

ORIGINAL

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



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

DOCKET NO. 9357
PUBLIC
ORAL ARGUMENT
REQUESTED

RESPONDENT LABMD, INC.'S MOTION FOR A PROTECTIVE ORDER

Pursuant to Federal Trade Commission Rule 3.31(d), 16 C.F.R. § 3.31(d), Respondent LabMD, Inc. hereby moves the Administrative Law Judge for a protective order. This motion is supported by the attached exhibits and accompanying memorandum. Respondent respectfully requests a hearing on all issues raised in this motion.

Respectfully submitted,

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Practice limited to cases in federal court and
administrative proceedings before federal agencies.

Dated: November 5, 2013

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

In the Matter of	)	DOCKET NO. 9357
)	
	)	PUBLIC
LabMD, Inc.,)	
a corporation.	)	ORAL ARGUMENT
	)	REQUESTED

**RESPONDENT LABMD, INC.'S MEMORANDUM IN SUPPORT OF MOTION FOR A
PROTECTIVE ORDER**

Petitioner LabMD, Inc. ("LabMD") hereby moves the Administrative Law Judge, under 16 C.F.R. § 3.31(d), to issue a protective order limiting or barring the more than twenty (20) third-party subpoenas for testimony and more than fifteen (15) third-party subpoenas for documents issued to LabMD's current and former employees, clients, and IT service providers.¹

FACTS

LabMD provides doctors with cancer-detection services. Its patient-information data-security practices are regulated by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"). LabMD has not violated these laws.

¹ This motion concerns the subpoenas issued to Allen Truett, 21st Century Oncology, Alison Simmons, Automated PC Technologies, David Lapides, Cyprus Communications, Eric Knox, Erick Garcia, Jeff Martin, Forensic Strategy Services, Karalyn Garrett, Josie Maldonado, John Boyle, Karina Jestes, Lawrence Hudson, Jeremy Dooley, Managed Data Solutions, Matt Bureau, MasterCard Worldwide, Patrick Howard, ProviDyn, Robert Hyer, Rosalind Woodson, Sacramento Police Dept., Sandy Springs GA Police Depart., Scott Moulton, Trend Micro, Inc., US Bank Nat'l Ass'n, Chris Maire, Visa Inc., Michael Daugherty, and Southeast Urology Network. The subpoenas are attached as Exhibit 1. The FTC has *already* deposed Mr. Daugherty and Mr. Boyle.

FTC notified LabMD on January 19, 2010, of a “non-public inquiry into LabMD, Inc.’s, compliance with federal law governing information security” because an internet security company called Tiversa Holding Corp. (“Tiversa”) had illicitly taken a LabMD patient information file (“PI file”) and given it to FTC after LabMD had turned down Tiversa’s new business pitch. FTC did not specify the regulations LabMD violated because FTC had not promulgated any.

On February 24, 2010, LabMD produced over 5,000 pages of documents. More were sent on June 4 and again on July 16. On July 23, LabMD’s principals were examined by the FTC counsel. On August 30, LabMD produced another 925 pages. On February 23, 2011, the FTC demanded more, and LabMD complied on May 16 and May 31. On December 11, the FTC issued formal civil investigative demands (the “CIDs”). LabMD petitioned to quash. Commissioner Brill denied this and LabMD appealed. Three Commissioners affirmed Commissioner Brill’s ruling, but Commissioner Rosch dissented, saying:

Tiversa...has a financial interest in intentionally exposing and capturing sensitive files on computer networks,...Tiversa used its robust, patented peer-to-peer monitoring technology to retrieve [LabMD’s file], and then repeatedly solicited LabMD...long before Commission staff contacted LabMD. In my view...the Commission should avoid even the appearance of bias or impropriety by not relying on such evidence or information in this investigation.

FTC petitioned for an order in the U.S. District Court for the Northern District of Georgia. The Court said that “there is significant merit to...[LabMD’s] argument that Section 5 does not justify an investigation into data security practices and consumer privacy issues....”²

² *FTC v. LabMD*, Case No. 1:12-cv-3005-WSD, at *6-7 (N.D. Ga. Nov. 26, 2012).

But it upheld the CIDs, leaving LabMD to endure two more investigative hearings,³ producing yet more documents.

On August 28, 2013, FTC issued a Complaint against LabMD alleging that it “failed to provide reasonable and appropriate security for personal information on its computer networks.” FTC did not name an individual complainant and has not discovered anyone harmed by this alleged failure. Despite LabMD’s admitted compliance with HIPPA and HITECH and the massive discovery already undertaken, FTC is now using discovery tactics that would not be tolerated by any Article III court to ruin LabMD’s reputation and business.⁴

ARGUMENT

The third-party subpoenas wrongfully overwhelm, harass, and embarrass LabMD. While the FTC may obtain “discovery to the extent that it may be reasonably expected to yield information relevant to the allegations in the complaint, to the proposed relief, or to the defenses of any respondent”⁵ it is prohibited from abusing this power.⁶ But this is precisely what FTC has done, for the third-party subpoenas are filled with irrelevant, overly-broad, and oppressive requests and demands for duplicative information that is more easily obtained from LabMD itself.

FTC is retaliating against LabMD for its CEO’s criticism of the FTC in his recent book, *The Devil Inside the Beltway*. Nothing else explains why the FTC would issue more than thirty-five (35) subpoenas at issue here. Instead of standing on the strength (or lack thereof) of its

³ FTC seeks to depose both witnesses again. *Cf.* FRCP 30(a)(2)(A)(ii)(leave of court required).

⁴ LabMD’s counsel suggested the parties agree to ten depositions per side, tracking FRCP 30(a)(2)(A). FTC refused, instead noticing twenty depositions across the country.

⁵ 16 C.F.R. § 3.31(c)(1); *see FTC v. Anderson*, 631 F.2d 741, 745 (D.C. Cir. 1979).

⁶ 16 C.F.R. § 3.31(d).

Complaint, the FTC seeks to crush LabMD by using its vast resources to harass through abusive discovery tactics.⁷

1. The third-party subpoenas are substantially unnecessary and irrelevant.

Discovery must “reasonably be expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.”⁸ Third-party subpoenas must have a stronger showing of relevance than party discovery,⁹ for courts attach greater significance to sweeping nonparty discovery.¹⁰ The subpoenas must seek “generally relevant” information and relevancy is determined by laying the subpoena alongside the pleadings.¹¹

Because no one was “injured” by Tiversa taking the PI file (except for LabMD), the Complaint was issued without a complaining witness.¹² Essentially, it alleges that LabMD “failed to provide reasonable and appropriate security for personal information on its computer networks” because Tiversa took the PI file.¹³ It says LabMD engaged in practices “that, *taken together*, failed to provide *reasonable and appropriate* security for personal information on its computer networks”; its “information security program” was not “*comprehensive*” and it did not use “*readily available measures*” for e-mail security; it did not “use *readily available* measures to identify *commonly known* or *reasonably foreseeable* security risks” and “could not

⁷ See FRCP 16, 26(b)(2),30(a)(2),40(c).

⁸ 16 C.F.R. § 3.31(c)(1); see *Anderson*, 631 F.2d at 745.

⁹ *Echostar Communications Corp. v. News Corp.*, 180 F.R.D. 391, 394 (D. Colo. 1998); *Bio-Vita, Ltd. v. Biopure Corp.*, 138 F.R.D. 13, 17 (D. Mass. 1991)(usual relevance standard does not apply to nonparties).

¹⁰ See, e.g., *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 48-49 (S.D.N.Y. 1996)(nonparty witness entitled to consideration of expense and inconvenience).

¹¹ *In the Matter of Rambus Incorporated*, 2002 FTC LEXIS 90, *4-5 (Nov. 18, 2002)(quoting *In re Kaiser Aluminum & Chemical Corp.*, 1976 FTC LEXIS 68, at *4 (Nov. 12, 1976)).

¹² The Complaint is attached as Exhibit 2.

¹³ *Id.* at ¶¶ 10 (emphasis added).

adequately assess” data-security risks; it “did not use *adequate* measures,” “did not *adequately* train employees,” and “did not employ *readily available measures*” relating to data-security; and it “could have corrected its [alleged] security failures at *relatively low* cost using *readily available* security measures.”¹⁴

The Complaint does not define what is “adequate,” “readily available,” “reasonably foreseeable,” “commonly known,” or “relatively low cost.” It does not specify the regulations LabMD violated or what of LabMD’s alleged failures, “taken together,” violate Section 5. It does not allege that LabMD’s claimed “security failures” caused any so-called “consumers” to suffer economic injury.¹⁵

The Complaint says that LabMD’s “Day Sheets and a small number of copied checks” were found by the Sacramento Police “in the possession of individuals who pleaded no contest” to identity theft charges.¹⁶ But it does not allege this caused LabMD’s “consumers” injury, speculating only that this “may indicate” such theft.¹⁷

FTC’s irrelevant third-party discovery falls into three categories:

1. Requests about the Sacramento incident;
2. Requests that are overly broad in time or as to the Complaint’s allegations;
3. Requests regarding contracts.

The Sacramento incident involved a criminal case where Erick Garcia and Josie Maldonado were found with LabMD patient information “Day Sheets.” They pled “no contest” to the unauthorized use of personal identifying information. The Day Sheets were available only

¹⁴ *Id.* at ¶¶ 10-11 (emphasis added).

¹⁵ *See id.* ¶11, ¶¶17-20.

¹⁶ *Id.* at ¶21.

¹⁷ *Id.*

in hard copy, not on LabMD's computer network.¹⁸ Discovery of the Sacramento incident is not "strongly relevant" to LabMD's computer network security and all subpoenas with respect thereto, including Erick Garcia, Karalyn Garnett, Josie Maldonado, and the Sacramento Police Department, should be barred.

Furthermore, all subpoenas requesting documents outside of the relevant time period of 2005-2008 are overly broad. FTC cannot show that documents outside this timeframe are relevant, and certainly not strongly relevant, to appropriate computer network security. Therefore, they should be barred.

FTC's request for "all communications between you and LabMD" is not reasonably limited to the Complaint's allegations and should be barred.

FTC seeks discovery of technology and software that LabMD used and currently uses to secure its computer network. However, the parties do not dispute how and when Tiversa took the PI file, as Commissioner Rosch explained; thus, LabMD's technology and software, other than that in place at the time of the events in Complaint paragraphs 17-20, is irrelevant and discovery with respect thereto should be barred.

FTC requests information regarding IT contract services. However, the agreements LabMD had or has with its IT service providers will not shed any new light on the Complaint's allegations. Thus, all such requests should also be barred.

2. The discovery is duplicative.

Third-party discovery may not be "duplicative"¹⁹ and shall be limited where the "burden and expense of the proposed discovery on a party or third party outweighs its likely benefit."²⁰

¹⁸ See Affidavit of Michael Daugherty, attached as Exhibit 3.

¹⁹ 16 C.F.R. § 3.31(c)(2)(i).

²⁰ 16 C.F.R. § 3.31(c)(2)(iii).

Here, the documents and depositions sought by the FTC are duplicative, and the burden and expense outweighs the likely benefit, so a protective order is warranted.

The FTC has requested thousands of documents from dozens of parties, many of which have already been provided by LabMD.²¹ The requests listed below are wrongly duplicative and need not be reproduced.²²

1. Documents sufficient to show version(s) and capabilities of any software the Company sold, provided, installed, updated, or maintained on LabMD's network, including, but not limited to operating system software, data backup software, database software, billing software, or antivirus software;
2. Documents sufficient to show how the software sold, provided, installed, updated, or maintained for all software the Company sold, provided, installed, or updated;
3. Documents sufficient to show the settings the Company configured, maintained, updated, or deployed on LabMD's network was configured, including setting provided by the Company at the time the software was sold, provided, installed, updated, or maintained for LabMD;
4. Documents sufficient to show any hardware the Company sold, provided, or installed for LabMD, including, but not limited to servers, workstation computers, firewalls, routers, or switches;
5. Identify by name and job title all Person with authority from LABMD to access Personal Information regarding Consumers, including, but not limited to, Persons who perform tasks related to billing by LABMD for services provided;
6. For each Person identified as having access to Personal Information, state the types of Personal Information that the Person had authority to access;
7. All forensic reports or analysis relating to any security incident.

16 C.F.R. § 3.31(c)(2)(iii) prohibits discovery when the "burden and expense of the proposed discovery on a party or third party outweigh its likely benefit." Because there is no benefit to FTC receiving information it already possesses, almost any burden would be too high,

²¹ Attached as Exhibit 4.

²² See *Act, Inc. v. Sylvan Learning Sys., Inc.*, 1999 U.S. Dist. LEXIS 7055 (E.D. Pa. May 14, 1999)(no substantial need for non-party's market information, where that information could be obtained from its own internal research).

especially as a third-party's burden is weighed more heavily.²³ LabMD has already spent hundreds of hours compiling and producing the required documents. The time and resources already expended by LabMD demonstrates the burden that FTC seeks to impose.

FTC cannot justify demanding nonparties produce documents previously produced by LabMD. The allegations of the Complaint surely do not justify this broad inquiry. Therefore, the requested protective order should be granted and the subpoenas barred.

3. The information is more easily obtainable from LabMD.

Under Rule of Practice 3.31(c), discovery "shall be limited" if it is "obtainable from some other source that is more convenient, less burdensome or less expensive."²⁴ Subpoenas should not be enforced where the information is as easily obtainable from a party to the action as a third party. FTC must demonstrate that the requested information can only be uniquely satisfied by the subpoenaed party to justify third-party production.²⁵

FTC has requested:

1. All communications between the third party and LabMD;
2. All contracts between the third party and LabMD;
3. All documents related to compensation received by the third party for services provided to LabMD;
4. Communications between the third party and LabMD regarding any security incident;
5. Identify each inquiry or investigation by a state or federal agency into LabMD's security practices;

²³ *Echostar Communic'ns Corp. v. News Corp.*, 180 F.R.D. 391, 394 (D. Colo. 1998)(citations omitted).

²⁴ 16 C.F.R. § 3.31(c); see also *In re James Carpets, Inc.*, 81 F.T.C. 1062 (1972)(denying ALJ's recommendation that the FTC enforce subpoena).

²⁵ See *Schering Corp. v. Amgen, Inc.*, 1998 U.S. Dist. LEXIS 13452, at *8-9 (Aug. 4, 1998).

6. State the names of all Consumers who requested credit monitoring services after receiving a Communication from LabMD related to any Security Incident; and
7. State, as a percentage of the total number of Consumers whose samples LabMD has tested, the proportion of Consumers who:
 - a. are uninsured,
 - b. have commercial health insurance,
 - c. have Medicare, and
 - d. have Medicaid.

FTC has not shown such information cannot be obtained from other sources, including LabMD. Furthermore, requests 1, 2, 3, 6, and 7 have nothing whatever to do with this case. The FTC has no need for this information in a patient-information data-security case, and so this request is made solely to punish LabMD's customers. The government's overreach must not stand.

4. The depositions sought by the FTC have limited benefit in comparison to the cost LabMD would expend to defend them, and are overall oppressive to LabMD.

In addition, FTC seeks to depose more than twenty (20) of LabMD's current and former employees, clients, and IT service providers. Not only is the testimony that FTC seeks duplicative of the information that it already has in its possession for reasons mentioned *supra*, but it is also duplicative of the documents simultaneously requested from these same third-parties. Furthermore, many of the depositions are noticed for varying locations across the country.²⁶ The expense that LabMD would expend in defending more than twenty depositions cross-country would be astronomical, and outweigh the sparse benefit, if any, that FTC would receive from the testimony. Thus, LabMD respectfully requests that the subpoenas for depositions also be barred.

²⁶ LabMD attempted to limit the number of depositions to 10 depositions each (the limit in federal court absent leave of court). *See* FRCP 30(a)(2)(A). FTC refused.

CONCLUSION

Petitioner respectfully requests a protective order to shield LabMD from FTC's oppressive tactics.

Respectfully submitted,



Reed D. Rubinstein

William A. Sherman, II

Dinsmore & Shohl, LLP

801 Pennsylvania Ave., NW Suite 610

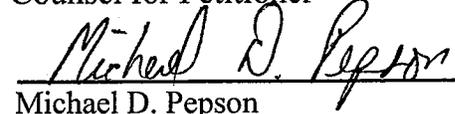
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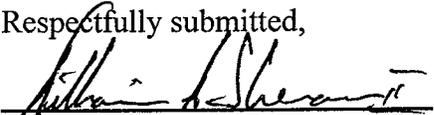
Practice limited to cases in federal court and administrative proceedings before federal agencies.

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

In the Matter of	)	DOCKET NO. 9357
)	
	)	PUBLIC
LabMD, Inc.,)	
a corporation.)	

STATEMENT PURSUANT TO SCHEDULING ORDER

Pursuant to the Additional Provisions set forth in paragraph 4 of the Scheduling Order, Counsel for the moving party, Respondent, LabMD, Inc. ("LabMD"), hereby certifies that counsel met and conferred with Complaint Counsel in a good-faith effort to resolve by agreement the issues set forth in LabMD's Motion for a Protective Order, but the parties were unable to reach agreement.

Respectfully submitted,

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Counsel for Respondent

Dated: November 5, 2013

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

In the Matter of	)	)	DOCKET NO. 9357
LabMD, Inc.,	)	)	PUBLIC
a corporation.))	

[PROPOSED] ORDER GRANTING RESPONDENT LABMD, INC.’S MOTION FOR A PROTECTIVE ORDER

This matter came before the Administrative Law Judge on November 5, 2013, upon a Motion for a Protective Order (“Motion”) filed by Respondent LabMD, Inc. (“LabMD”) pursuant to Commission Rule 3.31(d), 16 C.F.R. §3.31(d), for an Order protecting LabMD from Complaint Counsel’ discovery requests. Having considered LabMD’s Motion and all supporting and opposition papers, and good cause appearing, it is hereby ORDERED that LabMD’s Motion is granted and a protective order is issued barring all third-party discovery requests.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2013, I hand-delivered the foregoing document to:

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

I also certify that I delivered via electronic mail and first-class 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 and first-class mail a copy of the foregoing document to:

Alain Sheer, Esq.
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Mail Stop NJ-8122
Washington, D.C. 20580

I certify that the copy hand-delivered 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: November 5, 2013

By: 
Catherine Chae

EXHIBIT 1



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

September 30, 2013

VIA FEDERAL EXPRESS

Tiversa Holding Corporation
606 Liberty Avenue
Pittsburgh, PA 15222

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

To Whom it May Concern:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena to Tiversa Holding Company, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

The Commission's Rules of Practice also provide that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). Accordingly, Complaint Counsel has also issued a subpoena *duces tecum* for certain of Tiversa's documents. The subpoena schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission, Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the

Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss the scheduling of your deposition and any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura Riposo VanDruff', with a long horizontal stroke extending to the right.

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)
Eric Kline (*via email*)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO

Tiversa Holding Corp.
606 Liberty Avenue
Pittsburgh, PA 15222

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION

Tiversa Holding Corp.
606 Liberty Avenue
Pittsburgh, PA 15222

4. YOUR APPEARANCE WILL BE BEFORE

Laura Riposo VanDruff or other designated counsel

5. DATE AND TIME OF DEPOSITION

November 6, 2013

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. ADMINISTRATIVE LAW JUDGE

Chief Judge D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA

Laura Riposo VanDruff, Complaint Counsel
Federal Trade Commission
601 New Jersey Ave, NW, Room-8100
Washington, DC 20001
(202) 326-2999

DATE SIGNED

7/30/13

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/ETCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- by registered mail.
- by leaving copy at principal office or place of business, to wit:

Tiversa Holding Corporation
606 Liberty Avenue
Pittsburgh, PA 15222
via FedEx R/delivery on 10/1/13

on the person named herein on:

October 1, 2013
(Month, day, and year)

Laura Riposo VanDintf
(Name of person making service)

General Attorney
(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	
LabMD, Inc.,)	DOCKET NO. 9357
a corporation)	
)	
_____)	

COMPLAINT COUNSEL’S NOTICE OF DEPOSITION
PURSUANT TO SUBPOENA TO TIVERSA HOLDING CORPORATION

PLEASE TAKE NOTICE, pursuant to Rules 3.33(a) and (c)(1) of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. §§ 3.33(a) and (c)(1), that Complaint Counsel will take the deposition of Tiversa Holding Corporation (“Tiversa”) or its designee(s), who shall testify on Tiversa’s behalf about matters known or reasonably available to Tiversa.

DEFINITIONS

1. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
2. “**Company**” shall mean Tiversa Holding Corporation (“Tiversa”), its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
3. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
4. The terms “**each**,” “**any**,” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
5. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
6. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, and employees.

7. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
8. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
9. “**Personal Information**” means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
10. The terms “**Relate**” or “**Relating to**” mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
11. “**Subpoena**” means the Subpoena to Tiversa Holding Corporation, including this Notice, and including the Definitions, Instructions, and Specifications.
12. “**You**” or “**Your**” means Tiversa Holding Corporation, or the “Company.”
13. “**1,718 File**” means the 1,718 page file the Company found on a peer-to-peer network in 2008 and identified as having been created and stored on a LabMD computer
14. The use of the singular includes the plural, and the plural includes the singular.
15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

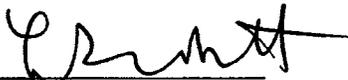
DEPOSITION TOPICS

Tiversa is advised that it must designate one or more officer, director, managing agent, or other Person who consents to testify on its behalf, and may set forth, for each Person designated, the matters on which he or she will testify. The Persons so designated shall testify as to matters known or reasonably available to Tiversa relating to the following topics:

1. The authenticity and admissibility under the provisions of Rule 3.43 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.43, of the 1,718 File.
2. The means by which Tiversa identified, accessed, and obtained a copy of the 1,718 File.

3. The time, date, Internet Protocol address, and network from which Tiversa downloaded the 1,718 File, including Tiversa's bases for this knowledge.
4. Whether the 1,718 File has been shared on peer-to-peer networks between June 2007 and the present, including the time, date, Internet Protocol address, and networks on which it was shared, including Tiversa's bases for this knowledge.
5. Whether LabMD files other than the 1,718 File that were available on peer-to-peer networks since January 2005, including Tiversa's bases for this knowledge.
6. Information on which the following statement, published by Trib Total Media on March 23, 2013 and written by Andrew Conte, was based: "Tiversa's searches of open file-sharing accounts found...[m]edical information on nearly 9,000 patients, including names, Social Security numbers, insurance numbers and home addresses," as written in the article "Unintentional File-sharing a Boon for Hackers."
7. Tiversa's Communications with LabMD, including proposed contracts for services.
8. The operation of peer-to-peer file sharing applications, including Limewire.
9. The risk of inadvertent file sharing using peer-to-peer applications, including Limewire.

September 30, 2013

By: 

Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania, Ave, NW
Room NJ-8100
Washington, DC 20580
Telephone: (202) 326-2999 (VanDruff)
Facsimile: (202) 326-3062
Electronic mail: lvandruff@gmail.com

CERTIFICATE OF SERVICE

This is to certify that on September 30, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

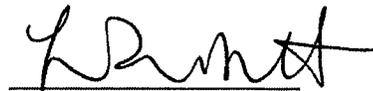
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Ave., NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

September 30, 2013

By:



Laura Riposo VanDruff
Federal Trade Commission
Bureau of Consumer Protection



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO Tiversa Holding Corp. 606 Liberty Avenue Pittsburgh, PA 15222	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001	4. MATERIAL WILL BE PRODUCED TO Matthew Smith 5. DATE AND TIME OF PRODUCTION <i>October 30, 2013</i>
--	---

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

8. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999
--	--

DATE SIGNED <i>9/30/13</i>	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-----------------------------------	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail.

by leaving copy at principal office or place of business, to wit:

TNessa Holdings Corporation
606 Liberty Avenue
Pittsburgh, PA 15222
via FedEx Air delivery on 10/1/13

on the person named herein on:

October 1, 2013

(Month, day, and year)

Laura Riposo Vanduff

(Name of person making service)

General Attorney

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
TIVERSA HOLDING CORPORATION**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued September 30, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. “**All documents**” means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. “**Company**” shall mean Tiversa Holding Corporation (“Tiversa”), its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
4. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.

5. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
6. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. “**Document**” shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
7. The term “**Documents Sufficient to Show**” means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
8. The terms “**each,**” “**any,**” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
9. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
10. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, and employees.
11. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
12. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.

13. **“Personal Information”** means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
14. The terms **“Relate”** or **“Relating to”** mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
15. **“Subpoena”** means the Subpoena to Tiversa Holding Corporation, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
16. **“You”** or **“Your”** means Tiversa Holding Corporation, or the “Company.”
17. **“1,718 File”** means the 1,718 page file the Company found on a peer-to-peer network in 2008 and identified as having been created and stored on a LabMD computer
18. The use of the singular includes the plural, and the plural includes the singular.
19. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2008 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, the Company’s response should indicate, for each document submitted, each specification to which the document is responsive. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or

electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is

in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is February 12, 2014.
11. **Document Retention:** The Company shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
 - (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (“AttachIDs”) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in

advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and

- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

SPECIFICATIONS

Demand is hereby made for the following documents:

1. All Communications between the Company and LabMD.
2. All proposed contracts for services the Company provided to LabMD.
3. All Communications between the Company and Michael Daugherty or John Boyle.
4. All Documents related to LabMD.
5. The 1,718 File.
6. Documents Sufficient to Show the time, date, Internet Protocol address, and network from which the Company obtained the 1,718 File.
7. Documents Sufficient to Show how many times the 1,718 File has been shared on peer-to-peer networks between June 2007 and the present, including the time, date, Internet Protocol address, and networks on which it was shared.
8. Document Sufficient to show LabMD files other than the 1,718 File that were available on peer-to-peer networks since January 2005.
9. Documents Sufficient to Show the source for the statement: "Tiversa's searches of open file-sharing accounts found...[m]edical information on nearly 9,000 patients, including names, Social Security numbers, insurance numbers and home addresses," as written in the article "Unintentional File-sharing a Boon for Hackers," published by Trib Total Media on March 23, 2013, and written by Andrew Conte.

September 30, 2013

By:



Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania, Ave, NW
Room NJ-8100
Washington, DC 20580
Telephone: (202) 326-2999 (VanDruff)
Facsimile: (202) 326-3062
Electronic mail: lvandruff@gmail.com

CERTIFICATE OF SERVICE

This is to certify that on September 30, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Ave., NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

September 30, 2013

By: 
Laura Riposo VanDruff
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

In the Matter of)
)
)

LabMD, Inc.,)
a corporation,)
Respondent.)
_____)

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

D. Michael Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Tiversa Holding Corporation and attached hereto.
3. The documents produced and attached hereto by Tiversa Holding Corporation are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Tiversa Holding Corp; and
 - c) Were made by the regularly conducted activity as a regular practice of Tiversa Holding Corporation.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, **which may affect the timing of your compliance with BCP's request.**

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

21st Century Oncology, LLC
d/b/a UroSurg Associates
2270 Colonial Blvd
Fort Myers, FL 33907

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

To Whom It May Concern:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

The Commission's Rules of Practice also provide that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). Complaint Counsel has also issued a subpoena *duces tecum* for certain of 21st Century Oncology, LLC's documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD

or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss the scheduling of your deposition and any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read "LRV", with a long horizontal line extending to the right.

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (*via* email)
Reed Rubinstein (*via* email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO

21st Century Oncology, LLC
d/b/a UroSurg Associates
2270 Colonial Blvd
Fort Myers, FL 33907

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION

21st Century Oncology, LLC
d/b/a UroSurg Associates
2270 Colonial Blvd
Fort Myers, FL 33907

4. YOUR APPEARANCE WILL BE BEFORE

Laura Riposo VanDruff or other designated counsel

5. DATE AND TIME OF DEPOSITION

December 2, 2013, at 9:00 a.m.

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. ADMINISTRATIVE LAW JUDGE

Chief Judge D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA

Laura Riposo VanDruff, Complaint Counsel
Federal Trade Commission
601 New Jersey Ave, NW, Room-8100
Washington, DC 20001
(202) 326-2999

DATE SIGNED

October 24, 2013

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail.

by leaving copy at principal office or place of business, to wit:

21st Century Oncology, LLC
d/b/a Uro Surg Associates
2270 Colonial Blvd
Fort Myers, FL 33907

on the person named herein on:

October 25, 2013

(Month, day, and year)

by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4 (a) (2)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

COMPLAINT COUNSEL’S NOTICE OF DEPOSITION
PURSUANT TO SUBPOENA TO
21st CENTURY ONCOLOGY, LLC, D/B/A UROSURG ASSOCIATES

PLEASE TAKE NOTICE, pursuant to Rules 3.33(a) and (c)(1) of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. §§ 3.33(a) and (c)(1), that Complaint Counsel will take the deposition of 21st Century Oncology, LLC, d/b/a/ UroSurg Associates (“UroSurg”) or its designee(s), who shall testify on UroSurg’s behalf about matters known or reasonably available to UroSurg.

DEFINITIONS

1. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
2. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
3. The terms “**each**,” “**any**,” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
4. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
5. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees, and agents.

6. “Or” as well as “and” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
7. The term “Person” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
8. “Personal Information” means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
9. The terms “Relate” or “Relating to” mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
10. “Security Incident” means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
11. “You” or “Your” means 21st Century Oncology, LLC, d/b/a/ UroSurg Associates or “UroSurg.”
12. The use of the singular includes the plural, and the plural includes the singular.
13. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

DEPOSITION TOPICS

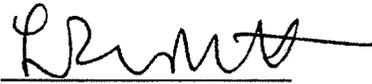
21st Century Oncology, LLC, d/b/a/ UroSurg Associates (“UroSurg”) is advised that it must designate one or more officer, director, managing agent, or other Person who consents to testify on its behalf, and may set forth, for each Person designated, the matters on which he or she will testify. The Persons so designated shall testify as to matters known or reasonably available to UroSurg relating to the following topics:

1. The authenticity and admissibility under the provisions of Rule 3.43 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.43, of documents produced in response to the Federal Trade Commission’s separate subpoena *duces tecum* to UroSurg.
2. UroSurg’s relationship with LabMD.
3. The installation, operation, management, use, and support of computer hardware and software provided to UroSurg by LabMD.

4. The types and volumes of personal information transmitted between UroSurg and LabMD.
5. The means by which personal information, including patient information and lab results, are transmitted between UroSurg and LabMD.
6. UroSurg's Communications with LabMD, including contracts between UroSurg and LabMD and any guidance LabMD provided to UroSurg related to UroSurg's use of hardware and software provided to UroSurg by LabMD.
7. Any Security Incidents at LabMD.

October 24, 2013

By:



Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, DC 20580
Telephone: (202) 326-2999 (VanDruff)
Facsimile: (202) 326-3062
Electronic mail: lvandruff@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

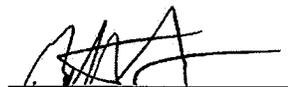
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

<p>1. TO</p> <p>21st Century Oncology, LLC d/b/a UroSurg Associates 2270 Colonial Blvd. Fort Myers, FL 33907</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION</p> <p>Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Matthew Smith</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION</p> <p>November 21, 2013</p>
---	--

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282</p>
--	--

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- by registered mail.
- by leaving copy at principal office or place of business, to wit:

21st Century Oncology, LLC
d/b/a UroSurg Associates
2270 Colonial Blvd.
Fort Myers, FL 33907

by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(e)(2)
on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL'S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
21st CENTURY ONCOLOGY, LLC, D/B/A UROSURG ASSOCIATES**

Pursuant to Complaint Counsel's attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. "All documents" means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term "Communication" includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. "Complaint" means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.
4. The term "Containing" means containing, describing, or interpreting in whole or in part.
5. "Document" means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or

location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. **“Document”** shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

6. The terms **“each,” “any,”** and **“all”** shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
7. **“Includes”** or **“including”** means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
8. **“LabMD”** means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
9. **“Or”** as well as **“and”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
10. The term **“Person”** means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
11. **“Personal Information”** means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
12. The terms **“Relate”** or **“Relating to”** mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing,

analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.

