UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:  EDITH RAMIREZ, CHAIRWOMAN
                   MAUREEN K. OHLHAUSEN
                   TERRELL MCSWEENY

____________________________________

In the Matter of
PUBLIC

LabMD, Inc.
    a corporation,
    Respondent.

____________________________________

RESPONDENT LABMD, INC.’s RECORD FILING OF EMAIL TRANSMISSIONS
REGARDING COMPLAINT COUNSEL’S ADMINISTRATIVE APPEAL BETWEEN
COUNSEL FOR THE PARTIES AND FEDERAL TRADE COMMISSION SECRETARY
DONALD S. CLARK

Alfred J. Lechner, Jr.
Daniel Z. Epstein
Patrick J. Massari
Cause of Action Institute
1919 Pennsylvania Avenue, NW
Suite 650
Washington, DC 20006

Dated: March 3, 2016

Counsel for Respondent
Respondent LabMD, Inc., by and through Counsel, hereby submits for the Record Email transmissions regarding Complaint Counsel’s administrative appeal between Counsel for the parties and Federal Trade Commission Secretary Donald S. Clark. The Record Email transmissions are attached as Exhibit 1.

Dated: March 3, 2016

Respectfully submitted,

Alfred J. Lechner, Jr.
Daniel Z. Epstein
Patrick J. Massari
Cause of Action Institute
1919 Pennsylvania Avenue, NW Suite 650
Washington, DC 20006
Phone: (202) 499-4232
Facsimile: (202) 330-5842
Email: alfred.lechner@causeofaction.org
Admitted in New Jersey and New York
Applying to District of Columbia Bar
Supervised by Members of the District of Columbia Bar

Counsel for Respondent, LabMD, Inc.
EXHIBIT 1
Patrick Massari

From: Clark, Donald S. <DCLARK@ftc.gov>
Sent: Monday, November 16, 2015 4:30 PM
To: Catherine Chae
Cc: Patrick Massari
Subject: RE: Initial Decision Issued in In the Matter of LabMD, Docket No. 9357, To Be Posted on the Commission Website At 5 pm Today, Monday, November 16th

Catherine, I'll add Patrick to my email distribution list; thanks.

Don

From: Catherine Chae [mailto:catherine.chae@causeofaction.org]
Sent: Monday, November 16, 2015 3:46 PM
To: Clark, Donald S.
Cc: Patrick Massari
Subject: RE: Initial Decision Issued in In the Matter of LabMD, Docket No. 9357, To Be Posted on the Commission Website At 5 pm Today, Monday, November 16th

Secretary Clark,

Can you kindly add Patrick Massari at patrick.massari@causeofaction.org to the recipient list? Thank you.

Best,

Catherine Chae | Cause of Action
1919 Pennsylvania Ave, N.W., Suite 650
Washington, D.C. 20006
Tel: 202.499.2025
catherine.chae@causeofaction.org

Confidentiality: The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

From: Clark, Donald S. [mailto:DCLARK@ftc.gov]
Sent: Monday, November 16, 2015 3:31 PM
To: 'Rubinstein, Reed' <reed.rubinstein@dinsmore.com>; Sheer, Alain <ASHEER@ftc.gov>; VanDruff, Laura Riposo <lvandruff@ftc.gov>; ‘william.sherman@dinsmore.com’ <william.sherman@dinsmore.com>; Cox, Megan <mcox1@ftc.gov>; Mehm, Ryan <rmehm@ftc.gov>; Daniel Epstein <daniel.epstein@causeofaction.org>; Catherine Chae <catherine.chae@causeofaction.org>; Brown, Jarad <jbrown4@ftc.gov>
Cc: Jeter, LaJuan J. <LJETER@ftc.gov>; Tabor, April <atabor@ftc.gov>; Frankle, Janice Podoll <JFRANKLE@ftc.gov>; Mack, Julie <JMACK@ftc.gov>
Subject: Initial Decision Issued in In the Matter of LabMD, Docket No. 9357, To Be Posted on the Commission Website At 5 pm Today, Monday, November 16th
Everyone, assuming that I don't receive any requests to redact any material from the attached courtesy copy of the Initial Decision by 4 pm today, it will be posted on the public Commission Website, at the following URL:

https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter

at 5 pm today. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary
Federal Trade Commission  Washington, D.C. 20580
Telephone: (202) 326-2514; FAX: (202) 326-2496

CONFIDENTIALITY NOTE: This message is intended only for the individual or entity to whom it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication by mistake, please notify the sender immediately by telephone, and destroy the original message and any copies of it. Thank you.

