | Cause of Action Institute**  
**1919 Pennsylvania Avenue NW, Suite # 650**

Washington, D.C. 20006

[Patrick.Massari@causeofaction.org](mailto:Patrick.Massari@causeofaction.org)

Direct: [202.499.4231](tel:202.499.4231) | Main: [202.499.4232](tel:202.499.4232)

Admitted in Maryland and the District of Columbia

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---

**From:** VanDruff, Laura Riposo [mailto:[lvandruff@ftc.gov](mailto:lvandruff@ftc.gov)]

**Sent:** Thursday, February 25, 2016 12:48 PM

**To:** Clark, Donald S. <[DCLARK@ftc.gov](mailto:DCLARK@ftc.gov)>; Sheer, Alain <[ASHEER@ftc.gov](mailto:ASHEER@ftc.gov)>; Cox, Megan <[mcox1@ftc.gov](mailto:mcox1@ftc.gov)>; Mehm, Ryan <[rmehm@ftc.gov](mailto:rmehm@ftc.gov)>; Daniel Epstein <[daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org)>; Catherine Chae <[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)>; Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>; Patrick Massari <[patrick.massari@causeofaction.org](mailto:patrick.massari@causeofaction.org)>

**Cc:** Tabor, April <[atabor@ftc.gov](mailto:atabor@ftc.gov)>; Frankle, Janice Podoll <[JFRANKLE@ftc.gov](mailto:JFRANKLE@ftc.gov)>; Mack, Julie <[JMACK@ftc.gov](mailto:JMACK@ftc.gov)>; Swenson, Robert <[rswenson@ftc.gov](mailto:rswenson@ftc.gov)>

**Subject:** RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

Good afternoon, Secretary Clark.

I will be presenting the argument for Complaint Counsel.

Best regards,

Laura

---

**From:** Clark, Donald S.

**Sent:** Wednesday, February 24, 2016 2:47 PM

**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'

**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert

**Subject:** Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

Everyone, just a reminder that the Order Scheduling Oral Argument at the following URL:

<https://www.ftc.gov/system/files/documents/cases/160119labmdorder.pdf> --

provides:

If either side wishes to provide the Commission with a short written or electronic compilation of material to facilitate its presentation during the Oral Argument, any such compilation may contain only public information that is already in the record of the proceeding, and copies must be filed with the Secretary of the Commission and provided to opposing counsel **no later than Tuesday, March 1, 2016, at 5:00 p.m.**

In addition, please let me know as soon as possible, by return email message, who will be presenting the argument for each side. Thanks very much.

Best regards,

Don Clark

---

**From:** Clark, Donald S.

**Sent:** Friday, January 15, 2016 5:28 PM

**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'

**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie

**Subject:** Commission Order Issued Today In the Matter of LabMD, Docket No. 9357

Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

<https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter>

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary

Federal Trade Commission Washington, D.C. 20580

Telephone: (202) 326-2514; FAX: (202) 326-2496

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**Patrick Massari**

---

**From:** Patrick Massari  
**Sent:** Monday, February 29, 2016 11:29 AM  
**To:** 'Clark, Donald S.'; VanDruff, Laura Riposo; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Alfred J. Lechner, Jr.  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash; Paulette Porter  
**Subject:** RE: Request For Corrected Version of Answering Brief Filed by Respondent In the Matter of LabMD, Docket No. 9357

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	'Clark, Donald S.'	
	VanDruff, Laura Riposo	
	Sheer, Alain	
	Cox, Megan	
	Mehm, Ryan	
	Daniel Epstein	Delivered: 2/29/2016 11:29 AM
	Catherine Chae	Delivered: 2/29/2016 11:29 AM
	Brown, Jarad	
	Alfred J. Lechner, Jr.	Delivered: 2/29/2016 11:29 AM
	Tabor, April	
	Frankle, Janice Podoll	
	Mack, Julie	
	Swenson, Robert	
	Shannon Thrash	Delivered: 2/29/2016 11:29 AM
	Paulette Porter	Delivered: 2/29/2016 11:29 AM

Secretary Clark,

I'll see to it.

Thank you.