13. **“Security Incident”** means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
14. **“Subpoena”** means the Subpoena to 21st Century Oncology, LLC, d/b/a UroSurg Associates, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
15. **“You” or “Your”** means 21st Century Oncology, LLC, d/b/a UroSurg Associates.
16. The use of the singular includes the plural, and the plural includes the singular.
17. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2005 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.
5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of

receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.

6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients

of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.
 - (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data

document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

- (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
- (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.

(2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:

- (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
- (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
- (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.

(3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (“AttachIDs”) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
- (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source

location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

- (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and
 - (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production

transmittal letter, which includes:

- (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
- (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of a document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If you are unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by you to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for you to make an estimate, provide an explanation.
- 15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

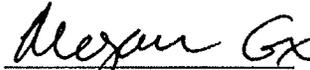
SPECIFICATIONS

Demand is hereby made for the following documents:

1. All contracts between you and LabMD.
2. All documents related to how patient information and lab results are transmitted between you and LabMD.
3. All communications between you and LabMD regarding any security incident.

October 24, 2013

By:



Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

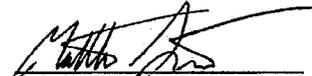
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

D. Michael Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by 21st Century Oncology LLC and attached hereto.
3. The documents produced and attached hereto by 21st Century Oncology LLC are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of 21st Century Oncology LLC; and
 - c) Were made by the regularly conducted activity as a regular practice of 21st Century Oncology LLC.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, which may affect the timing of your compliance with BCP's request.

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions under 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions over 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Allen Truett
2226 Heritage Trace Drive
Marietta, GA 30062

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Truett:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

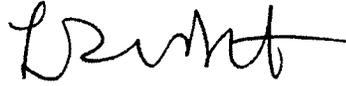
The Commission's Rules of Practice also provide that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). Complaint Counsel has also issued a subpoena *duces tecum* for certain of your documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss the scheduling of your deposition and any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Riposo VanDruff', with a long horizontal flourish extending to the right.

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO

Allen Truett
2226 Heritage Trace Drive
Marietta, GA 30062

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION

Federal Trade Commission
Southeast Region
225 Peachtree Street, NE, Suite 1500
Atlanta, GA 30303

4. YOUR APPEARANCE WILL BE BEFORE

Laura Riposo VanDruff or other designated counsel

5. DATE AND TIME OF DEPOSITION

December 2, 2013, at 9:00 a.m.

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. ADMINISTRATIVE LAW JUDGE

Chief Judge D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA

Laura Riposo VanDruff, Complaint Counsel
Federal Trade Commission
601 New Jersey Ave, NW, Room-8100
Washington, DC 20001
(202) 326-2999

DATE SIGNED

October 24, 2013

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

~~by registered mail~~ by Federal Express on October 24, 2013 for overnight delivery, pursuant to Courtroom rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Allen Truett
2226 Heritage Trace Drive
Marietta, GA 30062

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

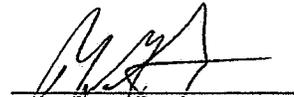
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO

Allen Truett
2226 Heritage Trace Drive
Marietta, GA 30062

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION

Matthew Smith
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room NJ-8100
Washington, D.C. 20001

4. MATERIAL WILL BE PRODUCED TO

Matthew Smith

5. DATE AND TIME OF PRODUCTION

November 21, 2013

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

8. ADMINISTRATIVE LAW JUDGE

Chief Judge D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL AND PARTY ISSUING SUBPOENA

Megan Cox, Complaint Counsel
Federal Trade Commission
601 New Jersey Ave, N.W., Room NJ-8100
Washington, DC 20001
(202) 326-2282

DATE SIGNED

October 24, 2013

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- ~~by registered mail.~~ *by Federal Express on October 24, 2013 by overnight delivery, pursuant to Commission rule 4.4 (a)(4)*
- by leaving copy at principal office or place of business, to wit:*

Allen Truett
2226 Heritage Trace Drive
Marietta, GA 30062

on the person named herein on:
October 25, 2013
(Month, day, and year)

Matthew Smith
(Name of person making service)

Paralegal
(Official title)

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

~~by registered mail~~ by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Alison Simmons
415 Armour Drive, SE
Apartment 1201
Atlanta, GA 30324

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

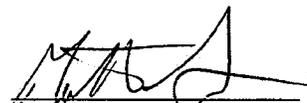
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

In the Matter of)
)
)

LabMD, Inc.,)
a corporation,)
Respondent.)
_____)

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Alison Simmons
415 Armour Drive, NE
Apt. 1201
Atlanta, GA 30324

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Ms. Simmons:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,


Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)
Thomas D. Bever (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Alison Simmons 415 Armour Drive, SE Apartment 1201 Atlanta, GA 30324</p>	<p>2. FROM</p> <p style="text-align: center; font-weight: bold;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	--

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Federal Trade Commission Southeast Region 225 Peachtree Street, NE, Suite 1500 Atlanta, GA 30303</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="text-align: center;">Laura Riposo VanDruff or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p style="text-align: center;">December 2, 2013, at 9:00 a.m.</p>
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6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
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<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p>
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Alison Simmons
415 Armour Drive, SE
Apartment 1201
Atlanta, GA 30324

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

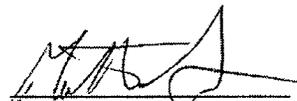
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

In the Matter of)
)
)

LabMD, Inc.,)
a corporation,)
Respondent.)

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Automated PC Technologies, Inc.
c/o Allen Truett
2226 Heritage Trace Drive
Marietta, GA 30062

Re: **In the Matter of LabMD, Inc., FTC Docket No. 9357**

Dear Mr. Truett:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of Automated PC Technologies Inc.'s documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2282.

Sincerely,

A handwritten signature in black ink that reads "Megan Cox". The signature is written in a cursive, flowing style.

Megan Cox

Enclosure (1)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO Automated PC Technologies, Inc. c/o Allen Truett 2226 Heritage Trace Drive Marietta, GA 30062	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
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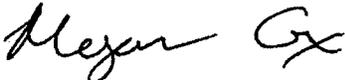
This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001	4. MATERIAL WILL BE PRODUCED TO Matthew Smith 5. DATE AND TIME OF PRODUCTION November 21, 2013
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6. SUBJECT OF PROCEEDING In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.
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8. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282
--	---

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail: *by Federal Express on October 24, 2013 for overnight delivery pursuant to Commission rule 4.4 (a) (4)*

by leaving copy at principal office or place of business, to wit:

*Automated PC Technologies, Inc.
c/o Allen Traxtt
2226 Heritage Trace Drive
Marietta, GA 30062*

on the person named herein on:

October 25, 2013
(Month, day, and year)

Matthew Smith
(Name of person making service)

Paralegal
(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
AUTOMATED PC TECHNOLOGIES, INC.**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. “All documents” means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term “Communication” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. “Company” shall mean Automated PC Technologies, Inc. (“APT”), its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
4. “Complaint” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.

5. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
6. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. “**Document**” shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
7. The term “**Documents Sufficient to Show**” means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
8. The terms “**each,**” “**any,**” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
9. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
10. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
11. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
12. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.

13. **“Personal Information”** means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
14. The terms **“Relate”** or **“Relating to”** mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
15. **“Security Incident”** means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
16. **“Subpoena”** means the Subpoena to Automated PC Technologies, Inc., including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
17. **“You”** or **“Your”** means Automated PC Technologies, Inc., or the “Company.”
18. The use of the singular includes the plural, and the plural includes the singular.
19. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2003 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, the Company’s response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed

from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state

individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** The Company shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
 - (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

- (a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments ("AttachIDs") delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in

advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and

- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy, but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

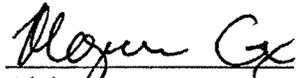
SPECIFICATIONS

Demand is hereby made for the following documents:

1. All communications between the Company and LabMD.
2. All documents related to work the Company performed for LabMD, including but not limited to: estimates or proposals for work; contracts; statements of work; service agreements; invoices; security assessments of any kind, including server or network scans; penetration tests; forensic reports or analyses of any security incident; or internal records, notes or work papers.
3. Documents sufficient to show version(s) and capabilities of any software the Company sold, provided, installed, updated, or maintained on LabMD's network, including, but not limited to operating system software, data backup software, database software, billing software, or antivirus software.
4. Documents sufficient to show how the software sold, provided, installed, updated, or maintained on LabMD's network was configured, including the settings provided by the Company at the time the software was sold, provided, installed, or updated.
5. Documents sufficient to show the settings the Company configured, maintained, updated, or deployed for all software the Company sold, provided, installed, updated, or maintained for LabMD.
6. Documents sufficient to show any hardware the Company sold, provided, or installed for LabMD, including, but not limited to, servers, workstation computers, firewalls, routers, or switches.
7. Documents sufficient to show how the Company configured, maintained, updated, or deployed the ZyXel firewall it delivered to LabMD on May 12, 2006 or any other similar hardware.
8. Documents sufficient to show the functions and capabilities of the ZyXel firewall the Company delivered to LabMD on May 12, 2006 and any other similar hardware.
9. All files relating to LabMD.

10. All materials considered in preparing the affidavit executed by Allen Truett on May 20, 2011.

October 24, 2013

By: 
Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

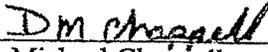
In the Matter of
LabMD, Inc.,
a corporation,
Respondent.

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Automated PC Technologies Inc. and attached hereto.
3. The documents produced and attached hereto by Automated PC Technologies Inc. are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Automated PC Technologies Inc.; and
 - c) Were made by the regularly conducted activity as a regular practice of Automated PC Technologies Inc.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, which may affect the timing of your compliance with BCP's request.

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

David Lapides
Sandy Springs, Georgia Police Department
7840 Roswell Road
Suite 301
Sandy Springs, GA 30350

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Detective Lapides:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Detective David Lapidés Sandy Springs, Georgia Police Department 7840 Roswell Road, Suite 301 Sandy Springs, GA 30350</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	---

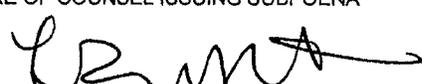
This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Federal Trade Commission Southeast Region 225 Peachtree Street, NE, Suite 1500 Atlanta, GA 30303</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Laura Riposo VanDruff or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>December 2, 2013, at 9:00 a.m.</p>
---	---

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
--	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- ~~by registered mail~~ by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)
- by leaving copy at principal office or place of business, to wit:

Detective David Lapidus
Sandy Springs, Georgia Police Department
7840 Roswell Road, Suite 301
Sandy Springs, GA 30350

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

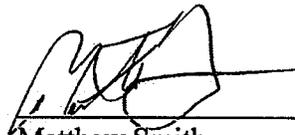
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:

A handwritten signature in black ink, appearing to read 'Matthew Smith', is written over a horizontal line.

Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Cypress Communications, LLC
3565 Piedmont Road
Building 4, Suite 600
Atlanta, GA 30305

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

To Whom It May Concern:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

The Commission's Rules of Practice also provide that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). Complaint Counsel has also issued a subpoena *duces tecum* for certain of Cypress Communications, LLC's documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD

or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss the scheduling of your deposition and any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Riposo VanDruff". The signature is fluid and cursive, with the first name "Laura" being the most prominent.

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Cypress Communications, LLC 3565 Piedmont Road Building 4, Suite 600 Atlanta, GA 30305</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

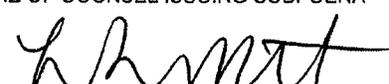
This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Federal Trade Commission Southeast Region 225 Peachtree Street, NE, Suite 1500 Atlanta, GA 30303</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Laura Riposo VanDruff or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>December 2, 2013, at 9:00 a.m.</p>
---	---

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
--	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail.

by leaving copy at principal office or place of business, to wit:

Cypress Communications, LLC
3565 Piedmont Road
Building 4, Suite 600
Atlanta, GA 30305

via Federal Express on October 24, 2013 for overnight delivery, pursuant to
on the person named herein on: Commission rule 4.4(a)(2)
October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

COMPLAINT COUNSEL’S NOTICE OF DEPOSITION
PURSUANT TO SUBPOENA TO
CYPRESS COMMUNICATIONS, LLC

PLEASE TAKE NOTICE, pursuant to Rules 3.33(a) and (c)(1) of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. §§ 3.33(a) and (c)(1), that Complaint Counsel will take the deposition of Cypress Communications, LLC (“Cypress”) or its designee(s), who shall testify on Cypress’s behalf about matters known or reasonably available to Cypress.

DEFINITIONS

1. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
2. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
3. The terms “**each**,” “**any**,” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
4. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
5. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees, and agents.
6. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.

7. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
8. “**Personal Information**” means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
9. The terms “**Relate**” or “**Relating to**” mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
10. “**Security Incident**” means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
11. “**You**” or “**Your**” means Cypress Communications, LLC or “Cypress.”
12. The use of the singular includes the plural, and the plural includes the singular.
13. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

DEPOSITION TOPICS

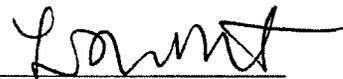
Cypress Communications, LLC (“Cypress”) is advised that it must designate one or more officer, director, managing agent, or other Person who consents to testify on its behalf, and may set forth, for each Person designated, the matters on which he or she will testify. The Persons so designated shall testify as to matters known or reasonably available to Cypress relating to the following topics:

1. The authenticity and admissibility under the provisions of Rule 3.43 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.43, of documents produced in response to the Federal Trade Commission’s separate subpoena *duces tecum* to Cypress.
2. Products and services provided by Cypress to LabMD, including hardware or software provided, installed, operated, or maintained by Cypress for LabMD.
3. Addressing information for servers, computers, firewalls, routers, and other devices used in connection with LabMD’s computer network(s), including Internet Protocol (IP) and Media Access Control (MAC) addresses.

4. The configuration of any hardware or software Cypress provided, installed, operated, maintained, or supported for LabMD.
5. The capabilities of any hardware or software Cypress provided, installed, operated, maintained, or supported for LabMD.
6. The intrusion detection or intrusion protection functions performed by any hardware or software Cypress provided, installed, maintained, operated, or supported for LabMD.
7. Any Security Incidents at LabMD.

October 24, 2013

By:



Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, DC 20580
Telephone: (202) 326-2999 (VanDruff)
Facsimile: (202) 326-3062
Electronic mail: lvandruff@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Ave., NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO Cypress Communications, LLC 3565 Piedmont Road Building 4, Suite 600 Atlanta, GA 30305	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001	4. MATERIAL WILL BE PRODUCED TO Matthew Smith 5. DATE AND TIME OF PRODUCTION November 21, 2013
--	---

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

8. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282
--	---

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------------	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

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The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/ETCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- by registered mail.
- by leaving copy at principal office or place of business, to wit:

Cypress Communications, LLC
3565 Piedmont Road
Building 4, Suite 600
Atlanta, GA 30305

by Federal Express on October 24, 2013 for overnight delivery, pursuant to Committee Rule 4.4(a)(2)
on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

5. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
6. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. “**Document**” shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
7. The term “**Documents Sufficient to Show**” means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
8. The terms “**each,**” “**any,**” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
9. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
10. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
11. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
12. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.

13. **“Personal Information”** means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
14. The terms **“Relate”** or **“Relating to”** mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
15. **“Security Incident”** means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
16. **“Subpoena”** means the Subpoena to Cypress Communications, LLC, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
17. **“You”** or **“Your”** means Cypress Communications, LLC or the “Company.”
18. The use of the singular includes the plural, and the plural includes the singular.
19. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2006 to present.**
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, the Company’s response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed

from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state

individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** The Company shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
 - (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

- (a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments ("AttachIDs") delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in

advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and

- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

SPECIFICATIONS

Demand is hereby made for the following documents:

1. All communications between the Company and LabMD, including, but not limited to, files maintained by Cypress Sales Representative Jared Abram.
2. All documents related to work the Company performed for LabMD, including but not limited to: estimates or proposals for work; contracts; statements of work; service agreements; invoices and reports of work performed; security assessments of any kind, including server or network scans; penetration tests; forensic reports or analyses of any security incident; and records, notes, or work papers.
3. Documents sufficient to show address information for servers, computers, firewalls, routers, and other devices used in connection with LabMD's computer network(s), including Internet Protocol and Media Access Control addresses.
4. Documents sufficient to show the identity, functional capabilities, and terms and conditions of use of each piece of software and hardware the Company provided, installed, operated, or maintained for LabMD, including firewalls and routers, and for each piece of software and hardware, the functions it performed, the entity responsible for configuring, operating, updating, patching, or maintaining it, its location on LabMD's network(s), and the computers, servers, and other devices making use of or connecting to the software or hardware.
5. Separately for each piece of software and hardware identified in the response to Specification 4, documents sufficient to show when and how the software or hardware was deployed, configured, maintained, updated, or patched.
6. Documents sufficient to show the intrusion detection or intrusion protection functions performed by each piece of software or hardware the Company provided, installed, operated, or maintained for LabMD.

7. All documents relating to vulnerabilities in each piece of software or hardware identified in response to Specification 4, including documents relating to the process followed to identify vulnerabilities, whether the Company or LabMD was responsible for identifying or remediating vulnerabilities, which remediations were performed, and when, why, and by whom the remediations were performed.

October 24, 2013

By:



Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

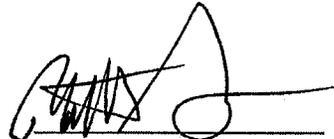
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Cypress Communications LLC and attached hereto.
3. The documents produced and attached hereto by Cypress Communications LLC are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Cypress Communications LLC; and
 - c) Were made by the regularly conducted activity as a regular practice of Cypress Communications LLC.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, which may affect the timing of your compliance with BCP's request.

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Eric Knox
7542 Broken Oak Lane
Sugar Land, TX 77479

Re: **In the Matter of LabMD, Inc., FTC Docket No. 9357**

Dear Mr. Knox:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Eric Knox 7542 Broken Oak Lane Sugar Land, TX 77479</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Sunbelt Reporting 6575 West Loop South Bellaire, TX 77401</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Laura Riposo VanDruff or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>December 2, 2013, at 9:00 a.m.</p>
--	---

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
--	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

~~by registered mail~~ - by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Eric Knox
7542 Broken Oak Lane
Sugar Land, TX 77479

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

D. Michael Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Erick Garcia
6309 34th Avenue
Sacramento, CA 95824

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Garcia:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Riposo VanDruff", is written over a horizontal line.

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

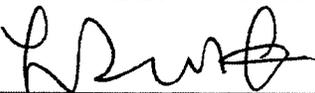
<p>1. TO</p> <p>Erick Garcia 6309 34th Ave Sacramento, CA 95824</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Carol Nygard Reporting 2295 Gateway Oaks Drive Suite 170 Sacramento, CA 95833</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="text-align: center;">Laura Riposo VanDruff or other designated counsel</p>
<p>5. DATE AND TIME OF DEPOSITION</p> <p style="text-align: center;">December 2, 2013, at 9:00 a.m.</p>	

<p>6. SUBJECT OF PROCEEDING</p> <p style="text-align: center;">In the Matter of LabMD, Inc., Docket 9357</p>
--

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p style="text-align: center;">Chief Judge D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p style="text-align: center;">Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p style="text-align: center;"></p>
--	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- by registered mail, by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)
- by leaving copy at principal office or place of business, to wit:

Erick Garcia
6309 34th Ave.
Sacramento, CA 95824

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

DM Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



AZ CORPORATION COMMISSION
FILED

DEC 17 2012

FILE NO. 18113936

**ARTICLES OF INCORPORATION
COMPASS COOPERATIVE HEALTH PLAN, INC.**

ARTICLE 6
Initial Board of Directors and Officers

Not less than five (5) nor more than fifteen (15) directors shall constitute the Board of Directors. The Initial Board of Directors will consist of eight (8) persons. At all times, at least one member of the Board of Directors shall be a resident of Arizona. The names and addresses of the persons who are to serve as the directors until their successors are appointed by the Member, and of the persons who are to serve as officers until their successors are elected by the Board of Directors and approved by the Member are:

Initial Directors

Michael Kelly
2375 E. Camelback Road, Suite 656
Phoenix, AZ 85016

Lawrence Alidick
2375 E. Camelback Road, Suite 656
Phoenix, AZ 85016

Ann Christensen
2375 E. Camelback Road, Suite 656
Phoenix, AZ 85016

Edward Escobedo
2375 E. Camelback Road, Suite 656
Phoenix, AZ 85016

Salvey Fildrup, M.D.
2375 E. Camelback Road, Suite 656
Phoenix, AZ 85016

Thomas McKinley
2375 E. Camelback Road, Suite 656
Phoenix, AZ 85016

RJ Voth
2375 E. Camelback Road, Suite 656
Phoenix, AZ 85016

Marquette White
2375 E. Camelback Road, Suite 656
Phoenix, AZ 85016

31 2012

applicable law. Any indemnification provided by the Corporation pursuant to this Article shall apply in the event, and to the extent that, the person so indemnified is not entitled to indemnification or other payment from any other source (including insurance), and such indemnification obligation of the Corporation shall be in excess of and shall not replace any indemnification or other payment provided by such other source.

7.3 Procedure. Indemnitee shall notify in writing, the Corporation's CEO and General Counsel promptly of the filing or commencement of any proceeding or legal action with respect to which indemnitee intends to seek indemnification. The Corporation shall, within a reasonable time thereafter, determine in a manner consistent with applicable law if the indemnitee falls into any of the above categories. If the Corporation so determines that such person does not fall within an exclusion with regard to the matter involved, indemnification shall be mandatory and shall be automatically extended as specified herein. The Corporation shall have the right to refuse indemnification in any instance in which the person to whom indemnification would otherwise have been applicable. If the individual requests, and the Corporation agrees, to obtain counsel of his/her own choice to defend him or her in the action, suit or proceeding, the Corporation shall not be liable to indemnify for legal or other expenses subsequently incurred by indemnitee.

7.4 Settlement of Claims. The Corporation shall not be obligated to indemnify indemnitee for any amounts incurred in settlement, if settlement is made without the Corporation's prior written consent. The Corporation reserves the sole right to settle such claims as it deems necessary and in the best interests of the corporation.

7.5 Effect of Repeal. In order that indemnitee may rely on the indemnification provided by this Section, no repeal or amendment of this Section shall reduce the right of an indemnitee to payment of expenses or indemnification for acts of an indemnitee taken before the date of repeal or amendment.

ARTICLE 8 Fiscal Year

The fiscal year end of the Corporation shall be December 31st of each year.

ARTICLE 9 Annual Member Meeting

The annual meeting of the Member shall be held on first Monday of October or such other date, time and place during the fourth quarter in each year as the Board of Directors Chairperson or CEO may determine, for the purpose of the transaction of such business as may come before the meeting.

ARTICLE 10 Bylaws

312012

Dec-17-13 11:14am From: NITAN ROCK

AMENDMENT

7-110 P.000/010 P-017

ARTICLE 15
Incorporators

The names and addresses of each incorporator are as follows:

Jennifer L. Krueger	Teaha C. Smith
8601 N. Scottsdale Road,	8601 N. Scottsdale Road,
Suite 300	Suite 300
Scottsdale, AZ 85253	Scottsdale, AZ 85253

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

4811-NR1-1070.1

6

31 2012

Dec-17-12 11:44am From: JUDITH ROSE

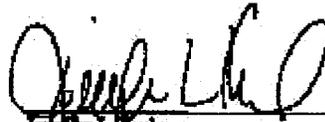
(0002310001)

T-410 P-010/012 P-017

ACCEPTANCE OF APPOINTMENT AS STATUTORY AGENT

Jennifer L. Krabum does hereby accept appointment as Statutory Agent for Compass Cooperative Mutual Health Network, Inc. in accordance with applicable law until appointment of a successor Statutory Agent by the Board of Directors or until any written resignation becomes effective in accordance with applicable law.

Dated this 17th day of December, 2012.



Jennifer L. Krabum
c/o Kintak Rock LLP
8891 N. Scottsdale Road, Suite 300
Scottsdale, AZ 85253

CALL-0001-0070.1

2

312012

Doc-File 11:14a Fee-WIDE BOX

4046901

T-018 P.012/018 P-017

3. BANKRUPTCY QUESTIONS

3.1 Has any person (a) who is currently an officer, director, trustee, incorporator, or (b) who controls or holds over twenty per cent of the issued and outstanding common shares or twenty per cent of any other proprietary, beneficial or membership interest in the corporation, served in any such capacity or held a twenty per cent interest in any other corporation (not the one filing this Certificate) on the bankruptcy or receivership of that other corporation?

Yes No

3.2 If the answer to number 3.1 is YES, you MUST complete and attach a Certificate of Disclosure Bankruptcy Attachment form COB4.

IMPORTANT: If within 90 days of the delivery of this Certificate to the A.C.C. any person not included in this Certificate becomes an officer, director, trustee or person controlling or holding over ten per cent of the issued and outstanding shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation, the corporation must submit a SUPPLEMENTAL Certificate providing information about that person, signed by all incorporators or by a duly elected and authorized officer.

INCORPORATOR RESPONSIBILITIES	
Under Certificate of Disclosure:	This Certificate must be signed by all incorporators. If more space is needed, complete and attach an Incorporator Attachment form COB4.
Foreign corporations:	This Certificate may be signed by a duly authorized officer or by the Chairman of the Board of Directors.
Credit Unions and Loan Companies:	This Certificate must be signed by any 2 officers or directors.

Jennifer Lindsey Krabum
Name

c/o Kunk Rock LLP
Address 1

8601 N. Scottsdale Road, Suite 300
Address 2

Scottsdale **AZ** **85213**
City State Zip

UNITED STATES
Country

Tasha Cyroell Smith
Name

c/o Kunk Rock LLP
Address 1

8601 N. Scottsdale Road, Suite 300
Address 2

Scottsdale **AZ** **85213**
City State Zip

UNITED STATES
Country

SIGNATURES - see Instructions COB2:

By checking the box marked "I accept" below, I acknowledge under penalty of perjury that this document together with any attachments is submitted in compliance with Arizona law.

Jennifer Lindsey Krabum I ACCEPT
12/13/12

SIGNATURES - see Instructions COB2:

By checking the box marked "I accept" below, I acknowledge under penalty of perjury that this document together with any attachments is submitted in compliance with Arizona law.

Tasha Cyroell Smith I ACCEPT
12/13/12

- RESPONSES - check only one:**
- Incorporator - I am an incorporator of the corporation submitting this Certificate.
 - Officer - I am an officer of the corporation submitting this Certificate.
 - Chairman of the Board of Directors - I am the Chairman of the Board of Directors of the corporation submitting this Certificate.
 - Director - I am a Director of the credit union or loan company submitting this Certificate.

- RESPONSES - check only one:**
- Incorporator - I am an incorporator of the corporation submitting this Certificate.
 - Officer - I am an officer of the corporation submitting this Certificate.
 - Chairman of the Board of Directors - I am the Chairman of the Board of Directors of the corporation submitting this Certificate.
 - Director - I am a Director of the credit union or loan company submitting this Certificate.

Filing Fee: None (regular processing)
Expedited processing - add \$38.00 to filing fee.
All fees are non-refundable - see Instructions.

Mail: Arizona Corporation Commission - Corporate Filings Section
1325 W. Washington St., Phoenix, Arizona 85007
Fax: 602-542-4100

Please be advised that while this form may be available printed request by e-mail, this e-mail does not constitute a filing and will not be filed with any person or the individual state of your business.
All documents filed with the Arizona Corporation Commission are public records and are open for public inspection.
If you have questions after reading the Instructions, please call 602-542-3225 or (toll-free) 800-352-0800.

CCF 002
Form 002

Arizona Corporation Commission - CORPORATION2012-01-01
Page 7 of 22



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Jeff Martin
LabMD, Inc.
2030 Powers Ferry Road
Bldg 500, Suite 520
Atlanta, GA 30339

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Martin:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,


Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO Jeff Martin LabMD, Inc. 2030 Powers Ferry Road Building 500, Suite 520 Atlanta, GA 30339	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION Federal Trade Commission Southeast Region 225 Peachtree Street, NE, Suite 1500 Atlanta, GA 30303	4. YOUR APPEARANCE WILL BE BEFORE Laura Riposo VanDruff or other designated counsel 5. DATE AND TIME OF DEPOSITION December 2, 2013, at 9:00 a.m.
---	--

6. SUBJECT OF PROCEEDING In the Matter of LabMD, Inc., Docket 9357

7. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999
--	--

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------------	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail, by Federal Express on October 24, 2013 for overnight delivery pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Jeff Martin
LabMD, Inc.
2030 Powers Ferry Road
Building 800, Suite 520
Atlanta, GA 30339
on the person named herein on.

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

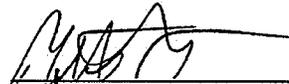
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

D. Michael Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Forensic Strategy Services LLC
c/o Scott Moulton
601B Industrial Court
Woodstock, GA 30189-3529

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Moulton:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of Forensic Strategy Services LLC's documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2282.

Sincerely,

A handwritten signature in cursive script that reads "Megan Cox". The signature is written in black ink and is positioned above the printed name.

Megan Cox

Enclosure (1)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO Forensic Strategy Services LLC c/o Scott Moulton 601B Industrial Court Woodstock, GA 30189-3529	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
---	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001	4. MATERIAL WILL BE PRODUCED TO Matthew Smith 5. DATE AND TIME OF PRODUCTION November 21, 2013
--	---

6. SUBJECT OF PROCEEDING <p style="text-align: center;">In the Matter of LabMD, Inc., Docket 9357</p>
--

7. MATERIAL TO BE PRODUCED <p>See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.</p>

8. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282
--	---

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------------	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

Forensic Strategy Services LLC
601B Industrial Court
Woodstock, GA 30189-3529

by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)
on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL'S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
FORENSIC STRATEGY SERVICES, LLC**

Pursuant to Complaint Counsel's attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. "All documents" means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term "Communication" includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. "Company" shall mean Forensic Strategy Services, LLC, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
4. "Complaint" means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.

5. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
6. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. “**Document**” shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
7. The term “**Documents Sufficient to Show**” means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
8. The terms “**each**,” “**any**,” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
9. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
10. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
11. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
12. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.

13. **“Personal Information”** means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
14. The terms **“Relate”** or **“Relating to”** mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
15. **“Subpoena”** means the Subpoena to Forensic Strategy Services, LLC, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
16. **“You”** or **“Your”** means Forensic Strategy Services, LLC, or the “Company.”
17. The use of the singular includes the plural, and the plural includes the singular.
18. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2011 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, the Company’s response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such

documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter,

memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** The Company shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.
 - (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:

- (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
- (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian,

from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments ("AttachIDs") delimited by a semicolon, MD5 or SHA Hash value, and link to native file;

- (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and

- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.
- 15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive

to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

SPECIFICATIONS

Demand is hereby made for the following documents:

1. All communications between you and LabMD.
2. All documents considered to prepare the affidavit executed by Scott Moulton on January 12, 2012, in the matter captioned LabMD, Inc. v. Tiversa, Inc., Docket No. 11-cv-04044 (N.D. Ga.).
3. All contracts between you and LabMD.
4. All documents related to work you performed for LabMD.
5. All documents related to compensation received by you for services provided to LabMD.

October 24, 2013

By: 
Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

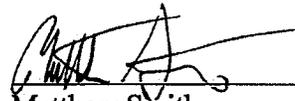
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

D. Michael Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Forensic Strategy Services LLC and attached hereto.
3. The documents produced and attached hereto by Forensic Strategy Services LLC are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Forensic Strategy Services LLC; and
 - c) Were made by the regularly conducted activity as a regular practice of Forensic Strategy Services LLC.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, **which may affect the timing of your compliance with BCP's request.**

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEBBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Karalyn Garrett
1106 Harbor Pointe Parkway
Atlanta, GA 30350

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Ms. Garrett:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Riposo VanDruff", is written over a horizontal line.