From: Clark, Donald S.
Sent: Friday, November 13, 2015 4:33 PM
To: 'Rubinstein, Reed'; Sheer, Alain; VanDruff, Laura Riposo; 'william.sherman@dinsmore.com'; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad
Cc: Jeter, LaJuan J.; Tabor, April; Frankle, Janice Podoll; Mack, Julie
Subject: Initial Decision Issued in In the Matter of LabMD, Docket No. 9357

Everyone, I have attached for your review a courtesy copy of the Initial Decision which Chief Administrative Law Judge Chappell has today issued in In the Matter of LabMD Inc., Docket No. 9357. The official service copies of the Initial Decision will be delivered to you next week, and the Initial Decision will not be placed on the public record of the Commission until next week. Therefore, if you believe that any information in the Initial Decision should be redacted before it is placed on the public record, please let me know by return email message, if possible, by 4 pm on Monday, November 16, 2015. Please also let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary
Federal Trade Commission  Washington, D.C. 20580
CONFIDENTIALITY NOTE: This message is intended only for the individual or entity to whom it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication by mistake, please notify the sender immediately by telephone, and destroy the original message and any copies of it. Thank you.
From: VanDruff, Laura Riposo
Sent: Monday, December 14, 2015 7:08 PM
To: Clark, Donald S.
Cc: patrick.massari@causeofaction.org; daniel.epstein@causeofaction.org
Subject: FTC Docket No. 9357 -- Complaint Counsel's anticipated response to Respondent's Dec. 14, 2015 filing

Good evening, Secretary Clark.

Respondent LabMD, Inc.’s December 14, 2015 filing in Opposition to Complaint Counsel’s Motion to Enforce Limits on Appeal Briefing seeks a variety of relief from the Commission. Consistent with Rule 3.22(d), Complaint Counsel anticipates that it will respond to Respondent’s requests for relief. I am writing to advise your office that we will file our response in opposition to Respondent’s request for relief without undue delay.

Please do not hesitate to call me with any questions or concerns.

Respectfully submitted,

Laura Riposo VanDruff
Complaint Counsel
Laura Riposo VanDruff  
Federal Trade Commission  
Assistant Director, Division of Privacy and Identity Protection  
600 Pennsylvania Avenue, N.W., CC-8232  
Washington, DC  20580  
202.326.2999 (direct)  
202.326.3393 (facsimile)  
lvandruff@ftc.gov
Dear Secretary Clark,

Please see attached Complaint Counsel's Appeal Brief, filed today.

Best,
Jarad Brown

Jarad Brown
Federal Trade Commission | Bureau of Consumer Protection
Division of Privacy and Identity Protection
600 Pennsylvania Ave. NW, CC-8232
Washington, DC 20580
jbrown4@ftc.gov | (202) 326-2927
Dear Secretary Clark,

Please see attached Complaint Counsel’s Corrected Appeal Brief, filed today.

Best,
Jarad Brown

Jarad Brown
Federal Trade Commission | Bureau of Consumer Protection
Division of Privacy and Identity Protection
600 Pennsylvania Ave. NW, CC-8232
Washington, DC 20580
jbrown4@ftc.gov | (202) 326-2927
Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Don Clark, Esq., Secretary
Federal Trade Commission Washington, D.C. 20580
Telephone: (202) 326-2514; FAX: (202) 326-2496

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Dear Secretary Clark:

Attached please find a courtesy copy of Notice of Appearance for Alfred J. Lechner, Jr. which was filed on Thursday, February 4, 2016 using the Federal Trade Commission E-Filing System.

