

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



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

PUBLIC

Docket No. 9357

JOINT MOTION FOR *IN CAMERA*
TREATMENT OF CERTAIN FORMER EMPLOYEE EXHIBITS

Pursuant to Rule 3.45 of the Commission’s Rule of Practice, 16 C.F.R. § 3.45, and the Revised Scheduling Order, Complaint Counsel and Respondent hereby jointly request that the Court grant *in camera* treatment to certain of Complaint Counsel’s and Respondent’s exhibits relating to [REDACTED]

[REDACTED], which are listed and described herein. Because of the potential serious injury to the individual by disclosure of this information—which is personal, not confidential business information—the Court should find this information to be sensitive personal information entitled to permanent *in camera* treatment.

Under Rule 3.45(b), the Court may order that material be placed *in camera* “after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting in camera treatment.” 16 C.F.R. § 3.45(b). The Court may also grant *in camera* treatment to sensitive personal information. *Id.* The definition of sensitive personal information “shall not be limited to” the types of information listed in Rule

3.45(b). *Id.* Sensitive personal information “shall be accorded permanent in camera treatment unless disclosure or an expiration date is required and provided by law.” 16 C.F.R. § 3.45(b)(3).

Complaint Counsel’s proposed exhibits CX0209, CX0210, CX0500, CX0714, and CX0723 and Respondent’s proposed exhibit RX496 include [REDACTED]

[REDACTED]

The Court should find that this information is sensitive personal information under Rule 3.45. [REDACTED]

[REDACTED]

[REDACTED]. The harm [REDACTED] would experience is the kind of serious injury from disclosure of personal information that Rule 3.45 is intended to protect against.

Furthermore, one exhibit, CX0209, described below, should be granted *in camera* treatment because it contains multiple types of sensitive personal information listed under Rule 3.45, including driver’s license number, Social Security number, and date of birth. *See* 16 C.F.R. § 3.45(b).

The following exhibits contain information regarding [REDACTED]

[REDACTED]

1. CX0209 consists of [REDACTED] It also contains several individuals' dates of birth, and [REDACTED] Social Security number and driver's license number.
2. CX0210 is an [REDACTED]
3. CX0500 is [REDACTED]
4. CX0714 is [REDACTED]
5. CX0723 is the Deposition Transcript of David Lapidès, wherein he testifies about [REDACTED].
6. RX496 is [REDACTED]

Due the personal, reputational nature of this information, the parties respectfully request that the Court find that this information falls under Rule 3.45's protection of sensitive personal information, and accordingly grant this Joint Motion for *In Camera* Treatment of Certain Former Employee Exhibits and confer permanent *in camera* treatment to the exhibits addressed herein.

Dated: April 23, 2014

William Sherman / with permission JAB

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Complaint Counsel

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

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

[PROPOSED] ORDER GRANTING MOTION FOR *IN CAMERA*
TREATMENT OF CERTAIN FORMER EMPLOYEE EXHIBITS

Upon consideration of Joint Motion for *In Camera* Treatment of Certain Former Employee Exhibits, it is hereby

ORDERED, that Complaint Counsel’s proposed exhibits CX0209, CX0210, CX0500, CX0714, and CX0723 and Respondent’s proposed exhibit RX496 are granted permanent *in camera* treatment.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2014, I filed the foregoing document electronically through the Office of the Secretary's FTC E-filing system, which will send notification of such filing to:

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

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

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

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

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CERTIFICATE FOR ELECTRONIC FILING

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

April 23, 2014

By:  _____

Jarad Brown
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

CONFIDENTIAL – REDACTED IN ENTIRETY

CX0500

Exhibit B

1 type of patient information was in the photocopies of
2 the LabMD documents that contained medical records of
3 patients?

4 A. I don't believe she did.

5 Q. You also testified that she said there
6 were other signs of potential fraud.

7 A. Yes, sir.

8 Q. Did she describe to you what those were?

9 A. I can't recall if she did or not.

10 Q. You also testified that she said that the
11 Sacramento investigation was inactive. Did she
12 explain why?

13 A. She did not.

14 Q. That same day, April 2nd, 2013, you spoke
15 to Mr. Fusco, right?

16 A. I did.

17 Q. What did you learn from talking to him?

18 A. He advised that his company, LabMD, the
19 company he was representing, was in a legal battle
20 with the FTC and that he was contacted by the
21 Sacramento Police Department in reference to some
22 items from LabMD that was located and then they
23 explained to me that LabMD in the past would use
24 social security numbers as patient ID numbers and that
25 someone had stolen some of that information. He said

1 April 2nd conversation.

2 A. Yes, sir.

[Redacted text block]

1 as ID fraud became more prevalent, that they changed
2 that policy, that they weren't using social security
3 numbers anymore.

4 [Redacted text block]

9 Q. Did he give you his title?

10 A. I don't believe he did.

11 Q. Did he tell you how long approximately
12 LabMD had been using patient social security numbers
13 as patient identifiers?

14 A. He did not.

15 Q. Was that your first contact with
16 Mr. Fusco?

17 A. It was.

18 Q. Was that your only contact with Mr. Fusco?

19 A. I believe I spoke to him once or twice
20 after that. He was going to send me a CD, I believe,
21 that had the medical records on them.

