

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



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

**COMPLAINT COUNSEL’S REPLY IN SUPPORT OF ITS
MOTION FOR DISCOVERY SANCTIONS**

Respondent continues to be in substantial noncompliance with six discovery requests more than a month after this Court’s January 10, 2014 Order requiring compliance. Indeed, Respondent has conceded its noncompliance with respect to two requests. It is appropriate and just, therefore, for the Court to enter sanctions to offset the prejudice caused by Respondent’s continuing refusal to comply with its discovery obligations.

BACKGROUND

The January 10, 2014 Order (“Order”) required Respondent to comply with nine discovery obligations on or before January 22, 2014. On February 10, 2014, more than 18 days after the court-imposed deadline, Complaint Counsel filed its Motion for Sanctions (“Motion”).

Since Complaint Counsel filed its Motion, Respondent produced only 4 documents, totaling 189 pages, hours before serving its Opposition on February 20, 2014. These documents are tax returns, a limited review of LabMD’s network security practices, a June 2013 employee handbook, and human resource files relating to seven individuals. That same day Respondent also served revised answers to Interrogatories 1 and 2. Exh. A.

Despite this eleventh-hour production, Respondent has persisted in not complying with six requests addressed in the Order. Respondent concedes it has utterly failed to provide any response to Interrogatory 9 and has partially failed to comply with Request 28. Opp. at 2. Respondent has failed to respond fully to four requests, as demonstrated by the facial deficiencies in the responses and by the testimony of Respondent's former employees.

Accordingly, Complaint Counsel has no option but to seek discovery sanctions for Respondent's continued refusal to comply.

ARGUMENT

I. REQUESTS TO WHICH RESPONDENT CONCEDES NONCOMPLIANCE

Respondent admits deficiencies remain in its responses to discovery obligations. Opp. at 2. Specifically, Respondent admits to providing no response whatsoever to Interrogatory 9. *Id.* Further, Respondent admits its response to Request 28 is deficient. *Id.* While the documents produced in response to Request 28 show LabMD's annual revenues and profits, they provide little to no information concerning IT-related expenditures.

II. REQUESTS TO WHICH RESPONDENT HAS FAILED TO FULLY RESPOND

A. REQUEST 13

Through the testimony of former LabMD employees, Complaint Counsel has learned of documents responsive to Request 13 that were created, preserved, and remain in Respondent's possession. Respondent has not yet produced these documents.

Jeff Martin, LabMD's most recent IT manager, testified [REDACTED]

[REDACTED]

[REDACTED]¹ To date, Respondent has produced only one such report.

Similarly, former LabMD IT employee Brandon Bradley [REDACTED]

[REDACTED]

[REDACTED] Finally, former LabMD IT employee Jennifer Parr testified that she

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] are responsive to Request 13, and the vast majority of them have not been produced.

B. INTERROGATORIES 1 AND 2

On January 27, 2014, Respondent served woefully inadequate answers to Interrogatories 1 and 2. Exh. E. Respondent submitted revised answers to Interrogatories 1 and 2 on February 20, 2014. These answers remain insufficient because they do not identify each individual's job title, as requested by Interrogatory 1, and they assert only that certain identified individuals "had various levels of access" to 10 types of personal information. Exh. A, at 4. This assertion lacks the specificity necessary to respond to Interrogatory 2, which seeks "the types of Personal Information that each person had authority to access."

¹ Respondent's counsel stated that "LabMD considers all information and knowledge that its current and former employees possess as confidential," and therefore it would mark all depositions of current and former employees as confidential. Exh. F (Letter from W. Sherman to L. VanDruff (Nov. 26, 2013)).

C. REQUEST 21

In response to the Order on Request 21, which required that Respondent produce information on the duties, job descriptions, and negative evaluations of individuals listed on Complaint Counsel's Preliminary Witness List who were employed in the IT department or had duties or responsibilities related to security practices, Respondent produced information relating to only seven individuals. Respondent has provided no such information concerning Messrs. Martin, Boyle, Bureau, Kaloustian, and Maire,² for whom such information would be responsive to the Order. Therefore, Respondent's responses to Request 21 remain incomplete.

