

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

**COMPLAINT COUNSEL’S MOTION FOR LEAVE
TO ISSUE SUBPOENAS TO RICHARD WALLACE**

Complaint Counsel respectfully moves for leave to issue subpoenas to Respondent’s witness Richard Wallace, seeking evidence concerning his anticipated testimony, including evidence regarding the alleged misconduct by Complaint Counsel and Mr. Wallace’s alleged falsification of evidence. This discovery is appropriate at this time to facilitate the efficient examination of Mr. Wallace. Complaint Counsel did not have any reason to take discovery regarding Mr. Wallace’s anticipated testimony during discovery or at any point prior to the attorney proffer on June 12, 2014. Complaint Counsel met and conferred with counsel for Respondent on this motion, but was unable to reach agreement. *See* Meet and Confer Statement (attached as Exhibit A). The requested subpoenas are necessary to allow Complaint Counsel to prepare for the cross-examination of Mr. Wallace and would serve the interests of justice and facilitate the disposition of this case on the merits.

BACKGROUND

The 1718 File, a LabMD document containing the sensitive personal information of thousands of consumers, was found on a peer-to-peer network by Tiversa Holding Corporation

(“Tiversa”). During discovery in this action, Robert Boback testified, in his deposition as Tiversa’s Rule 3.33 designee, that the 1718 File had been found at four IP addresses, none of which were LabMD. CX0703 (Boback, Tiversa Designee, Dep. at 50-53). These four IP addresses were listed in a document, CX0019, produced to Complaint Counsel. Mr. Boback testified that Tiversa created CX0019 in the regular course of business. CX0703 (Boback, Tiversa Designee, Dep. at 50-51). No question about the authenticity of CX0019 or Mr. Wallace’s role in generating the document was raised by either party during fact discovery, or at any point prior to the June 12, 2014 evidentiary hearing.¹ Respondent’s Final Witness List states only that Mr. Wallace will testify about “Tiversa’s communications with” the FTC and “facts relating to” the 1718 File but provides no detail about the nature of those “communications” or “facts.” Resp’t Final Witness List (Apr. 9, 2014) (attached as Exhibit B) at 4-5. Neither party deposed Mr. Wallace.²

On May 27, 2014, Respondent issued a trial subpoena to Mr. Wallace to testify at the evidentiary hearing in this matter. During the evidentiary hearing on May 30, 2014, counsel for

¹ See, e.g., JX0001 (Joint Stipulations of Fact, Law, and Authenticity) at 4 (stipulating to authenticity of all Complaint Counsel exhibits other than CX0451); Compl., *LabMD, Inc. v. Fed. Trade Comm’n*, Docket No. 1:14-cv-00810-WSD (N.D. Ga. Mar. 20, 2014) (not alleging proffered misconduct or fabrication of CX0019); Resp’t LabMD’s Pre-Trial Brief (May 9, 2014) at 5 n.4 (not raising Mr. Wallace or fabrication of CX0019); RX533 (Expert Report of Adam Fisk) at 23-24 (proposing reasons why 1718 File might be found at San Diego IP address).

² Respondent issued a deposition subpoena to Richard Wallace, an employee of Tiversa, on January 30, 2014 and, in consultation with counsel for Tiversa, scheduled his deposition for March 4, 2014. See 2014 email correspondence between J. Shaw and W. Sherman regarding Wallace Deposition (attached as Exhibit C) at 4. However, on February 26, 2014, counsel for Tiversa notified the parties that Mr. Wallace would be unable to attend due to an unexpected medical issue. See *id.* at 3-4. Respondent contacted counsel for Tiversa on April 3, 2014 to arrange Mr. Wallace’s deposition after close of discovery, but was informed that Mr. Wallace was no longer a Tiversa employee. See Ex. C at 1. The parties later learned that Tiversa discharged Mr. Wallace for cause on February 28, 2014. RX541 (Boback, Dep. at 101). Thereafter, the parties did not depose Mr. Wallace. See Trial Tr. at 1227.

Mr. Wallace advised the Court that Mr. Wallace would invoke his Fifth Amendment rights against self-incrimination in response to any substantive questions if called to testify in this matter. Trial Tr. at 1243-45. Counsel for Mr. Wallace stated that Mr. Wallace was seeking immunity from the United States House of Representatives Committee on Oversight and Government Reform (“Oversight Committee”) for testimony before that Committee. Trial Tr. at 1249. When Mr. Wallace appeared on June 12, 2014 and invoked his Fifth Amendment rights, Respondent’s counsel offered a proffer of Mr. Wallace’s expected testimony. He stated that Mr. Wallace would testify that the 1718 File had been found only at LabMD, and that an attorney for Complaint Counsel visited Tiversa’s offices in October 2013 and told him that “it’s got to be found somewhere else,” whereupon Mr. Wallace wrote down four IP addresses, creating CX0019. Trial Tr. at 1293, *in camera*.

Complaint Counsel requested that Respondent submit an application under Rule 3.39 for immunity for his testimony in this proceeding. *See, e.g.*, Trial Tr. at 1303. Respondent’s counsel responded that such an application would be premature while the Oversight Committee was considering a related request. *See, e.g.*, Trial Tr. at 1280. However, in the weeks that followed, the Oversight Committee did not grant Mr. Wallace immunity for his testimony.

On August 5, 2014, Complaint Counsel renewed its application for Respondent to be required to file a Rule 3.39 request. On August 22, 2014, the Court ordered that Respondent file such a request within five days of a decision of the Oversight Committee declining to grant immunity that would cover Mr. Wallace’s testimony in this proceeding, or by October 1, 2014, whichever occurred first.

On October 1, 2014, Respondent filed a motion under Rule 3.39(b) requesting an order requiring Mr. Wallace to testify in person in this proceeding and granting immunity to Mr.

Wallace with regard to such testimony. On October 9, 2014, the Court issued an Order requesting approval by the Attorney General for the issuance of an order requiring Mr. Wallace to testify and granting immunity.

Following the request of immunity, both parties learned that Tiversa has alleged in its Pennsylvania state court complaint that Mr. Wallace sold his stock in Tiversa for over \$250,000 at the same time he was making his accusations that Tiversa had engaged in improper conduct. *See Verified Complaint* filed in Court of Common Pleas of Allegheny County, Pennsylvania (attached as Exhibit D). Both parties also learned that Tiversa has at least two e-mails in its possession that it claims demonstrate the falsity of Mr. Wallace's claim that he fabricated CX0019.

On November 14, 2014, the Department of Justice approved the request for immunity for Mr. Wallace.

ARGUMENT

There is good cause for the Court to grant Complaint Counsel's request for leave to issue subpoenas to Mr. Wallace, which will allow Complaint Counsel to prepare for Mr. Wallace's testimony and facilitate the proceedings in this case.³ First, Complaint Counsel could not have reasonably anticipated the substance of Mr. Wallace's expected testimony during discovery or at any point prior to the June 12, 2014 evidentiary hearing, or that he would testify contrary to any information given in the deposition of Tiversa's Rule 3.33(c) designee. Second, this motion is not premature and is designed to expedite cross-examination of Mr. Wallace immediately

³ Complaint Counsel is requesting this discovery to facilitate the cross-examination of Mr. Wallace, not to develop its rebuttal case. However, depending on the substance of Mr. Wallace's testimony, Complaint Counsel may renew its request for additional discovery, pursuant to the Court's July 23, 2014 order, to gather the evidence necessary to rebut Wallace's expected testimony.

following his direct testimony, and will serve the interests of justice by allowing Complaint Counsel to conduct a meaningful cross-examination. This is especially important in this case given the fact that Mr. Wallace is expected to make allegations of serious misconduct by Complaint Counsel. Fairness to the parties as well as the interests of justice and judicial economy require permitting this discovery at this time.

I. THE COURT HAS AUTHORITY TO PERMIT THE REQUESTED DISCOVERY

The Commission Rules of Practice provide the Court authority to permit additional discovery at this stage of the proceeding. Rule 3.21(c)(2) provides that “[t]he Administrative Law Judge may, upon a showing of good cause, grant a motion to extend any deadline or time specified in this scheduling order other than the date of the evidentiary hearing”; and Rule 3.41(b)(1) states that the Administrative Law Judge may “grant a reasonable recess at the end of a case-in-chief for the purpose of discovery deferred during the prehearing procedure if the Administrative Law Judge determines that such recess will materially expedite the ultimate disposition of the proceeding.” 16 C.F.R. §§ 3.21(c)(2), 3.41(b)(1). Furthermore, Rule 3.42(c) confers the Administrative Law Judge with the authority “to take all necessary action to avoid delay in the disposition of the proceedings,” which includes the power “[t]o issue subpoenas and orders requiring answer to questions,” and “to cause depositions to be taken.” 16 C.F.R. § 3.42(c), (c)(2)–(3). As discussed in Part III, *infra*, issuing the requested subpoenas at this stage will avoid delay in the disposition of the proceedings. In addition, because Mr. Wallace has been granted immunity pursuant to Rule 3.39(b), he may not invoke his Fifth Amendment rights and the Court can compel him to appear for a deposition.

II. COMPLAINT COUNSEL COULD NOT REASONABLY HAVE ANTICIPATED THE PROFFERED WALLACE TESTIMONY DURING DISCOVERY

There is good cause to permit Complaint Counsel to take discovery of Mr. Wallace because Complaint Counsel could not reasonably have anticipated the need to depose Mr. Wallace before the March 5, 2014 close of discovery or the start of the evidentiary hearing in this matter. Prior to the end of fact discovery, key events concerning which Complaint Counsel is now seeking discovery, such as Mr. Wallace's termination and the sale of his Tiversa stock, had either not yet occurred or had just occurred during a period when Mr. Wallace was not available to be deposed. In addition, CX0019, the document that Mr. Wallace now is expected to claim he fabricated, was authenticated by Tiversa's designee pursuant to Rule 3.33(c) early in the fact discovery period. CX0703 (Boback, Tiversa Designee, Dep. at 50-51). Based on this testimony, Complaint Counsel had no reason to seek further discovery about the creation of CX0019 or to depose Mr. Wallace directly, especially given the substantial independent evidence showing that LabMD had been sharing the 1718 File on the Gnutella network. *See, e.g.*, JX0001 (Joint Stipulations of Fact, Law, and Authenticity) at 3, Stipulations of Fact 9-11; CX0766 (LabMD's Resps. and Objections to Reqs. for Admission) Admission 42; CX0154 (Screenshot: LimeWire: Get Started); CX0152 (Screenshot: LimeWire: My Shared Files); CX0730 (Simmons, Dep. at 12-13, 21-30). Complaint Counsel had no reason to believe that Mr. Wallace would say anything contrary to the testimony of Mr. Boback.⁴

⁴ Prior to Respondent's counsel's proffer concerning Mr. Wallace's testimony, Complaint Counsel stated that there was no objection to Mr. Wallace's direct testimony proceeding without a deposition. Trial Tr. at 439 (May 22, 2014). At that time, however, Complaint Counsel had no reason to believe that Mr. Wallace would testify in any way that was materially different than Mr. Boback had testified as Tiversa's Rule 3.33(c) designee.

Counsel did not learn of the substance of Mr. Wallace's anticipated testimony until Respondent's counsel made a proffer of that testimony during the evidentiary hearing on June 12, 2014. Prior to the evidentiary hearing, Complaint Counsel was not on notice of Mr. Wallace's claim that he fabricated evidence provided by Tiversa or of his allegations regarding misconduct by Complaint Counsel. Nor was the substance of Mr. Wallace's anticipated testimony disclosed or implied by Respondent's witness lists or discovery produced or conducted in this matter. Moreover, Mr. Wallace's anticipated testimony is directly contradicted by sworn testimony and other evidence in the record.

