

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

**CASE NO. 9:25-CV-80526-DMM**

|                                |   |  |
|--------------------------------|---|--|
| GOOD SAMARITAN MEDICAL         | ) |  |
| CENTER, INC., DELRAY MEDICAL   | ) |  |
| CENTER, INC., PALM BEACH       | ) |  |
| GARDENS COMMUNITY HOSPITALS,   | ) |  |
| INC. D/B/A PALM BEACH GARDENS  | ) |  |
| MEDICAL CENTER, ST. MARY'S     | ) |  |
| MEDICAL CENTER, INC., AND WEST | ) |  |
| BOCA MEDICAL CENTER, INC.,     | ) |  |
|                                | ) |  |
| <i>Plaintiffs,</i>             | ) |  |
|                                | ) |  |
| v.                             | ) |  |
|                                | ) |  |
| THE LEAPFROG GROUP,            | ) |  |
|                                | ) |  |
| <i>Defendant.</i>              | ) |  |

**THE LEAPFROG GROUP'S RESPONSE TO PLAINTIFFS' MOTION TO SEAL**

Defendant, THE LEAPFROG GROUP, by and through undersigned counsel, and hereby files its Response to Plaintiffs' Motion to Seal (ECF 142), and states in support thereof:

**INTRODUCTION**

Throughout discovery, Plaintiffs made a strategic choice to withhold documents, limit production, and foreclose inquiry into alleged consumer harm. (*See*, Plaintiffs' motion for protective order, ECF 55 at 5) ("[p]atient complaints, staff complaints, and union complaints are just a few of the types of documents TLG seeks, none of which are relevant to the sole count asserted here"). Plaintiffs repeatedly and unequivocally took the position that they were not required to prove nor even meaningfully explore consumer harm to prevail on their claims. It was not until after the Court opined that Plaintiffs offer a "dearth of evidence of actual consumer harm," that Plaintiffs attempted to reverse course. (ECF 139 at footnote 5).

While Plaintiffs assert confidentiality and HIPAA over PX-552.0, this maneuver is simply an effort to evade the consequences of Plaintiffs' own discovery positions. (ECF 142-1). Leapfrog

does not dispute Plaintiffs confidentiality over the redacted information, but Leapfrog does dispute the disclosure of these redactions for the first time now, on the eve of trial. (*Id.*). Having affirmatively disclaimed the relevance of consumer harm and withholding such information on that basis, Plaintiffs cannot now smuggle those same materials into the record under seal and ask the Court to consider them without affording Leapfrog a fair opportunity to examine, challenge, or investigate them. Plaintiffs scheme is simple. They never intended to assert evidence of consumer harm until the Court questioned their proofs. (ECF 139). Now that their strategy failed, Plaintiffs are scrambling for evidence but indeed time is out – and regardless this document is inadmissible hearsay evidence.

PX-552.0<sup>1</sup> should not be filed under seal because the redacted information has never been previously provided to the defense. PX-560.0 through PX560.2 are subject Leapfrog’s pending motion to exclude documents not produced in discovery. (ECF 144).

### **RELEVANT BACKGROUND**

Leapfrog served each Plaintiff with an identical set of interrogatories. (*See*, Plaintiffs Amended Interrogatory Answers at ECF 88-99, 88-100, 88-101, 88-102, 88-103). Interrogatory No. 8 requested Plaintiffs to “[i]dentify any and all persons...(e.g., patients...)...with whom [Plaintiffs] communicated in any way with respect to the Safety Grade or Hospital Survey. (*Id.* at p. 12). Interrogatory No. 14 requested identification of any “individual patient that declined to receive services” from the Plaintiff hospitals. (*Id.* at p. 23). Interrogatory No. 22 requested identity and description of any “complaints...from patients...or referring physicians that relate to the hospital’s reputation.” (*Id.* at p. 30). Plaintiffs lodged objections to all requests and never named a patient or physician. (*Id.*).

Instead, on August 13, 2025, Plaintiffs filed a motion for protective order seeking an order from the Court that “*all* documents ‘about patient safety or quality of healthcare services’ complaints received from patients or potential patients, including those concerning services ‘provided by any physician...affiliated with’ the Plaintiff Hospitals...are irrelevant.” (ECF 55 at 4). Thereafter, Plaintiffs produced some documents but none containing the names of patients<sup>2</sup>.

