

ORIGINAL



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.) | |
| _____) | |

**JOINT MOTION FOR *IN CAMERA* TREATMENT OF
FRAUD SURVEY QUESTIONS OF EXPERT JAMES VAN DYKE**

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 LabMD, Inc. ("Respondent") hereby jointly request that the Court issue an order granting *in camera* treatment to 2013 Fraud Survey questions produced by Complaint Counsel's expert James Van Dyke, which Respondent has requested and may elect to offer as evidence at the evidentiary hearing in this matter.

BACKGROUND

On February 3, 2014, Complaint Counsel provided Respondent with its expert witness list, identifying James Van Dyke as an expert it may call at the evidentiary hearing. On March 18, 2014, Complaint Counsel served Respondent with an expert report by Mr. Van Dyke. On April 11, 2014, Counsel for Respondent deposed Mr. Van Dyke. At the April 11th deposition, Counsel for Respondent asked for certain materials related to Mr. Van Dyke's research. The parties agreed that Complaint Counsel would produce the materials, provided that the parties could reach an agreement on a joint motion for *in camera* treatment.

The materials Counsel for Respondent requested are 2013 Fraud Survey questions ("Survey Questions") created by Mr. Van Dyke and the company of which he is founder and

president, Javelin Strategy & Research (“Javelin”). *See* Declaration of James Van Dyke, attached as Exhibit A. The Survey Questions, attached as Exhibit B, are a series of questions and available answers, organized into a particular order. Ex. A ¶ 2. Javelin’s “field house vendor” uses the Survey Questions to solicit responses from representative consumers on identity theft and related experiences. *See id.* The Survey Questions are “a data collection mechanism that is integral to Javelin’s research.” *Id.* ¶ 3.

ARGUMENT

A. *In Camera* Treatment of Survey Questions

Under Rule 3.45(b), the Administrative Law Judge 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). Applicants must show that the information is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). In determining whether to grant *in camera* treatment, the Court should consider

- (1) the extent to which the information is known outside of his business;
- (2) the extent to which it is known by employees and others involved in his business;
- (3) the extent of measures taken by him to guard the secrecy of the information;
- (4) the value of the information to him and to his competitors;
- (5) the amount of effort or money expended by him in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

In re Bristol-Myers Co., 90 F.T.C. 455, 456 (1977) (quoting Restatement of Torts § 757, Comment b at 6 (1939)). The Court should weigh any likely competitive injury associated with disclosure against the importance of publicly disclosing the information to help explain the rationale of the Commission’s decision. *In re General Foods Corp.*, 95 F.T.C. at 355.

The Survey Questions should receive *in camera* treatment because their disclosure would result in serious competitive injury to Javelin. *See* Ex. A ¶ 3. As addressed below, the Survey Questions warrant *in camera* treatment under the factors considered by the Court in *In re Bristol-Myers*. *See* 90 F.T.C. at 456.

1. Extent to Which Information is Known Outside of His Business

The Survey Questions are only provided to Javelin's field house vendor in order for the vendor to conduct the survey. *See id.* ¶ 3. Some consumers see questions and available answers from the Survey Questions in the course of taking the survey, but what they see is limited by their responses. *Id.* Survey Questions are also displayed in Javelin Reports in conjunction with graphic displays of results, but those reports are only available to Javelin's clients. *Id.*

2. Extent to Which Information Is Known by Employees and Others Involved in His Business

The Survey Questions are available within the Javelin organization and to its field house vendor. *Id.*

3. Extent of Measures Taken by Him to Guard the Secrecy of the Information

In order to protect the Survey Questions from disclosure, Javelin restricts access to its computer network and only shares the Survey Questions with its vendor. *Id.* Also, consumers taking the survey can only access the questions and responses through a web portal, rather than in paper form. *Id.*

4. Value of the Information to Him and to His Competitors

The unique combination of questions, available answers, and the flow of questions are valuable as a proprietary research tool that is integral to Javelin's research, which is Javelin's business. *Id.* The Survey Questions are a uniquely unbiased and longitudinally valid survey, and

as such they provide a valuable competitive advantage to Javelin that would be highly valuable to its competitors. *Id.*

5. Amount of Effort or Money Expended by Him in Developing the Information and Difficulty with Which the Information Could Be Properly Acquired or Duplicated by Others

The Survey Questions are the result of more than a decade of Mr. Van Dyke's work, as well as that of other research methodologists and professionals. *Id.* The Survey Questions could not be re-created without a duplication of the years of work that Javelin and Mr. Van Dyke have put into them. *See id.*

6. The Competitive Injury to Javelin Outweighs the Importance of Publicly Disclosing the Information

The competitive injury to Javelin if the Survey Questions were to be disclosed outweighs the public interest in disclosing the Survey Questions to help explain the Commission's decision. The injury to Javelin would be great, as the Survey Questions support an integral part of its research, and their public disclosure would eliminate Javelin's competitive advantage. *See id.* Furthermore, the Commission need not rely on the Survey Questions to explain its decision, as it can rely on Mr. Van Dyke's expert testimony or his report to explain its reasoning, without disclosing the Survey Questions. Thus the injury to Javelin outweighs the minimal need for the Commission to disclose the Survey Questions in a decision.

