

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



ORIGINAL

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

PUBLIC
Docket No. 9357

JOINT MOTION FOR *IN CAMERA*
TREATMENT OF RX541 AND FOR LEAVE OF COURT

Pursuant to Rule 3.45 of the Commission’s Rule of Practice, 16 C.F.R. § 3.45, Complaint Counsel and Respondent LabMD, Inc. request that the Court grant *in camera* treatment to a portion of RX541, a transcript of the June 7, 2014 deposition of Robert Boback, CEO of Tiversa Holding Corp. (“Tiversa”). RX541 includes sensitive personal information about a former Tiversa employee, Richard Wallace, that warrants permanent *in camera* status. The parties also seek leave of Court for Respondent’s counsel to provide counsel for Mr. Wallace with a copy of RX541 so that Mr. Wallace may assess what, if any, additional relief he may seek from the Court.

I. *In Camera* Status for Sensitive Personal Information

RX541 contains sensitive personal information that should be granted *in camera* status. Under Rule 3.45(b), the Administrative Law Judge may order that material be placed *in camera* if the material constitutes sensitive personal information. 16 C.F.R. § 3.45(b).

“Sensitive personal information” shall include, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and

any sensitive health information identifiable by individual, such as an individual's medical records.

Id. Sensitive personal information “shall be accorded permanent in camera treatment unless disclosure or an expiration date is required and provided by law.” 16 C.F.R. § 3.45(b)(3).

During the June 7, 2014 Deposition of Robert Boback, Mr. Boback testified regarding Mr. Wallace's [REDACTED] *See* Boback Depo Tr. (June 7, 2014), admitted as RX541, at 104, lines 17-20, relevant pages attached as Exhibit A. The testimony that Mr. Wallace [REDACTED] because it reveals [REDACTED] falls within the definition of sensitive personal information under Rule 3.45(b), and thus is presumptively *in camera*. *See* 16 C.F.R. § 3.45(b). Accordingly, the Court should confer RX541 page 104 lines 17-20 with permanent *in camera* treatment. *See id.* § 3.45(b)(3).

II. Wallace Review of Information Contained in RX541

During the June 7, 2014 deposition of Mr. Boback, counsel for Tiversa invoked the provisions of the Court's August 29, 2013 Protective Order as it related to certain information regarding Mr. Wallace. *See* Ex. A at 102-03. The Protective Order prevents the parties from disclosing confidential material, including deposition transcripts containing sensitive personal information, to third parties. Protective Order ¶¶ 7, 8. Accordingly, neither Complaint Counsel nor counsel for Respondent has provided Mr. Wallace's counsel with a copy of the testimony that is the subject of this Joint Motion. As a result, Mr. Wallace has not had the opportunity to seek relief from the Court. The parties submit that it is in the interest of justice for the Court to grant leave to permit Respondent to provide counsel for Mr. Wallace with a copy of RX541. *See* 16 C.F.R. § 3.42(c).

Dated: July 1, 2014

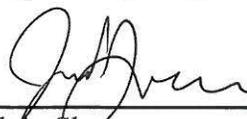
William Sherman / with permission
JAB

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Respectfully submitted,



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Complaint Counsel

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**[PROPOSED] ORDER GRANTING MOTION FOR
IN CAMERA TREATMENT OF RX541 AND FOR LEAVE OF COURT**

Upon consideration of the Joint Motion for *In Camera* Treatment of RX541 and for Leave of Court, it is hereby

ORDERED, that Respondent’s exhibit RX541 is granted permanent *in camera* treatment and that Respondent shall create a public version of RX541, labeled RX541-A, that redacts lines 17-20 of page 104 and thus can be entered into the public record.

IT IS FURTHER ORDERED, that Respondent shall provide counsel for Richard Wallace with a copy of RX541.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2014, I caused the foregoing document to be filed electronically through the Office of the Secretary's FTC E-filing system, which will send notification of such filing to:

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

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

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

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

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CERTIFICATE FOR ELECTRONIC FILING

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

July 1, 2014

By: 
Jarad Brown
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

CONFIDENTIAL – REDACTED IN ENTIRETY

Excerpts of RX541