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Karalyn Garrett 1106 Harbor Pointe Parkway Atlanta, GA 30350</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Federal Trade Commission Southeast Region 225 Peachtree Street, NE, Suite 1500 Atlanta, GA 30303</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Laura Riposo VanDruff or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>December 2, 2013, at 9:00 a.m.</p>
---	---

<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of LabMD, Inc., Docket 9357</p>
--

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Kerilyn Garrett
1106 Harbor Pointe Parkway
Atlanta, GA 30350

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

D. Michael Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Josie Martinez Maldonado
3722 43rd Street
Sacramento, CA 95820

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Ms. Maldonado:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read "LRV", is written over a horizontal line.

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO Josie Martinez Maldonado 3722 43rd Street Sacramento, CA 95820	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION Carol Nygard Reporting 2295 Gateway Oaks Drive, Suite 170 Sacramento, CA 95833	4. YOUR APPEARANCE WILL BE BEFORE Laura Riposo VanDruff or other designated counsel 5. DATE AND TIME OF DEPOSITION December 2, 2013, at 9:00 a.m.
--	--

6. SUBJECT OF PROCEEDING In the Matter of LabMD, Inc., Docket 9357

7. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999
--	--

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------------	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

~~by registered mail~~ - by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Josie Martinez Maldonado
3722 43rd Street
Sacramento, CA 95820

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

In the Matter of)
)
)

LabMD, Inc.,)
a corporation,)
Respondent.)
_____)

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

John Boyle
7525 Twin Creek Court
Cumming, GA 30041-4335

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

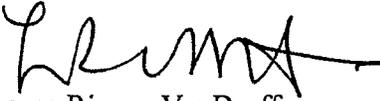
Dear Mr. Boyle:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,


Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>John Boyle 7525 Twin Creek Court Cumming, GA 30041</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Federal Trade Commission Southeast Region 225 Peachtree Street, NE, Suite 1500 Atlanta, GA 30303</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Laura Riposo VanDruff or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>December 2, 2013, at 9:00 a.m.</p>
---	---

<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of LabMD, Inc., Docket 9357</p>
--

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
--	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- ~~by registered mail~~ by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4 (a) (2)
- by leaving copy at principal office or place of business, to wit:

John Boyle
7525 Twin Creeks Court
Cumming, GA 30041

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

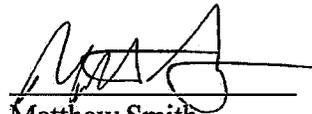
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

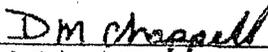
In the Matter of)
)
LabMD, Inc.,)
a corporation,)
Respondent.)

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA PROCESS SERVER

Detective Karina Jestes
Office of the Court Liaison
Sacramento Police Department
901 G Street
Sacramento, CA 95814

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Detective Jestes:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,


Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

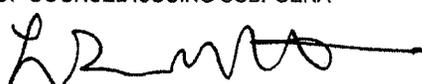
1. TO Detective Karina Jestes c/o Office of the Court Liaison Sacramento Police Department 901 G Street Sacramento, CA 95814	2. FROM <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION Sacramento Police Department 5770 Freeport Boulevard Sacramento, CA 95822	4. YOUR APPEARANCE WILL BE BEFORE Laura Riposo VanDruff or other designated counsel 5. DATE AND TIME OF DEPOSITION December 2, 2013, at 9:00 a.m.
---	--

6. SUBJECT OF PROCEEDING <p style="text-align: center;">In the Matter of LabMD, Inc., Docket 9357</p>
--

7. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999
--	--

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------------	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail.

by leaving copy at principal office or place of business, to wit:

Detective Karina Jester
c/o Office of the Court Liaison
Sacramento Police Department
901 G Street
Sacramento, CA 95814
by process server

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

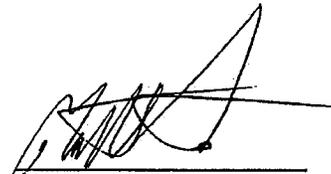
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

D. Michael Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

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13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Lawrence Hudson
285 West Horizon Drive
Boise, ID 83702

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Ms. Hudson:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

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I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Riposo VanDruff", is written over the typed name.

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Lawrence Hudson 285 West Horizon Drive Boise, ID 83702</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>United States Attorney's Office Washington Group IV 800 Park Blvd., Suite 600 Boise, ID 83712</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="text-align: center;">Laura Riposo VanDruff or other designated counsel</p>
<p>5. DATE AND TIME OF DEPOSITION</p> <p style="text-align: center;">December 2, 2013, at 9:00 a.m.</p>	

<p>6. SUBJECT OF PROCEEDING</p> <p style="text-align: center;">In the Matter of LabMD, Inc., Docket 9357</p>
--

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p style="text-align: center;">Chief Judge D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p style="text-align: center;">Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p style="text-align: center;"></p>
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail - by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Lawrence Hudson
285 West Horizon Drive
Boise, ID 83702

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

In the Matter of)
)

LabMD, Inc.,)
a corporation,)
Respondent.)

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Jeremy Dooley
4570 Cummings Cove Drive
Chattanooga, TN 37419

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Dooley:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO Jeremy Dooley 4570 Cummings Cove Drive Chattanooga, TN 37419	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION Office of the United States Attorney for the Eastern District of Tennessee 1110 Market Street, Suite 301 Chattanooga, TN 37402	4. YOUR APPEARANCE WILL BE BEFORE Laura Riposo VanDruff or other designated counsel 5. DATE AND TIME OF DEPOSITION December 2, 2013, at 9:00 a.m.
---	--

6. SUBJECT OF PROCEEDING In the Matter of LabMD, Inc., Docket 9357

7. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999
--	--

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------------	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail, by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4 (a) (2)

by leaving copy at principal office or place of business, to wit:

Jeremy Dasley
4570 Cummings Cove Drive
Chattanooga, TN 37419

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

In the Matter of)
)

LabMD, Inc.,)
a corporation,)
Respondent.)

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

DM Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Managed Data Solutions, Inc.
c/o Michael E. Krasnow
5825 Cheyenne Ct.
Warr Acres, OK 73132

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Krasnow:

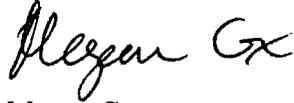
The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of Managed Data Solutions, Inc.'s documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2282.

Sincerely,

A handwritten signature in black ink that reads "Megan Cox". The signature is written in a cursive style with a large, stylized "M" and "C".

Megan Cox

Enclosure (1)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

<p>1. TO</p> <p>Managed Data Solutions, Inc. c/o Michael E. Krasnow 5825 Cheyenne Ct. Warr Acres, OK 73132</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION</p> <p>Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Matthew Smith</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION</p> <p>November 21, 2013</p>
---	--

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282</p>
--	--

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

~~by registered mail~~ by Federal Express on October 24, 2013, for overnight delivery, pursuant to Commission rule 4.4 (a) (2)

by leaving copy at principal office or place of business, to wit:

Managed Data Solutions, Inc.
c/o Michael E. Kratznow
5825 Cheyenne Ct.
Warr Acres, OK 73132

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
MANAGED DATA SOLUTIONS, INC.**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. “All documents” means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term “Communication” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. “Company” shall mean Managed Data Solutions, Inc. (“MDS”), its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
4. “Complaint” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.

5. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
6. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. “**Document**” shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
7. The term “**Documents Sufficient to Show**” means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
8. The terms “**each**,” “**any**,” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
9. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
10. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
11. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
12. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.

13. **“Personal Information”** means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
14. The terms **“Relate”** or **“Relating to”** mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
15. **“Security Incident”** means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
16. **“Subpoena”** means the Subpoena to Managed Data Solutions, Inc., including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
17. **“You”** or **“Your”** means Managed Data Solutions, Inc. or the “Company.”
18. The use of the singular includes the plural, and the plural includes the singular.
19. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2006 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, the Company’s response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed

from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state

individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** The Company shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
 - (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (“AttachIDs”) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in

advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and

- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

SPECIFICATIONS

Demand is hereby made for the following documents:

1. All communications between the Company and LabMD.
2. All documents related to the work the Company performed for LabMD, including but not limited to: estimates or proposals for work; contracts; statements of work; service agreements; invoices; security assessments of any kind, including server or network scans; penetration tests; forensic reports or analyses of any security incident; or internal records, notes or work papers.
3. Documents sufficient to show all software that the Company provided, installed, or maintained for LabMD, including but not limited to the version(s) and capabilities of all operating system software, data backup software, database software, billing software, antivirus software, spyware software, or security software.
4. Documents sufficient to show how the software that the Company sold, provided, installed, or maintained for LabMD was configured, including the settings provided by the Company at the time the software was sold, installed, or provided to LabMD.
5. Documents sufficient to show any hardware the Company provided to or installed for LabMD, including but not limited to, servers, workstation computers, firewalls, routers, or switches.
6. Documents sufficient to show how the hardware that the Company sold, provided, installed, or maintained for LabMD was configured, including the settings provided by the Company at the time the hardware was sold, installed, or provided to LabMD.

October 24, 2013

By: 
Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

In the Matter of)
)

LabMD, Inc.,)
a corporation,)
Respondent.)

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Managed Data Solutions, Inc. and attached hereto.
3. The documents produced and attached hereto by Managed Data Solutions, Inc. are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Managed Data Solutions, Inc.; and
 - c) Were made by the regularly conducted activity as a regular practice of Managed Data Solutions, Inc.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, **which may affect the timing of your compliance with BCP's request.**

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Matt Bureau
100 Remington Place Blvd
Dallas, GA 30157

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Bureau:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Riposo VanDruff", is written over a horizontal line.

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Matt Bureau 100 Remington Place Blvd Dallas, GA 30157</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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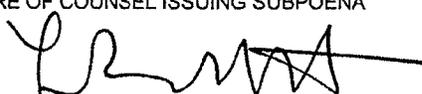
This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Federal Trade Commission Southeast Region 225 Peachtree Street, NE, Suite 1500 Atlanta, GA 30303</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Laura Riposo VanDruff or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>December 2, 2013, at 9:00 a.m.</p>
---	---

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
--	---

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

~~by registered mail~~ by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Matt Bureau
100 Remington Place Blvd
Dallas, GA 30157

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

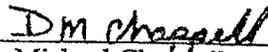
In the Matter of
LabMD, Inc.,
a corporation,
Respondent.

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:


D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

MasterCard Worldwide
c/o Lenora Lillie
2000 Purchase Street
Purchase, NY 10577

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Ms. Lillie:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of MasterCard Worldwide's documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2282.

Sincerely,

A handwritten signature in black ink that reads "Megan Cox". The signature is written in a cursive style with a large, stylized "M" and "C".

Megan Cox

Enclosure (1)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

<p>1. TO</p> <p>MasterCard Worldwide c/o Lenora Lillie 2000 Purchase Street Purchase, NY 10577</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION</p> <p>Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Matthew Smith</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION</p> <p>November 21, 2013</p>
---	--

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282</p>
--	--

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FICRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

MasterCard Worldwide

2000 Purchase Street

Purchase, NY 10577

by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(e)(2)

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA
TO MASTERCARD WORLDWIDE**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. “**All documents**” means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. “**Approved Scanning Vendors**” shall be defined as it is used by the Company in its PCI DSS and Site Data Protection compliance programs.
3. “**Attestations of Compliance**” shall be defined as it is used by the Company in its PCI DSS and Site Data Protection compliance programs.
4. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.

5. “**Company**” shall mean MasterCard Worldwide (“MasterCard”), its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
6. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.
7. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
8. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. “**Document**” shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
9. The term “**Documents Sufficient to Show**” means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
10. The terms “**each**,” “**any**,” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
11. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
12. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.

13. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
14. “**Payment Card**” shall mean the Company’s credit, debit, or charge card presented by a consumer to purchase goods or services.
15. “**Payment Card Industry Data Security Standard**” or “**PCI DSS**” shall mean the information security standard for organizations that handle payment card information, as established by the Payment Card Industry Security Standards Council.
16. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
17. “**Personal Information**” means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
18. “**Qualified Security Assessors**” shall be defined as it is used by the Company in its PCI DSS and Site Data Protection compliance programs.
19. The terms “**Relate**” or “**Relating to**” mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
20. “**Security Incident**” means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
21. “**Self-Assessment Questionnaires**” shall be defined as it is used by the Company in its PCI DSS and SDP compliance.
22. “**Site Data Protection Program**” or “**SDP**” shall mean the data security requirements and compliance validation requirements to protect stored and transmitted MasterCard payment account data.
23. “**Subpoena**” means the Subpoena to MasterCard Worldwide, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
24. “**You**” or “**Your**” means MasterCard Worldwide or the “Company.”

25. The use of the singular includes the plural, and the plural includes the singular.
26. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2006 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, the Company's response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.
5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above

before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

7. **Right to Financial Privacy Act:** The documents demanded by this Subpoena exclude any materials for which prior customer notice is required under the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. §§ 3401, et seq.
 - (1) The RFPA, 12 U.S.C. § 3401(5), defines "customer" as any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.
 - (2) The RFPA, 12 U.S.C. § 3401(4), defines "person" as an individual or a partnership of five or fewer individuals.
 - (3) The records demanded herein relate to either (a) an account or accounts at the Company in the name of a corporation or other entity that is not an individual or partnership of five or fewer individuals; or (b) an account or accounts at the Company in the name of a person associated with a financial transaction or class of financial transactions and this CID demands only that information which may be disclosed without notice pursuant to the RFPA, 12 U.S.C. § 3413(g).
8. **Right to Financial Privacy Act - Certificate of Compliance:** You should produce the responsive information and materials only after reviewing the Certificate of Compliance with the Right to Financial Privacy Act, 12 U.S.C. §§ 3401, et seq., which has been attached as Exhibit B.
9. **Exclusion of Suspicious Activity Reports:** The documents demanded by this Subpoena exclude Suspicious Activity Reports, which should not be produced.
10. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.

11. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.
12. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit C is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
13. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
14. **Document Retention:** The Company shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.

15. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

(1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:

(a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

(b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and

(c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.

(2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:

(a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and

(b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and

- (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments ("AttachIDs") delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;

- (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
- (c) All electronic media shall be scanned for and free of viruses;
- (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and
- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit D. This guide provides detailed directions on how to fully comply with this instruction.

16. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.

17. **Incomplete Records:** If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

18. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

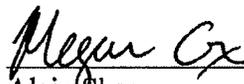
SPECIFICATIONS

Demand is hereby made for the following documents:

1. Documents sufficient to show LabMD's PCI DSS merchant level and SDP merchant level, including any change in merchant level.
2. All data security assessments provided to the Company or any third party related to LabMD, including the following: any PCI DSS or SDP Self-Assessment Questionnaires; assessments by Qualified Security Assessors; Attestations of Compliance with PCI DSS or SDP; or any Reports on Compliance.
3. All communications between or among the Company, LabMD, or any third party regarding LabMD's compliance with PCI DSS and SDP.
4. All external vulnerability scans provided to the Company related to LabMD.
5. Documents sufficient to show all Qualified Security Assessors and Approved Scanning Vendors that have relationships with LabMD, including for each the point of contact, address, telephone number, email address, and facsimile number.
6. All communications between or among the Company, LabMD, or any third party about any security incident at any point in time.
7. All forensic reports or analyses relating to any security incident.
8. Documents sufficient to show all acquiring banks that have a relationship with LabMD, including for each the point of contact, address, telephone number, email address, and facsimile number.

October 24, 2013

By:


Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

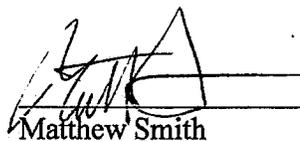
Michael D. Pepson
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Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:

A handwritten signature in black ink, appearing to read "Matthew Smith", is written over a horizontal line.

Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

D. Michael Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

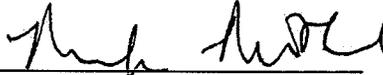
Exhibit B

CERTIFICATE OF COMPLIANCE WITH RFPA

This certifies that the provisions of the Right to Financial Privacy Act of 1978 ("RFPA") have been complied with as to the attached Subpoena. We are seeking information pursuant to the exception set forth in Section 3413(h) of RFPA.

The information obtained will be used to determine whether the legal entities named or referred to in the Subpoena are in compliance with laws administered by the Federal Trade Commission. See 12 U.S.C. § 3413(h)(1)(A). The information may be transferred to another government agency or department consistent with RFPA.

According to RFPA, good faith reliance on this certificate relieves a financial institution and its employees and agents of any liability to customers in connection with the requested disclosures of financial records. See 12 U.S.C. § 3417(c).



Maneesha Mithal
Associate Director
Division of Privacy and Identity Protection
Federal Trade Commission

Date: October 24, 2013

Exhibit C

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by MasterCard Worldwide and attached hereto.
3. The documents produced and attached hereto by MasterCard Worldwide are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of MasterCard Worldwide; and
 - c) Were made by the regularly conducted activity as a regular practice of MasterCard Worldwide.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit D

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, which may affect the timing of your compliance with BCP's request.

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Patrick K. Howard
308 Dickman Drive SW
Ruskin, Florida 33570

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

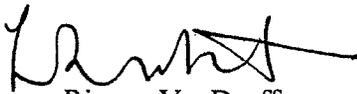
Dear Mr. Howard:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,


Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Patrick K. Howard 308 Dickman Drive SW Ruskin, Florida 33570</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Office of the United States Attorney for the Middle District of Florida 400 North Tampa Street Suite 3200 Tampa, FL 33602</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="text-align: center;">Laura Riposo VanDruff or other designated counsel</p>
<p>5. DATE AND TIME OF DEPOSITION</p> <p style="text-align: center;">December 2, 2013, at 9:00 a.m.</p>	

<p>6. SUBJECT OF PROCEEDING</p> <p style="text-align: center;">In the Matter of LabMD, Inc., Docket 9357</p>
--

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p style="text-align: center;">Chief Judge D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p>
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail. *by Federal Express on October 24, 2013 for overnight delivery pursuant to Commission rule 4.4(a)(2)*

by leaving copy at principal office or place of business, to wit:

*Patrick K. Howard
308 Dickman Drive SW
Runkin, FL 33570*

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

ProviDyn, Inc.
c/o Hamish Davidson
2812 Spring Road SE,
Suite 130
Atlanta, GA 30339

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Davidson:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of ProviDyn, Inc.'s documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2282.

Sincerely,

A handwritten signature in cursive script that reads "Megan Cox".

Megan Cox

Enclosure (1)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO ProviDyn, Inc. c/o Hamish Davidson 2812 Spring Road SE Suite 130 Atlanta, GA 30339	2. FROM <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	--

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001	4. MATERIAL WILL BE PRODUCED TO Matthew Smith 5. DATE AND TIME OF PRODUCTION November 21, 2013
--	---

6. SUBJECT OF PROCEEDING <p style="text-align: center;">In the Matter of LabMD, Inc., Docket 9357</p>
--

7. MATERIAL TO BE PRODUCED See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.
--

8. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282
--	---

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------------	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- by registered mail.
- by leaving copy at principal office or place of business, to wit:

ProviDyn, Inc. c/o Hamish David
2812 Spring Road SE Suite 130
Atlanta, GA 30339

by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
_____)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
PROVIDYN, INC.**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. “**All documents**” means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. “**Company**” shall mean ProviDyn, Inc. (“ProviDyn”), its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
4. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.

5. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
6. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. “**Document**” shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
7. The term “**Documents Sufficient to Show**” means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
8. The terms “**each**,” “**any**,” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
9. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
10. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
11. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
12. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.

13. **“Personal Information”** means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
14. The terms **“Relate”** or **“Relating to”** mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
15. **“Security Incident”** means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
16. **“Subpoena”** means the Subpoena to ProviDyn, Inc., including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
17. **“You”** or **“Your”** means ProviDyn, Inc., or the “Company.”
18. The use of the singular includes the plural, and the plural includes the singular.
19. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2006 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, the Company’s response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed

from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state

individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** The Company shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
 - (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

- (a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments ("AttachIDs") delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in

advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and

- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

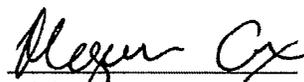
SPECIFICATIONS

Demand is hereby made for the following documents:

1. All communications between the Company and LabMD.
2. All documents related to work the Company performed for LabMD, including but not limited to: estimates or proposals for work; contracts; statements of work; service agreements; invoices; security assessments of any kind, including server or network scans; penetration tests; forensic reports or analyses of any security incident; or internal records, notes or work papers.
3. Documents sufficient to show all software the Company provided, installed, or maintained for LabMD, including but not limited to the version(s) and capabilities of all operating system software, data backup software, database software, billing software, or antivirus software.
4. Documents sufficient to show the settings the Company configured or deployed for all software the Company provided to LabMD or supported for LabMD.
5. Documents sufficient to show any hardware the Company provided to or installed for LabMD, including, but not limited to servers, workstation computers, firewalls, routers, or switches.
6. Documents sufficient to show the settings the Company configured or deployed for all hardware the Company provided to LabMD or supported for LabMD.

October 24, 2013

By:



Alain Sheer

Laura Riposo VanDruff

Megan Cox

Margaret Lassack

Ryan Mehm

Complaint Counsel

Bureau of Consumer Protection

Federal Trade Commission

600 Pennsylvania Avenue, NW

Room NJ-8100

Washington, D.C. 20580

Telephone: (202) 326-2282 (Cox)

Facsimile: (202) 326-3062

Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by ProviDyn, Inc. and attached hereto.
3. The documents produced and attached hereto by ProviDyn, Inc. are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of ProviDyn, Inc.; and
 - c) Were made by the regularly conducted activity as a regular practice of ProviDyn, Inc.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Robert Hyer
39 Groveview Ave.
Bluffton, SC 29910

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Hyer:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Robert Hyer 39 Groveview Ave. Bluffton, SC 29910</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>A. William Roberts & Associates 10 Pinckney Colony Road Suite 300 Okatie, SC 29909</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="text-align: center;">Laura Riposo VanDruff or other designated counsel</p>
	<p>5. DATE AND TIME OF DEPOSITION</p> <p style="text-align: center;">December 2, 2013, at 9:00 a.m.</p>

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p>
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Robert Hyer
39 Groveview Ave.
Bluffton, SC 29910

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

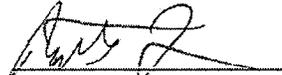
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Rosalind Woodson
5331 Nathan Drive NW
Lilburn, GA 30047-5858

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Ms. Woodson:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,


Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (via email)
Reed Rubinstein (via email)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Rosalind Woodson 5331 Nathan Drive NW Lilburn, GA 30047</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Federal Trade Commission Southeast Region 225 Peachtree Street, NE, Suite 1500 Atlanta, GA 30303</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="text-align: center;">Laura Riposo VanDruff or other designated counsel</p>
	<p>5. DATE AND TIME OF DEPOSITION</p> <p style="text-align: center;">December 2, 2013, at 9:00 a.m.</p>

<p>6. SUBJECT OF PROCEEDING</p> <p style="text-align: center;">In the Matter of LabMD, Inc., Docket 9357</p>
--

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p>
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- by registered mail by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)
- by leaving copy at principal office or place of business, to wit:
Rosalind Woodson
3331 Nathan Drive NW
Lilburn, GA 30047

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

In the Matter of)
)
)

LabMD, Inc.,)
a corporation,)
Respondent.)

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA PROCESS SERVER

Custodian of Records
Office of the Court Liaison
Sacramento Police Department
901 G Street
Sacramento, CA 95814

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

To Whom It May Concern:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of Sacramento Police Department's documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2282.

Sincerely,

A handwritten signature in black ink that reads "Megan Cox". The signature is written in a cursive, flowing style.

Megan Cox

Enclosure (1)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO Custodian of Records of the Sacramento Police Dept. Office of the Court Liaison 901 G Street Sacramento, CA 95814	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
---	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001	4. MATERIAL WILL BE PRODUCED TO Matthew Smith 5. DATE AND TIME OF PRODUCTION November 21, 2013
--	---

6. SUBJECT OF PROCEEDING In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.
--

8. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282
--	---

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------------	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail.

by leaving copy at principal office or place of business, to wit:
Custodian of Records of the Sacramento Police Dept.
Office of the Court Liaison
901 G Street
Sacramento, CA 95814

by PRODEM ALVES
on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
_____)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
CUSTODIAN OF RECORDS, SACRAMENTO POLICE DEPARTMENT**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. “**All documents**” means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.
4. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
5. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or

location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. **“Document”** shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

6. The terms **“each,” “any,”** and **“all”** shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
7. **“Includes”** or **“including”** means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
8. **“LabMD”** means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
9. **“Or”** as well as **“and”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
10. The term **“Person”** means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
11. **“Personal Information”** means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
12. The terms **“Relate”** or **“Relating to”** mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing,

analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.

13. “**Subpoena**” means the Subpoena to Custodian of Records, Sacramento Police Department, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
14. “**You**” or “**Your**” means the Sacramento Police Department, including Karina Jestes.
15. The use of the singular includes the plural, and the plural includes the singular.
16. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **June 5, 2007 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.
5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to

the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.

6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for

example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.
 - (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links,

directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

- (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
- (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.

(2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:

- (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
- (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
- (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.

(3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (“AttachIDs”) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
- (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

- (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and
 - (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
- (a) A summary of the number of records and all underlying

images, emails, and associated attachments, native files, and databases in the production; and

- (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

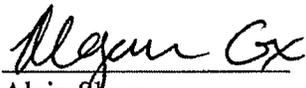
- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of a document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If you are unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by you to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for you to make an estimate, provide an explanation.
- 15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

SPECIFICATIONS

Demand is hereby made for the following documents:

1. All documents related to the investigation of Erick Garcia or Josie Martinez Maldonado.
2. All communications between you and LabMD.
3. All documents related to LabMD.
4. All records of communications you received from individuals who contacted you related to LabMD.

October 24, 2013

By: 
Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

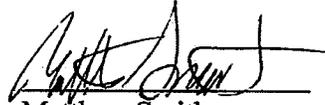
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by the Sacramento Police Department and attached hereto.
3. The documents produced and attached hereto by the Sacramento Police Department are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of the Sacramento Police Department; and
 - c) Were made by the regularly conducted activity as a regular practice of the Sacramento Police Department.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, **which may affect the timing of your compliance with BCP's request.**

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Sandy Springs, Georgia Police Department
c/o Roger Jones, Records Section Supervisor
7840 Roswell Road
Suite 301
Sandy Springs, GA 30350

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Jones:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of Sandy Springs Police Department's documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission, Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2282.

Sincerely,

A handwritten signature in black ink that reads "Megan Cox". The signature is written in a cursive style with a large, stylized 'M' and 'C'.

Megan Cox

Enclosure (1)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO Sandy Springs Police Department c/o Roger Jones, Records Section Supervisor 7840 Roswell Road, Suite 301 Sandy Springs, GA 30350	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001	4. MATERIAL WILL BE PRODUCED TO Matthew Smith 5. DATE AND TIME OF PRODUCTION November 21, 2013
--	---

6. SUBJECT OF PROCEEDING In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.
--

8. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282
--	---

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------------	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail.

by leaving copy at principal office or place of business, to wit:

*Sandy Springs Police Department
c/o Roger Jones, Records Section Supervisor
7840 Roswell Road Suite 301*

Sandy Springs, GA 30350

by Federal Express on October 24, 2013 for overnight delivery, per request to Commission rule 4.4(a)(2)
on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL'S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
THE SANDY SPRINGS POLICE DEPARTMENT**

Pursuant to Complaint Counsel's attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. "All documents" means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term "Communication" includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. "Complaint" means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.
4. The term "Containing" means containing, describing, or interpreting in whole or in part.
5. "Document" means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or

location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. "**Document**" shall also include electronically stored information ("ESI"). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

6. The terms "**each**," "**any**," and "**all**" shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
7. "**Includes**" or "**including**" means "including, but not limited to," so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
8. "**LabMD**" means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
9. "**Or**" as well as "**and**" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
10. The term "**Person**" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
11. "**Personal Information**" means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a "cookie" or processor serial number.
12. The terms "**Relate**" or "**Relating to**" mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing,

analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.

13. **“Subpoena”** means the Subpoena to the Sandy Springs Police Department, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
14. **“You”** or **“Your”** means the Sandy Springs Police Department, including David Lapides.
15. The use of the singular includes the plural, and the plural includes the singular.
16. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **May 1, 2007 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.
5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in

any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.

6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during _____ production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a

confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.
 - (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links,

directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

- (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
- (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (“AttachIDs”) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

- (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and
 - (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
- (a) A summary of the number of records and all underlying

images, emails, and associated attachments, native files, and databases in the production; and

- (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of a document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If you are unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by you to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for you to make an estimate, provide an explanation.
- 15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

SPECIFICATIONS

Demand is hereby made for the following documents:

1. All documents related to Karalyn Garrett.
2. All communications between you and LabMD.
3. All documents related to LabMD.

October 24, 2013

By: Megan Cox

Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

In the Matter of

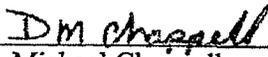
LabMD, Inc.,
a corporation,
Respondent.

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by the Sandy Springs Police Department and attached hereto.
3. The documents produced and attached hereto by the Sandy Springs Police Department are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of the Sandy Springs Police Department; and
 - c) Were made by the regularly conducted activity as a regular practice of the Sandy Springs Police Department.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, which may affect the timing of your compliance with BCP's request.

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	Ⓜ	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Scott Moulton
303 Eagle Ridge Place
Canton, GA 30114

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Moulton:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

The Commission's Rules of Practice also provide that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). Complaint Counsel has also issued a subpoena *duces tecum* for certain of your documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss the scheduling of your deposition and any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read 'LRV', with a long horizontal flourish extending to the right.

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Scott Moulton 303 Eagle Ridge Place Canton, GA 30114</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Federal Trade Commission Southeast Region 225 Peachtree Street, NE, Suite 1500 Atlanta, GA 30303</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Laura Riposo VanDruff or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>December 2, 2013, at 9:00 a.m.</p>
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<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of LabMD, Inc., Docket 9357</p>
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<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail: by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4 (a) (2)

by leaving copy at principal office or place of business, to wit:

Scott Moulton
303 Eagle Ridge Place
Canton, GA 30114

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

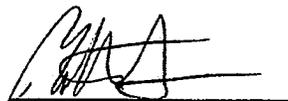
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

<p>1. TO</p> <p>Scott Moulton 303 Eagle Ridge Place Canton, GA 30114</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION</p> <p>Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Matthew Smith</p> <p>5. DATE AND TIME OF PRODUCTION</p> <p>November 21, 2013</p>
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6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282</p>
--	--

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://ftc.gov/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

~~by registered mail~~ by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Scott Moulton

303 Eagle Ridge Place

Canton, GA 30114

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	
)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
SCOTT MOULTON**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. “**All documents**” means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.
4. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
5. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or

location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. "**Document**" shall also include electronically stored information ("ESI"). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

6. The terms "**each**," "**any**," and "**all**" shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
7. "**Includes**" or "**including**" means "including, but not limited to," so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
8. "**LabMD**" means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
9. "**Or**" as well as "**and**" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
10. The term "**Person**" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
11. "**Personal Information**" means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a "cookie" or processor serial number.
12. The terms "**Relate**" or "**Relating to**" mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing,

analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.

13. **“Subpoena”** means the Subpoena to Scott Moulton, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
14. **“You”** or **“Your”** means Scott Moulton.
15. The use of the singular includes the plural, and the plural includes the singular.
16. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2011 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.
5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in

any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.

6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a

confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.
 - (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links,

directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

(b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and

(c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.

(2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:

(a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and

(b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and

(c) Documents shall be produced in color where necessary to interpret them or render them intelligible.