For all these reasons, the Court should grant *in camera* status to the Survey Questions.

B. Duration of *In Camera* Treatment

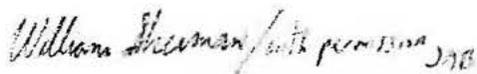
Rule 3.45 requires an order granting *in camera* treatment to include the date upon which *in camera* treatment will expire. 16 C.F.R. § 3.45(b)(3). Because Javelin's study captures experiences over time and tracks participants longitudinally, the Survey Questions must be kept confidential for the period of six years over which information is captured by the study. *See*

Ex. A ¶ 4. According to Mr. Van Dyke, the date after which the Survey Questions could no longer be used to capture responses is April 17, 2021. *Id.* Accordingly, the Court should order the Survey Questions be held *in camera* until April 17, 2021.

CONCLUSION

Because of the serious competitive harm that Javelin would endure from disclosure of the Survey Questions, the Court should order that the Survey Questions be placed *in camera* to the extent that the Court admits it as evidence at the evidentiary hearing in this matter. Complaint Counsel and Respondent respectfully request that the Court grant the Joint Motion for *In Camera* Treatment of Fraud Survey Questions of Expert James Van Dyke, and issue an order placing these materials *in camera* until April 17, 2021.

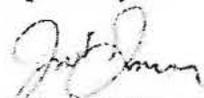
Dated: April 23, 2014



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Counsel for Respondent LabMD, Inc.

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

In the Matter of)

PUBLIC

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

Docket No. 9357

[PROPOSED] ORDER GRANTING MOTION FOR *IN CAMERA*
TREATMENT OF FRAUD SURVEY QUESTIONS OF EXPERT JAMES VAN DYKE

Upon consideration of the Joint Motion for *In Camera* Treatment of Fraud Survey
Questions of Expert James Van Dyke, it is hereby

ORDERED, that the Survey Questions are granted *in camera* treatment until April 17,
2021.

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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Counsel for Respondent LabMD, Inc.

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

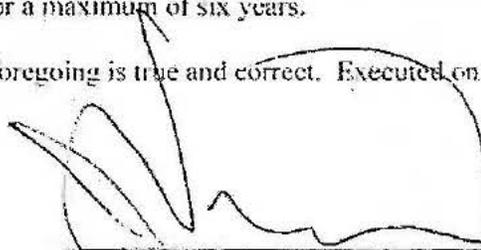
DECLARATION OF JAMES VAN DYKE

Now comes James Van Dyke who hereby states as follows:

I am Founder and President of Javelin Strategy & Research. The information set forth herein is true, correct, and based upon my personal knowledge.

1. I have personal knowledge of the September 2013 Fraud Survey materials for which *in camera* treatment is sought. This personal knowledge comes from my role as principal author of the 2013 Fraud Survey, and from my role as a contributor to the design and content of annual iterations of the Fraud Survey.
2. The materials for which *in camera* treatment is sought are September 2013 Fraud Survey questions, which are utilized by Javelin's field house vendor for soliciting responses from consumers, representative of the general population, on identity theft experiences (also referred to as "identity fraud"), along with other particular events that could relate to, or influence, those experiences (e.g., data breaches).
3. *In camera* treatment is needed to avoid the serious competitive injury that would result from public disclosure of these documents. The materials are provided externally only to Javelin's field house vendor, in order to program and deploy the survey. The complete survey document is stored on Javelin's computer network, and can only be accessed from within Javelin's computer network. Questions from the survey are presented to survey panel respondents through a web-based portal, and each respondent may answer a different number of questions depending on their experiences related to identity theft. Current or previous year's questions that relate to visual representations (e.g., charts, infographics, etc.) of survey data are disclosed alongside those visual representations in Javelin reports (which are available to our clients). The value of the materials resides in the unique combination of questions and available answers, and the flow of those questions which represent the culmination of more than a decade of work by me, research methodologists, and other research professionals to create an unbiased, longitudinally valid survey questionnaire. No single party, besides the field house vendor and Javelin, has access to the complete survey because they represent a competitive advantage as a data collection mechanism that is integral to Javelin's research.
4. The material will no longer require *in camera* treatment after April 17th, 2021 because each Fraud Survey is designed to capture experiences, and assist with tracking longitudinal changes among respondents, for a maximum of six years.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 17th day of April 2014.



