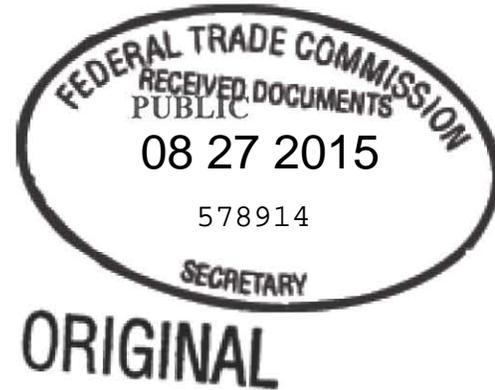


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



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

DOCKET NO. 9357

**ORDER DENYING RESPONDENT’S MOTION FOR *IN CAMERA*
TREATMENT OF LOCATION OF LABMD DATA**

I.

On August 14, 2015, Respondent LabMD (“Respondent” or “LabMD”) filed a motion seeking *in camera* treatment for portions of Complaint Counsel’s Post-Trial submissions that mention the current location of computer data that was previously housed at LabMD’s corporate office in Georgia (“Motion”). Complaint Counsel filed its opposition to the motion on August 26, 2015 (“Opposition”). For the reasons set forth below, the Motion is DENIED.

II.

On August 10, 2015, Complaint Counsel filed its Post-Trial Brief and its Proposed Findings of Fact. One of Complaint Counsel’s proposed findings of fact provides, generally and without a street address, a description of the current location of LabMD’s computer network equipment, including its network servers. Respondent states, “[i]t is further believed that several similar references are contained throughout Complaint Counsel’s Post-Trial Briefing.” In its Motion, Respondent requests that this information be withheld from the public record. Respondent argues that Complaint Counsel’s disclosure of the location of LabMD-related data could result in an injury to Respondent, patients of Respondent’s physician-clients, or Michael Daugherty.

Complaint Counsel responds that Respondent’s Motion is late, having been filed long after the evidentiary record has closed; that the statements that are the subject of the Motion do not constitute evidence for which *in camera* treatment is appropriate; and that Respondent failed to meet its burden for obtaining *in camera* treatment by failing to

submit an affidavit or declaration demonstrating that public disclosure of the information will result in a clearly defined, serious injury.

III.

The information for which Respondent now seeks *in camera* protection is already a matter of public record. For example, this information is contained in CX0709 at 21-22 (Daugherty, Dep. (Feb. 10, 2014)); CX0765 at 10-11 (Respondent's Resp. to Interrog. No. 17) (Mar. 3, 2014); and CX0713-A (former employee, Dep. at 43). In addition, Respondent has itself previously placed this information on the public record. *See* Respondent's Motion to Admit Select Exhibits, filed on the public record in this case on June 12, 2015, attaching proposed exhibit RX552 at Bates 0022 (Tr. p. 8) (Prelim. Inj. Hr'g Tr., *LabMD, Inc. v. Fed. Trade Comm'n*, Docket No. 1:14-cv-00810-WSD (N.D. Ga. May 7, 2014). Indeed, Respondent acknowledges in its Motion that "facts indicating the whereabouts of the patient information are in the public record based on previous depositions, court testimony, and filings." In addition, by including certain information in an unredacted form in its Motion, Respondent has further revealed the information it now seeks to shield from disclosure.

The May 6, 2014 Order on *In Camera* Treatment issued in this case set forth the strict standards for obtaining *in camera* treatment, including that an applicant must support its request for *in camera* treatment with an affidavit or declaration that demonstrates that the information is sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury. Respondent has failed to make that showing.

Respondent has not previously moved for *in camera* treatment of the location of LabMD's property described in the Motion, despite the fact that this information is contained in CX0709, CX0713-A, and CX0765, exhibits that were listed on Complaint Counsel's proposed final exhibit list, provided to Respondent in advance of trial. The deadline for filing motions for *in camera* treatment has long since passed.¹ The information Respondent now seeks to protect is not recently discovered information and thus there is no reason to further extend the *in camera* treatment motions deadline.

¹ The Revised Scheduling Order set April 22, 2014, as the deadline for motions for *in camera* treatment of proposed trial exhibits. In addition, by Order dated February 19, 2015, in anticipation of the resumption of the evidentiary hearing, the parties were directed that for any material that has been or will be offered into evidence, the deadline for filing a motion for *in camera* treatment would be February 24, 2015. Finally, on June 15, 2015, when Respondent's counsel brought to the Court's attention information that could merit *in camera* protection, as to which Respondent's counsel candidly admitted an oversight in failing to seek *in camera* treatment previously, Respondent was permitted to move for *in camera* protection for that information. *See* Tr. 1482; July 15, 2015 Order. The instant motion, coming well after the close of the record and after several chances to move for *in camera* treatment, is simply far too late.

IV.

For the above stated reasons, Respondent's Motion is DENIED, and Complaint Counsel need not revise its Post-Trial submissions.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 27, 2015