

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



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

**RESPONDENT LABMD, INC.’S MOTION TO STRIKE
TIVERSA HOLDING CORP.’S “NOTICE OF INFORMATION”**

On or about October 14, 2014, Tiversa Holding Corp. (Tiversa), attempted to file a document styled “Tiversa Holding Corp.’s Notice of Information Pertinent to Richard Edward Wallace’s Request for Immunity” (Notice) with the Federal Trade Commission’s (FTC) Office of the Secretary. Tiversa apparently hand-delivered the Notice to the Court and then circulated it in a mass email. *See* Exhibit 1; Notice, Certificate of Service. The certificate of service signed by Tiversa’s counsel, Jarrod D. Shaw, stated that he had served a copy of the Notice by “electronic mail” on LabMD, Inc.’s (LabMD) attorneys. Notice, Certificate of Service. Contrary to Mr. Shaw’s averment, not one of LabMD’s attorneys was served until October 28, 2014, when Cause of Action received six paper copies via FedEx.

Tiversa did not seek leave of Court to file the Notice and FTC’s Rules of Practice do not allow Tiversa to make such a filing by right. Furthermore, Tiversa violated this Court’s Orders by submitting unauthenticated and previously unproduced emails purportedly containing IP addresses at which Tiversa “found” the 1718 File. Finally, the Notice is neither consistent with nor contemplated by Rule 3.39(b). Therefore, LabMD requests that the Notice be stricken.

BACKGROUND

On October 9, 2014, this Court granted LabMD's unopposed motion seeking Rule 3.39(b) immunity for Mr. Wallace. *See* Order on Respondent's Unopposed Motion for an Order Requiring Richard Wallace to Testify in Person Under a Grant of Immunity Pursuant to Commission Rule 3.39, *In the Matter of LabMD*, Dkt. No. 9357, Federal Trade Commission (Oct. 9, 2014).¹

Mr. Wallace was Tiversa's Director of Special Operations, and handled special projects for Tiversa's CEO, Robert Boback. *See* RX 517, Gormley Dep., at p.83, 123-125; Dana Priest & William M. Arkin, *Top Secret America: the Rise of the New American Security State* 263-65 (2011) (describing Mr. Wallace's work on special projects for Tiversa). [REDACTED]

[REDACTED] Mr. Wallace was awarded for his work. *See* Investigative Excellence Award — Rick Wallace, *FBI-LEEDA Insider Magazine*, August 2013, at 12, Exhibit 2.

¹ On August 5, 2014, FTC Complaint Counsel moved for an order requiring LabMD to file under Rule 3.39 for Mr. Wallace's immunity. At that time, due to the ongoing House Committee on Oversight and Government Reform (OGR) investigation and immunity process, it was hard for LabMD to understand Complaint Counsel's insistence. In retrospect, however, FTC may have filed the motion precisely because OGR immunity was in play. If FTC's motion had been granted, then Tiversa likely would have earlier publicly attacked Mr. Wallace, an attack that would have supported the FTC's legislative relations team as it worked behind the scenes to frustrate OGR's investigation. *See, e.g.*, Letter from Sen. John D. Rockefeller, IV, Chairman, Commerce, Science, and Technology Comm., to Rep. Darrell Issa, Chairman, Comm. on Oversight and Gov't. Reform (Jul. 23, 2014); *see also* Exhibit 3. The email from Senator Rockefeller's Commerce Committee staff director to Chairperson Ramirez, who has an adjudicatory function in this case, may have violated Senate ethics rules. *See* S. Comm. on Ethics, 110th Cong., Senate Code of Official Conduct, Rule XLII (Apr. 2008).

[REDACTED]

[REDACTED]

[REDACTED] CX0019 is a single sheet of paper containing four typed IP addresses, all outside of LabMD, where Tiversa supposedly “found” the 1718 File. *See* CX 0019; *see also* CX 703, at 50, 53; RX 541, Boback Dep., at 22-25, 29 (June 7, 2014).

On January 30, 2014, LabMD served Tiversa with a subpoena for Mr. Wallace’s deposition. Exhibit 4. On February 4, 2014, Mr. Shaw told LabMD’s counsel that Mr. Wallace was available on February 27, 2014. Exhibit 5. On February 17, 2014, it was agreed that Mr. Wallace would be deposed on March 4 or 5, 2014. *See* Exhibit 6 at 4. Coincidentally, or not, Mr. Wallace was arrested for DUI on February 19 and 20, 2014, about a week before his deposition.

On February 21, 2014, LabMD’s counsel contacted Mr. Shaw to confirm the March 4 date. Exhibit 7. On February 26, 2014, Mr. Shaw informed LabMD’s counsel that Mr. Wallace was no longer available due to a medical situation. *See* Exhibit 6, at 3–4. On February 28, 2014, LabMD’s counsel requested documentation verifying that Mr. Wallace could not appear but Mr. Shaw refused. *See* Exhibit 6, at 2–3. Complaint Counsel then advised LabMD’s counsel that the FTC accepted Mr. Shaw’s claim and no documentation was necessary. *See* Exhibit 6, at 2.² On April 3, 2014, LabMD’s counsel asked Mr. Shaw for an update on Mr. Wallace’s health and availability. *See* Exhibit 6, at 1. On April 7, 2014, Mr. Shaw advised that Mr. Wallace was no longer employed by Tiversa. *See* Exhibit 6, at 1.

² Complaint Counsel’s unsolicited acquiescence to Tiversa’s refusal to document witness incapacity is yet another data point suggestive of improper collaboration, especially in light of FTC’s refusal to honestly reveal the nature and extent of its relationship with Tiversa, Mr. Boback, and Mr. Shaw.

On April 25, 2014, Mr. Wallace went to the police seeking protection from harassing phone calls and threats to his life. *See* Notice, Exhibit D.

On May 30, 2014, Complaint Counsel told this Court [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Tr. at 1227 (May 30, 2014). Neither Complaint Counsel nor Mr. Shaw disclosed or produced the new unauthenticated emails attached to the Notice at that time.

On October 14, Tiversa apparently “filed” the Notice with FTC, delivered it to this Court, and then emailed it to the public³ although Mr. Shaw had not yet filed a notice of appearance. *See* Notice of Appearance of Jarrod D. Shaw (Oct. 15, 2014). Tiversa claimed it filed the Notice “as a result of the immunity request and Mr. Wallace’s false allegations related to Tiversa.” Notice at 4. It cited arrest records to show that beginning in January, 2014, Mr. Wallace had drinking and marital problems. *See* Notice at 1-4, Exhibits A–I. Then, it cited the unauthenticated emails supposedly written by Mr. Wallace to himself (in a variety of fonts) in November, 2012, to prove CX0019 was not fabricated. *See* Notice at 4, Exhibits J–K. Yet, despite Tiversa’s years of collaboration with FTC and the multiple prior document subpoenas and depositions in this case, these emails had never before been produced.

³ *See* Exhibit 1.

ARGUMENT

The Notice is improper and should be stricken.

First, it is improper because Tiversa is not a party or an intervenor in this case and failed to request leave of Court prior to filing. The Rules authorize a third party to file only discovery motions on discovery sought therefrom. *See* Rule 3.31(10); Rule 3.45(b). No Rule allows a non-party to anticipatorily impeach the credibility of another witness or to offer new “evidence” to circumvent the Court’s orders, as Tiversa has attempted to do here.⁴

Second, it should be stricken because the attached emails, if genuine, were in the scope of LabMD’s and Complaint Counsel’s subpoenas *duces tecum* but were not produced.⁵ Mr. Boback also did not mention these emails at his November, 21, 2013, deposition or his June 7, 2014, deposition. *See generally* CX 703; RX 541. Among other things, the Notice is Tiversa’s procedural ruse to circumvent the discovery rules and to support its *third* origin story for the 1718 File.

Third, the Notice should be stricken due to unauthenticated exhibits, lack of demonstrated relevance, unreliable hearsay, and improper introduction of prior charges, all to impeach a

⁴Tiversa’s conduct rendered the Notice an improper de facto *ex parte* communication because Tiversa failed to serve LabMD for two weeks after filing, and circulated the Notice as part of a mass public relations email prior to sharing it with LabMD’s counsel. Nonpublic *ex parte* communications with the ALJ are forbidden and sanctions against a party may include having its claim or interest in the proceeding dismissed, denied, disregarded, or otherwise adversely affected on account of such violation. Rule 4.7; 5 U.S.C. § 557(d)(1). Sanctions against a non-party may include dismissal or disregard of its claim if it becomes a party to the case thereafter. Rule 4.7. If a party’s *ex parte* communication warrants dismissal, then it follows that a non-party’s *ex parte* communication should at least be stricken.

⁵ On November 13, 2013, LabMD subpoenaed “All documents referring or relating to LabMD” for January 1, 2008, to the subpoena date. Exhibit 8, Subpoena Duces Tecum at 4, 11. On September 30, 2013, Complaint Counsel subpoenaed “All Documents related to LabMD” and “Documents Sufficient to Show the time, date, Internet Protocol address, and network from which the Company obtained the 1,718 File” for January 1, 2008, to the subpoena date. Exhibit 9, Subpoena Duces Tecum at 3, 10.

witness who has not yet testified. Tiversa has not authenticated the exhibits as required by Rule 3.43(c)(1)-(3), and the documents to discredit Mr. Wallace are irrelevant because Mr. Wallace has not yet testified. *See* Order Denying Complaint Counsel’s Motion for Leave to Issue Subpoenas for Rebuttal Evidence, *In the Matter of LabMD, Inc.* Dkt. No. 9357, at 2 (July 23, 2014); Rule 3.43; Fed. R. Evid. 401, 402. Even if Mr. Wallace had testified, the exhibits should not come in to evidence because *all* of them are out-of-court statements introduced for the truth of the matter asserted, and all lack the satisfactory indicia of reliability and relevance required for fair use. *See* Rule 3.43(b); Fed. R. Evid. 801, 802. For example, the November 6, 2012, email never refers to LabMD or the 1718 File, and nothing on its face supports Tiversa’s claim that it identifies “IP addresses . . . as possessing the 1718 File” or establishes relevance. *See* Notice, at 4. The police reports and related documents contain only charges that have nothing to do with dishonesty or false statements. *See* Notice, Exhibits A–I; Fed. R. Evid. 609.⁶

At best, Tiversa’s “Notice” is designed to deny Mr. Wallace immunity, preemptively blacken his reputation and prevent this Court from hearing what he has to say. *See* Notice, at 1, 4. At worst, the Notice is a calculated abuse of FTC’s adjudicatory process. But, in the end, the Notice only highlights the importance of Mr. Wallace’s testimony and re-emphasizes the need for him to be heard.

As this Court is well aware, the Committee on Oversight and Government Reform is investigating Tiversa’s relationship with FTC and the circumstances surrounding this case. *See* Exhibit 10. Mr. Wallace, in his sensitive position as Mr. Boback’s personal “special projects”

⁶ Even if these were convictions they would be inadmissible. *See* Fed. R. Evid. 609; *see e.g. United States v. Crumbly*, 215 Fed. Appx. 983, 989 (11th Cir. 2007) (evidence of a misdemeanor conviction for resisting arrest was inadmissible under Rule 609(a) because it did not involve dishonesty or a false statement).

analyst⁷ and as an award-winning investigator, likely knows a great deal about Tiversa's business practices, the quality and reliability of Tiversa's documentation, the origin of the 1718 File, and Tiversa's relationship with FTC. Though Tiversa (and FTC) may not like what Mr. Wallace will say, Tiversa has no warrant to interfere with the Rule 3.39 process or to prevent the truth from coming out.

