

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 9:25-CV-80526-Middlebrooks/Matthewman

GOOD SAMARITAN MEDICAL CENTER,
INC., et al.,

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendant.

**JOINT [PROPOSED] ORDER RE PROTOCOL FOR THE PRODUCTION OF
ELECTRONICALLY STORED INFORMATION (ESI)**

The parties hereby provide the Court with the following joint proposed order re protocol governing the production of electronically stored information (“ESI”) in the above-captioned matter. This Order shall be applied in conjunction with, and construed with reference to, other orders of the Court concerning discovery.

1. **Production Format.** For all discovery requests in which ESI is reasonably available and responsive to a request, the responding party shall produce such information in single-page, black and white, Group IV Tagged Image File Format (“TIFF”) of at least 300 dpi with an agreed-upon accompanying load file (e.g., Concordance *.opt and *.dat) and an accompanying multi-page extracted text file (*.txt). TIFF files shall be named with a unique production Bates number followed by the appropriate file extension, .tif. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document. The parties will produce unredacted Excel and other spreadsheet (*.xls, .csv, and other similar) documents and media files in native format with an accompanying extracted text file. If the parties agree that the aforementioned electronic formats are inappropriate or inconvenient for a particular file type, then documents of such file type(s) will be produced in native format with an accompanying extracted text file. For each document produced in native format, a Bates-numbered placeholder TIFF document with the text

“Document Produced in Native Format” or similar text shall be included with the production and the native file shall be named with the Bates number for the corresponding placeholder. In addition, productions shall comply with the following:

- a. Word documents shall be produced reflecting track changes, comments, and any other hidden content, if any;
- b. PowerPoint documents and other presentations shall be produced reflecting speaker notes, hidden slides, and any other hidden content, if any;
- c. Excel files shall be produced with all hidden rows, columns, and other information visible;
- d. Each document shall be produced in a text-searchable format, to the extent commercially feasible;
- e. Where the original of a produced document is in color, and color is material to the interpretation of the document, the receiving party may request that the document be produced in color (whether electronic or hard copy);
- f. The parties will produce hard copy documents as scanned images in TIFF format with OCR-extracted text;
- g. To the extent hard copy documents are collected from an agreed custodian, the scanned images produced shall designate the custodian’s name in the metadata field “De-Duplicate (all custodian)”; to the extent hard copy documents are collected from a non-custodial source, the scanned images produced shall designate the producing party, as appropriate in the metadata field “De-Duplicate (all custodian)”;
- h. The parties agree that if any part of a document is responsive, the entire document and its family members (i.e., parent email or attachments) shall be produced, except that (1) any document may be withheld in its entirety under a claim of privilege and/or work product and (2) any portion of a document may be redacted on the basis of privilege, work product, or other applicable protection as outlined in section 12 (“Redactions”) of this protocol. The receiving party reserves the right to challenge the withholding and/or redaction of documents. The parties shall meet and confer in good faith to resolve any disputes regarding the withholding and/or

redaction of documents. Any intractable disagreements in this regard shall be resolved by the Court.

2. **System Files.** System and program files, including those as defined by the NIST library (<http://www.nsrl.nist.gov/>), commonly used by e-discovery vendors to exclude system and program files from document review and production, need not be processed, reviewed, or produced. Additional files may be added to the list of excluded files by agreement of the parties.

3. **De-duplication.** To the extent that exact duplicate stand-alone documents (based on MD5 hash values at the document level or by message ID and other standard vendor methodology for email) reside within a party's ESI data set, each party shall use best efforts to produce a single copy of a responsive document or record. Where any such documents have attachments, hash values must be identical for both the document plus attachment at the family level (including associated metadata) as well as for any attachment (including associated metadata) standing alone. Attachment to parents may not be suppressed if a duplicate stand-alone version of the attachment exists. Stand-alone versions of documents may not be suppressed if a duplicate version is attached to a parent. A "De-Duplicate (all custodian)" field containing the identity of each custodian whose data was de-duplicated shall be provided as a metadata field in the production data file.

4. **Production of Email Threads.** Non-inclusive emails (*i.e.*, any email whose text and attachments are fully contained within another email in the document population) may be excluded from review, production, and/or logging so long as the producing party's thread identification software is capable of identifying non-inclusive emails in an automated fashion and so long as the inclusive (*i.e.*, any email that contains unique content that is not included in any other email in the document population) email or emails in the document population is either produced (with or without redactions) or included on a privilege log, to the extent the entire chain is withheld on the basis of privilege. When producing inclusive emails, the producing party agrees to provide lesser-included, non-privileged, non-Foreign Law Protected, non-Personal Data metadata consisting of From, To, CC, BCC information in a concatenated, separate metadata field titled "Lesser_Included_Sender-Recipient". For the avoidance of doubt, responsive "non-inclusive" emails that will be produced independently of any "threaded" email chain include not only chains with different "endpoints," but also other non-inclusive content such as, for example, attachments that are not included in later iterations on the chain, unsent drafts with unique content,

or emails containing alterations to earlier emails not captured in a later inclusive email of the same thread. The receiving party can request in good faith reasonable and specific lesser included emails in order to exclude impertinent or extraneous materials from the examination of a witness and the producing party shall not refuse a good faith request for such production.

