

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 EXHIBITS CONTAINING SENSITIVE PERSONAL INFORMATION

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 containing sensitive personal information, which are listed and described herein.

Under Rule 3.45(b), the Administrative Law Judge may order that material be placed *in camera* if the material constitutes sensitive personal information. 16 C.F.R. § 3.45(b).

“Sensitive personal information” shall include, 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.

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).

I. PROPOSED EXHIBITS CONTAINING SENSITIVE PERSONAL INFORMATION LISTED IN RULE 3.45

The proposed exhibits listed and described below contain information that is included in the definition of sensitive personal information in Rule 3.45(b). *See* 16 C.F.R. § 3.45(b). The

sensitive personal information in these exhibits includes Social Security numbers, financial account numbers, driver's license numbers, dates of birth, and sensitive health information. *See id.* Because of the inclusion of sensitive personal information, the Court should grant permanent *in camera* treatment to the exhibits described below. *See* 16 C.F.R. § 3.45(b)(3).

A. P2P Insurance Aging File

Complaint Counsel's proposed exhibits CX0008, CX0009, CX0010, CX0011, and CX0697 are five versions of the 1,718 page document referred to in the Complaint as the "P2P insurance aging file."¹ These exhibits include the sensitive personal information of thousands of individuals, including names, dates of birth, Social Security numbers, Current Procedure Terminology codes ("CPT" codes, which identify diagnostic tests performed), and health insurance company names, addresses, and policy numbers. The CPT codes are sensitive health information because they reveal the diagnostic tests performed on an individual. Similarly, the individuals' health insurance company names, addresses, and policy numbers are sensitive health information because they may be used by identity thieves to conduct medical identity theft.

B. LabMD Day Sheets and Copies of Checks

Complaint Counsel's proposed exhibits CX0085, CX0087, and CX0088 and Respondent's proposed exhibit RX416 are several versions of LabMD Day Sheets and photocopies of checks recovered by the Sacramento Police Department. *See* Ex. A. These exhibits contain individuals' names associated with financial account numbers and nine digit numbers that Complaint Counsel believes to be Social Security numbers.

¹ Collectively, the exhibits that are the subject of this Motion, including the multiple P2P insurance aging files, are so voluminous and replete with sensitive information that it is impractical to attach them as exhibits. Therefore, attached as **Exhibit A** is a table listing all the exhibits addressed in this motion, along with their title and Bates range, if available. The parties can provide pages from the exhibits or full documents upon request.

C. Deposition Transcript of Kevin Wilmer

Complaint Counsel's proposed exhibit CX0732 and Respondent's proposed exhibit RX512 are designated transcripts of Kevin Wilmer. On page 158 of Mr. Wilmer's deposition transcript, he read into the record two names, two dates of birth, and one nine-digit number, which Complaint Counsel believes to be a Social Security number. The dates of birth and Social Security number are repeated on page 182 of the index. A copy of both pages from RX512 is attached as **Exhibit B**.

D. Spreadsheet with Sensitive Personal Information

Complaint Counsel's proposed exhibit CX0451 is a spreadsheet consisting of individuals' names, Social Security numbers, dates of birth, "AKAs," and addresses. *See* Ex. A.

E. Police Reports of Sacramento Police

Complaint Counsel's proposed exhibits CX0092, CX0104,² CX0105, and CX0106 are reports by the Sacramento Police Department containing sensitive personal information. They are narrative reports and records of the Sacramento Police Department, which in several instances mention or list the names and dates of birth of suspects, the names, dates of birth, and driver's license numbers of victims, or financial and other account numbers from documents discovered in investigations by the Sacramento Police. Specifically, CX0092 contains financial account numbers and driver's license numbers on pages 1-3; CX0104 contains financial account numbers, driver's license numbers, or dates of birth on many pages; CX0105 contains dates of birth on pages 3, 4, and 6; and CX0106 contains dates of birth on pages 3, 4, and 6 and driver's license numbers on pages 3 and 5.

² CX0104 is also addressed in Section II.B, *infra*.