CONCLUSION

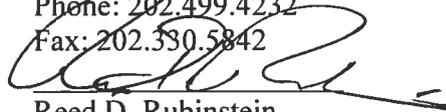
For the foregoing reasons, LabMD respectfully requests that the Court strike Tiversa Holding Corp.'s Notice of Information Pertinent to Richard Edward Wallace's Request for Immunity.

Dated: November 4, 2014

Respectfully submitted,



Daniel Z. Epstein
Prashant K. Khetan
Hallee K. Morgan
Cause of Action
1919 Pennsylvania Ave., NW, Suite 650
Washington, D.C. 20006
Phone: 202.499.4232
Fax: 202.330.5842



Reed D. Rubinstein
William A. Sherman, II
Dinsmore & Shohl, L.L.P.
801 Pennsylvania Ave., NW, Suite 610
Washington, D.C. 20006
Telephone: 202.372.9120

⁷ Given Mr. Wallace's role as Mr. Boback's special operations analyst, the Court could consider ordering Mr. Boback personally to appear and testify regarding his relationship with Mr. Wallace and to explain why his opinion of Mr. Wallace's credibility changed only after Mr. Wallace turned whistleblower. Presumably, Mr. Boback will properly plan his vacation schedule and avoid last-minute changes such as apparently occurred between Mr. Shaw's representation to this Court on May 30 that Mr. Boback would be leaving the U.S. on June 8 and his representation ten days later to Judge Fischer of the Western District of Pennsylvania that Mr. Boback was not leaving until June 12. *See* Shaw, Tr. at 1251:16-18 (May 30, 2104); Exhibit 11.

PUBLIC

Fax: 202.372.9141

Email: reed.rubinstein@dinsmore.com

Counsel for Respondent, LabMD

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 RESPONDENT LABMD, INC.’S MOTION TO STRIKE TIVERSA HOLDING CORP.’S “NOTICE OF INFORMATION”

Upon consideration of Respondent LabMD, Inc.’s Motion To Strike Tiversa Holding Corp.’s “Notice Of Information”:

It is Hereby ORDERED that Respondent LabMD, Inc.’s Motion To Strike Tiversa Holding Corp.’s “Notice Of Information” is hereby GRANTED, and

Tiversa Holding Corp.’s Notice Of Information Pertinent To Richard Edward Wallace’s Request For Immunity is STRICKEN.

SO ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

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.)	
)	
_____)	

STATEMENT REGARDING MEET AND CONFER

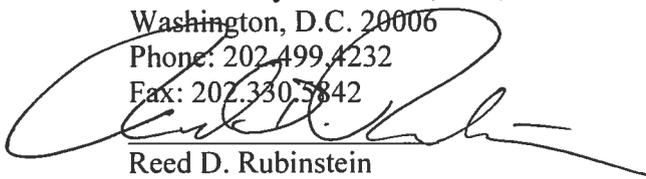
LabMD, Inc., respectfully submits this Statement, pursuant to Additional Provision 4 of the Scheduling Order. Prior to filing the attached Motion To Strike Tiversa Holding Corp.’s “Notice Of Information,” on October 28, 2014, counsel for LabMD (Prashant K. Khetan) conferred by telephone with Complaint Counsel (Laura Riposo VanDruff and Ryan Mehm) in a good faith effort to resolve by agreement the issues raised by the motion. Complaint Counsel advised that it intends to oppose this motion.

Dated: November 4, 2014

Respectfully submitted,



Daniel Z. Epstein
Prashant K. Khetan
Hallee K. Morgan
Cause of Action
1919 Pennsylvania Ave., NW, Suite 650
Washington, D.C. 20006
Phone: 202.499.4232
Fax: 202.330.5842



Reed D. Rubinstein
William A. Sherman, II
Dinsmore & Shohl, L.L.P.
801 Pennsylvania Ave., NW, Suite 610
Washington, D.C. 20006
Telephone: 202.372.9120

Fax: 202.372.9141

Email: reed.rubinstein@dinsmore.com

Counsel for Respondent, LabMD

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2014, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing 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 caused to be hand-delivered a copy of the foregoing document to:

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

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

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

Dated: November 4, 2014

By: /s/ Hallee K. Morgan

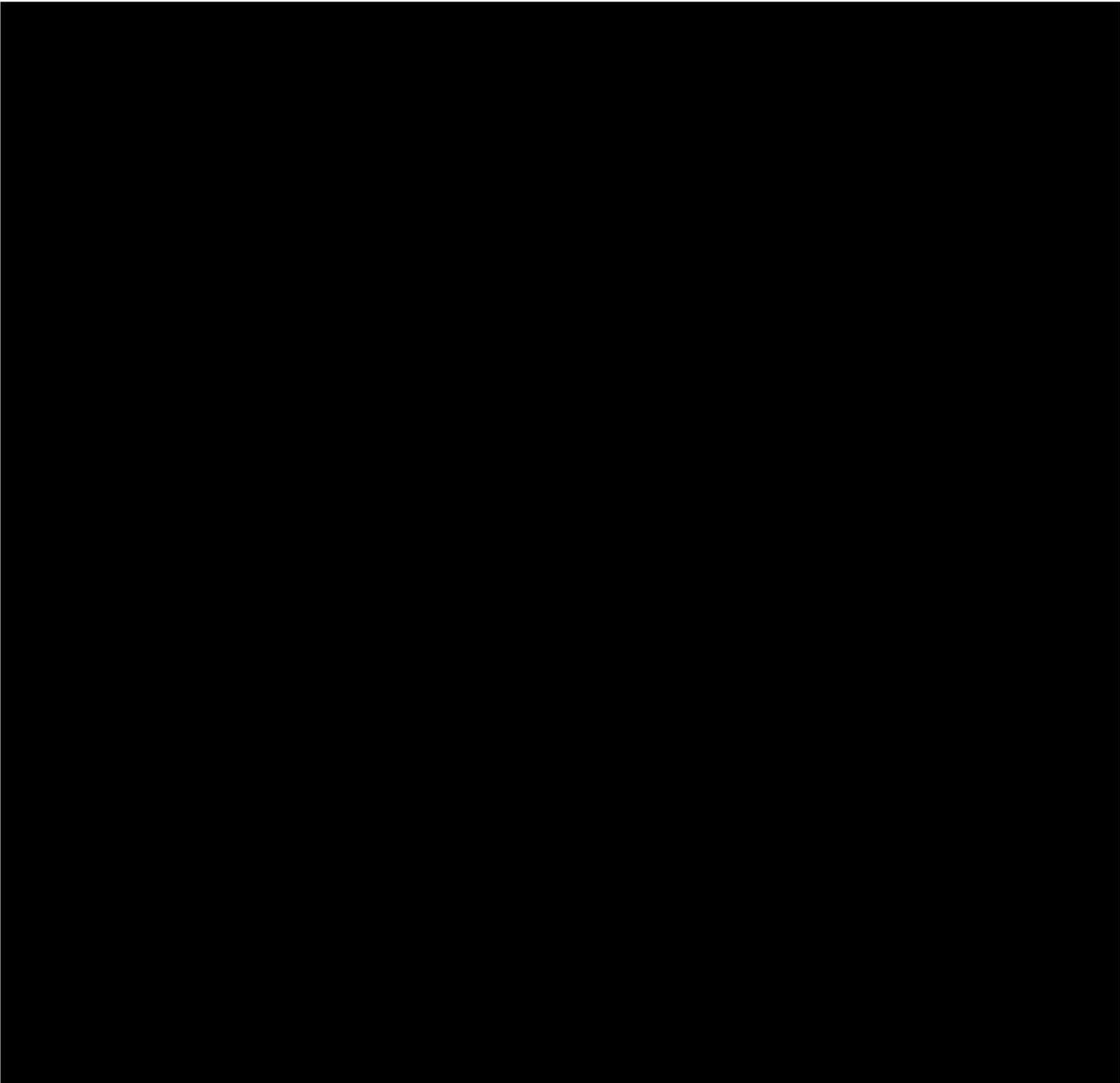
CERTIFICATE OF ELECTRONIC FILING

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

Dated: November 4, 2014

By: /s/ Hallee K. Morgan

EXHIBIT 1



From: Jennifer Gatto [<mailto:jgatto@tiversa.com>]
Sent: Thursday, October 23, 2014 9:45 AM
To: Jennifer Gatto
Subject: FTC Notice - Tiversa

Good morning --

Knowing of your interest in the LabMD FTC proceeding and the alleged "whistle blower" involved in this case, I thought you might be interested in the attached Notice of Information filed by Tiversa in this matter.

Thank you,
Jennifer Gatto

Jennifer Gatto
Communications Specialist

Tiversa

The Cyberintelligence Experts

606 Liberty Avenue

Pittsburgh, Pennsylvania 15222

412.325.1290 Office

www.tiversa.com

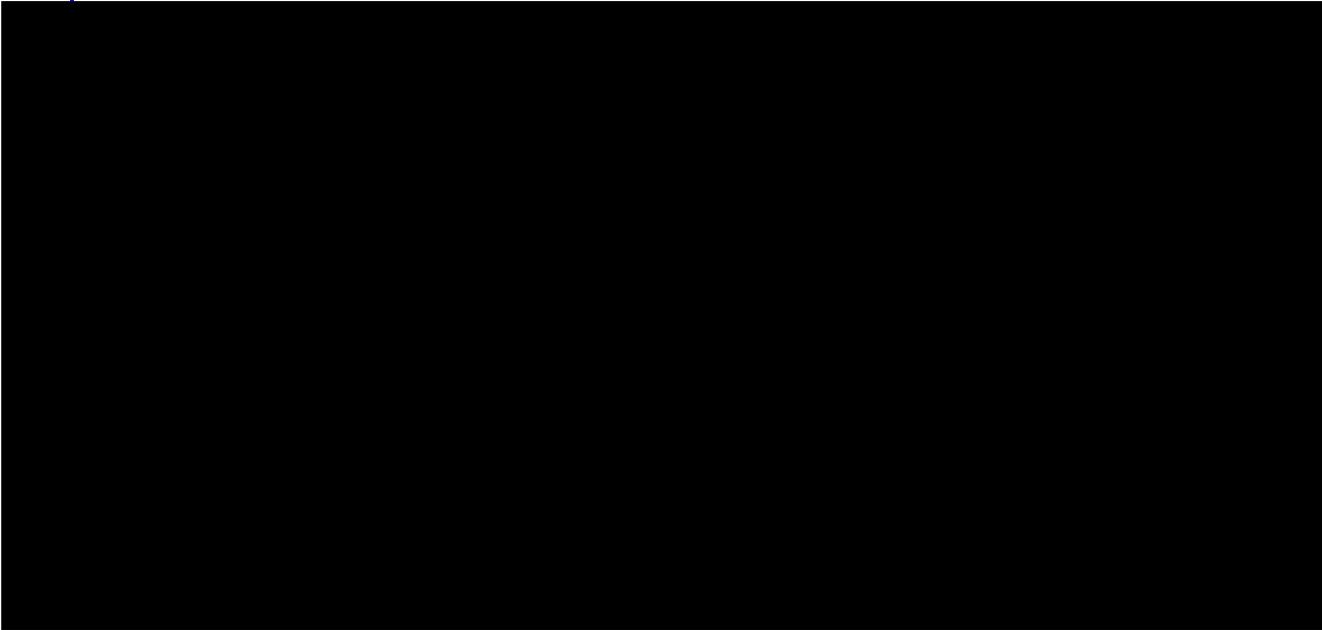
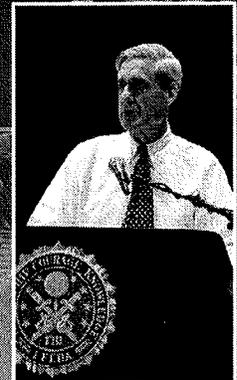


