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.,	)
Plaintiffs,	)
v.	)
THE LEAPFROG GROUP,	)
Defendant.	)

THE LEAPFROG GROUP'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
Jura C. Zibas (Bar #124571)
jura.zibas@wilsonelser.com
2063 Main Street, Suite 100
Sarasota, Florida 34237
(941) 866-8561 (Main)
(212) 915-5756 (Direct)

Kimberly E. Blair (*pro hac vice*)
Illinois Bar No.: 6272934
Courtney L. Wood (*pro hac vice*)
Illinois Bar No.: 6344385
161 N. Clark St., Suite 4500
Direct: (312) 821-6139
Main: (312) 704-0550
Kimberly.blair@wilsonelser.com

Attorneys for The Leapfrog Group

Defendant, The Leapfrog Group, hereby states as follows in Response to Plaintiffs' Motion for Summary Judgment (ECF 86):

I. FACTUAL BACKGROUND

Leapfrog was founded on the premise of fixing a critical public issue – lack of transparency and accountability in health care. (ASOF ¶2[1]). Specifically, it is Leapfrog's mission to "trigger giant leaps forward in the safety, quality and affordability of U.S. health care by using transparency to support informed health care decisions and promote high-value care." (*Id*). Leapfrog promotes this mission through, *inter alia,* its Leapfrog Hospital Survey and Hospital Safety Grade. (ECF No. 88-45, 59, 60, 61, 62) (Survey Docs.). These programs are separate and distinct; however, both serve crucial roles in upholding Leapfrog's mission to keep "patients safe from preventable harm and medical errors." (ECF No. 88-28 (Methodology) at 3046).

The Hospital Survey is free, voluntary and made publicly available to the consuming public on its website. (ECF No. 88-45 (Survey);88-62 (Web access to Survey)); (*See also,* ECF No. 88-59 at 1-2) (FAQs). While Leapfrog encourages survey participation across all hospitals, not every hospital is eligible for a Safety Grade. (ECF No. 88-28 at 3047). Nonetheless, some hospitals participate in the Hospital Survey regardless of their eligibility to receive a Safety Grade. (ECF No. 88-91 (Danforth) at 550:3-7). Rather, these hospitals use the Hospital Survey as a free, bench marking tool to help themselves improve on important patient safety measures. ECF 88-90 (Binder) at 74:2-4, 287:1-5, 415:15-19); ECF 88-91 (Danforth, at 190:1-13, 513:9-14, 550:3-6).

Nationally, Leapfrog assigns Safety Grades to nearly 3,000 general acute-care hospitals across the nation twice annually. (ECF 88-28 at 3047). "The Safety Grade uses up to 22 national patient safety measures from the Centers for Medicare & Medicaid Services (CMS) and the Leapfrog Hospital Survey, and information from other supplemental data sources, to produce a single letter grade representing a hospital's overall performance in keeping patients safe from preventable harm and medical errors." (*Id.*). Leapfrog has been grading hospitals across the country for the last 13 years. (ECF 88-91 (Danforth) at 98:5-7). However, overtime Leapfrog's underlying scoring methodology has evolved to keep up to date healthcare field. (*Id.* at 237:4-15;

[1] Cites to Leapfrog's Additional Statement of Facts will be "ASOF ¶". Cites to Plaintiff's Statement of Facts, "PSOF ¶," and cites to Leapfrog's Responses to Plaintiff's Statement of Facts, "R-PSOF ¶". Leapfrog further notes that it has filed its own Motion for Summary Judgment and supporting factual material. (ECF Nos. 99-101).

497:18-19). While this lawsuit takes issue with Leapfrog's fall 2024 methodology change, imputation is not a new concept to the scoring methodology. (ECF No. 88-91 (Danforth) at 269:21-270:2). Instead, Leapfrog has used imputation models in its methodology for years, including in calculating previous grades for Plaintiff Hospitals. (ECF No. 88-84 (Dr. Austin) at 81:13-17). Nonethless, these Plaintiff Hospitals bring this lawsuit because they no longer benefit from a prior methodology that allowed them to ride coat tails of hospitals who participate in the Hospital Survey ("reporting hospitals").

First, despite Plaintiffs taking issue with Leapfrog's use of the Hospital Survey results of reporting hospitals to calculate imputed measure scores for non-reporting hospitals, the use of Survey Results and the measure scores assigned to those Results (*e.g.*, performance categories of "Achieved the Standard," "Considerable Achievement," "Some Achievement," and "Limited Achievement"), imputation has been in place for many years, and the measure scores assigned to each performance category has not changed since the inception of the Safety Grade. (ECF No. 88-91 (Danforth) at 412:11-22). In fact, each measure score assigned to each respective performance category was determined by an expert panel in consideration of peer-reviewed literature and subject matter expertise. (*Id.* at 504:7-22; 505:1-18). Plaintiffs do not dispute the use of the performance categories as a mode of imputation *before* the Fall 2024 methodology change so they cannot assert any dispute of its use in Fall 2024 to the present.

Second, both pre- and post-fall 2024, Leapfrog's Safety Grade eligibility requirements have remained the same. (*Compare,* ECF No. 88-6 at 931 and ECF No. 88-28 at 3047) (two methodologies). Generally, ineligible hospitals include critical access hospitals, long-term care and rehabilitation facilities, mental health facilities, federal hospitals, specialty hospitals, free-standing pediatric hospitals, etc, who lack sufficient data. (ECF No. 88-28 (fall 2024 methodology) at 3047). Leapfrog does not assign Safety Grades to hospitals that "are missing scores for more than six (6) process/structural measures, or more than five (5) outcome measures, or missing PSI 90." (*Id.*). Since Plaintiffs take no issue with the eligibility requirements pre-Fall 2024, they cannot assert issues with these requirements as it applies to the Fall 2024 methodology to the present.

Third, prior to fall 2024, if a hospital did not report to the Hospital Survey ("non-reporting hospitals"), then Leapfrog used an imputation model for the "four imputed measures": computerized physician order entry ("CPOE"), bar code medication administration ("BCMA"),

ICU physician staffing ("IPS"), and hand hygiene.[2] (ASOF ¶3). The pre-fall 2024 imputation method used historical data for the hospital if the hospital had participated in a Survey within the last 4 rounds (Step 1) and if no historical data was available for that hospital, the hospital would be assigned the mean score for those measures achieved by similar, "cohort" hospitals (Step 2). (*Id.*). Over time, the pre-fall 2024 imputation model became biased in that it conferred a benefit on non-participating hospitals by raising the "cohort mean" scores as participating hospitals improved. (ECF 88-84 (Austin) 118:15-21). Thus, Leapfrog met with its Safety Grade expert panel to discuss proposed changes to the imputation model, and with the panel's guidance the 2024 Methodology change was published and circulated for public comment and input (including to the Plaintiff Hospitals), and implemented. (ECF 88-90 (Binder) 125:14-126-9; 157:3-160:5).

The fall 2024 Methodology change addressed the unintended consequences of prior Step 2 "cohort" method by proscribing that if a hospital "does not have historical data from the last two rounds…of the safety grade, the hospital is assigned a point value that is equivalent to receiving 'Limited Achievement' for this measure on the Leapfrog Hospital Survey." (ECF 88-38 (fall 2024 Methodology). "Limited Achievement" scores vary by measure, but they are the lowest scores available for each measure. (*Id.*); (R-PSOF, ¶15, 27).

In other words, the "new" imputation methodology implemented in fall 2024 still followed a two-step approach for non-reporting hospitals for the four imputed measures. (ECF No. 88-28 at 3058). Besides the foregoing adjustment to the imputation model, the scoring Methodology remained the same. (ASOF ¶10). The measure scores for the performance categories, including limited achievement, have never changed since the inception of the Safety Grade. (*Id.*); (ECF 88-91 (Danforth) 412:11-22) and imputed measure scores for the four measures have always been calculated based on those points assigned to reporting hospitals.

Plainly, the methodology change about which Plaintiffs complain is that under the Fall 2024 methodology, non-reporting hospitals are assigned "limited achievement" rather than the high "cohort mean" that was previously assigned. The fatal flaw in Plaintiffs' claim is that because imputation has always been used, their claims of deception and unfairness ring hollow. Indeed, Plaintiffs *only* complain of their Safety Grades from Fall 2024 to the present. Similarly, Plaintiffs'

[2] The 22-measure scoring Methodology includes two domains: 10 outcome measures (gauging "rates or incidences of harm occurring"), and 12 process/structural measures (gauging "systematic implementation"). (ECF No. 88-28 at 3048-3051). The four imputed measures are "process/structural measures." (*Id.*).

complaints cannot be that the measure scores associated with the performance categories are deceptive or unfair because Leapfrog has never changed these measure scores. Thus, to the extent Plaintiffs' arguments are premised on this, they fail.

Two Plaintiff Hospitals received "failing" Safety Grades prior to the Fall 2024 change. (ASOF ¶8; citing ASOF Ex. 7 (historical grades)). Thus, boiled down, Plaintiffs' complaint is not about consumer harm; it is that they should not be assigned "limited achievement" on the four imputed measures. The Plaintiffs' motion (ECF No. 86) rests upon faulty premises, and fails as a matter of law.