III. THE REQUESTED DISCOVERY IS NOT PREMATURE, WILL EXPEDITE THE ULTIMATE DISPOSITION OF THIS PROCEEDING, AND NOT PREJUDICE RESPONDENT

Complaint Counsel's requested subpoenas are narrowly tailored to prepare for Mr. Wallace's testimony including (1) the circumstances of the alleged fabrication of CX0019, (2) the alleged misconduct by Complaint Counsel, and (3) the circumstances of Mr. Wallace's termination from Tiversa and other issues related to Mr. Wallace's credibility.⁵ Nor is this request premature, as permitting Complaint Counsel to obtain this discovery prior to Mr. Wallace's testimony will serve the interests of justice by allowing Complaint Counsel to prepare to conduct a cross-examination of Mr. Wallace immediately following his direct testimony.

Allowing Complaint Counsel to seek the requested evidence at this time will thus materially expedite the ultimate disposition of the proceeding and will not prejudice

⁵ This includes issues related to the sale by Mr. Wallace of his Tiversa stock, as discussed above. Discovery of these facts is directly relevant to Mr. Wallace's credibility as a witness.

Respondent.⁶ Complaint Counsel seeks leave to issue (1) a subpoena *ad testificandum* to Mr. Wallace requiring Mr. Wallace to appear for a deposition by video⁷; and (2) a subpoena *duces tecum* to Mr. Wallace, which seeks any documents in Mr. Wallace’s possession, custody, or control related to Tiversa, LabMD, the creation of CX0019, his termination by Tiversa, the sale of his Tiversa stock, and certain communications with third parties regarding the Federal Trade Commission or Tiversa.⁸

This discovery is necessary to allow Complaint Counsel a full and fair opportunity to cross-examine Mr. Wallace. Justice and due process require that Complaint Counsel be permitted to prepare for cross-examination. *See* Rule 3.41(c), 16 C.F.R. § 3.41(c) (“Every party. . . shall have the right of . . . cross-examination, . . . and all other rights essential to a fair hearing.”). This is especially important in this case, as Mr. Wallace is expected to offer testimony accusing Complaint Counsel of serious misconduct, which Complaint Counsel could not have foreseen prior to the proffer given by Respondent’s counsel. Granting this leave for limited discovery will facilitate Mr. Wallace’s testimony and prevent the need for Mr. Wallace to appear before the Court on multiple occasions.

⁶ Respondent opposed the requirement to seek immunity on October 1, and requested that the Court continue the recess while the Oversight Committee continued its consideration of Mr. Wallace’s immunity request. *See* Respondent’s Response to Complaint Counsel’s Motion for Order Requiring Respondent’s Counsel to File a Rule 3.39 Request or Resuming the Evidentiary Hearing (Aug. 15, 2014) at 2 (“For these reasons, LabMD respectfully requests that the Court deny Complaint Counsel’s Motion, but if the Court believes a deadline ought to be set . . .”). Respondent thus will not be prejudiced by a brief additional delay in resumption of proceedings.

⁷ Complaint Counsel requests that the deposition proceed by video so that the Court may evaluate the credibility of Mr. Wallace if he becomes unavailable to testify live at the evidentiary hearing.

⁸ *See* [Proposed] Complaint Counsel’s Schedule for Production of Documents Pursuant to Subpoena to Richard Wallace (attached as Exhibit E) at 5.

CONCLUSION

For the foregoing reasons, the Court should grant Complaint Counsel leave to issue the requested subpoenas, which will permit Complaint Counsel to prepare for a meaningful cross-examination of Mr. Wallace and permit cross-examination of Mr. Wallace to begin immediately following direct examination.

Dated: November 21, 2014

Respectfully submitted,



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Complaint Counsel

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 COMPLAINT COUNSEL’S
MOTION FOR LEAVE TO ISSUE SUBPOENAS TO RICHARD WALLACE**

Upon consideration of Complaint Counsel’s Motion for Leave to Issue Subpoenas to Richard Wallace, it is hereby

ORDERED, that Complaint Counsel is granted leave to issue subpoenas *duces tecum* and *ad testificandum* to Richard Wallace.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 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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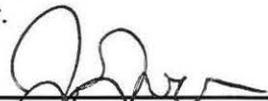
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CERTIFICATE FOR ELECTRONIC FILING

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.

November 21, 2014

By:



Jarad Brown
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

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

In the Matter of)

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

PUBLIC

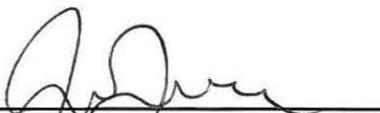
Docket No. 9357

**STATEMENT REGARDING MEET AND CONFER PURSUANT TO
RULE 3.22(g) AND ADDITIONAL PROVISION 4 OF THE SCHEDULING ORDER**

Complaint Counsel respectfully submits this Statement, pursuant to Federal Trade Commission Rule of Practice 3.22(g) and Additional Provision 4 of the Scheduling Order. Prior to filing the attached Motion for Leave to Issue Subpoenas to Richard Wallace, Complaint Counsel Laura Riposo VanDruff, Jarad Brown, and John Krebs met and conferred with counsel for Respondent Prashant Khetan by teleconference on November 20 and 21, 2014 in a good faith effort to resolve by agreement the issues raised by the motion. Despite good faith efforts, Complaint Counsel has been unable to reach agreement with counsel for Respondent regarding seeking leave to issue subpoenas to Mr. Wallace.

Dated: November 21, 2014

Respectfully submitted,



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Complaint Counsel

Exhibit B

C. To amend this Final Proposed Witness List to be consistent with the Court's ruling on any pending motions, including any motions in limine filed in this matter;

D. To question the persons listed below about any topics that are the subjects of testimony by witnesses to be called by Complaint Counsel;

E. Not to present testimony by deposition and/or investigational hearing transcript, declaration, or live orally, from any of the witnesses listed below;

F. To question any person listed below about any other topics that the person testified about at his or her deposition or investigational hearing, or about any matter that is discussed in any documents to which the person had access and which are designated as exhibits by either party or which have been produced since the person's deposition was taken;

G. To present testimony by deposition and/or investigational hearing transcript, affidavit, declaration, or orally by live witness, from any persons, regardless whether they are listed below, to rebut the testimony of witnesses proffered by Complaint Counsel;

H. For any individual listed below as being associated with a corporation, government agency, or other non-party entity, to substitute a witness designated by the associated non-party entity; and

I. To supplement this Final Proposed Witness List as circumstances may warrant.

Subject to these reservations of rights, Complaint counsel's Final Proposed Witness list is as follows:

1. Daniel Kaufman, Bureau of Consumer Protection's Rule 3.33 Witness

We expect that Mr. Kaufman will testify live about the FTC's regulatory scheme regarding data security, any published or unpublished FTC standards, guidelines or regulations which the FTC requires Covered Entities like LabMD to meet regarding the security of Protected Health Information from 2005 to the present; the initiation and evolution of the FTC's standards, guidelines and regulations regarding data security and what these regulations and guidelines required Covered Entities like LabMD to have in place at all relevant times from 2005 to the present; the media by which the FTC alerted or informed Covered Entities like LabMD that these standards, guidelines and regulations existed.

- 2. Robert Boback, Chief Executive Officer of Tiversa Holding Corporation (“Tiversa”)**
We expect that Mr. Boback will testify live, as Tiversa’s corporate designee, about Tiversa’s technology and its use on peer-to-peer file sharing protocols and networks; Tiversa’s communications with the FTC, Eric Johnson and Dartmouth; facts relating to the “P2P insurance aging file” referenced in Paragraph 17 of the Complaint; and other facts relating to the security incident alleged in Paragraphs 17-20 of the Complaint. We also expect that Mr. Boback will testify about facts relating to the documents produced in response to Complaint Counsel’s subpoena duces tecum to the organization that produced Tiversa’s document to the FTC in this action and the admissibility of those documents into evidence in the hearing in this action. We also expect that Mr. Boback will testify about any Civil Investigative Demands which resulted in the production of documents from Tiversa to FTC.
- 3. Eric Johnson, former Associate Dean of the Tuck School of Business at Dartmouth**
We expect that Mr. Johnson will testify live to the facts underlying his study entitled “Data Hemorrhages in the Health-Care Sector”; communications with the FTC, Tiversa, and/or Health and Human Services regarding LabMD, the 1718 file and his research methodology in general and specifically in relation to locating and downloading the 1718; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; and facts relating to affirmative defenses asserted in the Answer.
- 4. Allen Truett, former Chief Executive Officer of Automated PC Technologies, Inc.**
We expect that Mr. Truett will testify live about LabMD’s computer networks, including, but not limited to, remote access thereto; the products and/or services that he and his company, Automated PC Technologies, Inc., provided to LabMD, including but not limited to the security features of those products and/or services; the communications between LabMD and Mr. Truett or Automated PC Technologies, Inc.; the facts underlying and set forth in the affidavit that Mr. Truett executed on May 20, 2011, which LabMD submitted to Commission staff during the Part II investigation; and the facts relating to affirmative defenses asserted in the Answer.
- 5. Karina Jestes, Detective, Sacramento, CA Police Department**
We expect that Detective Jestes will testify by designation about facts relating to the security incident alleged in Paragraphs 10 and 21 of the Complaint; those consumers affected by the security incident alleged in Paragraphs 10 and 21 of the Complaint; facts relating to meetings and communications between her and the FTC; facts relating to the documents produced in response to Complaint Counsel’s subpoena *duces tecum* to the Custodian of Records of the Sacramento, CA Police Department in this action and the admissibility of those documents into evidence in the hearing in this action.
- 6. Robert Hyer, former LabMD IT Manager and former LabMD contractor**
We expect that Mr. Hyer will testify live about LabMD’s computer networks, including, but not limited to, hard ware and soft ware, remote access thereto; LabMD’s security policies and practices, and employee training; the protected health information to which he and other LabMD employees had access; and facts relating to affirmative defenses asserted in the Answer.

7. Jeff Martin, LabMD IT employee and former LabMD contractor

We expect that Mr. Martin will testify by designation about LabMD's computer networks, including, but not limited to, hard ware and soft ware, remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which he and other LabMD employees had access; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; and facts relating to affirmative defenses asserted in the Answer.

8. Allison Simmons, former LabMD IT employee

We expect that Ms. Simmons will testify by designation about her knowledge of LabMD's searches for the 1718 file on P2P networks; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; and facts relating to affirmative defenses asserted in the Answer.

9. Chris Maire, former LabMD employee

We expect that Mr. Maire will testify by designation about LabMD's computer networks, including, but not limited to, hard ware and soft ware, remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which he and other LabMD employees had access; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; and facts relating to affirmative defenses asserted in the Answer.

10. John Boyle, former LabMD employee

We expect that Mr. Boyle will testify live about LabMD's computer networks, including, but not limited to, remote access thereto; hard ware and soft ware, LabMD's security policies and practices, and employee training; the protected health information to which he and other LabMD employees had access; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; and facts relating to affirmative defenses asserted in the Answer.

11. Michael Daugherty, President CEO of LabMD, Inc.

We expect that Mr. Daugherty will testify live about LabMD's computer networks; LabMD's security policies and practices, and employee training; LabMD employees; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; and facts relating to affirmative defenses asserted in the Answer.

12. Lou Carmichael, former LabMD consultant

We expect that Ms. Carmichael will testify by designation about LabMD's security policies and practices, hard ware and soft ware, compliance program, and employee training; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; and facts relating to affirmative defenses asserted in the Answer.

13. Rick Wallace, former Tiversa Employee

We expect that Mr. Wallace will testify live about Tiversa's technology and its use with peer-to-peer file sharing applications and networks; Tiversa's communications with the Federal Trade Commission ("FTC") and Dartmouth College; facts relating to the "P2P insurance aging file" as referenced in Paragraph 17 of the Complaint; Mr. Wallace's and Tiversa's participation and role in Dartmouth's research for the article by Eric Johnson, titled; "Data Hemorrhages in the Health-Care Sector."

14. Chris Gormley, Tiversa Employee

We expect that Mr. Gormley will testify by designation about Tiversa's technology and its use with peer-to-peer file sharing applications and networks; Tiversa's communications with the Federal Trade Commission ("FTC") and Dartmouth College; facts relating to the "P2P insurance aging file" as referenced in Paragraph 17 of the Complaint; Mr. Gormley's and Tiversa's participation and role in Dartmouth's research for the article by Eric Johnson, titled; "Data Hemorrhages in the Health-Care Sector."