EXHIBIT 2



FBI-LEEDA insightter

2013 CONFERENCE HIGHLIGHTS



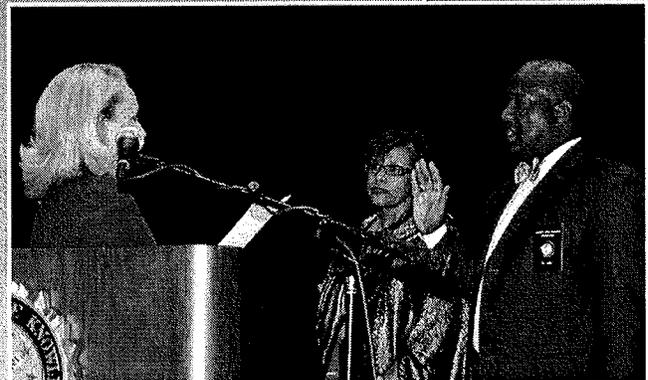
IN THIS ISSUE:

2013 Conference Recap, Awards and Photos

beginning on page 10

Law Enforcement Training Opportunities

page 4



A special thanks to our Conference Sponsor



FBI – LEEDA

5 Great Valley Parkway, Suite 125
 Malvern, PA 19355
 Tel: 877-772-7712 • Fax: 610-644-3193
 www.fbileeda.org



FBI-LEEDA insighter

2013 Executive Board

PRESIDENT

Greg Hamilton, Sheriff
 Travis County Sheriff's Office
 P.O. Box 1748, Austin, TX 78767
 Telephone: 512-854-9788 • Facsimile: 512-854-3289
 E-mail: greg.hamilton@co.travis.tx.us

FIRST VICE PRESIDENT

Sam Pennica, Director
 City County Bureau of Identification
 3301 Hammond Road, Raleigh, NC 27603
 Telephone: 919-255-7370 • Facsimile: 919-856-6305
 Email: sam.pennica@wakegov.com

SECOND VICE PRESIDENT

David Boggs, Chief
 Broken Arrow Police Department
 2302 S. First Place, Broken Arrow, OK 74012
 Telephone: 918-451-8394
 dboggs@brokenarrowok.gov

THIRD VICE PRESIDENT

Paul Shastany, Chief
 Stoughton Police Department
 26 Rose Street
 Stoughton, MA 02072
 Telephone: 781-232-9311
 pshastany@stoughtonpd.org

SERGEANT AT ARMS

Thomas Alber, Chief
 Garden City Police Department
 107 N. 3rd Street
 P. O. Box 20
 Garden City MO 64747
 Telephone: 816-773-8201
 thomasalber@gardencitypolice.com

PAST PRESIDENT

Ozzie Knezovich, Sheriff
 Spokane County Sheriff's Office
 1100 W. Mallon, Spokane, WA 99260
 Telephone: 509-477-6917 • Facsimile: 509-477-5641
 E-mail: oknezovich@spokanesherriff.org

EXECUTIVE DIRECTOR

Charles "Skip" Robb
 FBI-LEEDA, Inc.
 5 Great Valley Parkway, Suite 125, Malvern, PA 19355
 Telephone: 1-877-772-7712 • Facsimile: 610-644-3193
 E-mail: crobb@fbileeda.org

EXECUTIVE DIRECTOR EMERITUS

Tom Stone
 FBI-LEEDA, Inc.
 5 Great Valley Parkway, Suite 125, Malvern, PA 19355
 Telephone: 1-877-772-7712 • Facsimile: 610-644-3193
 E-mail: tstone@fbileeda.org

FBI LIAISON

Angela Konik, Chief
 Law Enforcement Development Unit
 FBI Academy, Quantico, Virginia
 Telephone: 703-632-1854
 Facsimile: 703-632-1853
 E-mail: Angela.Konik@ic.fbi.gov

- 1 | FBI-LEEDA Executive Board
- 2 | President's Message – *by President Greg Hamilton*
- 3 | The LEEDing Edge – *Executive Director's Report*
 FBI – LEEDA Mission Statement
- 4 | Training Opportunities – *Course Schedules*
 4 *Command Institute for Law Enforcement Executives®*
 4 *Supervisor Leadership Institute®*
 5 *Supervisory Liability - Online*
 5 *Executive Leadership®*
 5 *Leadership and Management Seminar*
 5 *Leaders Without Titles*
 8 *Distance Learning Online - Phase II - Advanced Supervisory Liability*
- 9 | One – Day Summits and Seminars
Identity Theft – LifeLock®
Drug Diversion Summits – Purdue Pharma®
Heavy Equipment Theft – NER and NICB®
- 10 | Conference Highlights and Awards – *From our 22nd Annual*
Conference in Louisville, Kentucky
 10 *FBI-LEEDA / LifeLock Scholarship Recipients*
 11 *FBI-LEEDA Trilogy Awards*
 12 *Special Presentations and Awards*
 13 *Tom Stone Award of Excellence for 2013*
 14 *FBI-LEEDA New Board Member Biographies*
 15 *Commemorative Glock Raffle Winner*
- 18 | General Counsel Update – *"Officer Involved Shootings - How Are*
Courts Analyzing the Use of Deadly Force?" — by Eric Daigle
- 21 | Regional Representative Program Update
 FBI – LEEDA Executive Services
- 22 | Feature Article
 14 *"Focus on Leadership...Chief: Are You Encouraging Candor, Quality*
Input, and Honest Feedback?" — by Colonel Keith Bushey
- 25 | Corporate Partner Directory
- 29 | Welcome New Members

The FBI-LEEDA *insighter* magazine is a publication of FBI-LEEDA, Inc., and is published three times each year by FBI-LEEDA, Inc.

FBI-LEEDA, Inc., is a non-government, non-profit corporation. Neither the Association, its Executive Board, nor its representatives endorse or assure the completeness or accuracy of information provided by outside sources which is contained in this or any other FBI-LEEDA publication.

The FBI-Law Enforcement Executive Development Association is a private, non – profit organization and is not part of the Federal Bureau of Investigation or acting on it's behalf.

The FBI-LEEDA Insighter magazine is managed and produced by Judith A. Grubb, Graphics / Publisher, E-mail: judith_a_grubb@yahoo.com; Tel: 484-571-4866



Louisville Conference Highlights... Special Congratulations

LifeLock Conference Host Award – Deb Griffith

In 2007, LifeLock became a Corporate Partner of FBI-LEEDA. Over the past four years they have been the named host of FBI-LEEDA's annual executive Training Conference. Three years ago they became the first Diamond Level Corporate Partner.

Beginning in October 2008, FBI-LEEDA and LifeLock began providing Law Enforcement Summits nationwide to provide the latest information regarding identity theft to our nation's law enforcement agencies.

In August 2010, we expanded this program and began offering two-day summits in selected areas. Through LifeLock's efforts and support there have been 94 summits with 6,580 attendees representing 2,310 law enforcement agencies.

We are honored to recognize LifeLock as our conference host and Diamond Level Corporate Partner. We proudly presented this crystal plaque to **Deb Griffith**, Director, Government Affairs, in recognition of LifeLock's support to our 22nd Annual Executive Training Conference, and their support to our communities and law enforcement agencies nationwide.



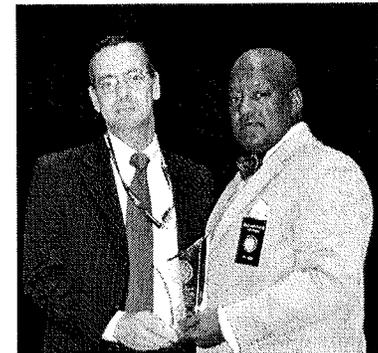
Pictured (left to right): Deb Griffith, LifeLock and Greg Hamilton, FBI-LEEDA

Investigative Excellence Award – Rick Wallace

The FBI-LEEDA Executive Board proudly presented its first Investigative Excellence Award to **Rick Wallace**, Director of Special Operations/Global-National Security Analyst at Tiversa during the opening ceremonies of the conference.

Rick provides peer-to-peer (P2P) intelligence and security services worldwide and is known for his commitment and dedication. He is truly one of the unsung major contributors to law enforcement agency's investigative efforts, acting as a catalyst in protecting and educating global law enforcement in overall internet safety, shielding them from cyber crime and guarding children worldwide from exploitation. He spends countless hours, often working around the clock, providing investigative support, which has resulted in an astounding 400 convictions.

Rick was recently presented with the **FBI Directors Community Leadership Award** for his outstanding contributions to law enforcement as well as his many volunteer community activities.



Pictured (left to right): Rick Wallace, Tiversa and Greg Hamilton, FBI-LEEDA

Special Recognition Award to Tiversa

Tiversa has been a Platinum Level Corporate Partner with FBI-LEEDA since 2010. Tiversa provides peer-to-peer (P2P) intelligence services to corporations, government agencies and individuals based on patented technologies that can monitor over 550 million users issuing 1.8 billion searches a day.

Tiversa has also been providing training for Identity Theft for FBI-LEEDA and our partner LifeLock, and has made their resources available to numerous law enforcement agencies with internal controls and investigative support.

During the conference opening ceremonies we proudly presented Tiversa with this Special Award in recognition of their outstanding contribution to law enforcement and national security through their investigative and educational support.



Accepting the award on behalf of Tiversa is Bob Boback.

EXHIBIT 3

Kelly, Andrea

From: Ramirez, Edith
Sent: Wednesday, July 23, 2014 1:53 PM
To: Ellen Doneski
Subject: RE: Rockefeller Letter to Issa Re: Improper Interference

Ellen, thank you for sending a copy of Chairman Rockefeller's letter. -Edith

From: Ellen Doneski
Sent: Wednesday, July 23, 2014 1:34 PM
To: Ramirez, Edith
Subject: Rockefeller Letter to Issa Re: Improper Interference

Senator Rockefeller just sent this letter to Congressman Issa and we wanted to make sure you had a copy. Will call after mark up/hearing on cramming. Best, Ellen

EXHIBIT 4

DINSMORE & SHOHL LLP
801 Pennsylvania Avenue, N.W. ^ Suite 610
Washington, DC 20004
www.dinsmore.com

William A. Sherman, II
(202) 327-9117 (direct) ^ (202) 372-9141 (fax)
william.sherman@dinsmore.com

January 30, 2014

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Rick Wallace
Tiversa Holding Corporation
606 Liberty Ave.
Pittsburgh, PA 15222

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

Dear Mr. Wallace:

This letter is to notify you that counsel for LabMD, Inc. (“LabMD”), has issued a subpoena to you, which is enclosed. The Federal Trade 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 Federal Trade 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). 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 to find a mutually convenient time for your deposition.

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.

I would be pleased to discuss the scheduling of your deposition at your earliest convenience. You may reach me at (202) 372-9100.

