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., et al.,

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendant.

THE COMMUNITY HOSPITALS' MOTION FOR SUMMARY JUDGMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

INTRODUCTION

This case is ripe for summary judgment. The undisputed record shows that Defendant The Leapfrog Group ("Leapfrog") carried out a deliberate and unfair campaign of deception against the five Palm Beach community hospitals bringing this action—Delray Medical Center, Good Samaritan Medical Center, Palm Beach Gardens Medical Center, St. Mary's Medical Center, and West Boca Medical Center (the "Community Hospitals"). The record—including Leapfrog's internal documents, data, and binding deposition admissions—confirms the deception as a matter of fact and law. The unlawful conduct inflicts substantial and immeasurable harm on the Community Hospitals, their patients, and the public. It constitutes a clear violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), leaves no genuine issue of material fact, and warrants summary judgment.

The Community Hospitals have provided life-saving and essential care collectively for more than 300 years, delivering critical services across cardiology, pediatrics, geriatrics, obstetrics, orthopedics, and emergency care. They have been repeatedly recognized by the American Heart Association, the Joint Commission, and the American College of Surgeons. Leapfrog's arbitrary and coercive "Hospital Safety Grades," however, create a false and deceptive perception of risk and cause real-world harm—lost patient trust, disrupted physician relationships, and reputational injury—each confirmed by the sworn testimony of the Community Hospitals' CEOs and corroborated by media, insurer, and community responses.

Leapfrog holds itself out as an impartial "watchdog," claiming to publish objective "Hospital Safety Grades." In truth, its Grades are arbitrary, punitive, and designed to coerce hospitals into completing Leapfrog's 350-page "Hospital Survey" and surrender data for Leapfrog's "for profit" use. Internal communications and deposition testimony confirm that Leapfrog deliberately structured its grading methodology to penalize non-participating hospitals, regardless of their actual safety performance. Emails among Leapfrog's own executives describe its Grades as a participation driver, not a measure of safety. Nonetheless, Leapfrog marketed its Grades as objective and accurate, creating the false impression that all hospitals were evaluated on equal footing.

FDUTPA requires proof that (1) a defendant engaged in a deceptive or unfair act or practice and (2) the plaintiff was aggrieved by that conduct. Both elements are satisfied. Leapfrog falsely states that non-participating hospitals are not penalized, or even graded at all; that its Grades reflect

hospital safety; and that its methodology relies on external, independent data. Internal documents and sworn testimony establish these statements are false.

Under Leapfrog's Fall 2024 Grade methodology, non-participating hospitals like the Community Hospitals automatically receive the lowest possible scores on four measures underlying their Grades—Computerized Physician Order Entry ("CPOE"), Bar-Code Medication Administration ("BCMA"), ICU Physician Staffing ("IPS"), and Hand Hygiene (collectively, the "Four Measures")—even though no underlying data exists. Internal emails described the methodology as "arbitrar[]y," "[d]rastic," and "penalizing," warning it would appear illegitimate if its coercive purpose were disclosed. Deposition testimony confirms that Leapfrog's Safety Grade Expert Panel—publicly touted as approving the methodology—neither reviewed nor endorsed the Fall 2024 changes, contrary to Leapfrog's public representations.

Additional undisputed evidence further confirms Leapfrog's misconduct. Dr. Patrick Romano, a member of the Expert Panel, admitted that increasing penalties for non-participation was "a simple business decision" because Leapfrog's "data are not valuable if participation is low." Other witnesses testified and documents confirmed that Leapfrog's Grade methodology coerced hospitals into participating in Leapfrog's burdensome Survey, rather than reflecting actual patient safety. Leapfrog's own internal materials and testimony reveal that the Grades were designed to generate negative publicity for non-participating hospitals and that Leapfrog's public statements were misleading, aimed to make the system appear legitimate.

Leapfrog compounds the deception through its consumer-facing materials. Its website, press releases, and promotional content falsely claim that the Grades are based on objective safety data and that hospitals lacking sufficient data are not graded. In reality, non-participating hospitals—including the Community Hospitals—receive failing Grades that misrepresent safety. Internal drafts of Leapfrog's press materials and social media directives confirm that leadership knows these statements are false. Leapfrog continues to assert that patients are "twice as likely to die of a preventable problem at a 'C,' 'D,' or 'F' hospital than an 'A' hospital," even though it relies on abandoned methodology. After this lawsuit was filed, Leapfrog instructed its regional leaders to amplify fear-based messaging—falsely denying that non-participation automatically affected Grades and promoting alarm among patients and caregivers.

These deceptive practices produced serious, predictable harm consistent with Leapfrog's goal of punishing non-participating hospitals. Patients canceled scheduled procedures. Physicians

chose to affiliate with a competitor hospital. Public confidence eroded. Insurers expressed concern. Community leaders repeated the false narrative that the hospitals were unsafe. And media coverage compounded the reputational damage. A widely circulated TikTok video labeled four of the five Community Hospitals as the "Worst Hospitals in Florida," based on Leapfrog's Grades.

Each Community Hospital CEO testified to these prior and ongoing harms, and Leapfrog has failed to rebut their testimony. Injury to the Community Hospitals was foreseeable, widespread, and is directly traceable to Leapfrog's false representations.

The undisputed evidence—including Leapfrog's own documents, internal communications, data, and sworn testimony—are clear. Leapfrog's Grades are arbitrary, punitive, and deceptive; its public representations are false and misleading; and its conduct has caused and continues to cause substantial harm to the Community Hospitals, their patients, and the public. No genuine dispute of material fact exists on the FDUTPA claim. The Community Hospitals respectfully move for summary judgment to enjoin Leapfrog from continuing to assign and publicize Grades based on a rigged, falsely presented methodology and to restore public confidence in these essential institutions.

FACTUAL BACKGROUND

A. Leapfrog's Purported Non-profit Mission Masks A Revenue-Driven Model Built On Survey Participation

The Community Hospitals are five South Florida hospitals dedicated to serving their communities. SOF ¶ 1. Leapfrog presents itself as a non-profit "watchdog" devoted to improving hospital safety. SOF ¶¶ 2–3.[1] Its website, hospitalsafetygrade.org, describes its Hospital Survey as "trusted, transparent[,] and evidence-based," and its "Safety Grade" as a "public service." SOF ¶ 5. Leapfrog tells consumers that "[p]atients should always decide on where to receive care based on a hospital's current Safety Grade" and that its "letter grade scoring system allows consumers to quickly assess the safety of their local hospital" and "choose the safest hospital to seek care." SOF ¶¶ 8–9. It likewise promotes its 350+ page Survey as an objective assessment of "hospital safety, quality, and efficiency." SOF ¶ 4.

Behind this public-interest veneer, however, Leapfrog's operations depend on maximizing Survey participation—a goal that directly drives revenue. SOF ¶¶ 19–21. In fact, hospitals that

[1] Citations to "SOF ¶ __" refer to The Community Hospitals' Rule 56.1 Statement of Material Facts In Support Of Their Motion For Summary Judgment, filed concurrently with this Motion.

participate in the time-consuming Survey, SOF ¶ 6, must affirm that Leapfrog can use the data in a "commercial manner for profit," SOF ¶ 20. The Survey is "burdensome" and "resource intensive" to complete, SOF ¶ 6, diverting resources from validated safety initiatives that more directly benefit patients, SOF ¶ 49. So during the height of COVID-19, when resources were strained, the Community Hospitals stopped participating. SOF ¶ 49.

Leapfrog's public filings and internal records show that Leapfrog earns most of its income from "licensing" Survey data, "data licensure," selling hospitals the right to display their Grades, and marketing "data products" to insurers and employers. SOF ¶ 19. When participation fell in 2023, then, licensing revenue fell with it. SOF ¶ 25. The organization's December 2024 Board-approved *Long Range Strategic Intent* document identified "increas[ing] [Survey] participation" as a critical means of expanding revenue and resources. SOF ¶ 22. And the Leapfrog Board of Directors' June 2024 *Strategic Planning Update* similarly reflected an aim to "focus on growing revenues"—adding that "improving patient safety is not central." SOF ¶ 23. As Leapfrog Expert Panel member Dr. Patrick Romano acknowledged, penalizing non-participants was "a simple business decision," SOF ¶ 38, because Leapfrog's "data are not valuable if participation is low," SOF ¶ 20.

Leadership incentives reinforced that profit motive. Public filings show Leapfrog's CEO, Leah Binder, receives compensation that rises in tandem with Leapfrog's overall revenue from Survey participation and licensing. SOF ¶ 24. The Leapfrog executive team's compensation is also tied to revenue. *Id*.

B. Leapfrog's 2024 Grade Methodology Was Designed To Punish Nonparticipants, Not Reflect Actual Safety

In Spring 2024, Leapfrog overhauled its Grade methodology to drive participation and recoup lost financial ground—not to improve accuracy. SOF ¶¶ 20, 25–26, 30, 35–39. Its own records concede the new methodology's "strategic objective" to "penaliz[e]" hospitals that did not participate. SOF ¶ 30.

Before Fall 2024, Leapfrog used historical scores or peer averages to compensate for missing data. SOF ¶ 27. In Fall 2024, finding peer averages too high to drive participation, Leapfrog replaced them with a methodology that automatically assigned the lowest score on the Four

Measures to every non-participant.[2] SOF ¶¶ 14–15, 35. Leapfrog's then-Program Analyst responsible for the Grade program, Alexandra Campione, later admitted the punitive scores were "arbitrar[]y" and "random." SOF ¶ 34. As intended, Grades for non-participating hospitals plummeted. SOF ¶ 36.

Leapfrog's witnesses confirmed its punitive purpose. Dr. Romano described the change to Leapfrog's Grade methodology as a means to achieve the "strategic objective of penalizing non-participants," and Ms. Campione "completely agree[d]." SOF ¶ 30. Hospitals also warned the methodology change would mislead consumers into believing non-participating hospitals were unsafe. SOF ¶ 32. Leapfrog's staff acknowledged in internal communications that "the public may misinterpret the assigned measure scores," but Leapfrog added only a perfunctory website footnote that in no way explained how it arrived at those scores. SOF ¶ 33–34, 42. And Dr. Romano admitted the new methodology's purpose "is not accuracy." SOF ¶ 38.