15. Rosalind Woodson, Former LabMD Employee

We expect that Rosalind Woodson will testify live about her use of a P2P file sharing application on her work station computer and her knowledge of LabMD's policies regarding such use, as well as her knowledge of the "1718 File."

16. David Lapidés, Detective Sandy Springs, GA Police Department

We expect that Detective Lapidés will testify by designation about his communications with LabMD and the Bureau of Consumer Protection and documents provided to him relating to the security incident alleged in Paragraph 21 of the Complaint; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief. Detective Lapidés will also testify about facts relating to documents that were produced in response to Complaint Counsel's subpoena *duces tecum* to the Sandy Springs, GA Police Department in this action, and the admissibility of those documents into evidence in the hearing in this action.

17. Curt Kaloustian, former LabMD IT employee

We expect that Mr. Kaloustian will testify live about his knowledge of LabMD's computer networks, including, but not limited to, remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which he and other LabMD employees had access; LabMD's IT-related expenditures; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; Respondent's affirmative defenses, or the proposed relief.

18. Kim Gardner, former LabMD Executive Assistant

We expect that Ms. Gardner will testify by designation about LabMD's security policies and practices, and employee training; the protected health information to which she had access; information relating to the wind down of LabMD's business operations and the corresponding relocation of LabMD's business premises; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint

Counsel about which she has knowledge; or any other matters as to which she has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

19. Peter Sandrev, Broadvox employee, Cypress Communications, LLC (“Cypress”) designee

We expect that Mr. Sandrev will testify by designation about LabMD's computer networks, including, but not limited to the products and/or services that Cypress provided to LabMD, including but not limited to any security features of those products and/or services; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which Cypress has knowledge; or any other matters as to which Cypress has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief. He will also testify about facts relating to the documents produced in response to Complaint Counsel's subpoena *duces tecum* to Cypress in this action, and the admissibility of those documents into evidence in the hearing in this action.

20. Eric Knox, former LabMD sales employee

We expect that Mr. Knox will testify by designation about LabMD's computer networks, including, but not limited to remote access thereto; LabMD's security policies and practices, and sales employee training; the protected health information to which he and other LabMD sales employees had access; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which he has knowledge; or any other matters about which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

21. Kevin Wilmer, Investigator, Federal Trade Commission, Bureau of Consumer Protection, Division of Privacy and Identity Protection

We expect that Mr. Wilmer will testify by designation about the process used to identify the individuals listed in Appendix A (designated as “CONFIDENTIAL”) to Complaint Counsel's Initial Disclosures as “Individuals Associated with 9-Digit Numbers Listed in the Day Sheets Referenced in Paragraph 21 of the Complaint Whose Names Are Not Listed in Those Day Sheets,” which has been produced at FTC-010907, as well any other issues addressed in his deposition.

22. Lawrence Hudson, former LabMD sales employee

We expect that Ms. Hudson will testify by designation about LabMD's computer networks, including, but not limited to remote access thereto; LabMD's security policies and practices, and sales employee training; the protected health information to which she and other LabMD sales employees had access; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which she has knowledge; or any other matters as to which she has

knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

23. Letonya Randolph, Midtown Urology, PC ("Midtown Urology") employee, Midtown Urology designee

We expect that Ms. Randolph will testify by designation about Midtown Urology's relationship and communications with LabMD; computer hardware and software provided to Midtown Urology by LabMD, and the maintenance thereof; the transmission of protected health information between Midtown Urology and LabMD, if any; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which Midtown Urology has knowledge; or any other matters about which Midtown Urology has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief. She will also testify about facts relating to the documents produced in response to Complaint Counsel's subpoena *duces tecum* to Midtown Urology in this action, and the admissibility of those documents into evidence in the hearing in this action.

24. Nicotra Harris, former LabMD finance or billing employee

We expect that Ms. Harris will testify by designation about LabMD's computer networks, including, but not limited to, remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which she and other LabMD billing employees had access; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which she has knowledge; or any other matters about which she has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

25. Jeremy Dooley, former LabMD Communications Coordinator and IT employee

We expect that Mr. Dooley will testify by designation about LabMD's computer networks, including, but not limited to, hard ware and soft ware; remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which he and other LabMD employees had access; LabMD's IT related expenditures; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which he has knowledge; or any other matters about which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

26. Jerry Maxey, Southeast Urology Network ("S.U.N.") employee, S.U.N. designee

We expect that Mr. Maxey will testify by designation about S.U.N.'s relationship and communications with LabMD; computer hardware and software provided to S.U.N. by LabMD, and the maintenance thereof; the transmission of protected health information between S.U.N. and LabMD; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which S.U.N. has knowledge; or any other matters about which S.U.N. has knowledge that are relevant to

the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief. He will also testify about facts relating to the documents produced in response to Complaint Counsel's subpoena duces tecum to S.U.N. in this action, and the admissibility of those documents into evidence in the hearing in this action.

27. Jennifer Parr, former LabMD IT employee

We expect that Ms. Parr will testify by designation about LabMD's computer networks, including, but not limited to, hardware and software; remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which she and other LabMD employees had access; LabMD's IT related expenditures; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which she has knowledge; or any other matters about which she has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

28. Karalyn Garrett, former LabMD finance or billing employee

We expect that Ms. Garrett will testify by designation about LabMD's computer networks, including, but not limited to, remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which she and other LabMD employees had access; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which she has knowledge; or any other matters about which she has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

29. Patricia Gilbreth, former LabMD finance or billing employee

We expect that Ms. Gilbreth will testify by designation about LabMD's computer networks, including, but not limited to, remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which she and other LabMD employees had access; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which she has knowledge; or any other matters about which she has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

30. Patrick Howard, former LabMD IT employee

We expect that Mr. Howard will testify by designation about LabMD's computer networks, including, but not limited to, remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which he and other LabMD employees had access; LabMD's IT-related expenditures; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which he has knowledge; or any other matters about which he

has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

31. Sandra Brown, former LabMD finance or billing employee

We expect that Ms. Brown will testify by designation about LabMD's computer networks, including, but not limited to, remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which she and other LabMD employees had access; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which she has knowledge; or any other matters about which she has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

32. Brandon Bradley, former LabMD IT employee

We expect that Mr. Bradley will testify by designation about LabMD's computer networks, including, but not limited to, remote access thereto; LabMD's security policies and practices, and employee training; the protected health information to which he and other LabMD employees had access; LabMD's IT-related expenditures; facts relating to the security incidents alleged in Paragraphs 17-21 of the Complaint; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel about which he has knowledge; or any other matters about which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

33. Erick Garcia

We expect that Mr. Garcia will testify by designation about facts relating to the security incident alleged in Paragraph 21 of the Complaint.

34. Adam Fisk

We expect Adam Fisk to testify live and give an expert opinion about the technology behind the program known as LimeWire; the operation of peer to peer networks; the adequacy of LabMD's network security hard ware, soft ware policies practices and procedures; and to offer rebuttle testimony with regard to Complaint Counsel's expert Rachel Hill's opinion.

s/ William A. Sherman, II

Reed D. Rubinstein, Esq.

William A. Sherman, II, Esq.

Dinsmore & Shohl, LLP

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Email: michael.pepson@causeofaction.org
Admitted only in Maryland.
Practice limited to cases in federal court and
and administrative proceedings before federal
agencies.
Counsel for LabMD, Inc.

CERTIFICATE OF SERVICE

I certify that on April, 9 2014 I caused a copy of the foregoing Respondent's Final Proposed Witness List to be served via courier on:

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

Dated: April 9, 2014

By: /s/ William A. Sherman, II
William A. Sherman, II

554316v1

Exhibit C

VanDruff, Laura Riposo

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

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

The logo for Dinsmore, featuring the word "Dinsmore" in a blue, sans-serif font with a stylized blue triangle above the letter 'i'.

William A. Sherman, II
Partner

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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

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William A. Sherman, II
Partner

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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

The logo for Dinsmore, featuring the word "Dinsmore" in a blue, sans-serif font with a stylized 'i'.

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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

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Washington, DC 20004

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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



William A. Sherman, II
Partner

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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

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T: +1 412 288 3131

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* * *

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Exhibit D

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TIVERSA HOLDING CORP. and ROBERT J. BOBACK,

Plaintiffs,

v.

LabMD, INC.;
MICHAEL J. DAUGHERTY; RICHARD
EDWARD WALLACE; and CAUSE OF
ACTION INSTITUTE,

Defendants.

CIVIL DIVISION

No. GD-14-016497

VERIFIED COMPLAINT

Filed on behalf of Tiversa Holding Corp.
and Robert J. Boback

Counsel of Record for these Parties:

Jarrold D. Shaw
PA I.D. No. 93459
Lucas Liben
PA I.D. No. 309527

REED SMITH, LLP
Firm No. 234
225 Fifth Avenue
Pittsburgh, PA 15222
(412) 288-3131
(412) 288-3063 (FAX)

FILED

14 OCT 31 PM 2:31

DEPT. OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY, PA

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TIVERSA HOLDING CORP. and ROBERT J. BOBACK,

Plaintiffs,

v.

LabMD, INC.; MICHAEL J. DAUGHERTY; RICHARD EDWARD WALLACE; and CAUSE OF ACTION INSTITUTE,

Defendants.

No.: GD-14-016497

JURY TRIAL DEMANDED

VERIFIED COMPLAINT

Plaintiffs Tiversa Holding Corp. (“Tiversa”) and Robert J. Boback, through their undersigned counsel, bring this Complaint against Defendants LabMD, Inc. (“LabMD”), Michael J. Daugherty, Richard Edward Wallace, and Cause of Action Institute (“CoA”), and in support state:

PRELIMINARY STATEMENT

Tiversa brings this action to seek justice and expose the conspiratorial conduct of the Defendants. Specifically, Defendants’ conduct – including their lies, defamatory comments, and misleading statements – have damaged Tiversa. Each of the Defendants’ actions has been taken with full knowledge that their conduct was egregious, improper, and wrong. Namely, LabMD and Mr. Daugherty have published a book containing defamatory statements which were they know were false. CoA has taken on LabMD’s and Mr. Daugherty’s cause and used those knowingly false and defamatory statements to harm Tiversa for the benefit of LabMD. Lastly, Mr. Wallace (with the assistance of LabMD and CoA) has spread lies and made misleading statements, and as a result, he has eschewed his contractual obligations and disparaged Tiversa.

As a result, Tiversa seeks damages – both compensatory and punitive – from Defendants resulting from their egregious, improper, and detrimental conduct.

THE PARTIES

1. Plaintiff Tiversa is a Delaware corporation with its principal place of business at 606 Liberty Avenue, Pittsburgh, Pennsylvania 15222.
2. Plaintiff Robert J. Boback is a resident of Allegheny County, Pennsylvania.
3. Upon information and belief Defendant LabMD is a Georgia corporation, with its principal place of business at 2030 Powers Ferry Road, Suite 520, Atlanta, Georgia 30339.
4. Upon information and belief Defendant Michael J. Daugherty is a resident of Fulton County, Georgia.
5. Upon information and belief Defendant Richard Edward Wallace is a resident of Butler County, Pennsylvania.
6. Upon information and belief Defendant CoA is a Delaware non-profit corporation, with its principal place of business at 2100 M Street, Washington, D.C. 20037.

FACTS

Mr. Boback and Tiversa's Business

7. Mr. Boback is the co-founder and CEO of Tiversa.
8. Tiversa is a cyber-intelligence company that provides, *inter alia*, data protection and review for various clients.
9. Mr. Boback and Tiversa work diligently to earn and maintain reputations for honesty, integrity, and legality in all aspects of their business.

10. Maintaining such a reputation is critical for Mr. Boback and Tiversa because Tiversa's clients trust it with finding and protecting information of significant import and sensitivity on a daily basis.

11. One of the services which Tiversa provides is the capability to search for, locate, and copy files on public peer-to-peer ("P2P") networks.

12. P2P technology uses the power of the computers that it connects and allows people to share files directly with one another. However, inadvertent file sharing can occur on P2P networks when computer users share more files than they intend. For example, the users may only want to share their music files or a large academic report when they access the P2P network, but instead may open all files on their computer's hard drive to access by other users on the P2P network.