Best,

Catherine Chae | Cause of Action Institute
1919 Pennsylvania Ave. NW, Suite 650
Washington, D.C. 20006
(o) 202.499.2025 / (c) 202.603.7372
catherine.chae@causeofaction.org

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Dear Secretary Clark:

Attached please find a courtesy copy of Respondent LabMD, Inc.’s Corrected Answering Brief which was filed on Friday, February 5, 2016 using the Federal Trade Commission E-Filing System.

Best,

Catherine Chae | Cause of Action Institute
1919 Pennsylvania Ave. NW, Suite 650
Washington, D.C. 20006
(o) 202.499.2025 / (c) 202.603.7372
catherine.chae@causeofaction.org

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Secretary Clark,

Attached please find a courtesy copy of Errata Sheet Amending Respondent LabMD, Inc.’s Corrected Answering Brief which was filed on Thursday, February 11, 2016 using the Federal Trade Commission E-Filing System.

Thank you.

W/r

/s/
Patrick J. Massari | Counsel | Cause of Action Institute
1919 Pennsylvania Avenue NW, Suite # 650
Confidentiality

The information contained in this communication may be confidential, is intended only for the use of the recipient named above, and may be legally privileged. It is not intended as legal advice, and may not be relied upon or used as legal advice. Nor does this communication establish an attorney-client relationship between us. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.
Patrick Massari

From: Brown, Jarad <jbrown4@ftc.gov>
Sent: Wednesday, February 17, 2016 4:27 PM
To: Clark, Donald S.; Frankle, Janice Podoll; Mack, Julie; Tabor, April
Cc: Daniel Epstein; Patrick Massari; Erica Marshall; Alfred J. Lechner, Jr.
Subject: FTC Docket No. 9357 - Complaint Counsel's Response to TechFreedom Motion for Leave to File Amicus Curiae Brief

Dear Secretary Clark,

Please see attached Complaint Counsel's Response to TechFreedom’s Motion for Leave to File Amicus Curiae Brief, filed today.

Best regards,
Jarad Brown

Jarad Brown
Federal Trade Commission | Bureau of Consumer Protection
Division of Privacy and Identity Protection
600 Pennsylvania Ave. NW, CC-8232
Washington, DC 20580
jbrown4@ftc.gov | (202) 326-2927
Dear Secretary Clark,

Please see attached Complaint Counsel's Reply Brief, filed today.

Best regards,
Jarad Brown

Jarad Brown
Federal Trade Commission | Bureau of Consumer Protection
Division of Privacy and Identity Protection
600 Pennsylvania Ave. NW, CC-8232
Washington, DC 20580
jbrown4@ftc.gov | (202) 326-2927
Everyone, just a reminder that the Order Scheduling Oral Argument at the following URL:

https://www.ftc.gov/system/files/documents/cases/160119labmdorder.pdf --

provides:

If either side wishes to provide the Commission with a short written or electronic compilation of material to facilitate its presentation during the Oral Argument, any such compilation may contain only public information that is already in the record of the proceeding, and copies must be filed with the Secretary of the Commission and provided to opposing counsel no later than Tuesday, March 1, 2016, at 5:00 p.m.

In addition, please let me know as soon as possible, by return email message, who will be presenting the argument for each side. Thanks very much.

Best regards,

Don Clark
at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary
Federal Trade Commission  Washington, D.C. 20580
Telephone: (202) 326-2514; FAX: (202) 326-2496

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Secretary Clark,

Alfred J. Lechner, Jr. will present argument on behalf of Respondent.

Thank you.

W/r

/s/
Patrick J. Massari | Counsel | Cause of Action Institute
1919 Pennsylvania Avenue NW, Suite # 650
Confidentiality

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Good afternoon, Secretary Clark.

I will be presenting the argument for Complaint Counsel.