Leapfrog did not present the imputation methodology it ultimately adopted in Fall 2024 to the Expert Panel at a meeting, as a video of the meeting shows, and it never sought the full Expert Panel's approval of the new imputation Grade methodology. SOF ¶ 28, 46. Internally, Leapfrog staff called it "[d]rastic" and later conceded it had not been "peer reviewed." SOF ¶¶ 29, 45. Externally, Leapfrog continued telling the public its Grades were "peer-reviewed" and reflected "how well a hospital does on safety"—without disclosing the automatic, severe penalty for non-participation. SOF ¶¶ 46–47.

While participating, each Community Hospital received "A," "B," or "C" Grades; after withdrawal, their Grades fell to "C" or "D." SOF ¶¶ 49–50. After Leapfrog's 2024 grading methodology overhaul, all five were graded "D" or "F," with each Community Hospital's Grade falling at least one letter by Spring 2025. SOF ¶ 50. Dr. Romano admitted these outcomes were designed to "achieve [the] strategic objective of penalizing nonparticipants." SOF ¶ 30. A third-party hospital opted for more colorful language, characterizing it as "marketing blackmail." SOF ¶ 39.

[2] The Four Measures for which Leapfrog "imputes" a value are Computerized Physician Order Entry ("CPOE"), Bar Code Medication Administration ("BCMA"), ICU Physician Staffing ("IPS"), and Hand Hygiene Score ("Hand Hygiene"). CPOE measures whether a hospital has implemented an electronic system to record prescriptions. SOF ¶ 14. BCMA measures whether a hospital confirms medication via bar code scanning. *Id*. IPS measures the use of intensivists in an ICU. *Id*. Hand Hygiene measures policies and training for handwashing and glove usage. *Id*.

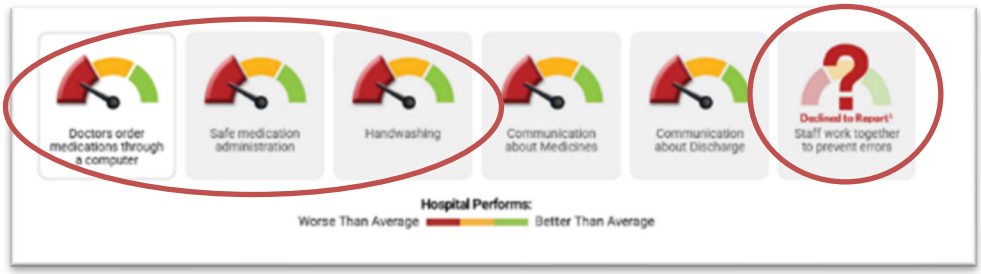
Leapfrog's website, hospitalsafetygrade.org, further conceals this punitive design, falsely suggesting that all hospitals are graded on a uniform, data-driven basis—even though many graded hospitals, including the Community Hospitals, did not participate in the Survey and Leapfrog accordingly lacked underlying data for them. SOF ¶¶ 15–17, 34–35, 44–47.

C. Leapfrog's Public Messaging Misleads Consumers And Amplifies Its False Grades

Leapfrog markets its Safety Grades as the definitive measure of hospital safety, telling consumers they "should always decide on where to receive care based on a hospital's current Safety Grade" and that patients are "twice as likely to die of a preventable problem" at hospitals rated "C," "D," or "F," than those with an "A" rating. SOF ¶¶ 8, 10.

Leapfrog publicly claims that "[h]ospitals missing more than six process measures … are not graded" because "[a] hospital must have enough safety data" or "no grade should be issued." SOF ¶ 17–18; *see also* SOF ¶ 18 (Expert Panel "Guiding Principles" in accord). In reality, Leapfrog graded the Community Hospitals despite missing data for seven measures—filling the gaps with the lowest-possible "imputed" scores on the Four Measures. SOF ¶¶ 11–16, 34. Leapfrog's Answer admits this practice. SOF ¶¶ 12–14.

Leapfrog's website, hospitalsafetygrade.org, displays "gas gauge" graphics implying data-backed performance assessments, even when none exist. SOF ¶¶ 14–16, 40–42, 44. For the Community Hospitals, the site shows red, low-score bars in parallel with a "Declined to Report" label—falsely suggesting the Community Hospitals declined to report data for one measure and performed poorly on the other depicted safety measures. SOF ¶ 40.



Id. (red circle emphases added)). But the Community Hospitals didn't provide data for *any one* of the measures circled in the image above. *E.g.*, SOF ¶¶ 14–16, 44.

Leapfrog's data analyst Ms. Campione admitted these imputed scores are "arbitrar[]y." SOF ¶ 34. Yet Leapfrog continues to assert that its Grades reflect a hospital's "overall performance in keeping patients safe," SOF ¶ 48, while fabricating scores for non-participants, SOF ¶ 16. Dr.

Matthew Austin, Leapfrog's scientific advisor—admitted Leapfrog doesn't "have any information to know how" non-participants "would perform" on the Four Measures. SOF ¶ 16. And Ms. Campione conceded Leapfrog cannot confirm the accuracy of its claim that patients are twice as likely to die under the Fall 2024 Grade methodology. SOF ¶ 48.

D. Leapfrog's False Grades Cause Ongoing Reputational, Operational, And Consumer Harm

Each Community Hospital's Grade dropped at least one full letter—some from "B" or "C," to "D" or "F"—after Leapfrog adopted its new methodology. SOF ¶¶ 49–50. Their executives uniformly testified that these reductions cause harm, including canceled procedures, physicians seeking privileges elsewhere, and erosion of community trust. SOF ¶¶ 56–61.

Leapfrog's own documents confirm that consumers rely on its Grades when deciding where to seek care. For example, Karen Jupiter, Leapfrog's Vice President of Development, explained that Leapfrog's website is intended to communicate to customers that hospitals with lower Grades are less safe. SOF ¶ 48. And Leapfrog's materials touted a patient who drove 400 miles to reach an "A" hospital after seeing poor local Grades. SOF ¶ 43. Leapfrog publicized such anecdotes as proof that its messaging influenced consumer behavior. SOF ¶¶ 43–44.

Patients and community members expressed confusion and fear after seeing the Community Hospitals' failing Grades. The CEO of each Community Hospital testified that insurers and patients questioned their institutions' safety and, in some cases, canceled procedures due to the published Grades. SOF ¶¶ 56–61. Delray CEO Heather Havericak explained that "patients … don't want to come for elective procedures because they're nervous about that score." SOF ¶ 56. Palm Beach Gardens CEO Erik Cazares similarly testified that patients "didn't want to go to Gardens because of the F letter grade." SOF ¶ 58. Good Samaritan, St. Mary's, and West Boca likewise received community feedback reflecting confusion and concern, including emails describing the hospitals as unsafe based on Leapfrog's Grades. SOF ¶¶ 55, 57, 59–61.

Local, national, and social media amplified Leapfrog's message (propelled by Leapfrog's own negative publicity campaign) to reach over one million consumers—labeling the Community Hospitals "the Worst Hospitals in Florida." SOF ¶¶ 51–53. The reports spread alarm among Florida consumers. Insurers and community organizations adopted the message, citing the Grades as evidence of poor safety and reinforcing public mistrust of these community hospitals. SOF ¶¶ 51, 56, 60–61.

LEGAL STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). If the movant establishes the absence of a genuine issue, the non-movant must "do more than simply show that there is some metaphysical doubt as to the material facts," and instead "must come forward with 'specific facts showing that there is a *genuine issue for trial*.' " *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Courts routinely grant summary judgment to plaintiffs asserting FDUTPA violations. *E.g.*, *FTC v. Life Mgmt. Servs. of Orange Cnty., LLC*, 350 F. Supp. 3d 1246, 1264–65 (M.D. Fla. 2018) (granting summary judgment and injunction against deceptive practices); *State Farm Mut. Auto Ins. Co. v. Med. Serv. Ctr. of Fla., Inc.*, 103 F. Supp. 3d 1343, 1354–55 (S.D. Fla. 2015).

ARGUMENT

I THE COMMUNITY HOSPITALS ARE ENTITLED TO SUMMARY JUDGMENT THAT LEAPFROG'S SO-CALLED "SAFETY GRADES" VIOLATE FDUTPA

FDUTPA prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.204(1). For injunctive or declaratory relief, the Community Hospitals must show that (1) Leapfrog engaged in a deceptive or unfair act or practice, and (2) they are "'aggrieved' by the deceptive" or unfair "act or practice." *SMS Audio, LLC v. Belson*, 2017 WL 1533941, at *4 n.6 (S.D. Fla. Mar. 9, 2017) (Middlebrooks, J.) (citing *Caribbean Cruise Line, Inc. v. Better Bus. Bureau of Palm Beach Cnty., Inc.*, 169 So. 3d 164, 166–67 (Fla. 4th DCA 2015)). No proof of damages is required. *Ahearn v. Mayo Clinic*, 180 So. 3d 165, 172 (Fla. 1st DCA 2015) (aggrieved party "'may obtain injunctive relief'" under FDUTPA "'regardless of whether [it] can recover 'actual damages'").

Here, Leapfrog's dissemination of its so-called "Safety Grades" across Florida is an undisputed FDUTPA violation that warrants injunctive relief. While purporting to guide consumers in making life-or-death medical decisions, Leapfrog misleads the public with a Grade methodology that arbitrarily assigns the lowest possible scores to hospitals that decline to complete its proprietary Survey—***not because those hospitals are unsafe, but to penalize non-participation and coerce compliance to drive revenue***. It then misleads the public about how it calculates its Grades and what they actually represent. Leapfrog's own records and witness admissions confirm both the punitive purpose of this design and the deceptive effect of Leapfrog's public statements. On

this undisputed record, Leapfrog has engaged in both deceptive and unfair conduct, and the Community Hospitals are entitled to summary judgment on both grounds.

