MOTION FOR LEAVE TO FILE A NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF LABMD, INC.'S MOTION TO DISQUALIFY
COMMISSIONER EDITH RAMIREZ

On April 27, 2015, Respondent LabMD, Inc. ("LabMD") filed a Motion to Disqualify Commissioner Edith Ramirez ("Motion to Disqualify") from the administrative proceedings because she has been irrevocably tainted by her involvement in the Federal Trade Commission’s ("FTC") response to a Congressional investigation. On May 8, 2015, and again on May 11, 2015, LabMD obtained documents in response to a FOIA request that are necessary and relevant to the Commission’s consideration of the Motion to Disqualify. These documents contain evidence of both the involvement of Commissioner Ramirez in response to Chairman Issa’s December 1, 2014 letter to her, and FTC’s public attempts to make it appear as if the Chairwoman had no involvement at all, even with regard to something as simple as a response letter. These supplemental records are necessary for the Commission to fully and fairly evaluate, review, and decide LabMD’s Motion to Disqualify.

Accordingly, LabMD respectfully requests leave to file the attached Exhibit 1, a Notice of Supplemental Authority In Support of LabMD’s Motion to Disqualify Commissioner Ramirez.
CONCLUSION

For the reasons stated above, LabMD respectfully requests that the Commission grant its Motion for Leave to File a Notice of Supplemental Authority In Support of LabMD, Inc.'s Motion to Disqualify Commissioner Edith Ramirez.

Dated: May 15, 2015

Respectfully submitted,

[Signature]
Daniel Z. Epstein, Esq.
Prashant K. Kheton, Esq.
Patrick J. Massari, Esq.
Erica L. Marshall, Esq.
Cause of Action
1919 Pennsylvania Ave., NW Suite 650
Washington, DC 20006
Phone: (202) 499-4232
Facsimile: (202) 330-5842
Email: prashant.khetan@causeofaction.org

[Signature]
Reed D. Rubinstein, Esq.
William A. Sherman, II, Esq.
Dinsmore & Shohl, LLP
801 Pennsylvania Ave., NW Suite 610
Washington, DC 20004
Phone: (202) 372-9100
Facsimile: (202) 372-9141
Email: reed.rubinstein@dinsmore.com

Counsel for Respondent, LabMD, Inc.
EXHIBIT 1
EDITH RAMIREZ, CHAIRWOMAN
MAUREEN K. OHLHAUSEN
JOSHUA D. WRIGHT
TERRILL M.C.G. SWEENEY

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

PUBLIC
Docket No. 9357

RESPONDENT LABMD, INC.'S NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF LABMD'S MOTION TO DISQUALIFY
COMMISSIONER EDITH RAMIREZ

Respondent LabMD, Inc. ("LabMD") filed a Motion to Disqualify Commissioner Edith Ramirez (the "Motion") on the ground that she has been irrevocably tainted by her integral involvement in the Federal Trade Commission's ("FTC") response to a Congressional investigation by the House Committee on Oversight and Government Reform ("OGG") into the conduct of FTC and Tiversa, Inc. in the instant proceedings.

The records attached hereto as Exhibit A are internal FTC communications which bear directly on LabMD's argument that Commissioner Ramirez's repeated and deep involvement in responding to Congressional inquiries regarding her own agency and its association with Tiversa, Inc., and its CEO Robert Boback, upon which FTC had built its case against LabMD. See Exhibit A, COA Bates # 001-022. For example, and leaving no doubt as to her involvement, on December 15, 2014, Chairwoman Ramirez told her Chief of Staff Heather Hippsley that she had personally revised FTC's response to Chairman Issa's December 1, 2014 letter. See id., at COA Bates # 017. Publicly, however, the next day, Donald Clark (Secretary of the Commission) told
Chairman Issa that his December 1, 2014 letter “had not been shared” with Chairwoman Ramirez. See id., at COA Bates # 002.

Indeed, the LabMD matter is ongoing, and Chairwoman Ramirez will be called on as an ultimate decisionmaker in the case, so her decision to direct FTC strategy in responding to Chairman Issa renders her irrevocably tainted and unable to objectively view this case. See Motion to Disqualify, at 7-9.