Best regards,

Laura
provides:

If either side wishes to provide the Commission with a short written or electronic compilation of material to facilitate its presentation during the Oral Argument, any such compilation may contain only public information that is already in the record of the proceeding, and copies must be filed with the Secretary of the Commission and provided to opposing counsel no later than Tuesday, March 1, 2016, at 5:00 p.m.

In addition, please let me know as soon as possible, by return email message, who will be presenting the argument for each side. Thanks very much.

Best regards,

Don Clark

From: Clark, Donald S.
Sent: Friday, January 15, 2016 5:28 PM
To: Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'
Cc: Tabor, April; Frankle, Janice Podoll; Mack, Julie
Subject: Commission Order Issued Today In the Matter of LabMD, Docket No. 9357

Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary
Federal Trade Commission  Washington, D.C. 20580
Telephone: (202) 326-2514; FAX: (202) 326-2496

CONFIDENTIALITY NOTE: This message is intended only for the individual or entity to whom it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under
Secretary Clark,

I’ll see to it.

Thank you.

W/r

/s/
Patrick J. Massari | Counsel | Cause of Action Institute
1919 Pennsylvania Avenue NW, Suite # 650
Washington, D.C. 20006
Patrick.Massari@causeofaction.org
Confidentiality

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From: Clark, Donald S. [mailto:DCLARK@ftc.gov]
Sent: Monday, February 29, 2016 11:26 AM
To: Patrick Massari <patrick.massari@causeofaction.org>; VanDruff, Laura Riposo <lvandruff@ftc.gov>; Sheer, Alain <ASHEER@ftc.gov>; Cox, Megan <mcox1@ftc.gov>; Mehm, Ryan <rmehm@ftc.gov>; Daniel Epstein <daniel.epstein@causeofaction.org>; Catherine Chae <catherine.chae@causeofaction.org>; Brown, Jarad <jbrown4@ftc.gov>; Alfred J. Lechner, Jr. <jlechner@causeofaction.org>
Cc: Tabor, April <atabor@ftc.gov>; Frankie, Janice Podoll <JFRANKLE@ftc.gov>; Mack, Julie <JMACK@ftc.gov>; Swenson, Robert <rswenson@ftc.gov>; Shannon Thrash <shannon.thrash@causeofaction.org>; Paulette Porter <paulette.porter@causeofaction.org>
Subject: RE: Request For Corrected Version of Answering Brief Filed by Respondent In the Matter of LabMD, Docket No. 9357

Patrick, yes, please both email a copy to me and file a copy through the E-Filing system. In addition, if you could highlight the corrected text in a color such as yellow or red, that would be helpful. Thanks very much.

Best regards,

Don Clark

From: Patrick Massari [mailto:patrick.massari@causeofaction.org]
Sent: Monday, February 29, 2016 11:16 AM
To: Clark, Donald S.; VanDruff, Laura Riposo; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein <daniel.epstein@causeofaction.org>; Catherine Chae <catherine.chae@causeofaction.org>; Brown, Jarad; Alfred J. Lechner, Jr. <jlechner@causeofaction.org>
Cc: Tabor, April; Frankie, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash <shannon.thrash@causeofaction.org>; Paulette Porter <paulette.porter@causeofaction.org>
Subject: RE: Request For Corrected Version of Answering Brief Filed by Respondent In the Matter of LabMD, Docket No. 9357

Secretary Clark,
Thank you for your message.

To be clear, you are asking for a submission via email to you of an edited version of Respondent’s Corrected Answering Brief, filed at 11:17 p.m. on Friday, February 5, 2016, to include all of the corrections in the Errata Sheet submitted by Respondent on February 11, 2015. Is this correct? If so, do the changes need to be highlighted in some way?

And given that this document is a filing transmitted through your Office to the Commission, it should also be filed on the FTC E-Filing system so that it is part of the record, correct?

Please advise.

Thank you.