II. ARGUMENT

A. PLAINTIFFS ARE NOT ENTITLED TO SUMMARY JUDGEMENT.

To establish a claim under FDUTPA, a plaintiff must prove "(1) a deceptive act or unfair practice; (2) causation; and (3) actual damages." *Novo Nordisk, Inc. v. Brooksville Pharms., Inc.*, 785 F. Supp. 3d 1123, 1145 (M.D. Fla. May 12, 2025); quoting, *Carriuolo v. Gen. Motors Co.*, 823 F. 3d 977, 983 (11th Cir. 2016). However, when seeking a declaratory judgment or injunction (as the Plaintiff Hospitals are here), a plaintiff must prove "(1) that it is aggrieved, in that its rights have been, are being, or will be adversely affected, by (2) a violation of FDUTPA, meaning an unfair or deceptive practice **which is injurious to consumers**." *Id.*; citing, *Stewart Agency, Inc. v. Arrigo Enterprises, Inc.*, 266 S. 3d 207, 217 (Fla. 4th DCA 2019) (emphasis added). "While a Plaintiff need not be a 'consumer" under FDUTPA to file suit ***, 'Florida case law requires a plaintiff to **prove harm to a consumer or consumers**.'" *Id.*; citing, *State Farm Mut. Auto Ins. Co. v. At Home Auto Glass LLC*, 2024 U.S. Dist. LEXIS 176615, *4 (M.D. Fla. Sept. 30, 2024) (emphasis added); *see also, Qunjian v. Globoforce, Inc.*, 89 F. 4th 852, 860 (11th Cir. 2023) (finding that plaintiff brining a FDUTPA claim must "prove there was an injury or detriment to consumers"); quoting, *Caribbean Cruise Line, Ind. v. Better Bus. Bureau of Palm Beach County, Inc.*, 169 So. 3d 164, 169 (Fla. 4th DCA 2015); *CMR Constr. & Roofing, LLC v. UCMS, LLC*, 2022 U.S. App LEXIS 21039, *3 (11th Cir. 2022) ("[I]n order to satisfy the first element for a claim for both damages and injunctive relief under FDUTPA – i.e., a deceptive act or unfair practice – the plaintiff must allege that the relevant act or practice was harmful to a consumer")

The Florida legislature is clear in its intent behind codifying FDUTPA, "[t]o protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade

or commerce." Fla. Stat. §501.20. However, rather than protecting the consuming public, these Plaintiff Hospitals bring this lawsuit to protect themselves from poor safety disclosures. Indeed, this lawsuit directly undermines the intent of the very statute under which they sue.

Far from showing entitlement to summary judgment, the Plaintiff Hospitals fail to identify *any* evidence to show either (1) consumer detriment or harm; or (2) that Plaintiffs were aggrieved. Plaintiffs only offer self-serving and conclusory testimony, hearsay, and otherwise inadmissible evidence in support of its claims. "[I]nadmissible hearsay 'cannot be considered on a motion for summary judgment.'" *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); quoting, *Garside v. Osco Drug, Inc.*, 895 F. 2d 46, 50 (1st Cir. 1990). The Plaintiff hospitals cannot rely on stories that patients allegedly told them or concerns allegedly expressed to doctors who then told the Plaintiff CEOs. (R-PSOF ¶49-61). Nor can Plaintiffs rely on anonymous an letter from "A Concerned Physician in Boca Raton" or a TikTok video. (*See*, R-PSOF, ¶52, 61) *Macuba v. DeBoer*, 193 F.3d at 1322. Indeed, actual and specific evidence of consumer harm is required. "Consumer harm" for purposes of a FDUTPA claim "parallels consumer harm under the Sherman Act, which requires 'specific damage done to consumers in the market.'" *State Farm Mut. Auto Ins. Co. v. At Home Auto Glass LLC*, 2024 WL 4349246 *12-13 (M.D. Fla. Sep. 30, 2024); citing, *Tymar Distribution LLC v. Mitchell Grp. USA, LLC*, 558 F. Supp. 3d 1275, 1289 (S.D. Fla. 2021). Likewise, *non-speculative* evidence of aggrievement is required. *Cravens v. Garda CL Se., Inc.*, 2024 WL 5058304, *36 (S.D. Fla. Dec. 6, 2024).

In short, Plaintiffs are seeking summary judgment without any competent evidence of consumer injury or aggrievement. That summary judgment should be denied is manifest. Indeed, Southern District has rejected vague evidence asserted coupled with expansive and erroneous interpretations of FDUTPA when assessing summary judgment motions on FDUTPA claims. *See, S. Broward Hosp. Dist. V. ELAP Servs., LLP,* 2023 WL 6547748 (S.D. Fla. Sep. 29, 2023) (finding plaintiff's expansive interpretation under FDUTPA is incorrect and awarding summary judgment in favor of defendant based on plaintiff's failure to prove consumer harm). Summary judgment is warranted in favor of *Leapfrog*, not the Plaintiffs.

1. <u>The Plaintiffs Gross Mischaracterize "Evidence" to Claim the Safety Grades are "Deceptive."</u>

To establish a deceptive practice, plaintiffs must establish that the act or practice is "likely to mislead the consumer acting reasonably in the circumstances, to the *consumer's detriment*." *See*

Caribbean Cruise Line, 169 So. 3d at 169 (italics in original). Plaintiffs present *no* evidence to show that *any* consumer relied on a Leapfrog Safety Grade to their detriment because no such evidence exists. This has left Plaintiffs with only conclusory statements and irrelevant discussions of their *own* purported harm, which is insufficient. *Id.* In light of this, Plaintiffs obscure the record.

First, Plaintiffs allege "Leapfrog deceptively represents to the public that participation does not affect Grades." (ECF No. 86, ¶(I)(A)(1)). In support of this misplaced allegation, Plaintiffs either mischaracterize Leapfrog's deposition testimony, strategically ignore Leapfrog's explanations or otherwise rely on irrelevant third-party documents. (ECF No. 87 (SOF) ¶¶13-16, 30, 34, 36, 38-39, 47); (*see also*, R-PSOF for the same). The futility of this argument is revealed in the first two sentences, wherein Plaintiffs argue "Leapfrog deceptively represents to the public that participation does not affect Grades," but then follows by quoting Leapfrog's published statement that "[t]he Hospital Safety Grade reflects how well a hospital does on safety, not whether they complete the Leapfrog Hospital Survey." (C*ompare,* ECF No. 86, ¶(A)(1); *with* ECF No. 87, ¶47). Those sentences are not synonymous. Leapfrog always wants hospitals to report to the Survey; however, that was not the reason Leapfrog set out to change the methodology. (ECF No. 88-87 (Binder) at 220:20-22; 221:1-2). Leapfrog encourages survey participation because that is what drives the mission: "To trigger giant leaps forward in the safety, quality and affordability of U.S. health care **by using transparency to support informed health care decisions and promote high-value care**." (ASOF ¶2). Less survey data means less transparency for consumers. Thus, Plaintiffs' argument fails; Leapfrog works to *inform* the public, not deceive.

Second, Plaintiffs attempt to argue that Leapfrog's Answer contradicts its public representations, but in support of this point, Plaintiffs cite to *Leapfrog's* published documents. (ECF 86 at ¶(A)(1)). There is no dispute that Leapfrog complies with, and publishes, its methodology for each respective grade cycle. (ECF No. 88-28, 44 (Methodologies)). It is undisputed that for measures that use data from the Leapfrog Hospital Survey, there are different steps for reporting vs. non-reporting hospitals. (*See generally,* ECF No. 88-28; *see also, supra*). It is axiomatic that the methodology for the Safety Grade cannot be deceptive because it is plainly laid out to consumers in its Scoring Methodology, which is published and readily available on its website. (*Id.*). Whether something is deceptive is measured on a reasonable-consumer standard. *Piescik v. CVS Pharm., Inc.,* 576 F. Supp. 3d 1125, 1132 (S.D. Fla. 2021). Reasonable consumers themselves can see, for example, when viewing Good Samaritan's "15*" hand hygiene score that

is presented directly next to the "Best Hospital's Score," "Average Hospital's Score," and "Worst Hospital's Score" followed by a footnote stating, "*** The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available.**" (ASOF ¶6). Also, reasonable consumers can see that Good Samaritan, a non-reporting hospital, is assigned the "Worst Hospital's Score." (ASOF ¶6). Thus, even without reviewing the published Methodology, a reasonable consumer would understand that these two thing, taken together, reflect the tenets of the imputation method. Also, a reasonable consumer would conclude that this poor hand hygiene score may affect Good Samaritan's overall Safety Grade. The Plaintiffs attempt to obfuscate and paint with a broad brush in its "deception" arguments, ignoring the plain reality of what is disclosed to consumers in the process. The Safety Grade is not deceptive simply because Plaintiffs' dislike the outcome of the methodology as applied to their data. And regardless, Plaintiffs did not complain of their imputed measure scores prior to Fall 2024 and only now complain because they do not receive "achieved the standard" or 100/100 points.