Sincerely,



William A. Sherman, II
Dinsmore & Shohl, LLP
801 Pennsylvania Ave., NW, Suite 610
Washington, D.C. 20004
Phone: 202.372.9100
Fax: 202.372.9141
william.sherman@dinsmore.com

Enclosures:

- (1) Subpoena *Ad Testificandum*
- (2) Exhibit A: Protective Order Governing Discovery Material

cc (via email):

Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm



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
Rick Wallace
Tiversa Holding Corporation
606 Liberty Ave.
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
Dinsmore & Shohl LLP
301 Grant St.
#2800
Pittsburgh, PA 15219
(412) 281-5000

4. YOUR APPEARANCE WILL BE BEFORE
William A. Sherman II or
other designated counsel

5. DATE AND TIME OF DEPOSITION
February 18, 2014, 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
William A. Sherman II, Respondent Counsel
Dinsmore & Shohl LLP
801 Pennsylvania Avenue, N.W.
Suite 610
Washington, DC 20004
(202) 372-9100

DATE SIGNED
1-30-14

SIGNATURE OF COUNSEL ISSUING SUBPOENA
William A. Sherman II

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.

certified
by registered mail.

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

on the person named herein on:

1-30-14

(Month, day, and year)

William J. Stewart

(Name of person making service)

Respondent Counsel

(Official title)

CERTIFICATE OF SERVICE

This is to certify that on January 30th, 2014, I served via electronic delivery a copy of the foregoing document to:

Alain Sheer
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-3321
Fax Number: 202-326-3062
Email: asheer@ftc.gov

Megan Cox
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-2282
Fax Number: 202-326-3062

Laura Riposo VanDruff
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-2999
Fax Number: 202-326-3062

Margaret Lassack
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-3713
Fax Number: 202-326-3062

Ryan Mehm
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-3713
Fax Number: 202-326-3062

January 30, 2014

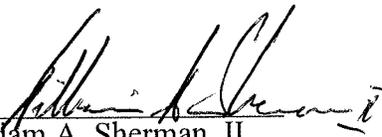
By: 
William A. Sherman, II

Exhibit A

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

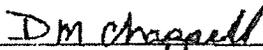
In the Matter of)	
LabMD, Inc.,)	
a corporation,)	
Respondent.)	

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 5

ReedSmith

Jarrold D. Shaw
Direct Phone: +1 412 288 3013
Email: jshaw@reedsmith.com

Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222-2716
+1 412 288 3131
Fax +1 412 288 3063
reedsmith.com

February 4, 2014

Via Email and U.S. First Class Mail

William A. Sherman, II
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW, Suite 610
Washington, D.C. 20004

Re: Tiversa Holding Corporation

Dear William:

I write in response to the subpoena you sent to Tiversa Holding Corporation directed to Samuel Hopkins. Please note, Mr. Hopkins is no longer employed by Tiversa. Accordingly, Tiversa cannot accept service of the subpoena on his behalf.

In addition, please be advised that I represent Mr. Wallace and he is available for deposition on February 27, 2014.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Jarrold D. Shaw

JDS:ds

EXHIBIT 6

Sherman, William

From: Shaw, Jarrod D. [JShaw@ReedSmith.com]
Sent: Monday, April 07, 2014 8:28 AM
To: Sherman, William; 'VanDruff, Laura Riposo'
Cc: Harris, Sunni; Sheer, Alain; Rubinstein, Reed
Subject: RE: FTC Docket No. 9357 - Wallace deposition

Follow Up Flag: Follow up
Flag Status: Flagged

William,

Mr. Wallace no longer is employed by Tiversa. Accordingly, Tiversa nor its counsel can coordinate his deposition or require him to appear.

Jarrold

From: Sherman, William [mailto:william.sherman@dinsmore.com]
Sent: Thursday, April 03, 2014 10:33 AM
To: 'VanDruff, Laura Riposo'; Shaw, Jarrod D.
Cc: Harris, Sunni; Sheer, Alain; Rubinstein, Reed
Subject: RE: FTC Docket No. 9357 - Wallace deposition

Jarrold,

We have several deadlines approaching in the LabMD matter according to the scheduling order. Particularly we are required to designate all witnesses by April 9th and have all expert witness depositions concluded by April 18. I am inquiring as to the condition of Mr. Wallace and whether his medical condition has improved sufficiently enough for him to sit for his deposition. Please advise.

Regards,

William

Dinsmore

William A. Sherman, II
Partner

Dinsmore & Shohl LLP • Legal Counsel
801 Pennsylvania Avenue, N.W.
Suite 610
Washington, DC 20004
T (513) 977-8494 • F (202) 372-9141
E william.sherman@dinsmore.com • dinsmore.com

From: VanDruff, Laura Riposo [mailto:lvandruff@ftc.gov]
Sent: Friday, February 28, 2014 2:20 PM
To: Sherman, William; 'Shaw, Jarrod D.'

Cc: Harris, Sunni; Sheer, Alain
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

Good afternoon, counsel.

Complaint Counsel accepts Mr. Shaw's representations regarding Mr. Wallace's medical issue.

Best regards,

Laura

From: Sherman, William [<mailto:william.sherman@dinsmore.com>]
Sent: Friday, February 28, 2014 1:56 PM
To: 'Shaw, Jarrod D.'
Cc: Harris, Sunni; VanDruff, Laura Riposo
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

My reading of the FTC's letter is that they will consider it, which is different than they have no objection. If they object later I want to be able to show the ALJ that it was not through some fault of mine that this deposition was not taken within the discovery deadline, and that I vigorously pursued the deposition until.

William

From: Shaw, Jarrod D. [<mailto:JShaw@ReedSmith.com>]
Sent: Friday, February 28, 2014 1:30 PM
To: Sherman, William
Cc: Harris, Sunni; 'VanDruff, Laura Riposo'
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

I guess my question is to whom do you need to make that showing? If the FTC does not have an objection, then what is the issue?

From: Sherman, William [<mailto:william.sherman@dinsmore.com>]
Sent: Friday, February 28, 2014 1:29 PM
To: Shaw, Jarrod D.
Cc: Harris, Sunni; 'VanDruff, Laura Riposo'
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

Jarrold,

I'm not asking for a diagnosis just something to indicate that he is not avoiding the subpoena. I need to demonstrate that I made reasonable efforts to take and or preserve his testimony prior to the close of discovery. An Affidavit from him would suffice.

William

Dinsmore

William A. Sherman, II
Partner

Dinsmore & Shohl LLP • Legal Counsel
801 Pennsylvania Avenue, N.W.
Suite 610

Washington, DC 20004
T (202) 372-9117 • F (202) 372-9141
E william.sherman@dinsmore.com • dinsmore.com

From: Shaw, Jarrod D. [<mailto:JShaw@ReedSmith.com>]
Sent: Friday, February 28, 2014 1:22 PM
To: Sherman, William
Cc: Harris, Sunni; 'VanDruff, Laura Riposo'
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

William,

I am unclear from your email below why you "anticipate" needing information to preserve your right to depose Mr. Wallace. Is this a condition the FTC has requested to preserve that right? As you know, Mr. Wallace has a right to privacy and I am unwilling to disclose any additional information based on some perceived anticipated need.

Please clarify when you have a moment.

Jarrold

From: Sherman, William [<mailto:william.sherman@dinsmore.com>]
Sent: Friday, February 28, 2014 8:47 AM
To: Shaw, Jarrod D.
Cc: Harris, Sunni; 'VanDruff, Laura Riposo'
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

Jarrold,

Please forward some documentation that Mr. Wallace is unable to comply with the subpoena *ad testificandum* due to a medical condition. I anticipate that I will need this information in order to preserve my right to depose Mr. Wallace prior to the hearing in this matter which is scheduled to begin on May 15, 2014. I have informed Complaint Counsel of your email and you have received their latest communication to me regarding same. Thank you

William

Dinsmore

William A. Sherman, II
Partner

Dinsmore & Shohl LLP • Legal Counsel
801 Pennsylvania Avenue, N.W.
Suite 610
Washington, DC 20004
T (202) 372-9117 • F (202) 372-9141
E william.sherman@dinsmore.com • dinsmore.com

From: Shaw, Jarrod D. [<mailto:JShaw@ReedSmith.com>]
Sent: Wednesday, February 26, 2014 4:07 PM
To: Sherman, William
Cc: Harris, Sunni
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

William,

Unfortunately, Mr. Wallace is no longer available to appear for the deposition on March 4 as a result of an unexpected medical issue. I am uncertain when he will become available, but at this time he is unable to appear and I will let you know when his condition changes.

Jarrold

From: Sherman, William [<mailto:william.sherman@dinsmore.com>]
Sent: Friday, February 21, 2014 7:50 PM
To: Shaw, Jarrod D.
Cc: Harris, Sunni
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

Jarrold,

See attached letter regarding deposition of Rick Wallace. Call if you have questions.

Regards,

William

From: Shaw, Jarrod D. [<mailto:JShaw@ReedSmith.com>]
Sent: Monday, February 17, 2014 9:07 AM
To: Sherman, William
Cc: Harris, Sunni
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

William,

Either day works for the deposition.

Jarrold

From: Sherman, William [<mailto:william.sherman@dinsmore.com>]
Sent: Sunday, February 16, 2014 1:23 PM
To: Shaw, Jarrod D.
Cc: Harris, Sunni
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

Jarrold,

Is it possible to schedule Mr. Wallace's deposition during the first week of March (4th or 5th)?

William

Dinsmore

William A. Sherman, II
Partner

Dinsmore & Shohl LLP • Legal Counsel
801 Pennsylvania Avenue, N.W.
Suite 610

Washington, DC 20004
T (202) 372-9117 • F (202) 372-9141
E william.sherman@dinsmore.com • dinsmore.com

From: Shaw, Jarrod D. [<mailto:JShaw@ReedSmith.com>]
Sent: Saturday, February 15, 2014 1:53 PM
To: Sherman, William
Cc: Harris, Sunni
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

William,

Please confirm the status of the Wallace deposition.

Thanks,

Jarrold

From: Sherman, William [<mailto:william.sherman@dinsmore.com>]
Sent: Friday, February 07, 2014 4:54 PM
To: Shaw, Jarrod D.
Cc: Harris, Sunni
Subject: RE: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

Jarrold,

Thank you for your letter of Feb. 4, 2014. I am in the process of confirming Feb. 27th as the Wallace depo date. Apparently the Hopkins subpoena was delivered to Tiversa. Please arrange to have it returned to me at my address below. Thank you.

William

Dinsmore

William A. Sherman, II
Partner

Dinsmore & Shohl LLP • Legal Counsel
801 Pennsylvania Avenue, N.W.
Suite 610
Washington, DC 20004
T (202) 372-9117 • F (202) 372-9141
E william.sherman@dinsmore.com • dinsmore.com

From: Shaw, Jarrod D. [<mailto:JShaw@ReedSmith.com>]
Sent: Tuesday, February 04, 2014 3:02 PM
To: Sherman, William
Subject: FTC Docket No. 9357 - Wallace and Hopkins subpoenas

William,

Please see attached.

Jarrold

Jarrold D. Shaw
jshaw@reedsmith.com
+1 412 288 3013
Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222-2716
T: +1 412 288 3131
F: +1 412 288 3063
reedsmith.com

* * *

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

* * *

To ensure compliance with Treasury Department regulations, we inform you that, unless otherwise indicated in writing, any U.S. Federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or applicable state and local provisions or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Disclaimer Version RS.US.20.10.00

NOTICE: This electronic mail transmission from the law firm of Dinsmore & Shohl may constitute an attorney-client communication that is privileged at law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected.