James Van Dyke

Exhibit B

CONFIDENTIAL – REDACTED IN ENTIRETY

2013 Fraud Survey Questions

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. |) | |
| |) | |
| |) | |
| |) | |

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]

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 Lapides, 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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Respectfully submitted,

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Complaint Counsel

UNITED STATES OF AMERICA
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OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)

) **PUBLIC**

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

) Docket No. 9357

[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

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April 23, 2014

By: 

Jarad Brown
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

PUBLIC

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]

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]

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]



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?



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 say 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 your 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 to 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 do that, all I was doing was investigating a theft of
2 some papers.

3

4

1

5 **Q. Can you spell his name?**

6 **A. I have him has Brock. I believe it is**
7 **M-u-l-h-e-n-b-r-o-c-k.**

8 **Q. When, approximately, did you have this**
9 **conversation with Mr. Mulhenbrock?**

10 **A. Sometime in May of 2013.**

19 (CX Exhibit 211 was marked for
20 identification.)

21 **Q. (By Mr. Mehm) I am now showing you a**
22 **document that has been labeled CX 211 which is Bates**
23 **labeled FTC-SPD-000087 to FTC-SPD-000091.**

24 **Take a minute to look over the document.**

25 **A. All right.**

1 **Q. Do you recognize this document?**

2 **A. I do.**

3 **Q. What is it?**

4 **A. It is a copy of the police report. And**
5 **then attached to it is an article, I guess that was in**
6 **the Atlanta Business Chronicle, from their website,**
7 **talking about LabMD and the FTC having legal issues.**

8 **Q. Are the first two pages of CX 211 which is**
9 **[REDACTED] the same as the**
10 **first two pages of CX 210?**

11 **A. I believe they are. Stand by.**

12 **Yes. They appear to be.**

13 **Q. You testified a moment ago that attached**
14 **to CX 211 is a September 2002 article from the Atlanta**
15 **Business Chronicle discussing the FTC's investigation**
16 **of LabMD. Did you pull that article off of what**
17 **appears to be the Internet?**

18 **A. I did.**

19 **Q. Why did you do that?**

20 **A. To find out a little bit more about what**
21 **was going on. I was a little ignorant of what the**
22 **Federal Trade Commission does to begin with. When I**
23 **found out all this was going on, I was involved in it,**
24 **I wanted a neutral party's take on the situation, a**
25 **news reporter, to find out a little bit more about**

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 Lapides. 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

1 reference to was anyone ever charged. But that was
2 really the extent of the conversation.

3 Q. So is it a correct timeline, then, to
4 describe your investigation as beginning with the
5 receipt of the officer's report; is that correct? It
6 began with that?

7 A. Yes, sir. I believe that was March 29th
8 was the first time I ever started an investigation.

9 Q. And after that, you made follow-up phone
10 calls to Mr. Fusco. On maybe the second or third call
11 you did finally get in touch with him and speak with
12 him as reflected in your notes; is that correct?

13 A. Yes, sir.

14 Q. Likewise, you made a follow-up phone call
15 to the Sacramento Police Department; is that right?

16 A. Yes, sir.

17 Q. Was it Mr. Fusco who gave you the contact
18 information for the Sacramento Police Department?

19 A. Via the initial report. I believe he gave
20 that to Officer Hudson because in the initial
21 narrative, the first line of that says that the victim
22 employee which is Mr. Fusco, he was advised by the
23 Sacramento County Police Department, Detective Jestes,
24 it has the number there. That's how I was able to get
25 the number to call Sacramento.

1 Any time there is a law enforcement
2 officer already involved in a case, I try to contact
3 law enforcement before I contact anyone else to kind
4 of get their take of kind of what was going on.

5 Q. In your conversation with Detective Jestes
6 of the Sacramento Police Department, she described
7 that her investigation initiated from a report of
8 stolen electricity.

9 A. Yes, sir.

10 Q. So is it your understanding that Detective
11 Jestes does or does not have as part of her area of
12 usual investigation identity theft?

13 A. I have no idea if she specializes in
14 anything or how they do anything in Sacramento.

15 Q. Did Detective Jestes indicate that these
16 documents were only found in hard copy?

17 A. That's what it appeared to be, just
18 paperwork. I don't know if there were any type of
19 electronic or different media it was found on.