Third, Plaintiffs' assertion that "Leapfrog's statement is also deceptive because it conceals a critical material fact—Leapfrog's undisputed use of a Grade methodology automatically assigns the lowest possible scores on the Fourth Measures…to every non-participant" is a specious, circular argument. (ECF No. 86 at p. 10). The Plaintiffs are claiming that a part of the Methodology that *expressly* disclosed and explained to the consumer is deceptive. This argument fails, and – at bottom – is not one on which summary judgment is warranted.

The "undisputed" Fall 2024 Scoring Methodology tells consumers that non-reporting hospitals are assigned Limited Achievement, and identifies what that "corresponding Safety Grade measure score" is. (ECF No. 88-28 at 003058). And, consumers can see that on the Grade page, a hospital (for example, West Boca, ASOF ¶5) gets the same score as the worst hospital's score *along* with the above-discussed, asterisked disclaimer. Leapfrog even goes a step further, showing consumers a comparison of "this hospital's score," "best hospital's score," "average hospital's score," and "worst hospital's score." (ASOF ¶5). The Motion should be denied.

Fourth**,** from a mathematical perspective, survey participation does not necessarily affect a hospital's grade because "an important thing to remember [] that hospitals that submit surveys and get Safety Grades get Ds, get Fs. And so participation in the survey isn't a straight line to an A grade, B grade, et cetera." (ECF No. 88-91 (Danforth) at 254: 14-18). In fact, "[w]hether you participate in the Leapfrog Hospital [Survey] you can still get an A, B, C, -- [Leapfrog has]

hospitals that have never done a survey that have the Step 2 imputation model applied that have A's." (*Id.* at 458: 2-10). The Safety Grade is a "22-measure composite, and so there's a lot of factors going into it. So [Leapfrog] could never say to…anyone definitively by virtue of answering the questions on the survey, your grade's going to go up, down or stay the same." (*Id.* at 461:4-10). Thus, Survey participation does not, per se, affect Safety Grades, which is why Leapfrog does not make such blanket representations to the public on its website, contrary to the disingenuous cribbing of website quotations that the Plaintiffs put in front of this Court.

Simply put, the measure scores used to calculate Safety Grades for Leapfrog's four performance categories (achieved the standard, considerable achievement, some achievement and limited achievement) scores are not arbitrary. The theme of Plaintiffs' motion is that Leapfrog's methods are arbitrary and not scientific, but Plaintiffs purposefully fail to acknowledge that even the "imputed scores" were determined by an expert panel in consideration of peer-reviewed literature and subject matter expertise. (ECF No. 88-91 (Binder) at 504:7-22; 505: 1-18). These measure scores have never changed since the inception of the Safety Grade. (*Id.* at 412:22-22; ASOF ¶10, ASOF, Ex. 2 (spring 2024 methodology). And, in any event, prior to Fall 2024, Leapfrog was already imputing measure scores corresponding with the four performance categories. (*Id*). The foregoing cannot be disputed, and Plaintiffs' arguments fail.

Fifth, Plaintiffs' own assertion that the imputation model "penalizes" hospitals and otherwise "affects grades" is disproven by their own Grades. The Amended Complaint only takes issue with each Plaintiffs Safety Grade from Fall 2024 to the present. Throughout the motion, Plaintiffs complain of their "failing" grades. The Plaintiffs themselves define a "failing" grade as a D or F. (ECF No. 88-93 at 186:2). However, even before the Fall 2024 methodology change that Plaintiffs complain of, Delray Medical and West Boca Medical both received "D" grades in the Spring 2024. (ASOF ¶8). They were failing hospitals before and after change. Logically, the imputation model did not affect their grades.

Plaintiffs drag on about whether non-reporting hospitals are "penalized" for not responding to the Leapfrog Hospital Survey, but this is of no consequence. Some hospital's Safety Grades may feel negative effects from receiving limited achievement scores and some may not be affected at all. (ECF 88-91 at 458: 2-10). These allegations are red herrings. These hospitals essentially argue that they liked it better when they were given the high median scores based on data submitted by *reporting hospitals* or had submitted data within the prior four grading rounds on each of the 4

imputed measures and no longer like it when they receive less points ("limited achievement"). But, as the record shows, the alteration to the imputation model was not intended to "punish," but to provide more accurate grading.

Sixth, it is undisputed that Leapfrog transparently publishes, *inter alia,* its Hospital Survey, survey results, measure scores (in detail), and scoring methodology. Leapfrog also explains, in detail, how the Safety Grade works. (*See, e.g.*, ASOF ¶7). It is further undisputed that the Leapfrog website displays specific scores for each specific measure and contains an asterisk and notation that "**The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available."** (ASOF ¶6)**.** Evidently recognizing that the website is transparent for consumers, Plaintiffs have no choice but to rely on irrelevant third-party documents showing other hospitals complaining of their own Safety Grades in an attempt to show deception. Leapfrog is a not-for-profit watchdog group. Leapfrog, unlike any other ratings system, provides consumers with information not only about hospitals that are doing well but all hospitals. Unhappiness with receiving poor ratings is not "evidence" of deception. And to be clear, Plaintiffs offer no evidence of actual consumer detriment in support of this baseless argument. *Stewart Agency*, 266 S. 3d 207, 217 (finding plaintiffs must prove injury to consumers).

The proper inquiry before this Court is whether Leapfrog discloses its scoring methodology to consumers and distinguishes between absent data and damning data. (ECF No. 41, p. 6, Motion to Dismiss ruling). The undisputed facts establish that Leapfrog does both. For that reason, Plaintiffs comparison to *Caribbean Cruise Line* fails. 169 So. 3d 164, 169. The myriad examples of transparence, along with the reality that any proposed change is submitted for public comment, renders Plaintiffs' analysis in this regard erroneous, and the Motion should be denied.

Seventh, Plaintiffs allege "Leapfrog falsely represents that it does not assign Safety Grades to hospitals when it lacks sufficient data." (ECF No. 86 at ¶(I)(A)(2)). Yet again, in support of this unfounded allegation, Plaintiffs mischaracterize testimony and fail to acknowledge the scoring methodology document itself. (*Id.*). The methodology is published, clear, and explains that hospitals are not eligible for a Safety Grade are those "missing scores for more than six (6) process/structural measures or more than five (5) outcome measures, or missing PSI 90." (ECF 88-28,, p. 3]. It is Plaintiffs' position that if a hospital does not respond to the Leapfrog Hospital Survey, then that non-reporting hospital is missing seven process measures. But, this is a mere conclusion, and Plaintiffs ignore that "[i]mputed scores are data points." (ECF 88-91 (Binder) at

519: 18-19). Leapfrog "and the expert panel considers imputed data." (*Id*. at 49:7-8). Again, their protestations come after being assigned "limited achievement" values, even though they agreeably received 100/100 previously. (ASOF ¶6).

By way of the imputation model, Leapfrog *does* have data for the four "imputed" measures. Therefore, non-reporting hospitals are only missing data for 3 of 7 process measures. (ASOF ¶3) Indeed, this is explicit in Leapfrog's scoring methodology. And regardless, both pre- and post-2024, Leapfrog's Safety Grade eligibility requirements have remained the same. (R-PSOF, ¶7) Leapfrog does not assign a Safety Grade to a hospital that lacks sufficient data. Plainly, this argument cannot be the basis for Plaintiffs' claims of deception.

Eighth, Plaintiffs allege "Leapfrog misrepresents its Grades as data-based and peer-reviewed when they are, in fact arbitrary." (DE 86 at ¶(I)(A)(3)). Specifically, Plaintiffs take issue with the statement that the "Leapfrog Hospital Safety Grade methodology has been peer reviewed and published in the Journal of Patient Safety," which is included on Leapfrog's "About the Grade" webpage. (ECF 88-60). Plaintiffs note that Dr. Matt Austin conceded that the imputation methodology is not peer reviewed. (ECF 88-84, 90:15-17). However, that is not what the "About the Grade" webpage says; thus, this testimony is irrelevant. Regardless, Dr. Matt Austin actually testified that the core of the methodology has been peer reviewed. (*See, supra*).

Notably, as Dr. Matt Austin points out, the webpage "does not say the current Leapfrog Hospital Safety Grade methodology [is peer reviewed]. It just says that the methodology has been peer reviewed." (ECF 88-84, 88:16-18). Dr. Austin further explained that "[i]t's fair to say that the general approach remains consistent from 2013, 2014. The individual measures that are included in the safety grade has evolved over time." (*Id*., 88:8-11). Even further, Dr. Matt Austin confirmed that "the general format of what [Leapfrog is] doing with a composite score made of up 25 measures that are weighted in two domains remains consistent and solid throughout that time frame," and "measures are going to come and go, right. CMS makes decisions about retiring certain measures. They've added new measures. So the safety grade does continue to evolve, and I would say appropriately." (*Id.* 90: 3-13]. Plaintiffs' cherry-picked testimony in support of this baseless argument is insufficient when considering the actual context of the statement.