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<sup>1</sup> By bringing this motion, Leapfrog does not waive its right to continue to assert its hearsay objections over PX-552.0 and PX-560.0 through PX560.2.

<sup>2</sup> It is worth noting that every single document produced by Plaintiffs was marked confidential, including communications between the parties, and it was not until several requests by the defense to de-designate documents that Plaintiffs slowly began lifting the confidentiality of improperly designated documents. As late as January 9, 2026, Plaintiffs continued to lift confidentiality designations from exhibits Leapfrog seeks to use at trial. Indeed, Plaintiffs

On September 8, 2025, Plaintiffs amended their interrogatory answers that stilled failed to disclose either a consumer, patient, or physician by name. (ECF 88-99, 88-100, 88-101, 88-102, 88-103).

Since then, Plaintiffs amended their Rule 26(a) disclosures twice. (*See*, Second Amended Rule 26(a) disclosures, ECF 146-3). On October 2, 2025, pursuant to Local Rule 16.1(e)(10), Plaintiffs served their proposed trial witness list with no consumer, patient, or physician named. (*See*, Plaintiffs Witness List, ECF 146-2). And on December 15, 2025, the parties filed a Joint Pretrial Stipulation wherein Plaintiffs failed to list a consumer, patient, or physician on their trial witness list. (*See*, Schedule D, ECF No. 129 at p. 103).

### **ARGUMENT**

It is undeniable that Plaintiffs never intended to present the name of any consumer, patient, or physician. Indeed, Plaintiffs continuously professed that “*all* documents ‘about patient safety or quality of healthcare services’ complaints received from patients or potential patients, including those concerning services ‘provided by any physician...affiliated with’ the Plaintiff Hospitals...are irrelevant.” (ECF 55 at 4). Plaintiffs did not list PX-552.0 on their initial exhibit list filed with this Court. (*See*, Plaintiffs exhibit list at ECF 129 at pp. 33-68). It was not until January 6, 2026 that Plaintiffs first alerted Leapfrog of this trial exhibit. And, in fact, Plaintiffs never advised Leapfrog that they were lifting the confidentiality designation for the non-redacted information in this document until it was filed with this Court. (*See*, “CONFIDENTIAL” ECF 142-1).

Plaintiffs hide behind the guise of “confidentiality” and HIPAA, but this is of no consequence. If Plaintiffs wanted to use the name of the patient to prove the consumer harm element (or any element of FDUTPA), then they were required to disclose this name to the defense during discovery. *See, Adp v. Ultimate Software Group*, 2017 U.S. Dist. LEXIS 231044 at \*3 (Judge Middlebrooks acknowledges that “[t]here are numerous issues associated with allowing unilateral redactions of purportedly irrelevant information. ‘Even when implemented with restraint and in good faith, the practice frequently gives rise to suspicion that relevant material harmful to the producing party has been obscured.’” (*citing In re Medeva Securities Litigation*, No 93-4376, 1995 U.S. Dist. LEXIS 21895 (C.D. Cal. 1995)) Indeed, it has always been Plaintiffs position that “[p]atient complaints, staff complaints, and union complaints are just a few of the

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have placed roadblocks on Leapfrog’s use of Plaintiffs documents throughout the entirety of this litigation. (*See*, “CONFIDENTIAL” designation on the PX-552.0, ECF 142-1).

types of documents TLG seeks, none of which are relevant to the sole count asserted here. ” (ECF 55 at p. 5) (emphasis added). Plaintiffs may not change course now, a week prior to trial, without ever affording Leapfrog the opportunity to investigate prior.

The burden of proving consumer harm is on the Plaintiffs – *not* Leapfrog; thus, Plaintiffs contention that “Leapfrog has never requested that this document be unredacted” is irrelevant. (ECF 55 at p. 2). Rather, if Plaintiffs wanted to use the name of the patient, they should have obtained a HIPAA order from the patient (as they assert), but they did not. Rather, it was Plaintiffs position that they needed a HIPAA waiver to disclose the name of the patient to the defense in discovery, but now that Plaintiffs want to use the patient’s name at trial, they have filed this instant motion to seal. And as a matter of logic, despite the burden being on the Plaintiffs, it was clearly impossible for Leapfrog to seek any HIPAA authorization from the purported patient as the name has *always* been redacted.