5. **Email Domains.** The producing party may exclude from review and production uniquely identifiable categories of Documents that are not likely to be responsive, such as emails from domains typically associated with junk email. Prior to excluding any such documents, the producing party shall provide a list of proposed email domains and other criteria used to remove documents from review and production. The parties shall meet and confer in good faith to reach agreement on categories of documents to exclude under this paragraph and any intractable disagreements in this regard shall be resolved by the Court. For the avoidance of doubt, this exclusion will not apply where an email originates from an email domain proposed to be excluded from review, but the original in time email is forwarded to, forwarded by, or altered in any way by an agreed-upon or Court-ordered document custodian.

6. **Parent-Child Relationships.** This relationship between attachments, enclosures, embedded files, and/or exhibits to any parent document shall be preserved. “Attachments” (also known as “Children”) and their “Parent” documents are a “Family” of documents. Children should be located directly after their Parent in the production set and should be sequentially Bates numbered. The child-document should be consecutively produced immediately after the parent-document unless justifiably withheld under the provisions of 1(h) herein. Each document shall be produced with the production number for the first and last page of that document in the “BegBates” and “EndBates” fields of the data load file and with the “BegAttach” and “EndAttach” fields listing the production number for the first and last page in the document family.

7. **Native Files.** A party that receives a document produced in a non-native format may make a reasonable request to receive the document in its native format, including where the production in TIFF format renders the document illegible or where the lack of color causes the document to lack complete context. The parties shall meet and confer in good faith to resolve any requests for native production and any intractable disagreements in this regard shall be resolved by the Court.

8. **Delivery.** The preferred means of producing documents is via secure FTP or secure file share. However, documents may also be produced via encrypted flash drive or hard drive if

(a) the size of the production exceeds the size limitations applicable to the producing party's secure FTP or file share or (b) if the interest of preserving the confidentiality of the information produced outweighs the speed and efficiency of producing documents via secure FTP or secure file share. All physical media must be write protected and encrypted before it is produced.

9. **Naming Convention for Production Media.** Whether produced via secure FTP, file share, or physical media, the files produced should be combined into a compressed file such as .zip, .rar, etc. The compressed file should be named so as to indicate the producing party, the date of the production, and the sequence of the production (e.g., "GoodSamaritanProduction20250801").

10. **Metadata.** The parties need not produce all metadata associated with ESI, unless the requesting party can show a need for metadata. However, the following metadata fields for each document shall be produced, if available:

Begdoc, Enddoc (or Begin Bates, End Bates) Begattach, Endattach, Email From, Email To, Email Cc, Email Bcc, Date and Time Sent/Received, Email Subject, Title, File Name, Document Type, File Extension, Page Count, MD5 Hash, Confidential, Redacted (Yes/No), Date Last Modified, Date Created, Author, and De-duplicate (all custodian).

A party may reasonably request, upon good cause shown, the production of additional metadata on an individual basis by identifying each document for which additional metadata is needed, specifying what kinds of additional metadata the party requires, and the reason why such metadata is needed. The parties agree to meet and confer in good faith if any disputes arise and any intractable disagreements in this regard shall be resolved by the Court.

11. **Bates numbering.** All images shall be assigned a Bates number that must always: (1) be unique across the entire document production; (2) maintain a constant length (0-padded) across the entire production; and (3) be sequential within a given document.

12. **Redactions.** A producing party may redact from any document (1) any information that is protected from disclosure by attorney-client privilege, the work-product doctrine, protection accorded to trial preparation materials, joint defense/common interest privilege, and any other reasonably applicable privilege and (2) any information that qualifies under subparagraph (a) of this paragraph. All documents that are redacted shall be identified as such in a "Redacted" metadata field.

- a. **Personal Data Protected Material Redactions.** A producing party may redact Personal Data to the extent that the information falls within one of the following categories: bank or credit card account number(s), personal passwords, medical or health information of individuals, including but not limited to information protected under health and privacy laws such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), social security numbers, personal information of minor children, national or state identification numbers, passport information or other information of a personal or sensitive nature. Such redactions should be labeled as “Redacted – Personal Data” on the document.

Any redacted material must be clearly labeled on the face of the document as having been redacted. Each redacted document shall be produced with an OCR .txt file to the extent the text file does not disclose the redacted information. The receiving party reserves the right to challenge the redaction of any information. The parties agree to meet and confer in good faith if any disputes arise and any intractable disagreements in this regard shall be resolved by the Court.

