

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 ON JOINT MOTION FOR *IN CAMERA* TREATMENT
OF RX541 AND FOR LEAVE OF COURT**

I.

On July 1, 2014, pursuant to Rule 3.45(b) of the Federal Trade Commission’s (“FTC”) Rules of Practice, FTC Complaint Counsel and Respondent filed a joint motion seeking (1) *in camera* treatment for certain portions of the transcript of the June 7, 2014 deposition of Robert Boback, of Tiversa, Inc. (“Tiversa”) (RX541) pertaining to Mr. Richard Wallace, a non-party; and (2) leave of court to provide a copy of RX541 to counsel for Mr. Wallace (“Joint Motion”).

As set forth below, the Joint Motion is GRANTED IN PART AND DENIED IN PART.

II.

Under Rule 3.45(b) of the Rules of Practice, after finding that material constitutes “sensitive personal information,” the Administrative Law Judge shall order that such material be placed *in camera*. 16 C.F.R. § 3.45(b). “Sensitive personal information” is defined as including, but not limited to, “an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.” 16 C.F.R. § 3.45(b). “Sensitive personal information . . . shall be accorded permanent *in camera* treatment unless disclosure or an expiration date is required or provided by law.” 16 C.F.R. § 3.45(b)(3).

The parties have demonstrated that the testimony for which they seek *in camera* treatment, at page 104, lines 17-20, constitutes “sensitive personal information” regarding Mr. Wallace. Accordingly, the parties’ joint request for *in camera* treatment of this portion of RX541 is GRANTED. The parties shall create a public version of RX541, labeled RX541-A, that redacts this sensitive personal information from page 104 and thus can be entered into the public record.


III.

The parties also request an order permitting the parties to provide counsel for Mr. Wallace with a copy of RX541, so that Mr. Wallace may assess what, if any, additional relief he may seek with regard to Mr. Boback's testimony. The parties assert that the Protective Order issued in this case prevents the parties from disclosing RX541 to counsel for Mr. Wallace, *see e.g.*, Protective Order, and therefore request leave of court.

It is not clear from the Motion whether the parties seek to provide to Mr. Wallace's counsel the entire transcript comprising RX451 or only "a copy of the testimony that is the subject of" the Joint Motion. Joint Motion at 2. Moreover, the Joint Motion does not address whether or not Mr. Wallace's counsel has agreed to be bound by the terms of the Protective Order. The parties have demonstrated, however, that it is in the interest of justice to enable Mr. Wallace's counsel to review those portions of the transcript pertaining to Mr. Wallace, provided that counsel first signs an agreement to abide by the terms of the Protective Order.

Accordingly, the parties joint request for leave is GRANTED IN PART AND DENIED IN PART, and it is hereby ORDERED that the parties shall consult and redact those portions of RX541 that do not refer, relate, or pertain to Mr. Wallace or his work during his period of employment with Tiversa; and that such redacted copy of RX541 may be provided to counsel for Mr. Wallace upon that counsel's signing an agreement to be bound by the terms of the Protective Order.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: July 1, 2014