W/r

/s/

**Patrick J. Massari | Counsel | Cause of Action Institute**  
**1919 Pennsylvania Avenue NW, Suite # 650**  
**Washington, D.C. 20006**  
**Patrick.Massari@causeofaction.org**

Direct: [202.499.4231](tel:202.499.4231) | Main: [202.499.4232](tel:202.499.4232)  
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---

**From:** Clark, Donald S. [<mailto:DCLARK@ftc.gov>]

**Sent:** Monday, February 29, 2016 11:26 AM

**To:** Patrick Massari <[patrick.massari@causeofaction.org](mailto:patrick.massari@causeofaction.org)>; VanDruff, Laura Riposo <[lvandruff@ftc.gov](mailto:lvandruff@ftc.gov)>; Sheer, Alain <[ASHEER@ftc.gov](mailto:ASHEER@ftc.gov)>; Cox, Megan <[mcox1@ftc.gov](mailto:mcox1@ftc.gov)>; Mehm, Ryan <[rmehm@ftc.gov](mailto:rmehm@ftc.gov)>; Daniel Epstein <[daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org)>; Catherine Chae <[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)>; Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>; Alfred J. Lechner, Jr. <[jlechner@causeofaction.org](mailto:jlechner@causeofaction.org)>

**Cc:** Tabor, April <[atabor@ftc.gov](mailto:atabor@ftc.gov)>; Frankle, Janice Podoll <[JFRANKLE@ftc.gov](mailto:JFRANKLE@ftc.gov)>; Mack, Julie <[JMACK@ftc.gov](mailto:JMACK@ftc.gov)>; Swenson, Robert <[rswenson@ftc.gov](mailto:rswenson@ftc.gov)>; Shannon Thrash <[shannon.thrash@causeofaction.org](mailto:shannon.thrash@causeofaction.org)>; Paulette Porter <[paulette.porter@causeofaction.org](mailto:paulette.porter@causeofaction.org)>

**Subject:** Re: Request For Corrected Version of Answering Brief Filed by Respondent In the Matter of LabMD, Docket No. 9357

Patrick, yes, please both email a copy to me and file a copy through the E-Filing system. In addition, if you could highlight the corrected text in a color such as yellow or red, that would be helpful. Thanks very much.

Best regards,

Don Clark

---

**From:** Patrick Massari [<mailto:patrick.massari@causeofaction.org>]

**Sent:** Monday, February 29, 2016 11:16 AM

**To:** Clark, Donald S.; VanDruff, Laura Riposo; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein <[daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org)>; Catherine Chae <[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)>; Brown, Jarad; Alfred J. Lechner, Jr. <[jlechner@causeofaction.org](mailto:jlechner@causeofaction.org)>

**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash <[shannon.thrash@causeofaction.org](mailto:shannon.thrash@causeofaction.org)>; Paulette Porter <[paulette.porter@causeofaction.org](mailto:paulette.porter@causeofaction.org)>

**Subject:** RE: Request For Corrected Version of Answering Brief Filed by Respondent In the Matter of LabMD, Docket No. 9357

Secretary Clark,

Thank you for your message.

To be clear, you are asking for a submission via email to you of an edited version of Respondent's Corrected Answering Brief, filed at 11:17 p.m. on Friday, February 5, 2016, to include all of the corrections in the Errata Sheet submitted by Respondent on February 11, 2015. Is this correct? If so, do the changes need to be highlighted in some way?

And given that this document is a filing transmitted through your Office to the Commission, it should also be filed on the FTC E-Filing system so that it is part of the record, correct?

Please advise.

Thank you.

W/r

/s/

**Patrick J. Massari | Counsel | Cause of Action Institute  
1919 Pennsylvania Avenue NW, Suite # 650  
Washington, D.C. 20006**

**[Patrick.Massari@causeofaction.org](mailto:Patrick.Massari@causeofaction.org)**

**Direct: 202.499.4231 | Main: 202.499.4232**

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---

**From:** Clark, Donald S. [<mailto:DCLARK@ftc.gov>]

**Sent:** Monday, February 29, 2016 10:39 AM

**To:** Patrick Massari <[patrick.massari@causeofaction.org](mailto:patrick.massari@causeofaction.org)>; VanDruff, Laura Riposo <[lvandruff@ftc.gov](mailto:lvandruff@ftc.gov)>; Sheer, Alain <[ASHEER@ftc.gov](mailto:ASHEER@ftc.gov)>; Cox, Megan <[mcox1@ftc.gov](mailto:mcox1@ftc.gov)>; Mehm, Ryan <[rmehm@ftc.gov](mailto:rmehm@ftc.gov)>; Daniel Epstein