D. REQUEST 23

Respondent's counsel brought to the February 21, 2014 deposition of former employee Nicotra Harris three non-Bates-stamped documents responsive to Request 23.³ Exh. G, at 140-42; *see also* Exh. H, at 12-13. When Complaint Counsel objected to Respondent's counsel's use of two of the non-Bates-stamped documents which were not previously produced, Respondent's counsel refrained from using them as exhibits. The documents were statements regarding LabMD policies signed by Ms. Harris, which are responsive to Request 23, which requests "All Statements of Understanding of and Compliance with LabMD's Ethics Policy and Employment Policy executed by LabMD current and former employees." Exh. H, at 12-13. Respondent's counsel did not provide copies of the documents to Complaint Counsel.

² *See* Motion n.3

³ Document Request 23 was not specifically addressed by Complaint Counsel's Motion because Complaint Counsel accepted Respondent's assertions regarding the completeness of its prior production. Since the filing, Complaint Counsel has learned that Respondent has withheld responsive, non-privileged documents.

III. LABMD’S OPERATING STATUS DOES NOT EXCUSE RESPONDENT’S COUNSEL’S FAILURES

Respondent’s Opposition states that “the only person capable of complying with the FTC’s discovery demands is Mike Daugherty,” and that “much of the information ordered to be produced is now in boxes and located in storage.” Opp. at 2. Mr. Daugherty’s efforts to search is not the standard to which discovery need be performed. Counsel must also be involved, and ensure measures are taken to monitor compliance with a litigation hold and identify and search all sources of discoverable information.⁴ See *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Given the testimony regarding the existence of documents responsive to Request 13 and Mr. Daugherty’s testimony [REDACTED] Respondent’s counsel cannot rely on Mr. Daugherty making “personal best efforts to locate and produce the documents requested” to meet Respondent’s discovery obligations. Opp. at Exh. 1. Similarly, the Court should not rely upon Respondent’s counsel’s equivocal assertions that “To LabMD’s best knowledge, all discovery deficiencies have been cured with the exception of Interrogatory 9 and Document Request 28,” and “To LabMD’s knowledge, it has no further documents” responsive to Requests 3, 4, and 27. Opp. at 2.

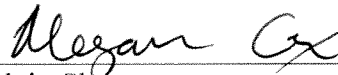
⁴ [REDACTED]

CONCLUSION

For the foregoing reasons, entry of an Order awarding sanctions remains just and appropriate.

Dated: February 27, 2014

Respectfully submitted,



Alain Sheer

Laura Riposo VanDruff

Megan Cox

Margaret Lassack

Ryan Mehm

John Krebs

Jarad Brown

Federal Trade Commission

600 Pennsylvania Ave., NW

Room NJ-8100

Washington, DC 20580

Telephone: (202) 326-2282 – Cox

Facsimile: (202) 326-3062

Electronic mail: mcox1@ftc.gov

Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2014, I caused to be filed the foregoing document and an electronic copy with the Office of the Secretary:

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 and an electronic copy to be 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

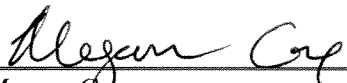
I further certify that I caused a copy of the foregoing document to be served *via* email and courier to:

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Counsel for Respondent LabMD, Inc.

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original.

February 27, 2014

By: 

Megan Cox
Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

Last	First	Position
Gilmore	Nena	Accessioning Mgr
Bellvue	Rose	Billing
Woodson	Rosalind	Billing Mgr
Brown	Sandra	Billing Rep
Garrett	Karalyn	Billing Rep
Harris	Nicotra	Billing Rep
Roberson-Wright	Bianca	Billing Rep
Starks	Jamie	Billing Rep
Washington	Jani	Billing Rep
Fair	Liz	Billing/Client Services Mgr
Diakow	Cindy	Exec Asst
Gilbreth	Tricia	Finance Mgr
Bradley	Brandon	IT
Bureau	Matt	IT
Elliott	Nicole	IT
Howard	Pat	IT
Kaloustian	Curt	IT
Maire	Christopher	IT
Parr	Jennifer	IT
Simmons	Alison	IT
Hyer	Bob	IT Mgr
Martin	Jeff	IT Mgr
Bagwell	Dean'na	Lab Asst
Miller	Chad	Lab Mgr
Warvin	Connie	Lab Mgr
Ghashghaei	Mandana	Med Tech
Haynes	Lindsey	Med Tech
Patel	Palak	Med Tech
Paul	Gerson	Pathologist
Pennington	Marian	Pathologist
Stevenson	Alan	Pathologist
Savera	Adnan	Phlebotomist
Daugherty	Michael	President
Jordan	Sherry	Transcriptionist