The File

13. In 2008, Tiversa was performing services on behalf of a client which included searching the P2P network for sensitive files. During that search, Tiversa located a 1,718 page document containing healthcare patient social security numbers, insurance information, and treatment codes (the "File").

14. The File was titled an "Insurance Aging" file, and appeared to list amounts owed to LabMD by insurance companies of the patients whose samples were tested by LabMD.

15. The File, while believed to be created and stored on a LabMD computer, was available to Tiversa and others only because a LabMD computer had downloaded LimeWire, a P2P sharing application. By downloading LimeWire, LabMD allowed access to the File via the P2P network making it publically available.

16. The File was downloaded by Tiversa from various IP addresses. The File was available on these networks because LabMD downloaded LimeWire on one of its computers making the File available to the public.

Mr. Boback and Tiversa's Interactions with LabMD

17. In May of 2008 Tiversa contacted LabMD to alert it to the publicly available nature of the File. Tiversa also provided a copy of the File to LabMD to confirm that it was LabMD's document.

18. After informing LabMD of the availability of the File, Tiversa offered to perform remediation services for LabMD to assist it in securing the File and ensuring that no other breaches of confidentiality took place.

19. In response to LabMD's request, Tiversa provided a statement of work regarding the cost of remediation.

20. LabMD did not retain Tiversa's services, and communications between the parties ceased.

The FTC

21. Upon information and belief, at some point in time the Federal Trade Commission ("FTC") learned of the extent and magnitude of security breaches that occurred via P2P.

22. Armed with this knowledge, the FTC visited Tiversa, and attempted to obtain any and all non-redacted files in Tiversa's possession which, among other things, contained Social Security Numbers.

23. Tiversa refused to produce anything directly to the FTC. Instead, Tiversa elected to create an entity called the Privacy Institute and the FTC served that entity with a Civil Investigative Demand pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1 (the "CID"). The CID did not specifically identify Defendants.

24. In August of 2009 the Privacy Institute responded to the CID and provided responses including a spreadsheet that contained, *inter alia*, information related to companies that had inadvertently file-shared documents containing unique personal identifying information (“PII”), including the Data Owner, File Title(s), Unique Individuals’ PII, IP Address, and date.

The FTC Investigation and the FTC Action

25. Upon information and belief, in 2009 the FTC began an investigation into LabMD.

26. On August 29, 2013, the FTC filed an administrative complaint against LabMD alleging that LabMD failed to reasonably protect the security of consumers’ personal data, including medical information (the “FTC Action”).

27. Upon information and belief, the FTC’s Action is based on, *inter alia*, the File.

The Book

28. On or around September 24, 2013, Mr. Daugherty authored a book entitled “The Devil Inside the Beltway The Shocking Exposé of the US Government’s Surveillance and Overreach into Cybersecurity, Medicine and Small Business” (the “Book”).

29. Mr. Daugherty and LabMD made defamatory statements regarding the Plaintiffs before, in, and after the publication of the Book.

Defamatory Statements Made by LabMD and Mr. Daugherty Prior to the Book’s Publication

30. In his video “trailer” for the Book, available on, *inter alia*, Mr. Daugherty’s personal website, Mr. Daugherty highlights his position as LabMD’s President and CEO and Mr. Daugherty alleges that Tiversa is part of a “Government Funded Data Mining & Surveillance” scheme that engages in “Psychological Warfare” and helps to assist in “Abusive Government Shakedown[s].” *See* www.michaeljdaugherty.com. More specifically, Mr. Daugherty alleges

Tiversa is conducting “300 Million Searches per day” for “Homeland Security” and the “Federal Trade Commission.” *See id.*

31. Mr. Daugherty made a host of additional statements prior to the Book’s publication:

- Mr. Daugherty claims that Tiversa “downloaded” the File “and would not answer our questions unless we hired them, kicked the file over to the feds, and then the Federal Trade Commission began overwhelming our small business, a cancer detection center, with their beltway tactics.” *See id.*
- *See also* Video of Heritage Foundation Blogger Brief (stating that Tiversa and Mr. Boback wouldn’t “give [LabMD] any information unless we hired him which I wouldn’t do” that “we, to this day, don’t feel like our file ever got out” and that “we don’t even believe that there was a breach”);
- www.michaeljdaugherty.com/2012/09/16/the-ftc-is-suing-me/ (alleging that Tiversa “took our file without authorization”);
- Amy Wenk, *Atlanta Medical Lab Facing Off Against FTC*, Atlanta Business Chronicle, September 7, 2012, p. 3A, 22A (““This is a property theft case,’ Daugherty said. ‘[Tiversa] came in and affected our network’”);
- www.indiegogo.com/projects/the-devil-inside-the-beltway/ (stating, on a website created by Mr. Daugherty, that “[w]hat began with the unauthorized but government-funded procurement of medical data for 9000+ patients from his medical laboratory turned into a government supported, financially draining, extortion attempt”);
- Interview by Accuracy in Media with Michael J. Daugherty, available at www.michaeljdaugherty.com/media (stating that Tiversa “did not find [the File] out on cyberspace”, that “the [F]ile was taken by a government funded study and a group from Dartmouth and a company named Tiversa”, and that Tiversa “took” LabMD’s property);
- Interview by Tea Party News Network with Michael J. Daugherty, available at <http://www.youtube.com/watch?v=-x6UDWwdevw> (stating that “Homeland Security paid [Tiversa] to surveil 4.5 million workstations around the world” and that “Homeland Security gave \$24 million dollars to Dartmouth and Tiversa to go out and surveil the web”);

- Interview by The Mike Huckabee Show, available at <http://www.mediafire.com/listen/anqxg16hdbay4hg/Michael+Daugherty+9+23+13.mp3> (stating, in response to the assertion “this sounds like a blackmail case” that “I can say we felt like something really bad was going on” and that “no one was willing to help us or educate us unless we paid them”, that “we couldn’t get any more information from [Tiversa] unless we were willing to sign a services agreement which we considered it was nefarious”, that “Homeland Security gave a \$24 million dollar grant to Dartmouth who worked with Tiversa to go and as they use the word ‘monitor’ for files”, that “the left hand took it and the right hand’s slapping me”, that “the next thing you know the FTC has [the File] and they’re investigating me. It was quite clubby”, responding to the question “somebody is able to infiltrate into your system, and I guess like a vacuum cleaner suck everything out of it, and then make copies of all those records; is that essentially what happened?” with the response of “Yea, we lost stuff”, and responding to the statement that “I might leave a lawnmower in my yard, so it could be accessible, but ... nobody just has a right to come by and take it home with them” with the assertion “right, it’s shocking”).

32. Mr. Daugherty further alleges that “the feds” are “paying contractors to surveil for medical files[.]” See Trailer for The Devil Inside the Beltway.

The Defamatory Nature of the Book

33. Upon information and belief, the statements made by Mr. Daugherty in Paragraphs 30-32 were all made prior to the publication of the Book.

34. Although they are far too numerous to list in their entirety, the Book, at 493 pages, offers a host of defamatory statements:¹

- See e.g., Book, p. 282 (calling Mr. Boback “a con artist”),
- p. 419 (“LabMD got entrapped”),
- p. 405 (“How about entrapment?”),
- p. 89 (stating that Tiversa was part of “the one-two entrapment strategy”),

¹ The examples listed below are some, but not all, of the defamatory statements published by LabMD and Mr. Daugherty. Plaintiffs reserve their right to add additional defamatory statements not identified in the Complaint.

- p. 359 (“It wasn’t until LabMD declined to engage Tiversa’s ‘security services’ ... and then sued Tiversa ... that the FTC was compelled to issue the present CID. This unusual timing only serves to incentivize organizations to pay off Tiversa (as non-payment appears to coincide with the opening of an FTC investigation)”),
- p. 310 (discussing “Tiversa’s ‘pay or no play’ program”),
- p. 279 (describing a conversation in which “Bloomberg” described Tiversa’s business model as a “shakedown”, and that Tiversa engaged in “[q]uestionable practices, to say the least”),
- p. 375 (“Tiversa regularly contacted companies whose file they had taken in order to solicit business”),
- p. 309 (stating that Tiversa and Mr. Boback were attempting “to exploit a medical facility”),
- p. 325 (describing the parties’ interactions as “a theft case”),
- *id.* (“Isn’t this nothing more than a flat-out case of theft?”),
- p. 111 (stating that Mr. Daugherty and LabMD “had used the terms ‘hustler’ and ‘oily salesman’ to describe” Mr. Boback),
- p. 276 (“You sneaky snake. How dare you, Tiversa, hold up our property as a means to scare others so you can close more business”),
- *id.* (describing Tiversa as “Nasty”),
- p. 355 (calling Tiversa “invaders” who had perpetrated an “injustice”),
- p. 53 (“I really hate it that Boback turned this over to the FTC. I feel like we’re being punished for not hiring Tiversa. ... Was it just me, or did something stink?”),
- p. 68 (“[A] security firm swip[ed] our stuff and then turn[ed] it in to the FTC”),
- p. 33 (“How much do you want to bet they’re throwing us under the bus because I wouldn’t hire them?”),
- *id.* (“Tiversa—a company that had just become even more soulless to me, if that was possible”),

- *id.* (“I know I wouldn’t sell my soul to this particular devil no matter what the consequence”),
- p. 51 (“We know who took the goods”),
- p. 109 (“I bet he threw us under the bus because we wouldn’t sign his services agreement! That hypocrite showed our file to Congress! He has the nerve to try to get us to pay him \$40,000 and then sits in front of those representatives like he’s a saint?”),
- p. 119 (“Tiversa collected (a.k.a. took with surveillance software) more than 3,000 files”),
- p. 276 (“Sounds like surveillance to me. Hey Tiversa . . . who is watching you watching us?”),
- p. 325 (“Tiversa should have been aware of the confidential nature of the information when they opened a port and entered our workstation and downloaded our file”),
- p. 326 (comparing the United States government and Tiversa to “Queen Elizabeth I sending Walter Raleigh to loot Spanish ships”),
- *id.* (claiming that Tiversa “use[d] software to remotely open our door locks”),
- p. 374 (stating that Tiversa “t[oo]k[] someone’s property”),
- p. 390 (stating that Tiversa was “snooping on the internet for other people’s property or sensitive private data”).

Defamatory Statements Made by LabMD and Mr. Daugherty Subsequent to the Book’s Publication

35. Mr. Daugherty not only made statements such as these before the publication of the Book, and in the Book itself, but has continued to make such statements since the Book’s publication:²

² To the extent Mr. Daugherty continues to make defamatory statements after the filing of the Complaint, Plaintiffs reserve the right to amend their Complaint to reflect those statements.

