

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



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

PUBLIC
Docket No. 9357

**COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENT’S
MOTION TO COMPEL A PROPER PRIVILEGE LOG**

The Court should deny Respondent LabMD, Inc.’s (“LabMD” or “Respondent”) Motion to Compel a Proper Privilege Log. Complaint Counsel has provided a proper privilege log, and its claims of privilege are supported by the law and facts.

BACKGROUND

Incident to responding to Respondent’s January 30, 2014 discovery requests, Complaint Counsel served a privilege log on March 5, 2014. The internal documents on the log are attorney notes of communications with the Sacramento Police Department¹ and drafts of a spreadsheet prepared by Kevin Wilmer, an investigator in the Bureau of Consumer Protection. The final spreadsheet was provided to Respondent, who questioned Mr. Wilmer about it in deposition. *See* Wilmer Tr. at 68-69, Exhibit A. Complaint Counsel asserted Work Product protection for these internal documents.

Complaint Counsel also identified numerous privileged, confidential communications with the Department of Health and Human Services (“HHS”) and asserted, as appropriate, Work

¹ Complaint Counsel produced communications with the Sacramento Police Department.

Product, Deliberative Process, and Law Enforcement privileges. Jessica Rich, Director of the Bureau of Consumer Protection, reviewed the relevant documents and executed a declaration supporting the deliberative process and law enforcement privilege assertions.

On Friday, March 21, 2014 at 6:17 pm, Respondent sent Complaint Counsel a letter regarding alleged deficiencies in its privilege log. The parties held a telephonic meet-and-confer on Monday, March 24, 2014, during which Complaint Counsel advised it would provide Respondent with a declaration regarding governmental privileges and a revised privilege log before the end of the week. The next morning, the parties held another telephonic meet-and-confer, at which Complaint Counsel advised Respondent that its position was unchanged since the previous afternoon's call. Respondent filed its Motion that afternoon, without awaiting Complaint Counsel's promised declaration and revised privilege log.

Complaint Counsel provided Respondent with a revised privilege log² and Director Rich's declaration on March 27, attached as Exhibits B and C.

ARGUMENT

Respondent claims that Complaint Counsel is using privilege as a sword and a shield to "importune this Court to alleged privileges to establish elements of its case." Mot. at 2. Respondent identifies no element Complaint Counsel allegedly intends to prove using privileged information. Complaint Counsel's Exhibit List, on which none of the 72 documents for which Complaint Counsel has asserted an applicable privilege appears, demonstrates that Respondent's

² This Response will refer throughout to the revised, superceding privilege log.

preliminary argument is specious. *See* Final Proposed Ex. List (Mar. 26, 2014), Exhibit D.

Respondent's remaining arguments are similarly without merit.

I. COMPLAINT COUNSEL'S PRIVILEGE LOG COMPLIES WITH RULE 3.38A

Rule 3.38A requires, if directed, production of “a schedule which describes the nature of the documents, communications, or tangible things not produced or disclosed – and does so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Complaint Counsel's privilege log provides for each document: line number, document identification number, document date, author, recipient(s), description, and privileges asserted. This information is sufficient to “describe the nature of the documents” under Rule 3.38A. Indeed, Respondent considered this information sufficient to claim its own privileges, providing on its privilege log the date, Bates range, whether the document was redacted or withheld, author, recipients, subject,³ and claimed privilege of its documents. *See* Respondent LabMD, Inc.'s Privilege Log, attached as Exhibit E.

Complaint Counsel's log provide the information necessary to claim privilege: the subject matter, the copy recipients, and specificity for each claimed document and privilege.

Respondent's claim that Complaint Counsel was also required to provide (1) the position of each

³ The following is a complete list of the subject descriptions provided by Respondent (each appended to “email regarding”): “Letters,” “privacy and security,” “1718 incident,” “LabSoft,” “Walk Arounds,” “IT outline,” and “IT outline modification.” Complaint Counsel accepts that these descriptions—of greater brevity than Complaint Counsel's—are sufficient to indicate the documents relate to this proceeding and are privileged and does not challenge Respondent's privilege log.

sender and recipient⁴ and (2) an affidavit⁵ for each document for which privilege is claimed is not supported by Rule 3.38A nor by its own practice, and the cases it cites are inapposite. *See In re Lab. Corp.*, 2011 FTC LEXIS 30 *3-12 (Feb. 24, 2011) (discussing affidavit in deliberative process context); *Victory Stanley, Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251, 264-68 (D. Md. 2008) (referencing in dicta letter order issued by court requiring certain procedures not required by Rule 3.38A); *In re Certain Muzzle-Loading Firearms*, 2011 ITC Lexis 2496 *19-20 (Nov. 29, 2011) (quoting ITC Ground Rule 4.10.1, which differs significantly from Rule 3.38A).

II. INTERNAL DOCUMENTS

A. WORK PRODUCT PROTECTED BY RULE 3.31(C)(5)

Rule 3.31(c)(5) protects from discovery, absent showing “substantial need” and “undue hardship” to obtain substantially equivalent materials, “documents ... prepared in anticipation of litigation or for hearing by or for [a] party or by or for [the] party’s representative (including the party’s attorney, consultant or agent).” This is broader than the traditional common law work product protection set out in *Hickman v. Taylor*, 329 U.S. 495 (1947), and its application is not limited to materials reflecting the mental impressions and processes of an attorney.

Indeed, Respondent availed itself of the Commission’s broader Rule 3.31(c)(5) work product protection in its own privilege log, asserting the privilege as to an email exchanged between Michael Daugherty and John Boyle—an exchange that did not include a lawyer—with

⁴ Complaint Counsel’s log identifies non-FTC personnel by agency. FTC personnel in the log have either appeared for deposition or entered their appearances in this proceeding.

⁵ See Exhibit C for the declaration regarding governmental privileges.

the description “email regarding LabSoft,” which does not indicate that it involves attorney-client communication or an attorney’s mental processes. Complaint Counsel did not challenge the immunity from production asserted as to this document because of the Commission’s broad Rule 3.31(c)(5) protection for documents prepared in anticipation of litigation.

B. NOTES AND DRAFTS

Each of the notes and drafts on Complaint Counsel’s privilege log was prepared in anticipation of litigation by or at the direction of Complaint Counsel. The documents relating to communications with the Sacramento Police Department relate to the incident referenced in Paragraph 21 of the Complaint. Mr. Wilmer’s materials relate to his work identifying consumers likely to be harmed by Respondent’s conduct, as alleged in Paragraph 22 of the Complaint. Complaint Counsel’s privilege log as to internal documents is sufficient under Rule 3.38A.

III. COMPLAINT COUNSEL’S COMMUNICATION WITH HHS

Complaint Counsel’s privilege log includes five categories of correspondence with HHS⁶: jurisdiction and venue for the Commission’s CID enforcement proceeding, LabMD’s compliance with HIPAA and other statutes, litigation strategy in the instant proceeding, analysis of the

⁶ Respondent’s requested remedy is a “proper privilege log,” not access to documents on the log. These documents are not relevant to any claim or defense. Complaint Counsel has not raised relevance in this Opposition because of the limited relief Respondent seeks, and does not herein waive its relevance assertions.

If Respondent seeks production of protected communications with HHS, Complaint Counsel submits that HHS must be served with any such motion and permitted an opportunity to be heard by the Court. *See, e.g., In re Grand Jury Subpoenas*, 902 F.2d 244, 248 (4th Cir. 1990) (joint privilege cannot be waived without consent of all parties).

instant proceeding, and availability and retention of experts. Each of these categories constitute work product prepared in anticipation of litigation. Where its communications with HHS were not privileged, Complaint Counsel provided documents to Respondents.

The FTC and HHS share a common interest in the protection of consumer information, as recognized by the Commission's Order Denying Respondent LabMD's Motion to Dismiss. *See* Comm'n Order at 11 ("[T]he patient-information protection requirements of HIPAA are largely consistent with the data security duties that the Commission has enforced pursuant to the FTC Act."). Indeed, Respondent has asserted throughout this proceeding that HHS has jurisdiction over its data security practices. *See, e.g.*, Respondent LabMD, Inc.'s Motion to Dismiss Complaint with Prejudice and to Stay Administrative Proceedings at 10-14.

Where parties share a common interest, privileged information may be shared without breaching the protection. All the HHS documents appearing on the log are protected work product prepared in anticipation of litigation. However, in order to preserve all the Commission's and HHS's privileges, Complaint Counsel also claimed Law Enforcement and Deliberative Process protections for certain of the documents.

A. COMMON INTEREST DOCTRINE

The common interest doctrine "permits parties whose legal interests coincide to share privileged materials with one another in order to more effectively prosecute ... their claims." *Hunton & Williams v. U.S. Dept. of Justice*, 590 F.3d 272, 277 (4th Cir. 2010). A common interest requires neither a written agreement nor participation in litigation. *Am. Mgmt Services, LLC v. Dep't of the Army*, 842 F. Supp. 2d 859, 876 (E.D. Va. 2012); *see also Nat'l Inst. Of Mil.*

Justice v. U.S. Dep't of Defense, 512 F.3d 677, 680-81 (D.C. Cir. 2008) (where information, advice, and assistance was provided to agency at agency's request, no formal relationship is required for a communication with outside parties to be considered "intra-agency"); *U.S. v. Schwimmer*, 892 F.2d, 243-44 (2d Cir. 1989) and *Hanson v. USAID*, 372 F.3d 286, 292 (4th Cir. 2004) (litigation need not be in progress for common interest to exist). The common interest doctrine extends privileges to communications among the interested parties. *Am. Mgmt Services*, 842 F. Supp. 2d at 878.

Where agencies share a common goal, documents shared between them are protected. *Modesto Irrig. Dist. v. Gutierrez*, 2007 U.S. Dist. LEXIS 21949, *54-55 (E.D. Cal. 2007). Assistance and counsel among government agencies is so routine that courts assume the existence of a common interest. *See, e.g., Brennan Ctr. for Justice at NYU School of Law v. U.S. Dep't of Justice*, 697 F.3d 184, 202-207 (2d Cir. 2012) (determining that exchange between USAID, HHS, and Office of Legal Counsel on legal interpretation protected from disclosure by deliberative process exemption). As the Fourth Circuit noted, "the government has as much right to undisclosed legal advice in anticipation of litigation as any private party." *Hanson*, 372 F.3d at 289 (4th Cir. 2004). What matters is a "unity of interest" wherein participants can "rely on one another's advice, secure in the knowledge that privileged communications would remain just that." *Hunton & Williams*, 590 F.3d at 282-83.

The FTC and HHS have similar missions with respect to the security of health information, have identical interests in the protection of consumer information, and have worked in tandem for many years on these issues. *See, e.g., In re Rite Aid Corp.*, FTC File No. 072-3121

(July 27, 2010) (settlement agreement resolving coordinated FTC-HHS information security investigations); *In re CVS Caremark Corp.*, FTC File No. 072-3119 (Feb. 18, 2009) (same). HHS's consultation on this litigation was merely a continuation of that common interest. As evidenced by Deputy Director for Health Information Privacy Susan McAndrew's affidavit, attached as Exhibit F, HHS exchanged information, advice, and counsel with the FTC under the agencies' common interest with the expectation that the communications would be held in confidence to protect the integrity of law enforcement actions, deliberative processes, and internal work product.

As discussed above, Rule 3.31(c)(5) protects documents prepared by a party in anticipation of litigation or for hearing. Each category of HHS documents is work product prepared in anticipation of litigation or for hearing and protected from disclosure under Rule 3.31(c)(5). *See Hanson*, 372 F.3d at 292-94 (protecting from disclosure work product shared between an agency and other parties).

B. DELIBERATIVE PROCESS PRIVILEGE

The deliberative process privilege protects "communications that are part of the decision-making process of a government agency" that "reflect advisory opinions, recommendations and deliberations comprising part of a process by which government decisions and policies are formulated." *In re Lab. Corp. of Am.*, 2011 WL 822928, at *2 (F.T.C. Feb. 24, 2011) (citations omitted). The protected documents must be predecisional and deliberative in nature. *Id.* Claiming the privilege requires "(1) a formal claim of privilege by the head of the department having control over the requested information; (2) assertion of the privilege based on actual

personal consideration by that official; and (3) a detailed specification of the information for which the privilege is claimed, with an explanation why it properly falls within the scope of the privilege.” *Id.* at *3 (citations omitted).

Director Rich’s Declaration, Ex. C, satisfies the elements required to claim the privilege. As stated in her Declaration, she reviewed the documents and found that the documents contain “frank discussions, comments, and legal advice by FTC and other government agency personnel” about “legal and policy issues” and that the documents were part of the process of agency decisionmaking. Ex. C ¶ 9. She determined that the jurisdiction and venue communications were predecisional and deliberative as to the Commission’s decision where to file its CID enforcement proceeding; the HIPAA compliance communications were predecisional and deliberative as to the Commission’s determination whether to proceed against Respondent and what claims to include in a complaint, as well as [REDACTED]; and the litigation strategy communications were predecisional and deliberative as to [REDACTED].

C. LAW ENFORCEMENT PRIVILEGE

The Law Enforcement privilege protects, among other things, the integrity of law enforcement techniques. *Tuite v. Henry*, 181 F.R.D. 175, 176 (D.D.C. 1998). The privilege is not limited to criminal actions, *A.N.S.W.E.R. Coalition v. Jewell*, 292 F.R.D. 44, 50-51 (D.D.C. 2013) (holding documents properly withheld under law enforcement privilege in civil suit), and can apply to inter-agency communication, *FTC v. AMG Svcs., Inc.*, 291 F.R.D. 544, 559-60 (D.

Nev. 2013). An investigation need not be ongoing for the privilege to apply, as release of information may impair the ability of a law enforcement agency to conduct future investigations. *In re the City of New York*, 607 F.3d 923, 944 (2d Cir. 2010).

The elements required to claim the law enforcement privilege are the same as for the deliberative process privilege, *Tuite v. Henry*, 98 F.3d 1411, 1417 (D.C. Cir. 1996), and Director Rich’s Declaration satisfies them. As stated in her Declaration, she reviewed the documents and found they contain law enforcement techniques and procedures and would reveal law enforcement tactics, “specifically the information law enforcement agencies share with each other.” Ex. C ¶ 14. Director Rich determined that the jurisdiction and venue communications contain [REDACTED]

[REDACTED]

[REDACTED]; and that the communications related to compliance with HIPAA and other statutes and regulations contain [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

CONCLUSION

For the foregoing reasons, the Court should deny Respondent's Motion to Compel a Proper Privilege Log.

Dated: April 7, 2014

Respectfully submitted,

Handwritten signature of Megan Cox in cursive, followed by a horizontal line.