W/r

/s/
Patrick J. Massari | Counsel | Cause of Action Institute
1919 Pennsylvania Avenue NW, Suite # 650
Washington, D.C. 20006
Patrick.Massari@causeofaction.org

Admitted in Maryland and the District of Columbia

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Patrick, I’ve been asked whether you can forward to me, for transmittal to the Commission, a corrected copy of your Answering Brief which incorporates all the corrections shown on the errata sheet that you filed. Please email the corrected copy to me by return email as soon as possible; thanks for your help.

Best regards,

Don Clark

From: Patrick Massari <mailto:patrick.massari@causeofaction.org>
Sent: Friday, February 26, 2016 1:14 PM
To: VanDruff, Laura Riposo; Clark, Donald S.; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Alfred J. Lechner, Jr.
Cc: Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash; Paulette Porter
Subject: RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument
Importance: High

Secretary Clark,

Alfred J. Lechner, Jr. will present argument on behalf of Respondent.

Thank you.

W/r

/s/
Patrick J. Massari | Counsel | Cause of Action Institute
1919 Pennsylvania Avenue NW, Suite # 650
Washington, D.C. 20006
Patrick.Massari@causeofaction.org
Admitted in Maryland and the District of Columbia
Click here to subscribe to our alerts!
Good afternoon, Secretary Clark.

I will be presenting the argument for Complaint Counsel.

Best regards,

Laura

---

Everyone, just a reminder that the Order Scheduling Oral Argument at the following URL:

https://www.ftc.gov/system/files/documents/cases/160119labmdorder.pdf --

provides:

If either side wishes to provide the Commission with a short written or electronic compilation of material to facilitate its presentation during the Oral Argument, any
such compilation may contain only public information that is already in the record of the proceeding, and copies must be filed with the Secretary of the Commission and provided to opposing counsel no later than Tuesday, March 1, 2016, at 5:00 p.m.

In addition, please let me know as soon as possible, by return email message, who will be presenting the argument for each side. Thanks very much.

Best regards,

Don Clark

From: Clark, Donald S.
Sent: Friday, January 15, 2016 5:28 PM
To: Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'
Cc: Tabor, April; Frankle, Janice Podoll; Mack, Julie
Subject: Commission Order Issued Today In the Matter of LabMD, Docket No. 9357

Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary
Federal Trade Commission Washington, D.C. 20580
Telephone: (202) 326-2514; FAX: (202) 326-2496

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Dear Secretary Clark,

Attached please find a courtesy copy of Respondent LabMD, Inc.’s Consolidated Corrected Answering Brief which was filed at your request on Monday, February 29, 2016 using the Federal Trade Commission E-Filing System.

Thank you.

W/r

/s/
Patrick J. Massari | Counsel | Cause of Action Institute
1919 Pennsylvania Avenue NW, Suite # 650
Confidentiality

The information contained in this communication may be confidential, is intended only for the use of the recipient named above, and may be legally privileged. It is not intended as legal advice, and may not be relied upon or used as legal advice. Nor does this communication establish an attorney-client relationship between us. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.
Patrick, thanks for your email message, in which you have confirmed that the compilation you filed on behalf of Respondent contains only public information already in the record of this proceeding. With respect to the question you raise, I should note that if Complaint Counsel had filed a compilation, I would have asked them to provide the same confirmation. More generally, I should note that the Office of the Secretary routinely asks parties in Part 3 matters to confirm that the information contained in filings is public in all respects and part of the record. We request this confirmation where, as here, there is ambiguity as to what portion of a filing a citation is referencing, or where the citation does not reference an exhibit on the public record. As the Office does not cite check filings, we seek this confirmation as an added precaution, so that counsel for the filing party has an opportunity to check and ensure that no confidential information is inadvertently posted to our public website at FTC.GOV. After receiving your email, and re-reviewing your filing, we now understand that the “OGR Report – released May 2015” that you reference beginning in Slide 5 and throughout your compilation is, in fact, RX 644, the January 2015 Report to which you cite in Slide 6. We also now understand that the citations to the OGR Report found on Slides 20, 21 and 24 refer to the emails themselves, and not the statements immediately above the citation.