(3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

(a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (“AttachIDs”) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;

(b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

- (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and
 - (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
- (a) A summary of the number of records and all underlying

images, emails, and associated attachments, native files, and databases in the production; and

- (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of a document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
14. **Incomplete Records:** If you are unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by you to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for you to make an estimate, provide an explanation.
15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

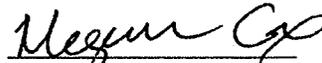
SPECIFICATIONS

Demand is hereby made for the following documents:

1. All communications between you and LabMD.
2. All documents considered to prepare the affidavit you executed on January 12, 2012, in the matter captioned LabMD, Inc. v. Tiversa, Inc., Docket No. 11-cv-04044 (N.D. Ga.).
3. All contracts between you and LabMD.
4. All documents related to work you performed for LabMD.
5. All documents related to compensation received by you, Forensic Strategy Services, LLC, or any other entity, for services you provided to LabMD.

October 24, 2013

By:



Alain Sheer

Laura Riposo VanDruff

Megan Cox

Margaret Lassack

Ryan Mehm

Complaint Counsel

Bureau of Consumer Protection

Federal Trade Commission

600 Pennsylvania Avenue, NW

Room NJ-8100

Washington, D.C. 20580

Telephone: (202) 326-2282 (Cox)

Facsimile: (202) 326-3062

Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Scott Moulton and attached hereto.
3. The documents produced and attached hereto by Scott Moulton are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Scott Moulton; and
 - c) Were made by the regularly conducted activity as a regular practice of Scott Moulton.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, **which may affect the timing of your compliance with BCP's request.**

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia** files in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Trend Micro Inc.
c/o Jorge Young
10101 N. De Anza Blvd
Cupertino, CA 95014

Re: **In the Matter of LabMD, Inc., FTC Docket No. 9357**

Dear Mr. Young:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of Trend Micro Inc.'s documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2282.

Sincerely,

A handwritten signature in cursive script that reads "Megan Cox". The signature is written in dark ink and is positioned above the printed name.

Megan Cox

Enclosure (1)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

<p>1. TO</p> <p>Trend Micro Inc. c/o Jorge Young, General Counsel 10101 N. De Anza Blvd. Cupertino, CA 95014</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION</p> <p>Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Matthew Smith</p> <p>5. DATE AND TIME OF PRODUCTION</p> <p>November 21, 2013</p>
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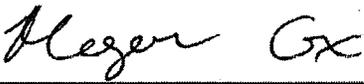
6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282</p>
--	--

<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- by registered mail.
- by leaving copy at principal office or place of business, to wit:

Trend Micro Inc.
c/o Jorge Young, General Counsel
10101 N. De Anza Blvd.
Cupertino, CA 95014

by Federal Express on October 24, 2013 for overnight delivery pursuant to Commission rule 4.4(a)(2)
on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL'S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURUSANT TO SUBPOENA TO
TREND MICRO INC.**

Pursuant to Complaint Counsel's attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. "All documents" means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term "Communication" includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. "Company" shall mean Trend Micro Inc., ("Trend Micro"), its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, resellers, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
4. "Complaint" means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.

5. The term "**Containing**" means containing, describing, or interpreting in whole or in part.
6. "**Document**" means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. "**Document**" shall also include electronically stored information ("ESI"). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
7. The term "**Documents Sufficient to Show**" means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
8. The terms "**each**," "**any**," and "**all**" shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
9. "**Includes**" or "**including**" means "including, but not limited to," so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
10. "**LabMD**" means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
11. "**Or**" as well as "**and**" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
12. The term "**Person**" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
13. "**Personal Information**" means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone

number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a "cookie" or processor serial number.

14. The terms "**Relate**" or "**Relating to**" mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
15. "**Security Incident**" means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
16. "**Subpoena**" means the Subpoena to Trend Micro Inc., including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
17. "**You**" or "**Your**" means Trend Micro Inc., or the "Company."
18. The use of the singular includes the plural, and the plural includes the singular.
19. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2006 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, the Company's response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the

folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is

in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** The Company shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition ("OCR") and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format ("TIFF") or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier ("DocID") or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
 - (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

- (a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments ("AttachIDs") delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in

advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and

- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

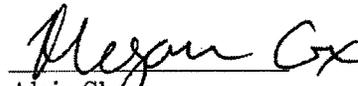
SPECIFICATIONS

Demand is hereby made for the following documents:

1. All communications between the Company and LabMD.
2. All documents related to the work the Company performed for LabMD, including but not limited to: estimates or proposals for work; contracts; statements of work; service agreements; invoices; security assessments of any kind, including server or network scans; penetration tests; forensic reports or analyses of any security incident; or internal records, notes or work papers.
3. Documents sufficient to show all software that the Company provided, installed, or maintained for LabMD, including the version(s) and capabilities of all antivirus software, spyware software, or security software.
4. Documents sufficient to show how the software that the Company sold, provided, installed, or maintained for LabMD was configured, including the settings provided by the Company at the time the software was sold, installed, or provided to LabMD.

October 24, 2013

By:



Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

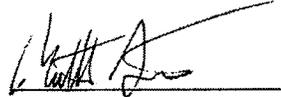
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY

Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Trend Micro Inc. and attached hereto.
3. The documents produced and attached hereto by Trend Micro Inc. are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Trend Micro Inc.;
and
 - c) Were made by the regularly conducted activity as a regular practice of Trend Micro Inc.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, **which may affect the timing of your compliance with BCP's request.**

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

U.S. Bank National Association, ND
c/o Christopher Rochelle
Merchant Data Compromise
7300 Chapman Hwy
Knoxville, TN 37920

Re: **In the Matter of LabMD, Inc., FTC Docket No. 9357**

Dear Mr. Rochelle:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of U.S. Bank National Association, ND's documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2282.

Sincerely,

A handwritten signature in black ink that reads "Megan Cox". The signature is written in a cursive style with a large, stylized 'M' and 'C'.

Megan Cox

Enclosure (1)

cc: Michael Pepson (*via* email)
Reed Rubinstein (*via* email)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

<p>1. TO U.S. Bank National Association, ND c/o Christopher Rochelle Merchant Data Compromise 7300 Chapman Hwy Knoxville, TN 37920</p>	<p>2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001</p>	<p>4. MATERIAL WILL BE PRODUCED TO Matthew Smith</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION November 21, 2013</p>
---	--

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

<p>8. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282</p>
--	--

<p>DATE SIGNED October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA <i>Megan Cox</i></p>
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://ftc.gov/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- by registered mail.
- by leaving copy at principal office, or place of business, to wit:

U. S. Bank National Association, ND
c/o Christopher Rochelle
Merchant Data Compromise
7300 Chapman Hwy
Knoxville, TN 37920

by Federal Express on October 24, 2013 for overnight delivery, pursuant to Courtroom rule 4.4(a)(2) on the person named herein on:

October 25, 2013
(Month, day, and year)

Matthew Smith
(Name of person making service)

Paralegal
(Official title)

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
U.S. BANK NATIONAL ASSOCIATION, ND**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. **“All documents”** means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. **“Approved Scanning Vendors”** shall be defined as it is used by the Company in its PCI DSS compliance program.
3. **“Attestations of Compliance”** shall be defined as it is used by the Company in its PCI DSS compliance program.
4. The term **“Communication”** includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.

5. “**Company**” shall mean U.S. Bank National Association, ND, (“U.S. Bank National”), its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
6. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.
7. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
8. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. “**Document**” shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
9. The term “**Documents Sufficient to Show**” means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
10. The terms “**each**,” “**any**,” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
11. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
12. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.

13. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
14. “**Payment Card**” shall mean the MasterCard Worldwide and Visa Inc.’s credit, debit, or charge card presented by a consumer to purchase goods or services.
15. “**Payment Card Industry Data Security Standard**” or “**PCI DSS**” shall mean the information security standard for organizations that handle payment card information, as established by the Payment Card Industry Security Standards Council.
16. “**Payment Card Companies**” shall mean MasterCard Worldwide and Visa Inc.
17. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
18. “**Personal Information**” means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
19. “**Qualified Security Assessors**” shall be defined as it is used by the Company in its PCI DSS compliance program.
20. The terms “**Relate**” or “**Relating to**” mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
21. “**Security Incident**” means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
22. “**Self-Assessment Questionnaires**” shall be defined as it is used by the Company in its PCI DSS compliance program.
23. “**Subpoena**” means the Subpoena to U.S. Bank National Association, ND, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
24. “**You**” or “**Your**” means U.S. Bank National Association, ND, or the “Company.”
25. The use of the singular includes the plural, and the plural includes the singular.

26. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2006 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, the Company's response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.
5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information

includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

7. **Right to Financial Privacy Act:** The documents demanded by this Subpoena exclude any materials for which prior customer notice is required under the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. §§ 3401, et seq.
 - (1) The RFPA, 12 U.S.C. § 3401(5), defines "customer" as any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.
 - (2) The RFPA, 12 U.S.C. § 3401(4), defines "person" as an individual or a partnership of five or fewer individuals.
 - (3) The records demanded herein relate to either (a) an account or accounts at the Company in the name of a corporation or other entity that is not an individual or partnership of five or fewer individuals; or (b) an account or accounts at the Company in the name of a person associated with a financial transaction or class of financial transactions and this CID demands only that information which may be disclosed without notice pursuant to the RFPA, 12 U.S.C. § 3413(g).
8. **Right to Financial Privacy Act - Certificate of Compliance:** You should produce the responsive information and materials only after reviewing the Certificate of Compliance with the Right to Financial Privacy Act, 12 U.S.C. §§ 3401, et seq., which has been attached as Exhibit B.
9. **Exclusion of Suspicious Activity Reports:** The documents demanded by this Subpoena exclude Suspicious Activity Reports, which should not be produced.
10. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
11. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for

production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

12. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit C is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
13. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
14. **Document Retention:** The Company shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.
15. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Chris Maire
2719 Gettysburg Lane, SE
Marietta, GA 30067

Re: **In the Matter of LabMD, Inc., FTC Docket No. 9357**

Dear Mr. Maire:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Chris Maire 2719 Gettysburg Lane, SE Marietta, GA 30067</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Federal Trade Commission Southeast Region 225 Peachtree Street, NE, Suite 1500 Atlanta, GA 30303</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Laura Riposo VanDruff or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>December 2, 2013, at 9:00 a.m.</p>
---	---

<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of LabMD, Inc., Docket 9357</p>
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<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
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<p>DATE SIGNED</p> <p>October 24, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail by Federal Express on October 24, 2013 for overnight delivery pursuant to Commission rule 4.61(a)(2)

by leaving copy at principal office or place of business, to wit:

Chris Maire
2719 Gettysburg Lane, SE
Marietta, GA 30067

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

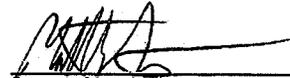
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Visa Inc.
c/o David Bitar
900 Metro Center Boulevard
Foster City, CA 94404

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Bitar:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of Visa Inc.'s documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2282.

Sincerely,

A handwritten signature in black ink that reads "Megan Cox". The signature is written in a cursive style with a large initial "M" and a stylized "Cox".

Megan Cox

Enclosure (1)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO Visa Inc. c/o David Bitar 900 Metro Center Boulevard Foster City, CA 94404	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
--	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001	4. MATERIAL WILL BE PRODUCED TO Matthew Smith 5. DATE AND TIME OF PRODUCTION November 21, 2013
--	---

6. SUBJECT OF PROCEEDING In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.
--

8. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282
--	---

DATE SIGNED October 24, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------------	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

Visa Inc. c/o David Bitar
900 Metro Center Boulevard
Foster City, CA 94404

by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 4.4(u)(2)

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO VISA INC.**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. “**All documents**” means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. “**Approved Scanning Vendors**” shall be defined as it is used by the Company in its PCI DSS compliance program and Cardholder Information Security Program.
3. “**Attestations of Compliance**” shall be defined as it is used by the Company in its PCI DSS compliance program and Cardholder Information Security Program.
4. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
5. “**Company**” shall mean Visa Inc. (“**Visa**”), its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates,

and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

6. **“Complaint”** means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.
7. The term **“Containing”** means containing, describing, or interpreting in whole or in part.
8. **“Document”** means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. **“Document”** shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
9. The term **“Documents Sufficient to Show”** means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
10. The terms **“each,” “any,”** and **“all”** shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
11. **“Includes”** or **“including”** means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
12. **“LabMD”** means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
13. **“Or”** as well as **“and”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.

14. **"Payment Card"** shall mean the Company's credit, debit, or charge card presented by a consumer to purchase goods or services.
15. **"Payment Card Industry Data Security Standard"** or **"PCI DSS"** shall mean the information security standard for organizations that handle payment card information, as established by the Payment Card Industry Security Standards Council.
16. The term **"Person"** means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
17. **"Personal Information"** means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a "cookie" or processor serial number.
18. **"Qualified Security Assessors"** shall be defined as it is used by the Company in its PCI DSS compliance program and Cardholder Information Security Program.
19. The terms **"Relate"** or **"Relating to"** mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
20. **"Security Incident"** means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
21. **"Self-Assessment Questionnaires"** shall be defined as it is used by the Company in its PCI DSS compliance and Cardholder Information Security Program.
22. **"Subpoena"** means the Subpoena to Visa Inc., including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
23. **"You"** or **"Your"** means Visa Inc., or the "Company."
24. The use of the singular includes the plural, and the plural includes the singular.
25. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2006 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, the Company's response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.
5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth,

Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

7. **Right to Financial Privacy Act:** The documents demanded by this Subpoena exclude any materials for which prior customer notice is required under the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. §§ 3401, et seq.
 - (1) The RFPA, 12 U.S.C. § 3401(5), defines "customer" as any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.
 - (2) The RFPA, 12 U.S.C. § 3401(4), defines "person" as an individual or a partnership of five or fewer individuals.
 - (3) The records demanded herein relate to either (a) an account or accounts at the Company in the name of a corporation or other entity that is not an individual or partnership of five or fewer individuals; or (b) an account or accounts at the Company in the name of a person associated with a financial transaction or class of financial transactions and this CID demands only that information which may be disclosed without notice pursuant to the RFPA, 12 U.S.C. § 3413(g).
8. **Right to Financial Privacy Act - Certificate of Compliance:** You should produce the responsive information and materials only after reviewing the Certificate of Compliance with the Right to Financial Privacy Act, 12 U.S.C. §§ 3401, et seq., which has been attached as Exhibit B.
9. **Exclusion of Suspicious Activity Reports:** The documents demanded by this Subpoena exclude Suspicious Activity Reports, which should not be produced.
10. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
11. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will

enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

12. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit C is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
13. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
14. **Document Retention:** The Company shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.
15. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
 - (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (“AttachIDs”) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and

SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and

- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit D. This guide provides detailed directions on how to fully comply with this instruction.

- 16. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 17. **Incomplete Records:** If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

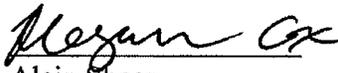
18. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

SPECIFICATIONS

Demand is hereby made for the following documents:

1. Documents sufficient to show LabMD's PCI DSS merchant level, including any change in merchant level.
2. All data security assessments provided to the Company related to LabMD, including the following: any PCI DSS Self-Assessment Questionnaires; assessments by Qualified Security Assessors; Attestations of Compliance with the PCI DSS; or any Reports on Compliance.
3. All communications between or among the Company, LabMD, or any third party regarding LabMD's compliance with PCI DSS.
4. All external vulnerability scans provided to the Company related to LabMD.
5. Documents sufficient to identify all Qualified Security Assessors and Approved Scanning Vendors that have relationships with LabMD, including for each the point of contact, address, telephone number, email address, and facsimile number.
6. All communications between or among the Company, LabMD, or any third party about any security incident at any point in time.
7. All forensic reports or analyses relating to any security incident.
8. Documents sufficient to show all acquiring banks that have a relationship with LabMD, including for each the point of contact, address, telephone number, email address, and facsimile number.

October 24, 2013

By: 
Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:


Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATE OF COMPLIANCE WITH RFPA

This certifies that the provisions of the Right to Financial Privacy Act of 1978 ("RFPA") have been complied with as to the attached Subpoena. We are seeking information pursuant to the exception set forth in Section 3413(h) of RFPA.

The information obtained will be used to determine whether the legal entities named or referred to in the Subpoena are in compliance with laws administered by the Federal Trade Commission. See 12 U.S.C. § 3413(h)(1)(A). The information may be transferred to another government agency or department consistent with RFPA.

According to RFPA, good faith reliance on this certificate relieves a financial institution and its employees and agents of any liability to customers in connection with the requested disclosures of financial records. See 12 U.S.C. § 3417(c).



Maneesha Mithal
Associate Director
Division of Privacy and Identity Protection
Federal Trade Commission

Date: October 24, 2013

Exhibit C

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Visa Inc. and attached hereto.
3. The documents produced and attached hereto by Visa Inc. are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Visa Inc.; and
 - c) Were made by the regularly conducted activity as a regular practice of Visa Inc.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit D

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, **which may affect the timing of your compliance with BCP's request.**

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions under 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions over 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Michael Daugherty
637 East Pelham Road, NE
Atlanta, GA 30324

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Daugherty:

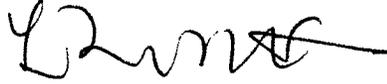
The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). This letter is to notify you that Complaint Counsel has issued a subpoena *duces tecum* for certain of your documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura Riposo VanDruff', with a long horizontal flourish extending to the right.

Laura Riposo VanDruff

Enclosure (1)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO

Michael Daugherty
637 East Pelham Road, NE
Atlanta, GA 30324

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION

Matthew Smith
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room NJ-8100
Washington, D.C. 20001

4. MATERIAL WILL BE PRODUCED TO

Matthew Smith

5. DATE AND TIME OF PRODUCTION

November 21, 2013

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

8. ADMINISTRATIVE LAW JUDGE

Chief Judge D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL AND PARTY ISSUING SUBPOENA

Laura Riposo VanDruff, Complaint Counsel
Federal Trade Commission
601 New Jersey Ave, NW, Room-8100
Washington, DC 20001
(202) 326-2999

DATE SIGNED

October 24, 2013

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

~~by registered mail.~~ by Federal Express on October 24, 2013 for overnight delivery, pursuant to Commission rule 9.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Michael Daugherty
637 East Pelham Road, NE
Atlanta, GA 30324

on the person named herein on:

October 25, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation.)	
)	
)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
MICHAEL DAUGHERTY**

Pursuant to Complaint Counsel’s attached Subpoena *Duces Tecum* issued October 24, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20001.

DEFINITIONS

1. “**All documents**” means each document, as defined below, which can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.
4. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
5. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated

or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. **“Document”** shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

6. The terms **“each,” “any,”** and **“all”** shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
7. **“Includes”** or **“including”** means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
8. **“Manuscript”** means the work currently titled *The Devil Inside the Beltway*, but shall also include any previous iterations of the work referred to by other titles.
9. **“Or”** as well as **“and”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
4. The term **“Person”** means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
5. **“Personal Information”** means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
6. The terms **“Relate”** or **“Relating to”** mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.

7. **“Subpoena”** means the Subpoena to Michael Daugherty, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
8. **“You”** or **“Your”** means Michael Daugherty.
9. The use of the singular includes the plural, and the plural includes the singular.
10. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2006 to the present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this Subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.
5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of

materials shall be produced in color if necessary to interpret them or render them intelligible.

6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Complaint Counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of

a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to Subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this Subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Complaint Counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.
 - (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

- (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
- (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (“AttachIDs”) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page

count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and

- (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Complaint Counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
 - (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and
 - (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and

- (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Complaint Counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Complaint Counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to comply fully with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If you are unable to answer any request fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by you to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for you to make an estimate, provide an explanation.
- 15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

SPECIFICATIONS

Demand is hereby made for the following documents:

1. All drafts of the Manuscript that were reviewed by any third party prior to the Manuscript's publication.
2. All comments received on drafts of the Manuscript.
3. All documents related to the source material for drafts of the Manuscript, including documents referenced or quoted in the Manuscript.
4. All promotional materials related to the Manuscript, including, but not limited to, documents posted on social media, commercials featuring you, and presentations or interviews given by you.

October 24, 2013

By:



Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, DC 20580
Telephone: (202) 326-2999 (VanDruff)
Facsimile: (202) 326-3062
Electronic mail: lvandruff@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By: 
Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Michael Daugherty and attached hereto.
3. The documents produced and attached hereto by Michael Daugherty are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Michael Daugherty;
and
 - c) Were made by the regularly conducted activity as a regular practice of Michael Daugherty.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, which may affect the timing of your compliance with BCP's request.

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 24, 2013

VIA FEDERAL EXPRESS

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW
Suite 650
Washington, DC 20006

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Pepson:

Enclosed are Complaint Counsel's First Set of Requests for Production and Interrogatories to your client, LabMD, Inc.

Judge Chappell's Scheduling Order requires the parties to confer regarding the "format for the production of electronically stored information" within seven days of service of document requests. Scheduling Order (Add'l Provisions) ¶ 11 (Sept. 25, 2013). We would be pleased to discuss these and related issues at your convenience. You may reach me at (202) 326-2999.

Sincerely,


Laura Riposo VanDruff

Enclosure (1)

cc: Reed Rubinstein (via email)

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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

DOCKET NO. 9357

**COMPLAINT COUNSEL'S FIRST SET
OF INTERROGATORIES TO RESPONDENT
(NUMBERS 1-9)**

Pursuant to the Federal Trade Commission's Rule of Practice § 3.35, 16 C.F.R. § 3.35, and the Court's Scheduling Order, dated September 25, 2013, Complaint Counsel requests that Respondent respond to these Interrogatories within 30 days and furnish the requested information to Complaint Counsel at the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20001 or at such time and place as may be agreed upon by all counsel.

DEFINITIONS

1. **"Communication"** includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
2. **"Consumer"** means a natural person.
3. **"Each," "any,"** and **"all"** shall be construed to have the broadest meaning whenever necessary to bring within the scope of any Interrogatory all information that might otherwise be construed to be outside its scope.
4. **"FTC"** or **"Commission"** means the Federal Trade Commission.
5. **"Includes"** or **"including"** means "including, but not limited to," so as to avoid excluding any information that might otherwise be construed to be within the scope of any Interrogatory.
6. **"LabMD," "Company,"** or **"Respondent"** mean Respondent LabMD, Inc., its directors, officers, employees, attorneys, accountants, independent contractors, consultants, agents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures.

7. “Or” as well as “and” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any Interrogatory all information that otherwise might be construed to be outside the scope.
8. “Person” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity, including the Company.
9. “Personal Information” means individually identifiable information from or about a Consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
10. The terms “Relate” or “Relating to” mean in whole or in part discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.
11. “Security Incident” means any instance of attempted or actual unauthorized access to or unauthorized disclosure of Personal Information maintained by or for LabMD.
12. “Security Practices” mean formal or informal policies, standards, guidelines, mechanisms, practices, defenses, or measures related to preventing or detecting Security Incidents, including: protecting Consumers’ Personal Information; assessing security risks on computer networks; preventing employees from accessing Personal Information not needed to perform their jobs; training employees to safeguard Personal Information; authenticating users to computer networks; maintaining and updating the operating systems of computers and other devices on computer networks; or employing measures to prevent or detect unauthorized access to Personal Information on computer networks.
13. “You” or “your” means LabMD.
14. The use of the singular includes the plural, and the plural includes the singular.
15. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
16. The spelling of a name shall be construed to include all similar variants thereof.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by an Interrogatory shall be limited to the period from **January 1, 2006 to December 31, 2010.**

2. **Interrogatory Responses:** Provide a separate and complete sworn response for each Interrogatory and subpart. Preceding each response, the Interrogatory shall be set forth in full.
3. **Available Information:** These Interrogatories seek answers based on information or knowledge in your possession, custody, or control, including information reasonably available to you and your agents, attorneys, or representatives.
4. **Referencing Documents in Interrogatory Responses:** To the extent that an Interrogatory may be answered by referencing a document, it is permissible to attach the document as an exhibit to the answer and refer to the document in the answer. If any such document contains more than one page, you must refer to the page and section where the relevant reference(s) can be found. 16 C.F.R. § 3.35(c).
5. **Interpreting Interrogatories:** If, in answering any of the Interrogatories, you claim any ambiguity in either the Interrogatory or any applicable definition or instruction, identify in your response the language you consider to be ambiguous and state the interpretation you are using in responding.
6. **Incomplete Responses:** State if you are unable to answer any of the Interrogatories fully and completely and after exercising due diligence to secure the information necessary to make full and complete responses. Specify the reason(s) for your inability to answer any portion or aspect of such Interrogatory. For each Interrogatory that cannot be answered in full, describe the efforts made to locate information needed for such answer.
7. **Objections:** All objections to any Interrogatory must be raised in your initial response or will be waived. If you object to any Interrogatory or a part of any Interrogatory, state with specificity the precise grounds upon which you rely so that the Administrative Law Judge or other administrative or judicial entity may determine the legal sufficiency of your objection, and provide the most responsive information you are willing to provide without an order compelling response(s).
8. **Claims of Privilege:** If you object to any Interrogatory or any portion of any Interrogatory on the ground that it requests information that is privileged or immune from production based on any similar claim, provide, not later than the date set for responses, a schedule that describes the nature of the applicable privilege(s) or similar claim(s), including all information required by 16 C.F.R. §3.38A, in a manner that will enable Complaint Counsel to assess the claim(s).
9. **Continuing Nature of Requests:** These Interrogatories are continuing and require prompt amendment of any prior response if you learn, after acquiring additional information or otherwise, that the response is in some material respect incomplete or incorrect. 16 C.F.R. § 3.31(e).

10. **Failure to Respond:** You are hereby advised that Complaint Counsel will move to preclude you from presenting evidence regarding responsive matters you fail to set forth in your answers to these Interrogatories.

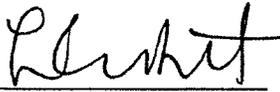
11. **Questions:** Any questions you have relating to the scope or meaning of anything in these Interrogatories or suggestions for possible modifications thereto should be directed to Laura Riposo VanDruff at (202) 326-2999. Documents produced in conjunction with Interrogatory responses shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

INTERROGATORIES

1. Identify by name and job title all Persons with authority from LabMD to access Personal Information regarding Consumers, including, but not limited to, Persons who performed tasks related to billing by LabMD for services provided.
2. For each Person identified in response to Interrogatory No. 1, state the types of Personal Information that the Person had authority to access.
3. Identify all file sharing applications downloaded to or installed on any LabMD computer, stating for each when the application was downloaded or installed, what version(s) were downloaded or installed, to which computer(s) the applications were downloaded or installed, and when the applications were updated.
4. Identify each inquiry or investigation by a state or federal agency regarding LabMD's Security Practices.
5. Describe each Security Incident not previously disclosed to the Commission or its staff. Include in your description the dates and circumstances of the Security Incident; the types and volumes of Personal Information accessed or disclosed; and the names and addresses of all Consumers whose Personal Information was accessed or disclosed.
6. For each each substantially different Communication from LabMD to Consumers relating to any Security Incident, describe how LabMD developed the list of Consumers to whom the Communication was directed.
7. State the names and addresses of all Consumers who requested credit monitoring services after receiving a Communication from LabMD related to any Security Incident.
8. State, as a percentage of the total number of Consumers whose samples LabMD has tested, the proportion of Consumers who:
 - a. Are uninsured;
 - b. Have commercial health insurance;
 - c. Have Medicare; and
 - d. Have Medicaid.

9. For each month beginning in May 2008, state the cost of any changes to made LabMD's Security Practices.

October 24, 2013

By: 

Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, DC 20580
Telephone: (202) 326-2999 (VanDruff)
Facsimile: (202) 326-3062
Electronic mail: lvandruff@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW
Suite 650
Washington, DC 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, DC 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
)	
LabMD, Inc., a corporation.	)	DOCKET NO. 9357
)	
)	

**COMPLAINT COUNSEL'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS TO RESPONDENT
(NUMBERS 1-28)**

Pursuant to the Federal Trade Commission's Rule of Practice § 3.37, 16 C.F.R. § 3.37, and the Court's Scheduling Order, dated October 22, 2013, Complaint Counsel requests that Respondent produce the documentary materials identified below for inspection and copying within thirty (30) days at the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20001.

DEFINITIONS

1. **"All Documents"** means each Document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all Documents possessed by: (a) you, including Documents stored in any personal or non-Corporate Respondent electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such Documents by request or which you have a legal right to bring within your possession by demand.
2. **"Communication"** includes any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished. Examples of Communications include all discussions, meetings, telephone conversations, letters, memoranda, and electronic mail.
3. **"Consumer"** means a natural person.
4. **"Containing"** means containing, describing, or interpreting in whole or in part.
5. **"Document"** means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of

every type and description, however and by whomever prepared, produced, disseminated or made, including any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, screen shot, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book, or label. **“Document”** shall also include electronically stored information (“ESI”). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

6. **“Documents Sufficient to Show”** means both Documents that are necessary and Documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying Documents.
7. **“Each,” “any,” and “all”** shall be construed to have the broadest meaning whenever necessary to bring within the scope of any request for production all Documents that might otherwise be construed to be outside its scope.
8. **“Includes” or “including”** means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any request for production.
9. **“LabMD,” “Company,” or “Respondent”** means Respondent LabMD, Inc., its directors, officers, employees, attorneys, accountants, independent contractors, consultants, agents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures.
10. **“LabMD IT Contractors”** means all contractors or vendors, consulted or retained by LabMD, providing products or services related to Security Practices, including the following: Automated PC Technologies, Inc.; Brian Bissel; Gary Clark; Cypress Communications, Inc.; Managed Data Solutions; ProviDyn, Inc.; Trend Micro Inc.; and Traincor.
11. **“LabMD IT Staff”** means all information technology employees of LabMD, including the following: Brandon Bradley, Matt Bureau, Jeremy Dooley, Nicole Elliott, Pat Howard, Robert Hyer, Curt Kaloustian, Chris Maire, Jeff Martin, Jennifer Parr, Alison Simmons, and Denise Vincent.

12. **“Or”** as well as **“and”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any request for production all Documents that otherwise might be construed to be outside its scope.
13. **“P2P Application”** means any peer-to-peer file sharing application, including LimeWire and Napster.
14. **“P2P Network”** means computers using compatible P2P Applications.
15. **“Person”** means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity, including the Company.
16. **“Personal Information”** means individually identifiable information from or about a Consumer including: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
17. **“Relate”** or **“Relating to”** means in whole or in part discussing, implementing, testing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.
18. **“Security Incident”** means any instance of attempted or actual unauthorized access to or unauthorized disclosure of Personal Information maintained by or for LabMD.
19. **“Security Practices”** mean formal or informal policies, standards, guidelines, mechanisms, practices, defenses, or measures related to preventing or detecting Security Incidents, including: protecting Consumers’ Personal Information; assessing security risks on computer networks; preventing employees from accessing Personal Information not needed to perform their jobs; training employees to safeguard Personal Information; authenticating users to computer networks; maintaining and updating the operating systems of computers and other devices on computer networks; or employing measures to prevent or detect unauthorized access to Personal Information on computer networks.
20. **“Tiversa”** means Tiversa Holding Corporation, and its wholly or partially owned subsidiaries, and all directors, officers, and employees of the foregoing.
21. **“You”** or **“your”** means LabMD.
22. The use of the singular includes the plural, and the plural includes the singular.
23. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a request for production shall be limited to the period from **January 1, 2006 to December 31, 2010**.
2. **Prior Productions:** If any Documents responsive to a request previously have been supplied to the Commission, you may comply with the request by identifying the Document(s) previously provided by Bates number and the date(s) of submission.
3. **Document Identification:** Documents that may be responsive to more than one request need not be submitted more than once. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if Documents are removed from their original folder, binders, covers, containers, or electronic source in order to be produced, then the Documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such Documents came. In addition, number by page (or file, for those Documents produced in native electronic format) all Documents in your submissions with a unique Bates identifier, and indicate the total number of Documents in your submission.
4. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original Documents, provided that the originals are retained in their state at the time of receipt of this First Set of Requests for Production of Documents. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original Documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original Documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.
5. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact Complaint Counsel before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental

health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

6. **Scope of Search:** These requests relate to Documents that are in your possession or under your actual or constructive custody or control, including Documents and information in the possession, custody, or control of your directors, officers, employees, attorneys, accountants, independent contractors, consultants, agents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, whether or not such Documents were received from or disseminated to any other person or entity.
7. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any Documents are withheld from production based on a claim of privilege or any similar claim, Respondent shall provide, not later than the date set for production of materials, a schedule that describes the nature of the Documents, Communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a Document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the Document, from which and to which each Document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive Document is privileged, all non-privileged portions of the Document must be produced.
8. **Continuing Nature of Requests:** These requests for production shall be deemed continuing in nature so as to require production of all Documents responsive to any specification included in these requests promptly upon obtaining or discovering different, new, or further information prior to the close of discovery.
9. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy Documents. Before submitting any electronic production, you must confirm with the Complaint Counsel named above that the proposed formats and media types will be

acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those Documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (OCR) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or as color JPEG images (where color is necessary to interpret the contents);
 - (c) Each electronic file should be assigned a unique document identifier ("DocID") or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These Documents should be true, correct, and complete copies of the original Documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
 - (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original Document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible;

- (3) For each Document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic Documents (as retrieved directly from network file stores, hard drives, etc.):** begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (d) **For imaged hard copy Documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the Document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Complaint Counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to these requests.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;

- (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.
- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's Documents and, if submitted in paper form, the box number containing such Documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Complaint Counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Complaint Counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit A. This guide provides detailed directions on how to comply fully with this instruction.