A. Leapfrog's Grades Are "Deceptive" Under FDUTPA

FDUTPA prohibits "deceptive" practices, Fla. Stat. § 501.204(1)—those "likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment," *Caribbean Cruise Line*, 169 So. 3d at 169 (emphasis deleted). Leapfrog's conduct is deceptive because it misrepresents its grading methodology as unaffected by hospital participation, based on real data, and reflective of actual safety—when it is none of those things. *See id.*at 166–67 (ratings organization's concealment of subjective and revenue-linked criteria was deceptive under FDUTPA); *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 984–85 (11th Cir. 2016) (misleading product ratings actionable); *Life Management Services of Orange County*, 350 F. Supp. 3d at 1264 (false claims actionable when "'a common sense net impression of the representations as a whole'" would mislead consumers). Leapfrog's own witnesses admit its "imputation" methodology is "arbitrar[]y" and "random." *See, e.g.*, SOF ¶ 34. Yet its public-facing materials continue to claim the methodology is supported by accurate data and has received expert validation. That juxtaposition demonstrates that there is no genuine dispute of material fact as to whether Leapfrog's Grades and representations deceive consumers in plain violation of FDUTPA. They do so in at least four distinct ways—each independently sufficient to establish Leapfrog's liability as a matter of law.[3]

1. Leapfrog deceptively represents to the public that participation does not affect Grades—when its own records show the opposite. The FAQs on Leapfrog's public-facing website assure consumers that "[t]he Hospital Safety Grade reflects how well a hospital does on safety, ***not whether they complete the Leapfrog Hospital Survey***." SOF ¶ 47. That statement is objectively false and therefore deceptive under FDUTPA. *See In re: £E.S. Bankest, L.C.*, 2010 WL 1417737, at *4 (Bankr. S.D. Fla. Apr. 6, 2010) ("False statements made to the public will violate FDUPTA."). Contrary to its public representations, Leapfrog's Answer admits that, for non-participating hospitals that lack Survey data from the two prior rounds of Grades, Leapfrog throws out three measures entirely and uses its Fall 2024 Grade methodology to assign low scores on the

[3] The Community Hospitals focus on these four practices for purposes of this summary judgment motion but are prepared, if necessary, to present at trial multiple other examples where Leapfrog's Grade methodology and public statements are deceptive or unfair, including those based on admissions from Leapfrog's own witnesses and internal documents.

Four Measures. SOF ¶ 13–16, 34. Leapfrog's Grade therefore indisputably "reflects" the fact that a nonparticipating hospital did not complete the Survey.

Leapfrog's statement is also deceptive because it conceals a critical material fact—Leapfrog's undisputed use of a Grade methodology that automatically assigns the ***lowest possible scores*** on the Four Measures (CPOE, BCMA, IPS, and Hand Hygiene) to every non-participant. SOF ¶ 47. Leapfrog's internal documents leave no doubt that the Fall 2024 Grade methodology penalizes non-participating hospitals to drive participation—and was in fact designed to do so. SOF ¶ 36 (Leapfrog's Senior Vice President of Healthcare Ratings, Missy Danforth explaining that "[t]he update ***dramatically lowers imputed scores*** for certain measures for hospitals that decline to report to the Leapfrog Hospital Survey"). Dr. Romano explicitly endorsed Leapfrog's "strategic objective of penalizing nonparticipants," and Ms. Campione "completely agree[d]." SOF ¶ 30. Dr. Romano further confirmed that "it's a penalty that has a specific purpose. Its purpose is not accuracy," but rather to punish nonparticipants to boost Survey participation. SOF ¶ 38. Indeed, Dr. Romano recognized that "Leapfrog staff [we]re exercised about the fact that the response rate decreased in 2023," and he explained that Leapfrog thus was "determined to more aggressively penalize nonparticipants" to coerce participation. SOF ¶ 30. Dr. Austin similarly admitted that "the changes will penalize hospitals that don't submit a Leapfrog survey," and he further explained that "there is a ***structural bias*** against ... nonreporting hospitals," *i.e.*, a "bias in how we assign scores based on whether they report or don't report to Leapfrog." SOF ¶ 39. And Leapfrog CEO Binder described the new imputation methodology as "***a major incentive***" for hospitals to complete the Survey. *Id*.

These admissions confirm that Leapfrog's public statements claiming participation has no effect are undisputedly false. Yet Leapfrog continued to tell consumers that its Grades reflect only "how well a hospital does on safety, not whether they complete the Leapfrog Hospital Survey." SOF ¶ 47. This is precisely the kind of hidden methodology condemned as deceptive in *Caribbean Cruise Line*. *See* 169 So. 3d at 170. In considering a highly analogous business-rating service, the court there held that concealing factors used to calculate grades would violate FDUTPA, as the statute prohibits "hid[ing] information from the public," like "not disclosing how" a factor in the "accreditation process affects the grades of businesses." *Id.* By lying about and concealing key components of its Grade methodology, Leapfrog violates FDUTPA.

2. Leapfrog falsely represents that it does not assign Safety Grades to hospitals when it lacks sufficient data. Leapfrog's website, www.hospitalsafetygrade.org, states that "[h]ospitals missing more than six process measures … are not graded" because "[a] hospital must have enough safety data available for our experts to issue [it] a letter grade." SOF ¶ 17. Its Expert Panel's "Guiding Principles" likewise declare that, "[i]f a hospital is missing data for a large number of performance measures, then a grade cannot be reliably calculated. In this situation, no grade should be issued for the hospital." SOF ¶ 18.[4]

Those statements too are objectively false. Leapfrog has admitted it ***lacks information on seven measures*** for nonparticipating hospitals. Ms. Danforth agreed that, "[w]ithout the imputation methodology, that's seven process measures missing," while Ms. Campione conceded that "Leapfrog has no data for any of those seven measures if a hospital does not participate in the survey." SOF ¶ 13. Yet it still grades them. As Leapfrog's Answer concedes, of the seven measures where it has no data, Leapfrog "abandons three" and "imputes" the lowest possible value on the remaining four—assigning a score "when it lacks any data pertaining to [the measure]." SOF ¶ 12–13. And Dr. Austin testified that assigning nonparticipants the lowest scores on the Four Measures was "based on a lack of data." SOF ¶ 16. Leapfrog's practice of assigning Grades to nonparticipant hospitals is deceptive because it contradicts Leapfrog's express representation that it withholds Grades when data are insufficient. *See Caribbean Cruise Line*, 169 So. 3d at 166.

3. Leapfrog misrepresents its Grades as data-based and peer-reviewed when they are, in fact, arbitrary. Leapfrog's website tells consumers that its "letter grade represent[s] a hospital's overall performance in keeping patients safe from preventable harm and medical errors." SOF ¶ 48. It further claims that each Grade is derived from three objective data sources: "Survey responses," "CMS data," and "other supplemental data sources." SOF ¶ 11, 44. And its website tells consumers that its methodology was "peer reviewed." SOF ¶ 45.

Again, those statements are objectively false. Leapfrog's own documents and testimony show that Grades for nonparticipants do not reflect actual performance; rather, they are the product

[4] Since fact discovery, Leapfrog has conceded the materially misleading nature of certain documents by scrubbing the "Guiding Principles" document from its website. Leapfrog has further manipulated its online materials by replacing the 2019 white paper supporting its claim that patients are "twice as likely to die of a preventable problem at a 'C,' 'D,' or 'F' hospital than at an 'A' hospital" with an older 2016 version of the same paper. *See* Declaration of Mary Beth Maloney In Support of the Community Hospitals' Motion for Summary Judgment ¶¶ 83–86.

of what Leapfrog terms "imputation"—assigning the lowest possible scores because a hospital "does not report to the Leapfrog Survey." SOF ¶¶ 47–48. Leapfrog also has no "supplemental data sources" as advertised—its staff simply invented failing values. SOF ¶¶ 13–15, 44. And Dr. Austin admitted the current Grade methodology has never been "peer reviewed." SOF ¶ 45.

Leapfrog's data analyst Ms. Campione acknowledged that the imputed scores are "arbitrar[]y" and "random." SOF ¶ 34. And Dr. Austin admitted that Leapfrog has no "information to know how" nonparticipants "would perform" on the Four Measures. SOF ¶ 16. Indeed, when asked whether he had ever "conducted any analysis to assess whether hospitals that do not participate in the Leapfrog survey are actually less safe than hospitals that do," he replied, "Not that I can think of." SOF ¶ 48. This testimony confirms the falsity of Leapfrog's claim that its Grade methodology is based on real—let alone reliable—data. This constitutes deception. *Caribbean Cruise Line*, 169 So. at 166 (FDUTPA applies where a rating entity "falsely represents that it bases its grade on … specifically enumerated factors," but "does not inform the public" it uses others). As does Leapfrog's use of misleading language—like touting its methodology as "peer reviewed" to lend legitimacy to its Grades.

To disguise its arbitrariness, Leapfrog selected phrasing on its website to make the "imputed" scores sound legitimate. When Senior Specialist Paulina Litter proposed saying the scores were calculated with "external data sources," Ms. Campione rejected the idea: "we can't say 'external data sources' because we're arbitrarily assigning them the points associated with the bottom scoring category." SOF ¶ 34. Instead, CEO Binder instructed the team to state that the Fall 2024 Grade methodology was "approved" by Leapfrog's "expert panel" to make it "sound … legitimate," even though no such approval existed. *Id.*; *see also* SOF ¶¶ 26, 28. Dr. Austin further conceded that the new methodology had *not* been "peer reviewed." SOF ¶ 45.

These undisputed facts establish that Leapfrog deceptively claimed that fabricated data represented true, reliable safety results.

4. Leapfrog exacerbates consumer deception through misleading "gas gauge" graphics and fear-based messaging. Leapfrog deceives the public by visually depicting fabricated data as genuine. On hospitalsafetygrade.org, "gas gauge" graphics (*see supra* at 6) present each measure as conveying actual performance data. SOF ¶ 40. The Community Hospitals are shown with red low-score bars beside a "Declined to Report" label—suggesting the hospital reported data on each of the low-score measures and that such data reflected "[w]orse than average"

performance. *Id*. But, of course, Leapfrog lacks data on *four* measures—including three on which it was assigned a low-score gas-gauge graphic. SOF ¶¶ 14–16, 44.