<[daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org)>; Catherine Chae <[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)>; Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>; Alfred J. Lechner, Jr. <[jlechner@causeofaction.org](mailto:jlechner@causeofaction.org)>

Cc: Tabor, April <[atabor@ftc.gov](mailto:atabor@ftc.gov)>; Frankle, Janice Podoll <[JFRANKLE@ftc.gov](mailto:JFRANKLE@ftc.gov)>; Mack, Julie <[JMACK@ftc.gov](mailto:JMACK@ftc.gov)>; Swenson, Robert <[rswenson@ftc.gov](mailto:rswenson@ftc.gov)>; Shannon Thrash <[shannon.thrash@causeofaction.org](mailto:shannon.thrash@causeofaction.org)>; Paulette Porter <[paulette.porter@causeofaction.org](mailto:paulette.porter@causeofaction.org)>

**Subject:** Request For Corrected Version of Answering Brief Filed by Respondent In the Matter of LabMD, Docket No. 9357

Patrick, I've been asked whether you can forward to me, for transmittal to the Commission, a corrected copy of your Answering Brief which incorporates all the corrections shown on the errata sheet that you filed. Please email the corrected copy to me by return email as soon as possible; thanks for your help.

Best regards,

Don Clark

---

**From:** Patrick Massari [<mailto:patrick.massari@causeofaction.org>]

**Sent:** Friday, February 26, 2016 1:14 PM

**To:** VanDruff, Laura Riposo; Clark, Donald S.; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Alfred J. Lechner, Jr.

**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash; Paulette Porter

**Subject:** RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

**Importance:** High

Secretary Clark,

Alfred J. Lechner, Jr. will present argument on behalf of Respondent.

Thank you.

W/r

/s/

**Patrick J. Massari | Counsel | Cause of Action Institute**

**1919 Pennsylvania Avenue NW, Suite # 650**

**Washington, D.C. 20006**

**[Patrick.Massari@causeofaction.org](mailto:Patrick.Massari@causeofaction.org)**

**Direct: 202.499.4231 | Main: 202.499.4232**

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---

**From:** VanDruff, Laura Riposo [<mailto:lvandruff@ftc.gov>]

**Sent:** Thursday, February 25, 2016 12:48 PM

**To:** Clark, Donald S. <[DCLARK@ftc.gov](mailto:DCLARK@ftc.gov)>; Sheer, Alain <[ASHEER@ftc.gov](mailto:ASHEER@ftc.gov)>; Cox, Megan <[mcox1@ftc.gov](mailto:mcox1@ftc.gov)>; Mehm, Ryan <[rmehm@ftc.gov](mailto:rmehm@ftc.gov)>; Daniel Epstein <[daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org)>; Catherine Chae <[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)>; Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>; Patrick Massari <[patrick.massari@causeofaction.org](mailto:patrick.massari@causeofaction.org)>

**Cc:** Tabor, April <[atabor@ftc.gov](mailto:atabor@ftc.gov)>; Frankle, Janice Podoll <[JFRANKLE@ftc.gov](mailto:JFRANKLE@ftc.gov)>; Mack, Julie <[JMACK@ftc.gov](mailto:JMACK@ftc.gov)>; Swenson, Robert <[rswenson@ftc.gov](mailto:rswenson@ftc.gov)>

**Subject:** RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

Good afternoon, Secretary Clark.

I will be presenting the argument for Complaint Counsel.

Best regards,

Laura

---

**From:** Clark, Donald S.

**Sent:** Wednesday, February 24, 2016 2:47 PM

**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'

**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert

**Subject:** Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

Everyone, just a reminder that the Order Scheduling Oral Argument at the following URL:

<https://www.ftc.gov/system/files/documents/cases/160119labmdorder.pdf> --

provides:

If either side wishes to provide the Commission with a short written or electronic compilation of material to facilitate its presentation during the Oral Argument, any

such compilation may contain only public information that is already in the record of the proceeding, and copies must be filed with the Secretary of the Commission and provided to opposing counsel **no later than Tuesday, March 1, 2016, at 5:00 p.m.**

In addition, please let me know as soon as possible, by return email message, who will be presenting the argument for each side. Thanks very much.