Everyone, as you know, the Oral Argument will be held in Room 532-H of the Headquarters Building next Tuesday, beginning at 1 pm, and I wanted to let you know that both sides will be able to check the computer and other facilities in Room 532-H either Monday afternoon (time to be determined) or Tuesday morning. Please let me know if you would like to check the room at either of those times. Thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary
Federal Trade Commission  Washington, D.C. 20580
Telephone: (202) 326-2514; FAX: (202) 326-2496

CONFIDENTIALITY NOTE: This message is intended only for the individual or entity to whom it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under
Secretary Clark,

Thank you for your message. However, Counsel for LabMD is unaware of any instance in this matter where the Secretary’s Office formally questioned a filing by Complaint Counsel regarding adherence to an order. This appears to be a singular request for LabMD.

Has an objection been raised to our filing? If so, it should be entered on the Record. If not (and I have not seen any such objection from Complaint Counsel), why is Respondent being singled out here? Please advise.

This case has gone on for 6 years — there really is nothing new under the sun. The slides all contain information referenced in the Initial Decision (in whole or in part), with the possible exception of Associate Director Mary Engle’s July 24, 2007 statement before the House Oversight Committee, referenced in Respondent’s post-trial briefing. Complaint Counsel is or should be well-aware of all the information in the slides. The topic headers are part of Respondent’s Closing Argument and support positions advanced by LabMD in this litigation.

So that is where we are. Please advise as requested.

Thank you.

W/r

/s/
Patrick J. Massari | Counsel | Cause of Action Institute
1919 Pennsylvania Avenue NW, Suite # 650
Washington, D.C. 20006
Patrick.Massari@causeofaction.org
Admitted in Maryland and the District of Columbia
Counsel for the Complaint and Counsel for Respondent, thanks for forwarding the names of the persons who will be presenting arguments at the Oral Argument before the Commission next Tuesday, March 8th, beginning at 1 pm in Room 532-H of the Commission Headquarters Building. Counsel for the Respondent, we yesterday received your filing entitled "Respondent's Slides Re: Oral Argument Before the Commission," and so I would appreciate your confirming, by return email, that the filing "contain[s] only public information that is already in the record of the proceeding, . . ." as provided by the Commission Order Scheduling Oral Argument, at https://www.ftc.gov/system/files/documents/cases/160119labmdorder.pdf. Thank you.

Don Clark

Donald S. Clark, Esq., Secretary
Federal Trade Commission  Washington, D.C. 20580
Telephone: (202) 326-2514; FAX: (202) 326-2496

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Secretary Clark,

Alfred J. Lechner, Jr. will present argument on behalf of Respondent.

Thank you.

W/r

/s/

Patrick J. Massari | Counsel | Cause of Action Institute
1919 Pennsylvania Avenue NW, Suite # 650
Washington, D.C. 20006
Patrick.Massari@causeofaction.org
Admitted in Maryland and the District of Columbia
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Good afternoon, Secretary Clark.

I will be presenting the argument for Complaint Counsel.

Best regards,

Laura
Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary
Federal Trade Commission  Washington, D.C. 20580
Telephone: (202) 326-2514; FAX: (202) 326-2496

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Secretary Clark,

Thank you for your message. However, Counsel for LabMD is unaware of any instance in this matter where the Secretary’s Office formally questioned a filing by Complaint Counsel regarding adherence to an order. This appears to be a singular request for LabMD.

Has an objection been raised to our filing? If so, it should be entered on the Record. If not (and I have not seen any such objection from Complaint Counsel), why is Respondent being singled out here? Please advise.

This case has gone on for 6 years — there really is nothing new under the sun. The slides all contain information referenced in the Initial Decision (in whole or in part), with the possible exception of Associate Director Mary Engle’s July 24, 2007 statement before the House.
Oversight Committee, referenced in Respondent’s post-trial briefing. Complaint Counsel is or should be well-aware of all the information in the slides. The topic headers are part of Respondent’s Closing Argument and support positions advanced by LabMD in this litigation.

So that is where we are. Please advise as requested.

Thank you.