Boyle	John	Vice Pres/GM
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Information Access

Medical and Billing
Billing and *Limited Medical
Billing and *Limited Medical
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Billing and *Limited Medical
Billing and *Limited Medical
Billing and *Limited Medical
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|Medical and Billing |

*People employed in the billing department had limited access to medical information which allowed them to properly code the bill for services

*Pursuant to the definition of "Personal Information" in the definition section of Complaint Counsel's First Set of Interrogatories, all of the people of above listed had various levels of access to: (a) first and last name; (b) telephone number; (c) a home or other physical address; (d) date of birth; (e) Social Security Number; (f) medical record number; (g) bank routing, account, and checknumbers; (h) credit or debit card information; (i) laboratory test result, medical test code, diagnosis or clinical history; or (j) health insurance company name and policy

; provided.

Exhibit B

In the Matter of:

LabMD, Inc.

February 6, 2014

Jeffrey Martin

Condensed Transcript with Word Index



**For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555**

Exhibit C

In the Matter of:

LabMD, Inc.

February 14, 2014

Brandon Bradley

Condensed Transcript with Word Index



For The Record, Inc.

(301) 870-8025 - www.ftrinc.net - (800) 921-5555

Exhibit D

In the Matter of:

LabMD, Inc.

February 11, 2014

Jennifer Parr

Condensed Transcript with Word Index



For The Record, Inc.

(301) 870-8025 - www.ftrinc.net - (800) 921-5555

Exhibit E

First	Position	Information Access
Nena	Accessioning Mgr	Medical and Billing
Rose	Billing	Billing and *Limited Medical
Rosalind	Billing Mgr	Billing and *Limited Medical
Sandra	Billing Rep	Billing and *Limited Medical
Karalyn	Billing Rep	Billing and *Limited Medical
Nicotra	Billing Rep	Billing and *Limited Medical
Bianca	Billing Rep	Billing and *Limited Medical
Jamie	Billing Rep	Billing and *Limited Medical
Jani	Billing Rep	Billing and *Limited Medical
Liz	Billing/Client Services Mgr	Billing and *Limited Medical
Cindy	Exec Asst	
Tricia	Finance Mgr	Medical and Billing
Brandon	IT	Medical and Billing
Matt	IT	Medical and Billing
Nicole	IT	Medical and Billing
Pat	IT	Medical and Billing
Curt	IT	Medical and Billing
Christopher	IT	Medical and Billing
Jennifer	IT	Medical and Billing
Alison	IT	Medical and Billing
Bob	IT Mgr	Medical and Billing
Jeff	IT Mgr	Medical and Billing
Dean'na	Lab Asst	Medical and Billing
Chad	Lab Mgr	Medical and Billing
Connie	Lab Mgr	Medical and Billing
Mandana	Med Tech	Medical and Billing
Lindsey	Med Tech	Medical and Billing
Palak	Med Tech	Medical and Billing
Gerson	Pathologist	Medical and Billing
Marian	Pathologist	Medical and Billing
Alan	Pathologist	Medical and Billing
Adnan	Phlebotomist	Medical and Billing
Michael	President	Medical and Billing
Sherry	Transcriptionist	Medical and Billing
John	Vice Pres/GM	Medical and Billing

*People employed in the billing department had limited access to medical information which allowed them to properly code the bill for services provided.

Exhibit F

William A. Sherman, II
202.372.9117
william.sherman@dinsmore.com

Admitted in D.C., Maryland and Ohio

November 26, 2013

Via Regular Mail and Electronic Mail (lvandruff@ftc.gov)

Laura Riposo VanDruff
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Mail Stop NJ-8100
Washington, D.C. 20580

Re: LabMD, Inc. FTC Docket No. 9357

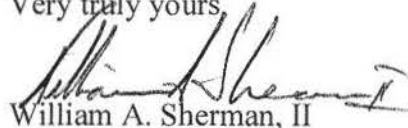
Dear Ms. VanDruff:

We are in receipt of the various and numerous subpoenas regarding the depositions of current and former employees of LabMD. As you may know, each employee of LabMD signed a confidentiality agreement upon becoming employed by LabMD. This is to advise you that LabMD considers all information and knowledge that its current and former employees possess as confidential. Therefore, LabMD will designate on the record at the beginning of each deposition that such deposition of its current and former employees is confidential.