Best regards,

Don Clark

---

**From:** Clark, Donald S.

**Sent:** Friday, January 15, 2016 5:28 PM

**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'

**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie

**Subject:** Commission Order Issued Today In the Matter of LabMD, Docket No. 9357

Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

<https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter>

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary  
Federal Trade Commission Washington, D.C. 20580  
Telephone: (202) 326-2514; FAX: (202) 326-2496

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**Patrick Massari**

---

**From:** Patrick Massari  
**Sent:** Monday, February 29, 2016 8:53 PM  
**To:** 'secretary@ftc.gov'  
**Cc:** Alfred J. Lechner, Jr.; Patrick Massari; Daniel Epstein; 'asheer@ftc.gov'; VanDruff, Laura Riposo; Cox, Megan; 'jkrebs@ftc.gov'; Brown, Jarad; Mehm, Ryan; Shannon Thrash; Paulette Porter  
**Subject:** RE: In the Matter of LabMD, Inc., a corporation No. 9357: Respondent LabMD, Inc.'s Consolidated Corrected Answering Brief  
**Attachments:** LabMD\_\_Consolidated\_\_Corrected\_\_Answering\_\_Brief.pdf  
**Importance:** High

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	'secretary@ftc.gov'	
	Alfred J. Lechner, Jr.	Delivered: 2/29/2016 8:53 PM
	Patrick Massari	Delivered: 2/29/2016 8:53 PM
	Daniel Epstein	Delivered: 2/29/2016 8:53 PM
	'asheer@ftc.gov'	
	VanDruff, Laura Riposo	
	Cox, Megan	
	'jkrebs@ftc.gov'	
	Brown, Jarad	
	Mehm, Ryan	
	Shannon Thrash	Delivered: 2/29/2016 8:53 PM
	Paulette Porter	Delivered: 2/29/2016 8:53 PM

Dear Secretary Clark,

Attached please find a courtesy copy of Respondent LabMD, Inc.'s Consolidated Corrected Answering Brief which was filed at your request on Monday, February 29, 2016 using the Federal Trade Commission E-Filing System.

Thank you.

W/r

/s/

**Patrick J. Massari | Counsel | Cause of Action Institute  
1919 Pennsylvania Avenue NW, Suite # 650**

Washington, D.C. 20006

[Patrick.Massari@causeofaction.org](mailto:Patrick.Massari@causeofaction.org)

Direct: 202.499.4231 | Main: 202.499.4232

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**Patrick Massari**

---

**From:** Clark, Donald S. <DCLARK@ftc.gov>  
**Sent:** Thursday, March 03, 2016 2:23 PM  
**To:** Patrick Massari; VanDruff, Laura Riposo; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Alfred J. Lechner, Jr.  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash; Paulette Porter  
**Subject:** RE: Request Regarding March 1st Filing, and Arrangements For the Oral Argument Next Tuesday

Patrick, thanks for your email message, in which you have confirmed that the compilation you filed on behalf of Respondent contains only public information already in the record of this proceeding. With respect to the question you raise, I should note that if Complaint Counsel had filed a compilation, I would have asked them to provide the same confirmation. More generally, I should note that the Office of the Secretary routinely asks parties in Part 3 matters to confirm that the information contained in filings is public in all respects and part of the record. We request this confirmation where, as here, there is ambiguity as to what portion of a filing a citation is referencing, or where the citation does not reference an exhibit on the public record. As the Office does not cite check filings, we seek this confirmation as an added precaution, so that counsel for the filing party has an opportunity to check and ensure that no confidential information is inadvertently posted to our public website at FTC.GOV. After receiving your email, and re-reviewing your filing, we now understand that the “OGR Report – released May 2015” that you reference beginning in Slide 5 and throughout your compilation is, in fact, RX 644, the January 2015 Report to which you cite in Slide 6. We also now understand that the citations to the OGR Report found on Slides 20, 21 and 24 refer to the emails themselves, and not the statements immediately above the citation.