W/r

/s/
Patrick J. Massari | Counsel | Cause of Action Institute
1919 Pennsylvania Avenue NW, Suite # 650
Washington, D.C. 20006
Patrick.Massari@causeofaction.org
Admitted in Maryland and the District of Columbia
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From: Clark, Donald S. [mailto:DCLARK@ftc.gov]
Sent: Wednesday, March 02, 2016 4:39 PM
To: Patrick Massari <patrick.massari@causeofaction.org>; VanDruff, Laura Riposo <lvandruff@ftc.gov>; Sheer, Alain <ASHEER@ftc.gov>; Cox, Megan <mcox1@ftc.gov>; Mehm, Ryan <rmehm@ftc.gov>; Daniel Epstein <daniel.epstein@causeofaction.org>; Catherine Chae <catherine.chae@causeofaction.org>; Brown, Jarad <jbrown4@ftc.gov>; Alfred J. Lechner, Jr. <jlechner@causeofaction.org>
Cc: Tabor, April <atabor@ftc.gov>; Frankle, Janice Podoll <JFRANKLE@ftc.gov>; Mack, Julie <JMACK@ftc.gov>; Swenson, Robert <rswenson@ftc.gov>; Shannon Thrash <shannon.thrash@causeofaction.org>; Paulette Porter <paulette.porter@causeofaction.org>
Subject: Request Regarding March 1st Filing

Counsel for the Complaint and Counsel for Respondent, thanks for forwarding the names of the persons who will be presenting arguments at the Oral Argument before the Commission
next Tuesday, March 8th, beginning at 1 pm in Room 532-H of the Commission Headquarters Building. Counsel for the Respondent, we yesterday received your filing entitled "Respondent's Slides Re: Oral Argument Before the Commission," and so I would appreciate your confirming, by return email, that the filing "contain[s] only public information that is already in the record of the proceeding, . . ." as provided by the Commission Order Scheduling Oral Argument, at https://www.ftc.gov/system/files/documents/cases/160119labmdorder.pdf. Thank you.

Don Clark

Donald S. Clark, Esq., Secretary
Federal Trade Commission Washington, D.C. 20580
Telephone: (202) 326-2514; FAX: (202) 326-2496

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From: Patrick Massari [mailto:patrick.massari@causeofaction.org]
Sent: Friday, February 26, 2016 1:14 PM
To: VanDruff, Laura Riposo; Clark, Donald S.; Sheer, Alain; Cox, Megan; Mehm, Ryan; Daniel Epstein; Catherine Chae; Brown, Jarad; Alfred J. Lechner, Jr.
Cc: Tabor, April; Frankie, Janice Podoll; Mack, Julie; Swenson, Robert; Shannon Thrash; Paulette Porter
Subject: RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument
Importance: High

Secretary Clark,

Alfred J. Lechner, Jr. will present argument on behalf of Respondent.

Thank you.

W/r

/s/  
Patrick J. Massari | Counsel | Cause of Action Institute  
1919 Pennsylvania Avenue NW, Suite # 650  
Washington, D.C. 20006  
Patrick.Massari@causeofaction.org  
Admitted in Maryland and the District of Columbia
**Confidentiality**

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**From:** VanDruff, Laura Riposo [mailto:lvandruff@ftc.gov]

**Sent:** Thursday, February 25, 2016 12:48 PM  
**To:** Clark, Donald S. <DCLARK@ftc.gov>; Sheer, Alain <ASHEER@ftc.gov>; Cox, Megan <mcox1@ftc.gov>; Mehm, Ryan <rmehm@ftc.gov>; Daniel Epstein <daniel.epstein@causeofaction.org>; Catherine Chae <catherine.chae@causeofaction.org>; Brown, Jarad <jbrown4@ftc.gov>; Patrick Massari <patrick.massari@causeofaction.org>  
**Cc:** Tabor, April <atabor@ftc.gov>; Frankle, Janice Podoll <JFRANKLE@ftc.gov>; Mack, Julie <JMACK@ftc.gov>; Swenson, Robert <rswenson@ftc.gov>  
**Subject:** RE: Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

Good afternoon, Secretary Clark.