It is undisputed that the low-score visuals are deceptive. Ms. Campione admitted Leapfrog had no factual basis for assigning low scores. SOF ¶ 44. Dr. Austin and Ms. Danforth likewise confirmed that the red-zone graphics for imputed measures were not grounded in evidence. *Id*.

The deception continues with Leapfrog's fear-based public messaging, which amplifies its misleading Grades through a coordinated media campaign in Florida. Its "Spring 2025 Hospital Safety Grade Media Coverage" report highlights a "strong" process for "sharing data/additional materials with reporters," including "targeted pre-embargo outreach to priority … regional/business journal reporters" and "alternate reporter contacts in South Florida from key outlets." SOF ¶ 51. Through its partnership with the Florida Alliance for Healthcare Value, Leapfrog ensures that hundreds of thousands of Floridians receive its Grades each spring and fall. *Id*. These strategic efforts magnify the reach of Leapfrog's messaging. Internal communications describe Leapfrog's media campaign as part of a targeted rollout designed to drive awareness and participation, confirming that the organization leverages fear to influence both consumers and hospitals. *Id*. As Ms. Jupiter testified, Leapfrog's messaging was designed so that, "if a consumer observes" a "hospital's safety grade going down over time," it "signal[s] to them that that hospital is less safe." SOF ¶ 43.

Leapfrog manufactures fear and deceptively manipulates consumer choice, using fabricated data and messaging to pressure hospitals into participation—conduct FDUTPA condemns as "'likely to mislead'" and "'substantially injurious to consumers.'" *See Caribbean Cruise Line*, 169 So. 3d at 169–70.

B. Leapfrog's Grades Are "Unfair" Under FDUTPA

While this Court need not reach the issue of whether Leapfrog's Grades are "unfair," that alternative basis for liability provides ample grounds for summary judgment. Conduct under FDUTPA is "unfair" when it inflicts "consumer injury that is: (1) substantial; (2) not outweighed by any countervailing benefits to consumers or competition that the practice produces; and (3) … that consumers could not reasonably have avoided." *SMS Audio*, 2017 WL 11631378, at *3 (citing

Porsche Cars N. Am., Inc. v. Diamond, 140 So. 3d 1090, 1096–97 (Fla. 3d DCA 2014)). Here, discovery has shown there is no genuine dispute Leapfrog's practices are "unfair."[5]

To start, because Leapfrog's practices are deceptive, they are necessarily also "unfair" under established principles. For example, the Federal Trade Commission ("FTC") has recognized in the federal context that "deceptive practices are always unfair." *In the Matter of Figgie Int'l, Inc*., 107 F.T.C. 313, 373 n.5 (1986). The Eleventh Circuit has embraced that same reasoning, holding that "[a]n act or practice is … unfair … if it has the tendency or capacity to deceive." *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1172 (11th Cir. 1985). Those principles are directly applicable to FDUTPA, which was "patterned after the [FTC] Act" and is construed in line with FTC Act precedents. *See Millennium Commc'ns & Fulfillment, Inc. v. Office of Att'y Gen.*, 761 So. 2d 1256, 1260 (Fla. 3d DCA 2000). So there is no doubt that manipulating consumers with false statements and tarnishing businesses' reputations through misleading grading practices violates FDUTPA. *See, e.g.*, *Caribbean Cruise Line*, 169 So. 3d at 166 (FDUTPA applies where a rating entity "falsely represents that it bases its grade on … specifically-enumerated factors," but "does not inform the public" it uses others).

The Court's three-factor test for "unfair[ness]" leads to the same destination. Leapfrog manipulates consumer behavior through an unavoidable reputational penalty, SOF ¶¶ 30, 35–39—forcing hospitals to either participate in its burdensome 350+ page Survey and sign over their rights to their data submissions for Leapfrog to use "in a commercial manner for profit," SOF ¶ 20, or receive a fabricated failing Grade and face unwarranted reputational harm, SOF ¶¶ 35–39, 44, 55. In fact, Leapfrog designed its Grade methodology specifically to penalize nonparticipant hospitals—in hopes of driving up its licensing revenues. *See, e.g.*, SOF ¶ 38. Leapfrog thus leaves hospitals no reasonable alternative but to submit to its Survey. Personnel from one third-party hospital, for example, explained that hospitals feel compelled to participate "to avoid taking the blackmail-like reputational hits," and that Leapfrog's model "truly is ***marketing blackmail***." SOF ¶ 39. No wonder: Refusal invites a failing, publicly promoted Grade and all the harms that come with it.

[5] A court may also find a practice "unfair" if it "'offends established public policy'" and is "'immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.'" *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1098 (11th Cir. 2021). That similar test is also satisfied here, for the reasons discussed in Part I.B. *See, e.g.*, *Casey v. Fla. Coastal Sch. of L., Inc.*, 2015 WL 10096084, at *6 (M.D. Fla. Aug. 11, 2015) (report and recommendation) (noting that the court's "conclusion d[id] not depend on which definition [of the test] is used").

Those resulting injuries—damaged reputations, lost patient confidence, distorted consumer decision-making, and the economic impact on hospitals that accompanies patient distrust—are substantial, weighty, and unavoidable. *See FTC v. Sperry & Hutchinson Co*., 405 U.S. 233, 244 n.5 (1972). Courts have concluded that FDUTPA prohibits precisely this kind of coercive and unfair business practice. *See, e.g.*, *Marco Island Cable v. Comcast Cablevision of S., Inc.*, 312 F. App'x 211, 214 (11th Cir. 2009) ("[T]he jury could have concluded that Comcast violated the Act by using the deceptive and bullying conduct we have described to induce the [plaintiffs] into contracting with Comcast."). Summary judgment is thus merited on this independent basis as well.

C. Leapfrog Operates In "Trade or Commerce" In Florida

There is no genuine dispute that Leapfrog operates in Florida "trade or commerce." Fla. Stat. § 501.204(1). The statute defines "trade or commerce" broadly to include "the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service," and expressly covers "not-for-profit … activity." *Id*. § 501.203(8). This Court has already held that "the publication of safety grades" qualifies as a "clear service" under FDUTPA. Dkt. 41 at 7. Discovery confirms that Leapfrog's conduct falls squarely within that definition.

The record shows that Leapfrog routinely engages with Florida hospitals and healthcare organizations to solicit Survey participation and promote its Grades. It maintains a long-standing partnership with the Florida Alliance for Healthcare Value, which serves as a "Regional Leader" for distributing the Survey to "[a]ll counties" in the State. SOF ¶ 51. And Leapfrog provided the Alliance with a "Regional Leader Communications Toolkit" to guide Survey distribution. *Id*.

Leapfrog's activities also extend to ongoing interactions with Florida hospitals themselves. It directly solicits participation, licenses use of its Grades, and collects revenue from Florida institutions purchasing those licenses. SOF ¶¶ 19–20, 22. These commercial activities in Florida confirm Leapfrog engages in the provision and marketing of services covered by the statute. That showing satisfies FDUTPA's "trade or commerce" element.

D. The Community Hospitals Are Aggrieved By Leapfrog's Deceptive And Unfair Conduct

To prevail under FDUTPA, a plaintiff seeking injunctive relief must show only that it was "aggrieved" by the defendant's unfair or deceptive act—*i.e.*, that it suffered an identifiable, non-speculative injury. *Ahearn*, 180 So. 3d at 173. Economic and reputational harm both qualify. *Bluegreen Vacations Unlimited, Inc. v. Timeshare Termination Team, LLC*, 2023 WL 4105529, at *8 (S.D. Fla. June 21, 2023) (injury to credit rating); *Wyndham Vacation Resorts, Inc. v. Timeshares*

Direct, Inc., 123 So. 3d 1149, 1152 (Fla. 5th DCA 2012) ("consumer confusion" and "damage [to] goodwill"); *Colonial Van Lines, Inc. v. Colonial Moving & Storage, LLC*, 2020 WL 6700449, at *4 (S.D. Fla. Oct. 20, 2020) ("consumer confusion about Plaintiff's business, rates, and quality of service"). This Court has already held that reputational harm satisfies FDUTPA's "aggrieved" requirement. Dkt. 41 at 8. And because the Community Hospitals seek only injunctive relief—not monetary damages—the inquiry is limited to whether Leapfrog's deception has caused, and continues to cause, actual or threatened injury to their goodwill and operations.

1. Undisputed documents and testimony show that Leapfrog's deceptive Grades cause reputational and operational harm to each Community Hospital. At **Delray Medical Center**, CEO Heather Havericak testified that patients cancel elective procedures "because they're nervous about that score that they've seen," and that physicians "are concerned about coming to the medical center when they have choices and are on staff at multiple places." SOF ¶ 56. At **Good Samaritan Medical Center**, CEO Sheri Montgomery stated that physicians are getting on staff at Jupiter due to patient complaints about the Grade and that the hospital is experiencing a decline in admissions, observation cases, and emergency-room visits. SOF ¶ 57. At **St. Mary's Medical Center**, CEO Cynthia McCauley testified to a decline in births, outpatient therapy, elective surgeries, and emergency-department visits following the Fall 2024 Grades. SOF ¶ 59 *see also id*. (patient "nervous that his wife was brought to St. Mary's" following the Leapfrog Grade). At **Palm Beach Gardens Medical Center**, CEO Erik Cazares testified that patients don't "want to go to Gardens because of the F letter grade" and that no other publication has "negatively affected the reputation of the hospital to the same degree." SOF ¶ 58. And at **West Boca Medical Center**, CEO Jerad Hanlon reported that community members questioned the hospital's quality, patients and physicians bypassed the facility (including leaving against medical advice), and insurer Humana Military sent a letter urging "improvement" based on its "D" grade. SOF ¶ 60.

The hospitals have also received community and insurer correspondence calling out their failing Grades, and all five have devoted substantial time and resources to addressing public confusion and concern. SOF ¶¶ 56–61. These direct, contemporaneous effects are undisputed and satisfy FDUTPA's "aggrieved" requirement as a matter of law. *See, e.g.*, *Bluegreen Vacations*, 2023 WL 4105529, at *8.

