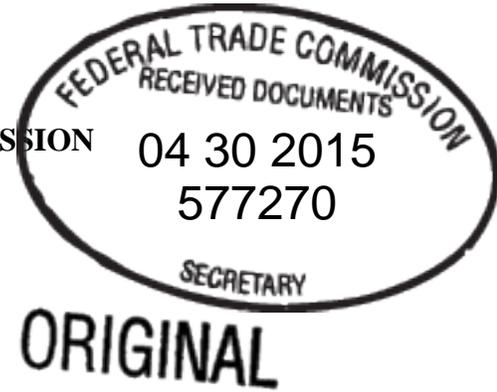


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

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

**COMPLAINT COUNSEL’S OPPOSITION TO
RESPONDENT’S MOTION TO DISQUALIFY
CHAIRWOMAN EDITH RAMIREZ FROM THIS ADMINISTRATIVE PROCEEDING**

Complaint Counsel submits this Opposition to Respondent LabMD, Inc.’s (“LabMD” or “Respondent”) Motion to Disqualify Chairwoman Edith Ramirez. Like other motions previously filed by Respondent in this matter, this filing makes baseless allegations in yet another attempt to distract from the central issues in this case by hurtling unsupported and unfounded allegations. Because Respondent utterly fails to meet the well-established test for disqualification, neither Chairwoman Ramirez nor the Commission should grant the relief sought.

To prevail on a disqualification motion brought under Rule 4.17, 16 C.F.R. § 4.17, Respondent must show that Chairwoman Ramirez has “adjudged the facts as well as the law” alleged in the Complaint. *Cinderella Career & Finishing Schools, Inc. v. Fed. Trade Comm’n*, 425 F.2d 583, 591 (D.C. Cir. 1970) (internal quotation omitted). Respondent must establish, with “affidavits and other information,” Rule 4.17(b)(1), 16 C.F.R. § 4.17(b)(1), that

Chairwoman Ramirez's mind is "irrevocably closed' with regard to the legality of the conduct at issue in the adjudication." *In re N.C. Bd. of Dental Examiners*, No. 9343, 2011 FTC LEXIS 59, at *9 (FTC Feb. 16, 2011) (quoting *FTC v. Cement Inst.*, 333 U.S. 683, 701 (1948)). The moving party in a motion for disqualification bears a "high" burden. *In re Whole Foods*, No. 9324, 2008 WL 4153583, at *2 (FTC Sept. 5, 2008).

Respondent fails to point to any evidence establishing that Chairwoman Ramirez has prejudged the law that the Commission will consider in this matter. Nor is there any evidence establishing that Chairwoman Ramirez's mind is "irrevocably closed" as it relates to the facts alleged in the Complaint. By its own admission Respondent has failed to make such a showing, stating that it holds only a "reasonable suspicion" that Chairwoman Ramirez has prejudged the case. Resp't Motion at 8 ("Ramirez Should Be Disqualified Because There Is A Reasonable Suspicion She Has Prejudged This Case"). Surely, Respondent's bald assertion of a "reasonable suspicion" cannot support disqualification.

Further, there is no merit to Respondent's baseless claim that the Commission's decision-making process is "fatally tainted," thereby warranting Chairwoman Ramirez's disqualification. Resp't Motion at 7 ("The Decisionmaking Process Is Fatally Tainted."). All Respondent points to in support of this allegation are three letters addressed to Chairwoman Ramirez from the former Chairman of the House Committee on Oversight and Government Reform (OGR), as well as documents related to these letters. Far from showing that the agency decision-making process is "tainted," the documents demonstrate the Commission's cooperation with the OGR investigation, compliance with the Commission's Rules of Practice governing administrative proceedings, including Rule 4.11(b), 16 C.F.R. § 4.11(b), and respect for the ongoing administrative litigation involving Respondent.

Accordingly, Chairwoman Ramirez and the Commission should deny Respondent's Motion to Disqualify.

Dated: April 30, 2015

Respectfully submitted,



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Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2015, I filed the foregoing document electronically through the Office of the Secretary's FTC E-filing system, which will send notification of such filing to:

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

I also certify that I caused a paper copy of the foregoing document with an original signature to be filed with the Office of the Secretary.

I also certify that I caused twelve (12) copies of the foregoing document to be delivered to the Office of the Secretary, Room H-113.

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

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

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

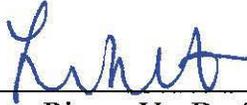
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I further certify that the electronic copy sent to the Office of the Secretary is a true and correct copy of the paper original and that I possess a paper copy of the signed document that is available for review.

April 30, 2015

By: 

Laura Riposo VanDruff
Federal Trade Commission
Bureau of Consumer Protection

Notice of Electronic Service

I hereby certify that on April 30, 2015, I filed via hand a paper original and electronic copy of the foregoing Complaint Counsel's Opposition to Respondent's Motion to Disqualify Chairwoman Ramirez, with:

D. Michael Chappell
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Washington, DC, 20580

I hereby certify that on April 30, 2015, I filed via E-Service of the foregoing Complaint Counsel's Opposition to Respondent's Motion to Disqualify Chairwoman Ramirez, with:

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I hereby certify that on April 30, 2015, I filed via other means, as provided in 4.4(b) of the foregoing Complaint Counsel's Opposition to Respondent's Motion to Disqualify Chairwoman Ramirez, with:

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