20 Q. She did not indicate that to you.

21 A. Correct.

22 Q. Did you ask Detective Jestes whether or
23 not there were any identity fraud prosecutions as a
24 result of the finding of this particular evidence?

25 A. I did not.

1 Q. Did she give you any indication as to
2 whether or not there were any prosecutions based on
3 identity fraud as a result of the finding of these
4 LabMD documents?

5 A. No. It appears she did not because she
6 advised that that -- the LabMD portion of her
7 investigation is inactive; and if inactive means the
8 same as it does here, that means there were no
9 prosecutions. It is not closed. If you have more
10 information that comes in two days, two years from
11 now, you can start actively investigating. Inactive
12 means the file goes on the shelf unless anything else
13 comes in. She said that portion of the investigation
14 was inactive.

15 Q. In your experience what usually leads to
16 an investigation becoming inactive?

17 A. Making one or two attempts to contact the
18 victim, victim doesn't call you back; getting a video
19 of someone that nobody can identify, case becomes
20 inactive.

21 Q. So is it fair to describe circumstances in
22 your experience that lead to a case becoming inactive
23 is a case where there simply isn't enough evidence to
24 continue to pursue it?

25 A. Yes, sir. Or to create charges. You get

1 to the point where you just don't have enough evidence
2 to charge anyone. You might even have a suspect in
3 mind, you just can't make that jump to file charges so
4 it becomes inactive.

5 [REDACTED]

23 Q. Other than Mr. Mehm and Mr. Sheer -- I
24 apologize if I already asked you this question -- did
25 you speak with anyone else from the FTC about this

| | | | | |
|--|---|--|--|---|
| <p>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</p> <hr/> <p style="text-align: center;">F</p> <p>F 49:1 fair 39:21 far 20:14 29:22 42:8 46:22 fast 13:5 fatality 6:23 11:20 11:25 Federal 1:1 3:3,4,9 4:7 32:22 48:15 51:9 felt 29:19 female 41:6 file 7:17 8:9,13 14:14 27:12 28:3 28:21 33:4,17 34:23 35:6,12 39:12 40:3 44:8</p> | <p>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</p> <hr/> <p>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</p> | <p>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</p> | <p>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</p> <hr/> <p style="text-align: center;">G</p> <p>gear 44:3,4 general 11:1,7 43:1 43:21,23 gentlemen 41:13 Georgia 1:15 4:4 43:3 49:3 50:5,7 51:10 gestures 5:9 getting 39:18 41:3,4 give 5:7 6:5,13 20:17 22:9 24:16 27:10 30:25 36:15 39:1 given 24:19 49:12 50:19 51:3,12 giving 25:10 glanced 28:1 glean 42:5 go 4:25 20:23 34:5 34:24 35:3 45:8 46:7,17 48:8 goes 17:10 39:12 going 8:19 20:12 22:20 28:24 29:12 29:22,23 32:21,23 33:1 36:12 38:4 46:16 good 4:5 29:18,20 34:4,18 gotten 36:13 47:21 government 10:17</p> | <p>10:19,22 41:8,9 grammatical 17:8 ground 4:25 guess 20:2 32:5 47:22</p> <hr/> <p style="text-align: center;">H</p> <p>halfway 16:16 hand 5:8 8:19 handed 28:18 35:5 35:12 handing 7:2 handle 47:17 handling 12:4,6 happened 19:5 harassing 11:3 hard 38:16 harm 42:20 45:18 harmed 45:20 head 5:8 headed 7:25 hearing 49:12 hey 30:22 high 13:3 hired 13:3 history 25:16,19 home 30:13 homeless 20:23 homicides 11:3 hours 43:10 house 20:6,21 29:23 29:25 Hudson 14:10,11,16 14:22 15:4,21 16:2 16:22 17:16,17,23 17:25 18:6 19:10 37:20</p> <hr/> <p style="text-align: center;">I</p> <p>ID 17:15 21:24 22:1 45:15,20 idea 38:13 identification 6:25 8:16 13:17 24:24 27:14 31:20 33:7 identified 35:6 identifiers 22:13</p> |
|--|---|--|--|---|

Exhibit C

PUBLIC

CONFIDENTIAL – REDACTED IN ENTIRETY

CX0209

Exhibit D

PUBLIC

CONFIDENTIAL – REDACTED IN ENTIRETY

CX0210

Exhibit E

PUBLIC

CONFIDENTIAL – REDACTED IN ENTIRETY

CX0714