Everyone, as you know, the Oral Argument will be held in Room 532-H of the Headquarters Building next Tuesday, beginning at 1 pm, and I wanted to let you know that both sides will be able to check the computer and other facilities in Room 532-H either Monday afternoon (time to be determined) or Tuesday morning. Please let me know if you would like to check the room at either of those times. Thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary  
Federal Trade Commission Washington, D.C. 20580  
Telephone: (202) 326-2514; FAX: (202) 326-2496

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---

**From:** Patrick Massari [mailto:patrick.massari@causeofaction.org]

**Sent:** Thursday, March 03, 2016 9:11 AM

**To:** Clark, Donald S.; VanDruff, Laura Riposo; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Alfred J. Lechner, Jr.

**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash; Paulette Porter

**Subject:** RE: Request Regarding March 1st Filing

**Importance:** High

Secretary Clark,

Thank you for your message. However, Counsel for LabMD is unaware of any instance in this matter where the Secretary's Office formally questioned a filing by Complaint Counsel regarding adherence to an order. This appears to be a singular request for LabMD.

Has an objection been raised to our filing? If so, it should be entered on the Record. If not (and I have not seen any such objection from Complaint Counsel), why is Respondent being singled out here? Please advise.

This case has gone on for 6 years — there really is nothing new under the sun. The slides all contain information referenced in the Initial Decision (in whole or in part), with the possible exception of Associate Director Mary Engle's July 24, 2007 statement before the House Oversight Committee, referenced in Respondent's post-trial briefing. Complaint Counsel is or should be well-aware of all the information in the slides. The topic headers are part of Respondent's Closing Argument and support positions advanced by LabMD in this litigation.

So that is where we are. Please advise as requested.

Thank you.

W/r

/s/

**Patrick J. Massari | Counsel | Cause of Action Institute  
1919 Pennsylvania Avenue NW, Suite # 650**

**Washington, D.C. 20006**

**Patrick.Massari@causeofaction.org**

**Direct: 202.499.4231 | Main: 202.499.4232**

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---

**From:** Clark, Donald S. [<mailto:DCLARK@ftc.gov>]

**Sent:** Wednesday, March 02, 2016 4:39 PM

**To:** Patrick Massari <[patrick.massari@causeofaction.org](mailto:patrick.massari@causeofaction.org)>; VanDruff, Laura Riposo <[lvandruff@ftc.gov](mailto:lvandruff@ftc.gov)>; Sheer, Alain <[ASHEER@ftc.gov](mailto:ASHEER@ftc.gov)>; Cox, Megan <[mcox1@ftc.gov](mailto:mcox1@ftc.gov)>; Mehm, Ryan <[rmehm@ftc.gov](mailto:rmehm@ftc.gov)>; Daniel Epstein <[daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org)>; Catherine Chae <[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)>; Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>; Alfred J. Lechner, Jr. <[jlechner@causeofaction.org](mailto:jlechner@causeofaction.org)>

**Cc:** Tabor, April <[atabor@ftc.gov](mailto:atabor@ftc.gov)>; Frankle, Janice Podoll <[JFRANKLE@ftc.gov](mailto:JFRANKLE@ftc.gov)>; Mack, Julie <[JMACK@ftc.gov](mailto:JMACK@ftc.gov)>; Swenson, Robert <[rswenson@ftc.gov](mailto:rswenson@ftc.gov)>; Shannon Thrash <[shannon.thrash@causeofaction.org](mailto:shannon.thrash@causeofaction.org)>; Paulette Porter <[paulette.porter@causeofaction.org](mailto:paulette.porter@causeofaction.org)>

**Subject:** Request Regarding March 1st Filing

Counsel for the Complaint and Counsel for Respondent, thanks for forwarding the names of the persons who will be presenting arguments at the Oral Argument before the Commission next Tuesday, March 8th, beginning at 1 pm in Room 532-H of the Commission Headquarters Building. Counsel for the Respondent, we yesterday received your filing entitled "Respondent's Slides Re: Oral Argument Before the Commission," and so I would appreciate your confirming, by return email, that the filing "contain[s] only public information that is already in the record of the proceeding, . . ." as provided by the Commission Order Scheduling Oral Argument, at <https://www.ftc.gov/system/files/documents/cases/160119labmdorder.pdf>. Thank you.