- *See, e.g.*, Author Mike Daugherty Discusses Government Overreach, available at <http://www.bloomberg.com/news/2013-10-29/author-mike-daugherty-discusses-government-overreach-audio-.html> (stating, regarding the Defendants' interactions with Plaintiffs, that "something was wrong", "it was creepy", there was a "big creepy, big brother feel", that Mr. Boback "would not give us any information unless we wanted to hire him for his services" and that Defendants "would not tell us anything unless we hired them and we didn't feel that was even a proper way to start a relationship", and were, along with Dartmouth "recipients of \$24 million dollars from Homeland Security to go out and do this research, and do this paper");
- Interview by RedState.com with Michael J. Daugherty, available at www.redstate.com/2013/10/30/the-devil-inside-the-beltway/ (stating that "our file was taken and retrieved", that "information [from Tiversa] stopped unless we would retain them", and, in response to the question "how is that not extortion?", responding "I guess we're going to ask the judge that");
- Interview by Taking Stock of Michael J. Daugherty, available at <http://michaeljdaugherty.com/2013/11/15/discussingthepitfallsoffederalagencies/> (stating that "when ... we wouldn't pay the company that actually took it, they got turned over to the feds" and that Tiversa was part of a "Homeland Security sponsored project");
- Interview by The Edington Post of Michael J. Daugherty, available at <http://michaeljdaugherty.com/2013/12/16> (available in the section entitled "Michael Interviewed by Edington Post") (stating that Tiversa "went out and scoured the web", "wouldn't tell us anything unless we had hired them", had its lawyers "call[and say], in a very accusatory tone of voice, you know, your standards aren't right, blah, blah, blah, we're giving this over to the Federal Trade Commission", and is, with the United States government, "snooping over everybody", and further stating that "so much of this was like a movie ... Wesley Clark on their board, and then I found out that Obama's head of cybersecurity, Howard Schmidt, is on their advisory board", "you've got academia, private business, the federal government, all intruding", "Homeland Security was paying Tiversa to go out ..., and they were monitoring thousands of work stations around the world", and also noting, in response to the question of "where can people get the Book?" that it was available at "thediablininsidethebeltway.com", a URL which redirects the user to Mr. Daugherty's personal website);
- William Jackson, *Patient Data on Filesharing Service Provokes Legal Trouble*, available at www.informationweek.com/government/cybersecurity/patient-data-on-

filesharing-service-provokes-legal-trouble/d/d-id/1113235 (quoting Mr. Daugherty as stating that “[t]his smelled of extortion”);

- Interview by Joy Tiz of Michael J. Daugherty, available at <http://www.blogtalkradio.com/joytiz/2014/01/02/the-devil-inside-the-beltway/> (stating that Tiversa had “a really big creepy Big Brother feeling” and in response to the statement “so, basically extortion”, responding “well yeah”);
- Interview by Bill Martinez of Michael J. Daugherty, available at <http://billmartinezlive.com/michael-j-daugherty-april-9-2014/> (describing Tiversa as “real shady” and “anything but professional”);
- Interview by Edward Woodson of Michael J. Daugherty, available at <http://edwardwoodson.com/listen/3-17-14> (stating that Tiversa “wouldn’t stop pursuing us” and remarking as to the File that they “never found it ourselves out in cyberspace” and Tiversa “turned it over to the feds”);
- Interview by Jack Burkman of Michael J. Daugherty, available at http://www.radioamerica.org/POD_burkman.htm/ (responding to the question “so that’s almost like extortion?” with “that’s about it, yeah”);
- Interview by Martha Zoller with Michael J. Daugherty, available at <http://zpolitics.com/the-devil-inside-the-beltway/> (naming Tiversa as the Pennsylvania company that contacted him about the File, stating that they “[could not] find the file out in cyberspace,” responding to the question “So this file was stolen from you?” with “Yeah” and stating that he was “going to start a book tour across country”);
- Interview by Book Bliss of Michael J. Daugherty, available at <http://bookbliss.com/2013/06/19/the-devil-inside-the-beltway/> (stating that “the government funded Dartmouth and this company Tiversa to go out and conduct a study, and to go surveil peer to peer networks”);
- United States House of Representatives, Committee on Oversight and Government Reform, 7/24/14 (“Mr. Boback told me that Tiversa had found LabMD patient data on the Internet, but refused to tell us more unless we paid and retained them”; describing Tiversa as a “protection racket”; alleging that Tiversa was “trying to scare us”; discussing “the so called ‘breach’”; stating that Mr. Boback “made good on his threat to us” and disregarded “the dignity of cancer patients”; “Tiversa did NOT get this file as portrayed in the Dartmouth study and Tiversa and Dartmouth knew it”; discussing “Tiversa’s creation of the FTC’s investigation after LabMD refused to retain Tiversa”);

- Interview by Frank Schneider of Michael J. Daugherty, available at <http://www.iheart.com/show/Rod-Arquette-Show/episodes/> (noting, without solicitation, that Tiversa was based in Pittsburgh, Pennsylvania; responding to the claim that Tiversa had said “hey we’ve got a bunch of your files that we got into your system and got a hold of” with the allegation that “they were very sneaky and wouldn’t say anything unless we paid them for more information”; stating that Tiversa is “essentially a private company that’s collected 13 million files from all of us”; agreeing with the statement that Tiversa “in a clandestine manner, in a secret manner, sneaks inside of servers of small companies and big companies, all over the country and yanks files of confidential information out of those servers and gathers those together”; stating that the file had been “clandestinely possessed”; discussing the Privacy Institute, and stating that “the FTC thought of it and that Tiversa built it and that’s how they funneled these files from Tiversa to the FTC”);
- Interview by Bill Martinez of Michael J. Daugherty, available at <http://billmartinezlive.com/october-7-2014/> (noting, unsolicited, that Tiversa was based in Pittsburgh, Pennsylvania; alleging that Tiversa is “working with the feds”; “He would say nothing unless we paid him. And then it got more aggressive”; “And he said he was going to turn us over to the feds. And he did turn us over to the feds”; discussing files, and stating that Tiversa “went and took them and they keep them”);
- Interview by Dana Roc of Michael J. Daugherty, available at http://danaroc.com/inspiring_020314michaeldaughtery.html (noting, unsolicited, that Tiversa was based in Pennsylvania; stating that Tiversa engages in “all of this macho power talk ... about how large and in charge they are on monitoring and finding all of these files”; stating that Mr. Boback “wouldn’t tell us anything unless we hired him and that’s what was bothering everybody”; stating that LabMD “was not leaking files”; stating that Tiversa told LabMD “we are going to give this to the Federal Trade Commission”; stating that Tiversa “threatened to go to the Feds”);
- Interview by Tom Barnard of Michael J. Daugherty, available at <http://www.tombarnardpodcast.com/> (noting, unsolicited, that Tiversa was based in Pittsburgh; “he wouldn’t tell [me] anything unless we paid him”; stating that LabMD was “hacked”; stating that “a whistleblower outside Tiversa came up, was manned up, stood up and said ‘I need immunity cause a whole lot of bad stuff is going down over here’”; stating that “agencies were getting lied to, companies were getting lied to”; stating that “Tiversa was less than truthful to the Feds, how they got it has been alleged to be a lie, where they found it is alleged to be a lie”);
- Interview by Cynthia Dillion of Michael J. Daugherty, available at <http://wsradio.com/030614-live-from-cpac-cyber-security-michael->

daugherty-youth-conservative-outreach-for-the-rnc-raffi-williams/ (stating that Tiversa “wouldn’t answer any questions other than they had it and prove they had it unless we paid them”; “our property was turned over by them to the ... Federal Trade Commission”);

- Interview by Marianne Kolbasuk McGee of Michael J. Daugherty, available at <http://www.healthcareinfosecurity.com/interviews/labmd-ceo-describes-his-beefs-ftc-i-2184> (“We could not get any answers out of them as to how, where or what unless we hired them, which created a huge issue of distrust”);
- 9/10/13 Panelist Briefing of Tech Freedom and Cause of Action, available at <http://www.youtube.com/watch?v=MqfcDmBJgvc> (stating that “no answers would come back unless we signed a services agreement”; stating that Tiversa’s communication “gave us a real big brother feel, like who is watching us, here?”; responding to the question “and you said no and you fixed the problem yourself, and then they turned you over to the FTC” with the response “correct”; “we know someone came in and took” the File);
- Interview by Cindy Graves of Michael J. Daugherty, available at <http://www.wbobradio.com/2014/10/01/cindy-graves-show-hr-2-10114/> (stating that “he wouldn’t tell us unless we paid him”, that “he wouldn’t give us any information unless we hired him ...”, that “it just was so creepy from the beginning, so Big Brother, ...”, that “he turns it over to the Feds”, that “these guys were working – Homeland Security gave \$24 million to Dartmouth and they use this company’s technology And they were monitoring and taking possession of all these files ...”, that the FTC was “sitting with this company that’s gathering the stuff. It’s a private enterprise that’s ... building ... this whole mountain of military information, tax records, medical records. They’re taking possession of it”, responding to the statement that “it looks like the government ... employed them to hack into your system and then say, ah hah! I hacked into your system. Now you need to pay me to – to plug that leak” with the statement “Right, right”, stating that “[t]hey took my stuff”);
- Interview by Stacy Harp of Michael J. Daugherty, available at <http://www.blogtalkradio.com/acmedia/2014/10/01/the-devil-inside-the-beltway-the-shocking-expose-of-the-govts-surveillance> (stating that “he was setting us up. And he wouldn’t tell us anything about how he got it unless we hired him”, that “that was very creepy it was a Big Brother type feel. It – it felt like a shakedown. It felt extortionistic. It did. It felt like this guy’s not going to give us anything unless we paid him and hired him”, stating that “here was a private company that’s working with a funded study and a major university looking and monitoring us and downloading 13 million workstations – files.

why is it theirs to take and hold and keep and not tell us what they've done with it or how they got it?", responding to the statement that "I'm hoping that this investigation, if there are any ties between Tiversa and the FTC that you know, there's a scratch each other's back kind of arrangement where people who don't buy our services, you know, you go after them, sue them and we'll take a cut, you know, we'll divvy up the loot. If such a thing is going on it wouldn't surprise me. I hope that that you know, hope that comes out as part of this investigation" with the response that "Oh well, it's going on all right and I can talk about that").

36. In essence, Mr. Daugherty has echoed, in many different mediums, the main crux of the Book: that Tiversa and Mr. Boback illegally accessed and stole LabMD's files, and then extorted LabMD in an attempt to obtain business. When LabMD refused, according to Mr. Daugherty, Tiversa and Mr. Boback sent the files to the FTC, to begin an investigation into LabMD. Thus, Mr. Daugherty and LabMD have accused Tiversa and Mr. Boback of being criminals, who have engaged in crimes involving *crimen falsi*, by being thieves, extortionists, con artists and parties to a government conspiracy somehow intended to defraud Mr. Daugherty and LabMD.

Plaintiffs' Provision of, and LabMD and Mr. Daugherty's Disregard For, the Truth

37. On November 8, 2012 – nearly a year prior to the publication of the Book – counsel for Tiversa sent a letter to LabMD's in-house counsel regarding the kind of statements discussed in Paragraphs 30-36.

38. That letter stated that the kind of statements discussed in Paragraphs 30-36 were false, as well as damaging to Tiversa, and must therefore be halted immediately.

39. As described in Paragraphs 30-36, LabMD and Mr. Daugherty disregarded the November 8, 2012 letter entirely by making statements, and publishing the Book. Those statements, and the Book, therefore, were made with knowledge of their falsehood or reckless disregard for the fact that they were false.

40. Moreover, upon information and belief – both prior to and after publication of the Book – Mr. Daugherty became aware that LabMD files made available on a peer to peer file sharing network are “public” because of LabMD’s downloading of LimeWire.

41. Upon information and belief, in May 2013, Mr. Daugherty was informed that the allegations he had levied against Plaintiffs were false and betrayed a general misunderstanding of P2P technology. Mr. Daugherty elected to willfully ignore those warnings.

42. Mr. Daugherty has also stated that he lacks any basis for making the statements described in Paragraphs 30-36 which directly undermines the purported basis for his accusations. Mr. Daugherty has testified, under oath, regarding his knowledge (or lack thereof) about the File’s dissemination. Specifically, on March 4, 2014, Mr. Daugherty testified as follows:

Q: Is it correct to say that at the present moment LabMD does not have the facts to be able to demonstrate that the P to P insurance aging file was disclosed to a P to P network through an intrusion on LabMD's network?

A. It's correct to say that LabMD does not have all the facts.

Q. What facts does LabMD have?

A. That, that LimeWire was on a work station and that file was on that work station.

Q. Anything besides that?

A. About how it got out?

Q. Yes.

A. **No.**

43. LabMD and Mr. Daugherty have willfully, intentionally, wantonly, maliciously, and repeatedly spread their allegations, targeted to Pennsylvania, regarding Pennsylvania residents, and with knowledge that those allegations would cause harm to those Pennsylvania residents in this Commonwealth.