But regardless of the HIPAA restrictions presented here, Leapfrog’s objection to PX-552.0 is simple. Plaintiffs never revealed this patient name during discovery and therefore, they cannot now, for the first time, on the eve of trial, seek to reveal the patient’s name to prove any element of their claim. Under Federal Rule of Civil Procedure 37(c)(1), when a party fails to provide information during discovery, “the party is not allowed to use that information . . . at a trial, unless the failure was substantially justified or is harmless.” The Plaintiffs face the burden to show that its failure to disclose these exhibits during discovery was substantially justified or harmless. *Mitchell v. Ford Motor Co.*, 318 F. App’x 821, 824 (11th Cir. 2009).

Leapfrog is highly prejudiced by Plaintiffs withholding this information until they realized their mistaken conclusion of the law. Leapfrog has never been afforded the opportunity to complete discovery or *any* investigation on *any* consumer, patient or physician that the Plaintiffs now seek to introduce at trial. These redactions prejudice Leapfrog due to their belated disclosure and must be excluded. *Lara v. G&E Fla. Contrs., Ltd. Liab. Co.*, 2016 U.S. Dist. LEXIS 190918, at \*3 (S.D. Fla. Mar. 3, 2016) (“any documents that were in existence prior to the close of discovery, but not produced, may not be used at trial by the party that failed to timely produce that document”).

In addition, as recent as January 12, 2026, Plaintiffs first disclosed Dr. Anthony Hernandez who they seek to have testify about PX-552.0, but as pointed out *supra*, Leapfrog has never been made aware of this purported witness until this week – the day the trial in the matter was intended to begin. (ECF 146-4). To be clear, Dr. Henandez is not named or otherwise identified on PX-552.

(ECF 142-1). Leapfrog has objected to and seeks to exclude the proffered testimony of Dr. Anthony Hernandez. (ECF 144).

Leapfrog likewise objects to PX-560.0 through PX560.2 being filed under seal as these documents are subject Leapfrog's pending motion to exclude documents not produced in discovery. (ECF 144). Plaintiff never produced these documents in discovery and, in fact, first produced these documents to Leapfrog on January 9, 2026, two days after the Court's ruling on the parties' motion for summary judgment. (ECF 139). These documents should not be filed under seal because they should not be allowed to be offered as evidence at trial at all.

WHEREFORE, Defendant, The Leapfrog Group, respectfully requests that this Honorable Court enter an Order DENYING Plaintiffs motion to file any documents under seal, and award any and all other appropriate relief.

Date: January 14, 2026

Respectfully submitted,

/s/Jura C. Zibas

**Jura C. Zibas**

Florida Bar ID # 124571

[jura.zibas@wilsonelser.com](mailto:jura.zibas@wilsonelser.com)

**Shawna C. Biggs**

Florida Bar ID # 1026407

[shawna.biggs@wilsonelser.com](mailto:shawna.biggs@wilsonelser.com)

Wilson Elser Moskowitz Edelman & Dicker LLP

2063 Main Street, Suite 100

Sarasota, Florida 34237

(941) 866-8561 (Main)

(212) 915-5756 (Direct)

(917) 744-4116 (Cell)

*Attorneys for Defendant, The Leapfrog Group*

/s/Kimberly E. Blair

**Kimberly E. Blair (Pro Hac)**

[kimberly.blair@wilsonelser.com](mailto:kimberly.blair@wilsonelser.com)

Illinois Bar ID # 6272934

**Courtney L. Wood (Pro Hac)**

[Courtney.wood@wilsonelser.com](mailto:Courtney.wood@wilsonelser.com)

Illinois Bar ID # 6344385

Wilson Elser Moskowitz Edelman & Dicker LLP

161 N. Clark, Ste. 4500

Chicago, IL 60601

312.821.6139 (Direct)  
312.704.0550 (Main)  
(312) 259-6414 (Cell)  
*Attorneys for Defendant, The Leapfrog Group*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2026, a true and correct copy of the foregoing was served via CM/ECF on all counsel or parties of record.

By: /s/ Jura C. Zibas  
JURA C. ZIBAS, ESQ.