This letter is to also give Complaint Counsel notice that LabMD, pursuant to Scheduling Order Additional Provisions, p. 6, ¶13, intends to divide evenly for purposes of examination the time allotted for each third-party deposition Complaint Counsel notices. Thus, we will expect to be permitted 3-1/2 hours of questioning of Mr. Dooley on December 2, 2013 as well as all other third-party depositions which have been scheduled by Complaint Counsel.

Should you have any questions do not hesitate to contact me.

Very truly yours,


William A. Sherman, II

WAS/dmb

cc: Reed D. Rubinstein, Esq. (via e-mail)
Lorinda Harris, Esq. (via e-mail)

2593631v1

Exhibit G

In the Matter of:

LabMD, Inc.

February 21, 2014

Nicotra Harris

Condensed Transcript with Word Index



For The Record, Inc.

(301) 870-8025 - www.ftrinc.net - (800) 921-5555

Exhibit H

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

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

DOCKET NO. 9357

**RESPONDENT LABMD'S RESPONSE TO COMPLAINT COUNSELS
INTERROGATORIES AND REQUESTS**

Respondent, LabMD, Inc. ("LabMD"), for its response to Complaint Counsel's Interrogatories and Requests ("Discovery Requests") states as follows:

GENERAL OBJECTIONS

1. Respondent objects to the Discovery Requests to the extent that they seek information which is neither relevant to, nor reasonably likely to lead to the discovery of admissible evidence.
2. Respondent objects to the Discovery Requests to the extent that they are overly broad, unduly burdensome, vague, ambiguous, and/or unrestricted by any relevant date parameters.
3. Respondent objects to the Discovery Requests to the extent that they seek information which is protected from discovery by the attorney-client privilege or work product doctrine.

4. Respondent objects to the Discovery Requests to the extent they seek a legal conclusion.

5. Respondent objects to the Discovery Requests to the extent they seek information and/or documents that are contained in or are part of the public record and readily obtainable by Complaint Counsel.

6. Respondent reserves all rights to object to the competency, relevancy, materiality and/or admissibility of the information and/or documents disclosed in response to the Discovery Requests.

7. Respondent hereby incorporates these General Objections into each of the Responses herein, and failure to include each such General Objection in response to each Discovery Requests shall not waive LabMD's objections in this regard.

INTERROGATORIES

1. Identify by name and job title all Persons with authority from LabMD to access Personal Information regarding Consumers, including, but not limited to, Persons who performed tasks related to billing by LabMD for services provided.

Answer: Respondent objects to this Interrogatory to the extent that it is vague and ambiguous and seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Specifically, Complaint Counsel's use of the phrase "authority from LabMD to access" is ambiguous. Without waiving these objections and/or the foregoing General Objections, Respondent states that all LabMD employees could gain knowledge of Personal Information regarding Consumers to the extent it was necessary to the performance of their job duties.

2. For each Person identified in response to Interrogatory No. 1, state the types of Personal Information that the Person had authority to access.

Answer: Respondent objects to this Interrogatory to the extent that it is vague and ambiguous and seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Specifically, Complaint Counsel's use of the phrase "authority to access" is ambiguous. Without waiving these objections and/or the foregoing General Objections, Respondent states that all employees could gain knowledge of any Personal Information regarding Consumers to the extent it was necessary to the performance of their job duties.

3. Identify all file sharing applications downloaded to or installed on any LabMD computer, stating for each when the application was downloaded or installed, what version(s) were downloaded or installed, to which computer(s) the applications were downloaded or installed, and when the applications were updated.

Answer: Respondent objects to this Interrogatory to the extent that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections and/or the foregoing General Objections, Respondent states that upon information and belief that the LimeWire sharing application was the only file sharing application downloaded to one of LabMD's computers used by its billing manager in or about 2005. Respondent does not know what version of the Lime Wire sharing application was downloaded.