Don Clark

Donald S. Clark, Esq., Secretary  
Federal Trade Commission Washington, D.C. 20580  
Telephone: (202) 326-2514; FAX: (202) 326-2496

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please notify the sender immediately by telephone, and destroy the original message and any copies of it. Thank you.

---

**From:** Patrick Massari [<mailto:patrick.massari@causeofaction.org>]  
**Sent:** Friday, February 26, 2016 1:14 PM  
**To:** VanDruff, Laura Riposo; Clark, Donald S.; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Alfred J. Lechner, Jr.  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash; Paulette Porter  
**Subject:** RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument  
**Importance:** High

Secretary Clark,

Alfred J. Lechner, Jr. will present argument on behalf of Respondent.

Thank you.

W/r

/s/

**Patrick J. Massari | Counsel | Cause of Action Institute**  
**1919 Pennsylvania Avenue NW, Suite # 650**  
**Washington, D.C. 20006**

**[Patrick.Massari@causeofaction.org](mailto:Patrick.Massari@causeofaction.org)**  
**Direct: [202.499.4231](tel:202.499.4231) | Main: [202.499.4232](tel:202.499.4232)**

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---

**From:** VanDruff, Laura Riposo [<mailto:lvandruff@ftc.gov>]

**Sent:** Thursday, February 25, 2016 12:48 PM

**To:** Clark, Donald S. <[DCLARK@ftc.gov](mailto:DCLARK@ftc.gov)>; Sheer, Alain <[ASHEER@ftc.gov](mailto:ASHEER@ftc.gov)>; Cox, Megan <[mcox1@ftc.gov](mailto:mcox1@ftc.gov)>; Mehm, Ryan <[rmehm@ftc.gov](mailto:rmehm@ftc.gov)>; Daniel Epstein <[daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org)>; Catherine Chae <[catherine.chae@causeofaction.org](mailto:catherine.chae@causeofaction.org)>; Brown, Jarad <[jbrown4@ftc.gov](mailto:jbrown4@ftc.gov)>; Patrick Massari <[patrick.massari@causeofaction.org](mailto:patrick.massari@causeofaction.org)>

**Cc:** Tabor, April <[atabor@ftc.gov](mailto:atabor@ftc.gov)>; Frankle, Janice Podoll <[JFRANKLE@ftc.gov](mailto:JFRANKLE@ftc.gov)>; Mack, Julie <[JMACK@ftc.gov](mailto:JMACK@ftc.gov)>; Swenson, Robert <[rswenson@ftc.gov](mailto:rswenson@ftc.gov)>

**Subject:** RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

Good afternoon, Secretary Clark.

I will be presenting the argument for Complaint Counsel.

Best regards,

Laura

---

**From:** Clark, Donald S.

**Sent:** Wednesday, February 24, 2016 2:47 PM

**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'

**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert

**Subject:** Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

Everyone, just a reminder that the Order Scheduling Oral Argument at the following URL:

<https://www.ftc.gov/system/files/documents/cases/160119labmdorder.pdf> --

provides:

If either side wishes to provide the Commission with a short written or electronic compilation of material to facilitate its presentation during the Oral Argument, any such compilation may contain only public information that is already in the record of the proceeding, and copies must be filed with the Secretary of the Commission and provided to opposing counsel **no later than Tuesday, March 1, 2016, at 5:00 p.m.**

In addition, please let me know as soon as possible, by return email message, who will be presenting the argument for each side. Thanks very much.

Best regards,

Don Clark

---

**From:** Clark, Donald S.

**Sent:** Friday, January 15, 2016 5:28 PM

**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'

**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie

**Subject:** Commission Order Issued Today In the Matter of LabMD, Docket No. 9357

Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

<https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter>

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary

Federal Trade Commission Washington, D.C. 20580

Telephone: (202) 326-2514; FAX: (202) 326-2496

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**Patrick Massari**

---

**From:** Patrick Massari  
**Sent:** Thursday, March 03, 2016 9:10 AM  
**To:** 'Clark, Donald S.'; VanDruff, Laura Riposo; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Alfred J. Lechner, Jr.  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash; Paulette Porter  
**Subject:** RE: Request Regarding March 1st Filing