44. LabMD's and Mr. Daugherty's allegations regarding Mr. Boback's and Tiversa's conduct are false and actionable.

Mr. Wallace's Tiversa Employment and Background

45. Mr. Wallace is a former Tiversa employee who was terminated for cause on February 28, 2014.

46. Upon his termination, Mr. Wallace signed an agreement with Tiversa (the 3/5/14 Agreement, attached as **Exhibit A**) which includes the following language:

You acknowledge and reaffirm the continuing validity of your obligations related to protection of confidential information, assignment of inventions and restrictions on competition and solicitation of Company employees or customers. ***You agree that you will not make or cause to be made, publicly or privately, in any manner (e.g. orally, in writing, electronically, etc.), any disparaging statement about Tiversa,*** including any of its subsidiaries, parents, affiliates, related entities, officers, managers, employees, agents, trustees, etc. Additionally, you agree not to access Tiversa facilities or networks, and you agree not to contact Tiversa officers, managers, employees, customers, or business associates.

You also agree that noncompliance with any terms of this Agreement will result in a claim against you to recover the amount of severance benefits including the shares issued to you pursuant to the exercise of stock options or the amount of proceeds received by you upon the sale or disposition of those shares.

47. Upon information and belief, after Mr. Wallace was terminated from Tiversa he engaged in a private sale of the Tiversa stock he accumulated during his employment with Tiversa.

48. Specifically, in April 2014, Mr. Wallace negotiated the sale of his Tiversa stock for a total aggregate purchase price of \$258,398.71.

49. At the time Mr. Wallace sold the shares, he was aware, but, upon information and belief, failed to disclose, that he was planning to breach his employment contract with Tiversa

and begin a campaign of disparagement against Plaintiffs. In doing so, he knowingly failed to disclose material information to the purchasers of his Tiversa stock.

50. Specifically, prior to Mr. Wallace's final disposition of the Tiversa stock which occurred on May 9, 2014, Mr. Wallace was allegedly in contact with the House Committee on Oversight and Government Reform in an effort to provide false and disparaging information regarding Tiversa. Upon information and belief, Mr. Wallace had also corresponded with LabMD and CoA to discuss providing false and disparaging information regarding Tiversa.

51. Relevant to Mr. Wallace's conduct and the allegations contained herein, Mr. Wallace has a significant record of arrests and/or citations which further undermine his credibility and the truthfulness. Specifically,

a. On November 21, 2010, Mr. Wallace was arrested and/or cited on 1 count of resisting arrest and 1 count of disorderly conduct.

b. On January 1, 2014, Mr. Wallace was arrested and/or cited on sixteen counts relating to issues of domestic abuse including 5 counts of simple assault, 1 count of resisting arrest, 5 counts of disorderly conduct, and 5 counts of harassment.

c. On February 19, 2014, Mr. Wallace was arrested and/or cited for 3 counts related to driving under the influence.

d. On February 20, 2014, Mr. Wallace was again arrested and/or cited, for 2 counts related to a separate incident of driving under the influence.

e. On April 25, 2014, Mr. Wallace entered a local police station to inform the officers that he had been receiving phone calls threatening his life, and had also been the recipient of life-threatening notes left on his automobile and at his house. Mr. Wallace suggested that his family would be going in to protective custody. Mr. Wallace also made calls to the

Federal Bureau of Investigation which agents characterized as “rambling.” Mr. Wallace further informed the police he had been contacted by the House Oversight and Government Reform Committee, namely that Mr. Wallace “was advised by Darell Isa [sic] that [Wallace] would be subpoenaed to testify for a hearing implicating several employee’s [sic].”

f. On May 18, 2014, Mr. Wallace was arrested and/or cited relating to issues of domestic abuse including simple assault and 2 counts of harassment. The police located Mr. Wallace “in the woods behind his residence” and Wallace was taken into custody. In connection with that arrest, Mr. Wallace’s original bail of \$2,000 was increased to \$20,000 after a hearing before the judge.

g. On May 19, 2014, a Protection from Abuse Order was signed by Magisterial District Judge Sue Haggerty, upon petition of Amy J. Wallace, Mr. Wallace’s wife, entitled “Order Granting Emergency Protection from Abuse.”

h. On July 23, 2014, Mr. Wallace was arrested and/or cited for 6 counts related to driving under the influence, resisting arrest, disorderly conduct, and public drunkenness. The officer who arrested Mr. Wallace observed that Wallace was on a “tractor” and was “highly intoxicated and uncooperative.”

i. On July 24, 2014, a report was filed with the Lancaster Township Police Department making allegations against Mr. Wallace for theft of services and alleging that Mr. Wallace impersonated an agent of the Federal Bureau of Investigation.

j. On September 11, 2014, Mr. Wallace was arrested and/or cited for 1 count of driving with a suspended license.

k. On October 15, 2014, Mr. Wallace was arrested and/or cited for domestic abuse, including simple assault, harassment, endangering the welfare of children, and disorderly conduct.

CoA

52. CoA has provided legal representation to Mr. Daugherty and LabMD in the FTC Action.

53. CoA's website describes it as a "non-profit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending and cronyism threaten it." *See* www.causeofaction.org/about/.

54. CoA's executive Director is Dan Epstein. *See* www.causeofaction.org/about/press-kit/. "Prior to joining Cause of Action, Epstein served at the U.S. House of Representatives for several years as a Counsel for Oversight and Investigations at the Committee on Oversight and Government Reform." *Id.*

Mr. Wallace, LabMD and CoA

55. Upon information and belief, CoA and Mr. Wallace have had extensive communications regarding LabMD and Mr. Wallace's employment with Tiversa.

56. Upon information and belief, Mr. Wallace has told CoA that, during his employment at Tiversa, he, at Tiversa's behest, engaged in various nefarious activities.

57. Plaintiffs are not aware of precisely what Mr. Wallace told CoA regarding his time at Tiversa, because neither CoA nor Mr. Wallace have provided Tiversa with that information. However, recent filings in the FTC Action indicate Mr. Wallace has told CoA that, while working for Tiversa and upon the request of an FTC attorney, Mr. Wallace fabricated information regarding the discovery and dissemination of the File.

58. Mr. Wallace's statements are demonstrably false.

59. CoA and LabMD have knowingly ignored the falsehoods provided to them by Mr. Wallace in exchange for conspiring to act maliciously against Plaintiffs.

60. Any and all allegations of Mr. Wallace regarding nefarious activity of Tiversa during Mr. Wallace's tenure as an employee are false. Any illegal or improper actions taken by Mr. Wallace while an employee of Tiversa, if any, were taken without Tiversa's knowledge, and were outside the scope of Mr. Wallace's employment with Tiversa.

The Committee on Oversight and Government Reform Investigates Tiversa

61. On May 30, 2014, Tiversa became aware that it was the subject of an investigation being conducted by the Committee on Oversight and Government Reform of the House of Representatives (the "Committee"), the very same committee for which the Executive Director of the company providing Mr. Daugherty's legal services – CoA – had worked for "several years" prior to leading CoA.

62. This connection has been noted by others, including Senator John D. Rockefeller, IV. On July 23, 2014, Senator Rockefeller, in a letter to the Committee, stated that the inappropriate timing and nature of the investigation "are buttressed by the revelation that LabMD is being represented by a former member of your Committee staff."

63. Upon information and belief, the Committee's investigation was triggered by CoA providing the Committee with the false allegations made by Mr. Wallace. *See, e.g.*, 5/29/14 Letter from Darrell Issa, Chairman of the Committee on Oversight and Government Reform, to Mr. Wallace (requesting that Mr. Wallace appear and be interviewed by the Committee); July 24, 2014 Hearing of the Committee on Oversight and Government Reform of the House of Representatives, *The Federal Trade Commission and its Section 5 Authority: Prosecutor, Judge, and Jury*, available at <http://oversight.house.gov/hearing/federal-trade-commission-section-5->

authority-prosecutor-judge-jury-2/ (Committee Chairman Darrell Issa stating that “[t]oday’s hearing is the result of a whistleblower ... ” and that “without the whistleblower we would not be having this hearing today”).

64. As a result of the investigation by the Committee into Tiversa – which upon information and belief was triggered by LabMD’s counsel in the FTC Action – the FTC Action was stayed.

65. The connection between the Committee’s investigation, CoA, LabMD and Mr. Wallace is further exposed by Mr. Wallace’s counsel in the FTC Action. Mr. Wallace is being represented by Katten Muchin Rosenman LLP. Notably, Katten Muchin Rosenman LLP previously represented LabMD in the FTC Action.

The Defendants’ Contacts With Pennsylvania

LabMD’s Nationwide Operations

66. Defendant LabMD is a “clinical and anatomic medical laboratory with a *national* client base.” See www.michaeljdaugherty.com/about/ (emphasis added). See also Trailer for The Devil Inside the Beltway, available at www.michaeljdaugherty.com (stating that LabMD is “a nice business going with a *nationwide* base”) (emphasis added); Video of Heritage Foundation Blogger Brief, available at www.michaeljdaugherty.com/media/ (stating that LabMD works with “urology offices *around the country*”) (emphasis added). Upon information and belief a “national” or “nationwide” client base, which includes “offices around the country” means that LabMD services clients in Pennsylvania. See also Book, p. 77 (stating that the samples tested at LabMD “come from various states ranging from California to South Carolina, down to Florida and over to Missouri”).

67. Upon information and belief, the File lists at least 30 companies, with mailing addresses in Pennsylvania, from whom LabMD was expecting payment for services rendered. The File makes clear that LabMD was expecting payment of approximately \$30,000 combined from these Pennsylvania companies. Upon information and belief, based on the File, LabMD does significant business with Pennsylvania insurance companies, including receipt of payments from those companies in connection with billings for Pennsylvania residents.

LabMD and Mr. Daugherty Have Traveled To And Conducted Business In Pennsylvania

68. In January of 2013 LabMD's then-general counsel sought, and was granted, admission to the United States District Court for the Western District of Pennsylvania. As part of that admission, LabMD's then-general counsel had to travel to Pennsylvania for the admission ceremony.

69. In that same month, LabMD and Mr. Daugherty met with a law firm located in Pittsburgh, Pennsylvania, to discuss the possibility of filing a lawsuit, against the Plaintiffs, in the United States District Court for the Western District of Pennsylvania. This meeting took place in Pittsburgh, Pennsylvania.

70. Furthermore, the Book references Pennsylvania frequently. *See* Book, p. 4 (noting that the initial contact from Tiversa came from Pennsylvania), 112, 129, 276 ("What is this small company in Pennsylvania ... doing hovering over all these files?"), 328 (discussing the impact that Tiversa's location in Pennsylvania had on previous litigation between the parties), 332 (same), 390 (same), 373 (discussing Mr. Daugherty and LabMD availing themselves of Pennsylvania courts), 404 (same), 417 (same), 445.

71. At least three copies of the Book have been purchased in Pennsylvania, and thus each and every defamatory statement in the Book has been published in Pennsylvania. Upon

information and belief, additional copies of the book have been purchased by Pennsylvania residents.

72. LabMD and Mr. Daugherty were aware of the fact that Plaintiffs were Pennsylvania residents at all times when making the defamatory statements.

73. Defendant Michael J. Daugherty, in his individual capacity and as a representative of LabMD, frequently travels away from his home in Atlanta, Georgia.

74. In addition, Mr. Daugherty is a sophisticated litigant. For example, Mr. Daugherty currently serves as a Relator, acting on behalf of the United States of America, the State of Texas, the State of Georgia, the Commonwealth of Virginia, the State of Tennessee, the State of New York, the State of Florida, the District of Columbia, the State of Indiana, and himself, and has brought claims under the False Claims Act, 31 U.S.C., § § 3729-3733. That case is pending in the United States District Court of the Southern District of Ohio captioned *United States of America ex rel. Michael Daugherty v. Bostwick Laboratories*, Civil Action No. 1:08CV354.

LabMD's and Mr. Daugherty's Pennsylvania Litigation

75. On September 1, 2013, Plaintiffs filed a lawsuit against LabMD and Mr. Daugherty in the United States District Court for the Western District of Pennsylvania, Pittsburgh Division (the "Federal Lawsuit").

76. The Federal Lawsuit arose out of some, but not all, of the same transactions and occurrences alleged herein.

77. LabMD and Mr. Daugherty originally objected to the Federal Lawsuit on the basis of, *inter alia*, lack of jurisdiction and improper venue, but withdrew those objections before they could be ruled on in that case.

78. LabMD and Mr. Daugherty thus actively litigated some, but not all, of the issues now before this Court for more than a year in this jurisdiction.