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Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2014, I caused to be filed the foregoing document 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 to be delivered by hand and electronic mail 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 to:

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April 7, 2014

By:



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Federal Trade Commission
Bureau of Consumer Protection

Exhibit A

Transcript of the Testimony of **Kevin J. Wilmer**

Date: February 25, 2014

Case: In The Matter of: LABMD, INC., a corporation

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION



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UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

- - - - -x

In The Matter of: : DOCKET NO. 9357

LABMD, INC., a corporation,:

Respondent. :

- - - - -x

CONFIDENTIAL DEPOSITION OF KEVIN J. WILMER

Washington, DC

Tuesday, February 25, 2014

REPORTED BY:

JULIE BAKER, RPR, CRR

Exhibit B

Complaint Counsel's Revised Log of Privileged Documents Responsive to Respondent's First Requests for Production

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
1	FIMGLMD00007070	12/12/2013	Megan Cox		Attorney notes regarding communication with Sacramento Police Department prepared in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories.	Work Product
2	FIMGLMD00007072	10/9/2012-10/10/2012	Alain Sheer		Attorney notes regarding communication with Sacramento Police Department prepared in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories.	Work Product
3	FIMGLMD00007073	7/3/2012	David Holtzman, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Law Enforcement; Work Product
4	FIMGLMD00007074	2/21/2013	Alain Sheer	Anne L. MacArthur, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
5	FIMGLMD00007075	2/26/2013	Andy M. McKee, HHS	Jennifer A Trussell, HHS; Anne L. MacArthur, HHS; Amitava Masumdar, HHS; Alain Sheer; Ruth Yodaiken; Laura Riposo VanDruff	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
6	FIMGLMD00007077	7/6/2012	Alain Sheer	Cathy T. Carter, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
7	FIMGLMD00007078	11/18/2011	David Holtzman, HHS	Anne L. MacArthur, HHS; Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
8	FIMGLMD00007080	7/5/2012	Kathleen M. Kersell, HHS	Patricia A. Gill, HHS; Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Law Enforcement; Work Product
9	FIMGLMD00007081	12/17/2013	Alain Sheer	Mariou King, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Law Enforcement; Work Product
10	FIMGLMD00007086	6/21/2011	Alain Sheer	David Holtzman, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
11	FIMGLMD00007087	1/30/2014	Alain Sheer	Mariou King, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC relating analysis of a current legal proceeding and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party; and communication made to an attorney by an intra-agency client for the purpose of securing an opinion on the law, legal services, or assistance in a legal proceeding.	Common Interest; Work Product; Attorney-Client

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
12	FIMGLMD00007091	7/10/2013	Alain Sheer	Michael S. Wroblewski, HHS; Anne E. Hauswald, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Law Enforcement; Work Product
13	FIMGLMD00007092	7/5/2012	Alain Sheer	David Holtzman, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Law Enforcement; Work Product
14	FIMGLMD00007093	2/21/2013	Alain Sheer	Anne L. MacArthur, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
15	FIMGLMD00007095	11/21/2011	Alain Sheer	Anne L. MacArthur, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
16	FIMGLMD00007097	2/21/2013	Alain Sheer	Andy M. McKee, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
17	FIMGLMD00007098	2/26/2013	Alain Sheer	Jennifer A. Trussell, HHS; Anne L. MacArthur, HHS; Amitava Mazumdar, HHS; Andy M. McKee, HHS; Ruth Yodaiken; Laura Riposo VanDruff	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
18	FIMGLMD00007100	7/5/2012	Alain Sheer	Kathleen M. Kersell, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Law Enforcement; Work Product
19	FIMGLMD00007101	7/11/2012	Alain Sheer	Raghu Akkapeddi, HHS; Paul Baranowski, HHS; Karen Brown, HHS; Dinah L. Horton, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
20	FIMGLMD00007104	7/12/2012	Alain Sheer	Raghu Akkapeddi, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
21	FIMGLMD00007109	6/24/2011	Alain Sheer	David Holtzman, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
22	FIMGLMD00007112	2/3/2014	Alain Sheer	Mariou King, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
23	FIMGLMD00007113	11/26/2013	Alain Sheer	Mariou King, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
24	FIMGLMD00007114	9/27/2010	David Holtzman, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
25	FIMGLMD00007115	7/6/2012	Alain Sheer	Cathy T. Carter, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
26	FIMGLMD00007122	2/21/2013	Alain Sheer	Anne L. MacArthur, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
27	FIMGLMD00007123	2/21/2013	Andy M. McKee, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
28	FIMGLMD00007124	2/3/2014	Alain Sheer	Mariou King, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
29	FIMGLMD00007125	11/26/2013	Alain Sheer	Mariou King, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Law Enforcement; Work Product
30	FIMGLMD00007126	6/23/2011	Alain Sheer	David Holtzman, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Law Enforcement; Work Product
31	FIMGLMD00007127	7/11/2012	Raghu Akkapeddi, HHS	Paul Baranoski, HHS; Karen Brown, HHS; Dinah L. Horton, HHS; Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
32	FIMGLMD00007130	7/11/2012	Raghu Akkapeddi, HHS	Paul Baranoski, HHS; Karen Brown, HHS; Dinah L. Horton, HHS; Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
33	FIMGLMD00007133	7/11/2012	Raghu Akkapeddi, HHS	Paul Baranoski, HHS; Karen Brown, HHS; Dinah L. Horton, HHS; Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
34	FIMGLMD00007134	6/24/2011	David Holtzman, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
35	FIMGLMD00007136	6/22/2011	David Holtzman, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
36	FIMGLMD00007201	2/3/2014	Marilou King, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
37	FIMGLMD00007203	2/3/2014	Marilou King, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
38	FIMGLMD00007240	2/25/2013	Alain Sheer	Andy M. McKee, HHS	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
39	FIMGLMD00007243	11/25/2013	Marilou King, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Law Enforcement; Work Product
40	FIMGLMD00007245	11/26/2013	Marilou King, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding compliance with HIPAA and other statutes that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
41	FIMGLMD00007249	2/21/2013	Anne L. MacArthur, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
42	FIMGLMD00007250	2/21/2013	Anne L. MacArthur, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
43	FIMGLMD00007251	2/25/2013	Andy M. McKee, HHS	Jennifer A. Trussell, HHS; Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding the availability and retention of expert witness(es) and containing mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
44	FIMGLMD00007252	7/10/2012	Cathy T. Carter, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding jurisdiction and venue that is predecisional and deliberative in nature, contains information that would reveal law enforcement techniques and procedures, and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Law Enforcement; Work Product
45	FIMGLMD00007253	Undated	Laura Riposo VanDruff		Attorney notes regarding communication with Sacramento Police Department prepared in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories.	Work Product
46	FIMGLMD00007254	12/5/2013	Laura Riposo VanDruff		Attorney notes regarding communication with Sacramento Police Department prepared in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories.	Work Product
47	FIMGLMD00007255	5/2/2013	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories	Work Product
48	FIMGLMD00007256	5/2/2013	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories	Work Product
49	FIMGLMD00007257	5/8/2013	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories	Work Product

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
50	FIMGLMD00007258	5/9/2013	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories	Work Product
51	FIMGLMD00007259	5/20/2013	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories	Work Product
52	FIMGLMD00007260	5/9/2013	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories	Work Product
53	FIMGLMD00007261	6/5/2013	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories	Work Product
54	FIMGLMD00007262	5/30/2013	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories	Work Product
55	FIMGLMD00007263	7/24/2013	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories	Work Product
56	FIMGLMD00007319	Undated	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation or for an administrative hearing and containing mental impressions, conclusions, opinions, or legal theories	Work Product
57	FIMGLMD00007320	Undated	Kevin Wilmer		Draft trial preparation materials prepared by a representative of the FTC at the direction of an attorney in anticipation of litigation or for an administrative hearing and containing mental impressions, conclusions, opinions, or legal theories	Work Product

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
58	FIMGLMD00007321	10/11/2012	Ruth Yodaiken		Attorney notes regarding communication with Sacramento Police Department prepared in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories.	Work Product
59	FIMGLMD00007323	Undated	Ruth Yodaiken		Attorney notes regarding communication with Sacramento Police Department prepared in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories.	Work Product
60	FIMGLMD00007324	1/8/2013	Ruth Yodaiken		Attorney notes regarding communication with Sacramento Police Department prepared in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories.	Work Product
61	FIMGLMD00007325	1/16/2013	Ruth Yodaiken		Attorney notes regarding communication with Sacramento Police Department prepared in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories.	Work Product
62	FIMGLMD00007326	Undated	Ruth Yodaiken		Attorney notes regarding communication with Sacramento Police Department prepared in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories.	Work Product
63	FIMGLMD00007327	1/29/2012	Ruth Yodaiken		Attorney notes regarding communication with Sacramento Police Department prepared in anticipation of litigation and containing mental impressions, conclusions, opinions, or legal theories.	Work Product
64	FIMGLMD00008705	2/5/2014	Marilou King, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that is predecisional and deliberative in nature and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Work Product
65	FIMGLMD00008706	2/3/2014	Marilou King, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product

Line	Doc ID No.	Doc. Date	Author	Recipient(s)	Description	Privilege(s) Asserted
66	FIMGLMD00008707	2/3/2014	Marilou King, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
67	FIMGLMD00008708	2/3/2014	Marilou King, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
68	FIMGLMD00008709	2/3/2014	Marilou King, HHS	Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
69	FIMGLMD00008710	2/8/2014	Marilou King, HHS	Laura Riposo VanDruff	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product
70	FIMGLMD00008711	2/7/2014	Marilou King, HHS	Laura Riposo VanDruff	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that is predecisional and deliberative in nature and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Work Product
71	FIMGLMD00008712	2/7/2014	Marilou King, HHS	Laura Riposo VanDruff	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that is predecisional and deliberative in nature and contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Deliberative Process; Work Product
72	FIMGLMD00008713	2/7/2014	Laura Riposo VanDruff	Marilou King, HHS; Alain Sheer	Communication in anticipation of litigation with a federal agency whose legal interests coincide with the FTC regarding litigation strategy that contains mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.	Common Interest; Work Product

Exhibit C

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

_____)	
In the Matter of)	
)	
LabMD, Inc.,)	Docket No. 9357
a corporation,)	CONFIDENTIAL--
Respondent.)	SUBJECT TO
)	PROTECTIVE ORDER
_____)	

I, Jessica L. Rich, declare as follows:

1. I am the Director of the Bureau of Consumer Protection of the Federal Trade Commission (“FTC” or “the Commission”). I have held this position since June 2013. Previously, I was the Associate Director of the Division of Financial Practices and the Deputy Director of the Bureau of Consumer Protection.
2. The Bureau of Consumer Protection is one of the principal units of the Federal Trade Commission. See 16 C.F.R. § 0.9. Pursuant to Rule 0.17 of the FTC’s Rules of Practice and Procedure, 16 C.F.R. § 0.17, the Bureau of Consumer Protection investigates unfair or deceptive acts or practices under Section 5 of the FTC Act as well as potential violations of numerous special statutes which the Commission is charged with enforcing. The Bureau of Consumer Protection brings actions seeking injunctive or other equitable relief pursuant to Rule 13(b) of the FTC Act. As Director of the Bureau of Consumer Protection, I am authorized to assert (and if necessary waive) the Commission’s governmental privileges with respect to documents that are in its custody or control.
3. This declaration is based on my review of the documents over which a governmental privilege is asserted, my professional experience, my personal knowledge, and information I have received in my official capacity as Director of the Bureau of Consumer

Protection.

4. On August 28, 2013, the FTC filed the above-captioned action charging Respondent with violating Section 5 of the FTC Act, 15 U.S.C. 45(a).

5. On or around December 24, 2013, Respondent served Complaint Counsel with a Request for Production of Documents (“Request”). Respondent’s sixth Request sought, “All communications between FTC and any federal Government agency, including the U.S. Department of Homeland Security, concerning LabMD generally and/or the 1,718 File specifically.”

6. Some of the materials collected or reviewed in the course of the investigation of this matter and the prosecution of the case that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter relating to communication between the FTC and the Department of Health and Human Services (“HHS”) are privileged under the governmental deliberative process and law enforcement privileges.

7. Complaint Counsel has asserted other, non-governmental privileges with respect to the documents that are the subject of this Declaration, and has asserted non-governmental privileges with respect to other documents on its privilege log over which no governmental privileges are asserted. This Declaration is not in derogation of and does not waive such other privileges, nor does it waive Complaint Counsel’s non-privilege assertions of lack of relevance and other non-privilege objections to discovery requests.

8. **Deliberative Process Privilege.** The deliberative process privilege protects information that is predecisional and deliberative in nature. The privilege permits the government to withhold documents that reflect opinions, recommendations, or advice that contribute to the government’s decisionmaking process. In my professional judgment and experience, it is crucial that all parties are able and willing to discuss thoroughly all aspects of a potential action in advance of making a decision in order to determine the best course of action. The disclosure of the documents over which this privilege is claimed would make

agencies less likely to communicate openly and honestly with the FTC in the future and provide the invaluable advice, opinions, and recommendations sought by the FTC for fear that their communications, and their decisions to pursue (or not pursue) certain matters and persons would not be kept confidential.

9. The documents over which Complaint Counsel asserts the deliberative process privilege contain frank discussions, comments, and legal advice by FTC and other government agency personnel about the legal and policy issues that the FTC and the other agencies have statutorily-imposed mandates to address and were used by FTC staff attorneys and managers and the employees of other governmental agencies in formulating their own proposals and recommendations. The documents were part of the process of: developing recommendations and decisions by the parties who participated in them, as well as their supervisors and managers and the Commissioners, where appropriate; carrying out investigations of possible law violations; and litigating enforcement actions. Each document was prepared for the purpose of aiding the FTC and other agencies in their decision-making and predated the relevant decisions.

10. As described below, the communications over which this privilege is claimed were exchanged pre-decision; reflect opinions, recommendations, and advice that contributed to the decisionmaking process; and were used to reach the decisions ultimately made or are still under consideration.

11. **Law Enforcement Privilege.** In my professional judgment and experience, it is crucial that law enforcement agencies are able to communicate with each other openly and honestly with confidence that inter-agency communications will be kept confidential. This capability allows agencies to avoid overlapping investigations, avoid duplicative work, share information about targets, and more efficiently and effectively enforce laws. Release of information relating to any of the techniques and procedures described below would reveal law enforcement techniques and procedures and hamper the agencies' ability to work cooperatively and bring appropriate actions.

12. If the documents over which this privilege is claimed were disclosed, Respondent would learn which agencies are or might be investigating it, and which agencies are not investigating it. Disclosure of these documents would threaten any pending or future investigations of Respondent by the agencies with which the FTC communicated, and have a chilling effect on future investigations.

13. In addition, the disclosure of the documents over which this privilege is claimed would make agencies less likely to communicate openly and honestly with the FTC in the future for fear that their communications, and their decisions to pursue (or not pursue) certain matters would not be kept confidential. This would harm the FTC's law enforcement efforts and those of agencies with which the FTC communicates.

14. The law enforcement privilege protects, among other things, law enforcement techniques and procedures. The disclosure of the documents over which this privilege is claimed would disseminate information about law enforcement tactics, specifically the information law enforcement agencies share with each other.

HHS

15. At the request of the Complaint Counsel, I have examined documents that are communications between FTC and HHS. These documents cover three subject areas. First, documents 3, 6, 8, 12, 13, 18, 19, 20, 25, 31, 32, 33, and 44 (FIMGLMD00007073, FIMGLMD00007077, FIMGLMD00007080, FIMGLMD00007091-FIMGLMD00007092, FIMGLMD00007100-FIMGLMD00007101, FIMGLMD00007104, FIMGLMD00007115, FIMGLMD00007127, FIMGLMD00007130, FIMGLMD00007133, and FIMGLMD00007252) relate to discussions between the agencies regarding jurisdiction and venue issues ("Jurisdiction"). Second, documents 9, 10, 21, 23, 24, 29, 30, 34, 35, 39, and 40 (FIMGLMD00007081, FIMGLMD00007086, FIMGLMD00007109, FIMGLMD00007113-FIMGLMD00007114, FIMGLMD00007125, FIMGLMD00007134, FIMGLMD00007136, FIMGLMD00007243, and FIMGLMD00007245) relate to discussions between the agencies regarding statutory and regulatory compliance with HIPAA and other statutes and regulations

(“Compliance”). Third, 64, 70, and 71 (FIMGLMD00008705, FIMGLMD00008711, and FIMGLMD00008712) relate to discussions between the agencies regarding litigation strategy (“Strategy”).

16. Having completed my review, I conclude that the Commission should assert the deliberative process privilege over the documents identified below. In addition, I conclude that the Commission should assert the law enforcement privilege over all the documents relating to Jurisdiction and Compliance.

A. Jurisdiction

17. In July 2012, Complaint Counsel Alain Sheer corresponded with David Holtzman, Cathy T. Carter, Kathleen M. Kersell, Patricia A. Gill, Michael S. Wroblewski, Anne E. Hauswald, Raghu Akkapeddi, Paul Baranoski, Karen Brown, and Dinah L. Horton of HHS and supporting vendors regarding the states to which Respondent provided its services.

18. **Deliberative Process Privilege.** I have determined that the Commission should assert the Deliberative Process Privilege over documents 6, 19, 20, 25, 31, 32, 33, and 44 (FIMGLMD00007077, FIMGLMD00007101, FIMGLMD00007104, FIMGLMD00007115, FIMGLMD00007127, FIMGLMD00007130, FIMGLMD00007133, and FIMGLMD00007252). Complaint Counsel exchanged these communications with HHS seeking information that informed the Commission’s decision of where to file its CID enforcement action against Respondent. The CID enforcement action was ultimately filed August 28, 2012 in the Northern District of Georgia under case number 1:12-cv-3005.

19. The deliberative process privilege protects information that is predecisional and deliberative in nature. The communication exchanged between Complaint Counsel and HHS pre-dated Complaint Counsel’s decision of where to file its CID enforcement action, and reflect opinions, recommendations, and advice that contributed to the decisionmaking process.

20. **Law Enforcement Privilege.** The communications exchanged between

Complaint Counsel and HHS contain [REDACTED]
[REDACTED]
[REDACTED]. Release of information

relating to any of the techniques and procedures enumerated herein would reveal law enforcement techniques and procedures and hamper the agencies' ability to work cooperatively and bring appropriate actions.

B. Compliance with HIPAA and Other Statutes and Regulations

21. From September 2010 through November 2013 Complaint Counsel Alain Sheer communicated periodically with Marilou King and David Holtzman of HHS regarding [REDACTED]
[REDACTED]
[REDACTED].

22. **Deliberative Process Privilege.** I have determined that the Commission should assert the Deliberative Process Privilege over documents 10, 21, 23, 24, 34, 35, and 40 (FIMGLMD00007086, FIMGLMD00007109, FIMGLMD00007113, FIMGLMD00007114, FIMGLMD00007134, FIMGLMD00007136, and FIMGLMD00007245). Complaint Counsel engaged in this communication to determine whether to bring an action against Respondent, which allegations to include in a complaint, and [REDACTED]

[REDACTED]. Some of the communications exchanged between Complaint Counsel and HHS pre-dated the Commission's filing of its Complaint on August 28, 2013. In addition, all communications are relevant to [REDACTED]

[REDACTED]. The communications reflect opinions, recommendations, and advice that contributed to the decisionmaking process.