**Importance:** High

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	'Clark, Donald S.'	
	VanDruff, Laura Riposo	
	Sheer, Alain	
	Cox, Megan	
	Mehm, Ryan	
	Daniel Epstein	Delivered: 3/3/2016 9:11 AM
	Catherine Chae	Delivered: 3/3/2016 9:11 AM
	Brown, Jarad	
	Alfred J. Lechner, Jr.	Delivered: 3/3/2016 9:11 AM
	Tabor, April	
	Frankle, Janice Podoll	
	Mack, Julie	
	Swenson, Robert	
	Shannon Thrash	Delivered: 3/3/2016 9:11 AM
	Paulette Porter	Delivered: 3/3/2016 9:11 AM

Secretary Clark,

Thank you for your message. However, Counsel for LabMD is unaware of any instance in this matter where the Secretary's Office formally questioned a filing by Complaint Counsel regarding adherence to an order. This appears to be a singular request for LabMD.

Has an objection been raised to our filing? If so, it should be entered on the Record. If not (and I have not seen any such objection from Complaint Counsel), why is Respondent being singled out here? Please advise.

This case has gone on for 6 years — there really is nothing new under the sun. The slides all contain information referenced in the Initial Decision (in whole or in part), with the possible exception of Associate Director Mary Engle's July 24, 2007 statement before the House

Oversight Committee, referenced in Respondent's post-trial briefing. Complaint Counsel is or should be well-aware of all the information in the slides. The topic headers are part of Respondent's Closing Argument and support positions advanced by LabMD in this litigation.

So that is where we are. Please advise as requested.

Thank you.

W/r

/s/

**Patrick J. Massari | Counsel | Cause of Action Institute**  
**1919 Pennsylvania Avenue NW, Suite # 650**  
**Washington, D.C. 20006**

**[Patrick.Massari@causeofaction.org](mailto:Patrick.Massari@causeofaction.org)**

**Direct: [202.499.4231](tel:202.499.4231) | Main: [202.499.4232](tel:202.499.4232)**

**Admitted in Maryland and the District of Columbia**

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---

**From:** Clark, Donald S. [mailto:DCLARK@ftc.gov]

**Sent:** Wednesday, March 02, 2016 4:39 PM

**To:** Patrick Massari <patrick.massari@causeofaction.org>; VanDruff, Laura Riposo <lvanDruff@ftc.gov>; Sheer, Alain <ASHEER@ftc.gov>; Cox, Megan <mcox1@ftc.gov>; Mehm, Ryan <rmehm@ftc.gov>; Daniel Epstein <daniel.epstein@causeofaction.org>; Catherine Chae <catherine.chae@causeofaction.org>; Brown, Jarad <jbrown4@ftc.gov>; Alfred J. Lechner, Jr. <jlechner@causeofaction.org>

**Cc:** Tabor, April <atabor@ftc.gov>; Frankle, Janice Podoll <JFRANKLE@ftc.gov>; Mack, Julie <JMACK@ftc.gov>; Swenson, Robert <rswenson@ftc.gov>; Shannon Thrash <shannon.thrash@causeofaction.org>; Paulette Porter <paulette.porter@causeofaction.org>

**Subject:** Request Regarding March 1st Filing

Counsel for the Complaint and Counsel for Respondent, thanks for forwarding the names of the persons who will be presenting arguments at the Oral Argument before the Commission

next Tuesday, March 8th, beginning at 1 pm in Room 532-H of the Commission Headquarters Building. Counsel for the Respondent, we yesterday received your filing entitled "Respondent's Slides Re: Oral Argument Before the Commission," and so I would appreciate your confirming, by return email, that the filing "contain[s] only public information that is already in the record of the proceeding, . . ." as provided by the Commission Order Scheduling Oral Argument, at <https://www.ftc.gov/system/files/documents/cases/160119labmdorder.pdf>. Thank you.