CONCLUSION

For these reasons, and those previously raised, LabMD respectfully requests that Chairwoman Ramirez disqualify herself and abstain from any further participation in this matter.

Dated: May 15, 2015

Respectfully submitted,

[Signature]

Daniel Z. Epstein, Esq.
Prashant K. Khetan, Esq.
Patrick J. Massari, Esq.
Erica L. Marshall, Esq.
Cause of Action
1919 Pennsylvania Ave., NW Suite 650
Washington, DC 20006
Phone: (202) 499-4232
Facsimile: (202) 330-5842
Email: prashant.khetan@causeofaction.org

[Signature]

Reed D. Rubinstein, Esq.
William A. Sherman, II, Esq.
Dinsmore & Shohl, LLP
801 Pennsylvania Ave., NW Suite 610
Washington, DC 20004
Phone: (202) 372-9100
Facsimile: (202) 372-9141
Email: reed.rubinstein@dinsmore.com

Counsel for Respondent, LabMD, Inc.
ATTACHMENT A
Kelly, Andrea

From: VanDruitt, Laura Riposo
Sent: Thursday, December 18, 2014 11:26 AM
To: OALJ
Cc: reed.rubenstein@dinsmore.com; William A. Sherman II (william.sherman@dinsmore.com); prashant.khetan@causeofaction.org

Subject: FTC Docket No. 9357 — letter from Secretary-Clark
Attachments: 2014.12.16 Letter from D. Clark to Chairman Issa.pdf

Dear Chief Administrative Law Judge Chappell:

Complaint Counsel has learned that the Secretary of the Commission, Donald Clark, transmitted the attached letter to Chairman Darryl Issa.

Respectfully Submitted,

Laura Riposo VanDruitt
Complaint Counsel

Laura Riposo VanDruitt
Federal Trade Commission
Division of Privacy and Identity Protection
600 Pennsylvania Avenue, N.W., C-2232
Washington, DC 20580
202.326.2999 (direct)
202.326.3993 (facsimile)
vandruitt@ftc.gov

COA BATES # 001
5/14/2015

LABMD - SUPP. PROD. 0719
December 16, 2014

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Issa:

Please know that because the matter of LabMD, Inc is still in administrative adjudication, your letter of December 1, 2014 has not been shared with the Chairwoman or the Commissioners. However, Chairwoman Ramirez has asked me to write and thank you on her behalf. Please also know, that after advising your Committee staff, the FTC’s Complaint Counsel shared your letter with the Administrative Law Judge in the LabMD, Inc. matter, and with counsel for LabMD and Tiversa. Thank you again for sharing your findings.

Sincerely,

[Signature]
Donald S. Clark
Secretary of the Commission
Good morning, Dave.

Best regards,

Laura

Laura Riposo VanDruff
Federal Trade Commission
Assistant Director, Division of Privacy and Identity Protection
600 Pennsylvania Avenue, N.W., CC-8322
Washington, DC 20580
202-326-2999 (direct)
202-326-3303 (facsimile)
vandruff@ftc.gov
From: VanDruff, Laura Riposo
Sent: Friday, January 02, 2015 4:53 PM
To: Vandecar, Kim
Subject: filed brief
Attachments: 2015.01.02 Complaint Counsel's Opposition to Respondent's Motion to Admit RX-543-RX-548.pdf

Laura Riposo-VanDruff
Federal Trade Commission
Assistant Director, Division of Privacy and Identity Theft
600 Pennsylvania Avenue, N.W., CC-8232
Washington, D.C. 20580
202-326-2909 (v/cell)
202-326-3353 (voice mail)
vandruff@ftc.gov
Hi Laura,

Attached please find the response we just sent to Chairman Issa's letter of December 1.

Jeanne
December 16, 2014

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Issa;

Please know that because the matter of LabMD, Inc is still in administrative adjudication, your letter of December 1, 2014 has not been shared with the Chairwoman or the Commissioners. However, Chairwoman Ramirez has asked me to write and thank you on her behalf. Please also know, that after advising your Committee staff, the FTC's Complaint Counsel shared your letter with the Administrative Law Judge in the LabMD, Inc. matter, and with counsel for LabMD and Tiversa. Thank you again for sharing your findings.