23. **Law Enforcement Privilege.** The communications exchanged between Complaint Counsel and HHS contain [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]. Release of information relating to any of the techniques and procedures would reveal law enforcement techniques and procedures and hamper the agencies' ability to work cooperatively and bring appropriate actions.

C. Strategy

24. On February 5-7, 2014, Complaint Counsel Alain Sheer and Laura Riposo VanDruff communicated with Marilou King of HHS regarding a Rule 3.34(a) subpoena issued by Respondent to HHS employee Susan McAndrew, the FTC's rules and procedures for administrative litigation, and [REDACTED]
[REDACTED].

25. **Deliberative Process Privilege.** I have determined that the Commission should assert the Deliberative Process Privilege over documents 64, 70, and 71 (FIMGLMD00008705, FIMGLMD00008711, and FIMGLMD00008712). Complaint Counsel and HHS engaged in this communication to [REDACTED]
[REDACTED].

[REDACTED]. The communication pre-dates HHS's response to the subpoena, which was sent by letter on February 10, 2014. The communication reflects opinions, recommendations, and advice that contributed to the decisionmaking process.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of March, 2014.



Jessica L. Rich

Exhibit D

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

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

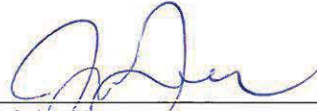
COMPLAINT COUNSEL’S FINAL PROPOSED EXHIBIT LIST

Pursuant to the Court’s October 22, 2013 and September 25, 2013 Scheduling Orders, Complaint Counsel serves its Final Proposed Exhibit List, including, for each proposed exhibit, a CX exhibit number designation, the Bates number or range at which the document was produced, if available, and the basis for admissibility of each exhibit under the Commission’s Rule of Practice. Without waiving its objections to exhibits included in Respondent’s Final Proposed Exhibit List, Complaint Counsel also reserves the right to move the admission of any exhibits included in Respondent’s Final Proposed Exhibit List. Complaint Counsel also reserves the right to supplement its Final Proposed Exhibit List as permitted under the Rules of Practice and the Court’s Scheduling Orders.

Complaint Counsel has marked several exhibits as confidential in accordance with the Court’s August 29, 2013 Protective Order. Complaint Counsel invokes the provisions of the Protective Order as to exhibits it has marked as confidential, including CX0451, a native file appearing at Bates number FTC-010907. The filename of CX0451 includes “confidential” because the original document cannot be marked without altering it. Complaint Counsel also

invokes the provisions of the Protective Order with regard to exhibits comprised of documents that were marked confidential when produced, whether by Complaint Counsel or a third party.

Dated: March 26, 2014



Alain Sheer
Laura Riposo VanDruff
Megan Cox
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Complaint Counsel's Final Proposed Exhibit List

EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0001	LabMD Employee Handbook Rev. June 2004	6/2004	FTC-LABMD-003531	FTC-LABMD-003553	3.43(b), 3.43(d), 3.43(e)
CX0002	LabMD Employee Handbook Rev. Mar. 2008	3/2008	FTC-LABMD-003554	FTC-LABMD-003575	3.43(b), 3.43(d), 3.43(e)
CX0003	New Team Member Checklist		FTC-LABMD-000366	FTC-LABMD-000366	3.43(b), 3.43(d), 3.43(e)
CX0004	IT Walk Around Checklist		FTC-LABMD-003164	FTC-LABMD-003164	3.43(b), 3.43(d), 3.43(e)
CX0005	LabMD Compliance Program effective Jan. 2003	1/2003	FTC-LABMD-003493	FTC-LABMD-003502	3.43(b), 3.43(d), 3.43(e)
CX0006	LabMD Policy Manual		FTC-LABMD-003141	FTC-LABMD-003162	3.43(b), 3.43(d), 3.43(e)
CX0007	LabMD Computer Hardware, Software and Data Usage and Security Policy Manual		FTC-LABMD-003590	FTC-LABMD-003621	3.43(b), 3.43(d), 3.43(e)
CX0008	Tiversa Holding Corp. ("Tiversa") Insurance Aging File 1 - [173.16.83.112]insuranceaging_6.05.071		TIVERSA-FTC_RESPONSE-000001	TIVERSA-FTC_RESPONSE-001719	3.43(b), 3.43(c)
CX0009	Tiversa Insurance Aging File 2 - [201.194.118.82]insuranceaging_6.05.071		TIVERSA-FTC_RESPONSE-001720	TIVERSA-FTC_RESPONSE-003438	3.43(b), 3.43(c)
CX0010	Tiversa Insurance Aging File 3 - [68.107.85.250]insuranceaging_6.05.071		TIVERSA-FTC_RESPONSE-003439	TIVERSA-FTC_RESPONSE-005157	3.43(b), 3.43(c)
CX0011	Tiversa Insurance Aging File 4 - [90.215.200.56]insuranceaging_6.05.071		TIVERSA-FTC_RESPONSE-005158	TIVERSA-FTC_RESPONSE-006876	3.43(b), 3.43(c)
CX0012 - CX0017	INTENTIONALLY NOT USED				
CX0018	LabMD Daily Credit Card Transactions		TIVERSA-FTC_RESPONSE-006904	TIVERSA-FTC_RESPONSE-006904	3.43(b), 3.43(c)
CX0019	Tiversa: List of 4 IP Addresses where Insurance Aging File found		TIVERSA-FTC_RESPONSE-006882	TIVERSA-FTC_RESPONSE-006882	3.43(b), 3.43(c)
CX0020	Tiversa: Properties of Insurance Aging File found		TIVERSA-FTC_RESPONSE-006877	TIVERSA-FTC_RESPONSE-006878	3.43(b), 3.43(c)
CX0021	Tiversa Incident Response Services Agreement	2008	TIVERSA-FTC_RESPONSE-006889	TIVERSA-FTC_RESPONSE-006896	3.43(b), 3.43(c)
CX0022	INTENTIONALLY NOT USED				
CX0023	Email J. Boyle to R. Boback Subject: Re: follow-up	5/13/2008	TIVERSA-FTC_RESPONSE-006886	TIVERSA-FTC_RESPONSE-006886	3.43(b), 3.43(c)
CX0024	INTENTIONALLY NOT USED				
CX0025	Email J. Boyle to R. Boback Subject: Re: Tiversa/LabMD	5/22/2008	TIVERSA-FTC_RESPONSE-006900	TIVERSA-FTC_RESPONSE-006900	3.43(b), 3.43(c)
CX0026	Email R. Boback to J. Boyle Subject RE: Tiversa/LabMD, attaching Standard Incident Resp. Case SOW.pdf	5/23/2008	TIVERSA-FTC_RESPONSE-006897	TIVERSA-FTC_RESPONSE-006899	3.43(b), 3.43(c)
CX0027 - CX0028	INTENTIONALLY NOT USED				
CX0029	Subpoena <i>ad test.</i> to Tiversa	11/1/2013			3.43(b)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0030 - CX0033	INTENTIONALLY NOT USED				
CX0034	Network Diagrams - Perimeter Center West Location & Powers Ferry Road Location		FTC-LABMD-000002	FTC-LABMD-000003	3.43(b), 3.43(d), 3.43(e)
CX0035	Automated PC Technologies, Inc. ("APT") Service Invoice		FTC-LABMD-003475	FTC-LABMD-003482	3.43(b), 3.43(d), 3.43(e)
CX0036 - CX0038	INTENTIONALLY NOT USED				
CX0039	Network Diagram - Powers Ferry Road Location Apr. 2009	4/2009	FTC-LABMD-003646	FTC-LABMD-003646	3.43(b), 3.43(d), 3.43(e)
CX0040	Network Diagram - Powers Ferry Road Location Sept. 2010	9/2010	FTC-LABMD-003647	FTC-LABMD-003647	3.43(b), 3.43(d), 3.43(e)
CX0041	Network Diagram - Powers Ferry Road Location 2011	2011	FTC-LABMD-003648	FTC-LABMD-003648	3.43(b), 3.43(d), 3.43(e)
CX0042	Email H. Davidson to M. Daugherty Subject RE: Providyn Follow Up, attaching LabMD External Vulnerability Scan.pdf, Auth. To Perform External Network Scan.doc	5/18/2010	FTC-PVD-000020	FTC-PVD-000027	3.43(b), 3.43(c)
CX0043	Robert Hyer Resume		FTC-LABMD-003588	FTC-LABMD-003589	3.43(b), 3.43(d), 3.43(e)
CX0044	Providyn Service Solutions Proposal for LabMD, executed by M. Daugherty	5/18/2010	FTC-LABMD-003732	FTC-LABMD-003736	3.43(b), 3.43(d), 3.43(e)
CX0045	INTENTIONALLY NOT USED				
CX0046	Managed Data Solutions ("MDS") Statement of Work for LabMD re: penetration testing		FTC-LABMD-003636	FTC-LABMD-003645	3.43(b), 3.43(d), 3.43(e)
CX0047	Providyn Service Solutions Proposal for LabMD, unexecuted	2010	FTC-PVD-000015	FTC-PVD-000017	3.43(b), 3.43(c)
CX0048	Providyn Invoice 2172	5/25/2013	FTC-PVD-000038	FTC-PVD-000038	3.43(b), 3.43(c)
CX0049	Providyn Invoice 2236	7/19/2010	FTC-PVD-000039	FTC-PVD-000039	3.43(b), 3.43(c)
CX0050	Providyn Invoice 2300	9/6/2010	FTC-PVD-000040	FTC-PVD-000040	3.43(b), 3.43(c)
CX0051	Providyn Service Solutions Proposal for LabMD, executed by M. Daugherty	5/18/2010	FTC-PVD-000049	FTC-PVD-000053	3.43(b), 3.43(c)
CX0052	Final Page of Providyn Service Solutions Proposal for LabMD, executed by M. Daugherty and H. Davidson	5/18/2010	FTC-PVD-000054	FTC-PVD-000054	3.43(b), 3.43(c)
CX0053	Spreadsheet of Trend Micro LabMD Invoices 2006-2013	7/18/2010	FTC-TRM-000455	FTC-TRM-000455	3.43(b), 3.43(c)
CX0054	Providyn Network Security Scan - Mapper	7/18/2010	FTC-PVD-000055	FTC-PVD-000093	3.43(b), 3.43(c)
CX0055	Providyn Network Security Scan - Demographics	7/18/2010	FTC-PVD-000094	FTC-PVD-000120	3.43(b), 3.43(c)
CX0056	Providyn Network Security Scan - Host 73.32.42.25	7/22/2010	FTC-PVD-000121	FTC-PVD-000173	3.43(b), 3.43(c)
CX0057	Providyn Network Security Scan - Firewall	9/3/2010	FTC-PVD-000241	FTC-PVD-000265	3.43(b), 3.43(c)
CX0058	Providyn Network Security Scan - LabNet	9/3/2010	FTC-PVD-000266	FTC-PVD-000314	3.43(b), 3.43(c)
CX0059	Providyn Network Security Scan - Mail	9/3/2010	FTC-PVD-000315	FTC-PVD-000387	3.43(b), 3.43(c)
CX0060	Providyn Network Security Scan - Router to/from internal network	9/3/2010	FTC-PVD-000388	FTC-PVD-000415	3.43(b), 3.43(c)
CX0061	Providyn Network Security Scan - Mapper	9/3/2010	FTC-PVD-000416	FTC-PVD-000442	3.43(b), 3.43(c)
CX0062	Providyn Network Security Scan - Demographics	9/3/2010	FTC-PVD-000443	FTC-PVD-000466	3.43(b), 3.43(c)

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CX0063	Providyn Network Security Scan - Specialty VPN	9/3/2010	FTC-PVD-000467	FTC-PVD-000490	3.43(b), 3.43(c)
CX0064	Providyn Network Security Scan - Network Printer	9/3/2010	FTC-PVD-000491	FTC-PVD-000514	3.43(b), 3.43(c)
CX0065	Providyn Network Security Scan - LabCorp VPN	9/3/2010	FTC-PVD-000515	FTC-PVD-000539	3.43(b), 3.43(c)
CX0066	Providyn Network Security Scan - Firewall	5/21/2010	FTC-PVD-000840	FTC-PVD-000864	3.43(b), 3.43(c)
CX0067	Providyn Network Security Scan - LabNet	5/21/2010	FTC-PVD-000865	FTC-PVD-000934	3.43(b), 3.43(c)
CX0068	Providyn Network Security Scan - Mail	5/21/2010	FTC-PVD-000935	FTC-PVD-001012	3.43(b), 3.43(c)
CX0069	Providyn Network Security Scan - Router to/from internal network	5/21/2010	FTC-PVD-001013	FTC-PVD-001037	3.43(b), 3.43(c)
CX0070	Providyn Network Security Scan - Mapper	5/21/2010	FTC-PVD-001038	FTC-PVD-001079	3.43(b), 3.43(c)
CX0071	Providyn Network Security Scan - Demographics	5/21/2010	FTC-PVD-001080	FTC-PVD-001137	3.43(b), 3.43(c)
CX0072	Providyn Network Security Scan - Specialty VPN	5/21/2010	FTC-PVD-001138	FTC-PVD-001161	3.43(b), 3.43(c)
CX0073	Providyn Network Security Scan - Network Printer	5/21/2010	FTC-PVD-001162	FTC-PVD-001185	3.43(b), 3.43(c)
CX0074	Providyn Network Security Scan - LabCorp VPN	5/21/2010	FTC-PVD-001186	FTC-PVD-001210	3.43(b), 3.43(c)
CX0075	Providyn Service Solutions Proposal for LabMD	5/18/2010	FTC-LABMD-002716	FTC-LABMD-002720	3.43(b), 3.43(d), 3.43(e)
CX0076	Providyn Network Security Scan - Redacted Public IP Address	5/21/2010	FTC-LABMD-002722	FTC-LABMD-002747	3.43(b), 3.43(d), 3.43(e)
CX0077	Providyn Network Security Scan - LabNet	5/21/2010	FTC-LABMD-002748	FTC-LABMD-002818	3.43(b), 3.43(d), 3.43(e)
CX0078	Providyn Network Security Scan - Specialty VPN	5/21/2010	FTC-LABMD-002819	FTC-LABMD-002843	3.43(b), 3.43(d), 3.43(e)
CX0079	Providyn Network Security Scan - Mapper	5/21/2010	FTC-LABMD-002844	FTC-LABMD-002886	3.43(b), 3.43(d), 3.43(e)
CX0080	Providyn Network Security Scan - Network Printer	5/21/2010	FTC-LABMD-002887	FTC-LABMD-002911	3.43(b), 3.43(d), 3.43(e)
CX0081	Providyn Network Security Scan - LabCorp VPN	5/21/2010	FTC-LABMD-002912	FTC-LABMD-002937	3.43(b), 3.43(d), 3.43(e)
CX0082	Providyn Network Security Scan - Router to/from internal network	5/21/2010	FTC-LABMD-002938	FTC-LABMD-002963	3.43(b), 3.43(d), 3.43(e)
CX0083	Providyn Network Security Scan - Specialty VPN	5/21/2010	FTC-LABMD-002964	FTC-LABMD-002988	3.43(b), 3.43(d), 3.43(e)
CX0084	Providyn Network Security Scan - Mail	5/21/2010	FTC-LABMD-002989	FTC-LABMD-003067	3.43(b), 3.43(d), 3.43(e)
CX0085	LabMD Day Sheets and Copied Checks		FTC-SAC-000001	FTC-SAC-000044	3.43(b), 3.43(c)
CX0086	Sacramento Police Department ("SPD") Certification of Records of Regularly Conducted Activity (2nd Production)	11/20/2013	FTC-SAC-000143	FTC-SAC-000144	3.43(b), 3.43(c)
CX0087	LabMD Day Sheets		FTC-SAC-000233	FTC-SAC-000272	3.43(b), 3.43(c)
CX0088	LabMD Copied Checks		FTC-SAC-000273	FTC-SAC-000282	3.43(b), 3.43(c)
CX0089	SPD Certification of Records of Regularly Conducted Activity (1st Production)	11/5/2013	FTC-SAC-000047	FTC-SAC-000048	3.43(b), 3.43(c)
CX0090	SPD Suspect Statement - Garcia, Eric	10/5/2012	FTC-SAC-000059	FTC-SAC-000059	3.43(b), 3.43(c)
CX0091	SPD Suspect Statement - Maldonado, Josie	10/5/2012	FTC-SAC-000060	FTC-SAC-000060	3.43(b), 3.43(c)
CX0092	SPD Detective Supplement-Observations - Jastes, Karina	10/25/2012	FTC-SAC-000061	FTC-SAC-000064	3.43(b), 3.43(c)
CX0093	INTENTIONALLY NOT USED				