22 Q. Do you recall when that was?

23 A. I don't. It was between that conversation
24 and the end of April.

25 Q. Let's just focus for right now on the

[Redacted text block]

1 someone acting on his behalf send the CD to you?

2 A. I apologize. It wasn't Mr. Fusco. It was
3 from the FTC. It was from Mr. Sheer. I apologize. I
4 am sorry. Let me review my supplement real quick if I
5 may.

6 I apologize. The CD came from LabMD to
7 me. I believe it was the copies of medical records
8 that possibly were stolen. Why they were sent to me,
9 I don't know if I requested them or if they wanted to
10 give them to me to show me kind of what the records
11 look like. But nonetheless, they were sent to me. I
12 placed the CD inside the case file.

13 (CX Exhibit 212 was marked for
14 identification.)

15 Q. (By Mr. Mehm) I am now showing you what
16 has been previously marked CX 212 which was previously
17 marked FTC-SPD-000092 to FTC-SPD-000135.

18 Take a few minutes to look over the
19 document.

20 A. Okay.

21 Q. What is this document?

22 A. I believe these were the records that were
23 on the CD.

24 Q. What did you do with these documents after
25 you received them?

1 [REDACTED]

9 Q. Let's move next to April 3rd, 2013.

10 A. Yes, sir.

11 Q. On that day you received a CD, right?

12 A. Yes, sir.

13 Q. What was on that CD?

14 A. It was redacted medical records, I
15 believe, from WebMD.

16 Q. Did you see WebMD or LabMD?

17 A. Whatever I said, I meant LabMD. I
18 apologize.

19 Q. Were you aware that that CD was being sent
20 to you?

21 A. Yes.

22 Q. Who to our knowledge sent it?

23 A. I believe either Mr. Fusco or someone
24 acting on behalf of Mr. Fusco, I believe.

25 Q. Why did your knowledge Mr. Fusco or

1 A. I glanced over them, then I placed the
2 CD -- it is password protected. I placed the CD with
3 the password in the case file.

4 There was nothing much really for me to do
5 with these files.

6 Q. There are a series of redactions on the
7 document, correct?

8 A. Yes, sir.

9 Q. Have you ever seen an unredacted version
10 of this document?

11 A. I have not.

12 Q. There are no full names listed on this
13 document, only first names. Did you ever make any
14 attempt to try to contact any of the consumers listed
15 on these documents?

16 A. I did not. There is no way to do it just
17 with first names. But until just now -- I didn't
18 until you handed me the documents, I didn't notice
19 there were money orders or checks on the back. I just
20 perused it very quickly and put the CD in the case
21 file.

22 What I was investigating was the theft and
23 in my view it was just some theft of paper. I would
24 then have to prove they were going to do identity
25 theft with the social security numbers. Until I could

1 what was going on.

2 **Q. Why did you attach the article to the**
3 **investigation report?**

4 A. I just put it in my case file because it
5 is something I did in reference to this case.

6 (CX Exhibit 218 was marked for
7 identification.)

8 **Q. (By Mr. Mehm) I am now showing you a**
9 **document that has been marked as CX 218 which is Bates**
10 **labeled FTC-SPD-000136.**

11 A. Okay.

12 **Q. Do you recognize CX 218?**

13 A. I do.

14 **Q. What is it?**

15 A. This is a copy of something that was sent
16 to me that I wrote my name in, dated, and signed in
17 reference to me making copies of my case file and
18 sending it to the FTC.

19 **Q. Is it a certification of records of**
20 **regularly conducted activity?**

21 A. It is.

22 **Q. And you executed the declaration that**
23 **appears at CX 218?**

24 A. I did.

25 **Q. And does CX 218 relate to the** [REDACTED]

[REDACTED] that we just discussed and have
2 designated CX 210 and CX 211?

3 A. They are.

4 MR. MEHM: This is a good time to take a
5 break. Let's go off the record for approximately
6 ten minutes or so.

7 (Recess from 10:05 a.m. to 10:17 a.m.)

8 **Q. (By Mr. Mehm) Back on the record.**

9 [REDACTED]

13 MR. MEHM: I don't have anything further
14 right now, but I am reserving any time left after
15 any examination by counsel for LabMD.

16 EXAMINATION

17 BY MR. SHERMAN:

18 **Q. Good morning, Detective Lapedes. As**
19 **stated earlier, my name is William Sherman. I am**
20 **counsel for LabMD.**

21 **I just have a few follow-up questions**
22 **based on what Mr. Mehm asked you earlier.**

23 **Can I see your file that you have brought**
24 **with you today. We can go off the record while I look**
25 **at this.**

1 **(Discussion off the record from 10:18**
2 **10:19 a.m.)**

3 MR. SHERMAN: We can go back on the
4 record.

5 **Q. (By Mr. Sherman) You just handed me what**
6 **you identified as your file. You indicated that is**
7 **what you reviewed in preparation for the deposition;**
8 **is that correct?**