Sincerely,

Donald S. Clark
Secretary of the Commission
Thank you, Jeanne.

Laura

From: Bumpus, Jeanne  
Sent: Tuesday, December 16, 2014 11:43 AM  
To: VanDruff, Laura Riposo  
Subject: FW: Response to Chairman Issa

Hi Laura,

Attached please find the response we just sent to Chairman Issa's letter of December 1.

Jeanne
From: Barbian, Jennifer [mailto:Jennifer.Barbian@mail.house.gov]
Sent: Monday, December 01, 2014 1:05 PM
To: Bumpus, Jeanne; Vandecar, Kim
Cc: Grimm, Tyler
Subject: Letter from Chairman Issa

Jeanne and Kim—

I hope you both had a nice Thanksgiving. Attached please find a letter from Chairman Issa, accompanied by documents discussed within the letter that appear to have been produced by Tiversa to the Committee but not to the FTC. Please also send this to Laura VanDruff, who is cc’d on the letter as Complaint Counsel for the FTC.

Feel free to call Tyler or me if you have any questions.

Thanks,

Jen

Jennifer Barbian
Senior Counsel
Committee on Oversight and Government Reform
Rep. Darrell E. Issa, Chairman
(202) 225-5074
Jennifer.Barbian@mail.house.gov

From: VanDruff, Laura Riposo
Sent: Monday, December 01, 2014 1:11 PM
To: Bumpus, Jeanne
Cc: Vandecar, Kim
Subject: FW: Letter from Chairman Issa

2014-12-01 DEI to Ramirez-FTC - Tiversa Documents w Attachments.pdf
Thank you Jen. We will make sure it gets to the Chairwoman and Ms. VanDruff.

Jeannie and Kim—

I hope you both had a nice Thanksgiving. Attached please find a letter from Chairman Issa, accompanied by documents discussed within the letter that appear to have been produced by Tiversa to the Committee but not to the FTC. Please also send this to Laura VanDruff, who is cc’d on the letter as Complaint Counsel for the FTC.

Feel free to call Tyler or me if you have any questions.

Thanks,
Jen

Jennifer Barbian
Senior Counsel
Committee on Oversight and Government Reform
Rep. Darrell E. Issa, Chairman
(202) 225-5074
Jennifer.Barbian@mail.house.gov
Kelly, Andrea

From: Barbian, Jennifer <Jennifer.Barbian@mail.house.gov>
Sent: Wednesday, December 17, 2014 3:10 PM
To: Bumpus, Jeanne
Cc: Grimm, Tyler
Subject: RE: Response to Chairman Issa

Thanks Jeanne.

From: Bumpus, Jeanne [mailto:Bumpus@ftc.gov]
Sent: Tuesday, December 16, 2014 11:39 AM
To: Barbian, Jennifer; Grimm, Tyler; Reavis, Brandon; Berroya, Meghan; Lynch, Tim
Cc: Vandecar, Kim
Subject: Response to Chairman Issa

Jen and Tyler,

Attached please find the response to Chairman Issa’s letter of December 1, 2014. Thank you.

Jeanne

Jeanne Bumpus
Office of Congressional Relations
Federal Trade Commission
(202) 326-2946
December 16, 2014

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Issa;

Please know that because the matter of LabMD, Inc is still in administrative adjudication, your letter of December 1, 2014 has not been shared with the Chairwoman or the Commissioners. However, Chairwoman Ramirez has asked me to write and thank you on her behalf. Please also know, that after advising your Committee staff, the FTC’s Complaint Counsel shared your letter with the Administrative Law Judge in the LabMD, Inc matter, and with counsel for LabMD and Tiversa. Thank you again for sharing your findings.

Sincerely,

Donald S. Clark
Secretary of the Commission
Dave and Kim,

Heather asked me to work with Don on a reply to Chairman Issa. Please let me know if you have any edits to the attached draft.