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CX0094	SPD Observations: Wilhite, Kurt	10/5/2012	FTC-SAC-000069	FTC-SAC-000072	3.43(b), 3.43(c)
CX0095 -					
CX0096	INTENTIONALLY NOT USED				
CX0097	SPD Detective Supplement-Observations: Jestes, Karina	10/18/2012	FTC-SAC-000118	FTC-SAC-000118	3.43(b), 3.43(c)
CX0098	SPD Victim Statement	10/4/2012	FTC-SAC-000139	FTC-SAC-000139	3.43(b), 3.43(c)
CX0099	SPD Observations - Barretto, G. re Victim Statement	10/4/2012	FTC-SAC-000140	FTC-SAC-000140	3.43(b), 3.43(c)
CX0100	SPD ECU Narrative Report		FTC-SAC-000636	FTC-SAC-000643	3.43(b), 3.43(c)
CX0101	SPD NetAnalysis Report		FTC-SAC-000679	FTC-SAC-000682	3.43(b), 3.43(c)
CX0102 -					
CX0103	INTENTIONALLY NOT USED				
CX0104	SPD Production (1 of 3)		FTC-SAC-000045	FTC-SAC-000110	3.43(b), 3.43(c)
CX0105	SPD Production (2 of 3)		FTC-SAC-000111	FTC-SAC-000130	3.43(b), 3.43(c)
CX0106	SPD Production (3 of 3)		FTC-SAC-000131	FTC-SAC-000142	3.43(b), 3.43(c)
CX0107	Sup. Ct. of Cal.: Erick Garcia Minute Order re Plea		FTC-000657	FTC-000658	3.43(b)
CX0108	Sup. Ct. of Cal.: Josie Martinez Maldonado Minute Order re Plea		FTC-000659	FTC-000660	3.43(b)
CX0109 -					
CX0118	INTENTIONALLY NOT USED				
CX0119	Monthly Status of Pending Tasks (1/2007)	1/2007	FTC-LABMD-000460	FTC-LABMD-000462	3.43(b), 3.43(d), 3.43(e)
CX0120	Monthly Status of Pending Tasks (3/2007)	3/2007	FTC-LABMD-000314	FTC-LABMD-000316	3.43(b), 3.43(d), 3.43(e)
CX0121	Monthly Status of Pending Tasks (5/2007)	5/2007	FTC-LABMD-000317	FTC-LABMD-000319	3.43(b), 3.43(d), 3.43(e)
CX0122	Monthly Status of Pending Tasks (8/2007)	8/2007	FTC-LABMD-000349	FTC-LABMD-000351	3.43(b), 3.43(d), 3.43(e)
CX0123	Monthly Status of Pending Tasks (8/2007)	8/2007	FTC-LABMD-000485	FTC-LABMD-000487	3.43(b), 3.43(d), 3.43(e)
CX0124	Monthly Status of Pending Tasks (9/2006)	9/2006	FTC-LABMD-000398	FTC-LABMD-000400	3.43(b), 3.43(d), 3.43(e)
CX0125	Server Updates (incl. Sales Reports) - 4/2010 to 5/2010	2010	FTC-LABMD-003272	FTC-LABMD-003273	3.43(b), 3.43(d), 3.43(e)
CX0126	Server Updates (incl. Sales Reports)	6/2010	FTC-LABMD-003274	FTC-LABMD-003275	3.43(b), 3.43(d), 3.43(e)
CX0127	Compliance Training PowerPoint Slides		FTC-LABMD-003503	FTC-LABMD-003530	3.43(b), 3.43(d), 3.43(e)
CX0128	Information Managers are supposed to Communicate to Employees		FTC-LABMD-003139	FTC-LABMD-003139	3.43(b), 3.43(d), 3.43(e)
CX0129	LabMD Compliance Program - effective Jan. 2003, signature pages	2004-2006	FTC-LABMD-003763	FTC-LABMD-003776	3.43(b), 3.43(d)
CX0130	LabMD Employee Handbook Rev. Oct. 2007 - signature pages	10/2007	FTC-LABMD-003819	FTC-LABMD-003865	3.43(b), 3.43(d)
CX0131	INTENTIONALLY NOT USED				

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0132	LabMD List of Referring Physicians and Sales Reps by State		FTC-LABMD-000569	FTC-LABMD-000585	3.43(b), 3.43(d), 3.43(e)
CX0133	INTENTIONALLY NOT USED				
CX0134	LabMD Clients with Remote Access		FTC-LABMD-000567	FTC-LABMD-000567	3.43(b), 3.43(d), 3.43(e)
CX0135	Rapid SSL software documents		FTC-LABMD-000166	FTC-LABMD-000171	3.43(b), 3.43(d), 3.43(e)
CX0136	LabMD Referring Physican Analysis	1/5/2006	FTC-LABMD-000380	FTC-LABMD-000382	3.43(b), 3.43(d), 3.43(e)
CX0137	Web Access lists		FTC-LABMD-003576	FTC-LABMD-003581	3.43(b), 3.43(d), 3.43(e)
CX0138	Web Access for Insurance Companies		FTC-LABMD-000447	FTC-LABMD-000447	3.43(b), 3.43(d), 3.43(e)
CX0139	Secure FX software documents		FTC-LABMD-000149	FTC-LABMD-000151	3.43(b), 3.43(d), 3.43(e)
CX0140	Van Dyke software document		FTC-LABMD-000140	FTC-LABMD-000140	3.43(b), 3.43(d), 3.43(e)
CX0141	Vshell software documents		FTC-LABMD-000141	FTC-LABMD-000148	3.43(b), 3.43(d), 3.43(e)
CX0142	INTENTIONALLY NOT USED				
CX0143	LabMD Notification Letter to Consumers - Unaddressed		FTC-LABMD-003910	FTC-LABMD-003911	3.43(b), 3.43(d)
CX0144 - CX0148	INTENTIONALLY NOT USED				
CX0149	Screenshot: LabMD - Tiversa.zip WINRAR - insuranceeaging 6.05.071.pdf		FTC-LABMD-003752	FTC-LABMD-003752	3.43(b), 3.43(d), 3.43(e)
CX0150	Screenshot: C:\		FTC-LABMD-003753	FTC-LABMD-003753	3.43(b), 3.43(d), 3.43(e)
CX0151	Screenshot: C:\Program Files\LimeWire		FTC-LABMD-003754	FTC-LABMD-003754	3.43(b), 3.43(d), 3.43(e)
CX0152	Screenshot: LimeWire: My Shared Files		FTC-LABMD-003755	FTC-LABMD-003755	3.43(b), 3.43(d), 3.43(e)
CX0153	Screenshot: LabMD - Tiversa.zip WinRAR - LabMD folder		FTC-LABMD-003757	FTC-LABMD-003757	3.43(b), 3.43(d), 3.43(e)
CX0154	Screenshot: LimeWire Get Started		FTC-LABMD-003758	FTC-LABMD-003758	3.43(b), 3.43(d), 3.43(e)
CX0155	Screenshot: Start Menu: LimeWire		FTC-LABMD-003759	FTC-LABMD-003759	3.43(b), 3.43(d), 3.43(e)
CX0156	Screenshot: LimeWire: Options: Shared Folders		FTC-LABMD-003760	FTC-LABMD-003760	3.43(b), 3.43(d), 3.43(e)
CX0157	Screenshot: insuranceeaging 6.05.071.pdf Properties		FTC-LABMD-003761	FTC-LABMD-003761	3.43(b), 3.43(d), 3.43(e)
CX0158	LabMD Insurance Verification Specialist Duties		FTC-LABMD-000308	FTC-LABMD-000308	3.43(b), 3.43(d), 3.43(e)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0159	LabMD Payment Posting Specialist Duties		FTC-LABMD-000309	FTC-LABMD-000309	3.43(b), 3.43(d), 3.43(e)
CX0160 - CX0161	INTENTIONALLY NOT USED				
CX0162	Mail Batch Instructions		FTC-LABMD-000312	FTC-LABMD-000313	3.43(b), 3.43(d), 3.43(e)
CX0163	Process for Working Aging Reports		FTC-LABMD-000377	FTC-LABMD-000377	3.43(b), 3.43(d), 3.43(e)
CX0164	Web Access for Insurance Companies		FTC-LABMD-000654	FTC-LABMD-000654	3.43(b), 3.43(d), 3.43(e)
CX0165	LabMD Insurance Aging Report (Cover Page)	6/5/2007	FTC-LABMD-000718	FTC-LABMD-000718	3.43(b), 3.43(d), 3.43(e)
CX0166	Insurance Aging Report - Page 1 Excerpt	6/5/2007	FTC-LABMD-000777	FTC-LABMD-000777	3.43(b), 3.43(d), 3.43(e)
CX0167	PC Tracking (John) Spreadsheet		FTC-LABMD-003131	FTC-LABMD-003131	3.43(b), 3.43(d), 3.43(e)
CX0168	INTENTIONALLY NOT USED				
CX0169	IT Tools/Checks-handwritten - Administrators Old Computer		FTC-LABMD-003344	FTC-LABMD-003344	3.43(b), 3.43(d), 3.43(e)
CX0170	Email S. Brown to J. Boyle Subject: Limewire Issue	8/12/2010	FTC-LABMD-003587	FTC-LABMD-003587	3.43(b), 3.43(d), 3.43(e)
CX0171 - CX0173	INTENTIONALLY NOT USED				
CX0174	Email Subject: Daily IT rounds	10/1/2007	FTC-LABMD-003192	FTC-LABMD-003192	3.43(b), 3.43(d), 3.43(e)
CX0175	Email Subject: Daily IT rounds	10/22/2007	FTC-LABMD-003200	FTC-LABMD-003200	3.43(b), 3.43(d), 3.43(e)
CX0176	Email Subject: Daily IT rounds	12/19/2007	FTC-LABMD-003222	FTC-LABMD-003222	3.43(b), 3.43(d), 3.43(e)
CX0177	Mapper - Server Ports & Firewall threat summary	6/21/2010	FTC-LABMD-002615	FTC-LABMD-002615	3.43(b), 3.43(d), 3.43(e)
CX0178	Mapper - Server Ports & Firewall threat summary	6/18/2010	FTC-LABMD-002616	FTC-LABMD-002616	3.43(b), 3.43(d), 3.43(e)
CX0179	LabNet - Server Ports & Firewall threat summary	7/15/2010	FTC-LABMD-002624	FTC-LABMD-002624	3.43(b), 3.43(d), 3.43(e)
CX0180	Mail - Server Ports & Firewall threat summary	6/21/2010	FTC-LABMD-002625	FTC-LABMD-002625	3.43(b), 3.43(d), 3.43(e)
CX0181	Router - Server Ports & Firewall threat summary	6/21/2010	FTC-LABMD-002626	FTC-LABMD-002626	3.43(b), 3.43(d), 3.43(e)
CX0182	Trend Micro Daily Virus Report	7/6/2010	FTC-LABMD-003069	FTC-LABMD-003073	3.43(b), 3.43(d), 3.43(e)
CX0183	Trend Micro Daily Virus Report	7/7/2010	FTC-LABMD-003074	FTC-LABMD-003078	3.43(b), 3.43(d), 3.43(e)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0184	Trend Micro Daily Virus Report	7/8/2010	FTC-LABMD-003079	FTC-LABMD-003083	3.43(b), 3.43(d), 3.43(e)
CX0185	Trend Micro Daily Virus Report	7/9/2010	FTC-LABMD-003084	FTC-LABMD-003088	3.43(b), 3.43(d), 3.43(e)
CX0186	Trend Micro Daily Virus Report	7/10/2010	FTC-LABMD-003089	FTC-LABMD-003093	3.43(b), 3.43(d), 3.43(e)
CX0187	Trend Micro Daily Virus Report	7/11/2010	FTC-LABMD-003094	FTC-LABMD-003098	3.43(b), 3.43(d), 3.43(e)
CX0188	Trend Micro Daily Virus Report	7/12/2010	FTC-LABMD-003099	FTC-LABMD-003103	3.43(b), 3.43(d), 3.43(e)
CX0189	Trend Micro Daily Virus Report	7/13/2010	FTC-LABMD-003104	FTC-LABMD-003108	3.43(b), 3.43(d), 3.43(e)
CX0190	Trend Micro Daily Virus Report	7/14/2010	FTC-LABMD-003109	FTC-LABMD-003113	3.43(b), 3.43(d), 3.43(e)
CX0191	Trend Micro Daily Virus Report	7/15/2010	FTC-LABMD-003114	FTC-LABMD-003123	3.43(b), 3.43(d), 3.43(e)
CX0192	Spyware/Grayware Results - July 2010	7/2010	FTC-LABMD-003347	FTC-LABMD-003349	3.43(b), 3.43(d), 3.43(e)
CX0193	Virus/Malware Results - July 2010	7/2011	FTC-LABMD-003350	FTC-LABMD-003358	3.43(b), 3.43(d), 3.43(e)
CX0194	MDS Project Proposal - Websense	4/11/2011	FTC-LABMD-003738	FTC-LABMD-003739	3.43(b), 3.43(d), 3.43(e)
CX0195	MDS Project Proposal - Websense Time Portion	4/11/2011	FTC-LABMD-003740	FTC-LABMD-003740	3.43(b), 3.43(d), 3.43(e)
CX0196 - CX0198	INTENTIONALLY NOT USED				
CX0199	Email Subject: Daily IT rounds	11/21/2007	FTC-LABMD-003213	FTC-LABMD-003213	3.43(b), 3.43(d), 3.43(e)
CX0200	Tiversa Certification of Records of Regularly Conducted Activity	11/21/2013			3.43(b), 3.43(c)
CX0201	INTENTIONALLY NOT USED				
CX0202	Network Diagram--Drawn by Jeremy Dooley at Deposition	12/2/2013			3.43(b)
CX0203	Christopher Maire Resume		FTC-LABMD-003488	FTC-LABMD-003489	3.43(b), 3.43(d), 3.43(e)
CX0204 - CX0206	INTENTIONALLY NOT USED				
CX0207	LabSoft Interfaces and Setup information		FTC-LABMD-000008	FTC-LABMD-000019	3.43(b), 3.43(d), 3.43(e)
CX0208	LabSoft Utilities and Configuration Information		FTC-LABMD-000081	FTC-LABMD-000137	3.43(b), 3.43(d), 3.43(e)
CX0209	Karalyn Garrett Background Documents		FTC-SPD-000001	FTC-SPD-000082	3.43(b), 3.43(c)
CX0210	Sandy Springs Police Department Incident/Investigation Report & Case Supplement Report	12/12/2013	FTC-SPD-000083	FTC-SPD-000086	3.43(b), 3.43(c)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0211 - CX0217	INTENTIONALLY NOT USED				
CX0218	Sandy Springs Police Department Certification of Records of Regularly Conducted Activity	12/12/2013	FTC-SPD-000136	FTC-SPD-000136	3.43(b), 3.43(c)
CX0219 - CX0220	INTENTIONALLY NOT USED				
CX0221	Subpoena <i>ad test.</i> to Southeast Urology Network, P.C.	12/9/2013			3.43(b)
CX0222 - CX0224	INTENTIONALLY NOT USED				
CX0225	Letter from Southeast Urology Network	11/25/2013	FTC-SUN-000001	FTC-SUN-000003	3.43(b)
CX0226	INTENTIONALLY NOT USED				
CX0227	LabMD Letter to Consumers re: Sacramento Incident, unaddressed	3/27/2013	FTC-LABMD-003914	FTC-LABMD-003915	3.43(b), 3.43(d)
CX0228 - CX0232	INTENTIONALLY NOT USED				
CX0233	Daily Credit Card Transactions		FTC-LABMD-000339	FTC-LABMD-000339	3.43(b), 3.43(d), 3.43(e)
CX0234	Staff Info		FTC-LABMD-000403	FTC-LABMD-000403	3.43(b), 3.43(d), 3.43(e)
CX0235	INTENTIONALLY NOT USED				
CX0236	Email Subject: Daily IT rounds	8/22/2007	FTC-LABMD-003175	FTC-LABMD-003175	3.43(b), 3.43(d), 3.43(e)
CX0237	Performance Appraisal - Karalyn Garrett	2008	FTC-LABMD-000477	FTC-LABMD-000480	3.43(b), 3.43(d), 3.43(e)
CX0238 - CX0240	INTENTIONALLY NOT USED				
CX0241	Patient Locator Project	11/2007	FTC-LABMD-000376	FTC-LABMD-000376	3.43(b), 3.43(d), 3.43(e)
CX0242 - CX0247	INTENTIONALLY NOT USED				
CX0248	Email M. Bureau to J. Boyle Subject: Walk Arounuds 8/14/09, with Attachments	8/14/2009	FTC-LABMD-004323	FTC-LABMD-004329	3.43(b), 3.43(d)
CX0249 - CX0252	INTENTIONALLY NOT USED				
CX0253	Cypress C4 IP Services Order Form	2/12/2009	FTC-LABMD-000246	FTC-LABMD-000249	3.43(b), 3.43(d), 3.43(e)
CX0254	Mapper scan		FTC-LABMD-002617	FTC-LABMD-002617	3.43(b), 3.43(d), 3.43(e)
CX0255	Advanced Port Scanner Scan		FTC-LABMD-002618	FTC-LABMD-002618	3.43(b), 3.43(d), 3.43(e)
CX0256	Demographics scan		FTC-LABMD-002620	FTC-LABMD-002620	3.43(b), 3.43(d), 3.43(e)
CX0257	ZyXEL Firewall Rules		FTC-LABMD-003268	FTC-LABMD-003268	3.43(b), 3.43(d), 3.43(e)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0258 - CX0263	INTENTIONALLY NOT USED				
CX0264	MDS Invoice	4/10/2009	FTC-LABMD-000255	FTC-LABMD-000255	3.43(b), 3.43(d), 3.43(e)
CX0265	John Boyle Resume		FTC-LABMD-003490	FTC-LABMD-003492	3.43(b), 3.43(d), 3.43(e)
CX0266	INTENTIONALLY NOT USED				
CX0267	Email J. Boyle to M. Daugherty Subject: Fw: SMB OEM, attaching SMB OEM.msg	12/23/2008	FTC-LABMD-004356	FTC-LABMD-004357	3.43(b), 3.43(d)
CX0268	mbam log	7/15/2010	FTC-LABMD-003284	FTC-LABMD-003286	3.43(b), 3.43(d), 3.43(e)
CX0269	Veritas Jobs Summary	7/2010	FTC-LABMD-002628	FTC-LABMD-002634	3.43(b), 3.43(d), 3.43(e)
CX0270	IT Tools/Checks-handwritten - Computer Name redacted		FTC-LABMD-003283	FTC-LABMD-003283	3.43(b), 3.43(d), 3.43(e)
CX0271 - CX0273	INTENTIONALLY NOT USED				
CX0274	Responses by Cypress Communication		FTC-CYP-0000001	FTC-CYP-0000001	3.43(b), 3.43(c)
CX0275	Cypress Communications C4 IP Services Order Form		FTC-CYP-0000002	FTC-CYP-0000002	3.43(b), 3.43(c)
CX0276 - CX0277	INTENTIONALLY NOT USED				
CX0278	Cypress Communications Special Stipulations Addendum No. 1 to C4 Service Order Form Executed 2009.02.19 and 2009.01.30	2009	FTC-CYP-0000007	FTC-CYP-0000009	3.43(b), 3.43(c)
CX0279	Cypress Communications C4 IP Services Order Form	3/14/2009	FTC-CYP-0000010	FTC-CYP-0000014	3.43(b), 3.43(c)
CX0280 - CX0281	INTENTIONALLY NOT USED				
CX0282	Subpoena <i>ad test.</i> to Cypress Communications	1/10/2014			3.43(b)
CX0283 - CX0285	INTENTIONALLY NOT USED				
CX0286	Subpoena <i>ad test.</i> to Midtown Urology	1/10/2014			3.43(b)
CX0287 - CX0288	INTENTIONALLY NOT USED				
CX0289	Midtown Urology Certification of Records of Regularly Conducted Activity	1/7/2014	FTC-MID-0000001	FTC-MID-0000001	3.43(b), 3.43(c)
CX0290	Midtown Urology Unofficial Protocol of Patient Information Transmittal		FTC-MID-0000010	FTC-MID-0000010	3.43(b), 3.43(c)
CX0291	LabMD Letter to Physicians Offices re: Closing	1/6/2014	FTC-MID-0000012	FTC-MID-0000012	3.43(b), 3.43(c)
CX0292	Email B. Goldsmith to S. Hammond Subject: FW: LabMD notification letter to patients, with attached LabMD Notification Letter to Patients	1/7/2014	FTC-MID-0000013	FTC-MID-0000015	3.43(b), 3.43(c)
CX0293 - CX0300	INTENTIONALLY NOT USED				