2. Leapfrog's own executives and experts admit that failing Grades damage hospital reputation and market position. Leapfrog's CEO Binder conceded that an "F" Grade "could

negatively impact" a hospital's reputation. SOF ¶ 55. Ms. Danforth agreed that an "F" Grade can "damage a hospital's reputation" and make it "more difficult … to repair." *Id*. Leapfrog's Director of Licensing Programs, Kushagra Banerjee, confirmed that publicity surrounding "D or F" Grades "lessens or hurts [hospitals'] competitive edge," and stated the Grades were designed to "help make hospitals accountable." *Id*. Dr. Romano testified that a failing Grade "could … harm the hospital's reputation" and lead to "canceled appointments." *Id*. And Dr. Austin admitted that physicians "would not want to work at an 'F' hospital." *Id*. These admissions—from Leapfrog's own leadership and expert advisors—further eliminate any factual dispute as to causation or injury.

3. Leapfrog's media amplification has intensified the harm. Florida media outlets repeated Leapfrog's false claims, labeling the Community Hospitals the "worst … for patient safety." SOF ¶ 52. Competitor Jupiter Medical Center also used Leapfrog's rankings to market itself as "the only 'A'-rated hospital in the area." SOF ¶ 54. Those public misrepresentations reinforce the perception of substandard care, further compounding the injury.[6] A TikTok video criticizing four of the five Community Hospitals as the "Worst Hospitals in Florida" has received over one million views and clearly evidences this harm. SOF ¶ 52.

The record is uncontroverted: Leapfrog's deceptive Grades and orchestrated publicity campaign cause direct reputational, operational, and competitive harm to each Community Hospital. The Community Hospitals seek only to halt that ongoing deception, not to recover damages, and these undisputed facts conclusively establish aggrievement under FDUTPA and entitlement to injunctive relief. *See Ahearn*, 180 So. 3d at 172 ("'[R]egardless of whether an aggrieved party can recover 'actual damages'" under FDUTPA, "it may obtain injunctive relief.'").

The undisputed record establishes that Leapfrog's conduct satisfies every element of a FDUTPA violation and that the Community Hospitals are directly and materially aggrieved.

[6] Leapfrog sought to maximize these harms after the Community Hospitals initiated litigation. Leapfrog engaged the Florida Alliance for Healthcare Value to steer patients to a competing local hospital. As Karen van Caulil (the President and CEO of the Alliance) explained, CEO Binder "wants to highlight Jupiter Medical Center's A safety grade because of the lawsuit." SOF ¶ 53. Leapfrog also directed its public relations firm to gin up stories "to convey the real-world harm of poor hospital performance," SOF ¶ 51, in an effort Leapfrog's Director of Communications Lauren Bailey characterized as aiming "to hurt" the Community Hospitals' parent company, SOF ¶ 53.

II. THE COMMUNITY HOSPITALS ARE ALSO ENTITLED TO SUMMARY JUDGMENT ON LEAPFROG'S AFFIRMATIVE DEFENSES

Summary judgment is also warranted on Leapfrog's three affirmative defenses. Each fails as a matter of law. FDUTPA imposes strict liability for deceptive or unfair practices; intent, motive, and good faith are irrelevant. *See In re Schurtenberger*, 2014 WL 92828, at *5 (Bankr. S.D. Fla. Jan. 9, 2014) (FDUTPA imposes "'an objective standard based upon the probable impact on the average consumer and not upon the subjective intent of the seller'"). And the Community Hospitals seek only injunctive relief, so none of these defenses bars summary judgment.

1. Anti-SLAPP and First Amendment: Leapfrog's purported "affirmative defense" necessarily fails because Florida's "Anti-SLAPP statute is not an affirmative defense." *Wyndham Vacation Ownership, Inc. v. Square One Dev. Grp., Inc.*, 2022 WL 21374382, at 4 (M.D. Fla. Feb. 2, 2022). "[A]n affirmative defense admits the essential facts of a claim and sets up other facts in justification or avoidance, while anti-SLAPP statutes target meritless claims" and thus do not supply affirmative defenses. *Wyndham Vacation Ownership, Inc. v. Reed Hein & Assocs., LLC*, 2019 WL 13138272, at *2 (M.D. Fla. Dec. 11, 2019) (granting motion to strike); *accord* Fla. Stat. § 768.295(3) (claim must be "without merit" for Florida Anti-SLAPP statute to apply). The Community Hospitals are entitled to summary judgment under FDUTPA, their claim is necessarily not "without merit," and thus Florida's Anti-SLAPP statute is inapplicable. Additionally, even if Anti-SLAPP were an affirmative defense, the defense would fail because Leapfrog simply repackages the First Amendment theory this Court already rejected when it held that the Community Hospitals' claim does not implicate the First Amendment. *See* Dkt. 41 at 5–6. Having lost that argument, Leapfrog cannot now replead the same meritless theory as an Anti-SLAPP defense.

2. Avoidable Consequences: Leapfrog's contention that the Community Hospitals could have avoided harm by participating in the Survey or improving safety misstates the law. The avoidable-consequences doctrine limits damages, not liability. *Farley v. Magnum Marine Corp., N.V.*, 1995 WL 795711, at *4 (S.D. Fla. June 9, 1995) ("[T]he doctrine of avoidable consequences addresses the extent of damages, not defendant's liability."); *Sys. Components Corp. v. Fla. Dep't of Transp.*, 14 So. 3d 967, 982 (Fla. 2009) ("The doctrine simply 'prevents a party from recovering those *damages* inflicted by a wrongdoer that the injured party *could have* reasonably avoided'" (first emphasis added)). Because the Community Hospitals seek no monetary recovery, the doctrine does not apply.

Even if it did apply, the undisputed record shows that the Community Hospitals acted reasonably to mitigate reputational harm. Their CEOs publicly explained the falsity of the Grades, highlighted verified safety awards, and devoted significant time and expense to reassuring physicians and the community. SOF ¶¶ 56–60. That satisfies the low standard of reasonableness required to show mitigation. *See Toucan Partners, LLC v. Hernando Cnty.*, 571 F. App'x 737, 743 (11th Cir. 2014) (plaintiffs must "do no more than is reasonable under the circumstances"). Finally, FDUTPA forbids coercive or "bullying conduct" to induce participation. *See Marco Island Cable*, 312 F. App'x at 214. Leapfrog cannot convert its own pressure tactics into a defense.

3. Good Faith: Leapfrog's "good-faith" defense fails both legally and factually. Legally, good faith is no defense under FDUTPA. "A defendant cannot avoid liability by showing that he acted in good faith because the statute does not require an intent to deceive." *FTC v. USA Fin., LLC*, 415 F. App'x 970, 974 n.2 (11th Cir. 2011) (FTC Act); *see also Schurtenberger*, 2014 WL 92828, at *3 (same holding directly under FDUTPA).

Factually, the record forecloses any claim of good faith. Leapfrog asserts it "consult[ed] with … a[n] … expert panel" on the Fall 2024 Grade methodology, SOF ¶ 46, but it never actually presented the methodology it ultimately adopted to its Expert Panel, as Dr. Romano and Dr. Austin both admit, *id.*; *see also* SOF ¶ 28. Its two-week "public comment" period ignored hospitals' objections, including from those that "strongly disagree[d] with the proposed [methodology]," noted it would "penalize hospitals" for not submitting the "extremely time-intensive" Survey, explained it would be "unnecessarily punitive," and cautioned it would result in misleading Grades. SOF ¶ 31–32.

These undisputed facts defeat any claim of good faith and confirm that Leapfrog consciously implemented and concealed a punitive scoring methodology, making false statements to consumers that harmed the Community Hospitals. Because each of Leapfrog's defenses is legally and factually deficient, summary judgment should be entered for the Community Hospitals.

III. AN INJUNCTION AND DECLARATION ARE WARRANTED

A permanent injunction requires (1) actual success on the merits, (2) irreparable injury, (3) a balance of equities favoring the movant, and (4) consistency with the public interest. *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004). Each element is satisfied.

The Community Hospitals have established the merits of their FDUTPA claim. *See supra* at 8–17. They continue to suffer irreparable harm to reputation and goodwill—injuries that cannot

be undone by money damages and that courts consistently recognize as non-compensable. *Ferrero v. Associated Materials Inc*., 923 F.2d 1441, 1449 (11th Cir. 1991). The equities also favor relief: Leapfrog will suffer no legitimate harm from being ordered to stop deceiving the public. A defendant "ha[s] no lawful interest in continuing a scam." *FTC v. E.M. Sys. & Servs., LLC*, 2015 WL 13709807, at *3 (M.D. Fla. June 17, 2015). And the public interest strongly supports an injunction. Leapfrog's fabricated "imputation" model distorts life-and-death medical decisions and undermines public trust in genuine safety data—precisely the type of consumer deception FDUTPA forbids. *See Popular Bank of Fla. v. Banco Popular de P.R*., 9 F. Supp. 2d 1347, 1364 (S.D. Fla. 1998) (noting the "strong public interest in preventing the deception of consumers").

The Court should therefore enjoin Leapfrog from assigning or publishing Grades for the Community Hospitals absent verifiable data and order removal of the existing Grades from its website and related media. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (injunction must afford "complete relief to the plaintiffs"). Leapfrog's own policies admit that hospitals missing data for six or more measures should not be graded. *Supra* at 6, 11; SOF ¶ 17. Holding Leapfrog to its own representations is a plainly appropriate remedy.

Similarly, under 28 U.S.C. § 2201(a), the Court should declare that Leapfrog's methodology, as applied to the Community Hospitals, violates FDUTPA—ensuring the public receives truthful, data-based information going forward.

CONCLUSION

The Community Hospitals seek equitable relief to halt continuing deception. The Court should grant summary judgment, enter a permanent injunction, and issue a declaratory judgment as set forth in the Proposed Order.

Dated: October 28, 2025

Respectfully submitted,

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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., et al.,

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendant.