LabMD's and Mr. Daugherty's Other Recent Pennsylvania Contacts

79. On November 14, 2013, LabMD served a subpoena on Tiversa seeking discovery in connection with the FTC Action. The subpoena *ad testificandum* specifically identified that the deposition would take place in Pittsburgh, Pennsylvania.

80. On November 21, 2013, Mr. Daugherty traveled to Pennsylvania to attend the Tiversa deposition identified above. That deposition took place in Pittsburgh, Pennsylvania.

81. During the deposition taken in the FTC administrative proceeding, LabMD and Mr. Daugherty's counsel repeatedly asked questions that related to the underlying facts in the Federal Lawsuit (and thus this litigation as well), going well beyond the agreed upon topics for testimony. It was clear that by asking those questions, those parties were seeking discovery relevant to the defamation case against LabMD and Mr. Daugherty.

82. Mr. Boback was again deposed for the FTC Action on June 7, 2014, which also took place in Pittsburgh. Mr. Daugherty again attended that deposition, and LabMD's counsel again asked Mr. Boback questions that relate to the underlying facts in the Federal Lawsuit and this litigation.

83. Further, LabMD filed an action in the United States District Court for the District of Columbia, *LabMD, Inc. v. Federal Trade Commission, et al.*, Civil Action No. 1:13-cv-01787, challenging the FTC's authority to pursue the administrative action against LabMD. When LabMD filed that action, it also filed a "Notice of Designation of Related Civil Cases Pending In this or Any Other United States Court" and identified the Federal Lawsuit as "related."³

³ Plaintiffs disagree with this designation and reserve their right to challenge the designation if necessary.

84. As a result, not only did LabMD and Mr. Daugherty twice appear in Pennsylvania to affirmatively take discovery in the FTC Action, but they used those opportunities to obtain discovery in the Federal Lawsuit (and this case) – which they designated as “related” – thereby further availing themselves of jurisdiction in Pennsylvania.

Venue

85. Venue is proper in this court under Pa. R. Civ. P. 1006(a)(1) because, *inter alia*, the cause of action arose in this county and the transaction or occurrences at issue took place in this county.

COUNT I – DEFAMATION (42 Pa. Cons. Stat. §§ 8341, et seq.)
(Plaintiffs v. LabMD and Mr. Daugherty)

86. Plaintiffs incorporate the foregoing Paragraphs of their Complaint as if stated in full herein.

87. The statements made by Mr. Daugherty and LabMD, discussed in Paragraphs 30-36, are defamatory in character as they have diminished the Plaintiffs’ reputations – both commercially and personally – and have hurt the Plaintiffs’ business and profession, by, *inter alia*, casting doubt on the Plaintiffs’ operations as a businessman and business that operates legally, ethically, and honestly.

88. Mr. Daugherty and LabMD have published these statements – Mr. Daugherty personally and on behalf of LabMD – both on the internet, in various talks and conferences, in news publications, and in the Book.

89. Mr. Daugherty’s and LabMD’s statements are directly applicable to the Plaintiffs, as they either name the Plaintiffs directly or make clear reference, in context, to the Plaintiffs.

90. Any recipient of Mr. Daugherty's and LabMD's statements – that Plaintiffs have conspired to extort Mr. Daugherty and LabMD – would understand the defamatory meaning of those statements.

91. Any recipient of Mr. Daugherty's and LabMD's statements would understand that these statements are to be applied to the Plaintiffs, as the Plaintiffs are either named or implicated in context.

92. The Plaintiffs have suffered special harm as a result of the publication of these statements, including, but not limited to, a diminished reputation in their field of business.

93. Plaintiffs are not public officials or public figures of any kind.

94. There is no conditionally privileged occasion which exists to allow Mr. Daugherty or LabMD to have made the defamatory statements. In the alternative, Mr. Daugherty and LabMD, as demonstrated above, have abused a conditionally privileged occasion to the extent any exist, which Plaintiffs deny.

95. Mr. Daugherty and LabMD knew, or reasonably should have known, of the falsity of each of their statements at the time those statements were made. Mr. Daugherty and LabMD have acted with actual malice.

96. Mr. Daugherty's and LabMD's conduct, as described above, is outrageous, and demonstrates intentionally willful, wanton, and reckless behavior on Mr. Daugherty and LabMD's part. Mr. Daugherty and LabMD had an appreciation for, and consciously disregarded, the risk of harm to Plaintiffs which their conduct entailed.

WHEREFORE, Plaintiffs request judgment in their favor, and against Mr. Daugherty and LabMD, in an amount greater than the jurisdictional minimum required by this Court, including

punitive damages, attorneys' fees, and disgorgement of profits, as well as any and all other relief deemed justified by this Court.

COUNT II – SLANDER PER SE
(Plaintiffs v. LabMD and Mr. Daugherty)

97. Plaintiffs incorporate the foregoing Paragraphs of their Complaint as if stated in full herein.

98. The spoken words of Mr. Daugherty and LabMD, discussed in Paragraphs 30-36, impute both the criminal offense and business misconduct of extortion upon the Plaintiffs.

99. As stated above, those words darkened the Plaintiffs' reputations as a businessman and business acting with integrity and within the bounds of the law.

100. Mr. Daugherty's and LabMD's words are particularly harmful to a businessman and business engaged in Plaintiffs' profession.

101. Plaintiffs' have been harmed by the publication of Mr. Daugherty's and LabMD's spoken words.

102. Mr. Daugherty and LabMD knew, or reasonably should have known, of the falsity of each of their statements at the time those statements were made. Mr. Daugherty and LabMD have acted with actual malice.

103. Mr. Daugherty's and LabMD's conduct, as described above, is outrageous, and demonstrates intentionally willful, wanton, and reckless behavior on Mr. Daugherty's and LabMD's part. Mr. Daugherty and LabMD had an appreciation for, and consciously disregarded, the risk of harm to Plaintiffs which their conduct entailed.

WHEREFORE, Plaintiffs request judgment in their favor, and against Mr. Daugherty and LabMD, in an amount greater than the jurisdictional minimum required by this Court, including

punitive damages, attorneys' fees, and disgorgement of profits, as well as any and all other relief deemed justified by this Court.

COUNT III – COMMERCIAL DISPARAGEMENT/TRADE LIBEL
(Plaintiffs v. LabMD and Mr. Daugherty)

104. Plaintiffs incorporate the foregoing Paragraphs of their Complaint as if stated in full herein.

105. The statements made by Mr. Daugherty and LabMD, discussed in Paragraphs 30-36, are false.

106. Mr. Daugherty and LabMD had no privilege to make these statements.

107. Mr. Daugherty and LabMD made these statements knowing, or reasonably should have known, and intending, that their publication would result in pecuniary loss to the Plaintiffs as a result of, *inter alia*, the negative effect the statements would have on Plaintiffs' reputations.

108. Plaintiffs have suffered pecuniary loss in the form of, *inter alia*, reduced business and a slandered reputation.

109. Mr. Daugherty and LabMD knew, or reasonably should have known, of the falsity of each of their statements at the time those statements were made. Mr. Daugherty and LabMD have acted with actual malice.

110. Mr. Daugherty's and LabMD's conduct, as described above, is outrageous, and demonstrates intentionally willful, wanton, and reckless behavior on Mr. Daugherty's and LabMD's part. Mr. Daugherty and LabMD had an appreciation for, and consciously disregarded, the risk of harm to Plaintiffs which their conduct entailed.

WHEREFORE, Plaintiffs request judgment in their favor, and against Mr. Daugherty and LabMD, in an amount greater than the jurisdictional minimum required by this Court, including

punitive damages, attorneys' fees, and disgorgement of profits, as well as any and all other relief deemed justified by this Court.

Count IV – Tortious Interference With Contractual Relations
(Tiversa v. Defendants)

111. Plaintiffs incorporate the foregoing Paragraphs of their Complaint as if stated in full herein.

112. Tiversa has existing contractual relationships with many companies including, without limitation, companies that do significant business in Pennsylvania.

113. In 2014, the Committee sent correspondence to two such companies (the “Recipient Companies”), informing the Recipient Companies of the investigation into Tiversa, and mandating that the Recipient Companies provide various documents in aid of the investigation.

114. The Recipient Companies do significant business in Pennsylvania.

115. Upon information and belief the Committee’s investigation into Tiversa was triggered by CoA’s provision of Mr. Wallace’s false statements regarding Tiversa.

116. It was the intent of all of the Defendants, in causing the investigation by the Committee, including the correspondence sent to the Recipient Companies, to harm Tiversa by interfering with its contractual relationships including, without limitation, its relationships with the Recipient Companies.

117. The Defendants had no privilege or justification for taking the above-referenced actions.

118. Tiversa has suffered monetary harm as a result of the above-referenced actions.

119. The harm suffered by Tiversa as a result of the above-referenced actions was suffered in Pennsylvania, where Tiversa is based and the only place Tiversa has offices.

120. All of the services that Tiversa has provided for the Recipient Companies are and were performed in Pennsylvania.

121. Defendants' behavior was expressly aimed at injuring Tiversa in the only place it resides: the Commonwealth of Pennsylvania.

WHEREFORE, Tiversa request judgment in its favor, and against Defendants, in an amount greater than the jurisdictional minimum required by this court, including punitive damages, attorneys' fees, and as any and all other relief deemed justified by this Court.

COUNT V – Civil Conspiracy
(Tiversa v. Defendants)

122. Plaintiffs incorporate the foregoing Paragraphs of their Complaint as if stated in full herein.

123. The Defendants LabMD, Mr. Daugherty, CoA, and Mr. Wallace combined and agreed to – acting with the intent to injure the Plaintiffs through an unlawful act or through an otherwise lawful act but by unlawful means, and without justification to do so – and took actions in furtherance of their agreement to cause harm to Tiversa by, among other things and without limitation, interfering with its existing contractual relations.

124. The acts in furtherance of this conspiracy by Defendants LabMD, Mr. Daugherty, CoA, and Mr. Wallace include but are not limited to the allegations previously set forth herein.

125. As a direct and proximate result of the above-referenced actions between and among Defendants LabMD, Mr. Daugherty, CoA, and Mr. Wallace, and their actions taken in furtherance of such combination and conspiring, Plaintiffs have been harmed.

126. The above-referenced actions by Defendants LabMD, Mr. Daugherty, CoA, and Mr. Wallace were made intentionally, willfully, outrageously, and in conscious disregard of the rights and interests of the Plaintiffs.

127. Upon information and belief Mr. Wallace spoke with CoA – and thereby committed a substantial act in furtherance of the conspiracy – while located in the Commonwealth of Pennsylvania.

128. Upon information and belief all of the Defendants were aware of the fact that Mr. Wallace resided in, and performed substantial acts in furtherance of the conspiracy in, the Commonwealth of Pennsylvania.

129. Upon information and belief all of the Defendants were aware of the fact that the Plaintiffs are and were Pennsylvania residents.

WHEREFORE, Plaintiffs request judgment in their favor, and against Defendants, in an amount greater than the jurisdictional minimum required by this court, including punitive damages, attorneys' fees, and any and all other relief deemed justified by this Court.

COUNT VI – BREACH OF CONTRACT
(Tiversa v. Mr. Wallace)

130. Plaintiffs incorporate the foregoing Paragraphs of their Complaint as if stated in full herein.

131. The 3/5/14 Agreement is a valid and binding contract between Tiversa and Mr. Wallace.

132. Upon information and belief Mr. Wallace breached the 3/5/14 Agreement by, among other things, making disparaging statements about Tiversa and Mr. Boback.

133. Tiversa had been harmed by Mr. Wallace's breach of the 3/5/14 Agreement.

WHEREFORE, Tiversa requests judgment in its favor, and against Mr. Wallace, in an amount greater than the jurisdictional minimum required by this Court, and no less than the amount of severance benefits including the shares issued to Mr. Wallace pursuant to the exercise of stock options or the amount of proceeds received by Mr. Wallace upon the sale or disposition

of those shares, per the 3/5/14 Agreement, including punitive damages, attorneys' fees, and any and all other relief deemed justified by this Court.