4. Identify each inquiry or investigation by a state or federal agency regarding LabMD's Security Practices.

Answer: Respondent objects to this Interrogatory to the extent that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. There is an ongoing FTC investigation and civil action involving Respondent's Security Practices. Respondent is not aware of any other inquiries or investigations.

5. Describe each Security Incident not previously disclosed to the Commission or its staff. Include in your description the dates and circumstances of the Security Incident; the types and volumes of Personal Information accessed or disclosed; and the names and addresses of all Consumers whose Personal Information was accessed or disclosed.

Answer: There are no undisclosed Security Incidents to report.

6. For each substantially different Communication from LabMD to Consumers relating to any Security Incident, describe how LabMD developed the list of Consumers to whom the Communication was directed.

Answer: Respondent objects to this Interrogatory to the extent that it is vague and ambiguous and seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Specifically, Complaint Counsel's use of the phrase "substantially different communication" is ambiguous and nonsensical as it lacks reference to a comparative communication. Without waiving these objections and/or the foregoing General Objections, and to the extent Respondent understands the interrogatory, Respondent states that it mailed two separate communications to Consumers regarding the Sacramento Incident. The consumers were identified by using the numbers located on the Daily Sheets and comparing that information with corresponding information in Respondent's possession.

7. State the names and addresses of all Consumers who requested credit monitoring services after receiving a Communication from LabMD related to any Security Incident.

Answer: Respondent objects to this Interrogatory to the extent that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections and/or the foregoing General Objections, and pursuant to 16 C.F.R. 3.35(c), Respondent will produce a list responsive to this request in its document production.

8. State, as a percentage of the total number of Consumers whose samples LabMD has tested, the proportion of Consumers who:

- a. Are uninsured;
- b. Have commercial health insurance;
- c. Have Medicare; and
- d. Have Medicaid.

Answer: Respondent objects to this Interrogatory to the extent that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

9. For each month beginning in May 2008, state the cost of any changes to made LabMD's Security Practices.

Answer: Respondent objects to this Interrogatory to the extent that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to this Interrogatory to the extent that it seeks inadmissible evidence of subsequent remedial measures to prove negligence or culpable conduct. *See* Fed. R. Evid. 407

DOCUMENT REQUESTS

To the extent LabMD has previously produced to Complaint Counsel documents

responsive to these document requests it will state so in its responses hereto. LabMD will not designate for Complaint Counsel those items previously produce by bates number as requested in the instruction to these document requests. There is no obligation under the Commission Rules or the Federal Rules of Civil Procedure that requires one party to create documents for the convenience of the other during discovery. The request that LabMD do so is unduly burdensome on the staff and resources of LabMD.

1. All Documents LabMD received from Tiversa.

Response: Respondent states it has previously produced the requested information in hard-copy form, but will further supplement its production by producing responsive e-mails in an electronic format.

2. All Documents LabMD provided to Tiversa.

Response: See Response to Request No. 1.

3. All Documents relating to purchasing, maintaining, servicing, updating, or replacing software used on LabMD's computer networks, including operating system software, data backup software, database software, billing and invoicing software, antivirus software, patching software, or software relating to computer security.

Response: Respondent objects to this Request to the extent that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; not reasonably limited in time or scope; inadmissible evidence of subsequent remedial measures to prove negligence or culpable conduct pursuant to Fed. R. Evid. 407; overly broad, and unduly burdensome. Without waiving these objections and/or the foregoing General Objections, Respondent states that it has previously produced its data use policy procedures, handbooks, and sample scanbooks. Respondent further states that it will produce documents responsive to this

request related to its system software, limited to that which was in place at the time of the alleged security breach.

4. All Documents relating to purchasing, maintaining, servicing, updating, or replacing hardware used on LabMD's computer networks, including servers, computers, firewalls, routers, or switches.

Response: Respondent objects to this Request to the extent that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; not reasonably limited in time or scope; inadmissible evidence of subsequent remedial measures to prove negligence or culpable conduct pursuant to Fed. R. Evid. 407; overly broad, and unduly burdensome. Without waiving these objections and/or the foregoing General Objections, Respondent states that it will produce documents responsive to this request limited to that which was in place at the time of the alleged security breach.

5. All Documents relating to "walk around" or manual inspections, conducted by LabMD IT Staff, LabMD IT Contractors, or LabMD management, of computers and other hardware on or with access to LabMD's computer networks.