NOTICE: This electronic mail transmission from the law firm of Dinsmore & Shohl may constitute an attorney-client communication that is privileged at law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected.

NOTICE: This electronic mail transmission from the law firm of Dinsmore & Shohl may constitute an attorney-client communication that is privileged at law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected.

NOTICE: This electronic mail transmission from the law firm of Dinsmore & Shohl may constitute an

EXHIBIT 7

Legal Counsel.

DINSMORE & SHOHL LLP
801 Pennsylvania Ave., N.W. ^ Suite 610
Washington, D.C. 20004
www.dinsmore.com

William A. Sherman, II
(202) 372-9117 (direct)
william.sherman@dinsmore.com

Dinsmore

February 21, 2014

VIA ELECTRONIC MAIL
(JShaw@ReedSmith.com)

Jarrod Shaw, Esq.
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222

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

Dear Jarrod:

This letter is to confirm, based on our agreement, that Mr. Rick Wallace's deposition is scheduled to take place on March 4, 2014. The deposition will begin at 9:30 a.m. at Dinsmore and Shohl, 301 Grant St., #2800, Pittsburgh, PA 15219.

I am happy to discuss any questions or concerns that you may have. You may reach me at (202) 372-9117.

Sincerely,


William A. Sherman, II

WAS

EXHIBIT 8



November 13, 2012

VIA FEDERAL EXPRESS

Tiversa Holding Corporation
606 Liberty Avenue
Pittsburgh, PA 15222

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

Dear Sir or Madam:

This letter is to notify you that counsel for LabMD, Inc. (“LabMD”), has issued a subpoena to Tiversa Holding Company, which is enclosed. The Federal Trade 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 Federal Trade 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). 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 Complaint Counsel to find a mutually convenient time 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 Federal Trade 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, LabMD’s 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, thumb drive, or other media, you may place the "CONFIDENTIAL – FTC Docket No. 9357 designation on the CD, thumb drive, or other media.

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) 449-2024.

Sincerely,



Michael Pepson
Cause of Action
1919 Pennsylvania Ave., NW, Suite 650
Washington, D.C. 20006
Phone: 202.499.2024
Fax: 202.330.5842
michael.pepson@causeofaction.org
Admitted only in Maryland.
Practice limited to cases in federal court and
administrative proceedings before federal agencies.

Enclosures:

- (1) Subpoena *Ad Testificandum* Deposition
- (2) LabMD's Counsel's Notice of Deposition Pursuant to Subpoena
- (3) Subpoena *Duces Tecum*
- (4) LabMD's Counsel's Schedule For Production of Documents Pursuant to Subpoena
- (5) Exhibit A: Protective Order Governing Discovery Material
- (6) Exhibit B: Certification of Records of Regularly-Conducted Activity
- (7) Exhibit C: BCP Production Guide

cc (via email):

Alain Sheer
Laura Riposo VanDruff
Megan Cox
Margaret Lassack
Ryan Mehm



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>Tiversa Holding Corp. 606 Liberty Avenue Pittsburgh, PA 15222</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>Reed Smith Center 225 Fifth Avenue Pittsburgh Pennsylvania 15222</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Michael D. Pepson and/or designated Counsel</p>
<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of LabMD, Inc. Docket No. 9357 (Subpoena pursuant to 3.33(c)(1), requiring the deponent to designate a witness to testify on behalf of the organization)</p>	<p>5. DATE AND TIME OF DEPOSITION</p> <p>November 21, 2013, 9:00 a.m.</p>

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief ALJ, D. Michael Chappell Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Michael D. Pepson, Counsel for Respondent LabMD Cause of Action 1919 Pennsylvania Ave, NW Suite 650 Washington, DC 20006</p>
----------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>DATE SIGNED</p> <p>11/13/2013</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 on the person named herein on November 13, 2013, via Overnight Delivery Certified Mail.



Michael D. Pepson

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

**RESPONDENT LABMD, INC.'S NOTICE OF DEPOSITION
PURSUANT TO SUBPOENA TO TIVERSA HOLDING COMPANY**

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), (c)(1), that LabMD's 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**" means 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, attorneys, 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. "**Document**" means any written, recorded, graphic, electronic, or other material, however produced or reproduced, irrespective of whether it is in the possession, custody, or control of the Company, and irrespective of whether it is claimed to be privileged against discovery on any grounds, including, but not limited to, material in the form of books, reports, witness statements, studies, records, agreements, lists, memoranda, diagrams, checks, sketches, charts, diaries, correspondence, notebooks, facsimiles, telegrams, schedules, bills, invoices, notes, photographs, videotapes, sound recordings, appointment

calendars, films, worksheets, computer printouts, computer discs, information stored in computer memory drives of any kind, bookkeeping entries, or any other documents of any kind whatsoever, irrespective of the form, including any draft or working copy.

5. 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.
6. “**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.
7. “**LabMD**” means LabMD, Inc., the named respondent in the above-captioned matter, and its directors, officers, and employees.
8. “**Federal Trade Commission**” means the Federal Trade Commission, and its current and former officers, contractors, affiliates, and employees.
9. “**Dartmouth College**” means Dartmouth College, its divisions, programs, projects, affiliates, contractors, and its directors, officers, and employees.
10. “**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.
11. The term “**person**” means any natural person or any entity other than a natural person, including, but not limited to, includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity.
12. “**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.

13. The terms “**relate**” or “**relating to**” or “**referring 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.
14. “**Subpoena**” means the Subpoena to Tiversa Holding Corporation, including this Notice, and including the Definitions, Instructions, and Specifications.
15. “**You**” or “**your**” means Tiversa Holding Corporation, or the “Company.”
16. “**1,718 File**” means the 1,718 page file owned by LabMD that the Company claimed in 2008 to have obtained from LabMD via Limewire.
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.
19. Words in the masculine, feminine, or neuter form shall include each of the other genders.

DEPOSITION TOPICS

Tiversa is advised that it must designate one or more officer(s), director(s), managing agent(s), or other person(s) 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 systems and other means by which the Company searches or monitors peer-to-peer networks, including Limewire.
2. Information on which the following statement, made by Tiversa’s CEO, Robert Boback, before the House Committee on Oversight and Government Reform on July 29, 2009, was based: “Beginning in 2003, Tiversa developed systems that monitor and interact with and within P2P [peer-to-peer] networks to search for sensitive information in an effort to protect the confidential information of our clients.... Tiversa can see and detect all the previously untraceable activity on the P2P network in one place to analyze searches and requests. While an individual user can only see a very small portion of a P2P file sharing network, Tiversa can see the P2P network in its entirety in real time. With this platform, Tiversa has processed as many as 1.6 billion P2P searches every day, more than the number of web searches entered into Google per day. This unique technology has led some industry experts (Information Week) to refer to Tiversa as the ‘Google of P2P.’”

3. Information on which the following statement, made by Rick Wallace, Forensic Engineer, Global Incident Response Operations Center (GIROC), in an email to Robert Boback on Tuesday May 13, 2008, Subject: LabMD, was based: “I checked back against the timeline to see the date that we originally acquired the file pertaining to LabMD. It appears that we first downloaded the file on 02/05/08 at 3:49PM. Our system shows a record of continued availability for sporadic periods over the past several months but we did not attempt to download it again. The system did not auto-record the IP, unfortunately, most likely due to the little amount of criteria indexed against the DSP.”
4. Information on which statements made in a May 28, 2009, press release, entitled “Tiversa Identifies Over 13 Million Breached Internet Files in the Past Twelve Months,” are based.
5. Information on which the following statement, in the Dissenting Statement of Commissioner J. Thomas Rosch, Petitions of LabMD, Inc. and Michael J. Daugherty to Limit or Quash the Civil Investigative Demands, FTC File No. 1023099 (June 21, 2012), is based: “I am concerned that Tiversa is more than an ordinary witness, informant, or ‘whistle-blower.’ It is a commercial entity that has a financial interest in intentionally exposing and capturing sensitive files on computer networks, and a business model of offering its services to help organizations protect against similar infiltrations. Indeed, in the instant matter, an argument has been raised that Tiversa used its robust, patented peer-to-peer monitoring technology to retrieve the 1,718 File, and then repeatedly solicited LabMD, offering investigative and remediation services regarding the breach, long before Commission staff contacted LabMD.”
6. The frequency, duration, means, method, purpose, and objectives with which the Company has searched and currently searches for, accesses, identifies, or obtains documents, files, or copies of files containing personal information from third persons, including LabMD, without their knowledge or permission.
7. Information on which the following statement, in a June 25, 2008, letter from Carl H. Settlemyer III, Bureau of Consumer Protection, Division of Advertising Practices, Federal Trade Commission, to Robert Boback, CEO, Tiversa, Inc., is based: “The Committee [on Oversight and Government Reform of the House of Representatives] has requested information concerning inadvertent file sharing over peer-to-peer (“P2P”) networks. Certain information and materials that Tiversa submitted may be responsive to this request.”
8. The Company’s communications with the Federal Trade Commission referring or relating to the 1,718 File and LabMD.
9. The Company’s communications with the Federal Trade Commission referring or relating to any other files, documents, or communications that it may have obtained containing sensitive or personal information, including communications referring or relating to a January 26, 2009 – March 4, 2009, email exchange between Carl H.

Settlemyer III, Bureau of Consumer Protection, Division of Advertising Practices, Federal Trade Commission, to Robert Boback, CEO, Tiversa, Inc., and others, Subject: "P2P ID Theft Research – Conference Call?"

10. On information and belief, a March 5, 2009, conference call between Robert Boback and Carl Settlemyer, Alain Sheer, Stacey Ferguson, and Richard A. Quaresima.
11. The Company's communications with Dartmouth College referring or relating to the 1,718 File.
12. The means by which the Company identified, accessed, and obtained a copy of the 1,718 File without LabMD's actual or constructive knowledge or permission.
13. The time, date, Internet Protocol address, and network from which the Company obtained the 1,718 File, including the Company's bases for this knowledge.
14. The Company's communications with Dartmouth College referring or relating to documents, including files and copies of files, that it has obtained containing sensitive or personal information from third persons without their actual or constructive knowledge or permission.
15. The Company's business model.
16. The Company's communications with LabMD.
17. The operation of peer-to-peer file sharing applications, including Limewire.
18. Contracts, grants, and formal or informal agreements between the Company and any federal Government agency, including the U.S. Department of Homeland Security, under which funding was used to obtain personal information from LabMD or other persons without their actual or constructive knowledge or permission
19. The risk of inadvertent file sharing using peer-to-peer applications, including Limewire.

November 13, 2013

By: 

Michael Pepson
Cause of Action
1919 Pennsylvania Ave., NW, Suite 650
Washington, D.C. 20006
Phone: 202.499.2024
Fax: 202.330.5842
michael.pepson@causeofaction.org
Admitted only in Maryland.