Further, Plaintiffs cite the testimony from Alex Campione, who assists with calculating the Safety Grades, that a team member cannot say "external data sources" because Leapfrog is "arbitrarily assigning them the points associated with the bottom scoring category ('limited

achievement')." (ECF 88-23) But, Ms. Campione was explaining to Ms. Litter that Leapfrog must distinguish between absent data and damning data in a way that is understandable to a reasonable consumer. Ms. Campione points out that Leapfrog cannot say "external data sources" because the imputation model either uses data from prior survey responses, which is an internal data source, or assigns hospitals "limited achievement." (ECF 88-23, pp. 383-392). Leapfrog must say a score was "assigned" rather than "calculated" because by virtue imputation is inherently not a calculation. (*Id*.). Ms. Campione also clarified that "[i]t's not arbitrary to assign them to the limited achievement category…the points themselves, from a mathematical standpoint, are arbitrary." (*Id.* 392:6-11). Ms. Campione even explained that Leapfrog considered using the term "imputed" in its disclosure but had concerns that the term may not be "understood by the general public." (*Id*. 383: 2-4). This highlights Leapfrog's effort to ensure its transparent in the way it reflects its methodology to the consuming public. To be clear, the disclosure makes no reference to "legitimacy" or "expert approval." Rather, it simply states, "***The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available."** (ASOF ¶6). Ms. Campione confirmed that the disclosure on the webpage is "a true representation of the scoring methodology." (ECF 88-23: 382:15-17).

To be clear, when prior to Fall 2024, Leapfrog did not have an asterisk next to the four imputed measures for non-reporting hospitals. (ECF 88-91, 434:14-7). Indeed, this was a new update to the Leapfrog hospitalsafetygrade.org website to help ensure reasonable consumers were aware that scores were being assigned based on a lack of information available. Yet, for the first time, *after* Leapfrog made efforts to be more transparent to consumers, Plaintiffs for the first time complain of deception.

Fourth, Plaintiffs allege "Leapfrog exacerbates consumer deception through misleading "gas gauge" graphics and fear-based messaging." (DE 86 at ¶(I)(A)(3)). In support of this baseless allegation, Plaintiffs cite Leapfrog testimony confirming that Leapfrog does not have *self-reported hospital survey data* for the four imputed measures. (R-PSOF ¶44). The parties agree that if a hospital chooses not to self-report data via the Survey, the hospital's specific data for those measures is not available to Leapfrog for scoring. This is plainly disclosed on the same page as these gauges, proving the futility of this argument. (ASOF ¶6-7). the gas gauges correctly depict that a "limited achievement" score is "worse than average" as compared to the other hospitals for that specific measure. (*Id*.). Thus, Leapfrog's "gas gauge" graphic accurately reflects, for a non-

reporting hospital, that it was assigned a score to reflect the lack of information available, which is a score that is comparatively a "worse than average" score to other hospitals for that measure. The gas gauge graphics are not deceptive. Rather, Leapfrog wants to "make sure it's clear to people who can't necessarily read all the information on the site hence, the gas gauges and more clear interpretations." (ECF 88-91, at 224: 11-14). Indeed, Ms. Danforth confirms that the "gas gauges are…a graphical depiction of a hospital's performance in relation to the average score for that measure." (*Id*. at 431:12-15); (*see also,* Id. at 434:3-20; 519:18-19).

Lastly on this point, the Plaintiffs offer no evidence – just innuendo – that the gas gauges manufacture fear and deceptively manipulate consumer choice. However, Plaintiffs have provided no evidence of any consumer harm and, in fact, the only purported evidence that Plaintiffs assert never mentions the gas gauges. Without evidence, and more specifically without evidence of consumer harm, this argument fails. *See, Novo Nordisk, Inc. v. Brooksville Pharms., Inc.*, 785 F. Supp. 3d 1123, 1132 (M.D. Fla. May 12, 2025) (finding actual patient harm is the proper standard at the summary judgment stage). Leapfrog's media coverage report indicates new outlets reporting on the Leapfrog Safety Grades but does not provide any confirmation that patients are reading these articles, relying on them or actually being harmed by the Safety Grade in any way. Absent any evidence of actual consumer (patient) harm, Plaintiffs' argument fails as a matter of law and summary judgment in favor of Leapfrog is warranted.

2. Plaintiffs' purported evidence in support of its claim that "Leapfrog's Grades are 'Unfair'" is grossly mischaracterized.

Nearly Plaintiffs' entire argument that Leapfrog's Safety Grades are unfair is predicated on the assumption that they are deceptive. (ECF 86 at I(B)). For all the reasons stated above, Plaintiffs cannot prove that Leapfrog's Safety Grades are deceptive; thus, this entire argument fails. However, it is worth noting that Plaintiffs likely glossed over the unfair analysis because they cannot satisfy the three-part test. *SMS Audio, LLC v. Belson,* 2017 WL 11631378, *10 (S.D. Fla. April 24, 2017) (to establish an unfair act or practice, plaintiffs must establish that the act or practice 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). Plaintiffs likewise fail to assert any evidence to support that Leapfrog's practices are "one that offends established public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious" to consumers. *PNR, Inc. v. Beacon Prop.*

Mgmt., Inc., 842 So. 2d 773, 777 (Fla. 2003). Plaintiffs conflate "consumer injury" with their own alleged aggrievement. To be clear, the Plaintiffs are *not* consumers of the Leapfrog Safety Grades – patients are.

First, Plaintiffs have not produced a single piece of admissible evidence that could establish substantial consumer harm. Each CEO only testifies to hearsay evidence whether about something a patient allegedly told them or a patient told a doctor who told them or a google review that was not produced. (R-PSOF, ¶49-61). Not a single CEO produced one name of a patient that was allegedly harmed by the Safety Grade. (*Id*.). Not a single doctor has left any of the Plaintiff hospitals due to the Safety Grade. (*Id*.). Instead, every CEO actually admitted that their patients provide positive feedback. (*Id*.). Plaintiffs "documentary" evidence is also inadmissible hearsay for which it cannot rely on to establish substantial consumer injury. (R-PSOF, ¶61).

Moreover, even if Plaintiffs could prove that patients were choosing to treat at an "A" hospital, they fail to show how that causes patients any harm. Simply alleging that patients choose to treat at a competitor hospital rather than one of the Plaintiff hospitals is not enough to show consumer injury. *See DiamondDog,* at 2024 WL 3278579 at *10 (the court dismissed plaintiff's FDUTPA claim after determining that plaintiff only alleged harm the defendant caused the plaintiff but failed to plead consumer injury); *see* also *SMS Audio,* at *10 (defendant's judgment as a matter of law was granted because plaintiffs did not prove any detriment or injury to consumers).

Second, Plaintiffs likewise cannot prove that any alleged consumer injury (for which there is none) is not outweighed by any countervailing benefits to consumers or competition that the practice produces. *Id.* at *10. The purpose of the Leapfrog Safety Grade is to "educate and encourage consumers to consider safety when selecting a hospital (ASOF ¶1-2). Indeed, this is a benefit to consumers. Alternatively, hospitals use the free, publicly available Leapfrog Hospital Survey as a benchmarking tool on how to improve on their own patient safety measures, as reflected by – for example – increased cohort mean scores leading to the methodology change. Patients and hospitals thus benefit. Leapfrog has "hundreds of hospitals that will never be eligible to receive a Hospital Safety Grade who for years and years have participated in the Leapfrog Hospital Survey." (ECF 88- 91, 550:3-7). The "Leapfrog Hospital Survey includes measures about maternity care and pediatric care, inpatient surgery, outpatient surgery. It's used to compare outpatient surgery in hospitals to ambulatory surgery centers." (*Id.* 550:10-15]. So "pediatric hospitals, critical access hospitals…have and do and continue to do the survey regardless of the

Safety Grade," for which they are not eligible. (*Id.*Ex. 91, 550:18-21; 88-24, p. 3). These hospitals clearly see value in participating in the Leapfrog Hospital Survey because it is a free tool to help hospitals track their own progress. Leapfrog makes a positive impact on the public, patients, and hospitals. In the absence of consumer injury, like here, Leapfrog is only proven to be a benefit to consumers and competition among hospitals.

Third, it is undisputed that the Hospital Survey is free and voluntary. The Plaintiffs even admit that it would not take any additional time or resources to participate in the voluntary survey. (R-PSOF Ex. 1). Instead, the Plaintiff Hospitals only refuse to participate because it is not "directly related to a contract/payment or a local regulatory requirement. (*Id*.).

Plaintiffs' documents confirm that they could reasonably avoid any alleged injury, but that is not the standard. Leapfrog's myriad explanations/disclosures reveal that consumers could avoid any purported injury. Leapfrog is clear that when making a decision on where to receive health care, "people should consider other aspects of hospital performance in the decision-making process, such as whether the hospital delivers a high level of care for the health concern the patient has, i.e., if the hospital has high-quality obstetrics or orthopedics." (ECF 88-59 (FAQ). It is not lost on Leapfrog that in "some cases, the only hospitals available in a community are not highly rated." (*Id*.). However, Leapfrog "offers guidance and resources on [its] website for patients and family members to protect themselves during a hospital stay, which is important no matter the hospital's grade." (*Id*.). The webpages also contain comprehensive disclaimers advising to always defer to medical professionals. (*Id*., bottom of page).