Don Clark

Donald S. Clark, Esq., Secretary  
Federal Trade Commission Washington, D.C. 20580  
Telephone: (202) 326-2514; FAX: (202) 326-2496

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---

**From:** Patrick Massari [<mailto:patrick.massari@causeofaction.org>]  
**Sent:** Friday, February 26, 2016 1:14 PM  
**To:** VanDruff, Laura Riposo; Clark, Donald S.; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Alfred J. Lechner, Jr.  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash; Paulette Porter  
**Subject:** RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument  
**Importance:** High

Secretary Clark,

Alfred J. Lechner, Jr. will present argument on behalf of Respondent.

Thank you.

W/r

/s/

**Patrick J. Massari | Counsel | Cause of Action Institute**  
**1919 Pennsylvania Avenue NW, Suite # 650**  
**Washington, D.C. 20006**  
**[Patrick.Massari@causeofaction.org](mailto:Patrick.Massari@causeofaction.org)**  
**Direct: 202.499.4231 | Main: 202.499.4232**  
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**Cc:** Tabor, April <[atabor@ftc.gov](mailto:atabor@ftc.gov)>; Frankle, Janice Podoll <[JFRANKLE@ftc.gov](mailto:JFRANKLE@ftc.gov)>; Mack, Julie <[JMACK@ftc.gov](mailto:JMACK@ftc.gov)>; Swenson, Robert <[rswenson@ftc.gov](mailto:rswenson@ftc.gov)>

**Subject:** RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

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Best regards,

Laura

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**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert

**Subject:** Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

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In addition, please let me know as soon as possible, by return email message, who will be presenting the argument for each side. Thanks very much.

Best regards,

Don Clark

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**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie  
**Subject:** Commission Order Issued Today In the Matter of LabMD, Docket No. 9357

Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

<https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter>

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary  
Federal Trade Commission Washington, D.C. 20580  
Telephone: (202) 326-2514; FAX: (202) 326-2496

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**CERTIFICATE OF SERVICE**

**I hereby certify** that on March 3, 2016, I caused to be filed the foregoing document electronically through the Office of the Secretary's FTC E-filing system, which will send an electronic notification of such filing to the Office of the Secretary:

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

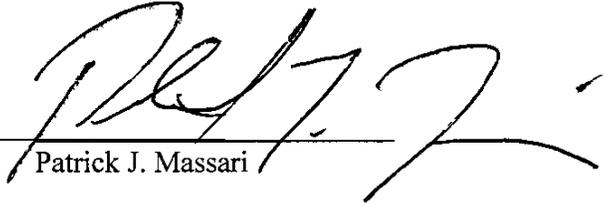
**I also certify** that I delivered via electronic mail a copy of the foregoing document to:

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

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

Alain Sheer, Esq.  
Laura Riposo Van Druff, Esq.  
Megan Cox, Esq.  
Ryan Mehm, Esq.  
John Krebs, Esq.  
Jarad Brown, Esq.  
Division of Privacy and Identity Protection  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Room CC-8232  
Washington, DC 20580

Dated: March 3, 2016

  
Patrick J. Massari

**CERTIFICATE OF 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.

Dated: March 3, 2016

  
Patrick J. Massari

Notice of Electronic Service

I hereby certify that on March 03, 2016, I filed an electronic copy of the foregoing RESPONDENT LABMD, INC.'s RECORD FILING OF EMAIL TRANSMISSIONS REGARDING COMPLAINT COUNSEL'S ADMINISTRATIVE APPEAL BETWEEN COUNSEL FOR THE PARTIES AND FEDERAL TRADE COMMISSION SECRETARY DONALD S. CLARK, 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 March 03, 2016, I served via E-Service an electronic copy of the foregoing RESPONDENT LABMD, INC.'s RECORD FILING OF EMAIL TRANSMISSIONS REGARDING COMPLAINT COUNSEL'S ADMINISTRATIVE APPEAL BETWEEN COUNSEL FOR THE PARTIES AND FEDERAL TRADE COMMISSION SECRETARY DONALD S. CLARK, upon:

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

Hallee Morgan  
Cause of Action  
cmccoyhunter@ftc.gov  
Respondent

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

Kent Huntington  
Counsel  
Cause of Action  
cmccoyhunter@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

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  
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rmehm@ftc.gov  
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Erica Marshall  
Counsel  
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Respondent

Alfred Lechner  
President & CEO  
Cause of Action Institute  
jlechner@causeofaction.org  
Respondent

Patrick Massari  
Attorney