13. **Privilege logs.** The parties agree to serve a privilege log providing information regarding all documents withheld under a claim of privilege and/or work product protection consistent with Rule 26. Documents protected by attorney-client privilege, the work-product doctrine, protection accorded to trial preparation materials, joint defense/common interest privilege and any other reasonably applicable privileged material that are created after the date of the filing of the original Complaint in the above-captioned matter need not be logged on a privilege log, provided that responsive communications with non-litigation counsel regarding matters unrelated to litigation strategy shall be logged. Redacted documents need not be logged as long as the reason for the redaction is noted on the face of the document in the redacted area and the redaction is noted in a metadata field. For redacted documents where the subject matter is not decipherable as a result of redactions, the receiving party may request additional information to understand the basis of the redaction. The parties shall meet and confer in good faith to resolve requests for additional information and any intractable disagreements in this regard shall be resolved by the Court.

Documents presumptively not to be logged on a privilege log include: communications exclusively between a party or its representative(s) and its trial counsel for this matter, after the commencement of this litigation on April 30, 2025; and/or work product created by counsel, an

agent of counsel, or a party at the direction of counsel, for this matter, after commencement of this litigation on April 30, 2025.

14. **Non-Waiver.** Pursuant to Federal Rule of Evidence 502(d), the production of any material or information, whether inadvertent or otherwise, shall not be deemed to waive any privilege, work product or privacy protection in the Litigation or in any other federal or state proceeding. Nothing in this Paragraph is intended to or shall serve to limit a party's voluntary election to conduct a review of any material or information for relevance, responsiveness, and/or segregation of privileged and/or protected information before production.

15. **Databases.** To the extent necessary, the parties will meet and confer regarding production of relevant information from proprietary databases or enterprise databases. Before producing any agreed upon structured data, the producing party shall produce a data sample from the relevant database that includes the fields and sample values to be produced. If the parties cannot reach agreement on the production parameters for structured data, the parties reserve the right to escalate disputes to the Court for resolution. Except by agreement of the parties or by order of the Court upon showing of good cause, the producing party shall not be required to extract structured data from the same source multiple times.

16. **Document Collection, Search, and Production.** Specifically, the parties will attempt in good faith to come to an agreement on search and culling methods used to identify responsive information. The parties will meet and confer regarding any proposed limitations on the scope of discovery, including custodians, custodial and non-custodial sources, date ranges, file types, or any additional proposed method to cull documents for review (*e.g.*, search terms, technology-assisted review, predictive coding). The parties will not seek Court intervention regarding the methodology to be used to identify responsive information without first attempting to resolve any disagreements in good faith, based upon all reasonably available information. The parties will meet and confer regarding the scope of preservation as required by Rule 26(f)(3)(C) of the Federal Rules of Civil Procedure.

- a. ***Search Terms:*** Where the parties agree that potentially responsive ESI shall be searched through the use of search terms, the parties shall use the process identified below and shall meet and confer regarding any proposed deviation.

- i. The producing party shall provide a list of proposed search terms, which shall contain all search terms that it believes would lead to the identification of relevant documents.
 - ii. Upon receipt of the proposed search terms, the receiving party shall provide any additional search terms to identify responsive documents.
 - iii. Upon receipt of the additional search terms, the producing party will provide a search term hit list or hit report after global de-duplication, including the number of documents that hit on each term, the number of unique documents that hit on each term (documents that hit on a particular term and no other term on the list), and the total number of documents that would be returned by using the proposed search term list, with and without families. In addition to global de-duplication, if the producing party intends to apply email thread suppression to its review population, the producing party may implement email thread suppression in connection with generating its search term hit list or hit report. When providing a hit list or hit report as described in this paragraph, each party must indicate whether its hit report accounts for email thread suppression or not.
 - iv. The parties shall then meet and confer regarding the proposed search terms.
- b. ***Technology-Assisted Review:*** A producing party may use predictive coding/technology-assisted-review or artificial intelligence for the purpose of culling the documents to be reviewed or produced, subject to (i) notifying the receiving party that it intends to use such technology and disclosing the name of the review tool, and (ii) the parties agreeing on a protocol for the use of such technologies. If the Parties cannot agree on a mutually agreeable protocol, the objecting party may initiate the Court's process for resolving any disputes regarding the use of such technology.

17. **Meet-and-Confer Obligations.** The parties recognize that the production of electronic documents often involves unforeseen issues and difficulties and therefore agree to act in good faith to negotiate any modifications to these production guidelines that are reasonably necessary to avoid undue cost or burden. To the extent there is any dispute with respect to the

provisions of this Order, or with the method(s) or manner(s) of the production of ESI, the parties shall meet and confer in attempt to resolve such dispute(s) prior to seeking judicial intervention.

18. **Non-Party Productions.** A party that issues a non-party subpoena shall timely notify other parties when it receives non-party productions, and shall provide copies of such productions in the format in which they were received from the third-party.

Dated: June 26, 2025

Respectfully submitted,

By: /s Michael Pineiro

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s Michael Pineiro
Michael Pineiro