Again, Plaintiffs rely on third party documents to assert that Leapfrog leaves hospitals with no reasonable alternative but to submit to its Survey[3]. Plaintiffs cite to an internal hospital email from UC Davis wherein an individual admits he "first learned" of Leapfrog just a few months before asserting criticisms. (ECF 88-35). Still, the email fails for the same reason that the Plaintiffs other purported "evidence" fails – no consumer injury. Moreover, Plaintiffs rely on *Marco Island Cable v. Comcast Cablevision of S., Inc.,* but in that case the court cited mounds of evidence to support the jury's finding of liability against the defendant on a FDUTPA claim. 312 F. App'x 211, 214 (11th Cir. 2009) (citing to, *inter alia,* the plaintiffs' historical business performance and

[3] The UC Davis emails are irrelevant to this litigation and should not be considered by this Court. Regardless, Plaintiffs have not identified any UC Davis representative on the email who could lay foundation or otherwise verify the veracity of this document at trial. The document is inadmissible.

expert testimony confirming diminished business value as sufficient evidence to support the jury verdict). Indeed, the Plaintiffs here offer no such evidence. Rather, they assert blanket conclusions that the Plaintiffs and consumers are likely harmed.

Fourth, the Plaintiffs cannot prove they were aggrieved, let alone that summary judgment *for them* is warranted. *Stewart Agency, Inc. v. Arrigo Enters.,* 266 So. 3d 207, 214 (4th Dist. 2019). The Plaintiff hospitals only offer contradictory testimony that is fatal to their own credibility. To be aggrieved, "'the injury claimed to have been suffered cannot be merely speculative.'" *Id.* (citing *Ahearn,* 180 So. 3d at 173) *see also Macias v. HBC of Fla., Inc.,* 694 So. 2d 88, 90 (Fla. 3d DCA 1997). Plaintiffs' "'must point to specific damages done to consumers in the market' to allege consumer harm under FDUTPA." *Bluegreen Vacations Unlimited, Inc. v. Timeshare Termination Team, LLC,* 2023 U.S. Dist. LEXIS 107479 (citing *Tymar Distribution LLC v. Mitchell Grp. USA, LLC,* 558 F. Supp. 3d 1275, 1289 (S.D. Fla. 2021). "To be 'aggrieved by' a deceptive act or practice, a plaintiff must show that its rights have been, are being, or will adversely be affected by an unfair or deceptive practice which is injurious to consumers." *Id.* (citing *Stewart Agency,* 266 So. 3d 207, 214).

As shown, Plaintiffs cannot genuinely claim that they have presented competent eveidnece of consumer harm let alone their own aggrievement. Plaintiffs rely on *Blue Green Vacations* wherein that case the court held defendants committed a *per se* violation of FDUTPA that resulted in "breach, default, and termination of the Bluegreen Owners' timeshare interest, and damaged Bluegreen Owners' credit" and plaintiffs were aggrieved by losing its rights to contractual payments. *Id.* at *26. Unlike *Blue Green,* Plaintiffs have not proven any "rights" that have been affected by the Leapfrog Safety Grades.

Each Plaintiff reports no decline in revenue and otherwise only offers inadmissible hearsay evidence in support of its claims that it is aggrieved. "[I]nadmissible hearsay 'cannot be considered on a motion for summary judgment.'" *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); quoting, *Garside v. Osco Drug, Inc.*, 895 F. 2d 46, 50 (1st Cir. 1990). Notably, Plaintiffs rely on a TikTok video that allegedly reports the Plaintiffs as the "Worst Hospitals in Florida." (R-PSOF ¶52). First, the TikTok itself is obvious hearsay, but even more concerningly the video appears to be AI generated. Regardless of the fact that Plaintiffs cannot rely on hearsay evidence to prove its claims, the TikTok makes no mention of Leapfrog or its Safety Grades; thus, the TikTok is not evidence that the Plaintiffs were "aggrieved *by*" the Leapfrog Safety Grades.

Heather Havericak, CEO of Delray Medical Center, admits that no doctor has revoked their privileges at Delray. (ECF 88-93, 254:10-12]. Havericak testified she received complaints about having to answer questions from Delray patients that are actively treating at Delray. [*Id.*, 251-257]. Yet, Havericak concedes that patients report incredible care at Delray. [*Id.*,, 249:23-25; 250:1-3]. Indeed, Havericak admits that patients are still coming to Delray for treatment. [*Id.*,, 252:16-25]. And, in fact, revenue has increased since Havericak became CEO. [*Id.*,, 66:5-7]. Delray has not and cannot show that it was "aggrieved" *by* the Leapfrog Safety Grades.

Sheri Montgomery, CEO of Good Samaritan, admits that she is unaware of any doctors or patients that have left Good Samaritan because of the Safety Grades. [88-33, 297: 16-25; 298:1-3]. No doctors revoked their privileges to work at Good Samaritan and that some surgeons already previously split their time between other healthcare facilities. [*Id.*, 296:24-56; 297:1-2; 298:4-10). And Good Samaritan's revenue is not down. [*Id.*,, 66:6-18]. Good Samaritan has not offered any firsthand, documentary evidence or testimony to show that it was "aggrieved" *by* the Leapfrog Safety Grades.

Cynthia McCauley, CEO of St. Mary's Medical Center, admits that she is "not certain with [what] a consumer[] look[s] at" when asked if she believes patients consider CMS star ratings. [ECF 88- 95, 229:15-17]. Yet, McCauley conclusively testified that attributes declined admissions to Leapfrog. [*Id.*, 231:7-15]. To support this baseless allegation, McCauley testified that she read a google review that reported "an amazing experience" at St. Mary's. [*Id.*, 231:15-25]. Despite this "evidence" directly contradicting St. Mary's claims that it was aggrieved, McCauley could not provide the name of this alleged patient and the google review was not produced. McCauley too admits that revenue is not down. [*Id.*, 105:10-12]. St. Mary's has not offered any firsthand, documentary evidence or testimony to show that it was "aggrieved" *by* the Leapfrog Safety Grades.

Erik Cazares, CEO of Palm Beach Gardens, admits that Palm Beach has not conducted any survey or research to determine what is causing its alleged decrease in ER visits and outpatient services. [*Id.*, 79:3-7]. Regardless, Cazares actually admits a Palm Beach has experienced a "slight increase" in inpatient admissions. [*Id.*, 78:14-16]. Further, Cazares admits that revenue too has "increased slightly" since 2024. [*Id.*, 56:2-4]. Palm Beach has not offered any firsthand, documentary evidence or testimony to show that it was "aggrieved" *by* the Leapfrog Safety Grades.

Jared Halon, CEO of West Boca Medical Center, only offered conclusory statements of West Boca's aggrievement and when asked how the harm was quantified, Halon only referenced

that he read google reviews. [ECF 88-92, 80:8-20]. Again, no google reviews were produced. Nonetheless, Hanlon admits that CMS star ratings impact the reputation of West Boca. [*Id.*, 81:11-14]. West Boca is a two-star overall from CMS. Hanlon confirmed that West Boca's "[r]evenue has gone up" since 2024. [*Id.*, 36:5-7]. And Hanlon admits that since 2024 physicians have only resigned because they either moved out of state or retied. [*Id.*,, 88:9-18]. West Boca has not offered any firsthand, documentary evidence or testimony to show that it was "aggrieved" *by* the Leapfrog Safety Grades.

For all of the reasons stated herein, Plaintiffs fail to prove a claim under the FDUTPA. Accordingly, summary judgment in favor of Leapfrog is warranted.

II. PLAINTIFFS ARE NOT ENTITLED TO SUMMARY JUDGEMENT ON LEAPFROG'S AFFIRMATIVE DEFENSES.

It is axiomatic that because Plaintiffs cannot prevail on their Motion, the anti-SLAPP arguments therein fail. Indeed, Leapfrog is entitled to summary judgment on this front. At bottom, if this case proceeds to trial, so too should the anti-SLAPP issue.

While Plaintiffs argue that the failure to mitigate and other affirmative defenses fail, Plaintiffs make these arguments on the erroneous assumption that their Motion will be granted. In the event that *Leapfrog* is not granted summary judgment, its affirmative defenses should proceed to trial. For example, while Plaintiffs claim failure to mitigate is not proper here, they continue to make intimations about financial harm (though without competent evidence). "The reasonableness of the plaintiff's efforts to mitigate damages is a question of fact." *Team Sys. Int'l LLC v. AQuate* Corp., 682 F. App'x 820, 824 (11th Cir. 2017). Therefore, Plaintiffs' arguments about Leapfrog's affirmative defenses – as well as all of their other arguments – fail, and summary judgment should be denied.

WHEREFORE, Defendant, The Leapfrog Group, respectfully requests that this Honorable Court enter an ORDER granting Summary Judgment in favor of The Leapfrog Group as set forth in the Proposed Order, and award any and all other appropriate relief.

Date: November 12, 2025

Respectfully submitted,

Kimberly E. Blair

Kimberly E. Blair (*pro hac vice*)

kimberly.blair@wilsonelser.com
Illinois Bar ID # 6272934
Courtney L. Wood (*pro hac vice*)
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)

Jura C. Zibas (Bar #124571)
Wilson Elser Moskowitz Edelman & Dicker LLP
jura.zibas@wilsonelser.com
2063 Main Street, Suite 100
Sarasota, Florida 34237
(941) 866-8561 (Main)
(212) 915-5756 (Direct)

Attorneys for Defendant, The Leapfrog Group

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025, a true and correct copy of the foregoing was served on all counsel or parties of record via the ECF filing system.

