

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



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

PUBLIC  
Docket No. 9317

**ORIGINAL**

**NON-PARTY RICHARD WALLACE'S  
MOTION FOR A SHORT CONTINUANCE**

Counsel for Richard Wallace, a non-party witness in this action, respectfully moves the Court, pursuant to Rule 3.21(c)(2) and 3.22 of the Commission's Rules of Practice, for a brief, two-week continuance of the trial of this action.

It is our understanding that trial will resume on March 3, 2015, with the direct examination of Mr. Wallace, followed by Complaint Counsel's two-hour deposition, both pursuant to a Rule 3.39(b)(2) grant of immunity. In order to adequately prepare Mr. Wallace for his testimony in this complex matter, given the gravity of his testimony pursuant to Rule 3.39 immunity and other pending client matters, counsel respectfully requests a two week continuance of the March 3, 2015 trial date or such continuance as the Court's calendar may allow.

**Background**

Mr. Wallace was subpoenaed to testify at the trial of this matter, but his testimony was delayed in order to obtain immunity pursuant to Rule 3.39(b)(2). (See Order on Complaint Counsel's Motion for Leave, December 8, 2014 ("Order")). Pursuant to the Order, Complaint Counsel served Mr. Wallace with a deposition subpoena and a subpoena *duces tecum* ("Subpoena"). Counsel for Mr. Wallace, only recently retained in this action, has worked diligently to obtain and provide the documents subpoenaed by Complaint Counsel. (See, e.g.,

Complaint Counsel's Motion to Compel and Withdrawal of Motion to Compel). This process has required substantial time and effort.

### **Request for Continuance**

Counsel for Mr. Wallace is preparing Mr. Wallace to testify at the trial of this action. Among other things, this preparation includes review of extensive background materials relating to this action and meeting with Mr. Wallace to discuss the allegations contained therein, as well as responding to other ancillary matters related to Mr. Wallace's testimony. In light of the complexity of this matter, the geographic distance between client and counsel,<sup>1</sup> and the gravity of Mr. Wallace's testimony pursuant to Rule 3.39(b)(2), counsel requires additional time to adequately prepare. Mr. Wallace has not previously requested a continuance of the trial or his deposition. Further, lead counsel, Mary Beth Buchanan, is required at a hearing in the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 2:15-cv-00776-MMB ("Pennsylvania Matter"), the day before the planned trial of this matter.<sup>2</sup>

Counsel requests only a brief continuance of two weeks, from March 3 until March 17, or such time as the Court's calendar may allow. Counsel has conferred with Complaint Counsel and Respondent's Counsel, and both have indicated that they do not object to the requested continuance. Moreover, counsel for the parties believe that Mr. Wallace's testimony and deposition in this matter can be completed in less than two days.

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<sup>1</sup> Mr. Wallace resides in Pennsylvania, while counsel resides in New York.

<sup>2</sup> Counsel for Mr. Wallace recognizes that the hearing in the Pennsylvania Matter was only recently scheduled, but it was ordered pursuant to a Motion for a Temporary Restraining Order.



Notice of Electronic Service for Public Filings

**I hereby certify that on February 20, 2015, I filed via hand a paper original and electronic copy of the foregoing Motion for Continuance, with:**

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**I hereby certify that on February 20, 2015, I filed via E-Service of the foregoing Motion for Continuance, with:**

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**I hereby certify that on February 20, 2015, I filed via other means, as provided in 4.4(b) of the foregoing Motion for Continuance, with:**

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