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

CERTIFICATE OF SERVICE

This is to certify that on November 13, 2013, I served via email a copy of the foregoing document to:

Alain Sheer
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-3321
Fax Number: 202-326-3062
Email: asheer@ftc.gov

Laura Riposo VanDruff
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-2999
Fax Number: 202-326-3062

Megan Cox
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-2282
Fax Number: 202-326-3062

Margaret Lassack
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-3713
Fax Number: 202-326-3062

Ryan Mehm
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-3713
Fax Number: 202-326-3062

November 13, 2013

By: 
Michael D. Pepson



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>Tiversa Holding Corp. 606 Liberty Avenue Pittsburgh, PA 15222</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
<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>	
<p>3. PLACE OF PRODUCTION</p> <p>Michael D. Pepson Cause of Action 1919 Pennsylvania Ave, NW, Suite 650 Washington, DC 20006</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Michael D. Pepson</p>
<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of LabMD, Inc., Docket 9357</p>	<p>5. DATE AND TIME OF PRODUCTION</p> <p>November 19, 2013</p>

<p>7. MATERIAL TO BE PRODUCED</p> <p>See attached Schedule and Exhibits, Including Protective Order Governing Discovery Material</p>	
<p>8. 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>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Michael D. Pepson Cause of Action 1919 Pennsylvania Ave, NW, Suite 650 Washington, DC 20006 (202) 499-2024 Counsel for Respondent LabMD, Inc.</p>
<p>DATE SIGNED</p> <p>November 13, 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 on the person named herein on November 13, 2013, via Overnight Delivery Certified Mail.

A handwritten signature in blue ink, consisting of several overlapping, fluid strokes that form a cursive name.

Michael D. Pepson

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

**RESPONDENT LABMD, INC.'S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
TIVERSA HOLDING CORPORATION**

PLEASE TAKE NOTICE, pursuant to LabMD’s counsel’s attached Subpoena Duces Tecum issued November 13, 2013, under Rules 3.34 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.34, that LabMD’s counsel requests that the following material be produced to Cause of Action, 1919 Pennsylvania Ave, NW, Suite 650, Washington, DC 20006.

DEFINITIONS

1. **“All documents”** means each document within your possession, custody, or control, 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. **“All communications”** means each communication, as defined below, that is a document that can be located, discovered, or obtained by reasonable, diligent efforts, including without limitation all communications possessed by: (a) you, including communications 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 that you have a legal right to bring within your possession by demand.

3. 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.
4. “**Company**” means 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, attorneys, and other persons working for or on behalf of the foregoing.
5. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on August 28, 2013.
6. The term “**containing**” means containing, describing, or interpreting in whole or in part.
7. “**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.
8. 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.

9. 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
10. “**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.
11. “**LabMD**” means LabMD, Inc., the named respondent in the above-captioned matter, and its directors, officers, and employees.
12. “**Federal Trade Commission**” means the Federal Trade Commission, and its directors, officers, and employees.
13. “**Dartmouth College**” means Dartmouth College, its divisions, programs, projects, affiliates, contractors, and its directors, officers, and employees.
14. “**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.
15. The term “**person**” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or other legal entity.
16. “**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.
17. Documents that are in the Company’s “**possession, custody, or control**” include, but are not limited to, documents that are in the Commission’s constructive possession, custody, or control, as well as documents that are in the possession, custody, or control of Commission’s attorney (if not privileged or work product). This means that the documents do not need to be owned, written, or recorded by the Company to fall within this definition, which should be construed liberally.

18. The terms “**relate**” or “**relating to**” or “**referring 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.
19. “**Subpoena**” means the Subpoena to Tiversa Holding Corporation, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
20. “**You**” or “**your**” means Tiversa Holding Corporation, or the “Company.”
21. “**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
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.
20. Words in the masculine, feminine, or neuter form shall include each of the other genders.

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 (10) 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 LabMD or its counsel 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 LabMD's 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 3.38(a), 16 C.F.R. § 3.38(a), 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 LabMD's 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 currently scheduled for 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.

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 LabMD counsel named above that the proposed formats and media types will be acceptable to LabMD. LabMD requests Concordance load-ready electronic productions, including DAT and OPT load files.

12. **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to LabMD 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;

All ESI other than those documents described in (l)(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

- (b) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.

(1) **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.
- (2) For each document electronically submitted to LabMD, 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.

(3) 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 LabMD's 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.

(4) Submit electronic productions as follows:

(a) With passwords or other document-level encryption removed or otherwise provided to LabMD;

(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. LabMD 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 LabMD; 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.**

(5) 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 LabMD's counsel named above determines prior to submission that the machine-readable form would be in a format that allows LabMD to use the computer files). 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 Michael Pepson, at 202.499.2024, or Reed Rubenstein, at 202.372.9120.
16. Documents responsive to the request shall be addressed to the attention of Michael Pepson, Cause of Action, 1919 Pennsylvania Ave., NW, Suite 650, Washington, DC 20006, and delivered between 8:30 a.m. and 5:00 p.m. on any business day.

SPECIFICATIONS

Demand is hereby made for the following documents:

1. All communications between the Company and the Federal Trade Commission.
2. All documents relating to the Company's communications with the Federal Trade Commission referring or relating to LabMD or the 1,718 File.
3. All documents relating to the Company's communications with the Federal Trade Commission referring or relating to personal information the Company has obtained from other persons without their actual or constructive knowledge or permission.
4. All communications between the Company and Dartmouth College, including Professor Eric M. Johnson.
5. All documents relating to the Company's communications with Dartmouth College referring or relating to LabMD or the 1,718 File.
6. All documents referring or relating to any contracts, grants, and formal or informal agreements between the Company and any federal Government agency, including the U.S. Department of Homeland Security, under which funding was used to obtain personal information from LabMD or other persons without their actual knowledge or permission.
7. All documents referring or relating to the Company's communications with Dartmouth College relating to personal information it has obtained from other persons without their actual or constructive knowledge or permission.
8. All documents referring or relating to LabMD.
9. The 1,718 File.
10. All documents sufficient to show the systems and other means by which the Company searches or monitors peer-to-peer networks.
11. All communications between the Company and persons from whom the Company has obtained personal information without their actual or constructive knowledge or permission referring or relating to the Company's investigative and remediation services, including the terms of its service contracts and nondisclosure agreements.
12. All documents referring or relating to the frequency, duration, means, method, purpose, and objectives with which the Company has searched and currently searches for, accesses, identifies, or obtains files or copies of files containing personal information from other persons without their actual or constructive knowledge or permission.

November 13, 2013

By: _____



Michael Pepson
Cause of Action
1919 Pennsylvania Ave., NW, Suite 650
Washington, D.C. 20006
Phone: 202.499.2024
Fax: 202.330.5842
michael.pepson@causeofaction.org
Admitted only in Maryland.
Practice limited to cases in federal court and
administrative proceedings before federal agencies.

CERTIFICATE OF SERVICE

This is to certify that on November 13, 2013, I served via email a copy of the foregoing document to:

Alain Sheer
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-3321
Fax Number: 202-326-3062
Email: asheer@ftc.gov

Laura Riposo VanDruff
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-2999
Fax Number: 202-326-3062

Megan Cox
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-2282
Fax Number: 202-326-3062

Margaret Lassack
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-3713
Fax Number: 202-326-3062

Ryan Mehm
Attorney
Federal Trade Commission
600 Pennsylvania Ave, NW
Room NJ-8100
Washington, DC 20580
Phone: 202-326-3713
Fax Number: 202-326-3062

November 13, 2013

By: 
Michael D. Pepson

Exhibit A

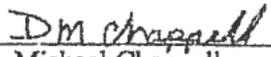
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

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

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 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.

EXHIBIT 9



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

PUBLIC

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 'LRiposoVanDruff', with a long horizontal line 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 PUBLIC 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>Tiversa Holding Corp. 606 Liberty Avenue Pittsburgh, PA 15222</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>Tiversa Holding Corp. 606 Liberty Avenue Pittsburgh, PA 15222</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>November 6, 2013</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>9/30/13</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:

Tiversa Holding Corporation
606 Liberty Avenue
Pittsburgh, PA 15222
vic FedEx for 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 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)

<p>1. TO</p> <p>Tiversa Holding Corp. 606 Liberty Avenue Pittsburgh, PA 15222</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>October 30, 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>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>9/30/13</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:

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:

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 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.

EXHIBIT 10

JOHN L. MICA, FLORIDA
MICHAEL R. TURNER, OHIO
JOHN J. DUNCAN, JR., TENNESSEE
PATRICK T. MCENRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
PAUL A. GOSAR, ARIZONA
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DESJARLAIS, TENNESSEE
TREY GOWDY, SOUTH CAROLINA
BLAKE FARENTHOLD, TEXAS
DOC HASTINGS, WASHINGTON
CYNTHIA M. LUMMIS, WYOMING
ROB WOODALL, GEORGIA
THOMAS MASSIE, KENTUCKY
DOUG COLLINS, GEORGIA
MARK MEADOWS, NORTH CAROLINA
KERRY L. BENTIVOLIO, MICHIGAN
RON DESANTIS, FLORIDA

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

FACSIMILE (202) 225-3974

MINORITY (202) 225-5051

<http://oversight.house.gov>

CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
MATTHEW A. CARTWRIGHT, PENNSYLVANIA
L. TAMMY DUCKWORTH, ILLINOIS
ROBIN L. KELLY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
PETER WELCH, VERMONT
TONY CARDENAS, CALIFORNIA
STEVEN A. HORSFORD, NEVADA
MICHELLE LUJAN GRISHAM, NEW MEXICO
VACANCY

LAWRENCE J. BRADY
STAFF DIRECTOR

June 11, 2014

The Honorable Edith Ramirez
Chairwoman
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Madam Chairwoman:

The Committee on Oversight and Government Reform is investigating the activities of Tiversa, Inc., a company upon which the Federal Trade Commission (“FTC”) relied as a source of information in its enforcement action against LabMD, Inc.¹ Information the Committee recently obtained indicates that the testimony provided by company officials to federal government entities may not have been truthful.

The Committee’s ongoing investigation has shown that competing claims exist about the culpability of those responsible for the dissemination of false information. It is clear at this point, however, that the information provided to the FTC is incomplete and inaccurate. A witness in the proceedings against LabMD, Inc. recently testified to the Committee that he provided incomplete or inaccurate information to the FTC regarding the origin of a “1718” document. In a transcribed interview with Committee staff, Tiversa’s Chief Executive Officer, Robert Boback, testified that he received “incomplete information with regard to my testimony of FTC and LabMD.”² He further stated that the “the original source of the disclosure was incomplete.”³ Mr. Boback testified:

Q How did you determine that it was incomplete or that there was a problem with the spread analysis?

A I had . . . [Tiversa Employee A], perform[] an analysis, again, remember, data store versus the peer to peer. So the information in the data store, [Tiversa Employee B] performed another analysis to say, what was the original source of the file from LabMD and what

¹ See *In re LabMD, Inc.*, No. 9357 (Fed. Trade Comm’n Aug. 29, 2013), available at <http://www.ftc.gov/sites/default/files/documents/cases/2013/08/130829labmdpart3.pdf>.

² Transcribed Interview of Robert Boback, Transcript at 129-130 (June 5, 2014) [hereinafter Boback Tr.].

³ *Id.*

The Honorable Edith Ramirez

June 11, 2014

Page 2

was the disclosure, a full analysis of it which then provided to me, which expanded upon what [Tiversa Employee B] had told me when I asked [Tiversa Employee B] prior to my testimony. And the only reason why I asked [Tiversa Employee B] in the first place was because [Tiversa Employee B] was the analyst on it at the time when it was found, so I asked the analyst who was most familiar with this. I didn't know [Tiversa Employee B] was going to provide me with less than accurate information.

* * *

Q So at the time that you were first made aware of the 1718 document in April, May of 2008, Tiversa employees had not conducted the spread analysis?

A No.

Q And you did not know the original source of the 1718 document?

A I did not. No.

* * *

Q Did there come a point at which a Tiversa employee determined who the original source of the 1718 document was?