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0301	SPD Certification of Records of Regularly Conducted Activity (Forensic Disc)	12/17/2013			3.43(b), 3.43(c)
CX0302	INTENTIONALLY NOT USED				
CX0303	MDS Project Proposal	4/10/2009	FTC-LABMD-000254	FTC-LABMD-000254	3.43(b), 3.43(d), 3.43(e)
CX0304	MDS Cost Estimate	4/14/2009	FTC-LABMD-000256	FTC-LABMD-000256	3.43(b), 3.43(d), 3.43(e)
CX0305	INTENTIONALLY NOT USED				
CX0306	Activity History for SR# 1-1-600949972	11/18/2013	FTC-TRM-000016	FTC-TRM-000325	3.43(b), 3.43(c)
CX0307	Privacy Institute Spreadsheet with IP Address		FTC-PRI-001720	FTC-PRI-001724	3.43(b)
CX0308 -					
CX0309	INTENTIONALLY NOT USED				
CX0310	LabMD IT Project Outline--Network, Hardware, Software changes		FTC-LABMD-004385	FTC-LABMD-004385	3.43(b), 3.43(d)
CX0311	Email J. Boyle to M. Daugherty Subject: Fw: New domain login, attaching New domain login.msg	11/2/2010	FTC-LABMD-004386	FTC-LABMD-004387	3.43(b), 3.43(d)
CX0312	INTENTIONALLY NOT USED				
CX0313	LabMD IT Project Outline - Network, Hardware, Software changes		FTC-LABMD-004394	FTC-LABMD-004395	3.43(b), 3.43(d)
CX0314 -					
CX0318	INTENTIONALLY NOT USED				
CX0319	Notice of Deposition of LabMD	1/16/2014			3.43(b)
CX0320	Brandon Bradley Resume		FTC-LABMD-003657	FTC-LABMD-003658	3.43(b), 3.43(d), 3.43(e)
CX0321	Jennifer Parr Resume		FTC-LABMD-003660	FTC-LABMD-003662	3.43(b), 3.43(d), 3.43(e)
CX0322 -					
CX0335	INTENTIONALLY NOT USED				
CX0336	Trend Micro Activity History for SR#1-1-542741161		FTC-TRM-000001	FTC-TRM-000015	3.43(b), 3.43(c)
CX0337	Trend Micro Activity History for SR#1-1-731188002		FTC-TRM-000326	FTC-TRM-000392	3.43(b), 3.43(c)
CX0338	Trend Micro Activity History for SR#1-1-743909492		FTC-TRM-000393	FTC-TRM-000413	3.43(b), 3.43(c)
CX0339	Trend Micro Activity History for SR#1-1-779414842		FTC-TRM-000414	FTC-TRM-000433	3.43(b), 3.43(c)
CX0340	Trend Micro Activity History for SR#1-1-823583422		FTC-TRM-000434	FTC-TRM-000453	3.43(b), 3.43(c)
CX0341	Trend Micro Certifications of Records of Regularly Conducted Activity	12/4/2013	FTC-TRM-000456	FTC-TRM-000458	3.43(b), 3.43(c)
CX0342 -					
CX0351	INTENTIONALLY NOT USED				
CX0352	Trend Micro Certifications of Records of Regularly Conducted Activity	1/30/2014	FTC-TRM-000633	FTC-TRM-000634	3.43(b), 3.43(c)
CX0353	Monthly Network Inspection Report April 2011	4/2011	FTC-LABMD-003668	FTC-LABMD-003731	3.43(b), 3.43(d), 3.43(e)
CX0354	Gold Line Credit Services Inc Proof of Service on Erick Garcia	1/20/2014			3.43(b)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0355 - CX0358	INTENTIONALLY NOT USED				
CX0359 CX0360 - CX0362	Performance Appraisal - Nikki Harris INTENTIONALLY NOT USED	2008	FTC-LABMD-000367	FTC-LABMD-000370	3.43(b), 3.43(d), 3.43(e)
CX0363	Job Instructions (unspecified position)		FTC-LABMD-000405	FTC-LABMD-000406	3.43(b), 3.43(d), 3.43(e)
CX0364	Correspondence Instructions		FTC-LABMD-000472	FTC-LABMD-000472	3.43(b), 3.43(d), 3.43(e)
CX0365	LabMD Billing Specialist Duties		FTC-LABMD-000473	FTC-LABMD-000473	3.43(b), 3.43(d), 3.43(e)
CX0366 CX0367 - CX0371	Helpful Tips for Better Audit Results INTENTIONALLY NOT USED	11/10/2005	FTC-LABMD-000500	FTC-LABMD-000500	3.43(b), 3.43(d), 3.43(e)
CX0372	Billing Office Employee Schedule		FTC-LABMD-000603	FTC-LABMD-000603	3.43(b), 3.43(d), 3.43(e)
CX0373 - CX0381	INTENTIONALLY NOT USED				
CX0382 CX0383 - CX0394	Article: Data Hemorrhages in the Health-Care Sector INTENTIONALLY NOT USED	2/22/2009	Eric Johnson - 000003	Eric Johnson - 000021	
CX0395	New APT service agreement	2/23/2006	FTC-LABMD-003471	FTC-LABMD-003474	3.43(b), 3.43(d), 3.43(e)
CX0396 CX0397 CX0398	Affidavit of Allen Truett RecordInvent APT Service Invoice	5/20/2011 12/22/2013 2006-2007	FTC-LABMD-003624 FTC-ALT-0000001 FTC-ALT-0000004	FTC-LABMD-003625 FTC-ALT-0000003 FTC-ALT-0000011	3.43(b), 3.43(d), 3.43(e) 3.43(b), 3.43(c) 3.43(b), 3.43(c)
CX0399 CX0400	Allen Truett Certification of Records of Regularly Conducted Activity NIST Special Publication 800-30 dated July 2002	1/15/2014 7/2002	FTC-ALT-0000012	FTC-ALT-0000012	3.43(b), 3.43(c) 3.43(b)
CX0401 CX0402	Declaration of Michael Daugherty in support of Opp'n to Complaint Counsel's Motion for Sanctions Consumer Sentinel Complaint by Peter Cuttino	2/20/2014 3/28/2013		FTC-000667	3.43(b) 3.43(b)
CX0403 CX0404	HIPAA Security Series 2 - Security Standards-Administrative Safeguards INTENTIONALLY NOT USED				3.43(b)
CX0405 CX0406	HIPAA Security Series 6 - Basics of Risk Analysis and Risk Management INTENTIONALLY NOT USED				3.43(b)
CX0407 CX0408 - CX0411	Mail Merge List of Persons for LabMD Notification Letter INTENTIONALLY NOT USED		FTC-LABMD-003866	FTC-LABMD-003908	3.43(b), 3.43(d)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0412	The 7 Best Practices for Network Security in 2007				3.43(b)
CX0413	Computerworld: The best practices for network security in 2007	1/23/2007			3.43(b)
CX0414	MDS Review of LabMD's network security practices		FTC-LABMD-004576	FTC-LABMD-004593	3.43(b), 3.43(d)
CX0415	INTENTIONALLY NOT USED				
CX0416	MDS quote	8/7/2010	FTC-LABMD-010654	FTC-LABMD-010656	3.43(b), 3.43(d)
CX0417	MDS quote with modifications	8/7/2010	FTC-LABMD-010657	FTC-LABMD-010659	3.43(b), 3.43(d)
CX0418	Monthly Computer Inspection Report [Nicole Elliot]	10/11/2010	FTC-LABMD-015414	FTC-LABMD-015417	3.43(b), 3.43(d)
CX0419	MDS Review of LabMD's network security practices - 2nd version		FTC-LABMD-015542	FTC-LABMD-015561	3.43(b), 3.43(d)
CX0420	Trend Micro Daily Virus Report	7/26/2010	FTC-LABMD-004832	FTC-LABMD-004851	3.43(b), 3.43(d)
CX0421	Table of Scan Results and Action Taken		FTC-LABMD-004937	FTC-LABMD-004940	3.43(b), 3.43(d)
CX0422	MDS Project List - week of 2010.08.23	8/23/2010	FTC-LABMD-005686	FTC-LABMD-005686	3.43(b), 3.43(d)
CX0423	MDS Project List - week of 2010.08.23	8/23/2010	FTC-LABMD-005689	FTC-LABMD-005689	3.43(b), 3.43(d)
CX0424	INTENTIONALLY NOT USED				
CX0425	LabMD IT Project Outline, with network diagram		FTC-LABMD-006545	FTC-LABMD-006546	3.43(b), 3.43(d)
CX0426	LabMD IT Project Outline - subsequent version		FTC-LABMD-006549	FTC-LABMD-006549	3.43(b), 3.43(d)
CX0427	MDS Statement of Work for LabMD re: penetration testing	4/19/2011	FTC-LABMD-007492	FTC-LABMD-007501	3.43(b), 3.43(d)
CX0428	MDS Server Assessment	7/22/2010	FTC-LABMD-004594	FTC-LABMD-004677	3.43(b), 3.43(d)
CX0429	INTENTIONALLY NOT USED				
CX0430	Heartland Payroll Report 2010	12/27/2010	FTC-LABMD-015970	FTC-LABMD-015977	3.43(b), 3.43(d)
CX0431	Heartland Payroll Report 2008	12/29/2008	FTC-LABMD-015978	FTC-LABMD-015983	3.43(b), 3.43(d)
CX0432	Heartland Payroll Report 2009	12/29/2009	FTC-LABMD-015984	FTC-LABMD-015989	3.43(b), 3.43(d)
CX0433 -					
CX0436	INTENTIONALLY NOT USED				
CX0437	Employee Handbook Rev. June 2013	6/2013	FTC-LABMD-004514	FTC-LABMD-004536	3.43(b), 3.43(d)
CX0438 -					
CX0439	INTENTIONALLY NOT USED				
CX0440	LabMD Breach Notice Letter to Peter Cuttino	3/27/2013	FTC-000676	FTC-000679	3.43(b)
CX0441	Letter J. Hayes to R. Yodaiken attaching LabMD Breach Notice Letter	4/24/2013	FTC-000680	FTC-000684	3.43(b)
CX0442	Consumer Sentinel Complaint by Juanita Norris	4/25/2013	FTC-000668	FTC-000675	3.43(b)
CX0443	LabMD Access Letter Response by Philippa Ellis	2/24/2010	FTC-LABMD-002505	FTC-LABMD-002520	3.43(b), 3.43(d), 3.43(e)
CX0444	LabMD Access Letter Response by Philippa Ellis	6/4/2010	FTC-LABMD-002523	FTC-LABMD-002524	3.43(b), 3.43(d), 3.43(e)
CX0445	LabMD Access Letter Response by Philippa Ellis	7/16/2010	FTC-LABMD-002495	FTC-LABMD-002503	3.43(b), 3.43(d), 3.43(e)
CX0446	LabMD Access Letter Response by Philippa Ellis	8/30/2010	FTC-LABMD-003132	FTC-LABMD-003137	3.43(b), 3.43(d), 3.43(e)
CX0447	LabMD Access Letter Response by Dana Rosenfeld	5/16/2011	FTC-LABMD-003445	FTC-LABMD-003452	3.43(b), 3.43(d), 3.43(e)
CX0448	LabMD Access Letter Response by Dana Rosenfeld	5/31/2011	FTC-LABMD-003629	FTC-LABMD-003634	3.43(b), 3.43(d), 3.43(e)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0449	Email D. Rosenfeld to A. Sheer Subject: LabMD Responses to				
CX0450	FTC Questions	7/12/2011	FTC-LABMD-003749	FTC-LABMD-003750	3.43(b), 3.43(d), 3.43(e)
CX0451	INTENTIONALLY NOT USED				
CX0452 -	Sacramentoresults7.xlsx Native File		FTC-010907	FTC-010907	3.43(b)
CX0454	INTENTIONALLY NOT USED				
CX0455	Dell Equipment Records		FTC-LABMD-004099	FTC-LABMD-004188	3.43(b), 3.43(d)
CX0456 -					
CX0460	INTENTIONALLY NOT USED				
CX0461	LINKTools Manual		FTC-LABMD-004202	FTC-LABMD-004299	3.43(b), 3.43(d)
CX0462 -					
CX0463	INTENTIONALLY NOT USED				
CX0464	Tiversa Incident Response Services Agreement		FTC-LABMD-004314	FTC-LABMD-004321	3.43(b), 3.43(d)
CX0465 -					
CX0467	INTENTIONALLY NOT USED				
CX0468	Email A. Simmons to J. Boyle Subject: Accessioning improvement	3/9/2007	FTC-LABMD-004350	FTC-LABMD-004350	3.43(b), 3.43(d)
CX0469	Email C. Kaloustian to J. Boyle Subject: SMB OEM	12/23/2008	FTC-LABMD-004358	FTC-LABMD-004358	3.43(b), 3.43(d)
CX0470	Providyn Certification of Records of Regularly Conducted Activity	11/4/2013	FTC-PVD-000002	FTC-PVD-000002	3.43(b), 3.43(c)
CX0471	Trend Micro Daily Virus Report	7/30/2010	FTC-LABMD-004782	FTC-LABMD-004851	3.43(b), 3.43(d)
CX0472	Trend Micro Daily Virus Report	7/19/2010	FTC-LABMD-004882	FTC-LABMD-004886	3.43(b), 3.43(d)
CX0473	Trend Micro Daily Virus Report	7/20/2010	FTC-LABMD-004887	FTC-LABMD-004891	3.43(b), 3.43(d)
CX0474	Trend Micro Daily Virus Report	7/23/2010	FTC-LABMD-004897	FTC-LABMD-004901	3.43(b), 3.43(d)
CX0475	Trend Micro Daily Virus Report	7/24/2010	FTC-LABMD-004902	FTC-LABMD-004906	3.43(b), 3.43(d)
CX0476	Trend Micro Daily Virus Report	7/28/2010	FTC-LABMD-004922	FTC-LABMD-004926	3.43(b), 3.43(d)
CX0477	Trend Micro Daily Virus Report	7/29/2010	FTC-LABMD-004927	FTC-LABMD-004931	3.43(b), 3.43(d)
CX0478	Trend Micro Daily Virus Report (Short)	7/30/2010	FTC-LABMD-004932	FTC-LABMD-004936	3.43(b), 3.43(d)
CX0479	MDS Server Assessment	7/29/2010	FTC-LABMD-005690	FTC-LABMD-005817	3.43(b), 3.43(d)
CX0480	Mapper Spyware-Grayware detected		FTC-LABMD-004941	FTC-LABMD-004950	3.43(b), 3.43(d)
CX0481	Emails C. Maire to J. Boyle Subject: Daily IT rounds		FTC-LABMD-004975	FTC-LABMD-005075	3.43(b), 3.43(d)
CX0482	IT Dept Walkaround Checklist		FTC-LABMD-005076	FTC-LABMD-005076	3.43(b), 3.43(d)
CX0483	Emails M. Bureau to J. Boyle Subject: Walkarounds		FTC-LABMD-005077	FTC-LABMD-005129	3.43(b), 3.43(d)
CX0484	June 2010 Server Ports & Firewall - Mapper	6/2010	FTC-LABMD-005160	FTC-LABMD-005171	3.43(b), 3.43(d)
CX0485	Threats of Virus, Trojan, other Malicious Software Logs and Reports				
CX0486	Providyn Network Security Scan - Mapper	7/18/2010	FTC-LABMD-005183	FTC-LABMD-005221	3.43(b), 3.43(d)
CX0487	Providyn 2010 Service Solutions Proposal	5/2010	FTC-LABMD-005250	FTC-LABMD-005253	3.43(b), 3.43(d)
CX0488	Providyn 2010 Signed Service Solutions Proposal	5/18/2010	FTC-LABMD-005254	FTC-LABMD-005258	3.43(b), 3.43(d)
CX0489	Monthly Computer Inspection Report	8/25/2010	FTC-LABMD-005259	FTC-LABMD-005310	3.43(b), 3.43(d)
CX0490	Monthly Computer Inspection Report	8/20/2010	FTC-LABMD-005644	FTC-LABMD-005651	3.43(b), 3.43(d)
CX0491	Providyn Authorization to Perform External Network Testing	5/18/2010	FTC-PVD-000001	FTC-PVD-000001	3.43(b), 3.43(c)
CX0492	Martin - MDS - Project List	8/23/2010	FTC-LABMD-005687	FTC-LABMD-005687	3.43(b), 3.43(d)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0493	Martin - MDS - Project List - subsequent version	8/23/2010	FTC-LABMD-005688	FTC-LABMD-005688	3.43(b), 3.43(d)
CX0494 - CX0495	INTENTIONALLY NOT USED				
CX0496	August 2010 Network Administrator Daily Scans Performed	8/2010	FTC-LABMD-005818	FTC-LABMD-005823	3.43(b), 3.43(d)
CX0497	August 2010 Network Administrator TrendMicro Logs - Spyware	8/2010	FTC-LABMD-005824	FTC-LABMD-005848	3.43(b), 3.43(d)
CX0498	August 2010 Network Administrator TrendMicro Logs - AntiVirus	8/2010	FTC-LABMD-005849	FTC-LABMD-005894	3.43(b), 3.43(d)
CX0499	Network Administrator Malware Logs Malwarebytes		FTC-LABMD-005895	FTC-LABMD-005914	3.43(b), 3.43(d)
CX0500	Karalyn Garrett Petition for Discharge of Defendant (First Offender Act)				3.43(b)
CX0501	LabMD v. Savera Verified Complaint April 2010	4/12/2010			3.43(b)
CX0502	INTENTIONALLY NOT USED				
CX0503	Network Administrator Malware Logs Spybot		FTC-LABMD-005915	FTC-LABMD-005946	3.43(b), 3.43(d)
CX0504	Providyn Network Security Scan - Mapper	9/3/2010	FTC-LABMD-005947	FTC-LABMD-005973	3.43(b), 3.43(d)
CX0505	Providyn Network Security Scan - Demographics	9/3/2010	FTC-LABMD-005974	FTC-LABMD-005997	3.43(b), 3.43(d)
CX0506	Providyn Network Security Scan - Specialty VPN	9/3/2010	FTC-LABMD-005998	FTC-LABMD-006021	3.43(b), 3.43(d)
CX0507	Providyn Network Security Scan - Network Printer	9/3/2010	FTC-LABMD-006022	FTC-LABMD-006045	3.43(b), 3.43(d)
CX0508	Providyn Network Security Scan - LabCorp VPN	9/3/2010	FTC-LABMD-006046	FTC-LABMD-006070	3.43(b), 3.43(d)
CX0509	Providyn Network Security Scan - Firewall	9/3/2010	FTC-LABMD-006071	FTC-LABMD-006095	3.43(b), 3.43(d)
CX0510	Providyn Network Security Scan - LabNet	9/3/2010	FTC-LABMD-006096	FTC-LABMD-006144	3.43(b), 3.43(d)
CX0511	Providyn Network Security Scan - Mail	9/3/2010	FTC-LABMD-006145	FTC-LABMD-006217	3.43(b), 3.43(d)
CX0512	Providyn Network Security Scan - Router to/from internal network				
CX0513 - CX0521	INTENTIONALLY NOT USED	9/3/2010	FTC-LABMD-006218	FTC-LABMD-006245	3.43(b), 3.43(d)
CX0522	Curt Kaloustian Resume		FTC-LABMD-003483	FTC-LABMD-003485	3.43(b), 3.43(d), 3.43(e)
CX0523	LabMD IT Project Outline		FTC-LABMD-006547	FTC-LABMD-006547	3.43(b), 3.43(d)
CX0524	LabMD IT Project Outline - Network, Hardware, Software Changes		FTC-LABMD-006548	FTC-LABMD-006548	3.43(b), 3.43(d)
CX0525	Alison Simmons Resume		FTC-LABMD-003486	FTC-LABMD-003487	3.43(b), 3.43(d), 3.43(e)
CX0526	INTENTIONALLY NOT USED				
CX0527	Monthly Network Inspection Report	9/2010	FTC-LABMD-006551	FTC-LABMD-006637	3.43(b), 3.43(d)
CX0528	INTENTIONALLY NOT USED				
CX0529	Monthly Computer Inspection Report [Boyle]	9/28/2010	FTC-LABMD-006828	FTC-LABMD-006835	3.43(b), 3.43(d)
CX0530	Monthly Computer Inspection Report [Fusco]	9/14/2010	FTC-LABMD-007128	FTC-LABMD-007132	3.43(b), 3.43(d)
CX0531	Monthly Network Inspection Report	9/2010	FTC-LABMD-007212	FTC-LABMD-007240	3.43(b), 3.43(d)
CX0532	Providyn Network Security Scan - LabNet, with Notes	9/3/2010	FTC-LABMD-007241	FTC-LABMD-007274	3.43(b), 3.43(d)
CX0533	Windows IIS SSL Restrict Weak Ciphers - Braindump		FTC-LABMD-007275	FTC-LABMD-007290	3.43(b), 3.43(d)
CX0534	Monthly Server Inspection Report - Visnetic	10/1/2010	FTC-LABMD-007291	FTC-LABMD-007342	3.43(b), 3.43(d)
CX0535	Traincor Report Analysis	4/18/2011	FTC-LABMD-007463	FTC-LABMD-007463	3.43(b), 3.43(d)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0536	Compliance Training Powerpoint Slides		FTC-LABMD-007464	FTC-LABMD-007491	3.43(b), 3.43(d)
CX0537	List of Hosts - Scans		FTC-LABMD-010513	FTC-LABMD-010615	3.43(b), 3.43(d)
CX0538	Web Access lists		FTC-LABMD-007502	FTC-LABMD-007507	3.43(b), 3.43(d)
CX0539	Monthly Computer Inspection Report [Hyer]	5/10/2011	FTC-LABMD-007619	FTC-LABMD-007623	3.43(b), 3.43(d)
CX0540 -	INTENTIONALLY NOT USED				
CX0543	Monthly Computer Inspection Report [Gardner]	7/10/2011	FTC-LABMD-008026	FTC-LABMD-008036	3.43(b), 3.43(d)
CX0545 -	INTENTIONALLY NOT USED				
CX0546	Traincor Report Analysis (subsequent scan)	4/19/2011	FTC-LABMD-009955	FTC-LABMD-009958	3.43(b), 3.43(d)
CX0548	Traincor Report Analysis	4/19/2011	FTC-LABMD-009960	FTC-LABMD-009960	3.43(b), 3.43(d)
CX0549	List of Hosts - Scans		FTC-LABMD-009961	FTC-LABMD-010060	3.43(b), 3.43(d)
CX0550	Calculations based on CX0551 by M. Daugherty at Deposition of LabMD	3/4/2014			3.43(b)
CX0551	Spreadsheet of IT Expenditures 2005-2013				3.43(b), 3.43(c)
CX0552	Network Diagram Hand-drawn at Simmons IH	6/24/2013	FTC-000512	FTC-000512	3.43(b)
CX0553	MDS Juniper Proposal	8/18/2010	FTC-LABMD-010660	FTC-LABMD-010660	3.43(b), 3.43(d)
CX0554 -	INTENTIONALLY NOT USED				
CX0570	Monthly Computer Inspection Report [LabMD Lab]	12/2/2010	FTC-LABMD-014704	FTC-LABMD-014711	3.43(b), 3.43(d)
CX0572 -	INTENTIONALLY NOT USED				
CX0579	Monthly Computer Inspection Report [Steven Fusco]	11/30/2010	FTC-LABMD-015050	FTC-LABMD-015054	3.43(b), 3.43(d)
CX0581 -	INTENTIONALLY NOT USED				
CX0582	Monthly Computer Inspection Report [Billing Spare PC]	10/11/2010	FTC-LABMD-015242	FTC-LABMD-015245	3.43(b), 3.43(d)
CX0583	Network Diagram Hand-drawn at Kaloustian IH	5/15/2013	FTC-000656	FTC-000656	3.43(b)
CX0585	Monthly Computer Inspection Report [Sherry PC]	10/18/2010	FTC-LABMD-015457	FTC-LABMD-015477	3.43(b), 3.43(d)
CX0586	Monthly Computer Inspection Report [Tonisha Robinson PC]	10/18/2010	FTC-LABMD-015491	FTC-LABMD-015525	3.43(b), 3.43(d)
CX0587	SPD Certification of Records of Regularly Conducted Activity (Forensic Disc)	12/17/2013	FTC-SAC-001093	FTC-SAC-001093	3.43(b), 3.43(c)
CX0588	Traincor Report Analysis	6/30/2011	FTC-LABMD-015562	FTC-LABMD-015565	3.43(b), 3.43(d)
CX0590	List of Hosts - Scans (3)	7/2010	FTC-LABMD-015566	FTC-LABMD-015665	3.43(b), 3.43(d)
CX0591	Providyn Network Security Scan - Demographics	7/2010	FTC-LABMD-015666	FTC-LABMD-015726	3.43(b), 3.43(d)
CX0592	Providyn Network Security Scan - LabNet	7/2010	FTC-LABMD-015727	FTC-LABMD-015765	3.43(b), 3.43(d)
CX0593	Providyn Network Security Scan - Mapper	7/2010	FTC-LABMD-015766	FTC-LABMD-015879	3.43(b), 3.43(d)
CX0594	Providyn Network Security Scan - Mail	7/2010	FTC-LABMD-015880	FTC-LABMD-015948	3.43(b), 3.43(d)
CX0595	Letter of Agreement re Proprietary Information executed by Gary Clark	11/15/2008	FTC-LABMD-015949	FTC-LABMD-015952	3.43(b), 3.43(d)
CX0596	Traincor Report Analysis	4/21/2013	FTC-LABMD-015953	FTC-LABMD-015955	3.43(b), 3.43(d)
CX0597	Traincor Report Analysis	7/2012	FTC-LABMD-015956	FTC-LABMD-015959	3.43(b), 3.43(d)
CX0598	Traincor Report Analysis	5/2/2012	FTC-LABMD-015960	FTC-LABMD-015962	3.43(b), 3.43(d)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0599 - CX0600	INTENTIONALLY NOT USED				
CX0601	Cypress Certification of Records Regularly Conducted Activity	1/31/2014	FTC-CYP-0002171	FTC-CYP-0002171	3.43(b), 3.43(c)
CX0602	Cypress Certification of Records Regularly Conducted Activity	3/4/2014	FTC-CYP-0002170	FTC-CYP-0002170	3.43(b), 3.43(c)
CX0603	ZyXEL Firewall Rules Storage Space in Use		FTC-LABMD-015994	FTC-LABMD-015994	3.43(b), 3.43(d)
CX0604	Server, Router, Switch Information	5/26/2010	FTC-LABMD-015995	FTC-LABMD-015996	3.43(b), 3.43(d)
CX0605	Computer Inventory by Location, User, Model Number, IP Address		FTC-LABMD-015997	FTC-LABMD-015999	3.43(b), 3.43(d)
CX0606	Hand-drawn Lab Layouts by Floor		FTC-LABMD-016000	FTC-LABMD-016007	3.43(b), 3.43(d)
CX0607	Emails Redacted between IT staff, M. Daugherty, J. Boyle	2009	FTC-LABMD-016008	FTC-LABMD-016011	3.43(b), 3.43(d)
CX0608	Emails Redacted between LabMD and IT services	2007-2009	FTC-LABMD-016012	FTC-LABMD-016017	3.43(b), 3.43(d)
CX0609	INTENTIONALLY NOT USED				
CX0610	Emails between LabMD staff and J. Boyle	2008	FTC-LABMD-016019	FTC-LABMD-016029	3.43(b), 3.43(d)
CX0611	Mapper - Server Ports and Firewall with Notes	6/18/2010	FTC-LABMD-016030	FTC-LABMD-016031	3.43(b), 3.43(d)
CX0612 - CX0613	INTENTIONALLY NOT USED				
CX0614	APT New Service Agreement and Invoices	2/23/2006	FTC-LABMD-016042	FTC-LABMD-016054	3.43(b), 3.43(d)
CX0615	INTENTIONALLY NOT USED				
CX0616	Email C. Maitre to J. Boyle Subject: TrendMicro, with Notes	10/19/2007	FTC-LABMD-016058	FTC-LABMD-016058	3.43(b), 3.43(d)
CX0617	ZyXEL Firwall Rules Storage Space in Use (2)		FTC-LABMD-016059	FTC-LABMD-016059	3.43(b), 3.43(d)
CX0618	Screenshot: Rule 4 Source Address, Destination Address, Available Services and Scheduling		FTC-LABMD-016060	FTC-LABMD-016060	3.43(b), 3.43(d)
CX0619	Screenshot: Rule 6 Source Address, Destination Address, Available Services and Scheduling		FTC-LABMD-016061	FTC-LABMD-016061	3.43(b), 3.43(d)
CX0620 - CX0621	INTENTIONALLY NOT USED				
CX0622	MDS Project Proposal - LabMD Websense	4/11/2011	FTC-LABMD-016135	FTC-LABMD-016140	3.43(b), 3.43(d)
CX0623	INTENTIONALLY NOT USED				
CX0624	MDS and Davenport Group Invoices - Payments from LabMD		FTC-LABMD-016148	FTC-LABMD-016167	3.43(b), 3.43(d)
CX0625	2011.04.11 MDS Project Proposal - LabMD Websense (2)	4/11/2011	FTC-LABMD-016168	FTC-LABMD-016173	3.43(b), 3.43(d)
CX0626	MDS Review of LabMD Network Security Policies and Procedures		FTC-LABMD-016174	FTC-LABMD-016176	3.43(b), 3.43(d)
CX0627	iTrain Technologies Invoice	9/12/2005	FTC-LABMD-016177	FTC-LABMD-016177	3.43(b), 3.43(d)
CX0628	iTrain Technologies Invoice	8/30/2005	FTC-LABMD-016178	FTC-LABMD-016178	3.43(b), 3.43(d)
CX0629	INTENTIONALLY NOT USED				
CX0630	Cisco Guide to Harden Cisco IOS Devices		FTC-CYP-0001656	FTC-CYP-0001724	3.43(b), 3.43(c)
CX0631	Computer Inventory by Updates		FTC-CYP-0001725	FTC-CYP-0001725	3.43(b), 3.43(c)
CX0632 - CX0634	INTENTIONALLY NOT USED				