Jeanne.
Kelly, Andrea

From: Bumpus, Jeanne  
Sent: Tuesday, December 02, 2014 3:42 PM  
To: Clark, Donald S.  
Cc: Vandecar, Kim  
Subject: RE: Letter from Chairman Issa

Thanks Don.

From: Clark, Donald S.  
Sent: Tuesday, December 02, 2014 3:28 PM  
To: Bumpus, Jeanne  
Cc: Vandecar, Kim  
Subject: RE: Letter from Chairman Issa

Jeannie, thanks.

Don

From: Bumpus, Jeanne  
Sent: Tuesday, December 02, 2014 2:49 PM  
To: Clark, Donald S.  
Cc: Vandecar, Kim  
Subject: FW: Letter from Chairman Issa

Don,

Attached is the letter from Chairman Issa we discussed this morning. It has already been shared with Laura Van Druff.

Jeannie

From: Barblan, Jennifer  
Sent: Monday, December 01, 2014 1:05 PM  
To: Bumpus, Jeanne; Vandecar, Kim  
Cc: Grimm, Tyler  
Subject: Letter from Chairman Issa

Jeanne and Kim—

I hope you both had a nice Thanksgiving. Attached please find a letter from Chairman Issa, accompanied by documents discussed within the letter that appear to have been produced by Tyversa to the Committee but not to the FTC. Please also send this to Laura VanDruff, who is cc’d on the letter as Complaint Counsel for the FTC.

Feel free to call Tyler or me if you have any questions.

Thanks,

Jen

Jennifer Barblan

COA BATES # 013
5/14/2015
Senior Counsel
Committee on Oversight and Government Reform
Rep. Darrell E. Issa, Chairman
(202) 225-5074
Jennifer.Barbian@mail.house.gov
As we discussed, here’s a copy of the response to Chairman Issa for your files. Both sides in the LabMD case and the Administrative Law Judge have now been given copies of the incoming letter, so there is no longer an ex parte contact issue; Sue and Emalea therefore will now scan the incoming letter and this response into DocSmart (but not circulate it to anyone else). Thanks for your call!

Don
December 16, 2014

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Issa:

Please know that because the matter of LabMD, Inc is still in administrative adjudication, your letter of December 1, 2014 has not been shared with the Chairwoman or the Commissioners. However, Chairwoman Ramirez has asked me to write and thank you on her behalf. Please also know, that after advising your Committee staff, the FTC's Complaint Counsel shared your letter with the Administrative Law Judge in the LabMD, Inc. matter, and with counsel for LabMD and Tiversa. Thank you again for sharing your findings.

Sincerely,

Donald S. Clark
Secretary of the Commission
Great; thanks, H.

Heather, I've made a couple of small changes. The revised text is below.

HI Edith, I forgot that we haven't cleared this letter yet to go from Don back to Issa. Here's the text:

I've edited the response letter to Issa a bit; Joanne had forgotten to send it our way so just got this afternoon. H.
Kelly, Andrea

From: Taylor, Susan
Sent: Friday, December 19, 2014 4:43 PM
To: Clark, Donald S.
Subject: Darrell Issa/LabMD
Attachments: SP60252_KMC14122002420.pdf
December 16, 2014

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Issa:

Please know that because the matter of LabMD, Inc is still in administrative adjudication, your letter of December 1, 2014 has not been shared with the Chairwoman or the Commissioners. However, Chairwoman Ramirez has asked me to write and thank you on her behalf. Please also know, that after advising your Committee staff, the FTC's Complaint Counsel shared your letter with the Administrative Law Judge in the LabMD, Inc. matter, and with counsel for LabMD and Tiversa. Thank you again for sharing your findings.

Sincerely,

Donald S. Clark
Secretary of the Commission
Kelly, Andrea

From: Clark, Donald S.
Sent: Wednesday, January 21, 2015 12:54 PM
To: Goins, Suzie S.
Subject: RE: FYI - Issa letter

Tracking: Recipient Delivery Read
Goins, Suzie S. Delivered: 1/21/2015 12:54 PM Read: 1/21/2015 12:55 PM

Suzie, that's great; thanks!