[PROPOSED] ORDER GRANTING THE COMMUNITY HOSPITALS' MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Plaintiffs the Community Hospitals' Motion For Summary Judgment And Incorporated Memorandum Of Law. The Court, having reviewed the Motion, any response thereto, and all available evidence, hereby GRANTS the Community Hospitals' Motion for Summary Judgment. Accordingly, it is hereby ORDERED and ADJUDGED that:

1. The Community Hospitals are entitled to summary adjudication on their Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") claim against Defendant The Leapfrog Group.
    a. The Court finds there is no genuine issue of material fact with respect to whether Leapfrog's Hospital Safety Grades are deceptive or unfair. Given the undisputed facts in the record, the Court holds Leapfrog's Hospital Safety Grades are deceptive or unfair as a matter of law.

b. The Court finds there is no genuine issue of material fact with respect to whether Leapfrog operates in trade or commerce in Florida as a matter of law.

c. The Court finds there is no genuine issue of material fact with respect to whether Good Samaritan Medical Center, Inc. was aggrieved by Leapfrog's conduct as a matter of law.

d. The Court finds there is no genuine issue of material fact with respect to whether Delray Medical Center, Inc. was aggrieved by Leapfrog's conduct as a matter of law.

e. The Court finds there is no genuine issue of material fact with respect to whether Palm Beach Gardens Community Hospital, Inc. d/b/a Palm Beach Gardens Medical Center was aggrieved by Leapfrog's conduct as a matter of law.

f. The Court finds there is no genuine issue of material fact with respect to whether St. Mary's Medical Center, Inc. was aggrieved by Leapfrog's conduct as a matter of law.

g. The Court finds there is no genuine issue of material fact with respect to whether West Boca Medical Center, Inc. was aggrieved by Leapfrog's conduct as a matter of law.

2. The Community Hospitals are entitled to summary adjudication on each of Leapfrog's affirmative defenses.

3. The Community Hospitals are entitled to a declaratory judgment that Leapfrog's Hospital Safety Grades are deceptive or unfair and therefore violate FDUTPA. The Court hereby declares Leapfrog's Safety Grades are deceptive or unfair and therefore violate FDUTPA as a matter of law.

4. Leapfrog is permanently enjoined from grading the Community Hospitals in its Hospital Safety Grades.
5. Leapfrog shall remove the Hospital Safety Grades previously assigned to the Community Hospitals from all of Leapfrog's websites or similar materials within **5 business days** of the entry of this order.
6. Leapfrog shall take all reasonable and diligent efforts to ensure that entities licensing its Hospital Safety Grades previously issued to the Community Hospitals remove such Hospital Safety Grades from their materials within **30 days** of the entry of this order. Within **45 days** of the entry of this order, Leapfrog shall file a declaration documenting the reasonable and diligent efforts it has undertaken.
7. The Clerk shall enter final judgment in favor of Plaintiffs the Community Hospitals and close this case.
8. This court will retain jurisdiction for the purpose of enforcing the terms of this order.

DONE AND ORDERED in the Southern District of Florida on [].

DATED _____

_____
Donald M. Middlebrooks
United States District Judge

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., et al.,

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendant.

THE COMMUNITY HOSPITALS' RULE 56.1 STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

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Pursuant to Local Rule 56.1, the Community Hospitals file their statement of material facts:

I. Overview of the Parties

1. The Community Hospitals—Good Samaritan Medical Center, Inc., Delray Medical Center, Inc., Palm Beach Gardens Community Hospital, Inc., St. Mary's Medical Center, Inc., and West Boca Medical Center, Inc.—are five South Florida hospitals. *See* Leapfrog's Ans. to Am. Comp., ECF No. 75 ("Ans.") ¶¶ 7–11.

2. Defendant The Leapfrog Group ("Leapfrog") is a non-profit hospital ratings "watchdog" based in Washington, DC; its IRS Form 990 states it had $8,356,867 in revenue in the fiscal year ending June 30, 2024. Ex. 79 at 1[1] (2024 IRS Form 990); Ex. 56 at 227 ("watchdog").

3. Leapfrog's publicly filed corporate materials state its "mission" is to "us[e] transparency to support informed healthcare decisions," that it "fields" a "survey of hospitals," and that it "help[s] [consumers] make decisions on where to seek care," and "educate[s]" its membership "on the safest and highest quality providers." Ex. 79 at 2 (2024 IRS Form 990).

II. How Leapfrog Markets the "Safety Grades" to the Public

4. Leapfrog annually distributes a 350+ page Hospital Survey, Ex. 45 at 651–58, to over 3,000 hospitals in the United States, Ex. 42 at 765, which purports to "assess[] hospital safety, quality, and efficiency," Ex. 62 at 1 ("Welcome to the 2025 Leapfrog Hospital Survey," leapfroggroup.org/survey-materials/survey-login-and-materials).

5. Leapfrog's website, hospitalsafetygrade.org, describes its Survey as "trusted, transparent and evidence-based" and its "Safety Grade"—discussed *infra* at ¶ 7—as a "public service." Ex. 58 at 2 ("About the Leapfrog Group," hospitalsafetygrade.org).

6. Witnesses and documents characterized the Survey as "burdensome" and "resource intensive." Ex. 16 at 275 ("too burdensome," per member of Leapfrog's Expert Panel); Ex. 20 at 935 ("very resource intensive outside of existing regulatory, quality operations and quality improvement efforts," per hospital administrator "public comment"); *see* Ex. 50 at 130 ("[initially] requires around 120 hours," per a Leapfrog employee); Ex. 88 (Campione) at 51:18–52:3 ("80 to 100 hours"); Ex. 91 (Danforth) at 207:11–17; Ex. 96 (Montgomery) at 208:1–10; Ex. 95 (McCauley) at 79:11–22; Ex. 98 (West) at 88:22–89:3 ("hundreds of hours").

[1] Citations to "Ex." refer to Exhibits to the Declaration of Mary Beth Maloney in Support of the Community Hospitals' Motion for Summary Judgment. Citations to Exhibits with a Bates stamp refer to the last three digits of the Bates stamp.

7. Leapfrog publishes on its website, hospitalsafetygrade.org, Grades ("A," "B," "C," "D," or "F") Leapfrog assigns to hospitals nationwide, including 191 hospitals in Florida, Ex. 42 at 776, whether or not a hospital submits a Survey response, Ans. ¶¶ 18, 20–21.

8. Leapfrog's consumer facing website, hospitalsafetygrade.org, states "[p]atients should always decide on where to receive care based on a hospital's current Safety Grade," Ex. 63 at 4 ("How to Use the Grade," hospitalsafetygrade.org), and Leapfrog's "letter grade scoring system allows consumers to quickly assess the safety of their local hospital," Ex. 61 at 2 ("Why the Hospital Safety Grade Works," hospitalsafetygrade.org).

9. Leapfrog's consumer facing website, leapfroggroup.org, states the Grades are "a quick way for consumers to choose the safest hospital to seek care." Ex. 54 at 438.

10. Leapfrog's consumer facing website, hospitalsafetygrade.org, states "patients are twice as likely to die of a preventable problem at a 'C,' 'D,' or 'F' hospital than an 'A' hospital," Ex. 59 at 2 ("Frequently Asked Questions About the Leapfrog Hospital Safety Grade," hospitalsafetygrade.org), and "[c]ompared to an 'A' hospital, your risk of dying increases … 91.8%" at a "D" or "F" hospital, Ex. 83 at 4 ("Lives Lost and Lives Saved," hospitalsafetygrade.org) (ellipses in original); *see also* Ex. 84 (Austin) at 349:20–350:3 ("Leapfrog took a little liberty with the 'twice'").

III. How Leapfrog Actually Calculates the Grades: Participating Versus Non-Participating Hospitals

11. Leapfrog's "Scoring Methodology" states each Grade uses "up to 22 national patient safety measures," derived from participating hospitals' Survey responses, Centers for Medicare and Medicaid Services ("CMS") data, and "other supplemental data sources." Ex. 44 at 514.

12. Leapfrog states 12 of the measures used to calculate a hospital's Grade depend on data self-reported by the hospital through the Hospital Survey. Ans. ¶ 20.

13. For hospitals that do not participate in the Survey yet still receive a Grade (collectively, "non-participating hospitals"), including 592 such hospitals in Spring 2025, Ex. 42 at 765, Leapfrog uses alternative methods for the 12 measures: it substitutes CMS data for five measures, removes three measures from consideration, and applies its "imputation model" to assign values to four measures, Ans. ¶¶ 21–22 (Leapfrog uses imputation when "it lacks any data pertaining" to these four measures); Ex. 88 (Campione) at 72:9–20, 146:12–17; Ex. 91 (Danforth) at 516:19–22.

14. To develop Grades for non-participating hospitals, Leapfrog "imputes" values for four

measures (collectively, the "Four Measures"): (1) Computerized Physician Order Entry ("CPOE"), which measures whether a hospital uses an electronic system to record physician orders; (2) Bar Code Medication Administration ("BCMA"), which measures whether staff confirm medication through bar code scanning; (3) ICU Physician Staffing ("IPS"), which measures intensivist staffing at the ICU; and (4) Hand Hygiene Score ("Hand Hygiene"), which measures the policies and training for hand hygiene. Ans ¶ 23.

15. Leapfrog's methodology automatically assigns the lowest score on the Four Measures to non-participating hospitals that lack Survey data from the two prior rounds of Grades. Ex. 28 at 058, Ex. 44 at 527.

16. Leapfrog's executives, experts, and consultants testified that using imputation to assign non-participating hospitals the lowest scores on the Four Measures is not based on any data as to a hospital's actual performance on those measures. Ex. 84 (Austin) at 239:19–240:7 ("based on a lack of data"), 277:5–10 (lacks "any information to know how" non-participating hospitals would perform on those measures); Ex. 91 (Danforth) at 519:20–520:3 ("missing data from the [nonparticipating] hospitals"); Ex. 88 (Campione) at 47:9–12, 54:7–13, 55:9–12, 62:14–19 (no data); Ex. 97 (Romano) at 179:8–25 ("[i]mputations always involve assumptions. The assumptions are usually wrong in various ways.").

17. Leapfrog's website, hospitalsafetygrade.org, states "[a] hospital must have enough safety data available for [Leapfrog's] experts to issue [it] a letter grade," and that "[h]ospitals missing more than six process measures … are not graded." Ans. ¶ 25; Ex. 60 at 5 ("About the Grade," hospitalsafetygrade.org).

