



FOR IMMEDIATE RELEASE
March 20, 2014

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LabMD Sues Federal Trade Commission

Atlanta-based cancer detection company seeks relief from FTC's abuse of power

WASHINGTON – Cause of Action (CoA), a government accountability organization, announced today the filing of a Motion for Preliminary Injunction against the Federal Trade Commission (FTC) on behalf of LabMD in the U.S. District Court for the Northern District of Georgia Atlanta Division. This case was previously filed in the U.S. District Court for the District of Columbia and in the U.S. Court of Appeals for the Eleventh Circuit, but was refiled in the District Court due to jurisdictional issues. The injunction asks the court to stop the FTC's abuse of power and regulation of patient-information despite lacking authority.

CoA is also defending LabMD against a complaint brought by the FTC in an administrative proceeding, *In the Matter of LabMD Inc.*, a corporation, Docket No. 9357. The FTC has attacked LabMD without publishing any data-security regulations or standards and with the knowledge that LabMD's data security practices are regulated by the U.S. Department of Health and Human Services (HHS). HHS has never suggested, and the FTC does not claim, that LabMD violated any of the HHS's patient information data-security regulations or requirements.

CoA is challenging the FTC's statutory authority to regulate patient information data-security practices on top of HHS as "unfair acts or practices" under Section 5 of the FTC Act and disputed the FTC's claim that LabMD supposedly failed to provide reasonable and appropriate security for personal information on its computer networks. Notwithstanding its lack of expertise and its failure to provide for public notice or input, the FTC has unilaterally decided that HHS's data security regulations are inadequate and that compliance with those regulations is not enough to avoid Commission sanctions.

"By continuing to drag the administrative proceedings along, the FTC continues to act without the authority granted to it by Congress – authority they admitted only last month they do not have," said CoA Executive Director Dan Epstein. "The FTC continues to exemplify the dangers of unbridled federal agency overreach into areas in which they have no authority. The merits of our complaint have yet to be evaluated by a court, which is why we are bringing them before the District Court now."

"By filing this lawsuit, we are asking the court to stop FTC's abuse of government power and to ensure LabMD's case is decided fairly and objectively. Right now, small businesses like LabMD that stand up to the FTC must play a rigged game because FTC is the legislator, prosecutor,

judge, jury and executioner all rolled into one,” CoA Senior VP of Litigation Reed Rubinstein said. “The FTC has no power over LabMD here and its obvious disregard for the patient-information data security regulations that the Department of Health and Human Services has had in place for years creates additional chaos, expense and hardship for America’s doctors, medical labs and clinics.”

CoA is also challenging the FTC’s unconstitutional refusal to provide LabMD, and all other consumers and businesses, with fair and clear administrative data-security regulations so that everyone knows what conduct is permitted and what conduct is prohibited ahead of time. The FTC has assumed for itself the power to ignore the public participation, transparency and accountability provisions of the laws passed by Congress and to regulate every American business without any oversight or controls.

Finally, CoA is challenging the constitutionality of the FTC’s administrative process. According to a study by FTC Commissioner Joshua Wright, for nearly the past twenty years, in 100 percent of the cases where an Administrative Law Judge ruled for the FTC, the Commission affirmed the ruling, but in 100 percent of the cases where the ALJ ruled for the target of Commission enforcement action, the Commission reversed the ruling. In other words, the FTC never loses on its home court. By contrast, when the victims of the FTC’s abuses are able to make their case before a fair court, the FTC loses at four times the normal rate. However, the cost and burden of standing up and speaking out against the FTC’s abuse of the law is so prohibitive that the vast majority of businesses must simply give in and settle. Since the FTC began its “investigation” in January, 2010, the FTC repeatedly increased its bullying tactics in an apparent attempt to force LabMD to admit fault, something most any small business would do without help from CoA and others.

The lawsuit filed today, along with the previous filings on behalf of LabMD, can be found [here](#).

About Cause of Action:

Cause of Action is a non-profit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending and cronyism threaten it. For more information, visit www.causeofaction.org.

About LabMD:

LabMD is a cancer detection facility that specializes in analysis and diagnosis of blood, urine, and tissue specimens for cancers, micro-organisms and tumor markers. You can find out more about their battle with the FTC here.

To schedule an interview with Cause of Action’s Executive Director Dan Epstein, contact Mary Beth Hutchins, mary.beth.hutchins@causeofaction.org or Kevin Schmidt, kevin.schmidt@causeofaction.org.

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