Response: Respondent objects to this Request to the extent that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; inadmissible evidence of subsequent remedial measures to prove negligence or culpable conduct pursuant to Fed. R. Evid. 407; overly broad, and unduly burdensome. Without waiving these objections and/or the foregoing General Objections, Respondent states that it has previously produced the requested information.

6. All Documents created by LabMD IT Staff or for LabMD that depict or otherwise

represent LabMD's computer networks' architecture or topology, including detailed blueprints or schematics.

Response: See objections and Response to Request No. 5.

7. All emails between LabMD IT Staff and Michael Daugherty or John Boyle relating to Security Practices.

Response: Respondent objects to this Request to the extent that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; inadmissible evidence of subsequent remedial measures to prove negligence or culpable conduct pursuant to Fed. R. Evid. 407; protected by attorney-client privilege; protected by the work-product doctrine; overly broad, and unduly burdensome. Without waiving these objections and/or the foregoing General Objections, Respondent states that it has previously produced the requested information in hard copy form, but will further supplement its production by producing responsive e-mails in an electronic format.

8. All Communications between Michael Daugherty or John Boyle and LabMD IT Contractors relating to Security Practices.

Response: See objections and Response to Request No. 7.

9. All Documents relating to LabMD's Security Practices regarding accessing LabMD's computer network from remote locations, including policies or procedures relating to the use of LabMD laptop computers.

Response: See objections and Response to Request No. 5.

10. All Documents relating to searches of P2P Networks for LabMD documents, including the results of such searches.

Response: Respondent states that it does not possess any such documents.

11. All Documents contained in folders for sharing on LabMD computers running one or more P2P Applications, including folders designated by the LimeWire or Napster applications installed on Rosalind Woodson's computer.

Response: Respondent objects to this Request to the extent that it assumes that LabMD maintained documents in folders for sharing on its computers that were running P2P Applications and to the extent it suggests that LABMD was aware that any of its computers were running P2P Applications. Without waiving these objections and/or the foregoing General Objections, Respondent states that it has previously produced screenshots of all known shared documents.

12. For the period from January 1, 2006 through the present, Documents Sufficient to Show the dates and circumstances of any Security Incident(s) not previously disclosed to the Commission or its staff, including Documents Sufficient to Show the types and volumes of Personal Information accessed or disclosed during the incident(s) and the identity of all individuals whose Personal Information was accessed or disclosed.

Response: Respondent states that there are no such Security Incidents to report.

13. For the period from January 1, 2006 through the present, all internal and external assessments of LabMD's Security Practices, including formal and informal audits, evaluations, or reviews, and reports assessing whether the Security Practices comply with federal or state law.

Response: Respondent objects to this Request to the extent that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; not reasonably limited in time or scope; inadmissible evidence of subsequent remedial measures to prove negligence or culpable conduct pursuant to Fed. R. Evid. 407, overly broad, and unduly

burdensome.

14. All Documents related to information provided by LabMD to the Sandy Springs, Georgia Police Department, including Officer David Lapidés.

Response: Respondent objects to this Request to the extent that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; overly broad, and unduly burdensome. Without waiving these objections and/or the foregoing General Objections, Respondent states that it has previously produced the requested information.

15. All Documents related to LabMD's Security Practices provided by or for LabMD to Visa Inc., MasterCard Worldwide, U.S. Bank National Association, ND, Elavon, Inc., or any of their subsidiaries, or any other financial institution that provides services to LabMD relating to the processing of credit or debit card transactions, including PCI DSS self- assessment questionnaires, assessments by qualified security assessors, Attestations of Compliance with PCI DSS, or any Reports on Compliance.

Response: Respondent objects to this Request to the extent that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; overly broad, and unduly burdensome. No such documents exist.

16. All Documents relating to Communications with Consumers regarding any Security Incident(s), including each substantially different Communication from LabMD to Consumers, all records of calls received by LabMD's Notification Hotline, all emails received at the address NotificationHotline@labmd.org, and all letters received at LabMD's Letter Notification Department.

Response: Respondent objects to this Request to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence

and to the extent that the phrase, “substantially different communication” is nonsensical as it lacks reference to a comparative communication. Without waiving these objections and/or the foregoing General Objections, Respondent states that it will produce responsive documents to the extent that they exist.