18. Leapfrog's Expert Panel "Guiding Principles"—until recently available to the public on Leapfrog's website—state "[i]f a hospital is missing data for a large number of performance measures, then a grade cannot be reliably calculated. In this situation, no grade should be issued for the hospital." Ex. 80 at 050.

IV. Leapfrog's Business Model Depends on Survey Participation

19. Leapfrog's 2024 IRS Form 990 reports annual revenue of nearly $8.4 million, of which more than $5.4 million was derived from "licensing," "data licensure," and "data products" tied to its Survey and Grades. Ex. 79 (2024 IRS Form 990 at 9); Ex. 25 at 789; Ex. 87 (Binder) at 271:16–272:6 (confirming); Ex. 57 at 737 ($5,700–$29,900 fee for hospitals to license logo and promote grades); *see* Ex. 43 at 281 (Florida hospital purchasing license to promote its Grade).

20. Survey participation affects revenue, which in turn affects Leapfrog's business model. *See* Ex. 34 at 208 (Leapfrog Expert Panelist Dr. Romano: "[Leapfrog's] business model ... depends on producing data," and Leapfrog's "data are not valuable if [Survey] participation is low."); Ex. 45 at 718 (Participating hospitals are required to "Affirm[]" that Leapfrog may use the Survey information "in a commercial manner for profit.").

21. Leapfrog's *Business Development Discovery Report* "assess[ing]" Leapfrog's "opportunity to monetize its IP" states that increased Survey participation "maximize[s] the value of The Leapfrog Group's Data," Ex. 2 at 484, and Director of Licensing Programs Kush Banerjee testified that "more" Survey participation "could garner the interest of specific types of organizations to … look at the[] Leapfrog Hospital Survey data," such as "insurance companies or benefits providers." Ex. 86 (Banerjee) at 79:10–80:5, 213:18–23; *see also id.* at 82:21–83:6.

22. In 2024, Leapfrog's Board and officers were focused on increasing revenue and Survey participation. Ex. 14 at 278 (April 2024 email from Leapfrog CEO Leah Binder instructing Leapfrog finance adviser not to "lose focus on what managers should be thinking about 24/7, which is revenues"); Ex. 30 at 926, 929 (December 2024 Board-approved *Long Range Strategic Intent* calling for "increas[ing] participation" in the Survey).

23. 2024 Leapfrog Board documents state "leadership must focus on growing revenues," and an "[i]ssue[] with" Leapfrog's current "approach" is that "improving patient safety is not central," Ex. 19 at 727, 730; *see also* Ex. 30 at 927.

24. Leapfrog's recent IRS Form 990s show Ms. Binder's compensation tracked the organization's revenue, Ex. 77 at 1, 38 (Leapfrog's 2022 IRS Form 990, Schedule J); Ex. 78 at 1, 30 (2023 IRS Form 990, Schedule J); Ex. 79 at 1, 31 (2024 IRS Form 990 Schedule J), and members of Leapfrog's executive team's compensation is based, in part, on revenue, Ex. 87 (Binder) at 311:18–22.

25. Leapfrog's internal reports show that both Survey participation and total licensing revenue declined from fiscal year 2022 to 2023, Ex. 9 at 374; Ex. 8 at 247, and in December 2024, Leapfrog set a goal of increasing data licensing revenue by 20%, Ex. 30 at 927.

26. In Spring 2024, Leapfrog considered the level of participation in the Survey and proposed potential changes to its Grade methodology. Ex. 9 at 369; Ex. 16 at 276; Ex. 85 (Bailey) at 94:8–95:15; Ex. 13 at 293 ("Underlying Issues of the Current Imputation Model … Hospitals are disincentivized from completing the survey").

V. The Fall 2024 Change to Leapfrog's Grade Methodology

27. Before the Fall 2024 change in Leapfrog's methodology, Leapfrog used historical scores or peer averages to assign scores on the Four Measures to non-participating hospitals. Ex. 9 at 369; Ex. 13 at 293–94; Ex. 6 at 942–43.

28. On April 12, 2024, Leapfrog's Expert Panel met to discuss a potential revision to the Grade methodology (the "Expert Panel Meeting"). Ex. 9 at 364, 366. At that meeting, no one proposed, considered, or approved assigning the lowest scores on the Four Measures (the change Leapfrog ultimately adopted in Fall 2024). Ex. 12 at 995–1013; *see also* Ex. 10 at 982; Ex. 11 at 076–97; Ex. 84 (Austin) at 133:14–17 (admitting no proposal to assign lowest scores); Ex. 97 (Romano) at 156:17–21.

29. After the Expert Panel Meeting, Leapfrog employees discussed assigning non-participating hospitals the lowest scores for the Four Measures, Ex. 13 at 293–94; Ex. 84 (Austin) at 290:10–13 (confirming limited achievement scores are the lowest score that can be assigned), and Leapfrog then-Program Analyst Alexandra Campione labeled this a "Drastic Change," Ex. 13 at 293–94.

30. After Dr. Patrick Romano, a member of Leapfrog's Expert Panel, became aware of Leapfrog's planned change to the Four Measures, he wrote to Leapfrog that it would "achieve [Leapfrog's] strategic objective of penalizing nonparticipants" and "in a clear and unmistakable manner"; Ms. Campione replied, "I completely agree." Ex. 17 at 490. Dr. Romano wrote to his colleagues: "Leapfrog staff are exercised about the fact that the response rate decreased in 2023" and Leapfrog is "determined to more aggressively penalize nonparticipants." Ex. 15 at 635.

31. Between May 21 and June 7, 2024, Leapfrog conducted a public comment period on the proposed Grade methodology. Ex. 24 at 628.

32. Hospitals commented that they "strongly disagree with the proposed [methodology]," Ex. 20 at 935, that it "would result in an inaccurate portrayal of the actual status of the patient safety structures and processes," Ex. 22 at 044, that it would "penalize hospitals" for not submitting the "extremely time intensive" Survey, Ex. 18 at 030, that hospitals "should not be so adversely punished," Ex. 20 at 935, and that the changes would be "unnecessarily punitive," Ex. 21 at 967, or result in misleading grades, Ex. 18 at 030.

33. Leapfrog staff proposed to respond, "We do acknowledge the commenter's point that the public may misinterpret the assigned measure scores," and discussed adding a notation on the Grades website, hospitalsafetygrade.org, to identify imputed scores. Ex. 24 at 629.

34. On June 18, 2024, Ms. Campione wrote that Leapfrog "can't say" on its website, hospitalsafetygrade.org, that scores for non-participating hospitals were calculated using "'external data sources' because we're arbitrarily assigning them the points associated with the bottom scoring category," that "[CEO] Leah [Binder] wanted us to make it sound like the expert panel approved it and the assigning of these points was legitimate," and that "Leah wants something else that makes it sound like the data we imputed wasn't random." Ex. 23 at 863–64.

35. In Fall 2024, Leapfrog adopted a new Grade methodology automatically assigning the lowest score on the Four Measures to non-participating hospitals that lacked Survey data from the prior two rounds of Grades. Ex. 28 at 058, Ex. 44 at 527.

36. The change "dramatically lower[ed] imputed scores" for non-participating hospitals. Ex. 27 at 185.

37. Leapfrog saw "record participation" in Fall 2024. *Id.*; Ex. 42 at 765, 66.

38. The Fall 2024 methodology change was a "simple business decision," Ex. 34 at 208 (Dr. Romano: "It's just business, folks!")—"a penalty," the "purpose" of which "[was] not accuracy." Ex. 97 (Romano) at 142:12–22; *see* Ex. 84 (Austin) at 250:17–20, 271:13–18; Ex. 94 (Jupiter) at 274:13–25 ("purpose" of the change was to "encourage hospitals to participate in the Survey").

39. One hospital described the Fall 2024 Grade methodology as, in effect, "marketing blackmail." Ex. 35 at 346 (hospitals feel compelled to participate "to avoid taking the blackmail-like reputational hits"); Ex. 26 at 327 (Ms. Binder: "a very big deal to hospitals," "a major incentive to report to the Survey"); Ex. 84 (Austin) at 236:21–237:5 (admitting "the changes will penalize hospitals that don't submit a Leapfrog Survey"), 298:9–20 (agreeing "there is a structural bias against . . . nonreporting hospitals").

VI. Leapfrog's Public Representations Regarding Its Methodology and Grades

40. On hospitalsafetygrade.org, each Community Hospital's profile displays its Grade at the top of the page, with "gas gauge" graphics below showing putative scores for individual measures, including the Four Measures. Ex. 69 at 1 (Delray); Ex. 70 at 1 (Good Samaritan); Ex. 71 at 1 (Palm Beach); Ex. 72 at 1 (St. Mary's); Ex. 73 at 1(West Boca). Red zones on the gas gauge are labeled "Worse Than Average," and a "Declined to Report" label appears on the gas gauge for some measures but not the Four Measures. *Id*.

41. For non-participating hospitals, the page includes a small footnote at the bottom, stating a hospital "Declined to Report." Ex. 69 at 2; Ex. 70 at 2; Ex. 71 at 2; Ex. 72 at 2; Ex. 73 at 2.

42. For non-participating hospitals, the page also includes a footnote stating "a score was assigned to reflect the lack of information available" only when a webpage user clicks on one of the Four Measures. *Compare* Ex. 74 (non-imputed metric selected for Delray), *with* Ex. 69 (imputed metric selected for Delray).

43. Leapfrog's messaging was designed so that, "if a consumer observes ... their particular hospital's safety grade going down over time," that should signal the hospital is "less safe," and Leapfrog "want[s] consumers to think that visiting a hospital with a C, D, or F grade could seriously injure or even kill them." Ex. 94 (Jupiter) at 20:24–21:4, 247:12–17, 253:11–15. Leapfrog's public statements highlight a patient who drove 400 miles to reach an "A" hospital after seeing "the hospitals closest to him did not perform well" on Leapfrog's Grade. Ex. 4 at 714.