COUNT VII – TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
(Tiversa v. LabMD and CoA)

134. Plaintiffs incorporate the foregoing Paragraphs of their Complaint as if stated in full herein.

135. The 3/5/14 Agreement is a valid and binding contract between Tiversa and Mr. Wallace.

136. Upon information and belief Mr. Wallace breached the 3/5/14 Agreement by, among other things, making disparaging statements about Tiversa and Mr. Boback.

137. Upon information and belief, both LabMD and CoA were aware of the existence of the 3/15/14 Agreement.

138. Notwithstanding their knowledge, LabMD and CoA actively assisted Mr. Wallace in breaching the agreement by, among other things, bringing Mr. Wallace into the FTC Action, facilitating Mr. Wallace's disparaging statements.

139. LabMD and CoA do not have any justification for their interference with the 3/5/14 Agreement.

140. Tiversa had been harmed by LabMD's and CoA's tortious interference with the 3/5/14 Agreement.

WHEREFORE, Tiversa requests judgment in its favor, and against LabMD and CoA, in an amount greater than the jurisdictional minimum required by this Court, and no less than the amount of severance benefits including the shares issued to Mr. Wallace pursuant to the exercise of stock options or the amount of proceeds received by Mr. Wallace upon the sale or disposition of those shares, per the 3/5/14 Agreement, including punitive damages, attorneys' fees, including

attorney's fees incurred in connection with the Committees' investigation of Tiversa, and any and all other relief deemed justified by this Court.

PLAINTIFFS DEMAND A JURY ON ALL ISSUES TRIABLE BY JURY.

REED SMITH LLP



Jarrod D. Shaw
Pa. ID No. 93459
Lucas Liben
Pa. ID. No. 309527
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
(412) 288-3131

Date: ~~October~~ 31, 2014

Counsel for Plaintiffs

T I V E R S A

606 Liberty Avenue
Pittsburgh, PA 15222

(724) 940-9030 office
(724) 940-9033 fax
www.tiversa.com

March 5, 2014

Richard E. Wallace
130 Scott Ridge Road
Harmony, PA 16037

Rick:

This Agreement sets forth the details of your separation from Tiversa Holding Corp. (the "Company").

1. Your employment with the Company was terminated effective February 28, 2014 (the "Date of Disassociation").
2. In addition to your last paycheck, which includes payment of your salary through the Date of Disassociation and payment for all amounts due to you at that date, you will receive a severance payment in the amount of \$14,375.00, subject to your signature of this Agreement and compliance with its terms. Upon receipt of the signed Agreement and the Agreement going into effect, your severance will be paid through regularly scheduled payroll.
3. As of the Date of Disassociation, your outstanding unexercised options to purchase 127,400 shares of common stock of each Tiversa Holding Corp., Tiversa Government, Inc. and Tiversa Media, Inc. have vested. As a severance benefit, you may exercise these vested options by notifying and paying Tiversa within 90 days of the Date of Disassociation; vested options that remain unexercised after 90 days will be forfeited and cancelled pursuant to the terms of the Company's Employee Stock Purchase Plan.
4. Your current medical insurance coverage and dental insurance coverage (if you elected it) will continue through April 30, 2014 as part of your severance. At that time you may elect to continue your coverage, at your expense, under "COBRA." Further details will be provided to you if you decide to take this coverage.
5. Other than as set forth in this Agreement, you will not receive any compensation, benefits or payment of any kind from the Company, and you agree that you are not entitled to any additional compensation, payment or benefits of any kind from the Company and that no statements or promises to the contrary have been made to you.
6. You must return all Company property in your possession immediately, but in no event later than three (3) days after signing this Agreement, including, without limitation, keys, key card, parking card, computer equipment, all Company intellectual property, and any documents, records or other information that you may have in your custody, either in paper or electronic form, that relate to the Company or its operations, business, technology or customers.
7. You acknowledge and reaffirm the continuing validity of your obligations related to protection of confidential information, assignment of inventions and restrictions on competition and solicitation of Company employees or customers. You agree that you will not make or cause to be made, publicly or privately, in any manner (e.g., orally, in writing, electronically, etc.), any disparaging statement about Tiversa, including any of its subsidiaries, parents, affiliates, related entities, officers, managers, employees, agents, trustees, etc. Additionally, you agree not to access Tiversa facilities or networks, and you agree not to contact Tiversa officers, managers, employees, customers, or business associates.

8. In exchange for the severance benefits extended to you by the Company under this Agreement which you agree you would not otherwise be entitled to receive, you agree to expressly and unconditionally release and forever discharge the Company, and its past or present predecessors, successors, parents, subsidiaries, related companies, directors, shareholders, benefit plans, assigns, officers, agents, attorneys, employees, former employees, trustees, members and servants (the "Released Parties"), from any and all claims arising at any time through the date on which you sign this Agreement, including, without limitation, all possible claims arising out of, or in any way related to, your employment with the Company or the termination of that employment. This general release of claims covers, without limitation:

(a) any and all claims under any possible legal, equitable, contract, or tort theory including, without limitation, assault, battery, slander, defamation, wrongful discharge, intentional infliction of emotional distress, negligent infliction of emotional distress, interference with contract, negligent hiring, negligent supervision, breach of contract or any other legal or equitable obligation (except breach of this Agreement), and any and all claims for invasion of privacy;

(b) any and all claims under any possible statutory theory, including, without limitation, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, 42 U.S.C. § 1981, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans with Disabilities Act, the Rehabilitation Act, the Equal Pay Act, the Genetic Information Nondisclosure Act, the National Labor Relations Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act, the Sarbanes-Oxley Act, the Worker Adjustment and Retraining Notification Act, the Pennsylvania Human Relations Act, the Pennsylvania Whistleblower Law, and any other federal, state, or local law, statute, ordinance, regulation, or executive order prohibiting employment discrimination or harassment based on sex, religion, race, color, handicap, disability, retaliation or any other characteristic proscribed by law or relating to leaves of absence or employee benefits; and

(c) any and all claims you have or may have, known or unknown, and of whatever kind or nature, against the Company which arose on or before the date you sign this Agreement, including, without limitation, any continuing effects.

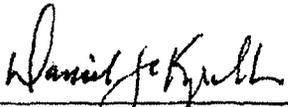
You further acknowledge that neither the Company nor any other person or entity released by this Agreement has (a) discriminated against you, (b) breached any contract with you, (c) committed any civil wrong (tort) against you or (d) otherwise acted unlawfully towards you. You also agree that noncompliance with any terms of this Agreement will result in a claim against you to recover the amount of severance benefits including the shares issued to you pursuant to the exercise of stock options or the amount of proceeds received by you upon the sale or disposition of those shares.

9. You represent that you have completely and carefully read this Agreement and understand it, including specifically the release in paragraph 8 and that you voluntarily accept the terms of this Agreement and have executed this Agreement of your own free will, act and deed, without coercion, and with full knowledge of the nature and consequences thereof. You further agree that you have had the opportunity to consult with outside advisors concerning this Agreement, including your attorney and/or financial advisor, if you chose to do so. You further agree that you are waiving any additional time periods provided to you by law for the severance consideration being paid under this Agreement. You also acknowledge that you have a period of seven (7) calendar days following your execution of this Agreement in which to revoke the Agreement (the "Revocation Period"). For the revocation to be valid, you must deliver written notice that you have revoked the Agreement to Daniel Koppak by certified mail prior to expiration of the Revocation Period. If you do not revoke this Agreement, the Company shall have no obligations under this Agreement. If you do not revoke this Agreement as required under this Paragraph 9, this Agreement will become effective and enforceable on the eighth (8th) day following the date on which you sign this Agreement (the "Effective Date").

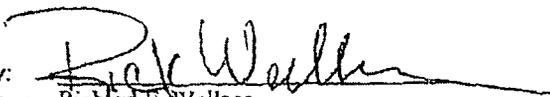
10. This Agreement contains the entire agreement between the Company and you and supersedes any other prior agreements, communications or understandings, whether oral or written, pertaining to the subject matter hereof. You represent and acknowledge that in executing this Agreement, you have not relied upon any representation or statement not set forth herein made by any employee or representative of the Company. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be unenforceable in any respect under the law of any state or of the United States of America, the unenforceable provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. The construction, interpretation or performance of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, and the exclusive venue for any action arising hereunder shall be in the Court of Common Pleas, Allegheny County or the United States District Court for the Western District of Pennsylvania.

11. If you are in agreement with these terms, please sign this Agreement in the space provided and return it to the Company. In accordance with corporate policy, no payments will be made to you until you have returned to the Company all Company property in your possession and control.

Very truly yours,

By: 
Name: Daniel J. Kopchak
Title: Chief Financial Officer

Accepted and Agreed to

By: 
Name: Richard E. Wallace

VERIFICATION

I, Robert J. Boback, in my personal capacity and as CEO of Tiversa Holding Corp., Plaintiffs herein, depose and say, subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, that the allegations set forth in the foregoing *Verified Complaint* are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read 'Robert Boback', written over a horizontal line.

Robert Boback
Chief Executive Officer
Tiversa Holding Corp.

Dated: October 30, 2014

Exhibit E

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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

**[PROPOSED] COMPLAINT COUNSEL’S SCHEDULE FOR
PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA TO
RICHARD WALLACE**

Pursuant to Complaint Counsel’s attached Subpoena Duces Tecum issued November XX, 2014, under Commission Rule of Practice § 3.34(b), Complaint Counsel requests that the following material be produced to the Federal Trade Commission, 600 Pennsylvania Ave NW, Mailstop CC-8232, Washington, DC 20580.

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. “**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.

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. **“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.
7. The terms **“Relate”** or **“Related 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.
8. **“Subpoena”** means the Subpoena to Richard Wallace, including this Schedule and Exhibits, and including the Definitions, Instructions, and Specifications.
9. **“Tiversa”** means Tiversa Holding Corporation or Tiversa, Inc., 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.
10. **“Third Party”** means any natural person, corporate entity, partnership, association, joint venture, or governmental entity other than You.
11. **“You”** or **“Your”** means Richard Wallace.
12. **“1718 File”** means the 1,718 page file, bearing the filename “insuranceaging_6.05.071.pdf,” which Tiversa found on a peer-to-peer network.

13. **“IP Address List”** means the document produced to the Federal Trade Commission listing four IP addresses where the 1718 file was found on a peer-to-peer network, marked by Tiversa as TIVERSA-FTC_RESPONSE-006882.
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.

INSTRUCTIONS

1. **Transmission of Sensitive Personally Identifiable Information:** Because material called for by this request may contain sensitive personally identifiable information or sensitive health information, materials responsive to this request shall be submitted by Accellion file transfer or another encrypted method of transmission.
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. **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.
5. **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.
6. **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.

7. **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.
8. **Questions:** Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto, or questions regarding the encrypted transmission of electronically stored information should be directed to Laura Riposo VanDruff, at (202) 326-2999.

SPECIFICATIONS

Demand is hereby made for the following documents:

1. All Documents related to Tiversa.
2. All Documents related to LabMD, Inc. and/or the 1718 File.
3. All Documents related to the IP Address List.
4. For the period from February 28, 2014 through the present, all Documents related to Communications, including proffered testimony, with any third party related to the Federal Trade Commission, including the Federal Trade Commission's employees or agents, or Tiversa, including its employees or agents.
5. All Documents, including personnel files, that relate to your duties, formal or informal performance evaluations, disciplinary records, and promotion, demotion, or termination from Tiversa.
6. All Documents related to the sale or offer of sale of your stock in Tiversa.

Dated: November XX, 2014

Respectfully submitted,

Laura Riposo VanDruff

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Washington, DC 20580
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Facsimile: (202) 326-3062
Electronic mail: lvandruff@ftc.gov

Complaint Counsel

CERTIFICATE OF SERVICE

This is to certify that on November XX, 2014, I served *via* electronic mail delivery a copy of the foregoing document to:

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Kent Huntington
Daniel Epstein
Patrick Massari
Prashant Khetan
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Counsel for Respondent LabMD, Inc.

November XX, 2014

By: _____
Laura Riposo VanDruff
Federal Trade Commission
Bureau of Consumer Protection