9 A. That is correct.

10 **Q. And I just reviewed it along with counsel**
11 **for FTC. Is it your agreement that everything located**
12 **in the file that you just handed me you produced to**
13 **the FTC pursuant to their request for documents?**

14 A. Yes, sir.

15 **Q. You indicated that you spoke with**
16 **Mr. Fusco concerning the incident report; is that**
17 **correct?**

18 A. Yes, sir.

19 **Q. And you indicated that you spoke with**
20 **Mr. Mehm with regard to time, place, and location of**
21 **the deposition; is that right?**

22 A. Yes.

23 **Q. When you spoke to Mr. Mehm, you were aware**
24 **he was counsel for the FTC; is that correct?**

25 A. Yes, sir.

1 **Q. If you could, turn to what has been marked**
2 **as CX 210 which is** [REDACTED]

4 A. Yes, sir.

5 **Q. At the bottom of Page 3 of that report,**
6 **you indicate that on April 3rd, 2013, you spoke with**
7 **Mr. Sheer of the FTC; is that correct?**

8 A. Yes, sir.

9 **Q. What did you and Mr. Sheer discuss?**

10 A. That the FTC was investigating LabMD in
11 reference to how they secure their records and that
12 there was a legal battle going on and that was about
13 the extent that they -- I believe Mr. Sheer had gotten
14 my information from the detective in Sacramento. She
15 asked if she could give them my number and everything.
16 I said yes.

17 That is how they contacted me. I

18 explained that I was investigating a theft of some
19 paperwork and that if any charges -- if charges are --
20 through my investigation, if anyone was charged, I
21 would notify them and let them know.

22 **Q. Is that the only conversation you had with**
23 **Mr. Sheer?**

24 A. I believe so. I believe that was it.

25 There might have been one or two follow-up calls in

31:16 38:24 39:23 40:1 46:11 49:12 exact 40:9 exactly 23:12 42:3 44:9 examination 2:2,3,4 2:5,6 4:22 10:2,3,4 34:15,16 examined 4:20 exclusive 50:15 excuse 11:14,15 executed 33:22 exhibit 2:8 6:24 7:3 8:15,19 13:16 24:23 27:13 31:19 33:6 41:16,21 exhibits 9:11,20,21 9:22 experience 39:15,22 expires 52:25 explain 21:12 explained 7:22 20:2 21:23 22:4 29:5,12 36:18 extent 8:2 9:3 30:3 36:13 37:2 extra 29:23 e-mail 25:15	filed 29:7 46:19 48:1 48:5 files 28:5 fill 16:20 finally 37:11 financial 50:19 find 20:22 29:14 30:3 32:20,25 46:11,18,21 finding 38:24 39:3 fine 26:7 finish 5:6 first 4:20 18:14,16 18:20 22:15 26:2 28:13,17 32:8,10 37:8,21 45:23 46:6 five 46:9 flophouse 20:3,20 20:20 45:3 focus 22:25 focusing 19:20 folder 20:4 following 50:5 51:8 follows 4:21 follow-up 16:8 24:3 34:21 36:25 37:9 37:14 47:5 follow-ups 16:13 food 13:5 force 11:20,22 12:21 foregoing 49:6,10 [REDACTED] form 51:11,13 formal 42:23 former 22:6 found 20:4 31:13 32:23 38:16,19 45:3 four 11:23 fraud 20:11 21:6 22:1 38:23 39:3 FTC 20:16 21:20 27:3 29:22 32:7 33:18 35:11,13,24 36:7,10 40:25 42:2	42:6 FTC's 32:15 FTC-SPD-000001 25:2 FTC-SPD-000001... 2:11 FTC-SPD-000073 25:20 FTC-SPD-000074 25:25 FTC-SPD-000082 25:2 FTC-SPD-000083 13:25 17:14 FTC-SPD-000083... 2:12 FTC-SPD-000084 16:15 FTC-SPD-000086 13:25 FTC-SPD-000087 31:23 FTC-SPD-000087... 2:13 FTC-SPD-000091 31:23 FTC-SPD-000092 27:17 FTC-SPD-000092... 2:14 FTC-SPD-000135 27:17 FTC-SPD-000136 2:16 33:10 full 10:12 28:12 Fulton 12:16,19,24 49:4 fundamentals 43:1 furnish 52:15 further 20:14 34:13 45:6 46:25 48:7 49:12 Fusco 13:20 14:14 14:15 15:5,22 16:2 17:24 18:18 19:7 21:15 22:16,18 23:4,9 24:10 26:23	26:24,25 27:2 29:5 29:8 34:10 35:16 37:10,17,22 40:6,9 40:12,19 44:15,16 46:19 Fusco's 24:19 31:12 42:9 F-u-s-c-o 13:20	10:19,22 41:8,9 grammatical 17:8 ground 4:25 guess 20:2 32:5 47:22
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Exhibit C

CONFIDENTIAL – REDACTED IN ENTIRETY

CX0209

Exhibit D

CONFIDENTIAL – REDACTED IN ENTIRETY

CX0210

Exhibit E

CONFIDENTIAL – REDACTED IN ENTIRETY

CX0714