By: /s/ *Courtney L. Wood*
COURTNEY L. WOOD

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

GOOD SAMARITAN MEDICAL CENTER, INC., et al., Plaintiffs, v. THE LEAPFROG GROUP, Defendant.	)	Case No.: 9:25-cv-80526-DMM

DEFENDANT'S OPPOSING STATEMENT OF MATERIAL FACTS IN RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to S.D.L.R. 56.1(b)(2), Defendant, THE LEAPFROG GROUP ("Leapfrog"), submits Defendant's Opposing Statement of Material Facts in response to Plaintiffs' Statement of Material Facts ("PSOF") in support of Plaintiffs' Motion for Summary Judgment [Dkt Nos. 86-88], and states as follows:

1. Undisputed.

2. Disputed. And, irrelevant. Leapfrog's total revenue for tax year July 1, 2023 to June 30, 2024 is $8,356,867, but "revenue less expenses" is $657. ECF No. 88-79 (IRS Form, at 1). Regardless, this is irrelevant as it has no bearing on whether Leapfrog allegedly committed an unfair or deceptive act in violation of FDUTPA. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) (holding that a declaration did not put forth a "material fact" because it was "irrelevant or unnecessary" and would not "affect the outcome of the suit under the governing law").

3. Disputed. Leapfrog's 2024 IRS Form 990 briefly describes the organization's mission as: "To trigger giant leaps forward in the safety, quality, and affordability of U.S. healthcare by using transparency to support informed health care decisions and promote high-value care." ECF No. 88-79 at 2. PSOF ¶3 otherwise cherry picks phrases from Leapfrog's program service accomplishments reflected in its 2024 IRS Form 990.

4. Disputed. ECF No. 88-42 (Final Stats Doc) makes no reference to how many hospitals Leapfrog "annually distributes" its Hospital Survey to. Rather, it analyzes survey participation for hospitals that *receive* a Hospital Safety Grade. ECF No. 88-42 at 765.

5. Undisputed.

6. Disputed. Missy Danforth, Senior Vice President of the Ratings at Leapfrog, testified that the time it takes a hospital to complete the Hospital Survey "varies" by the type of hospital, its services, and the time commitment reduces year after year. ECF No. 88-91 at 202:14-204:13. Plaintiffs admit that is "minimal effort and no cost" for them to respond to the Leapfrog Hospital Survey. *See,* **Exhibit 1** (12/12/24 Plaintiff Email) at 06465-6466. Dr. Romano confirmed the time it takes to complete the Leapfrog Hospital Survey is "quite different…the first time you do it versus subsequent times." ECF No. 88-97 at 36:8-17 (Romano Dep.).

7. Disputed. Leapfrog's Scoring Methodology incudes eligibility requirements that state "[d]ue to the limited availability of public data, Leapfrog is not able to calculate a Safety Grade for every hospital in the U.S." and goes on to note types of hospitals that do not receive a Safety Grade, including but not limited to "Hospitals that are missing scores for more than six (6) process/structural measures, or more than five (5) outcome measures, or missing PSI 90." ECF No. 88-06 at 3; ECF No. 88-28 at 3047. Thus, Leapfrog does not assign Safety Grades regardless of "whether or not a hospital submits a Survey Response." ECF No. 88-59 at 4 (FAQ) "[u]nfortunately, not all hospitals have enough data publicly available to be eligible for a grade").

8. Disputed. Leapfrog is clear that when making a decision on where to receive health care, "people should consider other aspects of hospital performance in the decision-making process, such as whether the hospital delivers a high level of care for the health concern the patient has, i.e., if the hospital has high-quality obstetrics or orthopedics." ECF No. 88-59 at 6 (FAQ, in "some cases, the only hospitals available in a community are not highly rated" so Leapfrog "offers guidance and resources on [its] website for patients and family members to protect themselves during a hospital stay, which is important no matter the hospital's grade"). *See also,* ECF No. 88-61 at 1 (LF webpage, "[t]he purpose of the [] Safety Grade is to bring this information to light in a way that is easy for you – the consumer – to use…[t]he [] Safety Grade provides data and research to help you make informed decision about a critical aspect of your hospital stay – safety.").

9. Undisputed.

10. Disputed. Dr. Matt Austin, the author of the white paper, Lives Lost Lives Saved, confirmed that based on the current imputed methodology, patients are still twice as likely to die pf a preventable problem at a "C," "D," or "F" hospital than an "A." ECF No. 88-84 (Austin Dep.)

at 105:7-107:1. And that "the numbers with the imputed scores are more reflective of the actual reality." ECF No. 88-84 at 353:16-20.

11. Undisputed.

12. Disputed. The allegations in ¶20 of the Amended Complaint and, in turn, Leapfrog's Answers thereto does not provide a full description of the 12 measures that come from Leapfrog Hospital Survey and used in the Hospital Safety Grade. ECF No. 74, 75. The Leapfrog Hospital Survey is the "primary data source" for 12 of the 22 measures that are used in the Safety Grade. ECF No. 88-44 (Methodology) at 0217515-519. However, of those 12 measures, 9 of them use a "secondary data source" if Hospital Survey data is unavailable. *Id.*

13. Disputed except for numbers cited from ECF 88-42. It is disputed that the imputation model lacks data. ECF 88-91 (Danforth) 155:22-156:2.

14. Disputed. The four "imputed measures" are each defined in detail on Leapfrog's scoring methodology. ECF No. 88-44 at 520-521. Non-reporting hospitals that receive a Hospital Safety Grade use all "secondary data sources" available each of the 12 measures "survey" measures in addition to still using the "primary data source for the other 10 measures. ECF No. 88-44 at 515-519 (Methodology).

15. Disputed. For non-reporting hospitals, Leapfrog uses "two-step imputation approach for determining scores for CPOE, BCMA, IPS, and Hand Hygiene. ECF No. 88-28 at 3058 (fall '24 methodology). In Step 2, "if the hospital does not have historical data from the last two rounds…of the Safety Grade, the hospital is assigned a point value that is equivalent to receiving "Limited Achievement" for this measure on the Leapfrog Hospital Survey. ECF No. 88-28 at 3058. The measure scores associated with each respective performance category, like "Limited Achievement" have never changed since the inception of the Hospital Safety Grade. ECF No. 88-91, 412:11-22. Each measure score was determined by an expert panel in consideration of peer-reviewed literature and subject matter expertise. ECF No. 88-91 at 504: 7-505:18 (Danforth).

16. Disputed. Leapfrog "and the expert panel considers imputed data[,] data." ECF No. 88-91 at 49:7-8 (Danforth). Dr. Austin agrees that "the numbers with the imputed scores are more reflective of the actual reality." ECF No. 88-84 at 353:16-20 (Dr. Austin).

17. Disputed. Leapfrog's eligibility requirements are described in its Scoring Methodology, and includes more than PSOF ¶17 lists. ECF No. 88-28 at 3047.

18. Disputed. The Expert Panel "Guiding Principles" is a document that was used in the "very early development of the Hospital Safety Grade." ECF No. 88-91 at 488:4-489:3 (Danforth). The Guiding Principles and Leapfrog's methodology has "evolved over the past 13 years." ECF No. 88-91 at 497:13-20. Rather, the "expert panel can bring [Leapfrog] any guidance or rationale they have for any change." ECF No. 88-91:9-11.

19. Disputed. And, irrelevant. Leapfrog's revenue has no bearing on whether Leapfrog violated FDUPTA. *Anderson v. Liberty Lobby, Inc*. 477 U.S. 242, 248 (1986) (holding that a declaration did not put forth a "material fact" because it was "irrelevant or unnecessary" and would not "affect the outcome of the suit under the governing law"). Regardless, Leapfrog has never seen a change in revenue in correlation with fluctuated Survey participation. ECF No. 88-91 at 548:5-559-11 (Danforth). Leapfrog's data sets are not "based on the number of hospitals that are reporting. It's the same price, regardless." ECF No. 88-86 at 75:4-12 (Banerjee of LF, Dep.).

20. Disputed. Dr. Romano is a third party and not a Leapfrog employee who can speak to Leapfrog's revenue or "business model." ECF No. 88-34 at 1 (Romano dep. "Patrick S. Romano…Professor of Medicine and Pediatrics, US Davis Division of General Medicine."). Survey participation does not affect revenue because Leapfrog's data sets are not "based on the number of hospitals that are reporting. It's the same price, regardless." ECF No. 88-86 at 75:4-12.

21. Disputed. And, irrelevant. Leapfrog's revenue is irrelevant and has no effect on the outcome of the suit under FDUTPA. *Anderson,* 477 U.S. 242, 248. "[T]he more organizations that are using [Leapfrog] data to assess quality and safety and marking that a component of how healthcare is decided or in educating the public…increases awareness of patient safety, and one of the results of that is [] increased revenue, which goes back into sustaining our mission." ECF No. 88-86 at 31:12-23 (Banerjee). ECF No. 88-79 at 1 (IRS Doc, Leapfrog's "revenue less expenses" is $657). ECF No. 88-2 is an outdated "Business Development Discovery Report" dated 2/13/18.