- 10. **Documents No Longer In Existence:** If Documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but the Respondent has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the Documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such Documents.
- 11. **Failure to Respond:** You are hereby advised that Complaint Counsel will move to preclude you from presenting evidence regarding responsive matters you fail to set forth in your answers to these Requests for Production.
- 12. **Questions:** Any questions you have relating to the scope or meaning of anything in these requests or suggestions for possible modifications thereto should be directed to Laura

Riposo VanDruff at (202) 326-2999. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

REQUESTS

Produce the following:

1. All Documents LabMD received from Tiversa.
2. All Documents LabMD provided to Tiversa.
3. All Documents relating to purchasing, maintaining, servicing, updating, or replacing software used on LabMD's computer networks, including operating system software, data backup software, database software, billing and invoicing software, antivirus software, patching software, or software relating to computer security.
4. All Documents relating to purchasing, maintaining, servicing, updating, or replacing hardware used on LabMD's computer networks, including servers, computers, firewalls, routers, or switches.
5. All Documents relating to "walk around" or manual inspections, conducted by LabMD IT Staff, LabMD IT Contractors, or LabMD management, of computers and other hardware on or with access to LabMD's computer networks.
6. All Documents created by LabMD IT Staff or for LabMD that depict or otherwise represent LabMD's computer networks' architecture or topology, including detailed blueprints or schematics.
7. All emails between LabMD IT Staff and Michael Daugherty or John Boyle relating to Security Practices.
8. All Communications between Michael Daugherty or John Boyle and LabMD IT Contractors relating to Security Practices.
9. All Documents relating to LabMD's Security Practices regarding accessing LabMD's computer network from remote locations, including policies or procedures relating to the use of LabMD laptop computers.
10. All Documents relating to searches of P2P Networks for LabMD documents, including the results of such searches.
11. All Documents contained in folders for sharing on LabMD computers running one or more P2P Applications, including folders designated by the LimeWire or Napster applications installed on Rosalind Woodson's computer.

12. For the period from January 1, 2006 through the present, Documents Sufficient to Show the dates and circumstances of any Security Incident(s) not previously disclosed to the Commission or its staff, including Documents Sufficient to Show the types and volumes of Personal Information accessed or disclosed during the incident(s) and the identity of all individuals whose Personal Information was accessed or disclosed.
13. For the period from January 1, 2006 through the present, all internal and external assessments of LabMD's Security Practices, including formal and informal audits, evaluations, or reviews, and reports assessing whether the Security Practices comply with federal or state law.
14. All Documents related to information provided by LabMD to the Sandy Springs, Georgia Police Department, including Officer David Lapidés.
15. All Documents related to LabMD's Security Practices provided by or for LabMD to Visa Inc., MasterCard Worldwide, U.S. Bank National Association, ND, Elavon, Inc., or any of their subsidiaries, or any other financial institution that provides services to LabMD relating to the processing of credit or debit card transactions, including PCI DSS self-assessment questionnaires, assessments by qualified security assessors, Attestations of Compliance with PCI DSS, or any Reports on Compliance.
16. All Documents relating to Communications with Consumers regarding any Security Incident(s), including each substantially different Communication from LabMD to Consumers, all records of calls received by LabMD's Notification Hotline, all emails received at the address NotificationHotline@labmd.org, and all letters received at LabMD's Letter Notification Department.
17. For each substantially different Communication from LabMD to Consumers relating to any Security Incident(s), Documents Sufficient to Show every Consumer to whom LabMD directed the Communication.
18. All Documents relating to Communications with LabMD's referring physicians or other health care professionals regarding any Security Incident(s), including each substantially different Communication from LabMD to LabMD's referring physicians or other health care professionals.
19. For each substantially different Communication from LabMD to referring physicians or other health care professionals, Documents Sufficient to Show every referring physician or health care professional to whom LabMD directed the Communication.
20. All Communications with the United States Department of Health and Human Services relating to LabMD's Security Practices, including all Communications relating to any Security Incidents.

21. All Documents, including personnel files, relating to the duties, compensation, performance, productivity, or compliance with LabMD policies of each current and former LabMD employee.
22. All confidentiality agreements executed by current and former LabMD employees.
23. All Statements of Understanding of and Compliance with LabMD's Ethics Policy and Employment Policy executed by LabMD current and former employees.
24. All contracts between LabMD and its referring physicians.
25. All contracts between LabMD and health insurance providers.
26. Documents Sufficient to Show the extent to which actual or allowable reimbursements to LabMD by government and private health insurance providers equal, exceed, or are less than charges submitted by LabMD to health insurance providers.
27. Documents Sufficient to Show all of LabMD's expenditures for information technology products or services that relate to Security Practices.
28. All financial statements, budgets, and other financial reports regularly prepared by or for LabMD, including operating statements, balance sheets, income statements, profit and loss statements, cost center reports, and statements of earnings.

October 24, 2013

By:



Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, DC 20580
Telephone: (202) 326-2999 (VanDruff)
Facsimile: (202) 326-3062
Electronic mail: lvandruff@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

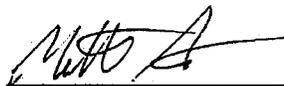
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW
Suite 650
Washington, DC 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, DC 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 24, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 29, 2013

VIA FEDERAL EXPRESS

Karalyn Garrett
79 Claudia Drive
Apt. 349
West Haven, CT 06516

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Ms. Garrett:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material ("Protective Order") in the above-referenced action. The Protective Order protects confidential information disclosed in discovery in this matter. A copy of the Protective Order is enclosed.

I would be pleased to discuss the scheduling of your deposition or other issues with you at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,


Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)
William Sherman (*via email*)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO

Karalyn Garrett
79 CLAUDIA DR APT 349
WEST HAVEN CT 06516

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION

Office of the United States Attorney
District of Connecticut
Connecticut Financial Center
157 Church Street
23rd Floor
New Haven, CT 06510

4. YOUR APPEARANCE WILL BE BEFORE

Laura Riposo VanDruff or other designated counsel

5. DATE AND TIME OF DEPOSITION

December 6, 2013, at 9:00 a.m.

6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. ADMINISTRATIVE LAW JUDGE

Chief Judge D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA

Laura Riposo VanDruff, Complaint Counsel
Federal Trade Commission
601 New Jersey Ave, NW, Room-8100
Washington, DC 20001
(202) 326-2999

DATE SIGNED

October 29, 2013

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail - by Federal Express on October 29, 2013 for overnight delivery pursuant to Commission rule 4.4(a)(2)

by leaving copy at principal office or place of business, to wit:

Karalyn Guarrth
79 Claudia Drive Apt 349
West Haven, CT 06510

on the person named herein on:

October 30, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on October 29, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Ave., NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

William A. Sherman, II
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
william.sherman@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 29, 2013

By: 

Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Bureau of Consumer Protection
Division of Privacy and Identity Protection

October 29, 2013

VIA FEDERAL EXPRESS

Southeast Urology Network, P.C.
c/o Michael Alabaster
Suite 1
995 S. Yates Road
Memphis, TN 38119

Re: In the Matter of LabMD, Inc., FTC Docket No. 9357

Dear Mr. Alabaster:

The Commission recently initiated an adjudicative proceeding against LabMD, Inc. The Commission's Rules of Practice state that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena. . . ." 16 C.F.R. § 3.34(a). This letter is to notify you that Complaint Counsel has issued a subpoena for your deposition, which is enclosed. Please note that the date set forth in the enclosed documents for the time of your deposition is simply a placeholder; we look forward to working with you and LabMD's counsel to find a mutually convenient date for your deposition.

The Commission's Rules of Practice also provide that "[c]ounsel for a party may sign and issue a subpoena, on a form provided by the Secretary [of the Commission], commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things. . . ." 16 C.F.R. § 3.34(b). Complaint Counsel has also issued a subpoena *duces tecum* for certain of Southeast Urology Network, P.C.'s documents. The subpoena and its schedule and exhibits are enclosed.

On August 29, 2013, the Federal Trade Commission's Office of Administrative Law Judges issued a Protective Order Governing Discovery Material (the "Protective Order") in the above-referenced action. The Protective Order protects confidential information produced in discovery in the case. A copy of the Protective Order signed by Chief Administrative Law Judge D. Michael Chappell is enclosed as an exhibit to the subpoena's schedule.

Any documents you produce to the Commission that are confidential must include the notice "CONFIDENTIAL – FTC Docket No. 9357," in accordance with paragraph 6 of the Protective Order. If you produce confidential documents in electronic format, such as on a CD

or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357" designation on the CD.

I would be pleased to discuss the scheduling of your deposition and any issues regarding production of documents at your earliest convenience. You may reach me at (202) 326-2999.

Sincerely,



Laura Riposo VanDruff

Enclosures (2)

cc: Michael Pepson (*via email*)
Reed Rubinstein (*via email*)



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Southeast Urology Network, P.C. c/o Michael Alabaster Suite 1 995 S. Yates Road Memphis, TN 38119</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>United States Attorney's Office Interview Room 821 167 N. Main Street, Suite 800 Memphis, Tennessee 38103</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Laura Riposo VanDruff or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>December 6, 2013, at 9:00 a.m.</p>
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6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Laura Riposo VanDruff, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, NW, Room-8100 Washington, DC 20001 (202) 326-2999</p>
--	---

<p>DATE SIGNED</p> <p>October 29, 2013</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> 
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

Southeast Urology Network, P.C
Suite 1
995 S. Yates Road
Memphis, TN 38119

by Federal Express on October 29, 2013 for overnight delivery pursuant to Commission rule 4.4(a)(2)

on the person named herein on:

October 30, 2013

(Month, day, and year)

Matthew Smith

(Name of person making service)

Paralegal

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

COMPLAINT COUNSEL’S NOTICE OF DEPOSITION
PURSUANT TO SUBPOENA TO
SOUTHEAST UROLOGY NETWORK, P.C.

PLEASE TAKE NOTICE, pursuant to Rules 3.33(a) and (c)(1) of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. §§ 3.33(a) and (c)(1), that Complaint Counsel will take the deposition of Southeast Urology Network, P.C. (“Southeast Urology Network”) or its designee(s), who shall testify on Southeast Urology Network’s behalf about matters known or reasonably available to Southeast Urology Network.

DEFINITIONS

1. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
2. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
3. The terms “**each**,” “**any**,” and “**all**” shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
4. “**Includes**” or “**including**” means “including, but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
5. “**LabMD**” means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees, and agents.

6. “**Or**” as well as “**and**” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
7. The term “**Person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
8. “**Personal Information**” means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a “cookie” or processor serial number.
9. The terms “**Relate**” or “**Relating to**” mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.
10. “**Security Incident**” means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
11. “**You**” or “**Your**” means Southeast Urology Network, P.C.
12. The use of the singular includes the plural, and the plural includes the singular.
13. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

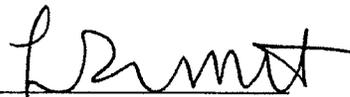
DEPOSITION TOPICS

Southeast Urology Network, P.C. (“Southeast Urology Network”) is advised that it must designate one or more officer, director, managing agent, or other Person who consents to testify on its behalf, and may set forth, for each Person designated, the matters on which he or she will testify. The Persons so designated shall testify as to matters known or reasonably available to Southeast Urology Network relating to the following topics:

1. The authenticity and admissibility under the provisions of Rule 3.43 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.43, of documents produced in response to the Federal Trade Commission’s separate subpoena *duces tecum* to Southeast Urology Network, P.C.
2. Southeast Urology Network’s relationship with LabMD.
3. The installation, operation, management, use, and support of computer hardware and software provided to Southeast Urology Network by LabMD.

4. The types and volumes of personal information transmitted between Southeast Urology Network and LabMD.
5. The means by which personal information, including patient information and lab results, are transmitted between Southeast Urology Network and LabMD.
6. Southeast Urology Network's Communications with LabMD, including contracts between Southeast Urology Network and LabMD and any guidance LabMD provided to Southeast Urology Network related to Southeast Urology Network's use of hardware and software provided to Southeast Urology Network by LabMD.
7. Any Security Incidents at LabMD.

October 29, 2013

By: 

Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2999 (VanDruff)
Facsimile: (202) 326-3062
Electronic mail: lvandruff@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 29, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 29, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO Southeast Urology Network, P.C. c/o Michael Alabaster Suite 1 995 S. Yates Road Memphis, TN 38119	2. FROM <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Matthew Smith Federal Trade Commission 601 New Jersey Avenue, N.W. Room NJ-8100 Washington, D.C. 20001	4. MATERIAL WILL BE PRODUCED TO Matthew Smith 5. DATE AND TIME OF PRODUCTION November 27, 2013
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6. SUBJECT OF PROCEEDING

In the Matter of LabMD, Inc., Docket 9357

7. MATERIAL TO BE PRODUCED

See attached Schedule and Exhibits, including the Protective Order Governing Discovery Material.

8. ADMINISTRATIVE LAW JUDGE Chief Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Megan Cox, Complaint Counsel Federal Trade Commission 601 New Jersey Ave, N.W., Room NJ-8100 Washington, DC 20001 (202) 326-2282
--	---

DATE SIGNED October 29, 2013	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

Southeast Urology Network, P.C
995 S. Yates Road, Suite 1
Memphis, TN 38119

by Federal Express on October 29, 2013 for overnight delivery pursuant to Commission rule 4.4(a)(2)
on the person named herein on:

October 30, 2013
(Month, day, and year)

Matthew Smith
(Name of person making service)

Paralegal
(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation)	
)	
)	

**COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
SOUTHEAST UROLOGY NETWORK, P.C.**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued October 29, 2013, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

DEFINITIONS

1. “**All documents**” means each document, as defined below, that can be located, discovered or obtained by reasonable, diligent efforts, including without limitation all documents possessed by: (a) you, including documents stored in any personal electronic mail account, electronic device, or any other location under your control, or the control of your officers, employees, agents, or contractors; (b) your counsel; or (c) any other person or entity from which you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
2. The term “**Communication**” includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
3. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.
4. The term “**Containing**” means containing, describing, or interpreting in whole or in part.
5. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or

location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book or label. "**Document**" shall also include electronically stored information ("ESI"). ESI means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, thumb or flash drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

6. The terms "**each**," "**any**," and "**all**" shall be construed to have the broadest meaning whenever necessary to bring within the scope of any document request all documents that might otherwise be construed to be outside its scope.
7. "**Includes**" or "**including**" means "including, but not limited to," so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
8. "**LabMD**" means LabMD, Inc., the named defendant in the above-captioned matter, and its directors, officers, employees and agents.
9. "**Or**" as well as "**and**" shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
10. The term "**Person**" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
11. "**Personal Information**" means individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a "cookie" or processor serial number.
12. The terms "**Relate**" or "**Relating to**" mean discussing, constituting, commenting, containing, concerning, embodying, summarizing, reflecting, explaining, describing,

analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, in whole or in part.

13. **“Security Incident”** means any instance of attempted or actual unauthorized access to or unauthorized disclosure of personal information maintained by or for LabMD.
14. **“Subpoena”** means the Subpoena to Southeast Urology Network, P.C., including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
15. **“You”** or **“Your”** means Southeast Urology Network, P.C.
16. The use of the singular includes the plural, and the plural includes the singular.
17. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. **Applicable Time Period:** Unless otherwise specified, the time period covered by a document request shall be limited to the period from **January 1, 2005 to present**.
2. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice § 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service thereof.
3. **Protective Order:** On August 29, 2013, the Court entered a Protective Order governing discovery material in this matter. A copy of the protective order is enclosed as Exhibit A, with instructions on the handling of confidential information.
4. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.
5. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of

originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of materials shall be produced in color if necessary to interpret them or render them intelligible.

6. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact the Commission counsel named above before sending those materials to discuss ways to protect such information during production. For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
7. **Scope of Search:** These requests relate to documents that are in your possession or under your actual or constructive custody or control, including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, or other agents or consultants, whether or not such documents were received from or disseminated to any other person or entity.
8. **Claims of Privilege:** Pursuant to the Federal Trade Commission's Rule of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production based on a claim of privilege or any similar claim, you shall provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed in a manner that will enable Complaint Counsel to assess the claim of privilege. The schedule shall state individually for each item withheld: (a) the document control number(s); (b) the full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (c) a description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (d) the date the material was created; (e) the date the material was sent to each recipient (if different from the date the material was created); (f) the email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (g) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (h) the names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (i) the names, titles, business addresses, email addresses or other

electronic contact information, and relevant affiliations of all persons copied on the material; (j) the factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (k) any other pertinent information necessary to support the assertion of protected status by operation of law. If only part of a responsive document is privileged, all non-privileged portions of the document must be produced.

9. **Certification of Records of Regularly Conducted Activity:** Attached as Exhibit B is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena you to testify at future proceedings in order to establish the admissibility of documents produced in response to this subpoena. You are asked to execute this Certification and provide it with your response.
10. **Continuing Nature of Requests:** This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by you prior to the close of discovery, which is March 5, 2014.
11. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. We may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this litigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise.
12. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.
 - (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables,

fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

- (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (“OCR”) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (“TIFF”) or as color JPEG images (where color is necessary to interpret the contents); and
 - (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
- (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, you should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (“AttachIDs”) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time

created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

- (c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file; and
 - (d) **For imaged hard-copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact the Commission counsel named above to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC; and
 - (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter, which includes:

- (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
- (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

We have included a Bureau of Consumer Protection Production Guide as Exhibit C. This guide provides detailed directions on how to fully comply with this instruction.

- 13. **Documents No Longer In Existence:** If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of a document retention policy but you have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
- 14. **Incomplete Records:** If you are unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by you to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for you to make an estimate, provide an explanation.
- 15. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Laura VanDruff, at (202) 326-2999, or Megan Cox, at (202) 326-2282. Documents responsive to the request shall be addressed to the attention of Matthew Smith, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

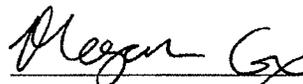
SPECIFICATIONS

Demand is hereby made for the following documents:

1. All contracts between you and LabMD.
2. All documents related to how patient information and lab results are transmitted between you and LabMD.
3. All communications between you and LabMD regarding any security incident.

October 29, 2013

By:



Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm

Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room NJ-8100
Washington, D.C. 20580
Telephone: (202) 326-2282 (Cox)
Facsimile: (202) 326-3062
Electronic mail: mcox1@ftc.gov

CERTIFICATE OF SERVICE

This is to certify that on October 29, 2013, I served *via* electronic mail delivery a copy of the foregoing document to:

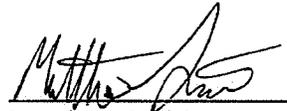
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, D.C. 20006
michael.pepson@causeofaction.org

Reed Rubinstein
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
reed.rubinstein@dinsmore.com

Counsel for Respondent LabMD, Inc.

October 29, 2013

By:



Matthew Smith
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

D. Michael Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Southeast Urology Network, P.C. and attached hereto.
3. The documents produced and attached hereto by Southeast Urology Network, P.C. are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity Southeast Urology Network, P.C.; and
 - c) Were made by the regularly conducted activity as a regular practice of Southeast Urology Network, P.C.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature

Exhibit C

BCP PRODUCTION GUIDE

Bureau of Consumer Protection Production Guide

An eDiscovery Resource

This guide explains what the Bureau of Consumer Protection (BCP) at the Federal Trade Commission (Commission) generally requires in response to a Civil Investigative Demand (CID) or a subpoena. The suggested formats are based on BCP's experience with many different submissions; follow them to organize your submission and minimize the chance of incompatibility with BCP's processes and systems.

This resource is intended as guidance and does not supersede instructions in any CID or subpoena. Please contact the Commission counsel identified in CID or subpoena to discuss any specific issues you may have with collecting, formatting, or submitting documents.

1. Getting Started: Protocols for All Submissions

Before processing documents in response to a formal request, please note: The following protocols apply to ALL formats submitted to BCP. BCP has additional requirements pertaining to metadata, format, etc., for certain types of documents. See section 2 of these instructions (entitled "Preparing Collections") for details.

a. Concordance Version and Load Files

BCP uses LexisNexis® Concordance® 2008 v 10.05. With the production, you must submit:

- an Opticon image load file (OPT) containing a line for every image file in the production, and
- a Concordance delimited data load file (DAT) containing a line for every document in the production, with Bates references, metadata fields, and native file links where applicable.

b. Virus Scanning

All electronic documents and production media shall be scanned and free of viruses prior to shipping to BCP. BCP will request replacement for any infected media, **which may affect the timing of your compliance with BCP's request.**

c. Extracted Text / OCR

Submit text:

- as document-level text files,
- named for the beginning Bates number, and
- organized into a folder separate from images.

BCP cannot accept Unicode text files and will request replacement files if received.

d. Deduplication

You must have the approval of Commission counsel to globally de-dupe or to apply email threading. You do not need prior approval of Commission counsel to deduplicate within a custodian's document set.

e. Labeling & Numbering Files

For image file names, bates numbers and document identification numbers (Doc IDs), use a consistent number of numerals to prevent issues with image display, using leading zeros where necessary. Do not use a space to separate the prefix from numbers.

Acceptable formats (as long as you are consistent)

- ABC-FTC0000001
- ABCFTC0000001

Unacceptable format

- ABC 0000001

f. Recommended Delimiters

BCP strongly recommends using these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	□	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

g. Image Files

BCP only accepts image files that are:

- 300 DPI
- single-page Group IV TIFF files
- or color JPEG image files where color is necessary to interpret content

h. Date & Time Format

Submit date and time data in separate fields so Concordance can load it.

2. Preparing Collections

a. Preparing Scanned Documents

Submit TIFF (or color JPEG) images with OCR text

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	Mailbox where the email resided	CUSTODIAN

b. Preparing Email & Attachments

Email: Submit TIFF images with extracted text of email

Attachments:

- Submit Microsoft **Excel** and **PowerPoint** files in native format with extracted text and metadata.
- Submit Microsoft **Access** files and other **multimedia files** in native format with *metadata only*.
- Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

- Preserve the parent/child relationship in email by including a reference to all attachments.
- Produce attachments as separate documents and number them consecutively to the parent email.
- Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata for Emails

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT

Custodian	Mailbox where the email resided	CUSTODIAN
To	Recipient(s) of the email	RECIPIENT
From	The person who authored the email	FROM
CC	Person(s) copied on the email	CC
BCC	Person(s) blind copied on the email	BCC
Date Sent	Date the email was sent	DATESENT
Time Sent	Time the email was sent	TIMESENT
Subject	Subject line of email	SUBJECT
Date Received	Date the email was received	DATERCVD
Time Received	Time the email was received	TIMERCVD
Child records (attachments)	The beginning bates number(s) of attachments delimited by comma	ATTACHMENTID
Location or "Path"	Location of email in personal folders/Deleted Items/Sent Items	FILEPATH
Message ID	MS Outlook Message ID or similar number in other message systems	MESSAGEID

Metadata for Attachments

<u>Document Info / Metadata</u>	<u>Description</u>	<u>Concordance Field Name</u>
Beginning Bates number	The beginning bates number for the document	BEGBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Parent Record	Beginning bates number of parent email	PARENTID
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME

Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes, however may be reported in single bytes	FILESIZE
File Name	The name of the attachment including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files such as Excel spreadsheets	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 (Message Digest) hash for the original native file if available	HASH

c. Preparing Native Files

- a. Submit Microsoft Access, Excel, and PowerPoint files in native format with extracted text and metadata.
- b. Submit other files and attachments as images with extracted text and metadata.

Metadata & Other Information Requirements

Include the following metadata fields and information in the delimited data load file. Alongside each piece of information, BCP recommends a corresponding field name for the delimited data load file.

Metadata and other information requirements for native files

Document Info / Metadata	Description	Concordance Field Name
Beginning Bates number	The beginning bates number for the document	BEBATES
Ending Bates number	The ending bates number for the document	ENDBATES
Page Count	The total number of pages in the document	PGCOUNT
Custodian	The name of the original custodian of the file	CUSTODIAN
Creation Date	The date attachment was saved at the location on the electronic media for the first time	CREATEDATE
Creation Time	The time the attachment was saved at the location on the electronic media for the first time	CREATETIME
Modified Date	The date/time the attachment was last changed, and then saved	MODDATE
Modified Time	The time the attachment was last changed, and then saved	MODTIME
Last Accessed Date	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCDATE
Last Accessed Time	The time the attachment was last opened, scanned, or even "touched" by a user or software activity	LASTACCTIME
Size	The amount of space the file takes up on the electronic media. Usually recorded in kilobytes	FILESIZE

File Name	The name of the file including the extension denoting the application in which the file was created	FILENAME
Native link	Relative path of submitted native files	NATIVELINK
Hash	The SHA (Secure Hash Algorithm) or MD5 Hash for the original native file if available	HASH

3. Submitting Your Production

Once you've prepared documents according to this guide, follow these instructions to submit them to BCP.

a. Media BCP Accepts

Submit any of the following:

- For Productions *under* 10 gigabytes:
 - CD-R CD-ROM optical disks formatted to ISO 9660 specifications
 - DVD-ROM optical disks for Windows-compatible personal computers
 - USB 2.0 flash drives
- For Productions *over* 10 gigabytes
 - IDE, EIDE and SATA hard disk drives, formatted in Windows-compatible, uncompressed data in a USB 2.0 external enclosure
 - USB 2.0 flash drives

b. Submit a Production Transmittal Letter

For any format, accompany the submission with a letter that includes all of the following:

- volume name,
- Bates ranges and custodians,
- total number of records,
- total number of images or files,
- list of fields in the order in which they are listed in the data files,
- date and time format, and
- confirmation that the number of files on the volume match the load files.

EXHIBIT 2

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

DOCKET NO.

D09357

IN THE MATTER OF:

LabMD, Inc.

COMPLAINT



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

August 28, 2013

Stephen F. Fusco, Esq.
Counsel for Respondent LabMD, Inc.
LabMD, Inc.
2030 Powers Ferry Road
Building 500
Suite 520
Atlanta, Georgia 30339

Re: *In the Matter of LabMD, Inc.*
Docket No. 9357

Dear Stephen:

Enclosed is the official service copy of the *in camera* version of the Administrative Complaint ("Complaint") issued in the above-captioned matter. As recited in the Complaint – and pursuant to Rule 3.12 of the Commission's Rules of Practice, 16 C.F.R. § 3.12 – "[a] respondent shall file an answer within 14 days after being served with the complaint."¹ This letter serves to notify you of certain policies affecting Part 3 administrative proceedings.

1. Notices of Appearance

Pursuant to Rule 4.1(d), 16 C.F.R. § 4.1(d), "any attorney desiring to appear before the Commission or an Administrative Law Judge on behalf of a person or party shall file with the Secretary of the Commission a written notice of appearance." A copy of the Notice of Appearance form is available online at <http://www.ftc.gov/ftc/ftc-232.pdf>. All attorneys appearing on behalf of the parties, or on behalf of any third parties, must enter a Notice of Appearance. The Notice of Appearance form should be accompanied by language "stating the basis for eligibility under this section and including the attorney's jurisdiction of admission/qualification, attorney identification number, if applicable, and a statement by the appearing attorney attesting to his/her good standing within the legal profession." *Id.*

2. Filings

For all filings that must be filed with the Office of the Secretary, we ask that the parties email a courtesy copy to the Administrative Law Judge at aljl@ftc.gov and to the Secretary at secretary@ftc.gov. Each such courtesy copy should be transmitted at or shortly after the time of

¹ A complete copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>.

Stephen Fusco, Esq.
August 28, 2013
Page 2

any filing with the Office of the Secretary. Please note that the oyalj@ftc.gov and secretary@ftc.gov accounts are to be used only for courtesy copies of pleadings filed with the Office of the Secretary, or in accordance with instructions by the Office of Administrative Law Judges. The subject line of all submissions to oyalj@ftc.gov or secretary@ftc.gov shall set forth only the Docket Number and the title of the submission.

A. FTC E-File System

Parties in Part 3 administrative proceedings may file public filings through FTC E-File, the Commission's electronic filing system.² FTC E-File is modeled after the ECF filing system used in federal district courts nationwide and conforms to the guidance provided by the Federal Rules of Civil Procedure with respect to electronic filing systems. As with the ECF filing system, all documents submitted through FTC E-File (a) must be public; (b) must be submitted in .PDF format; and (c) must first be properly redacted to remove all nonpublic information.³

Please note that electronically filing a document via FTC E-File does not constitute service on the parties in the matter and does not fulfill any additional requirements that the Administrative Law Judge assigned in this matter or the Commission may establish regarding the submission of courtesy copies.

Parties cannot use FTC E-File to file documents containing *in camera* or otherwise confidential material or labeled "IN CAMERA" or "CONFIDENTIAL." Each such document must instead be filed in paper form, with a CD or a DVD containing the electronic version, in Room H-113 of the Office of the Secretary.⁴

Should you have any questions regarding FTC E-File, a copy of the FTC E-File User Manual is available at https://ftcefile.gov/FTC_E-filing/User Manual-Filers.pdf, or you can contact Dolores Wood at (202) 326-2506 or dwood@ftc.gov, or Bernita Lofty at (202) 326-3117 or blofty@ftc.gov.

² *Federal Trade Commission: 16 C.F.R. Parts 3 and 4: Rules of Practice: Final Rule*, 74 Fed. Reg. 20205, 20208 (May 1, 2009). Commission Rule 4.2(c)(3)(i), 16 C.F.R. § 4.2(c)(3)(i), consequently provides that public electronic copies of documents filed in Part 3 proceedings "shall be filed as the Secretary shall direct, or through such electronic system as the Commission may provide..." and Commission Rule 4.2(b), 16 C.F.R. § 4.2(b), provides that "[e]very page of each such document shall be clearly and accurately labeled 'Public'...."

³ Redactions must be effected by completely deleting the *in camera* or otherwise confidential material before filing. Simply masking the *in camera* or otherwise confidential material -- through the use, for example, of a white type font -- is insufficient.

⁴ See Rule 4.2(c)(3)(ii), 16 C.F.R. § 4.2(c)(3)(ii).

B. Filings Before the Administrative Law Judge

Please make sure that filings directed to the Administrative Law Judge bear the following caption:

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

This will ensure the filing is properly directed to the Office of Administrative Law Judges for consideration.

C. Filings Before the Commission

In the event a party files a dispositive motion, such as a motion to dismiss, a motion to strike, or a motion for summary decision (and responses and replies thereto),⁵ or an interlocutory motion appealing a decision by the Administrative Law Judge, such pleadings should be filed for consideration by the Commission.

All pleadings for consideration by the Commission (rather than by the Administrative Law Judge) should include the following caption:

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

The caption should not include any reference to the recusal or non-participation of any particular Commissioner, as those terms only refer to a particular Commissioner's vote on a specific motion.