17. For each substantially different Communication from LabMD to Consumers relating to any Security Incident(s), Documents Sufficient to Show every Consumer to whom LabMD directed the Communication.

Response: Respondent objects to this Request to the extent that the phrase, “substantially different communication” is nonsensical as it lacks reference to a comparative communication. Without waiving these objections and/or the foregoing General Objections, and to the extent Respondent understands this Request, Respondent will produce the letters referenced in Interrogatory No. 6.

18. All Documents relating to Communications with LabMD's referring physicians or other health care professionals regarding any Security Incident(s), including each substantially different Communication from LabMD to LabMD's referring physicians or other health care professionals.

Response: Respondent objects to this Request to the extent that the phrase, “substantially different communication” is nonsensical as it lacks reference to a comparative communication. Without waiving these objections and/or the foregoing General Objections, and to the extent Respondent understands this Request, Respondent will produce responsive documents.

19. For each substantially different Communication from LabMD to referring physicians or other health care professionals, Documents Sufficient to Show every referring

physician or health care professional to whom LabMD directed the Communication.

Response: See Response to Request No. 18.

20. All Communications with the United States Department of Health and Human Services relating to LabMD's Security Practices, including all Communications relating to any Security Incidents.

Response: Respondent objects to this Request to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections and/or the foregoing General Objections, Respondent states that it will produce responsive documents to the extent that they exist.

21. All Documents, including personnel files, relating to the duties, compensation, performance, productivity, or compliance with LabMD policies of each current and former LabMD employee.

Response: Respondent objects to this Request to the extent that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; overly broad, and unduly burdensome and only seeks to harass and annoy Respondent and its current and former employees.

22. All confidentiality agreements executed by current and former LabMD employees.

Response: Respondent states that it has previously produced its employee handbooks and will produce all confidentiality agreements between LabMD and its current and former employees.

23. All Statements of Understanding of and Compliance with LabMD's Ethics Policy and Employment Policy executed by LabMD current and former employees.

Response: Respondent objects to this Request to the extent that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; overly broad, and unduly burdensome. Without waiving these objections and/or the foregoing General Objections, Respondent states that it has previously produced the requested information.

24. All contracts between LabMD and its referring physicians.

Response: Respondent objects to this Request to the extent that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; overly broad, and unduly burdensome and only seeks to harass and annoy Respondent and its referring physicians. Without waiving these objections and/or the foregoing General Objections, Respondent states that no such documents exist.

25. All contracts between LabMD and health insurance providers.

Response: Respondent objects to this Request on the grounds that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; overly broad, and unduly burdensome.

26. Documents Sufficient to Show the extent to which actual or allowable reimbursements to LabMD by government and private health insurance providers equal, exceed, or are less than charges submitted by LabMD to health insurance providers.

Response: Respondent objects to this Request on the grounds that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; overly broad, and unduly burdensome and only seeks to harass and annoy Respondent.

27. Documents Sufficient to Show all of LabMD's expenditures for information technology products or services that relate to Security Practices.

Response: Respondent objects to this Request on the grounds that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; overly broad, and unduly burdensome and only seeks to harass and annoy Respondent.

28. All financial statements, budgets, and other financial reports regularly prepared by or for LabMD, including operating statements, balance sheets, income statements, profit and loss statements, cost center reports, and statements of earnings.

Response: Respondent objects to this Request on the grounds that it seeks information that is: neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; overly broad, and unduly burdensome and only seeks to harass and annoy Respondent.

Respectfully submitted,


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Practice limited to cases in federal court and
administrative proceedings before federal
agencies.

CERTIFICATE OF SERVICE

This is to certify that on November 27, 2013, I served via electronic mail delivery a copy of the foregoing document to:

Alain Sheer
Laura Riposo VanDruff
Megan Cox Margaret Lassack Ryan Melun
Complaint Counsel
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW Room NJ-8100
Washington, DC 20580
Tel: (202) 326-2999 (VanDruff) Facsimile: (202) 326-3062
Email: lvandruff@ftc.gov

By: 

544902v1

Exhibit I

In the Matter of:

LabMD, Inc.

February 10, 2014
Michael Daugherty

Condensed Transcript with Word Index



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