... Don ...

From: Goins, Suzie S.
Sent: Wednesday, January 21, 2015 12:40 PM
To: Clark, Donald S.
Subject: FYI - Issa letter

Hi Don,

FYI—the Issa request is complete and I reported it two weeks ago on the Committee report.

Thank you,
Suzie
Kelly, Andrea

From: Clark, Donald S.
Sent: Monday, December 15, 2014 6:28 PM
To: Bumpus, Jeannene
Subject: RE: Slightly Revised Draft Response To Chairman Issa

Tracking:
Recipient Delivery
Bumpus, Jeannene Delivered: 12/15/2014 6:28 PM

OK, will do; thanks.

Don

From: Bumpus, Jeannene
Sent: Monday, December 15, 2014 6:27 PM
To: Clark, Donald S.
Subject: RE: Slightly Revised Draft Response To Chairman Issa

Don, Thanks.

From: Clark, Donald S.
Sent: Monday, December 15, 2014 6:20 PM
To: Bumpus, Jeannene
Subject: Slightly Revised Draft Response To Chairman Issa

Jeanne, I've attached a slightly revised version of the above response for your review. Thanks.

Don
Kelly, Andrea

From: Clark, Donald S.
Sent: Wednesday, January 21, 2015 12:56 PM
To: Taylor, Susan; Helisek, Emalea R. CTR
Cc: Goins, Suzie S.
Subject: Request To Move the Issa Letter to the Completed Section of the Weekly Report

Tracking:

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<tr>
<td>Goins, Suzie S.</td>
<td>Delivered: 1/21/2015 12:56 PM</td>
<td>Read: 1/21/2015 12:56 PM</td>
</tr>
</tbody>
</table>

Sue and Emalea, per Suzie’s message, please move the above letter to the completed section of the weekly report; thanks!

...Don

From: Goins, Suzie S.
Sent: Wednesday, January 21, 2015 12:40 PM
To: Clark, Donald S.
Subject: FYI - Issa letter

Hi Don,

FYI – the Issa request is complete and I reported it two weeks ago on the Committee report.

Thank you,
Suzie
UNIVERSAL STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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

PUBLIC
Docket No. 9357

MEET AND CONFER STATEMENT

On May 15, 2015, Prashant Khetan, counsel for Respondent, LabMD, Inc. ("LabMD"), met and conferred by telephone with Laura VanDruff, Complaint Counsel, regarding the subject of the instant Motion for Leave to File a Notice of Supplemental Authority In Support of LabMD’s Motion to Disqualify Commissioner Edith Ramirez. Complaint Counsel did not consent to the Motion.

Dated: May 15, 2015

By: /s/ Prashant K. Khetan
Prashant K. Khetan
UNIVERSAL STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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

[PROPOSED] ORDER

IT IS HEREBY ORDERED that Respondent LabMD, Inc.’s Motion for Leave to File a Notice of Supplemental Authority In Support of LabMD’s Motion to Disqualify Commissioner Edith Ramirez, be and the same is hereby GRANTED, and it is further ORDERED that LabMD Inc.’s Notice of Supplemental Authority shall be filed as part of the Record.

Commissioner
CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2015, I caused to be filed the foregoing document electronically through the Office of the Secretary’s FTC E-filing system, which will send an electronic notification of such filing to the Office of the Secretary:

Donald S. Clark, Esq.
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that on May 15, 2015, I caused hand-delivery of twelve paper copies of the foregoing document to the following address: Document Processing Unit, RFO Receiving Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024.

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

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

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

Alain Sheer, Esq.
Laura Riposo VanDruiff, Esq.
Megan Cox, Esq.
Ryan Mehm, Esq.
John Krebs, Esq.
Jarad Brown, Esq.
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Room CC-8232
Washington, D.C. 20580

Dated: May 15, 2015

By: /s/ Patrick J. Massari
CERTIFICATE OF ELECTRONIC FILING

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

Dated: May 15, 2015                        By:  /s/ Patrick J. Massari