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0635	LabMD Equipment Configurations - DNS Records, IP Blocks, Router		FTC-CYP-0001735	FTC-CYP-0001735	3.43(b), 3.43(c)
CX0636	Q1 2004 Product Training Powerpoint		FTC-CYP-0001736	FTC-CYP-0001752	3.43(b), 3.43(c)
CX0637	INTENTIONALLY NOT USED				
CX0638	Email A. Robinson to L. Leiknes Subject: RE: Cypress Communications system	2/5/2009	FTC-CYP-0001756	FTC-CYP-0001757	3.43(b), 3.43(c)
CX0639 - CX0643	INTENTIONALLY NOT USED				
CX0644	Cypress Communications, Inc. ("Cypress") C3_C4 Technical Audit	2/20/2014	FTC-CYP-0001784	FTC-CYP-0001789	3.43(b), 3.43(c)
CX0645	LabMD DNS Record Configuration, Mail, LabMD.net, LabMD.org		FTC-CYP-0001790	FTC-CYP-0001791	3.43(b), 3.43(c)
CX0646	LabMD DNS Record Configuration, Mail, LabMD.net, LabMD.org (2)		FTC-CYP-0001792	FTC-CYP-0001793	3.43(b), 3.43(c)
CX0647	Router Solution Spreadsheet		FTC-CYP-0001794	FTC-CYP-0001795	3.43(b), 3.43(c)
CX0648	LabMD and Cypress Website Coding		FTC-CYP-0001796	FTC-CYP-0001802	3.43(b), 3.43(c)
CX0649	Atlanta Office C4 Enterprise Diagram		FTC-CYP-0001803	FTC-CYP-0001806	3.43(b), 3.43(c)
CX0650	INTENTIONALLY NOT USED				
CX0651	traceroute		FTC-CYP-0001810	FTC-CYP-0001810	3.43(b), 3.43(c)
CX0652	INTENTIONALLY NOT USED				
CX0653	Computer Inventory by Updates		FTC-CYP-0001881	FTC-CYP-0001881	3.43(b), 3.43(c)
CX0654 - CX0671	INTENTIONALLY NOT USED				
CX0672	Cypress Ticket 595825	3/14/2012	FTC-CYP-0001963	FTC-CYP-0001966	3.43(b), 3.43(c)
CX0673	INTENTIONALLY NOT USED				
CX0674	Cypress Ticket 604745	6/11/2010	FTC-CYP-0001973	FTC-CYP-0001976	3.43(b), 3.43(c)
CX0675 - CX0677	INTENTIONALLY NOT USED				
CX0678	Cypress Master Terms and Conditions	8/11/2008	FTC-CYP-0001554	FTC-CYP-0001570	3.43(b), 3.43(c)
CX0679	LabMD v. FTC Verified Complaint for Declaratory and Injunctive Relief in N.D. Ga	3/20/2014			3.43(b)
CX0680	Declaration of Michael Daugherty in support of LabMD v. FTC	3/19/2014			3.43(b)
CX0681	Rosalind Woodson Dates of Employment		FTC-LABMD-016222	FTC-LABMD-016232	3.43(b), 3.43(d)
CX0682	LabMD Letter to Physician's Offices re: Closing	1/6/2014	FTC-LABMD-016233	FTC-LABMD-016233	3.43(b), 3.43(d)
CX0683	Spreadsheet of IT Expenditures 2005-2013 native file		FTC-LABMD-016184	FTC-LABMD-016184	3.43(b), 3.43(d)
CX0684	Email D. Rosenfeld to A. Sheer Subject: LabMD screenshots	7/22/2011	FTC-LABMD-003756	FTC-LABMD-003756	3.43(b), 3.43(d), 3.43(e)
CX0685	LabMD (John Boyle) Investigational Hearing ("IH") Ex. 5 - LabMD Payment Posting Specialist Duties		FTC-000166	FTC-000166	3.43(b), 3.43(d), 3.43(e)
CX0686	LabMD IH Ex. 6 - Mail Batch Instructions		FTC-000167	FTC-000168	3.43(b), 3.43(d), 3.43(e)
CX0687	LabMD IH Ex. 7 - Checks and LabMD Day Sheets, redacted		FTC-000169	FTC-000224	3.43(b), 3.43(d), 3.43(e)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0688	LabMD IH Ex. 8 - LabMD Policy Manual		FTC-000225	FTC-000246	3.43(b), 3.43(d), 3.43(e)
CX0689	LabMD IH Ex. 9 - LabMD Computer Hardware, Software and Data Usage and Security Policy Manual		FTC-000247	FTC-000278	3.43(b), 3.43(d), 3.43(e)
CX0690	LabMD IH Ex. 11 - Screenshot: LimeWire: MySharedFiles		FTC-000280	FTC-000280	3.43(b), 3.43(d), 3.43(e)
CX0691	LabMD IH Ex. 12 - LabMD New Team Member Checklist		FTC-000281	FTC-000281	3.43(b), 3.43(d), 3.43(e)
CX0692	LabMD IH Ex. 13 - Information that Managers are supposed to Communicate to Employees		FTC-000282	FTC-000282	3.43(b), 3.43(d), 3.43(e)
CX0693	LabMD IH Ex. 14 - LabMD Employee Handbook Rev. June 2004	6/2004	FTC-000283	FTC-000304	3.43(b), 3.43(d), 3.43(e)
CX0694	LabMD IH Ex. 15 - LabMD Employee Handbook Rev. Mar. 2008	3/2008	FTC-000305	FTC-000326	3.43(b), 3.43(d), 3.43(e)
CX0695	LabMD IH Ex. 16 - LabMD Compliance Program effective Jan. 2003	1/2003	FTC-000327	FTC-000337	3.43(b), 3.43(d), 3.43(e)
CX0696	LabMD IH Ex. 17 - Compliance Training PowerPoint Slides		FTC-000338	FTC-000365	3.43(b), 3.43(d), 3.43(e)
CX0697	insurancecageing 6.05.071.pdf produced by Privacy Institute		FTC-PRI-000001	FTC-PRI-001719	3.43(b)
CX0698	LabMD v. FTC Verified Complaint for Declaratory and Injunctive Relief in D.D.C.	11/13/2013			3.43(b)
CX0699	INTENTIONALLY NOT USED				
CX0700	Network Diagram 1 Hand-drawn at Martin Deposition	2/6/2014			3.43(b)
CX0701	Network Diagram 2 Hand-drawn at Martin Deposition	2/6/2014			3.43(b)
CX0702	Network Diagram 3 Hand-drawn at Martin Deposition	2/6/2014			3.43(b)
CX0703	Deposition Transcript of Robert Boback, designee of Tiversa Holding Corp.	11/21/2013			3.43(b)
CX0704	Deposition Transcript of John Boyle	1/28/2014			3.43(b)
CX0705	Deposition Transcript of Brandon Bradley	2/14/2014			3.43(b)
CX0706	Deposition Transcript of Sandra Brown	1/11/2014			3.43(b)
CX0707	Deposition Transcript of Matt Bureau	1/10/2014			3.43(b)
CX0708	Deposition Transcript of Lou Carmichael	2/17/2014			3.43(b)
CX0709	Deposition Transcript of Michael Daugherty	2/10/2014			3.43(b)
CX0710	Deposition Transcript of Michael Daugherty, designee of LabMD, Inc.	3/4/2014			3.43(b)
CX0711	Deposition Transcript of Jeremy Dooley	12/2/2013			3.43(b)
CX0712	Deposition Transcript of Erick Garcia	2/13/2014			3.43(b)
CX0713	Deposition Transcript of Kim Gardner	2/14/2014			3.43(b)
CX0714	Deposition Transcript of Karalyn Garrett	1/25/2014			3.43(b)
CX0715	Deposition Transcript of Patricia Gilbreth	2/7/2014			3.43(b)
CX0716	Deposition Transcript of Nicotra Harris	2/21/2014			3.43(b)
CX0717	Deposition Transcript of Patrick Howard	1/24/2014			3.43(b)
CX0718	Deposition Transcript of Lawrence Hudson	1/13/2014			3.43(b)
CX0719	Deposition Transcript of Robert Hyer	12/13/2013			3.43(b)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0720	Deposition Transcript of Karina Jestes with attached Signature and Errata	12/17/2013			3.43(b)
CX0721	Deposition Transcript of Eric Johnson	2/18/2014			3.43(b)
CX0722	Deposition Transcript of Eric Knox	1/9/2014			3.43(b)
CX0723	Deposition Transcript of David Lapides	1/8/2014			3.43(b)
CX0724	Deposition Transcript of Christopher Maire	1/9/2014			3.43(b)
CX0725	Deposition Transcript of Jeff Martin	2/6/2014			3.43(b)
CX0726	Deposition Transcript of Randall Jerry Maxey, designee of Southeast Urology Network (SUN)	1/17/2014			3.43(b)
CX0727	Deposition Transcript of Jennifer Parr	2/11/2014			3.43(b)
CX0728	Deposition Transcript of Letonya Randolph, designee of Midtown Urology	2/4/2014			3.43(b)
CX0729	Deposition Transcript of Peter Sandrev, designee of Cypress Communications	1/31/2014			3.43(b)
CX0730	Deposition Transcript of Alison Simmons with attached Signature and Errata	2/5/2014			3.43(b)
CX0731	Deposition Transcript of Allen Truett	2/27/2014			3.43(b)
CX0732	Deposition Transcript of Kevin Wilmer	2/25/2014			3.43(b)
CX0733	Investigational Hearing Transcript of John Boyle, designee of LabMD, Inc. with attached Errata	2/5/2013	FTC-000001	FTC-000115	3.43(b), 3.43e
CX0734	Investigational Hearing Transcript of Alison Simmons with attached Signature	5/2/2013	FTC-000424	FTC-000493	3.43(b), 3.43e
CX0735	Investigational Hearing Transcript of Curt Kaloustian with attached Errata	5/3/2013	FTC-000513	FTC-000638	3.43(b), 3.43e
CX0736	Investigational Hearing Transcript of Michael Daugherty with attached Errata	2/6/2013	FTC-000377	FTC-000416	3.43(b), 3.43e
CX0737 -	INTENTIONALLY NOT USED				
CX0739	Expert Report of Raquel Hill	3/18/2014			3.43(b)
CX0740	Expert Report of Raquel Hill	3/18/2014			3.43(b)
CX0741	Expert Report of Jim Van Dyke	3/18/2014			3.43(b)
CX0742	Expert Report of Rick Kam	3/18/2014			3.43(b)
CX0743	Expert James Van Dyke - List of Documents Considered or Relied Upon	3/18/2014			3.43(b)
CX0744	Expert Rick Kam - List of Documents Considered or Relied Upon	3/18/2014			3.43(b)
CX0745	Civil Investigative Demand ("CID") to LabMD [LabMD (John Boyle) Investigational Hearing Ex. 1]	12/21/2012	FTC-000116	FTC-000127	3.43(b), 3.43e
CX0746	LabMD's Responses and Objections to CID	1/17/2013			3.43(b), 3.43e
CX0747	CID to Michael Daugherty [LabMD IH Ex. 23]	12/21/2012	FTC-000417	FTC-000423	3.43(b), 3.43e
CX0748	Michael Daugherty's Responses and Objections to CID	1/17/2013			3.43(b), 3.43e
CX0749	CID to Alison Simmons	3/13/2013	FTC-000494	FTC-000498	3.43(b), 3.43e
CX0750	CID to Curt Kaloustian	3/13/2013	FTC-000639	FTC-000643	3.43(b), 3.43e
CX0751	Certification of CID Resps. by Michael Daugherty individually and on behalf of LabMD	2/6/2013			3.43(b), 3.43e