II. PROPOSED EXHIBITS CONTAINING OTHER SENSITIVE PERSONAL INFORMATION

Certain of Complaint Counsel's and Respondent's proposed exhibits contain personal information that should be treated as sensitive personal information, but which is not listed within Rule 3.45's definition of sensitive personal information. *See* 16 C.F.R. § 3.45(b). But the definition of sensitive personal information "shall not be limited to" the types of information listed. *Id.*

A. Exhibits Containing Consumers' Names and Addresses

Complaint Counsel's proposed exhibits CX0402, CX0407, CX0440, CX0441, and CX0442 and Respondent's proposed exhibits RX6 and RX7 contain the names and addresses of consumers who received letters from Respondent notifying them that their personal information may have been compromised. *See* Ex. A. The names and addresses of these consumers should be treated as sensitive personal information because disclosure of this information—in conjunction with the subject matter of this case and the sensitive personal information that has been disclosed without authorization about these consumers—makes their names and addresses sensitive in this context. CX0402, CX0440, and RX6 are printouts of Consumer Sentinel reports filed by consumers who apparently received notification letters from LabMD. CX0440, CX0441, and RX7 are copies of LabMD notification letters addressed to specific consumers. And CX0407 is a spreadsheet of consumers to whom LabMD notification letters were addressed. The Court should grant permanent *in camera* treatment to these exhibits to protect additional personal information about these consumers from disclosure and harmful use. *See* 16 C.F.R. § 3.45(b)(3).

B. Exhibits Containing [REDACTED]

Finally, Complaint Counsel's proposed exhibits CX0090, CX0091, CX0094, and CX0104 contain sensitive personal information in the form of [REDACTED]

[REDACTED]. Complaint Counsel is unable to determine whether and to what extent this information is publicly available. Thus, in an abundance of caution, the parties request *in camera* treatment. This information should be granted *in camera* treatment as sensitive personal information because it may lead to serious reputational injury to the individuals if it is disclosed. Although it is not clear to what extent this information may otherwise be available in the public record, the information is of a sufficiently sensitive nature that further access could result in serious reputational injury to the individuals. Furthermore, the reputational harm of disclosure is not likely to decline over time. Therefore, the Court should treat this information as sensitive personal information in this proceeding, and grant permanent *in camera* treatment to Complaint Counsel's proposed exhibits CX0090, CX0091, CX0094, and CX0104.

III. PERSONS WHO SHOULD BE NOTIFIED

Under Rule 3.45(b), the party seeking *in camera* treatment “must provide, for each piece of such evidence, and affixed to such evidence, the name and address of any person who should be notified in the event the Commission intends to disclose *in camera* information in a final decision.” 16 C.F.R. § 3.45(b). In this situation, it is impractical to include the name and address of all the individuals whose sensitive personal information is included in the exhibits that are the subject of this motion. First, the exhibits at issue include the sensitive personal information of nearly 10,000 individuals. Second, for those individuals for whom name and address information is included in the exhibits at issue, the listed information may not be accurate for many individuals by the time exhibits could be made public by the Commission. Third, for many individuals, the information is incomplete, and the task of identifying current, full name and address information for those individuals—and for individuals whose addresses

may be invalid at present—would be costly and burdensome. Finally, this information is distinct from confidential information the Commission would choose to make public, because disclosing this information would manifest the very harm that is the subject of this case. Because of the burden involved and the very low likelihood that the Commission would publicly release this information, the parties ask the Court to grant an exception to the requirement to affix the name and address of persons to be notified for each piece of evidence.

CONCLUSION

Because each of the proposed exhibits discussed above contains sensitive personal information under Rule 3.45, the Court should grant this Joint Motion for *In Camera* Treatment of Certain Exhibits Containing Sensitive Personal Information and confer permanent *in camera* treatment to the exhibits addressed herein.

Dated: April 23, 2014



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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 EXHIBITS CONTAINING SENSITIVE PERSONAL INFORMATION

Upon consideration of the Joint Motion for *In Camera* Treatment of Certain Exhibits Containing Sensitive Personal Information, it is hereby

ORDERED, that Complaint Counsel’s proposed exhibits CX0008, CX0009, CX0010, CX0011, CX0085, CX0087, CX0088, CX0090, CX0091, CX0092, CX0094, CX0104, CX0105, CX0106, CX0402, CX0407, CX0440, CX0441, CX0442, CX0451, CX0697, and CX0732 and Respondent’s proposed exhibits RX6, RX7, RX416, and RX512 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:

A handwritten signature in blue ink, appearing to read "Jarad Brown", is written over a solid black horizontal line.