When filing pleadings for consideration by the Commission, the party should also deliver 12 paper copies of the filing to the Document Processing Section in Room H-113 of the Headquarters Building, located at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.⁶ In addition, the party should email a courtesy copy of each such filing to Donald Clark (dclark@ftc.gov) and April Tabor (atabor@ftc.gov).

⁵ See Rule 3.22 (a), 16 C.F.R. § 3.22 (a).

⁶ See Rule 4.2(c)(1), 16 C.F.R. § 4.2(c)(1).

Stephen Fusco, Esq.
August 28, 2013
Page 4

3. Subpoenas

In the event a party wishes to effect the issuance of a subpoena to a third party, pursuant to Rule 3.34(a) and (b), that party should complete the appropriate subpoena form⁷ and deliver such form to Bernita Lofty via email at blofty@ftc.gov or via mail or hand delivery to 600 Pennsylvania Avenue, N.W., Room H-113, Washington, D.C. 20580. Upon receipt, the Document Processing Section will affix the Commission seal to the subpoenas so that they can be signed and issued, and the Section will notify you when they are ready to be picked up.

As a reminder, before mailing or delivering a given subpoena, please make sure that the field on the subpoena labeled "Counsel and Party Issuing Subpoena" (field 8 or 9) includes the name and contact information (including phone number) of the counsel to whom any responses or questions should be addressed and expressly identifies the party you represent, *i.e.*, Complaint Counsel or Respondent.

* * *

If you have any questions regarding this letter, please contact either April Tabor, at atabor@ftc.gov, or me at dclark@ftc.gov. Thank you for your attention.

Sincerely,


Donald S. Clark
Secretary

⁷ Copies of the four types of subpoenas -- Subpoena Ad Testificandum Deposition, Subpoena Ad Testificandum Adjudicative Hearing, Subpoena Duces Tecum, and Subpoena To Permit Inspection of Premises -- are attached to this letter. If a party requires a witness to travel in order to provide testimony at an adjudicative hearing, counsel should use Form 1157, a copy of which is attached to this letter, to seek reimbursement for all or some of the travel expenses the witness incurs.



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO	2. FROM <p style="text-align: center; margin: 0;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
-------	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION	4. YOUR APPEARANCE WILL BE BEFORE
	5. DATE AND TIME OF DEPOSITION

6. SUBJECT OF PROCEEDING

7. ADMINISTRATIVE LAW JUDGE <p style="text-align: center; margin: 0;">Federal Trade Commission Washington, D.C. 20580</p>	8. COUNSEL AND PARTY ISSUING SUBPOENA
--	---------------------------------------

DATE SIGNED	SIGNATURE OF COUNSEL ISSUING SUBPOENA
-------------	---------------------------------------

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.



**SUBPOENA AD TESTIFICANDUM
ADJUDICATIVE HEARING**

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
-------	---

This subpoena requires you to attend and give testimony at an adjudicative hearing, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF ADJUDICATIVE HEARING	4. YOUR APPEARANCE WILL BE BEFORE
	5. DATE AND TIME OF ADJUDICATIVE HEARING

6. SUBJECT OF PROCEEDING

7. ADMINISTRATIVE LAW JUDGE Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA
---	---------------------------------------

DATE SIGNED	SIGNATURE OF COUNSEL ISSUING SUBPOENA
-------------	---------------------------------------

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION

4. MATERIAL WILL BE PRODUCED TO

5. DATE AND TIME OF PRODUCTION

6. SUBJECT OF PROCEEDING

7. MATERIAL TO BE PRODUCED

8. ADMINISTRATIVE LAW JUDGE

9. COUNSEL AND PARTY ISSUING SUBPOENA

Federal Trade Commission
Washington, D.C. 20580

DATE SIGNED

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.



SUBPOENA TO PERMIT INSPECTION OF PREMISES

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to permit inspection of premises, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF INSPECTION

4. PREMISES WILL BE INSPECTED BY

5. DATE AND TIME OF INSPECTION

6. SUBJECT OF PROCEEDING

7. PREMISES TO BE INSPECTED

8. ADMINISTRATIVE LAW JUDGE

9. COUNSEL AND PARTY ISSUING SUBPOENA

Federal Trade Commission
Washington, D.C. 20580

DATE SIGNED

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**CLAIMS FOR WITNESS ATTENDANCE FEES, TRAVEL, AND
 MISCELLANEOUS EXPENSES**

PART I - ATTENDANCE CERTIFICATION

1. General Information

a. Witness Name _____ d. Case Name _____
 b. Witness Address _____ e. Case Number _____
 Street _____ f. District or Location _____
 City _____ State _____ Zip _____ g. SSN or Tax ID Number _____
 c. U.S. Citizen: Yes No Alien: Legal Illegal

2. Travel and Attendance Information

a. Dates of Travel from Residence to Case Location: From _____ To _____
 b. Dates of Travel from Case Location to Residence: From _____ To _____
 c. Dates of Attendance: From _____ To _____

3. Certification

I certify that the witness named above attended in the case or matter indicated and is entitled to the statutory allowances for attendance and travel. In the proceedings before United States Magistrate where more than four witnesses were called, the Magistrate also certifies that the approval and certificate of the U.S. Attorney were first obtained.

 (Signature) (Title) (Date)

PART II - WITNESS CLAIM FOR FEES AND ALLOWANCES

	Rate	No. of Days	Amount Claimed	Totals
1. Attendance Fees				
a. Fact, Pretrial Conference & Detained Witness			\$ _____	
Total Attendance Fees.....				\$ _____
2. Mileage Allowance (Indicate type of privately owned vehicle) :				
<input type="checkbox"/> Auto <input type="checkbox"/> Motorcycle <input type="checkbox"/> Airplane	Rate	No. of Miles	Amount Claimed	
a. From Residence to Case Location (and Return)			\$ _____	
b. From Hotel/Motel to Court (or Court to Hotel/Motel)				
Total Mileage Allowance.....				\$ _____
3. Subsistence Per Diem Rate: _____ or HRGA Rate: _____				
HRGA: High Rate Geological Area	Rate	No. of Days	Amount Claimed	
a. Meals			\$ _____	
b. Lodging				
Total Subsistence Allowance.....				\$ _____
4. Miscellaneous Allowances (See Item 8 Below)				
			Amount Claimed	
a. Common Carrier			\$ _____	
b. Parking Fees, Tolls, Taxi Fares				
Total Miscellaneous Allowances				\$ _____
5. Total Amount Claimed (Items 1-4, Part II)				\$ _____
6. Less Outstanding Check or Cash Advances				\$ _____
7. Net Amount Claimed by Witness				\$ _____

8. Use this space to itemize your expenses from Item 4, Part II above. Receipts are required for all common carriers, hotels, parking fees, and for all other single items in excess of \$75.00.

Paid by Check No. _____

Paid by \$ _____

(Signature of Payee) _____

(Date) _____

9. Witness Certification

I certify that the above data is correct and that payment has not been received, and that at the time of travel and attendance I (was) (was not) a U.S. Government employee and I (was) (was not) a citizen of the United States. (If not a citizen, present your Alien Registration Record with this form.) I (did) (did not) receive a Government Transportation Request to pay for my official travel.

 (Signature) (Date)

**CLAIMS FOR WITNESS ATTENDANCE FEES, TRAVEL, AND
MISCELLANEOUS EXPENSES**

PART III - RESERVED FOR FINANCE OFFICE

1. Computation

a. New Amount Claimed by Witness (From Item 7, Part II)

\$ _____

b. Adjustments Due to Any Differences (Explain Differences)

c. Amount Authorized for Payment _____

\$ _____

d. By _____ Title _____ Date _____

2. Accounting Classification Data _____

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

In the Matter of)	
)	
LabMD, Inc.,	)	DOCKET NO. 9357
a corporation.)	
	)	NONPUBLIC
)	

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that LabMD, Inc. ("LabMD" or "respondent"), a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

RESPONDENT'S BUSINESS

1. Respondent LabMD is a Georgia corporation with its principal office or place of business at 2030 Powers Ferry Road, Building 500, Suite 520, Atlanta, Georgia 30339.
2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
3. [Since at least 2001, respondent has been in the business of conducting clinical laboratory tests on specimen samples from consumers and reporting test results to consumers' health care providers.
4. Respondent files insurance claims for charges related to the clinical laboratory tests with health insurance companies. [Insured consumers typically pay the part of respondent's charges not covered by insurance; uninsured consumers are responsible for the full amount of the charges. Consumers in many instances pay respondent's charges with credit cards or personal checks.]

5. Respondent tests samples from consumers located throughout the United States.
6. In performing tests, respondent routinely obtains information about consumers, including, but not limited to: names; addresses; dates of birth; gender; telephone numbers; Social Security numbers (“SSN”); medical record numbers; bank account or credit card information; health care provider names, addresses, and telephone numbers; laboratory tests, test codes and results, and diagnoses; clinical histories; and health insurance company names and policy numbers (collectively, “personal information”).
7. Respondent has accumulated and maintains personal information for nearly one million consumers.
8. Respondent operates computer networks in conducting its business. The computer networks include computers, servers, and other devices in respondent’s corporate offices and laboratory, computers used by its personnel in different parts of the country, and computers that respondent provides to some health care providers.
9. Among other things, respondent uses the computer networks to: receive orders for tests from health care providers; report test results to health care providers; file insurance claims with health insurance companies; prepare bills and other correspondence to consumers; obtain approvals for payments made by consumers with credit cards; and prepare medical records. For example, respondent’s billing department uses the computer networks to generate or access documents related to processing claims and payments, such as:
 - (a) monthly spreadsheets of insurance claims and payments (“insurance aging reports”), which may include personal information such as consumer names, dates of birth, SSNs, the American Medical Association current procedural terminology (“CPT”) codes for the laboratory test conducted, and health insurance company names, addresses, and policy numbers;
 - (b) spreadsheets of payments received from consumers (“Day Sheets”), which may include personal information such as consumer names, SSNs, and methods, amounts, and dates of payments; and
 - (c) copies of consumer checks, which may include personal information such as names, addresses, telephone numbers, payment amounts, bank names and routing numbers, and bank account numbers (“copied checks”).

RESPONDENT'S SECURITY PRACTICES

10. At all relevant times, respondent engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for personal information on its computer networks. Among other things, respondent:
 - (a) did not develop, implement, or maintain a comprehensive information security program to protect consumers' personal information. Thus, for example, employees were allowed to send emails with such information to their personal email accounts without using readily available measures to protect the information from unauthorized disclosure;
 - (b) did not use readily available measures to identify commonly known or reasonably foreseeable security risks and vulnerabilities on its networks. By not using measures such as penetration tests, for example, respondent could not adequately assess the extent of the risks and vulnerabilities of its networks;
 - (c) did not use adequate measures to prevent employees from accessing personal information not needed to perform their jobs;
 - (d) did not adequately train employees to safeguard personal information;
 - (e) did not require employees, or other users with remote access to the networks, to use common authentication-related security measures, such as periodically changing passwords, prohibiting the use of the same password across applications and programs, or using two-factor authentication;
 - (f) did not maintain and update operating systems of computers and other devices on its networks. For example, on some computers respondent used operating systems that were unsupported by the vendor, making it unlikely that the systems would be updated to address newly discovered vulnerabilities; and
 - (g) did not employ readily available measures to prevent or detect unauthorized access to personal information on its computer networks. For example, respondent did not use appropriate measures to prevent employees from installing on computers applications or materials that were not needed to perform their jobs or adequately maintain or review records of activity on its networks. As a result, respondent did not detect the installation or use of an unauthorized file sharing application on its networks.
11. Respondent could have corrected its security failures at relatively low cost using readily available security measures.

12. Consumers have no way of independently knowing about respondent's security failures and could not reasonably avoid possible harms from such failures, including identity theft, medical identity theft, and other harms, such as disclosure of sensitive, private medical information.

PEER-TO-PEER FILE SHARING APPLICATIONS

13. Peer-to-peer ("P2P") file sharing applications are often used to share music, videos, pictures, and other materials between persons and entities using computers with the same or a compatible P2P application ("P2P network").
14. P2P applications allow a user to both designate files on the user's computer that are available to others on a P2P network and search for and access designated files on other computers on the P2P network.
15. After a designated file is shared with another computer, it can be passed along among other P2P network users without being downloaded again from the original source. Generally, once shared, a file cannot with certainty be removed permanently from a P2P network.
16. Since at least 2005, security professionals and others (including the Commission) have warned that P2P applications present a risk that users will inadvertently share files on P2P networks.

SECURITY INCIDENTS

17. In May 2008, a third party informed respondent that its June 2007 insurance aging report (the "P2P insurance aging file") was available on a P2P network through Limewire, a P2P file sharing application.
18. After receiving the May 2008 notice that the P2P insurance aging file was available through Limewire, respondent determined that:
 - (a) Limewire had been downloaded and installed on a computer used by respondent's billing department manager (the "billing computer");
 - (b) at that point in time, the P2P insurance aging file was one of hundreds of files that were designated for sharing from the billing computer using Limewire; and
 - (c) Limewire had been installed on the billing computer no later than 2006.
19. The P2P insurance aging file contains personal information about approximately 9,300 consumers, including names, dates of birth, SSNs, CPT codes, and, in many instances, health insurance company names, addresses, and policy numbers.

20. Respondent had no business need for Limewire and removed it from the billing computer in May 2008, after receiving notice.
21. In October 2012, the Sacramento, California Police Department found more than 35 Day Sheets and a small number of copied checks in the possession of individuals who pleaded no contest to state charges of identity theft. These Day Sheets include personal information, such as names and SSNs, of several hundred consumers in different states. Many of these consumers were not included in the P2P insurance aging file, and some of the information post-dates the P2P insurance aging file. A number of the SSNs in the Day Sheets are being, or have been, used by people with different names, which may indicate that the SSNs have been used by identity thieves.

VIOLATION OF THE FTC ACT

22. As set forth in Paragraphs 6 through 21, respondent's failure to employ reasonable and appropriate measures to prevent unauthorized access to personal information, including dates of birth, SSNs, medical test codes, and health information, caused, or is likely to cause, substantial injury to consumers that is not offset by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. This practice was, and is, an unfair act or practice.
23. The acts and practices of respondent as alleged in this complaint constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C § 45(a).

NOTICE

Notice is hereby given to the respondent that the twenty-eighth day of April, 2014, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532-H, Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Federal Trade Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings of fact and conclusions of law under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint, and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the answer is filed by the respondent. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532-H, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, but in any event no later than five (5) days after the answer is filed by the respondent. Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving respondent's answer, to make certain disclosures without awaiting a formal discovery request.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations, in the form of restitution for past, present, and future consumers and such other types of relief as are set forth in Section 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
2. Unless otherwise specified, "respondent" shall mean LabMD, Inc., and its successors and assigns.
3. "Affected Individual" shall mean any consumer whose personal information LabMD has reason to believe was, or could have been, accessible to unauthorized persons before the date of service of this order, including, but not limited to, consumers listed in the Insurance File and the Sacramento Documents.
4. "Insurance File" shall mean the file containing personal information about approximately 9,300 consumers, including names, dates of birth, Social Security numbers, health insurance company names and policy numbers, and medical test codes, that was available to a peer-to-peer file sharing network through a peer-to-peer file sharing application installed on a computer on respondent's computer network.
5. "Personal information" shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) first and last name; (b) telephone number; (c) a home or other physical address, including street name and name of city or town; (d) date of birth; (e) Social Security number; (f) medical record number; (g) bank routing, account, and check numbers; (h) credit or debit card information, such as account number; (i) laboratory test result, medical test code, or diagnosis, or clinical history; (j) health insurance company name and policy number; or (k) a persistent identifier, such as a customer number held in a "cookie" or processor serial number.
6. "Sacramento Documents" shall mean the documents identified in Appendix A.

I.

IT IS ORDERED that the respondent shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers by respondent or by any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by respondent. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the personal information collected from or about consumers, including:

- A. the designation of an employee or employees to coordinate and be accountable for the information security program;
- B. the identification of material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management; (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other systems failures;
- C. the design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures;
- D. the development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from respondent, and requiring service providers by contract to implement and maintain appropriate safeguards; and
- E. the evaluation and adjustment of respondent's information security program in light of the results of the testing and monitoring required by Subpart C, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of its information security program.

II.

IT IS FURTHER ORDERED that, in connection with its compliance with Part I of this order, respondent shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. Professionals qualified to prepare such assessments shall be: a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

- A. set forth the specific administrative, technical, and physical safeguards that respondent has implemented and maintained during the reporting period;
- B. explain how such safeguards are appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the personal information collected from or about consumers;
- C. explain how the safeguards that have been implemented meet or exceed the protections required by the Part I of this order; and
- D. certify that respondent's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director for Enforcement within ten (10) days of request. Unless otherwise directed by a representative of the Commission, the initial Assessment, and any subsequent Assessments requested, shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the Matter of LabMD, Inc.*, FTC File No.1023099. Provided, however, that in lieu of overnight courier, assessments may be sent by first-class mail, but only if an electronic version of any such assessment is contemporaneously sent to the Commission at Debrief@ftc.gov.

III.

IT IS FURTHER ORDERED that respondent shall provide notice to Affected Individuals and their health insurance companies within 60 days of service of this order unless an appropriate notice has already been provided, as follows:

- A. Respondent shall send the notice to each Affected Individual by first class mail, only after obtaining acknowledgment from the Commission or its staff that the form and substance of the notice satisfies the provisions of the order. The notice must be easy to understand and must include:
 1. a brief description of why the notice is being sent, including the approximate time period of the unauthorized disclosure, the types of personal information that were or may have been disclosed without authorization (e.g., insurance information, Social Security numbers, etc.),

and the steps respondent has taken to investigate the unauthorized disclosure and protect against future unauthorized disclosures;

2. advice on how Affected Individuals can protect themselves from identity theft or related harms. Respondent may refer Affected Individuals to the Commission's identity theft website (www.ftc.gov/idtheft), advise them to contact their health care providers or insurance companies if bills don't arrive on time or contain irregularities, or to obtain a free copy of their credit report from www.annualcreditreport.com and monitor it and their accounts for suspicious activity, or take such other steps as respondent deems appropriate; and
 3. methods by which Affected Individuals can contact respondent for more information, including a toll-free number for 90 days after notice to Affected Individuals, an email address, a website, and mailing address.
- B. Respondent shall send a copy of the notice to each Affected Individual's health insurance company by first class mail.
- C. If respondent does not have an Affected Individual's mailing address in its possession, it shall make reasonable efforts to find such mailing address, such as by reviewing online directories, and once found, shall provide the notice described in Subpart A, above.

IV.

IT IS FURTHER ORDERED that respondent shall maintain and, upon request, make available to the Federal Trade Commission for inspection and copying:

- A. for a period of five (5) years, a print or electronic copy of each document relating to compliance, including, but not limited to, notice letters required by Part III of this order and documents, prepared by or on behalf of respondent, that contradict, qualify, or call into question respondent's compliance with this order; and
- B. for a period of three (3) years after the date of preparation of each Assessment required under Part II of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of respondent, including, but not limited to, all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and any other materials relating to respondent's compliance with Parts I and II of this order, for the compliance period covered by such Assessment.

V.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to: (1) all current and future principals, officers, directors, and managers; (2) all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order; and (3) any business entity resulting from any change in structure set forth in Part VI. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part VI, delivery shall be at least ten (10) days prior to the change in structure.

VI.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in respondent that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in either corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the Matter of LabMD, Inc.*, FTC File No. 1023099. Provided, however, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

VII.

IT IS FURTHER ORDERED that respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the Matter of LabMD, Inc.*, FTC File No. 1023099.

VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in less than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that each respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this twenty-eighth day of August, 2013.

By the Commission.



Donald S. Clark
Secretary

Appendix A



Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Friday, June 01, 2007, 08:22 AM

Chart	Name	Full Name	Date	Time	Provider	Pos	Diagnosis	ICD9 Code	Amount
			05/31/2007	13					0.00
			05/31/2007	13					-4.37
			05/30/2007	13					-12.00
			05/30/2007	13					-114.00
			05/30/2007	13					-119.00
			05/30/2007	13					-12.00
			05/30/2007	13					-119.00
			05/30/2007	13					-114.00
			05/30/2007	13					-12.00
			05/30/2007	13					-33.00
			05/30/2007	13					-41.00
			05/30/2007	13					-12.00
			05/30/2007	13					-41.00
			05/30/2007	13					-33.00
			05/30/2007	13					-12.00
			05/30/2007	13					-12.00
			05/30/2007	13					-20.54
			05/01/2007	13					-8.61
			05/01/2007	13					-8.59
			05/01/2007	13					-117.80

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	0.00	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		0.00	
Adjustments	Debit	0.00	
	Credit	-847.71	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		-847.71
All Locations Total		-847.71	

Report Balance	-847.71
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Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Friday, June 01, 2007, 09:44 AM

Chart	Name	Bill No	Date	Time	Provider	POS	Diagnosis	ICD9	Code	Amount
			06/01/2007	13						-19.80
			06/01/2007	13						-19.80
			06/01/2007	13						-22.80
			06/01/2007	13						-330.00
			06/01/2007	13						-104.00
			06/01/2007	13						-70.75
			06/01/2007	13						-29.85
			06/01/2007	13						-22.00
			06/01/2007	13						-22.00
			06/01/2007	13						-4.40
			06/01/2007	13						-5.00
			06/01/2007	13						-25.00
			06/01/2007	13						-8.16
			06/01/2007	13						-5.80
			06/01/2007	13						-2.80
			06/01/2007	13						-1.98
			06/01/2007	13						-3.08
			06/01/2007	13						-4.10
			06/01/2007	13						-4.37
			06/01/2007	13						-4.37
			06/01/2007	13						-5.00
			06/01/2007	13						-4.00
			06/01/2007	13						-4.00
			06/01/2007	13						-2.89
			06/01/2007	13						-4.11
			06/01/2007	13						-110.00
			06/01/2007	13						-4.37
			06/01/2007	13						-4.37
			06/01/2007	13						-54.19
			06/01/2007	13						-8.16
			06/01/2007	13						-110.00
			06/01/2007	13						-12.00
			06/01/2007	13						-15.00
			06/01/2007	13						-110.00
			06/01/2007	13						-100.60
			06/01/2007	13						-12.50
			06/01/2007	13						-12.25
			06/01/2007	13						-50.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-1323.01	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-1323.01	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-1323.01

Report Balance

-1323.01

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Friday, June 01, 2007, 10:45 AM

Name	Bar	Date	Time	Provider	Diagnosis	ICD-9 Code	Amount
[REDACTED]	[REDACTED]	06/01/2007	13				-60.00
[REDACTED]	[REDACTED]	06/01/2007	13				-10.60
[REDACTED]	[REDACTED]	06/01/2007	13				-10.40
[REDACTED]	[REDACTED]	06/01/2007	13				-110.00
[REDACTED]	[REDACTED]	06/01/2007	13				-106.00
[REDACTED]	[REDACTED]	06/01/2007	13				-1.85
[REDACTED]	[REDACTED]	06/01/2007	13				-2.61
[REDACTED]	[REDACTED]	06/01/2007	13				-9.60
[REDACTED]	[REDACTED]	06/01/2007	13				-1.03
[REDACTED]	[REDACTED]	06/01/2007	13				-1.03
[REDACTED]	[REDACTED]	06/01/2007	13				-41.00
[REDACTED]	[REDACTED]	06/01/2007	13				-4.10
[REDACTED]	[REDACTED]	06/01/2007	13				-41.00
[REDACTED]	[REDACTED]	06/01/2007	13				-18.75
[REDACTED]	[REDACTED]	06/01/2007	13				-60.00
[REDACTED]	[REDACTED]	06/01/2007	13				-14.62
[REDACTED]	[REDACTED]	06/01/2007	13				-10.44
[REDACTED]	[REDACTED]	06/01/2007	13				-165.00
[REDACTED]	[REDACTED]	06/01/2007	13				-41.00
[REDACTED]	[REDACTED]	06/01/2007	13				-12.50
[REDACTED]	[REDACTED]	06/01/2007	13				-10.32
[REDACTED]	[REDACTED]	06/01/2007	13				-8.82
[REDACTED]	[REDACTED]	06/01/2007	13				-0.86
[REDACTED]	[REDACTED]	06/01/2007	13				-22.00
[REDACTED]	[REDACTED]	06/01/2007	13				-22.00
[REDACTED]	[REDACTED]	06/01/2007	13				-22.00
[REDACTED]	[REDACTED]	06/01/2007	13				-22.00
[REDACTED]	[REDACTED]	06/01/2007	13				-560.00
[REDACTED]	[REDACTED]	06/01/2007	13				-25.00
[REDACTED]	[REDACTED]	06/01/2007	13				-100.00
[REDACTED]	[REDACTED]	06/01/2007	13				-5.00
[REDACTED]	[REDACTED]	06/01/2007	13				-8.60
[REDACTED]	[REDACTED]	06/01/2007	13				-8.60
[REDACTED]	[REDACTED]	06/01/2007	13				-14.62
[REDACTED]	[REDACTED]	06/01/2007	13				-26.00
[REDACTED]	[REDACTED]	06/01/2007	13				-8.21
[REDACTED]	[REDACTED]	06/01/2007	13				-3.84
[REDACTED]	[REDACTED]	06/01/2007	13				-3.84
[REDACTED]	[REDACTED]	06/01/2007	13				-3.83
[REDACTED]	[REDACTED]	06/01/2007	13				-22.00
[REDACTED]	[REDACTED]	06/01/2007	13				-2.40
[REDACTED]	[REDACTED]	06/01/2007	13				20.00
[REDACTED]	[REDACTED]	06/01/2007	13				-20.00
[REDACTED]	[REDACTED]	06/01/2007	13				-32.20
[REDACTED]	[REDACTED]	06/01/2007	13				-4.80
[REDACTED]	[REDACTED]	06/01/2007	13				-24.00
[REDACTED]	[REDACTED]	06/01/2007	13				-1500.00

Day Sheet - Transaction Detail

LABMD, INCORPORATED
LABMD

Friday, June 01, 2007, 12:17 PM

Chart	Name	Bill No	Date	Time	Provider	Pos	Diagnosis	TX Code	Amount
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-27.50
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-18.27
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-20.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-24.58
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-13.80
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-25.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-8.20
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-41.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-11.40
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-21.85
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-11.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-89.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-25.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-22.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-475.20
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-14.08
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-5.46
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-5.46
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-13.20
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-148.29
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-110.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-29.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-14.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-29.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-29.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-17.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-12.50
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-21.85
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-55.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-20.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-108.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-25.70
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-99.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-82.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-22.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-22.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-2.40
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-482.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-22.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-22.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-2.40
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-110.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-110.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-12.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-222.75
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-84.80
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-31.50
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-36.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-38.90
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-21.85
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-12.28
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-22.80
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-2.30
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-2.18
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-3.06
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-1.25
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-60.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-8.84
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-21.85
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	11					-62.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-10.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-10.40
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-11.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-10.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-15.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-62.50
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-25.70
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-54.18
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-92.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-90.00
[REDACTED]	[REDACTED]	[REDACTED]	06/01/2007	13					-110.00

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Friday, June 01, 2007, 12:17 PM

Chart	Name	Bill No	Date	Provider	Pos	Diagnosis	TX Code	Amount
			08/01/2007	13				-4.10
			08/01/2007	13				-80.00
			08/01/2007	13				-21.85
			08/01/2007	13				-3.15
			06/01/2007	13				-41.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-3700.37	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-3700.37	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-3700.37

Report Balance

-3700.37

Day Sheet - Transaction Detail

LABMD, INCORPORATED
LABMD

Friday, June 08, 2007, 11:18 AM

Chart	Name	Account	Date	Time	Provider	Ref	Original	TX Code	Amount
			06/08/2007	13					-11.00
			06/08/2007	13					-12.50
			06/08/2007	13					-4.40
			06/08/2007	13					-5.00
			06/08/2007	13					-25.00
			06/08/2007	13					-72.00
			06/08/2007	13					-40.00
			06/08/2007	13					-41.00
			06/08/2007	13					-41.00
			06/08/2007	13					-73.09
			06/08/2007	13					-20.54
			06/08/2007	13					-9.81
			06/08/2007	13					-9.59
			06/08/2007	13					-18.80
			06/08/2007	13					-87.00
			06/08/2007	13					-12.28
			06/08/2007	13					-5.92
			06/08/2007	13					-11.54
			06/08/2007	13					-22.00
			06/08/2007	13					-14.00
			06/08/2007	13					-11.00
			06/08/2007	13					-22.00
			06/08/2007	13					-22.00
			06/08/2007	13					-68.00
			06/08/2007	13					-27.68
			06/08/2007	13					-27.68
			06/08/2007	13					-40.00
			06/08/2007	13					-125.00
			06/08/2007	13					-7.20
			06/08/2007	13					-7.19
			06/08/2007	13					-0.84
			06/08/2007	13					-65.06
			06/08/2007	13					-204.24
			06/08/2007	13					0.00
			06/08/2007	13					-7.84
			06/08/2007	13					-8.51
			06/08/2007	13					-72.87
			06/08/2007	13					-20.74
			06/08/2007	13					-50.00
			06/08/2007	13					-27.50
			06/08/2007	13					-17.25
			06/08/2007	13					-50.00
			06/08/2007	13					-44.25
			06/08/2007	13					-8.12
			06/08/2007	13					-1.80
			06/08/2007	13					-3.02
			06/08/2007	13					-3.08
			06/08/2007	13					-1.60
			06/08/2007	13					-3.02
			06/08/2007	13					-3.08
			06/08/2007	13					-15.31
			06/08/2007	13					-8.15
			06/08/2007	13					-21.85
			06/08/2007	13					-21.85
			06/08/2007	13					-11.00
			06/08/2007	13					-11.00
			06/08/2007	13					-14.42
			06/08/2007	13					-8.12
			06/08/2007	13					-4.37
			06/08/2007	13					-8.20
			06/08/2007	13					-10.00
			06/08/2007	13					-2.20
			06/08/2007	13					-2.50
			06/08/2007	13					-41.00
			06/08/2007	13					-7.28
			06/08/2007	13					-21.85
			06/08/2007	13					-21.85
			06/08/2007	13					-156.30
			06/08/2007	13					-5.80
			06/08/2007	13					-0.70
			06/08/2007	13					-25.70

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Friday, June 08, 2007, 11:19 AM

Chart	Pat Name	Phys	Day	Time	Provider	Pos	Diagnosis	Code	Amount
			08/08/2007		13				-3.00
			08/08/2007		13				-20.60
			08/08/2007		13				-6.90
			08/08/2007		13				-41.00
			08/08/2007		13				-110.00
			08/08/2007		13				-11.00
			08/08/2007		13				-4.60
			08/08/2007		13				-27.60
			08/08/2007		13				-10.26
			08/08/2007		13				-150.00
			08/08/2007		13				-20.00
			08/08/2007		13				-95.60
			08/08/2007		13				-75.00
			08/08/2007		13				-132.12
			08/08/2007		13				-110.00
			08/08/2007		13				-68.87
			08/08/2007		13				-110.00
			08/08/2007		13				-6.12
			08/08/2007		13				-0.85
			08/08/2007		13				-22.00
			08/08/2007		13				-3.10
			08/08/2007		13				-6.40
			08/08/2007		13				-2.20
			08/08/2007		13				-3.60
			08/08/2007		13				-2.60
			08/08/2007		13				-2.60
			08/08/2007		13				-2.30
			08/08/2007		13				-1.60
			08/08/2007		13				-2.00
			08/08/2007		13				-1.00
			08/08/2007		13				-11.30
			08/08/2007		13				-1.80
			08/08/2007		13				-1.80
			08/08/2007		13				-3.60
			08/08/2007		13				-1.80
			08/08/2007		13				-3.90
			08/08/2007		13				-12.26
			08/08/2007		13				-8.13
			08/08/2007		13				-8.13
			08/08/2007		13				-24.47
			08/08/2007		13				-47.80
			08/08/2007		13				-86.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-3125.82	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
	Credits Subtotal		-3125.82
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
	All Locations Total		-3125.82