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0752 -	INTENTIONALLY NOT USED				
CX0753	LabMD's Suppl. Resp. to First Set of Interrog.	3/17/2014			3.43(b)
CX0754	LabMD's Resp. to First Set of Interrog. and Regs. for Prod.	11/27/2013			3.43(b)
CX0755	INTENTIONALLY NOT USED				
CX0756 -	LabMD's First Resp. to Interrog 1 and 2	1/27/2014			3.43(b)
CX0759	INTENTIONALLY NOT USED				
CX0760	Complaint Counsel's Regs. for Admission to LabMD	2/19/2014			3.43(b)
CX0761	LabMD's Revised Response to Interrog. 1 and 2	2/20/2014			3.43(b)
CX0762	LabMD's Second Rev. Resp. to Interrog. 1 and 2	2/26/2014			3.43(b)
CX0763	LabMD's Resps. to Second Set of Discovery	3/3/2014			3.43(b)
CX0764	LabMD's Resps. and Objections to Regs. for Admission	3/3/2014			3.43(b)
CX0765	INTENTIONALLY NOT USED				
CX0766	LabMD's Suppl. Resp. to Second Set of Interrog.	3/5/2014			3.43(b)
CX0767	Verification of Revised Resps. to Interrog. 2 and 19 by Michael Daugherty	3/21/2014			3.43(b)
CX0768	FTC Consumer Alert: File-Sharing: A Fair Share? Maybe Not	7/29/2003	FTC-000685	FTC-000689	3.43(b)
CX0769	Press Release: Council of Better Business Bureaus, National Cyber Security Alliance, Federal Trade Commission, Offer Businesses Tips For Keeping Their Computer Systems Secure				
CX0770	Press Release: FTC Testifies on Peer to Peer File Sharing and Online Pornography	4/2/2004	FTC-000690	FTC-000692	3.43(b)
CX0771	Prepared Statement of FTC: Hearing on Online Pornography: Closing the Door on Pervasive Smut	5/6/2004	FTC-000693	FTC-000694	3.43(b)
CX0772	Press Release: Peer-to-Peer File-Sharing Risks Can Be Better Disclosed	5/6/2004	FTC-000695	FTC-000705	3.43(b)
CX0773	Prepared Statement of FTC: Hearing on P2P File-Sharing Technology	6/23/2004	FTC-000706	FTC-000707	3.43(b)
CX0774	Press Release: FTC Issues Report on Peer-to-Peer File Sharing	6/23/2004	FTC-000708	FTC-000717	3.43(b)
CX0775	FTC Staff Report: Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues: A Federal Trade Commission Staff Workshop Report	6/23/2005	FTC-000718	FTC-000719	3.43(b)
CX0776	Revised FTC Consumer Alert: P2P File-Sharing: Evaluating the Risks	6/23/2005	FTC-000720	FTC-000806	3.43(b)
CX0777	Revised FTC Consumer Alert: P2P File-Sharing: Evaluating the Risks	6/23/2005	FTC-000807	FTC-000811	3.43(b)
CX0778	Revised FTC Consumer Alert: File-Sharing: Evaluating the Risks	7/18/2005	FTC-000812	FTC-000817	3.43(b)
CX0779	Revised FTC Spanish Consumer Alert: File-Sharing: Evaluating the Risks	8/18/2005	FTC-000818	FTC-000823	3.43(b)