22. Disputed. Leapfrog's Long Range Strategic Intent demonstrates numerous priorities for Leapfrog including but not limited to education initiatives, increasing policy advocacy, reducing healthcare inequities, and include emergency department measures to the Leapfrog Hospital Survey. ECF No. 88-30. Leapfrog must generate revenue to sustain its mission. ECF No. 88-86 at 268:15-16; 272:16-19 (revenue of a byproduct of Leapfrog's mission); 251:1-9 (the mission results in revenue which is vital to the organization).

23. Disputed. It is Leapfrog's goal and strategic intent to "make giant leaps for patient safety," set higher standards for patient safety, and motivate stakeholders to accelerate momentum for patient safety and transparency. ECF No. 88-19 at 731-733 (Strategic Planning Update).

24. Disputed. Leah Binder's salary is irrelevant. *Anderson,* 477 U.S. 242, 248. *See,* 88-87 at 309:12-310:20 (Binder Dep.) (explaining that compensation is based on both Leapfrog performance as an organization and individual performance in their job duties); 311:4-314:19 (Leah's performance is not associated with revenue-based goals but that only certain other Leapfrog executives whose job duties are aimed towards fundraising have revenue-based goals and stating that bonus compensation on revenue and non-revenue metrics).

25. Disputed. Leapfrog's revenue is irrelevant. *Anderson,* 477 U.S. 242, 248. Regardless, the "Leapfrog Survey has increased since 2012 from 31% to 61%." ECF No. 88-9 at 374 (Grade Panel Meeting Doc); ECF No. 88-87 at 289:16-292:14 (accolade program goals show Leapfrog seeks to have "less dependence on accolade revenue as a percent of overall revenue.").

26. Disputed. Lauren Bailey has no role with respect to Leapfrog's scoring methodology, including its design or implementation. ECF No. 88-85 at 31:21-32:1-16 (L. Bailey Dep.); ECF No. 88-9 at 367 (stating "imputed scores have crept up, making imputation a more favorable choice for lots of hospitals and has de-incentivized true transparency of performance"); ECF No. 88-84, 118:1-119:12 (Austin explains how LF knows imputation scores have "crept up").

27. Disputed. The Spring 2024 methodology used a two-step imputation model for CPOE, BCMA, IPS, and hand hygiene. (Spring '24 Methodology, **Ex. 2** at 287-288. If Step 1 is not applicable for CPOE, BCMA and hand hygiene, then in Step 2 the "hospital is assigned to a cohort of other similar hospitals using three or four hospital characteristics obtained from the most recent CMS Impact File and the 2023 Leapfrog Hospital Survey." *Id.* at 287. For IPS, Leapfrog imputed scores based on the CMS Cost Report, which it had been doing for at least two grade cycles before spring 2024. *Id.* at 290; *also,* ECF 88-91 at 410:7-16 (Danforth).

28. Disputed. Peter Pronovost suggested using the "lowest quartile." ECF No. 88-12 (LF expert meeting transcript) at 26:18-25; ECF No. 88-84 (Austin) at 208:9-21 (Leapfrog"has full decision-making authority…all of the expert panels are acting in an advisory capacity to Leapfrog"); ECF No. 88-91 at 244:13-18 (the expert panel does not vote on changes to the methodology); ECF No. 88-88 (Campione Dep.) at 173:22-175:7.

29. Disputed. Leapfrog could have chosen to impute a measure score of zero, which would be the "lowest score that could be assigned." ECF No. 88-91 at 506:2-13 (Danforth). "Limited Achievement" is the lowest performance category. ECF No. 88-28 at 3052-3053.

30. Disputed. ECF No. 88-97 at 180:11-182:1 (Romano stating that penalizing hospitals is "not an objective in itself"); ECF No. 88-88 (Campione) at 303:15-304:16; 308:15-309:15 (clarifying she "completely agree[s] with the first statement" in Romano's email but stating she does not agree that goal was to penalize non-participants); ECF No. 88-97 (Romano) at 233:4-11.

31. Undisputed.

32. Disputed. The statements contained in ECF No. 88-18 at 88-20, 88-21 and 88-22 are incomplete quotations from comments from hospitals during Leapfrog's transparent public comment period. Moreover, the statements contained in ECF No. 88-18 at 88-20, 88-21 and 88-22 are hearsay barred by Fed. Rules of Evidence 802, Rule Against Hearsay.

33. Disputed. ECF No. 88-24 states that Leapfrog does "acknowledge the commentor's point that the public may misinterpret the assigned measure scores. In response, we will add a new denotation to the Hospital Safety Grade website (https://www.hospitalsafetygrade.org/) for scores that have been imputed" but only with respect to the two commenters that expressed concerns about Step 2 imputation misrepresenting the current procedures or infrastructure of the hospital to the public. This acknowledgement was not in response to all comments. (*Id*., final updates to fall 2024 methodology change).

34. Disputed. On June 18, 2024 at 11:42 A.M. Paulina Litter wrote to Alexandra Campione suggesting five different versions for the footnote that would ultimately be placed for the imputed measure scores; each of these suggested versions used phrasing suggesting to the consumer that the score was "calculated." ECF No. 88-24 at 7864. To make sure that the foot note "was a true representation of the scoring methodology" Alex Campione removed the word "calculated" from the footnote and replaced it with assigned. ECF No. 88-24 at 7863; ECF No. 88-88 (Campione) 382:7-17; *see also*, ECF No. 88-88 at 391:3-19.

35. Disputed. ECF No. 88-84 (Dr. Austin) at 376:1-379:20 (illustrating that limited achievement on the Safety Grade measures is not the lowest score a hospital, participating or non-participating, could receive)

36. Disputed. ECF No. 88-27 at 185 ("The update dramatically lowers imputed scores ***for certain measures*** for hospitals that decline to report to the Leapfrog Hospital Survey."

37. Undisputed. But, irrelevant. *Anderson.*, 477 U.S. at 248.

38. Disputed. ECF No. 88-9 (Panel Meeting Doc.) at 367; ECF No. 88-97 (Romano Dep.) at 63:6-64:13; ECF No. 88-91 at 423:12 – 425:15 (Danforth).

39. Disputed. The statements contained in ECF No. 88-35 are hearsay barred by FRE 802 and lacks foundation. The citations to ECF No. 88-26, 88-84 do not support the contention that one hospital's statement equates, in fact, to the methodology as "marketing blackmail."

40. Undisputed.

41. Disputed. ECF No. 88-69, 88-70, 88-71, 88-72 and 88-73 at p. 2 (LF webpages) (displaying regular sized, red, bold footnote with red text stating "Declined to Report: The hospital was asked to provide this information to the public, but did not.")

42. Disputed. ECF No. 88-69, 88-70, 88-71, 88-72 and 88-73 at p. 2 (displaying regular sized, red, bold footnote with red text stating "The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available.")

43. Disputed. The statement cites to Karen Jupiter's testimony as that of "Leapfrog"; Karen Jupiter was not designated as a 30(b)(6) witness and does not and cannot speak for Leapfrog. ECF No. 88-94 (Jupiter) at 245:1-10) explaining that a decline of a hospital's Grade states that a hospital is comparatively less safe than it may have been previous); *Id.* at 246:2-23 (elaborating that consumers should determine where to receive care on a hospital's **current** safety grade").

44. Disputed as containing a materially incomplete quote. ECF No. 88-60 ("About the Grade") states "The Leapfrog Hospital Safety Grade uses up to 30 national performance measures from the Centers for Medicare & Medicaid Services (CMS), the Leapfrog Hospital Survey and information from other supplemental data sources." Plaintiffs' citations to ECF No. 88-88, ECF No. 88-84 and ECF No. 88-91 simply state that Leapfrog has no ***data*** for these measures which is inherently different from stating there is "no factual basis for assigning the lowest scores to the Four Measures." *See also,* ECF No. 88-91 (Danforth) 497:7-9 ("We consider and the expert panel considers imputed data. And so that is the secondary data source for those measures.")

45. Disputed that the current methodology has never been "peer reviewed." ECF No. 88-84 (Austin) at 89:6-91:14 (the "…methodology has been peer reviewed…").

46. Undisputed that ECF No. 88-59 (FAQ) is correctly quoted, incompletely. (Id.) ("The Hospital Safety Grade uses a public, peer-reviewed methodology, calculated by top patient safety experts under the guidance of a National Expert Panel and is 100% transparent and free to

the public"). Disputed that the "Expert Panel did not consider, review, or approve the Grade methodology adopted in Fall 2024. ECF No. 88-9 (Panel Doc.) at 367-371, 375; ECF No. 88-97 (Romano) at 189:1-17, 190:22-192:15; 198:25-199:14.

47. Disputed. Plaintiffs' citation to ECF No. 88-59 takes the quotation out of context.

48. Disputed. ECF No. 88-84 (Austin) at 110:18-111:21; 106:2-107:1.

49. Disputed. And, Irrelevant. *Anderson*, 477 U.S. at 248; s*ee also* ECF No. 88-5 (Grade History) (showing that Plaintiffs all received "C" grades, between Fall 2021 through Fall 2023, except St. Mary's which received a "B" in Spring and Fall 2022); *see also* ECF No. 26 at ¶19, ECF No. 27 at ¶14, ECF No. 25 at ¶13, ECF No. 24 at ¶13, ECF No. 23 at ¶14.