I will be presenting the argument for Complaint Counsel.

Best regards,

Laura

---

**From:** Clark, Donald S.  
**Sent:** Wednesday, February 24, 2016 2:47 PM  
**To:** Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; ‘daniel.epstein@causeofaction.org’; ‘Catherine Chae’; Brown, Jarad; ‘Patrick Massari’  
**Cc:** Tabor, April; Frankle, Janice Podoll; Mack, Julie; Swenson, Robert  
**Subject:** Reminder Regarding March 1st Deadline For Compilations of Material For the Oral Argument, and Request For Names of Counsel Presenting the Argument

Everyone, just a reminder that the Order Scheduling Oral Argument at the following URL:

https://www.ftc.gov/system/files/documents/cases/160119lambdorder.pdf --

provides:
If either side wishes to provide the Commission with a short written or electronic compilation of material to facilitate its presentation during the Oral Argument, any such compilation may contain only public information that is already in the record of the proceeding, and copies must be filed with the Secretary of the Commission and provided to opposing counsel no later than Tuesday, March 1, 2016, at 5:00 p.m.

In addition, please let me know as soon as possible, by return email message, who will be presenting the argument for each side. Thanks very much.

Best regards,

Don Clark

---

From: Clark, Donald S.
Sent: Friday, January 15, 2016 5:28 PM
To: Sheer, Alain; VanDruff, Laura Riposo; Cox, Megan; Mehm, Ryan; 'daniel.epstein@causeofaction.org'; 'Catherine Chae'; Brown, Jarad; 'Patrick Massari'
Cc: Tabor, April; Frankle, Janice Podoll; Mack, Julie
Subject: Commission Order Issued Today In the Matter of LabMD, Docket No. 9357

Everyone, the Commission has now issued the attached Order Scheduling Oral Argument, and a copy of the Order will be placed on the public Commission Website, at the following URL:

https://www.ftc.gov/enforcement/cases-proceedings/102-3099/labmd-inc-matter

at or after 12 noon on Tuesday, January 19, 2016. Please let me know if you need any additional information; thanks.

Best regards,

Don Clark

Donald S. Clark, Esq., Secretary
Federal Trade Commission  Washington, D.C. 20580
Telephone: (202) 326-2514; FAX: (202) 326-2496

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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2016, 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  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Rm. H-113  
Washington, DC  20580

I also certify that I delivered via electronic mail 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 Van Druff, 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., NW  
Room CC-8232  
Washington, DC  20580

Dated: March 3, 2016

__________________________________________
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: March 3, 2016

Patrick J. Massari
Notice of Electronic Service

I hereby certify that on March 03, 2016, I filed an electronic copy of the foregoing RESPONDENT LABMD, INC.’s RECORD FILING OF EMAIL TRANSMISSIONS REGARDING COMPLAINT COUNSEL’S ADMINISTRATIVE APPEAL BETWEEN COUNSEL FOR THE PARTIES AND FEDERAL TRADE COMMISSION SECRETARY DONALD S. CLARK, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on March 03, 2016, I served via E-Service an electronic copy of the foregoing RESPONDENT LABMD, INC.’s RECORD FILING OF EMAIL TRANSMISSIONS REGARDING COMPLAINT COUNSEL’S ADMINISTRATIVE APPEAL BETWEEN COUNSEL FOR THE PARTIES AND FEDERAL TRADE COMMISSION SECRETARY DONALD S. CLARK, upon:

John Krebs
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Federal Trade Commission
jkrebs@ftc.gov
Complaint

Hallee Morgan
Cause of Action
cmccoyhunter@ftc.gov
Respondent

Jarad Brown
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Respondent

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Esq.
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sunni.harris@dinsmore.com
Respondent

Daniel Epstein
Cause of Action
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Respondent

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Respondent

Alfred Lechner
President & CEO
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jlechner@causeofaction.org
Respondent

Patrick Massari
Attorney