Report Balance

-3125.82

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Monday, June 11, 2007, 11:30 AM

Chart	Name	Billing	Date	Provider	Pos	Diagnosis	TX Code	Amount
			08/11/2007	13				0.00
			08/11/2007	13				-18.01
			08/11/2007	13				-18.00
			08/11/2007	13				-26.97
			08/11/2007	13				-37.03
			08/11/2007	13				-14.82
			08/11/2007	13				-110.00
			08/11/2007	13				-25.00
			08/11/2007	13				-18.50
			08/11/2007	13				-18.50
			05/11/2007	13				-9.59
			08/11/2007	13				-3.00
			08/11/2007	13				-3.00
			08/11/2007	13				-3.00
			08/11/2007	13				-27.37
			08/11/2007	13				-12.25
			08/11/2007	13				-1.91
			08/11/2007	13				-25.00
			08/11/2007	13				-12.55
			08/11/2007	13				-21.85
			08/11/2007	13				-30.87
			08/11/2007	13				-25.70
			08/11/2007	13				-50.00
			08/11/2007	13				-28.87
			08/11/2007	13				-36.08
			08/11/2007	13				-100.00
			08/11/2007	13				-100.00
			08/11/2007	13				-30.75
			08/11/2007	13				-82.50
			08/11/2007	13				-53.58
			08/11/2007	13				-5.00
			08/11/2007	13				-5.00
			08/11/2007	13				-5.00
			08/11/2007	13				-5.00
			08/11/2007	13				-6.15
			08/11/2007	13				-10.00
			08/11/2007	13				-38.90
			08/11/2007	13				-79.20
			08/11/2007	13				-220.80
			08/11/2007	13				-5.00
			08/11/2007	13				-8.92
			08/11/2007	13				-6.12
			08/11/2007	13				-21.85
			08/11/2007	13				0.00
			08/11/2007	13				-13.89
			08/11/2007	13				-172.78
			08/11/2007	13				-12.00
			08/11/2007	13				-4.40
			08/11/2007	13				-5.00
			08/11/2007	13				-38.37
			08/11/2007	13				-30.00
			08/11/2007	13				-7.31
			08/11/2007	13				-42.40
			08/11/2007	13				-20.54
			08/11/2007	13				-9.60
			08/11/2007	13				-9.81
			08/11/2007	13				-9.59
			08/11/2007	13				-21.85
			08/11/2007	13				-55.00
			08/11/2007	13				-89.91
			08/11/2007	13				-5.14
			08/11/2007	13				-21.85
			08/11/2007	13				-21.24
			08/11/2007	13				-14.82
			08/11/2007	13				-12.25
			08/11/2007	13				-55.13
			08/11/2007	13				-1.98
			08/11/2007	13				-2.94
			08/11/2007	13				-6.60
			08/11/2007	13				-14.82
			08/11/2007	13				-17.00

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Monday, June 11, 2007, 11:30 AM

Chart	Name	Billing	Date	Provider	Pos	Diagnosis	TX Code	Amount
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-33.00
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-12.28
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-4.37
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-168.83
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-7.29
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-6.12
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-3.02
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-3.08
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-16.67
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-22.99
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-22.99
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-5.07
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-25.70
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-25.70
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-8.42
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	11				-40.00
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-22.80
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-25.70
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-36.08
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-15.00
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-10.40
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-11.00
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-8.20
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-22.00
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-5.00
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-16.23
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-183.24
[REDACTED]	[REDACTED]	[REDACTED]	06/11/2007	13				-73.87

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-2748.04	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-2748.04	
Adjustments	Debit	0.00	
	Credit	-100.00	
	Refunds	0.00	
	Charge Backs	0.00	
Adjustments Subtotal		-100.00	
All Locations Total			-2848.04

Report Balance

-2848.04

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Monday, August 04, 2008, 10:12 AM

Chart	Name	Billing	Date	Provider	POS	Diagnosic	TX Code	Amount
			08/04/2008	13				-0.60
			08/04/2008	13				-6.20
			08/04/2008	13				-9.02
			08/04/2008	13				-29.62
			08/04/2008	13				-20.66
			08/04/2008	13				-20.58
			08/04/2008	13				-9.02
			08/04/2008	13				20.00
			08/04/2008	13				-20.00
			08/04/2008	13				-4.11
			08/04/2008	13				-5.68
			08/04/2008	13				-5.77
			08/04/2008	13				-2.49
			08/04/2008	13				-2.08
			08/04/2008	13				-4.37
			08/04/2008	13				-3.86
			08/04/2008	13				-1.81
			08/04/2008	13				-1.80
			08/04/2008	13				-10.00
			08/04/2008	13				-110.00
			08/04/2008	13				-28.10
			08/04/2008	13				-9.69
			08/04/2008	13				-61.28
			08/04/2008	13				-7.20
			08/04/2008	13				-4.00
			08/04/2008	13				-4.10
			08/04/2008	13				-4.11
			08/04/2008	13				-4.11
			08/04/2008	13				-73.83
			08/04/2008	13				-22.80
			08/04/2008	13				-29.60
			08/04/2008	13				-22.80

Report Summary

Charges	Patient	20.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		20.00
Credits	Insurance	0.00	
	Patient	-543.08	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
	Credits Subtotal		-543.08
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
	All Locations Total		-523.08

Report Balance

-523.08

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Friday, August 08, 2008, 02:19 PM

Chart	Name	Bill	Date	Provider	Pos	Diagnosis	Occur	Amount
			08/08/2008	13				-20.68
			08/08/2008	13				-20.68
			08/08/2008	13				-29.62
			08/08/2008	13				-131.84
			08/08/2008	13				-58.22
			08/08/2008	13				-20.68
			08/08/2008	13				-22.00
			08/08/2008	13				-20.00
			08/08/2008	13				-15.00
			08/08/2008	13				-100.00
			08/08/2008	13				-80.00
			08/08/2008	13				-18.50
			08/08/2008	13				-24.50
			08/08/2008	13				-14.40
			08/08/2008	13				-8.00
			08/08/2008	13				-8.20
			08/08/2008	13				-20.00
			08/08/2008	13				-70.00
			08/08/2008	13				-80.00
			08/08/2008	13				-26.00
			08/08/2008	13				-87.89
			08/08/2008	13				-20.84
			08/08/2008	13				-10.80
			08/08/2008	13				-5.29
			08/08/2008	13				-8.06
			08/08/2008	13				-8.20
			08/08/2008	13				-4.11
			08/08/2008	13				-219.24
			08/08/2008	13				-26.00
			08/08/2008	13				-110.00
			08/08/2008	13				-16.79
			08/08/2008	13				-22.80
			08/08/2008	13				-2.40

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-1300.86	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
	Credits Subtotal		-1300.86
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
	All Locations Total		-1300.86

Report Balance	-1300.86
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Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Monday, August 11, 2008, 10:14 AM

Chart	Name	Bill To	ES Date	PL	PL Code	PL Desc	PL Pos	PL Dia	PL TX Code	PL Amt
			08/11/2008	13						-8.50
			08/11/2008	13						-8.20
			08/11/2008	13						-9.90
			08/11/2008	13						-11.90
			08/11/2008	13						-11.40
			08/11/2008	13						-126.00
			08/11/2008	13						-2.06
			08/11/2008	13						-2.06
			08/11/2008	13						-20.58
			08/11/2008	13						-20.58
			08/11/2008	13						-8.52
			08/11/2008	13						-1.83
			08/11/2008	13						-0.90
			08/11/2008	13						-0.90
			08/11/2008	13						-22.00
			08/11/2008	13						-22.00
			08/11/2008	13						-58.47
			08/11/2008	13						-81.96
			08/11/2008	13						-28.09
			08/11/2008	13						-106.29
			08/11/2008	13						-28.09
			08/11/2008	13						-25.00
			08/11/2008	13						-4.11
			08/11/2008	13						-5.77
			08/11/2008	13						-42.70
			08/11/2008	13						-27.78
			08/11/2008	13						-13.02
			08/11/2008	13						-13.02

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-709.97	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-709.97	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-709.97

Report Balance

-709.97

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Monday, August 11, 2008, 11:18 AM

Charge	Name	Building	Room	Date	Time	Provider	Room	Diagnosis	ICD9	Code	Rate	Amount
				08/11/2008	13							-20.58
				08/11/2008	13							-29.38
				08/11/2008	13							-30.00
				08/11/2008	13							-41.00
				08/11/2008	13							-1.85
				08/11/2008	13							-8.28
				08/11/2008	13							-8.28
				08/11/2008	13							-8.59
				08/11/2008	13							-13.28
				08/11/2008	13							-8.22
				08/11/2008	13							-8.20
				08/11/2008	13							-30.00
				08/11/2008	13							-20.88
				08/11/2008	13							-5.14
				08/11/2008	13							-11.00
				08/11/2008	13							-50.00
				08/11/2008	13							-70.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charge Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-378.32	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
	Credits Subtotal		-378.32
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
	All Locations Total		-378.32

Report Balance

-378.32

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Tuesday, August 12, 2008, 10:39 AM

Location	Product Name	Quantity	Unit Price	Product Code	Product Description	POS	Medical Code	Amount
				08/12/2008	13			-5.60
				08/12/2008	13			-29.82
				08/12/2008	13			-5.77
				08/12/2008	13			-25.00
				08/12/2008	13			-20.58
				08/12/2008	13			-9.44
				08/12/2008	13			-70.78
				08/12/2008	13			-55.00
				08/12/2008	13			-15.00
				08/12/2008	13			-14.14
				08/12/2008	13			-98.07
				08/12/2008	13			-134.30
				08/12/2008	13			-11.28
				08/12/2008	13			-24.18
				08/12/2008	13			-11.31
				08/12/2008	13			-11.28
				08/12/2008	13			-4.11
				08/12/2008	13			-20.68
				08/12/2008	13			-110.00
				08/12/2008	13			-5.84

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-379.60	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-379.60	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-379.60

Report Balance	-379.60
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Day Sheet - Transaction Detail

LABMD, INCORPORATED
LABMD

Tuesday, August 12, 2008, 12:33 PM

Chart	Asset	Name	Code	Blk	Acct	Dr	Cr	Debit	Amount	TX
						08/12/2008	13		-13.02	
						08/12/2008	13		-8.45	
						08/12/2008	13		-28.88	
						08/12/2008	13		-197.31	
						08/12/2008	13		-77.00	
						08/12/2008	13		-67.90	
						08/12/2008	13		-8.83	
						08/12/2008	13		-60.00	
						08/12/2008	13		-5.90	
						08/12/2008	13		-0.85	
						08/12/2008	13		-8.77	
						08/12/2008	13		-25.70	
						08/12/2008	13		-3.00	
						08/12/2008	13		-64.30	
						08/12/2008	13		-4.95	
						08/12/2008	13		-4.95	
						08/12/2008	13		-0.54	
						08/12/2008	13		-25.00	
						08/12/2008	13		-41.00	
						08/12/2008	13		-0.71	
						08/12/2008	13		-0.80	
						08/12/2008	13		-3.30	
						08/12/2008	13		-0.61	
						08/12/2008	13		-1.52	
						08/12/2008	13		-0.68	
						08/12/2008	13		-0.79	
						08/12/2008	13		-0.59	
						08/12/2008	13		-0.41	
						08/12/2008	13		-0.61	
						08/12/2008	13		-0.51	
						08/12/2008	13		-0.42	
						08/12/2008	13		-3.86	
						08/12/2008	13		-1.80	
						08/12/2008	13		-1.81	
						08/12/2008	13		-1.80	
						08/12/2008	13		-3.86	
						08/12/2008	13		-1.80	
						08/12/2008	13		-1.81	
						08/12/2008	13		-1.80	
						08/12/2008	13		-20.56	
						08/12/2008	13		-8.20	
						08/12/2008	13		-41.00	
						08/12/2008	13		-50.65	
						08/12/2008	13		-52.29	
						08/12/2008	13		-50.99	
						08/12/2008	13		-19.40	
						08/12/2008	13		-18.01	

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Wednesday, August 13, 2008, 10:46 AM

DATE	TIME	DESCRIPTION	AMOUNT
08/13/2008	13		-88.00
08/13/2008	13		-22.00
08/13/2008	13		0.00
08/13/2008	13		-33.00
08/13/2008	13		-87.89
08/13/2008	13		-14.78
08/13/2008	13		-8.20
08/13/2008	13		-8.20
08/13/2008	13		-24.16
08/13/2008	13		-22.62
08/13/2008	13		-11.28
08/13/2008	13		-68.47
08/13/2008	13		-11.31
08/13/2008	13		-25.70
08/13/2008	13		-8.69
08/13/2008	13		-9.46
08/13/2008	13		-60.00
08/13/2008	13		-4.37
08/13/2008	13		-8.76
08/13/2008	13		20.00
08/13/2008	13		-20.00
08/13/2008	13		-322.60
08/13/2008	13		-48.00
08/13/2008	13		-48.00
08/13/2008	13		-9.02
08/13/2008	13		-25.00
08/13/2008	13		-110.00
08/13/2008	13		-110.00
08/13/2008	13		-41.00
08/23/2007	13		0.00
08/13/2008	13		-29.52
08/13/2008	13		-20.52
08/13/2008	13		-114.00
08/13/2008	13		-5.73
08/13/2008	13		-10.95
08/13/2008	13		-5.62
08/13/2008	13		-1.83
08/13/2008	13		-5.77
08/13/2008	13		-11.00
08/13/2008	13		-11.90
08/13/2008	13		-11.40
08/13/2008	13		-50.00
08/13/2008	13		-5.82

Report Summary

Charges	Patient	20.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		20.00
Credits	Insurance	0.00	
	Patient	-1497.08	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-1497.08	
Adjustments	Dubit	0.00	
	Credit	-22.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		-22.00
All Locations Total			-1499.08

Report Balance

-1499.08

Day Sheet - Transaction Detail

LABMD, INCORPORATED
LABMD

Monday, August 18, 2008, 11:41 AM

Officer	Name	Bill No	Date	Time	Provider	Pos	Diagnosis	ICD9	Code	Amount
			08/18/2008		13					-14.82
			08/18/2008		13					-5.14
			08/18/2008		13					-5.14
			08/18/2008		13					-2.28
			08/18/2008		13					-28.00
			08/18/2008		13					-12.00
			08/18/2008		13					-5.14
			08/18/2008		13					-11.00
			08/18/2008		13					-11.40
			08/18/2008		13					-4.11
			08/18/2008		13					-4.11
			08/18/2008		13					-105.23
			08/18/2008		13					-10.00
			08/18/2008		13					-110.00
			08/18/2008		13					-88.00
			08/18/2008		13					-254.00
			08/18/2008		13					-145.47
			08/18/2008		13					-11.69
			08/18/2008		13					20.00
			08/18/2008		13					-20.00
			08/18/2008		13					-20.00
			08/18/2008		13					-4.10
			08/18/2008		13					-2.78
			08/18/2008		13					-1.30
			08/18/2008		13					-1.30
			08/18/2008		13					-187.78
			08/18/2008		13					-25.70
			08/18/2008		13					-8.59
			08/18/2008		13					-14.79
			08/18/2008		13					-106.87
			08/18/2008		13					-8.18
			08/18/2008		13					-9.18
			08/18/2008		13					-9.18
			08/18/2008		13					-9.18
			08/18/2008		13					-9.18
			08/18/2008		13					-9.18
			08/18/2008		13					-9.18
			08/18/2008		13					-4.30
			08/18/2008		13					-8.00
			08/18/2008		13					-8.00
			08/18/2008		13					-20.58
			08/18/2008		13					-5.73
			08/18/2008		13					-58.47
			08/18/2008		13					-9.02
			08/18/2008		13					-12.50
			08/18/2008		13					-11.00
			08/18/2008		13					-11.40

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Thursday, August 21, 2008, 04:57 PM

Chrg	Code	Amount
08/21/2008	13	-5.90
08/21/2008	13	-5.90
08/21/2008	13	-140.30
08/21/2008	13	-110.00
08/21/2008	13	-29.82
08/21/2008	13	-11.47
08/21/2008	13	-3.50
08/21/2008	13	-4.00
08/21/2008	13	-4.10
08/21/2008	13	-13.68
08/21/2008	13	-2.05
08/21/2008	13	-2.05
08/21/2008	13	-25.00
08/21/2008	13	-25.70
08/21/2008	13	-68.47
08/21/2008	13	-2.28
08/21/2008	13	-4.28
08/21/2008	13	-4.32
08/21/2008	13	-284.24
08/21/2008	13	-12.50
08/21/2008	13	-1.35
08/21/2008	13	-4.59
08/21/2008	13	-0.39
08/21/2008	13	-0.39
08/21/2008	11	-12.78
08/21/2008	11	-20.78
08/21/2008	13	-13.62
08/21/2008	13	-2.85
08/21/2008	13	-82.50
08/21/2008	13	-28.99
08/21/2008	13	-5.80
08/21/2008	13	-5.21
08/21/2008	13	-20.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-906.47	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
	Credits Subtotal		-906.47
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
	All Locations Total		-906.47

Report Balance

-906.47

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Wednesday, August 27, 2008, 12:06 PM

Order #	Order Date	Order Time	Order Type	Order Status	Order Description	Order Amount
[REDACTED]	08/27/2008	13				-22.00
[REDACTED]	08/27/2008	13				-22.00
[REDACTED]	08/27/2008	13				-14.79
[REDACTED]	08/27/2008	13				-25.70
[REDACTED]	08/27/2008	13				-108.22
[REDACTED]	08/27/2008	13				-28.52
[REDACTED]	08/27/2008	13				-55.00
[REDACTED]	08/27/2008	13				-54.00
[REDACTED]	08/27/2008	13				-30.00
[REDACTED]	08/27/2008	13				-30.76
[REDACTED]	08/27/2008	13				-11.00
[REDACTED]	08/27/2008	13				-22.00
[REDACTED]	08/27/2008	13				-14.79
[REDACTED]	08/27/2008	13				-20.00
[REDACTED]	08/27/2008	13				-9.02
[REDACTED]	08/27/2008	13				-20.96

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-489.75	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-489.75	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total		-489.75	

Report Balance -489.75

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Friday, August 29, 2008, 09:21 AM

Account Name	Bill to	By Date	Yr	Provider	ICD 9	Diagnosis	ICD 9	Code	Amount
		08/29/2008	13						-110.00
		08/29/2008	13						-110.00
		08/29/2008	13						-110.00
		08/29/2008	13						-14.79
		08/29/2008	13						-29.08
		08/29/2008	13						-29.09
		08/29/2008	13						-612.96
		08/29/2008	13						-15.00
		08/29/2008	13						-20.68
		08/29/2008	13						-25.00
		08/29/2008	13						-12.50
		08/29/2008	13						-59.00
		08/29/2008	13						-125.00
		08/29/2008	13						-8.17
		08/29/2008	13						-20.58
		08/29/2008	13						-113.50
		08/29/2008	13						-20.56
		08/29/2008	13						-5.90
		08/29/2008	13						-27.78
		08/29/2008	13						-13.02
		08/29/2008	13						-13.02
		08/29/2008	13						-13.02
		08/29/2008	13						-29.98
		08/29/2008	13						-29.62
		08/29/2008	13						-30.82
		08/29/2008	13						-29.52
		08/29/2008	13						-41.24
		08/29/2008	13						-34.73
		08/29/2008	13						-13.02
		08/29/2008	13						-2.20
		08/29/2008	13						-4.10
		08/29/2008	13						-8.20
		08/29/2008	13						-50.00
		08/29/2008	13						-8.55
		08/29/2008	13						-6.15
		08/29/2008	13						-118.31
		08/29/2008	13						-87.61

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-1898.75	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Payment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-1898.75	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total		-1898.75	

Report Balance

-1898.75

Day Sheet - Transaction Detail

LABMD, INCORPORATED
LABMD

Friday, August 29, 2008, 02:28 PM

Charge	Code	Description	Amount
[REDACTED]	08/29/2008	13	-40.00
[REDACTED]	08/29/2008	13	-21.36
[REDACTED]	08/29/2008	13	-19.32
[REDACTED]	08/29/2008	13	-9.03
[REDACTED]	08/29/2008	13	-9.06
[REDACTED]	08/29/2008	13	-9.02
[REDACTED]	08/29/2008	13	-1.93
[REDACTED]	08/29/2008	13	-0.90
[REDACTED]	08/29/2008	13	-0.90
[REDACTED]	08/29/2008	13	-0.90
[REDACTED]	08/29/2008	13	-113.00
[REDACTED]	08/29/2008	13	-20.56
[REDACTED]	08/29/2008	13	-28.48
[REDACTED]	08/29/2008	13	-28.88
[REDACTED]	08/29/2008	13	-11.69
[REDACTED]	08/29/2008	13	-110.00
[REDACTED]	08/29/2008	13	-0.10
[REDACTED]	08/29/2008	13	-4.80
[REDACTED]	08/29/2008	13	-2.40
[REDACTED]	08/29/2008	13	-11.80
[REDACTED]	08/29/2008	13	-4.10
[REDACTED]	08/29/2008	13	-12.50
[REDACTED]	08/29/2008	13	-25.00
[REDACTED]	08/29/2008	13	-41.00
[REDACTED]	08/29/2008	13	-14.79
[REDACTED]	08/29/2008	13	-41.12
[REDACTED]	08/29/2008	13	20.00
[REDACTED]	08/29/2008	13	-20.00
[REDACTED]	08/29/2008	13	-23.03
[REDACTED]	08/29/2008	13	-20.56
[REDACTED]	08/29/2008	13	-28.68

Report Summary

Charges	Patient	20.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		20.00
Credits	Insurance	0.00	
	Patient	-674.93	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-674.93	
Adjustments	Debit	0.00	
	Credit	-0.10	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		-0.10
All Locations Total			-658.03

Report Balance

-658.03

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD

Wednesday, September 10, 2008, 04:22 PM

Charge	Payor	Name	DOB	MRN	Encounter	Diagnosis	ICD9	ICD10	Location
					09/10/2008	13			-4.11
					09/10/2008	13			-4.11
					09/10/2008	13			-4.30
					09/10/2008	13			-85.00
					09/10/2008	13			-34.76
					09/10/2008	13			-34.86
					09/10/2008	13			-19.40
					09/10/2008	13			-128.10
					09/10/2008	13			-29.62
					09/10/2008	13			-29.62
					09/10/2008	13			-5.14
					09/10/2008	13			-5.00
					09/10/2008	13			-18.48
					09/10/2008	13			-79.16
					09/10/2008	13			-13.02
					09/10/2008	13			-60.00
					09/10/2008	13			-25.00
					09/10/2008	13			-5.77
					09/10/2008	13			-41.00
					09/10/2008	13			-9.46
					09/10/2008	13			-2.66
					09/10/2008	13			-2.66
					09/10/2008	13			-20.00
					09/10/2008	13			-11.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-661.98	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-661.98	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-661.98

Report Balance

-661.98

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Thursday, September 11, 2008, 09:46 AM

Charge Code	Quantity	Unit Price	Charge Description	Diagnosis	ICD9 Code	Amount
[REDACTED]			09/11/2008	13		-26.70
[REDACTED]			09/11/2008	13		-3.00
[REDACTED]			09/11/2008	13		-10.00
[REDACTED]			09/11/2008	13		-276.00
[REDACTED]			09/11/2008	13		-294.00
[REDACTED]			09/11/2008	13		-15.36
[REDACTED]			09/11/2008	13		-11.28
[REDACTED]			09/11/2008	13		-13.02
[REDACTED]			09/11/2008	13		-29.52
[REDACTED]			09/11/2008	13		-20.56
[REDACTED]			09/11/2008	13		-36.06
[REDACTED]			09/11/2008	13		-55.00
[REDACTED]			09/11/2008	13		-39.38
[REDACTED]			09/11/2008	13		-24.02
[REDACTED]			09/11/2008	13		-8.76
[REDACTED]			09/11/2008	13		-8.18
[REDACTED]			09/11/2008	13		-76.00
[REDACTED]			09/11/2008	13		-65.00
[REDACTED]			09/11/2008	13		-110.00
[REDACTED]			09/11/2008	13		-9.00
[REDACTED]			09/11/2008	13		-5.00
[REDACTED]			09/11/2008	13		-75.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-1228.86	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-1228.86	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-1228.86

Report Balance

-1228.86

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Friday, September 19, 2008, 12:33 PM

Chart	Encounter Number	Day	Time	Location	Procedure Code	Amount
		09/19/2008	13			-200.00
		09/19/2008	13			-8.32
		09/19/2008	13			-1.68
		09/19/2008	13			-55.00
		09/19/2008	13			-55.00
		09/19/2008	13			-20.50
		09/19/2008	13			-49.00
		09/19/2008	13			-110.00
		09/19/2008	13			-125.00
		09/19/2008	13			-14.41
		09/19/2008	13			-29.52
		09/19/2008	13			-5.87
		09/19/2008	13			-31.00
		09/19/2008	13			-71.10
		09/19/2008	13			-17.00
		09/19/2008	13			-33.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-828.40	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-828.40	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-828.40

Report Balance

-828.40

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Friday, September 19, 2008, 01:51 PM

Order No	Order Date	Order Time	Order Type	Order Status	Order Code	Order Amount
[REDACTED]	09/19/2008	13				-110.00
[REDACTED]	09/19/2008	13				-20.62
[REDACTED]	09/19/2008	13				-40.81
[REDACTED]	09/19/2008	13				-41.24
[REDACTED]	09/19/2008	13				-222.26
[REDACTED]	09/19/2008	13				-110.00
[REDACTED]	09/19/2008	13				-5.00
[REDACTED]	09/19/2008	13				-5.00
[REDACTED]	09/19/2008	13				-605.00
[REDACTED]	09/19/2008	13				-2.20
[REDACTED]	09/19/2008	13				-2.50
[REDACTED]	09/19/2008	13				-10.00
[REDACTED]	09/19/2008	13				-65.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-1238.53	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
	Credits Subtotal		-1238.53
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
	All Locations Total		-1238.53

Report Balance

-1238.53

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Monday, September 22, 2008, 02:31 PM

Chart	Service	Quantity	Unit Price	Charge	Insurance	Refund	Net Charge	Code
				09/22/2008	13			
				09/22/2008	13			
				09/22/2008	13		-1.	
				09/22/2008	13		-48.3	
				09/22/2008	13		-31.08	
				09/22/2008	13		-15.00	
				09/22/2008	13		-25.00	
				09/22/2008	13		-25.00	
				09/22/2008	13		-27.78	
				09/22/2008	13		-13.02	
				09/22/2008	13		-13.02	
				09/22/2008	13		-13.02	
				09/22/2008	13		-25.70	
				09/22/2008	13		-19.32	
				09/22/2008	13		-9.05	
				09/22/2008	13		-9.02	
				09/22/2008	13		-29.52	
				09/22/2008	13		-110.00	

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-424.99	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-424.99	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-424.99

Report Balance

-424.99

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Monday, September 29, 2008, 05:49 PM

Chart	Account	Period	Pos	Prov	Qnt	Rate	Amount
		09/29/2008	13				-7.39
		09/29/2008	13				-11.28
		09/29/2008	13				-106.22
		09/29/2008	13				-23.29
		09/29/2008	13				-22.00
		09/29/2008	13				-7.81
		09/29/2008	13				-40.00
		09/29/2008	13				-11.00
		09/29/2008	13				-11.81
		09/29/2008	13				-11.81
		09/29/2008	13				-20.52
		09/29/2008	13				-29.52
		09/29/2008	13				-5.90
		09/29/2008	13				-87.69
		09/29/2008	13				-2.92
		09/29/2008	13				-3.08
		09/29/2008	13				-110.00
		09/29/2008	13				-22.00
		09/29/2008	13				-25.00
		09/29/2008	13				-4.37
		09/29/2008	13				-14.79
		09/29/2008	13				-5.90
		09/29/2008	13				-5.90
		09/29/2008	13				-20.00
		09/29/2008	13				-14.79
		09/29/2008	13				-170.90
		09/29/2008	13				-9.80
		09/29/2008	13				-26.00
		09/29/2008	13				-55.00
		09/29/2008	13				-5.00
		09/29/2008	13				-8.28
		09/29/2008	13				-10.32
		09/29/2008	13				-9.03
		09/29/2008	13				-9.05
		09/29/2008	13				-9.02
		09/29/2008	13				-21.36
		09/29/2008	13				-20.00
		09/29/2008	13				-4.40
		09/29/2008	13				-5.00
		09/29/2008	13				-17.60
		09/29/2008	13				-3.60
		09/29/2008	13				-5.84
		09/29/2008	13				-4.11
		09/29/2008	13				-4.11
		09/29/2008	13				-33.00
		09/29/2008	13				-1.04
		09/29/2008	13				-15.52

Day Sheet - Transaction Detail

LABMD, INCORPORATED
LABMD

Tuesday, September 30, 2008, 10:22 AM

Chart	Service	Pat Name	DOB	Date	Time	Provider	Room	Diag	Code	Amount
				09/30/2008	13					-3.00
				09/30/2008	13					-3.00
				09/30/2008	13					-2.04
				09/30/2008	13					-0.82
				09/30/2008	13					-0.83
				09/30/2008	13					-1.08
				09/30/2008	13					-0.63
				09/30/2008	13					-0.69
				09/30/2008	13					-0.78
				09/30/2008	13					-0.78
				09/30/2008	13					-4.47
				09/30/2008	13					-0.67
				09/30/2008	13					-2.34
				09/30/2008	13					-0.78
				09/30/2008	13					-1.30
				09/30/2008	13					-0.78
				09/30/2008	13					-21.36
				09/30/2008	13					-18.47
				09/30/2008	13					-18.50
				09/30/2008	13					-16.00
				09/30/2008	13					-25.70
				09/30/2008	13					-11.00
				09/30/2008	13					-8.17
				09/30/2008	13					-26.00
				09/30/2008	13					-13.58
				09/30/2008	13					-8.92
				09/30/2008	13					-8.92
				09/30/2008	13					-11.70
				09/30/2008	13					-14.79
				09/30/2008	13					-10.00
				09/30/2008	13					-8.22
				09/30/2008	13					-80.00
				09/30/2008	13					-14.79
				09/30/2008	13					-50.00
				09/30/2008	13					-11.80

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-392.00	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-392.00	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-392.00

Report Balance

-392.00

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Tuesday, November 25, 2008, 10:54 AM

Chart	Name	Member	Date	Provider	Base	Diagnosis	TX Code	Amount
			09/22/2008	13				-8.82
			09/22/2008	13				-322.50
			09/22/2008	13				-11.28
			09/22/2008	13				-22.00
			09/22/2008	13				-47.00
			09/22/2008	13				-13.48
			09/22/2008	13				-12.50
			09/22/2008	13				-4.10
			09/22/2008	13				-5.40
			09/22/2008	13				-82.50
			09/22/2008	13				-29.52
			09/22/2008	13				-29.52
			09/22/2008	13				-33.00
			09/22/2008	13				-20.00
			09/22/2008	13				-20.58
			09/22/2008	13				-20.58
			09/22/2008	13				-7.20
			09/22/2008	13				-8.20
			09/22/2008	13				-8.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-704.22	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-704.22	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total		-704.22	

Report Balance

-704.22

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Tuesday, November 25, 2008, 11:16 AM

Chart	Name	Billing	Date	Provider	Pos	Diagnosis	TX Code	Amount
			09/22/2008	13				-5.00
			09/22/2008	13				-29.52
			09/22/2008	13				-110.00
			09/22/2008	13				-3.76
			09/22/2008	13				-1.44
			09/22/2008	13				-48.39
			09/22/2008	13				-31.08
			09/22/2008	13				-19.32
			09/22/2008	13				-9.05
			09/22/2008	13				-9.02
			09/22/2008	13				-27.78
			09/22/2008	13				-13.02
			09/22/2008	13				-13.02
			09/22/2008	13				-13.02
			09/22/2008	13				-15.00
			09/22/2008	13				-25.00
			09/22/2008	13				-25.00
			09/22/2008	13				-25.70