Jarad Brown
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

Exhibits Containing Sensitive Personal Information

PUBLIC

Exhibit Number	Exhibit Title	Beginning Bates	End Bates	Exhibit Description	Type of SPI
CX0008	Tiversa Holding Corp. ("Tiversa") Insurance Aging File 1 - [173.16.83.112]insuranceaging_6.05.071	TIVERSA-FTC_RESPONSE-000001	TIVERSA-FTC_RESPONSE-001719	P2P aging file produced by Tiversa	Name DOB SSN Sensitive Health Info
CX0009	Tiversa Holding Corp. ("Tiversa") Insurance Aging File 2 - [201.194.118.82]insuranceaging_6.05.071	TIVERSA-FTC_RESPONSE-001720	TIVERSA-FTC_RESPONSE-003438	P2P aging file produced by Tiversa	Name DOB SSN Sensitive Health Info
CX0010	Tiversa Holding Corp. ("Tiversa") Insurance Aging File 3 - [68.107.85.250]insuranceaging_6.05.071	TIVERSA-FTC_RESPONSE-003439	TIVERSA-FTC_RESPONSE-005157	P2P aging file produced by Tiversa	Name DOB SSN Sensitive Health Info
CX0011	Tiversa Holding Corp. ("Tiversa") Insurance Aging File 4 - [90.215.200.56]insuranceaging_6.05.071	TIVERSA-FTC_RESPONSE-005158	TIVERSA-FTC_RESPONSE-006896	P2P aging file produced by Tiversa	Name DOB SSN Sensitive Health Info
CX0697	insuranceaging_6.05.071.pdf produced by Privacy Institute	FTC-PRI-000001	FTC-PRI-001719	P2P aging file produced by the Privacy Institute	Name DOB SSN Sensitive Health Info
CX0085	LabMD Day Sheets and Copied Checks	FTC-SAC-000001	FTC-SAC-000044	LabMD Day Sheets and Copied Checks recovered by Sacramento Police Dept. ("SPD"), combined	Financial Acct. No. Sensitive Health Info
CX0087	LabMD Day Sheets	FTC-SAC-000233	FTC-SAC-000272	LabMD Day Sheets, recovered by SPD	Financial Acct. No. Sensitive Health Info
CX0088	LabMD Copied Checks	FTC-SAC-000273	FTC-SAC-000282	LabMD Copied Checks, recovered by SPD	Financial Acct. No. Sensitive Health Info
RX416	RX3 Yodaiken Deposition	FTC-SAC-000001	FTC-SAC-000044	LabMD Day Sheets and Copied Checks recovered by SPD, combined	Financial Acct. No. Sensitive Health Info
CX0732	Deposition Transcript of Kevin Wilmer			Designated Deposition Transcript	Name DOB SSN
RX512	Deposition Transcript of Kevin Wilmer			Designated Deposition Transcript	Name DOB SSN