A Well, that's – yes. A Tiversa employee told me who the original source was . . . just before I testified . . . in the deposition [in the FTC LabMD case] in November of last year. And, subsequently, we have done a new search and found that the origin was different than what was provided to me . . . in November.

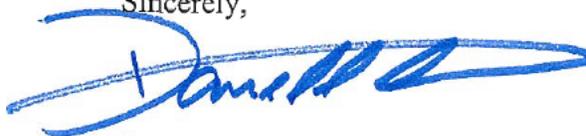
The Committee brings this matter to your attention because this information bears directly on the ongoing proceeding against LabMD, Inc. The Committee is currently considering next steps with regard to its own investigation, including the possibility of holding hearings, agreeing to hear certain testimony in executive session, and, based on information provided, to immunize certain future testimony pursuant to 18 U.S.C. § 6005. The Committee may request documents and access to relevant FTC witnesses. It is my expectation that you and your staff will cooperate fully with any subsequent requests for documents or transcribed witness interviews.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X.

The Honorable Edith Ramirez
June 11, 2014
Page 3

If you have any questions, please contact the Committee staff at (202) 225-5074.
Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, sweeping flourish extending to the right.

Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
William A. Sherman II, Counsel, LabMD, Inc.
Laura Riposo VanDruff, Complain Counsel, U.S. Federal Trade Commission
William A. Burck, Quinn Emanuel Urquhart & Sullivan LLP

JOHN L. MICA, FLORIDA
MICHAEL R. TURNER, OHIO
JOHN J. DUNCAN, JR., TENNESSEE
PATRICK T. McHENRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
PAUL A. GOSAR, ARIZONA
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DESJARLAIS, TENNESSEE
TREY GOWDY, SOUTH CAROLINA
BLAKE FARENTHOLD, TEXAS
DOC HASTINGS, WASHINGTON
CYNTHIA M. LUMMIS, WYOMING
ROB WOODALL, GEORGIA
THOMAS MASSIE, KENTUCKY
DOUG COLLINS, GEORGIA
MARK MEADOWS, NORTH CAROLINA
KERRY L. BENTIVOLIO, MICHIGAN
RON DeSANTIS, FLORIDA

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
<http://oversight.house.gov>

PUBLIC
CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
JACKIE SPEIER, CALIFORNIA
MATTHEW A. CARTWRIGHT, PENNSYLVANIA
L. TAMMY DUCKWORTH, ILLINOIS
ROBIN L. KELLY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
PETER WELCH, VERMONT
TONY CARDENAS, CALIFORNIA
STEVEN A. HORSFORD, NEVADA
MICHELLE LUJAN GRISHAM, NEW MEXICO
VACANCY

LAWRENCE J. BRADY
STAFF DIRECTOR

July 18, 2014

The Honorable Edith Ramirez
Chairwoman
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Madam Chairwoman:

The Committee on Oversight and Government Reform is investigating the activities of Tiversa, Inc., a company the Federal Trade Commission relied upon as a source of information in investigations and enforcement actions. The Committee has learned that the FTC received information on nearly 100 companies from Tiversa, and initiated investigations or enforcement actions against multiple companies after receiving the information. The Committee has received serious allegations against Tiversa related to the ways that the company collected and used that information. In the course of investigating those allegations, the Committee obtained documents and testimony that show the company's business practices cast doubt on the reliability of the information that Tiversa supplied to the FTC. Given what the Committee has learned so far, I have serious reservations about the FTC's reliance on Tiversa as a source of information used in FTC enforcement actions. I am also concerned that the FTC appears to have acted on information provided by Tiversa without verifying it in any meaningful way.

From the information the Committee has gathered the relationship between the FTC and Tiversa dates back to 2007. In July 2007, Tiversa and the FTC testified before the Oversight and Government Reform Committee about the dangers of peer-to-peer networks.¹ Following Tiversa's July 2007 testimony, the FTC had a number of conversations with Tiversa about the risks of inadvertent sharing on peer-to-peer networks.² According to documents obtained by the Committee, after at least two telephone conversations between FTC and Tiversa employees,

¹ H. Comm. on Oversight & Gov't Reform, *Hearing on Inadvertent File Sharing Over Peer-to-Peer Networks*, 110th Cong. (July 24, 2007) (H. Rept. 110-39).

² E-mail traffic indicates that representatives from the FTC and Tiversa held a conference call with an online meeting component on October 26. E-mail from [FTC Employee 1], Fed. Trade Comm'n, to Robert Boback, CEO, Tiversa, Inc. (Oct. 22, 2007 2:23 p.m.) ("We'll plan on speaking with you at 10:30 on Friday morning (10/26). I'll check on our ability to do the call with web access to be able to view a presentation." E-mail from Robert Boback, CEO, Tiversa, Inc., to [FTC Employee 1], Fed. Trade Comm'n (Oct. 22, 2007 3:25 p.m.) ("I have scheduled our demonstration for Friday at 10:30."). Another phone conversation appears to have occurred on December 19, 2007. E-mail from Robert Boback, CEO, Tiversa, Inc., to [FTC Employee 1], Fed. Trade Comm'n (Dec. 11, 2007 2:04 p.m.) ("2 pm on Wednesday (12/19) will work. Let's plan for that time.").

The Honorable Edith Ramirez
July 18, 2014
Page 2

Robert Boback, Tiversa's CEO, sent information to the FTC in December 2007.³ It is unclear what specific information Tiversa sent to the FTC at that time or how that information was used.

In 2009, Tiversa and FTC again testified before the Oversight and Government Reform Committee at another hearing on the risk of inadvertent sharing on peer-to-peer networks.⁴ The Committee has learned that around the same time as this hearing, the FTC contacted Tiversa and asked for information about companies with large data breaches.⁵ In order to receive the information, the FTC issued a civil investigative demand to the Privacy Institute, an entity Tiversa apparently created for the specific and sole purpose of providing information to the FTC. Mr. Boback explained the relationship between Tiversa and the Privacy Institute during a transcribed interview with the Committee. He testified that Tiversa lawyers set up the Privacy Institute "to provide some separation from Tiversa from getting a civil investigative demand at Tiversa, primarily. And, secondarily, it was going to be used as a nonprofit, potentially, but it never did manifest."⁶

Through the Privacy Institute, Tiversa produced a spreadsheet to the FTC that contained information on data breaches at a large number of companies.⁷ Mr. Boback further testified that Tiversa provided information on "roughly 100 companies" to the FTC.⁸

In February 2010, the FTC announced that it notified "almost 100 organizations" that personal information had been shared from the organizations' computer networks and was available on peer-to-peer networks.⁹ The FTC also announced that it opened non-public investigations concerning an undisclosed number of companies.¹⁰ The timing of the Privacy Institute's production of negative information on "roughly 100 companies" to the FTC, and the FTC's subsequent announcement that it notified "almost 100 organizations" that they were under FTC scrutiny, creates the appearance that the FTC relied substantially on the information that Tiversa collected and provided.

That same month, Mr. Boback gave an interview to *Computerworld* about the FTC's announcement.¹¹ He stated, "We were happy to see that the FTC [has] finally started recognizing that P2P [peer-to-peer] is a main source for criminals to gain access to consumer's personally identifiable information for ID theft and fraud."¹² Mr. Boback also stated that 14 of the companies the FTC contacted had already reached out to Tiversa for assistance, and that 12

³ E-mail from Robert Boback, CEO, Tiversa, Inc., to [FTC Employee 1], Fed. Trade Comm'n (Dec. 19, 2007 3:08 p.m.) ("Per our discussion...see attached.").

⁴ H. Comm. on Oversight & Gov't Reform, *Hearing on Inadvertent File Sharing Over Peer-to-Peer Networks: How it Endangers Citizens and Jeopardizes National Security*, 111th Cong. (July 29, 2009) (111-25).

⁵ H. Comm. on Oversight & Gov't Reform, Transcribed Interview of Robert Boback, CEO, Tiversa, Inc., at 169 (June 5, 2014) [hereinafter Boback Tr.].

⁶ Boback Tr. at 42-43.

⁷ Boback Tr. at 169.

⁸ Boback Tr. at 171.

⁹ Fed. Trade Comm'n, Press Release, *Widespread Data Breaches Uncovered by FTC Probe* (Feb. 22, 2010).

¹⁰ *Id.*

¹¹ Jaikumar Vijayan, *FTC seeks extensive information from firms being investigated for P2P breaches*,

COMPUTERWORLD, Feb. 25, 2010,

http://www.computerworld.com/s/article/9162560/FTC_seeks_extensive_information_from_firms_being_investigated_for_P2P_breaches?taxonomyId=84&pageNumber=1.

¹² *Id.*

The Honorable Edith Ramirez
July 18, 2014
Page 3

of those companies received civil investigative demands.¹³ Because Tiversa was benefiting commercially from the fact that the FTC was investigating the companies that Tiversa itself referred to the FTC, it is critical for the Committee to understand the relationship between the FTC and Tiversa, and whether Tiversa manipulated the FTC in order to enrich themselves.

In order to assist the Committee in its investigation, please provide the following documents as soon as possible, but by no later than 5:00 p.m. on July 21, 2014:

1. All civil investigative demand letters the FTC sent to the Privacy Institute and Tiversa, Inc.
2. All documents, including spreadsheets, produced by the Privacy Institute or Tiversa to the FTC in response to any civil investigative demand letters sent by the FTC.
3. All letters or other notices sent by the FTC sent to “almost 100 organizations” as discussed in a February 22, 2010, FTC press release.
4. All civil investigative demand letters the FTC sent as part of the investigations announced in the February 22, 2010, FTC press release.

The Committee on Oversight and Government Reform is the principal investigative committee of the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate “any matter” at “any time.” An attachment to this letter provides additional information about responding to the Committee’s request.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Tyler Grimm or Jennifer Barblan of the Committee staff at (202) 225-5074. Thank you for your prompt attention to this matter.

Sincerely,



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

¹³ *Id.*

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Phone: (202) 225-5274
Modem: (202) 225-5891

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

JOHN L. MICA, FLORIDA
MICHAEL R. TURNER, OHIO
JOHN J. DUNCAN, JR., TENNESSEE
PATRICK T. McHENRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
PAUL A. GOSAR, ARIZONA
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DESJARLAIS, TENNESSEE
TREY GOWDY, SOUTH CAROLINA
BLAKE FARENTHOLD, TEXAS
DOC HASTINGS, WASHINGTON
CYNTHIA M. LUMMIS, WYOMING
ROB WOODALL, GEORGIA
THOMAS MASSIE, KENTUCKY
DOUG COLLINS, GEORGIA
MARK MEADOWS, NORTH CAROLINA
KERRY L. BENTIVOLIO, MICHIGAN
RON DESANTIS, FLORIDA

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

FACSIMILE (202) 225-3974

MINORITY (202) 225-5051

<http://oversight.house.gov>

CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
JACKIE SPEIER, CALIFORNIA
MATTHEW A. CARTWRIGHT, PENNSYLVANIA
L. TAMMY DUCKWORTH, ILLINOIS
ROBIN L. KELLY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
PETER WELCH, VERMONT
TONY CARDENAS, CALIFORNIA
STEVEN A. HORSFORD, NEVADA
MICHELLE LUJAN GRISHAM, NEW MEXICO
VACANCY

LAWRENCE J. BRADY
STAFF DIRECTOR

June 17, 2014

Ms. Kelly Tshibaka
Acting Inspector General
Federal Trade Commission
Room CC-5206
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Ms. Tshibaka:

The Committee on Oversight and Government Reform is investigating the activities of Tiversa, Inc., a company that provided information to Federal Trade Commission in an enforcement action against LabMD, Inc.¹ In 2008, Tiversa allegedly discovered a document containing the personal information of thousands of patients on a peer-to-peer network.² Tiversa contacted LabMD in May 2008, explaining that it believed it had identified a data breach at the company and offering “remediation” services through a professional services agreement.³ LabMD did not accept Tiversa’s offer because LabMD believed it had contained and resolved the data breach. Tiversa, through an entity known as the Privacy Institute, later provided the FTC with a document it created that included information about LabMD, among other companies.⁴ Apparently, Tiversa provided information to the FTC about companies that refused to buy its services. In the case of LabMD, after Tiversa provided questionable information to the FTC, the Commission sought an enforcement action against the company under its Section 5 authority related to deceptive and unfair trade practices.⁵

In addition to concerns about the merits of the enforcement action with respect to the FTC’s jurisdiction, the Committee has substantial concerns about the reliability of the information Tiversa provided to the FTC, the manner in which Tiversa provided the information, and the relationship between the FTC and Tiversa. For instance, according to testimony by

¹ See Complaint, *In re LabMD, Inc.*, No. 9357 (Fed. Trade Comm’n, Aug. 29, 2013), available at <http://www.ftc.gov/sites/default/files/documents/cases/2013/08/130829labmdpart3.pdf>.