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-424.99	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-424.99	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-424.99

Report Balance

-424.99

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Monday, December 01, 2008, 10:32 AM

Chart	Name	BL	Date	Time	Provider	Post	Diagnose	TX Code	Amount
			09/29/2008	13					-7.99
			09/29/2008	13					-11.28
			09/28/2008	13					-105.22
			09/29/2008	13					-23.28
			09/29/2008	13					-22.00
			09/28/2008	13					-7.91
			09/29/2008	13					-40.00
			09/29/2008	13					-11.00
			09/29/2008	13					-11.81
			09/29/2008	13					-11.81
			09/29/2008	13					-29.52
			09/29/2008	13					-29.52
			09/29/2008	13					-5.90
			09/29/2008	13					-87.89
			09/29/2008	13					-2.92
			09/29/2008	13					-3.08
			09/29/2008	13					-110.00
			09/29/2008	13					-22.00
			09/29/2008	13					-25.00
			09/29/2008	13					-4.37
			09/29/2008	13					-14.79
			09/29/2008	13					-5.50
			09/29/2008	13					-5.90
			09/29/2008	13					-20.00
			09/29/2008	13					-14.79
			09/29/2008	13					-170.80
			09/29/2008	13					-9.80
			09/29/2008	13					-25.00
			09/29/2008	13					-55.00
			09/29/2008	13					-6.00
			09/29/2008	13					-8.25
			09/29/2008	13					-19.32
			09/29/2008	13					-9.03
			09/29/2008	13					-9.05
			09/29/2008	13					-8.02
			09/29/2008	13					-21.35
			09/29/2008	13					-20.00
			09/29/2008	13					-7.38
			09/29/2008	13					-2.02
			09/29/2008	13					-17.60
			09/29/2008	13					-3.60
			09/29/2008	13					-5.84
			09/29/2008	13					-4.11
			09/29/2008	13					-4.11
			09/29/2008	13					-33.00
			09/29/2008	13					-1.94
			09/29/2008	13					-15.62

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Monday, December 01, 2008, 11:19 AM

Chn	PAT Name	Bill	Date	Day	Provider	ICD9	Diagnosis	ICD10	Code	Amount
			09/30/2008	13						-3.00
			09/30/2008	13						-3.00
			09/30/2008	13						-2.04
			09/30/2008	13						-0.82
			09/30/2008	13						-0.83
			09/30/2008	13						-1.08
			09/30/2008	13						-0.83
			09/30/2008	13						-0.80
			09/30/2008	13						-0.78
			09/30/2008	13						-0.78
			09/30/2008	13						-4.47
			09/30/2008	13						-0.57
			09/30/2008	13						-2.34
			09/30/2008	13						-0.78
			09/30/2008	13						-1.30
			09/30/2008	13						-0.78
			09/30/2008	13						-21.35
			09/30/2008	13						-18.47
			09/30/2008	13						-18.50
			09/30/2008	13						-15.00
			09/30/2008	13						-25.70
			09/30/2008	13						-11.00
			09/30/2008	13						-6.17
			09/30/2008	13						-25.00
			09/30/2008	13						-13.58
			09/30/2008	13						-6.92
			09/30/2008	13						-6.92
			09/30/2008	13						-11.70
			09/30/2008	13						-14.79
			09/30/2008	13						-10.00
			09/30/2008	13						-4.11
			09/30/2008	13						-4.11
			09/30/2008	13						-80.00
			09/30/2008	13						-14.79
			09/30/2008	13						-50.00
			09/30/2008	13						-11.80

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-392.00	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
	Credits Subtotal		-392.00
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
	All Locations Total		-392.00

Report Balance

-392.00

Day Sheet - Transaction Detail
 LABMD, INCORPORATED
 LABMD
 Tuesday, March 10, 2009, 12:31 PM

Chart	Name	Bill No	Date	QTY	Provider	Pos	Diagnosis	ICD-9	ICD-10	Amount
			03/10/2009	13						-55.00
			03/10/2009	13						-20.00
			03/10/2009	13						-60.00
			03/10/2009	13						-127.54
			03/10/2009	13						-11.84
			03/10/2009	13						-93.80
			03/10/2009	13						-10.00
			03/10/2009	13						-11.00
			03/10/2009	13						-20.00
			03/10/2009	13						-25.00
			03/10/2009	13						-7.50
			03/10/2009	13						-75.00
			03/10/2009	13						-256.20
			03/10/2009	13						-5.14
			03/10/2009	13						-62.50
			03/10/2009	13						-3.86
			03/10/2009	13						-1.80
			03/10/2009	13						-1.81
			03/10/2009	13						-1.80
			03/10/2009	13						-3.86
			03/10/2009	13						-1.81
			03/10/2009	13						-1.80
			03/10/2009	13						-3.00
			03/10/2009	13						-3.00
			03/10/2009	13						-3.00
			03/10/2009	13						-55.00
			03/10/2009	13						-25.00
			03/10/2009	13						-5.77
			03/10/2009	13						-209.82
			03/10/2009	13						-20.00

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-1174.85	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Payment Offset	0.00	
	Managed Care	0.00	
Credits Subtotal		-1174.85	
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
All Locations Total			-1174.85

Report Balance

-1174.85

Day Sheet - Transaction Detail

LABMD, INCORPORATED

LABMD

Tuesday, March 24, 2009, 03:30 PM

Chart	Name	Blind	Date	Provider	Pos	Diagnosis	ICD Code	Amount
			03/24/2009	13				-60.00
			03/24/2009	13				-58.20
			03/24/2009	13				-119.40
			03/24/2009	13				-25.00
			03/24/2009	13				-72.00
			03/24/2009	13				-40.00
			03/24/2009	13				-41.00
			03/24/2009	13				-11.89

Report Summary

Charges	Patient	0.00	
	Inventory	0.00	
	Sales Tax	0.00	
	Managed Care	0.00	
	Charges Subtotal		0.00
Credits	Insurance	0.00	
	Patient	-415.29	
	Sales Tax	0.00	
	Prepayment Received	0.00	
	Prepayment Offset	0.00	
	Managed Care	0.00	
	Credits Subtotal		-415.29
Adjustments	Debit	0.00	
	Credit	0.00	
	Refunds	0.00	
	Charge Backs	0.00	
	Adjustments Subtotal		0.00
	All Locations Total		-415.29

Report Balance

-415.29

Name Redacted

Redacted

Redacted

Handwritten Notes Redacted

Address Redacted

DATE 5-27-07

PAY TO THE ORDER OF

LAB MD

\$ 50.00

MEMO

DOLLARS

Redacted

Redacted

Banking Information Redacted

Name Redacted

Redacted

Address Redacted

March 2, 2008

PAY TO THE ORDER OF

Lab MD

\$ 256.20

MEMO

Two hundred fifty six and 20/100

DOLLARS

MEMO

Banking Information Redacted

Name Redacted

Redacted

Address Redacted

DATE Sept 25, 2008

PAY TO THE ORDER OF

LAB MD

\$ 13.58

MEMO

Thirteen and 58/100

DOLLARS

MEMO

Banking Information Redacted

Name Redacted

Address Redacted

Redacted

Redacted

Handwritten Notes Redacted

DATE 8/19/08

Pay to the order of

LABMD

\$ 21.58

Twenty one and 58/100

DATE

Handwritten Notes Redacted

Redacted

citigold

Redacted

FOR

Banking Information Redacted

Name Redacted

Address Redacted

Redacted

Redacted

25 Sept 08

PAY

LABMD

\$ 21.35

ORDER OF

Twenty one and 35/100

DOLLARS

Redacted

Redacted

FOR

Redacted

Banking Information Redacted

Handwritten Note Redacted

Name Redacted

Redacted

9/24/08

Pay to the order of

LAB MD, Inc.

\$ 15.00

Fifteen and 00/100

Dollars

Redacted

Redacted

FOR

Banking Information Redacted

Name Redacted
Address Redacted
Date: 3/27/07
Pay to the order of: LABMD
Twenty dollar = 20/100
\$ 12.25
Dollars

Name Redacted
Address Redacted
Date: 5/30 20 07
Pay To The Order Of: LAB MD
ONE HUNDRED TWO & 60/100
\$ 102.60
DOLLARS
Priority Choice

Name Redacted
Address Redacted
Date: 5/26/07
Pay to the order of: LabMD
Twenty three 10/100
\$ 23.70
DOLLARS

Handwritten Notes Redacted

Redacted

Bar in Electronic Control

40.00

PAY EXACTLY FORTY DOLLARS AND NO CENTS

PAY EXACTLY
PAY TO THE
ORDER OF Lab MD

Address Redacted

Redacted

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



In the Matter of)
)
)

LabMD, Inc.,)
a corporation,)
Respondent.)
_____)

DOCKET NO. 9357

ORDER DESIGNATING ADMINISTRATIVE LAW JUDGE

Pursuant to authority vested in the Federal Trade Commission and delegated to the Chief Administrative Law Judge,

IT IS ORDERED that D. Michael Chappell, Chief Administrative Law Judge at this Commission, be, and hereby is, designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law.

ORDERED:

Dm chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

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



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

DOCKET NO. 9357

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 29, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9357" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

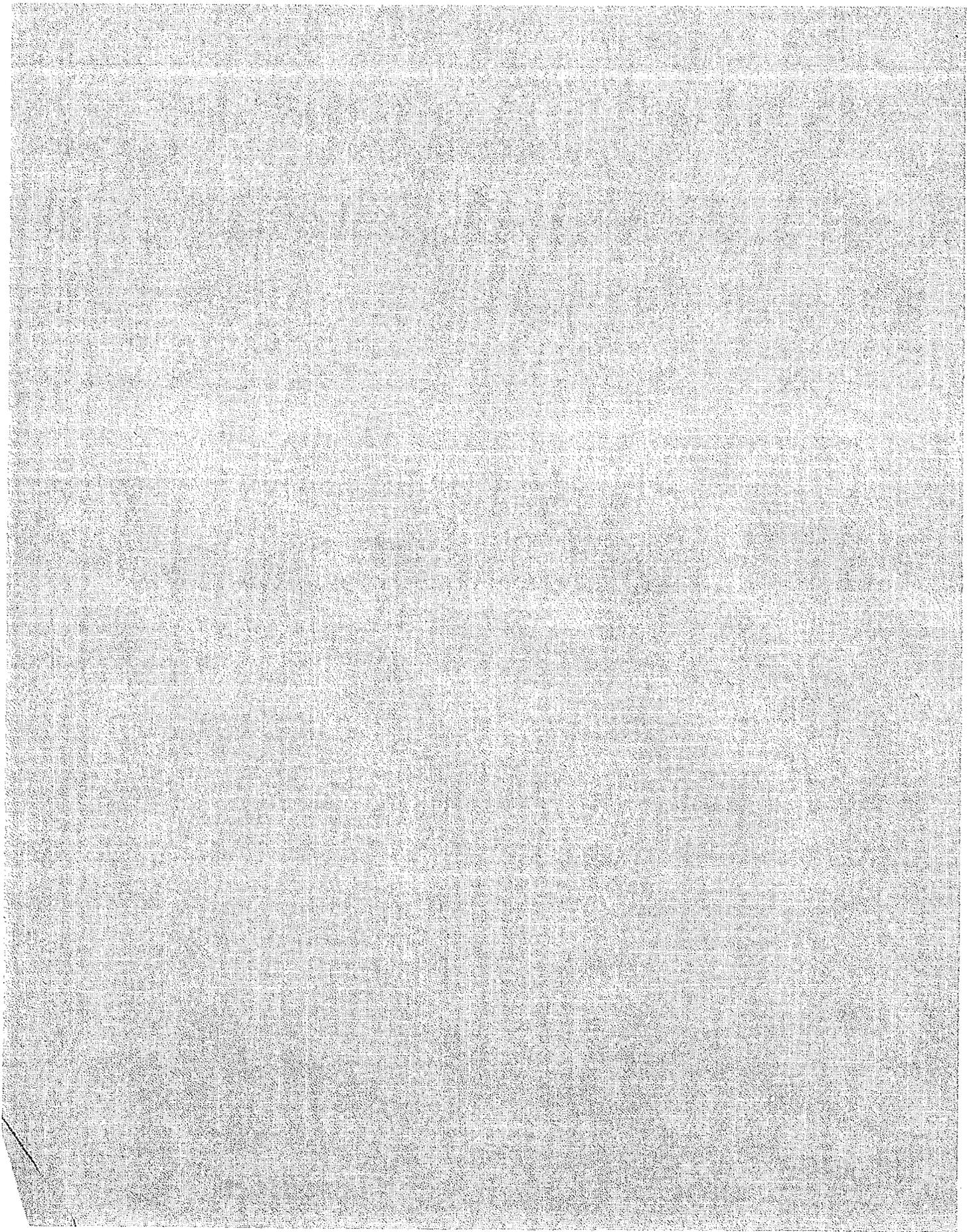


EXHIBIT 3

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
	)	Docket No. 9357
LabMD, Inc.)	
)	
_____)	

AFFIDAVIT OF MICHAEL DAUGHERTY
IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

The undersigned Michael Daugherty, hereby states and affirms as follows:

1. My name is Michael Daugherty, and I am the CEO of LabMD, Inc. ("LabMD").

I have personal knowledge of the matters set forth herein, except where stated on information and belief.

2. LabMD records payments received from referring physicians' patients (referred to as "Day Sheets").

3. Day Sheets are kept in hard copy form only and are not saved on LabMD's computer network.

4. I am informed and thereon believe that in October 2012 members of the Sacramento, California police department found more than 35 of LabMD's Day Sheets in the possession and/or control of Josie Maldonado and Eric Garcia.

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5. Given that Day Sheets are not saved on LabMD's computer network, I am informed and thereon believe that Josie Maldonado and Eric Garcia did not access the Day Sheets from LabMD's computer network.

I declare under penalty of perjury that the foregoing is true and correct, executed this 4th day of November, 2013 in Wayne County, Michigan.

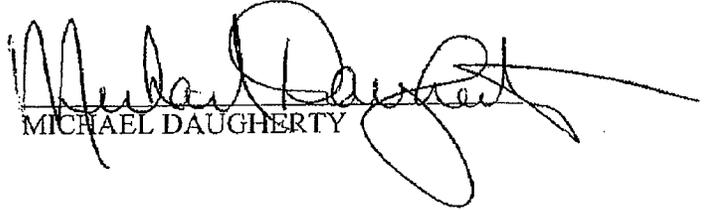

MICHAEL DAUGHERTY

EXHIBIT 4



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Alain Sheer
Attorney
Division of Privacy and Identity Protection

Direct Dial: 202.326.3321
Fax: 202.326.3629
E-mail: asheer@ftc.gov

January 19, 2010

Via Federal Express

Michael J. Daugherty
LabMD, Inc.
2030 Power Ferrys Road
Bldg. 500, Suite 520
Atlanta, GA 30339

Dear Mr. Daugherty:

As I discussed today with Mr. Boyle, the staff of the Federal Trade Commission ("Commission") is conducting a non-public inquiry into LabMD, Inc.'s compliance with federal law governing information security. According to information we have received, a computer file (or files) from your computer network is available to users on a peer-to-peer file sharing ("P2P") network (hereinafter, "P2P breach").¹ The file (or files) contains sensitive information about consumers and/or employees that could be used to commit identity theft or fraud or cause other types of harms to consumers and/or employees.²

Section 5 of the FTC Act prohibits deceptive or unfair acts or practices, such as misrepresentations about privacy and security and practices that cause substantial injury to

¹ P2P networks are created when users install compatible peer-to-peer file sharing applications on personal computers in homes and businesses. The applications link these computers together and can be used to share files between the computers. Once a file has been shared, the original source of the file cannot remove the file from the P2P networks or control access to it by other users on the networks.

For information about security concerns raised by the use of peer-to-peer file sharing applications and possible responses to them, see the enclosed *Peer-to-Peer File Sharing: A Guide For Business*, www.ftc.gov/bcp/edu/pubs/business/ldtheft/bus46.shtml.

² One such file is *insuranceaging_6.05.071*.

consumers.³ Accordingly, we seek to determine whether your handling of sensitive information from or about consumers and/or employees raises any issues under Section 5.

We invite you to meet with us in our Washington, D.C. office to discuss this matter, or to discuss this matter with us by telephone. If possible, we would like to meet during the week of March 8, 2010. In advance of the meeting, we request that you provide us with the information and documents listed below by February 22, 2010. Please feel free to submit any additional information you believe would be helpful to the Commission's understanding of this matter. Any materials you submit in response to this request, and any additional information that you mark "Confidential," will be given confidential treatment.⁴

In preparing your response:

- Please provide all responsive documents in the possession, custody, or control of LabMD, and its parents, owners, subsidiaries, divisions, affiliates, branches, joint ventures, and agents (collectively, "LabMD", "you," or "your").
- Please submit complete copies of all documents requested, even if you deem only part of a document to be responsive.
- Responses to each request should describe in detail each material change or update that has been made that concerns, refers, or relates to the request, as well as the date the change or update was implemented and the reason(s) for the change or update.
- Please number each page of your response by Bates stamp or otherwise, and itemize your response according to the numbered paragraphs in this letter.
- If any document is undated, please indicate in your response the stamped page numbers of the document and the date on which you prepared or received it.
- If you do not have documents that are responsive to a particular request, please submit a written statement in response. If a document provides only a partial response, please submit a written statement which, together with the document, provides a complete response.
- If you decide to withhold responsive material for any reason, including an applicable privilege or judicial order, please notify us before the date set for

³ 15 U.S.C. § 45 *et seq.*

⁴ The Commission's procedures concerning public disclosure and confidential treatment can be found at 15 U.S.C. §§ 46(f) and 57b-2, and at Commission Rules 4.10 - 4.11 (16 C.F.R. §§ 4.10 - 4.11).

responding to this request and submit a list of the items withheld and the reasons for withholding each.

- Please do not submit documents that contain any individual consumer's or employee's date of birth, Social Security number, driver's license or other personal identification number, financial account information, or medical information. If you have responsive documents that include such information, please redact the information before providing the documents.
- We may seek additional information from you at a later time. Accordingly, you must retain all relevant records, documents, and materials (not only the information requested below, but also any other information that concerns, reflects, or relates to this matter, including files and information stored electronically, whether on computers, computer disks and tapes, or otherwise) until the final disposition of this inquiry or until the Commission determines that retention is no longer necessary.⁵ This request is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3512.
- A responsible corporate officer or manager of LabMD shall sign the responses and certify that the documents produced and responses given are complete and accurate.
- For purposes of this letter, the term "personal information" means individually identifiable information from or about an individual consumer, including, but not limited to: (a) first and last name; (b) home or other physical address, including street name and name of city or town; (c) email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) telephone number; (e) date of birth; (f) government-issued identification number, such as a driver's license, military identification, passport, or Social Security number, or other personal identification number; (g) financial information, including but not limited to: investment account information; income tax information; insurance policy information; checking account information; and credit, debit, and/or check-cashing card information, including card number, expiration date, security number (such as card verification value), information stored on the magnetic stripe of the card, and personal identification number; (h) health information, including, but not limited to: prescription medication and dosage; prescribing physician name, address, and telephone number; health insurer name, and insurance account and policy numbers; and medical condition or diagnosis; (i) employment information, including, but not limited to, income, employment, retirement, disability, and medical records; (j) a persistent identifier, such as a customer number held in a "cookie" or processor serial number, that is

⁵ Failure to retain documents that may be relevant to this matter may result in civil or criminal liability. 15 U.S.C. § 50.

combined with other available data that identifies an individual consumer; or (k) any information from or about an individual consumer that is combined with any of (a) through (j) above. For the purpose of this definition, an individual consumer shall include an "employee", and "employee" shall mean an agent, servant, salesperson, associate, independent contractor, or other person directly or indirectly under your control.

REQUESTS FOR DOCUMENTS AND INFORMATION

Please provide the documents and information identified below.⁶ Unless otherwise indicated, the time period covered by these requests is from January 1, 2007 through the date of full and complete production of the documents and information requested.

General Information

1. Identify the complete legal name of LabMD and all other names under which it does, or has done, business, its corporate mailing address, and the date and state of incorporation.
2. Identify and describe LabMD's parents, subsidiaries (whether wholly or partially owned), divisions (whether incorporated or not), affiliates, branches, joint ventures, franchises, operations under assumed names, and entities over which it exercises supervision or control. For each such entity, describe in detail the nature of its relationship to LabMD.
3. Identify each individual or entity having an ownership interest in LabMD, as well as their individual ownership stakes and their positions and responsibilities within LabMD.
4. Provide documents sufficient to describe your business in detail. The response should identify and describe: each product and service you offer; each location (both online and offline) through which you offer such products and services; and, annually, your revenue, number of employees, and number of customers.

Personal Information

5. Provide documents that describe in detail the types of personal information you collect,

⁶ For purposes of this letter: the word "any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any;" the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or;" the word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each;" and the term "document" means any preexisting written or pictorial material of any kind, regardless of the medium in which such material was created, and regardless of the method by which it is stored (e.g., computer file, computer disk or tape, microfiche, etc.).

obtain, store, maintain, process, transmit, handle, or otherwise use (collectively, "collect and store") in conducting your business, how and where you collect and store the information, and how you use the information. The response should include, but not be limited to: documents sufficient to identify the type(s) of personal information you collect and store, the source(s) of each such type of information (such as consumers, employees, medical providers, healthcare plans, and insurance companies), and the manner by which you collect or obtain the information (such as by paper documents or electronically through a website); and documents or a narrative that describe in detail how you use each type of information in conducting your business.

Security Practices

6. Identify by name, location, and operating system each computer network that you use directly or indirectly to collect and store personal information, and provide for each such network:
 - (a) a high-level diagram (or diagrams) that sets out the components of the network and a narrative that describes the components in detail and explains their functions and how they operate together on the network. The description of the network components should identify and locate (within the network): computers; servers; firewalls; routers; internet, private line, and other connections; connections to other internal and external networks; virtual private networks; remote access equipment (such as wireless access points); websites; and security mechanisms and devices (such as intrusion detection systems). In responding, please feel free to use blueprints and diagrams that set out in detail the components, topology, and architecture of the network;
 - (b) documents sufficient to identify each computer, server, or other device where you collect and store personal information and, for each such computer, server, or device, each program, application, or other means (collectively, "databases") used to collect and store personal information; and
 - (c) documents that concern, relate, or refer to each database identified in the response to Request 6(b), including, but not limited to: operating manuals; user guides; communications with database vendors; database schemes, diagrams, and/or blueprints (including table and field names); and documents sufficient to identify the length of time for which you maintain personal information in the database.
7. Provide documents or a narrative that describe in detail the flow path of personal information over each network identified in response to Request 6, including the initial collection point for personal information (such as a website), the entry and exit points to and from the network, and all intermediate points within the network.
8. Provide documents sufficient to identify the policies, procedures, and practices you have used on each network identified in the response to Request 6 to prevent unauthorized

access to personal information collected and stored on the network, as well as the time period during which such policies, procedures, and practices were written and implemented. The response should include, but not be limited to, documents that concern, reflect, or relate to: controls on direct or remote access to personal information (such as a firewall policy or a password policy); controls on accessing and/or downloading personal information without authorization; the lifecycle of personal information, including maintaining, storing, using, and/or destroying the information; controls on the installation of programs or applications on computers or work stations on the network by employees or others; limits on the transmission of personal information within the network and between the network and other (internal or external) networks; logging network activity and reviewing the logs; secure application and website development; employee training; and plans for responding to security incidents.

9. For each network identified in the response to Request 6, provide documents that describe in detail each security policy, procedure, practice, control, defense, or other measure (collectively, "security practice") used on the network. The response should include, but not be limited to:
- (a) all documents that concern, reflect, or relate to each security practice, including, but not limited to, practices to control the installation and/or use of P2P programs (whether such programs are authorized or not);
 - (b) documents that set out the technical configurations of devices and programs you use to enforce each security practice, including, but not limited to, the configurations of firewalls or other means used to control or block P2P communications to and from the network and networks that connect to it;
 - (c) training or security awareness materials provided to network users (such as employees and third-party persons and entities with access to the network) regarding your security practices, such as materials that concern security generally or the use of and risks presented by P2P programs;
 - (d) documents that set out the frequency and extent to which such network users receive training or security awareness materials generally and as to the use of and risks presented by P2P programs;
 - (e) documents sufficient to identify by name and title each employee who is, or has been, responsible for coordinating security practices on the network, and to describe the responsibilities of each such employee;
 - (f) documents sufficient to identify whether and, if so, when you conducted or obtained (from another person or entity) a risk assessment to identify risks to the security, integrity, and confidentiality of personal information on the network;
 - (g) all documents that concern, reflect, or relate to testing, monitoring, and/or

evaluations of the effectiveness of security practices used on the network, including the dates when such activities were conducted and completed and plans and procedures for future testing, monitoring, and/or evaluation of security practices; and

- (h) documents that set out in detail all changes made to security practices on the network based upon testing, monitoring, and/or evaluations identified in the response to Request 9(g).
10. Provide all documents that concern, reflect, or relate to each risk assessment identified in the response to Request 9(f) and the security risks identified therein, if any. For each such assessment, the response should include, but not be limited to:
- (a) documents sufficient to identify the date of the assessment and the name and title of the person(s) responsible for conducting the assessment;
 - (b) a copy of the assessment;
 - (c) documents that describe in detail the steps taken in conducting the assessment;
 - (d) documents that concern, reflect, or relate to specific risks identified in the assessment and how you addressed each such risk; and
 - (e) a copy of each (internal or external) report or other document that verifies, confirms, challenges, questions, or otherwise concerns the assessment.
11. Provide documents sufficient to identify each third-party person or entity that, in the course of providing services to you ("service provider"), receives, maintains, processes, or otherwise is permitted access to personal information collected and stored by you.
12. For each service provider identified in the response to Request 11, provide:
- (a) documents sufficient to identify the types of personal information to which the service provider has access;
 - (b) documents sufficient to describe the manner and form of the service provider's access to personal information (such as physical access to your offices, remote access to your computer network(s), or the mailing of paper documents or computer storage media);
 - (c) a narrative that explains in detail the business reasons why the service provider has access to such information;
 - (d) copies of all contracts between you and the service provider;

- (e) documents that describe in detail the measures you took to select and retain the service provider to ensure that it is capable of appropriately protecting personal information you have provided or made available to the service provider; and
- (f) documents that describe in detail how you monitor the service provider to confirm that it has implemented and maintained security measures adequate to protect the security, integrity, and confidentiality of such personal information.

Other Information

- 13. Provide documents sufficient to identify any instance of which you are aware (including, if appropriate, the P2P breach) where personal information from a network identified in the response to Request 6 was or may have been shared or accessed without authorization (the "intrusion"), and, for each such intrusion, identify when and how you first learned about the intrusion, the network(s) involved, and all persons with knowledge about it.
- 14. Separately for each intrusion identified in the response to Request 13, provide all documents prepared by or for you that identify, describe, investigate, evaluate, or assess:
 - (a) how the intrusion occurred;
 - (b) the time period over which it occurred;
 - (c) the security vulnerabilities that were or may have been exploited in the intrusion;
 - (d) the actual or suspected point of entry;
 - (e) the path the intruder followed from the (actual or suspected) point of entry to the location of the personal information that was or may have been compromised and then in exporting or downloading the information (including all intermediate points);
 - (f) the type(s) and amount(s) of personal information that was or may have been accessed without authorization; and
 - (g) the security measures you implemented in response to the intrusion.

Responsive documents should include, but not be limited to: preliminary, interim, draft, and final reports that describe, assess, evaluate, or test security vulnerabilities that were or could have been exploited in the intrusion; (formal and informal) security audits or forensic analyses of the intrusion prepared internally and by third parties; security scans (such as for packet capture tools, password harvesting tools, rootkits, P2P programs, and unauthorized programs); incident reports; documents that identify the intruder; logs that record the intruder's steps in whole or part in conducting the intrusion; warnings issued by anti-virus, intrusion detection, or other security measures; records of reviews by

network administrators or others of logs and warnings; records setting out the routine security activities and checklists performed by network administrators (such as verifying that scheduled jobs were authorized); and other documents that concern, reflect, or relate to the intrusion, such as minutes or notes of meetings attended by you or your employees.

15. Separately for each intrusion identified in the response to Request 13 that was accomplished or facilitated by a P2P program and for the P2P breach if not identified in the response to Request 13 ("collectively, "P2P intrusion"), identify each P2P program (including version number and upgrade) that was, or may have been, used in any way in the intrusion. For each such program:
 - (a) identify: the manufacturer, model, type, operating system, and network location of each computer or other electronic device on which the P2P program was installed (collectively, the "breach computer"); the source from which the program was downloaded to the breach computer; when and by whom the program was downloaded and installed on the breach computer; when the program was removed from the breach computer; how long the program was active on the computer; whether the default settings on the program were changed after it was installed on the breach computer, and, if so, when, by whom, and in what ways; and whether you authorized the installation and use of the program on the breach computer;
 - (b) explain in detail your business need for using the program, if any, and identify who was using the program and why they were using it;
 - (c) explain in detail all limitations you placed on use of the program, including security practices; and
 - (d) provide a copy of each file generated as a result of installing the program on the breach computer, including, but not limited to, executable, history, and configuration files.

16. Separately for each P2P intrusion:
 - (a) provide all logs, audits, assessments, or reports that concern, reflect, or relate to the intrusion;
 - (b) identify the name of each folder and subfolder that was shared (uploaded or downloaded) through the intrusion, the name (including file extension) and content of each internal and external file (other than a purely music or video file) that was shared, and the amount and type of personal information in each file that was shared; and
 - (c) describe in detail each folder, subfolder, file, and/or program (including functionality) that was shared through the intrusion.

17. Separately for each intrusion identified in the response to Request 13, provide all documents that concern, relate, or refer to fraud and/or identity theft attributable to the intrusion and to the consequences of the fraud or identity theft. Responsive documents should include, but not be limited to:
- (a) fraud reports, alerts, or warnings issued by bank associations, banks, or other entities; documents that assess, identify, evaluate, estimate, or predict the number of consumers or employees that have, or are likely to, suffer fraud or identity theft; claims made against you for fraud or identity theft, such as by affidavits filed by consumers or employees; and documents that assess, identify, evaluate, estimate, or predict the dollar amount of fraud, identity theft, or other costs (such as for increased fraud monitoring or providing fraud insurance) attributable to the intrusion;
 - (b) documents that concern, reflect, or relate to investigations of or complaints filed with or against you relating to the intrusion, including, but not limited to, private lawsuits, correspondence with you, and documents filed with Federal, State, or local government agencies, Federal or State courts, and Better Business Bureaus; and
 - (c) documents or a narrative that identifies how (such as by public announcement or individual breach notification letter), when, how many, and by whom consumers and/or employees were notified that their personal information was or may have been obtained without authorization through the intrusion. If notification has been made, explain why notification was made (*e.g.*, compelled by law) and provide a copy of each substantively different notification. If notification was not provided as soon as you became aware of the intrusion or was not provided to all affected consumers and/or employees or at all, provide a narrative explaining why not.
18. Provide documents sufficient to identify all policies, claims, and statements you have made regarding the collection, disclosure, use, storage, destruction, and protection of personal information, including any policies, claims, or statements relating to how you secure personal information, and for each such policy, claim, or statement identify the date(s) when it was adopted or made, to whom it was distributed, and all means by which it was distributed.

Please send all documents and information to: Alain Sheer, Division of Privacy and Identity Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW, Mail Stop NJ-8122, Washington, D.C. 20580. Due to extensive delays resulting from security measures taken to ensure the safety of items sent via the U.S. Postal Service, we would appreciate receiving these materials via Federal Express or a similar delivery service provider, if possible.

Thank you for your prompt attention to this matter. Please contact me (at 202.326.3321)

if you have any questions about this request or need any additional information.⁷

Sincerely,



Alain Sheer
Division of Privacy and Identity Protection

⁷ The Commission has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action. The Commission strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.