50. Disputed. *See* ECF No. 88-5 (Plaintiff Grades) (showing that Plaintiffs all received "C" grades, between Fall 2021 through Fall 2023, except St. Mary's which received a "B" in '22),

51. Undisputed.

52. Disputed. The 2025 TikTok video is hearsay barred by FRE 802, lacks foundation, is irrelevant to this dispute as it does not name Leapfrog, was not published by Leapfrog and has no connection to Leapfrog and therefore is barred by FRE 401 and 402.

53. Disputed. ECF No. 88-87 (Binder)at 393:19-394:4; 399:13-400:8; ECF No. 88-85 (Bailey) at 372:7-373 (mischaracterizes answer; they did not go through with any of the PR).

54. Undisputed.

55. Disputed. ECF No. 88-84 (Austin) at 397:19-398:6 is misrepresented. ECF No. 88-87 (Binder) at 390:11-17 (states that it could harm the reputation "but it would especially harm their reputation if they also had one star or they had a bad press report."); ECF No. 88-86 (Banerjee) at 95:19-98-13 makes no reference to impact on reputation or failing grades effecting relationships with payors or physicians. ECF No. 88-91 (Danforth) at 581:14-582:7 simply stated "theoretically" about potential harm to reputation.

56. Disputed. ECF No. 88-93 (Haverciak) at 249:15-250:2; 252:6-253:15; 254:10-12; 261:14-21. Fed. R. Evid. 802; Fed. R. Evid. 805 (testimony containing hearsay statements purportedly made by patients for having a "D" or "F" Safety Grade); *Id.* at 262:3-7 (Plaintiff CEO stating to her knowledge as a 30(b)(6) representative, no documents have been produced linking a decline in revenue to Leapfrog's Safety Grade).

57. Disputed. ECF No. 88-96 (Montgomery) at 65:4-66:18; 148:11-15; 296:3-297:11; 296:24-297:21; 282:16-283:16; 298:4-10.

58. Disputed. ECF No. 88-90 at 78:2-16; 31:21-32:10 (reiterating hearsay statements from patients and doctors purportedly making complaints to him and a "Tik Tok video" to which Fed. R. Evid. 802, Fed. R. Evid. 805, Fed. R. Evid. 901 are applicable to bar from admission as evidence; 40:12-24; 56:2-4).

59. Disputed. ECF No. 88-95 (McCauley) at 175:11-176:21; 229:6-14 (agreeing that SMMC's patient experience scores are poorer than Florida and national average, reflected in its CMS 1-star rating could be improved); ECF No. 88-95 at 238:15-240:14 (CEO testifying that in her purported conversations with patients at SMMC, she cannot recall them mentioning Leapfrog); ECF No. 88-95 at 105:4-12 (CEO confirming that SMMC's revenue is **not down** from 2024 through September 2025) (emphasis added); *see also* ECF No. 88-95 at 231:15-25.

60. Disputed. ECF No. 88-92 (Hanlon) at 81:11-14, 56:13-58:3 (agreeing that CMS star rating impacts WBMC reputation and that WBMC currently has a 2-star CMS rating and may receive a 1-star based on their recent quality data); *Id.* at 36:5-7 (stating that revenue has increased from 2024 to 2025); *Id.* at 78:2-14; 72:19-73:20, 109:11-21 (reiterating hearsay statements from doctors regarding patients which are inadmissible per Fed. R. Evid. 802; Fed. R. Evid. 805).

61. Disputed. ECF No. 88-55 is a letter from an anonymous "Concerned Physician in Boca Raton" inquiring about West Boca's administration of Hepatitis B vaccine to newborns; it is not competent evidence nor proof of the "fact" asserted in PSOF ¶61. ECF No. 88-32 is an email from a Good Samaritan Governing Board member commenting on an article about the Leapfrog Grade, not a "community member;" it is hearsay, and it is not competent evidence nor proof of the "fact" asserted in PSOF ¶61.

Date: November 12, 2025

Respectfully submitted,

/s/ Kimberly E. Blair

Kimberly E. Blair
kimberly.blair@wilsonelser.com
Illinois Bar ID # 6272934
Courtney L. Wood
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)

Jura C. Zibas (Bar #124571)
Wilson Elser Moskowitz Edelman & Dicker LLP
jura.zibas@wilsonelser.com
2063 Main Street, Suite 100
Sarasota, Florida 34237
(941) 866-8561 (Main)
(212) 915-5756 (Direct)

Attorneys for Defendant, The Leapfrog Group

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025, a true and correct copy of the foregoing was served on all counsel or parties of record via the ECF filing system.

By: /s/ *Courtney L. Wood*
COURTNEY L. WOOD

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

GOOD SAMARITAN MEDICAL CENTER, INC., et al.,	)	
Plaintiffs,	)	
v.	)	Case No.: 9:25-cv-80526-DMM
THE LEAPFROG GROUP,	)	
Defendant.	)	

DEFENDANT'S ADDITIONAL FACTS IN RESPONSE TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS

1. "Four commenters supported the change to the imputation methodology." **Ex. 3**[1] ("Fall 2024 Proposed Changes Public Comments" at 0178624, collecting public comments from hospitals in favor of imputation change to prevent poor performing hospitals from "absorbing positive performance" of surrounding hospitals and that "this change would better reflect a hospital's commitment to an overall patient safety program").

2. Leapfrog was founded on the premise of fixing a critical public issue – lack of transparency and accountability in healthcare. **Ex. 4** (Leapfrog History Page). Specifically, it is Leapfrog's mission to "trigger giant leaps forward in the safety, quality and affordability of U.S. health care by using transparency to support informed health care decisions and promote high-value care." (*Id.*).

3. Prior to Fall 2024, if a hospital did not report to the Hospital Survey ("non-reporting hospitals"), then Leapfrog used an imputation model for the "four imputed measures": computerized physician order entry ("CPOE"), bar code medication administration ("BCMA"), ICU physician staffing ("IPS"), and hand hygiene. ECF 88-84 (Austin Dep.) at 82:13-83:2; **Ex. 2** (Spring 2024 methodology) at 287-290. Specifically, the Spring 2024 methodology used a two-step imputation model for CPOE, BCMA, and hand hygiene. *Id.* at 287-288.

4. In Step 1, if "the hospital had a score assigned by Leapfrog in the previous four rounds of grades…excluding imputed scores, the hospital is assigned the most recent score on that

[1] Exhibit numbering is continued from Leapfrog's Response to Plaintiffs' SOF.

measure in the current Hospital Safety Grade." *Id.* at 287. If Step 1 is not applicable, then the "hospital is assigned to a cohort of other similar hospitals using three or four hospital characteristics obtained from the most recent CMS Impact File and the 2023 Leapfrog Hospital Survey." *Id.* Indeed, each possibly applicable cohort score was published in Leapfrog's scoring methodology for hospitals to determine their potential scores. *Id.* at 289-290. For IPS, Leapfrog imputed scores based on the CMS Cost Report, which it had been doing for at least two grade cycles before spring 2024. *Id.* at 290; *see also,* ECF 88-91 (Danforth) at 410:7-16. CPOE, BCMA, IPS, and hand hygiene all used the performance categories to determine their final measure score. **Ex. 2** at 281-284.

5. After clicking "view full score," on a hospital's Score page, scores are reflected through red, yellow, green gas gauges and numerical scores in addition to a side-by-side comparison of "this hospital's score," "best hospital's score," "average hospital's score," and "worst hospital's score." **Ex. 5** (Full Score Page).

6. Each of the five tabs includes (for non-participating hospitals) "**Declined to Report: The hospital was asked to provide this information to the public, but did not.**" In red and bold at the bottom, and an additional red, bold statement with an asterisk when "Practices to Prevent Errors" tab is selected, "***The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available." Ex. 5.**

7. Clicking the "Detailed table view" link (**Ex. 6**) leads to measure-by-measure scores and explanations, and a link to access the full methodology. **Ex. 6** ("Detailed Table View" page). Navigation of the Grades and measure-by-measure scores leads to a link allowing access to the full Methodology. **Ex. 6.**

8. Prior years' Safety Grades reflect that the Plaintiff Hospitals' Grades were declining even before 2024. **Ex. 7** (Historical Safety Grades).

9. West Boca's Safety Grade did not change from a "D" upon the fall 2024 Methodology change. **Ex. 7** at 0006504.

10. The pre-Fall 2024 Methodology change solely related to the imputation model; the methodology and measures otherwise stayed the same. **Ex. 2** (Spring 2024 Methodology); ECF No. 88-28 (fall 2024 methodology).

Date: November 12, 2025 Respectfully submitted,

/s/ Kimberly E. Blair

Kimberly E. Blair
kimberly.blair@wilsonelser.com
Illinois Bar ID # 6272934
Courtney L. Wood
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)

Jura C. Zibas (Bar #124571)
Wilson Elser Moskowitz Edelman & Dicker LLP
jura.zibas@wilsonelser.com
2063 Main Street, Suite 100
Sarasota, Florida 34237
(941) 866-8561 (Main)
(212) 915-5756 (Direct)

Attorneys for Defendant, The Leapfrog Group