² Respondent LabMD, Inc.’s Answer and Defenses to Administrative Complaint, *In re LabMD, Inc.*, No. 9357 (Fed. Trade Comm’n, Sept. 17, 2013), at 5.

³ Respondent LabMD, Inc.’s Motion to Dismiss Complaint with Prejudice and to Stay Administrative Proceedings, *In re LabMD, Inc.*, No. 9357 (Fed. Trade Comm’n, Nov. 12, 2013), at 5.

⁴ H. Comm. on Oversight & Gov’t Reform, Transcribed Interview of Robert Boback, Chief Executive Officer, Tiversa, Inc., Transcript at 42 (June 5, 2014) [hereinafter Boback Tr.].

⁵ See generally 15 U.S.C. § 45.

Ms. Kelly Tshibaka
June 17, 2014
Page 2

Tiversa CEO Robert Boback, the Committee has learned of allegations that Tiversa created the Privacy Institute in conjunction with the FTC specifically so that Tiversa could provide information regarding data breaches to the FTC in response to a civil investigative demand. The Committee has also learned that Tiversa, or the Privacy Institute, may have manipulated information to advance the FTC's investigation. If these allegations are true, such coordination between Tiversa and the FTC would call into account the LabMD enforcement action, and other FTC regulatory matters that relied on Tiversa supplied information.

Further, the Committee has received information from current and former Tiversa employees indicating a lack of truthfulness in testimony Tiversa provided to federal government entities. The Committee's investigation is ongoing, and competing claims exist about the culpability of those responsible for the dissemination of false information. It is now clear, however, that Tiversa provided incomplete and inaccurate information to the FTC. In a transcribed interview with Oversight and Government Reform Committee staff, Mr. Boback testified that he received "incomplete information with regard to my testimony of FTC and LabMD."⁶ He stated that he now knows "[t]he original source of the disclosure was incomplete."⁷ Mr. Boback testified:

Q How did you determine that it was incomplete or that there was a problem with the spread analysis?

A I had . . . [Tiversa Employee A] perform[] an analysis, again, remember, data store versus the peer to peer. So the information in the data store, he performed another analysis to say, what was the original source of the file from LabMD and what was the disclosure, a full analysis of it which then provided to me, which expanded upon what [Tiversa Employee B] had told me when I asked [Tiversa Employee B] prior to my testimony. And the only reason why I asked [Tiversa Employee B] in the first place was because [Tiversa Employee B] was the analyst on it at the time when it was found, so I asked the analyst who was most familiar with this. I didn't know [Tiversa Employee B] was going to provide me with less than accurate information.⁸

* * *

Q So at the time that you were first made aware of the 1718 document in April, May of 2008, Tiversa employees had not conducted the spread analysis?

A No.

Q And you did not know the original source of the 1718 document?

⁶ Boback Tr. at 129.

⁷ *Id.*

⁸ *Id.* at 129-130.

Ms. Kelly Tshibaka
June 17, 2014
Page 3

A I did not. No.

* * *

Q Did there come a point at which a Tiversa employee determined who the original source of the 1718 document was?

A Well, that's – yes. A Tiversa employee told me who the original source was ... just before I testified ... in the deposition [in the FTC LabMD case] in November of last year. And, subsequently, we have done a new search and found that the origin was different than what was provided to me ... in November.⁹

The possibility that inaccurate information played a role in the FTC's decision to initiate enforcement actions against LabMD is a serious matter. The FTC's enforcement actions have resulted in serious financial difficulties for the company.¹⁰ Additionally, the alleged collaboration between the FTC and Tiversa, a company which has now admitted that the information it provided to federal government entities—including the FTC—may be inaccurate, creates the appearance that the FTC aided a company whose business practices allegedly involve disseminating false data about the nature of data security breaches. The Committee seeks to understand the motivations underlying the relationship between Tiversa and the FTC.

The Committee is currently considering next steps, including the possibility of holding hearings, agreeing to take certain testimony in executive session, and, based on information provided, to immunize certain future testimony pursuant to 18 U.S.C. § 6005. Concurrent with the Committee's investigative efforts, I request that you undertake a full review of the FTC's relationship with Tiversa.

Specifically, I ask that your office examine the following issues:

1. FTC procedures for receiving information that it uses to bring enforcement actions pursuant to its authority under Section 5, and whether FTC employees have improperly influenced how the agency receives information.
2. The role played by FTC employees, including, but not limited to, Alain Sheer and Ruth Yodaiken, in the Commission's receipt of information from Tiversa, Inc. through the Privacy Institute or any other entity, and whether the Privacy Institute or Tiversa received any benefit for this arrangement.
3. The reasons for the FTC's issuance of a civil investigative demand to the Privacy Institute instead of Tiversa, the custodian of the information.

⁹ *Id.* at 162-163.

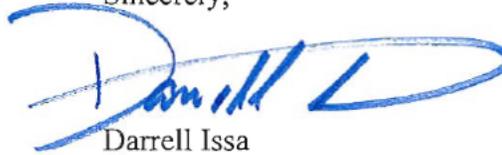
¹⁰ Rachel Louise Ensign, *FTC Cyber Case Has Nearly Put Us Out of Business, Firm Says*, WALL ST. J., Jan. 28, 2014, <http://blogs.wsj.com/riskandcompliance/2014/01/28/ftc-cyber-case-has-nearly-put-us-out-of-business-firm-says/>.

Ms. Kelly Tshibaka
June 17, 2014
Page 4

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X.

If you have any questions about this request, please contact Tyler Grimm or Jennifer Barblan of the Committee staff at (202) 225-5074. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, stylized flourish extending to the right.

Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

EXHIBIT 11

AFFIDAVIT OF CYNTHIA L. COUNTS

STATE OF GEORGIA

COUNTY OF FULTON

Personally appeared before the undersigned attesting officer, duly authorized to administer oaths in the State and County aforesaid, Cynthia L. Counts, after being duly sworn, states on oath and deposes as follows:

1. All statements herein are within my personal knowledge. I am fully competent to testify to the facts recited herein.

2. I am an attorney representing Michael J. Daugherty and LabMD, Inc. ("LabMD") in a lawsuit filed against them by Tiversa Holding Corp. ("Tiversa") and Robert J. Boback in the United States District Court for the Western District of Pennsylvania at Civil Action Number 13-cv-01269-NBF.

3. On June 10, 2014 at approximately 4:00 p.m., I attended a status conference before the Honorable Nora Barry Fischer, to discuss, among other things, scheduling and case management issues in the lawsuit.

4. Also in attendance were my co-counsel, Richard T. Victoria, as well as Jarrod Shaw, Esq., and Lucas Liben, Esq., each from the law firm of Reed Smith LLP and counsel for Mr. Boback and Tiversa, Ms. Katri Tremblay, a summer associate from Reed Smith LLP, and Brian Kravetz, Judge Fischer's law clerk.

5. During the conference, the Judge asked the parties about staying or staging discovery. I mentioned my understanding that Mr. Shaw, who also represented Mr. Boback at the FTC trial and at his deposition this past Saturday, should not be in any hurry to conduct discovery because Mr. Boback had already left for Africa the day before and would be gone for the whole month.

6. Mr. Shaw immediately clarified that Mr. Boback had not left, but was, in fact, "still here," and he was not leaving for two more days. Mr. Shaw further explained that Mr. Boback would not be gone the entire month. My recollection is Mr. Shaw stated that Mr. Boback was returning on the 24th.

7. Further affiant sayeth not.

8. The foregoing affidavit is given under oath.

[SIGNATURE ON FOLLOWING PAGE]

Dated June 12th, 2014.

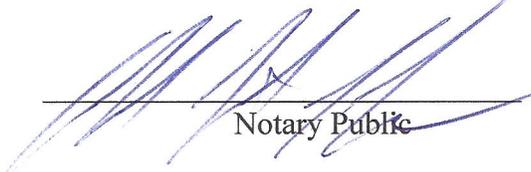


CYNTHIA L. COUNTS

I, a Notary Public, residing in the county and state aforesaid, do certify that CYNTHIA L. COUNTS personally did sign, seal, and deliver the foregoing instrument of her own free will and accord, for the purposes therein named and expressed.

In witness whereof, I have hereunto set my hand and official seal, this 12th day of June, 2014.

My commission expires: 06/20/2017



Notary Public



4. On June 10, 2014 at approximately 4:00 p.m., I attended a status conference before the Honorable Nora Barry Fischer, the judge to whom the Lawsuit is assigned, as counsel for Mr. Daugherty and LabMD in the Lawsuit.

5. Also in attendance at that conference were my co-counsel, Cynthia Counts, Esq., Jarrod Shaw, Esq., and Lucas Liben, Esq., each from the law firm of ReedSmith LLP and counsel for Mr. Boback and Tiversa, Ms. Katri Tremblay, a summer associate from ReedSmith LLP, and Brian Kravetz, Esq., Judge Fischer's law clerk.

6. The purpose of the conference was to discuss certain scheduling and case management issues in the Lawsuit.

7. During the conference, my co-counsel, Cynthia Counts, Esq., stated that it was her understanding that Mr. Boback would be out of the country (the United States) until the end of June 2014.

8. In response to Ms. Counts' statement, Mr. Shaw advised that Mr. Boback would be leaving the country in two days and would return on June 24, 2014.

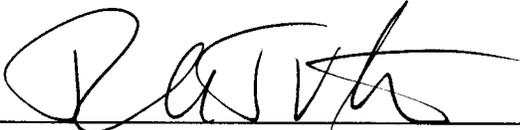
9. Though I do not recall who first stated it, both Mr. Shaw and Ms. Counts expressed an understanding that Mr. Boback would be in Africa during the time that he was out of the country.

THIS SPACE LEFT BLANK INTENTIONALLY

10. The foregoing statements are true, accurate, and correct to the best of my knowledge, information and belief.

FURTHER Affiant sayeth not

Dated: June 12, 2014


Richard T. Victoria

Subscribed and sworn to
before the undersigned, this
12th day of June, 2014.


NOTARY PUBLIC

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Lauraine Lynn Samuels, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Sept. 20, 2017
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

[Faint, illegible text, likely bleed-through from the reverse side of the page]