Exhibits Containing Sensitive Personal Information

PUBLIC

Exhibit Number	Exhibit Title	Beginning Bates	End Bates	Exhibit Description	Type of SPI
CX0451	Sacramentoresults7.xlsx Native File	FTC-010907	FTC-010907	Spreadsheet of SPI generated in Complaint Counsel's investigation	Name DOB SSN Address "AKA"s
CX0092	SPD Detective Supplement-Observations - Jestes, Karina	FTC-SAC-000061	FTC-SAC-000064	Narrative description of SPD Detective Jestes responding to report of account fraud	Financial Acct. No. Driver's License No.
CX0104	SPD Production (1 of 3)	FTC-SAC-000045	FTC-SAC-000110	SPD compilation of Reports and Records relating to account fraud case	Financial Acct. No. DOB Driver's License No. Sensitive Health Info [REDACTED]
CX0105	SPD Production (2 of 3)	FTC-SAC-000111	FTC-SAC-000130	SPD compilation of Reports and Records relating to account fraud case	DOB
CX0106	SPD Production (3 of 3)	FTC-SAC-000131	FTC-SAC-000142	SPD compilation of Reports and Records relating to account fraud case	DOB Driver's License No.
CX0402	Consumer Sentinel Complaint by Peter Cuttino	FTC-000661	FTC-000667	Report by consumer filed in FTC's Consumer Sentinel	Name Address
CX0407	Mail Merge List of Persons for LabMD Notification Letter	FTC-LABMD-003866	FTC-LABMD-003908	LabMD spreadsheet of Names and Addresses to send Notification Letters	Name Address
CX0440	LabMD Breach Notice Letter to Peter Cuttino	FTC-000676	FTC-000679	LabMD Notification Letter sent to FTC by consumer	Name Address
CX0441	Letter J. Hayes to R. Yodaiken attaching LabMD Breach Notice Letter	FTC-000680	FTC-000684	LabMD Notification Letter sent to FTC by consumer	Name Address
CX0442	Consumer Sentinel Complaint by Juanita Norris	FTC-000668	FTC-000675	Report by consumer filed in FTC's Consumer Sentinel	Name Address
RX6	Sentinel Network Complaint	FTC-000661	FTC-000675	Reports by consumers filed in FTC's Consumer Sentinel	Name Address
RX7	FTC envelope scan	FTC-000680	FTC-000684	LabMD Notification Letter sent to FTC by consumer	Name Address
CX0090	SPD Suspect Statement	FTC-SAC-000059	FTC-SAC-000059	Record of statement by [REDACTED] taken by SPD officer [REDACTED]	[REDACTED]

Exhibits Containing Sensitive Personal Information

PUBLIC

Exhibit Number	Exhibit Title	Beginning Bates	End Bates	Exhibit Description	Type of SPI
CX0091	SPD Suspect Statement	FTC-SAC-000060	FTC-SAC-000060	Record of statement by ██████████ taken by SPD officer	██████████
CX0094	SPD Observations: Wilhite, Kurt	FTC-SAC-000069	FTC-SAC-000072	Narrative description of SPD Detective Wilhite investigating account fraud	██████████

Exhibit B

Kevin J. Wilmer - February 25, 2014
THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

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1 A I found several.

2 Q Maybe if you would show me a couple, that
3 would be great.

4 A Certainly. I can give an example at line
5 numbers 83 through 85, the nine-digit number is
6 [REDACTED] and there are three names associated
7 with it.

8 Q Can you state those for the record,
9 please.

10 A [REDACTED] -- I'm giving you first name
11 first and then last name, but it appears last name
12 first. [REDACTED] [REDACTED]
13 [REDACTED].

14 The second name is -- I'll do my best with
15 this, [REDACTED]

16 [REDACTED] And then again at line
17 85, the same name.

18 Lines 83, 84 and 85, the same number, two
19 different individuals based on, what I would say,
20 the date of birth. The first names, the date of
21 birth associated with that individual, [REDACTED],
22 the second two, [REDACTED].

Kevin J. Wilmer - February 25, 2014
THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

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119:21 162:6 wrap 140:20 writing 78:11 written 41:7 42:21 118:8 wrong 12:20 83:7 94:3	1718 111:8,11,13 112:5 1919 2:13 1979 18:4 1981 18:4 1982 26:21 1990 142:7 1992 18:21 19:20	5 5 82:20,21 145:20 145:22 146:6,12 146:19 153:10,11 153:13 166:15 50 30:2 35:12 500 40:11,12 55 166:18 5661 51:14		
X x 1:5,9 165:7,15 166:10 167:1	2 2 5:12 62:3 145:16 2/14/14 166:20 20 165:11 2000 142:17 20001 4:16 20006 2:14 2007 56:19 57:10 57:11 58:13,17 59:5,12 2008 7:5 21:2 23:11 23:21 30:3 38:3 56:18 126:22 127:11 128:1 130:4,10 131:7 142:20 2012 59:18 2013 92:19,20 161:18,20 2014 1:15 2:3 78:5 78:9 202-326-2999 3:10 202-499-2426 2:15 20580 3:9 21 56:5,12 59:17 81:20 82:1,8 139:16 25 1:15 2:3 22:19 22:20 29:22 2L 142:17	6 601 2:4 3:7 4:15 643 95:19 167:10 650 2:13 67 95:3 167:8 682 97:9 167:14 69 166:19		
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