44. Leapfrog's website, hospitalsafetygrade.org, states the Grades are calculated using "information from other supplemental data sources." Ex. 60 at 1 ("About the Grade," hospitalsafetygrade.org); Ex. 44 at 514–15. But Leapfrog does not use any "supplemental data sources" for non-participating hospitals, Ex. 84 (Austin) at 80:7–12 ("currently the safety grade I do not believe is using information from other supplemental data sources"); Ms. Campione, Leapfrog's scientific advisor Dr. Matthew Austin, and Leapfrog's Senior Vice President of Healthcare Ratings Missy Danforth testified that Leapfrog had no factual basis for assigning the lowest scores to the Four Measures (or the red "gas gauge" ratings for their scores). Ex. 88 (Campione) at 47:9–12, 54:9–13, 55:9–12, 62:14–19; Ex. 84 (Austin) at 240:2–7; Ex. 91 (Danforth) at 152:14–18, 153:10–14, 159:18–22.

45. Leapfrog's website, hospitalsafetygrade.org, states its Grade methodology is "peer reviewed." Ex. 60 at 2 ("About the Grade," hospitalsafetygrade.org). But the current methodology has never been "peer reviewed." Ex. 84 (Austin) at 90:15–17, 306:15–17; *see* Ex. 1 at 665 (peer-review article on Leapfrog's website is from 2013).

46. Leapfrog's website, hospitalsafetygrade.org, states its "peer-reviewed methodology" is "calculated" by "top patient safety experts under the guidance of a National Expert Panel." Ex. 59 at 1–2 ("Frequently Asked Questions About the Leapfrog Hospital Safety Grade," hospitalsafetygrade.org); *see* Ans. ¶ 48 ("Leapfrog consults with a world-renowned expert panel to review and provide guidance on the methodology leading to the hospital Safety Grades"). But meeting records for the Expert Panel Meeting show, and testimony reflects, the Expert Panel did not consider, review, or approve the Grade methodology adopted in Fall 2024. Ex. 12 at 8000

(Transcribed Recording of Expert Panel Meeting); Ex. 11 (Zoom transcript); Ex. 10 (video recording);[2] Ex. 84 (Austin) at 145:19–146:4, 283:17–285:21; Ex. 97 (Romano) at 156:17–21.

47. Leapfrog's website, hospitalsafetygrade.org, states the "Safety Grade reflects how well a hospital does on safety, not whether they complete the Leapfrog Hospital Survey." Ex. 59 at 3 ("Frequently Asked Questions About the Leapfrog Hospital Safety Grade," hospitalsafetygrade.org). But non-participating hospitals automatically received the lowest possible scores on the Four Measures. Ex. 28 at 058.

48. Leapfrog's website, hospitalsafetygrade.org, states a Grade "represent[s] a hospital's overall performance in keeping patients safe from preventable harm and medical errors." Ex. 60 at 1 ("About the Grade," hospitalsafetygrade.org); *see* Ex. 94 (Jupiter) at 247:12–17 (Vice President of Development Karen Jupiter: decline in a hospital's Grade intended to signal decreased safety). But Dr. Austin admitted he has not "conducted any analysis" comparing the actual safety of participating and non-participating hospitals, Ex. 84 (Austin) at 112:1–5, and Ms. Campione testified Leapfrog did not know in 2024 if its patients-are-twice-as-likely-to-die statement was accurate, Ex. 88 (Campione) at 417:11–15; *see also* Ex. 3 at 123 ("Lives Lost White Paper" on which statement was based, co-written by Dr. Austin in 2019, *before* new Grade methodology).

VII. Consequences of the 2024 Methodology on The Community Hospitals' Grades

49. Prior to 2021, the Community Hospitals had received "A", "B," or "C" Grades, Ex. 5 at 502, but during the COVID-19 pandemic they stopped participating in the Survey to focus resources on patient care and quality initiatives. Ex. 96 (Montgomery) at 208:1–10, 209:21–210:22; Ex. 93 (Havericak) at 95:16–25; Ex. 92 (Hanlon) at 47:18–48:4; Ex. 95 (McCauley) at 78:21–79:22.

50. From Spring 2022 to Spring 2024, when the Community Hospitals were no longer participating in the Survey, they each received "B," "C," or "D" Grades, but in Fall 2024, all received "D" or "F" Grades—by Spring 2025, each Community Hospital's Grade had dropped by at least one letter from Spring 2024. Ex. 64 at 1; Ex. 65 at 1; Ex. 66 at 1; Ex. 67 at 1; Ex. 68 at 1.

51. Leapfrog conducted media and public-relations campaigns to promote the release of its Grades. Internal communications reflect a targeted rollout of the Grades to drive awareness and participation, partnerships with the Florida Alliance for Healthcare Value ("Alliance"), and

[2] Exhibit 10 is a video recording of the April 12, 2024 Expert Panel Meeting. Exhibits 11 and 12 reflect the video transcript of the meeting and a certified copy of the video transcript.

outreach to reporters in South Florida. *See* Ex. 46 at 846–47 (Spring 2025 Grades covered 46 times in Florida following release), 850–851; Ex. 7 at 378–79, 421. The Alliance distributed Leapfrog materials to its members and the public and issued statewide announcements following each release. Ex. 89 (Van Caulil) at 24:21–24, 26:2–22 (Alliance publicizes Grade release to employer members with press release and in weekly bulletin); Ex. 41 at 403; Ex. 36 at 486, 488–89, 528 ("2025 Regional Leader Communications Toolkit: Launching Leapfrog Surveys"); Ex. 47 at 115–16 ("Talking Points for Regional Leaders about Leapfrog Lawsuit"); Ex. 48 at 186 (discussion with Leapfrog's PR firm regarding "convey[ing] the real-world harm of poor hospital performance").

52. Following publication of the Fall 2024 Grades, media, including in Florida, repeated Leapfrog's warning that patients in "'D' or 'F' hospitals are twice as likely to die," Ex. 31 at 572–73; Ex. 37 at 412; Ex. 39 at 309, 311; Ex. 29 at 245 (describing the Grades as "concerning" and "alarming"), and a 2025 TikTok video that named four of the five Community Hospitals the "Worst Hospitals in Florida" received over one million views, Ex. 51; Ex. 75; Ex. 76.

53. One of the purposes of promoting the Community Hospital's failing Grades "was to hurt Tenet." Ex. 85 (Bailey) at 372:7–373:1; Ex. 49 at 386 (Alliance CEO Karen van Caulil: "Leah wants to highlight Jupiter Medical Center's A safety grade because of the lawsuit and poor performing hospitals in Palm Beach County").

54. The Community Hospitals' market is competitive and includes Jupiter Medical Center, Ex. 95 (McCauley) at 50:8–14, 90:1–8; Exs. 100–102 (Good Samaritan, Palm Beach Gardens, and St. Mary's Amended Responses and Objections to Leapfrog's Interrogatory No. 19), which, after Leapfrog released its Fall 2024 Safety Grades, publicized itself as the only "A"-rated hospital in the area. Ex. 38 at 129.

55. Leapfrog executives and experts confirmed a failing Grade can harm a hospital's reputation and relationships with physicians and payors. Ex. 84 (Austin) at 397:19–398:6; Ex. 87 (Binder) at 390:11–17; Ex. 86 (Banerjee) at 95:19–98:13, 129:17–130:5; Ex. 91 (Danforth) at 581:14–582:7; Ex. 97 (Romano) at 95:5–7; 286:8–16.

56. Failing Grades caused reputational and business harm to Delray. Ex. 93 (Havericak) at 249:14–250:24, 253:22–254:3, 257:22–258:9 (Delray's CEO testifying that patients and physicians expressed concerns, including reticence about elective procedures, after seeing the Grades); *see* Ex. 53 at 915 (insurer Humana expressing concern about Delray's Grade and urging

"improvement"); Ex. 99 (Amended Interrogatory Responses) at 11–12, 24 ("devoted substantial time and resources").

57. Failing Grades caused reputational and business harm to Good Samaritan. Ex. 33 at 170; Ex. 32 at 138 (redirected patient); Ex. 96 (Montgomery) at 63:1–19, 296:24–297:11 (Good Samaritan's CEO testifying physicians are choosing to get on staff at Jupiter due to patient complaints about the Grade; admissions, observation cases, and emergency room visits declined); Ex. 100 (Amended Interrogatory Responses) at 11–12, 24.

58. Failing Grades caused reputational and business harm to Palm Beach Gardens. Ex. 90 (Cazares) at 30:3–14, 31:21–32:23, 35:18–36:1, 41:14–42:2, 56:5–22 (Palm Beach Gardens' CEO testifying patients stated they did not want to receive care at the hospital because of its "F" Grade, cardiac patient did not go to Palm Beach Gardens though it was "well known" for "cardiac care," ratings from other organizations had not negatively affected the hospital's reputation to the same degree, and he fields multiple complaints each week from physicians and patients "citing the F grade"); Ex. 101 (Amended Interrogatory Responses) at 11–12, 23.

59. Failing Grades caused reputational and business harm to St. Mary's. Ex. 95 (McCauley) at 230:22–231:25, 232:22–233:5 (St. Mary's CEO testifying that the hospital experienced "a decline in number of births," outpatient therapy, "elective outpatient surgeries," and "emergency department" volume since publication of its failing Fall 2024 Grades and that a community member was "nervous that his wife was brought to St. Mary's because of what he ha[d] heard" about the Grades); Ex. 102 (Amended Interrogatory Responses) at 11, 24.

60. Failing Grades caused reputational and business harm to West Boca. Ex. 92 (Hanlon) at 78:2–14, 72:19–73:20, 35:12–17, 109:11–21 (West Boca's CEO testifying hospital's "goodwill" has been "tarnished," its emergency-room admissions dropped 17%, it spent significant "expense, resources, and time" explaining Leapfrog's Grades to stakeholders, and patients "vocalized" concerns, including a patient who "wanted to go to a different facility," "against medical advice," due to the Grade); Ex. 40 at 103 (physician had "bypassed [West Boca] for Boca Regional" because of West Boca's "D" Grade); *see also* Ex. 52 at 914 (insurer Humana expressing concern about West Boca's Grade and urging "improvement"); Ex. 103 (Amended Interrogatory Responses) at 11–12, 23.

61. Other community members also reached out to the Community Hospitals and expressed their concern about the failing Grades. *E.g.*, Ex. 55 at 127; Ex. 32 at 138.

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Respectfully submitted,

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