Complaint Counsel's Final Proposed Exhibit List

EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0781	FTC Distribution: Stop. Think. Click: 7 Practices for Safer Computing	9/16/2005	FTC-000824	FTC-000832	3.43(b)
CX0782	FTC Spanish Distribution: Stop. Think. Click brochure	10/28/2005	FTC-000833	FTC-000843	3.43(b)
CX0783	FTC Spanish Distribution: New version of Stop. Think. Click brochure	11/4/2005	FTC-000844	FTC-000852	3.43(b)
CX0784	FTC Distribution: Revised P2P File Sharing: Evaluate the Risks	12/9/2006	FTC-000853	FTC-000857	3.43(b)
CX0785	Revised FTC Spanish Consumer Alert: File-Sharing: Evaluating the Risks	2/27/2007	FTC-000858	FTC-000863	3.43(b)
CX0786	Press Release: FTC Testifies on Potential Risks of Peer-to-Peer File Sharing	7/24/2007	FTC-000864	FTC-000865	3.43(b)
CX0787	Prepared Statement of FTC on Peer-To-Peer File-Sharing Technology Issues	7/24/2007	FTC-000866	FTC-000877	3.43(b)
CX0788	FTC Distribution: Revised P2P File Sharing: Evaluate the Risks	4/30/2008	FTC-000878	FTC-000886	3.43(b)
CX0789	Revised FTC Spanish Consumer Alert: File-Sharing: Evaluating the Risks	4/30/2008	FTC-000887	FTC-000893	3.43(b)
CX0790 - CX0799	INTENTIONALLY NOT USED				
CX0800	Proffer Agreement to Erick Garcia	2/13/2014			3.43(b)
CX0801	INTENTIONALLY NOT USED				
CX0802	Products for Small Business - Trend Micro USA	2/8/2010	FTC-LABMD-000172	FTC-LABMD-000172	3.43(b), 3.43(d), 3.43(e)
CX0803	Email R. Boback to J. Boyle Subject: FW: LabMD	5/13/2008	FTC-LABMD-000289	FTC-LABMD-000289	3.43(b), 3.43(d), 3.43(e)
CX0804	Performance Appraisal - Karalyn Garrett	2008	FTC-LABMD-000659	FTC-LABMD-000662	3.43(b), 3.43(d), 3.43(e)
CX0805	Screenshot - Advanced Port Scanner - Radmin Remote Control Software		FTC-LABMD-002621	FTC-LABMD-002621	3.43(b), 3.43(d), 3.43(e)
CX0806	Computer Inventory by Department with Redactions		FTC-LABMD-002707	FTC-LABMD-002707	3.43(b), 3.43(d), 3.43(e)
CX0807	Email Subject: Daily IT rounds	9/10/2007	FTC-LABMD-003182	FTC-LABMD-003182	3.43(b), 3.43(d), 3.43(e)
CX0808	Email Subject: Daily IT rounds	10/4/2007	FTC-LABMD-003194	FTC-LABMD-003194	3.43(b), 3.43(d), 3.43(e)
CX0809	Email Subject: Daily IT rounds	10/5/2007	FTC-LABMD-003195	FTC-LABMD-003195	3.43(b), 3.43(d), 3.43(e)
CX0810	Email Subject: Daily IT rounds	10/30/2007	FTC-LABMD-003203	FTC-LABMD-003203	3.43(b), 3.43(d), 3.43(e)
CX0811	Email Subject: Daily IT rounds	10/31/2007	FTC-LABMD-003205	FTC-LABMD-003205	3.43(b), 3.43(d), 3.43(e)
CX0812	Email Subject: Daily IT rounds	11/1/2007	FTC-LABMD-003206	FTC-LABMD-003206	3.43(b), 3.43(d), 3.43(e)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0813	Rule 4 - Source Address and Destination Address		FTC-LABMD-003269	FTC-LABMD-003269	3.43(b), 3.43(d), 3.43(e)
CX0814	Rule 6 - Source Address and Destination Address		FTC-LABMD-003270	FTC-LABMD-003270	3.43(b), 3.43(d), 3.43(e)
CX0815	Microsoft Window XP (Version 5.2 2600) - Error Unrecognized Usage		FTC-LABMD-003280	FTC-LABMD-003281	3.43(b), 3.43(d), 3.43(e)
CX0816	Microsoft Window XP (Version 5.2 2600) - Active Connections-LabMD Access		FTC-LABMD-003287	FTC-LABMD-003288	3.43(b), 3.43(d), 3.43(e)
CX0817	Microsoft Window XP (Version 5.2 2600) - Active Connections-LabMD Access (2)		FTC-LABMD-003291	FTC-LABMD-003291	3.43(b), 3.43(d), 3.43(e)
CX0818	mbam log (14-12-36)	7/15/2010	FTC-LABMD-003293	FTC-LABMD-003293	3.43(b), 3.43(d), 3.43(e)
CX0819	Windows Systems32 cmd exe - With Redactions		FTC-LABMD-003298	FTC-LABMD-003298	3.43(b), 3.43(d), 3.43(e)
CX0820	Microsoft Window XP (Version 5.2 2600) - Active Connections-LabMD Billing		FTC-LABMD-003301	FTC-LABMD-003301	3.43(b), 3.43(d), 3.43(e)
CX0821	Screenshot - Proto Local Address and Foreign Address - With Redactions		FTC-LABMD-003305	FTC-LABMD-003305	3.43(b), 3.43(d), 3.43(e)
CX0822	Windows Systems32 cmd exe - With Redactions (2)		FTC-LABMD-003308	FTC-LABMD-003308	3.43(b), 3.43(d), 3.43(e)
CX0823	Windows Systems32 cmd exe - With Redactions (3)		FTC-LABMD-003312	FTC-LABMD-003312	3.43(b), 3.43(d), 3.43(e)
CX0824	Windows Systems32 cmd exe - With Redactions (4)		FTC-LABMD-003315	FTC-LABMD-003315	3.43(b), 3.43(d), 3.43(e)
CX0825	Microsoft Windows App Firewall Bypass		FTC-LABMD-003316	FTC-LABMD-003317	3.43(b), 3.43(d), 3.43(e)
CX0826	Microsoft Window XP (Version 5.2 2600) - Active Connections-APCM		FTC-LABMD-003322	FTC-LABMD-003322	3.43(b), 3.43(d), 3.43(e)
CX0827	Microsoft Window XP (Version 5.2 2600) - Active Connections-CytolH		FTC-LABMD-003324	FTC-LABMD-003324	3.43(b), 3.43(d), 3.43(e)
CX0828	Microsoft Windows App Firewall Bypass - UponBar Class ID		FTC-LABMD-003326	FTC-LABMD-003327	3.43(b), 3.43(d), 3.43(e)
CX0829	Microsoft Window XP (Version 5.2 2600) - Active Connections-LabMDIT02		FTC-LABMD-003339	FTC-LABMD-003340	3.43(b), 3.43(d), 3.43(e)
CX0830	Microsoft Windows App Firewall Bypass - Windows Security Center AntiVirus Override		FTC-LABMD-003343	FTC-LABMD-003343	3.43(b), 3.43(d), 3.43(e)
CX0831	Public IP Addresses Chart - REG Clnr, Malwarebytes, TrendMicro, Security Ck	7/2010	FTC-LABMD-003346	FTC-LABMD-003346	3.43(b), 3.43(d), 3.43(e)
CX0832	mbam logs-Mapper	7/2010	FTC-LABMD-003428	FTC-LABMD-003438	3.43(b), 3.43(d), 3.43(e)
CX0833	mbam logs-Visnetic	7/2010	FTC-LABMD-003439	FTC-LABMD-003444	3.43(b), 3.43(d), 3.43(e)
CX0834	Pathology Records and Materials Retention		FTC-LABMD-003635	FTC-LABMD-003635	3.43(b), 3.43(d), 3.43(e)

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EXHIBIT NUMBER	EXHIBIT TITLE	DATE	BEGINNING BATES	END BATES	BASIS OF ADMISSIBILITY
CX0835	Juniper Networks SSG 5 and SSG 20		FTC-LABMD-003649	FTC-LABMD-003656	3.43(b), 3.43(d), 3.43(e)
CX0836	Trend Micro Daily Virus Report	4/1/2011	FTC-LABMD-003663	FTC-LABMD-003667	3.43(b), 3.43(d), 3.43(e)
CX0837	WebSense Triton - The First and Only Unified Content Security Solution		FTC-LABMD-003741	FTC-LABMD-003748	3.43(b), 3.43(d), 3.43(e)
CX0838	U.S. Income Tax Returns for LabMD, 2006 - 2010	2006-2010	FTC-LABMD-004405	FTC-LABMD-004513	3.43(b), 3.43(d)
CX0839	Performance Appraisal - Alison Simmons	4/2007	FTC-LABMD-004537	FTC-LABMD-004575	3.43(b), 3.43(d)
CX0840	LabMD v. Savera Amended Verified Complaint	4/13/2010			3.43(b)
CX0841	LabMD v. Savera 4th Amended Verified Complaint	2/1/2011			3.43(b)
CX0842	LabMD v. Savera 5th Amended Verified Complaint	10/21/2011			3.43(b)
CX0843	LabMD v. Tiversa Complaint - Ga. State Court	10/19/2011			3.43(b)
CX0844 -					
CX0854	INTENTIONALLY NOT USED				
CX0855	Server Checks and Inventory	2010	FTC-LABMD-004708	FTC-LABMD-004781	3.43(b), 3.43(d)
CX0856	Server Checks and Inventory with Redactions	2010	FTC-LABMD-005130	FTC-LABMD-005159	3.43(b), 3.43(d)
CX0857	Monthly Computer Inspection Report [Joan D.]	8/25/2010	FTC-LABMD-005414	FTC-LABMD-005417	3.43(b), 3.43(d)
CX0858	Monthly Computer Inspection Report [Billing Spare]	8/23/2009	FTC-LABMD-005524	FTC-LABMD-005527	3.43(b), 3.43(d)
CX0859	Monthly Computer Inspection Report [Palak]	8/24/2010	FTC-LABMD-005588	FTC-LABMD-005617	3.43(b), 3.43(d)
CX0860	Monthly Computer Inspection Report [Conference Rm Laptop]	8/23/2010	FTC-LABMD-005652	FTC-LABMD-005655	3.43(b), 3.43(d)
CX0861	Monthly Computer Inspection Report [Conference Rm Laptop]	9/23/2010	FTC-LABMD-006731	FTC-LABMD-006735	3.43(b), 3.43(d)
CX0862	INTENTIONALLY NOT USED				
CX0863	Monthly Computer Inspection Report [Elliot]	9/23/2010	FTC-LABMD-006998	FTC-LABMD-007000	3.43(b), 3.43(d)
CX0864	Monthly Computer Inspection Report [Brown]	9/24/2010	FTC-LABMD-007062	FTC-LABMD-007095	3.43(b), 3.43(d)
CX0865	Monthly Computer Inspection Report [LabMD Lab]	12/28/2010	FTC-LABMD-011121	FTC-LABMD-011133	3.43(b), 3.43(d)
CX0866	Monthly Computer Inspection Report [Hyer]	10/13/2010	FTC-LABMD-015246	FTC-LABMD-015249	3.43(b), 3.43(d)
CX0867	Monthly Computer Inspection Report [Joan D.]	11/2/2010	FTC-LABMD-015317	FTC-LABMD-015320	3.43(b), 3.43(d)

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2014, I caused a copy of Complaint Counsel's Final Proposed Exhibit List to be delivered *via* electronic mail and 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 also certify that I caused a copy of the foregoing Complaint Counsel's Final Proposed Exhibit List to be served *via* electronic mail on:

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Counsel for Respondent LabMD, Inc.

I further certify that I caused to be delivered *via* secure file transfer a copy of all documents listed within Complaint Counsel's Final Proposed Exhibit List to Counsel for Respondent LabMD, Inc., as listed above.

March 26, 2014

By:



Jarad Brown
Federal Trade Commission
Bureau of Consumer Protection

Exhibit E

Respondent LabMD, Inc.'s Privilege Log-Redactions Made on the Basis of Privilege

In the Matter of LabMD, Inc.

Date	Bates Range FTC-LABMD	Redacted or Withheld?¹	Author	Recipients	Subject	Privilege²
2/8/13	004189	R	Philippa Ellis	Steven Fusco	E-mail regarding "1718" incident.	AC
7/22/08	004192	R	Michael Daugherty	Phillipa Ellis	E-mail regarding "1718" incident.	AC
10/8/09	004300-01	R	John Boyle	Michael Daugherty	Email regarding LabSoft.	WP
		R	Philippa Ellis	John Boyle	Email regarding LabSoft.	AC
10/2/09	004302	R	Philippa Ellis	John Boyle	Email regarding LabSoft.	AC
7/16/10	004322	R	John Boyle	Philippa Ellis, Michael Daugherty	Email regarding Walk Arounds.	AC
2/14/13	004330	R	Steven Fusco	LabMD	Email regarding "1718" incident.	AC
7/22/08	004333	R	Michael Daugherty	Philipa Ellis	E-mail regarding "1718" incident.	AC
7/15/08	004336-37	R	John Boyle	Philippa Ellis	E-mail regarding "1718" incident.	AC
9/19/10	4360	R	Phillipa Ellis	Michael Daughery	E-mail regarding privacy and security.	AC
9/19/10	4361	R	Stephen Fusco	Phillipa Ellis	E-mail regarding privacy and security.	AC
9/19/10	4362	R	Stephen Fusco	Phillipa Ellis	E-mail regarding privacy and security.	AC

¹ R = Redacted
W = Withheld

² A-C = Attorney-Client Privilege
W-P = Work Product Doctrine

Date	Bates Range FTC-LABMD	Redacted or Withheld?¹	Author	Recipients	Subject	Privilege²
9/19/10	4363-64	R	Phillipa Ellis	Stephen Fusco	E-mail regarding privacy and security.	AC
9/19/10	4363-65	R	Phillipa Ellis	Stephen Fusco	E-mail regarding privacy and security.	AC
9/19/10	4367-68	R	Michael Daugherty	Phillipa Ellis	E-mail regarding privacy and security.	AC
9/30/10	4369	R	Stephen Fusco	Michael Daugherty/Phillipa Ellis	E-mail regarding letters.	AC
9/29/10	4382-83	R	Michael Daughery	Phillipa Ellis	E-mail regarding privacy and security.	AC
9/20/10	4384	R	John Boyle	Phillipa Ellis	E-mail regarding IT outline.	AC
9/19/10	4389	R	Phillipa Ellis	Phillipa Ellis	E-mail regarding privacy and security.	AC
9/19/10	4390	R	Phillipa Ellis	Michael Daugherty	E-mail regarding privacy and security.	AC
9/29/10	4393	R	John Boyle	Phillipa Ellis	E-mail regarding IT outline modification	AC
9/19/10	4402	R	Stephen Fusco	Phillipa Ellis	E-mail regarding privacy and security.	AC
9/19/10	4403	R	Phillipa Ellis	Michael Daugherty	E-mail regarding privacy and security.	AC
9/19/10	4404	R	Phillipa Ellis	Michael Daugherty	E-mail regarding privacy and security.	AC

Exhibit F

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

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

I, Susan McAndrew, declare as follows:

1. I am the Deputy Director of Health Information Privacy of the Office for Civil Rights in the Department of Health and Human Services (“HHS”).

2. Among the laws enforced by HHS are the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act. Congress enacted HIPAA in 1996 to, among other things, improve “the efficiency and effectiveness of the health care system” by establishing “standards and requirements for the electronic transmission of certain health information,” including requirements to protect the privacy and security of personal health information. Pub. L. 104–191, § 261. HITECH, enacted in 2009, strengthens HIPAA’s privacy and security protections by, among other things, widening the scope of entities subject to civil penalties. See Pub. L. 111-5, §§ 13400-11, 123 Stat. 115, 258-276 (2009).

3. Among other things, the HHS Office for Civil Rights enforces the HIPAA Privacy Rule, which protects the privacy of individually identifiable health information; the HIPAA Security Rule, which sets national standards for the security of electronic protected health information; and the Breach Notification Rule, which requires covered entities and

business associates to provide notification following a breach of unsecured protected health information.

4. The HIPAA Privacy Rule provides federal protections for individually identifiable health information held by covered entities and their business associates and gives individuals an array of rights with respect to that information.

5. The HIPAA Security Rule specifies a series of administrative, physical, and technical safeguards for covered entities and their business associates to use to assure the confidentiality, integrity, and availability of electronic protected health information.

6. The Federal Trade Commission (“FTC”) has a complementary mandate to prevent deceptive or unfair practices, including the failure to provide reasonable and appropriate security for personal information. See 15 U.S.C. § 45(a).

7. For many years, the two agencies have coordinated enforcement actions that involve the failure to protect sensitive personal health information covered by HIPAA. *See In re Rite Aid Corp.*, FTC File No. 072-3121 (July 27, 2010) (settlement agreement resolving coordinated FTC-HHS information security investigations); *In re CVS Caremark Corp.*, FTC File No. 072-3119 (Feb. 18, 2009) (same).

8. In fulfilling their respective statutory mandates to protect the confidentiality of consumer information, FTC and HHS are in frequent communication with one another involving the exchange, orally and in writing, of documents, factual materials, mental impressions, and other information regarding the interpretation and application of the law, enforcement actions, and policy decisions. These communications are often part of the deliberative processes of each agency.

9. In my professional judgment and experience, it is crucial that law enforcement agencies are able to communicate with each other openly and honestly with confidence that inter-agency communications will be kept confidential. This capability allows agencies to avoid overlapping investigations, avoid duplicative work, share information about targets, and more efficiently and effectively enforce laws. Release of information relating to any of the techniques and procedures would reveal law enforcement techniques and procedures and hamper the agencies' ability to work cooperatively and bring appropriate actions.

10. Each agency expects that the other will hold the communications exchanged in confidence to protect the integrity of their law enforcement actions, deliberative processes, and internal work product.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of April, 2014.



Susan McAndrew
Susan McAndrew
Deputy Director of Health Information Privacy
Office for Civil Rights
U.S. Department of Health and Human Services