

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' REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Leapfrog’s opposition to the Community Hospitals’ Motion for Summary Judgment confirms that Leapfrog’s practices concerning its so-called “Safety Grades” are unfair and deceptive. Although Leapfrog publicly professes that its mission is to promote “transparency and accountability in health care,” Opp. 2, the undisputed evidence shows that behind closed doors, Leapfrog purposely tries to hide the ball about how those Grades actually work. Leapfrog’s opposition offers no record evidence rebutting Leapfrog’s core misrepresentations. Instead, Leapfrog relies on semantics and post-hoc distinctions—like saying participation does not affect Grades because it does not “necessarily” do so, deeming “imputed data” real data, and claiming the new methodology is peer reviewed because a prior version was peer reviewed twelve years ago. None of these arguments raises a genuine issue of material fact.

Similarly, Leapfrog fails to refute the harm that its deceptive statements have caused to consumers. And Leapfrog ignores overwhelming evidence that its false Safety Grades have aggrieved the Community Hospitals. In direct response to the Grades, a respected insurance company urged the Hospitals to address “performance on safety measures,” community members questioned the Hospitals’ competence, and the Hospitals’ CEOs consistently testified that patients cancelled procedures and physicians signed up with competitors. Leapfrog offers no contrary documents or testimony. On this record, the harms are undisputed.

Leapfrog’s Safety Grades continue to cause ongoing harm. Just days ago, Leapfrog released its latest Grades slamming the Community Hospitals anew and deceiving the public about its methodology yet again. It is time for Leapfrog’s brazen campaign of unfair and deceptive practices to end. Leapfrog’s opposition identifies no genuine issue of material fact on deception, unfairness, or aggrievement. Where a defendant offers no evidence to contradict the material facts—and those facts are established primarily through a defendant’s own admissions—summary judgment is warranted because the record establishes each FDUTPA element as a matter of law.

ARGUMENT

I. THERE IS NO GENUINE DISPUTE THAT LEAPFROG’S “SAFETY GRADES” ARE DECEPTIVE AND UNFAIR UNDER FDUTPA

Leapfrog does not contest that it operates in commerce, MSJ Br. 15, or that an injunction is appropriate if its practices are deceptive or unfair, MSJ Br. 19-20. Instead, its opposition argues four principal points: (1) the Safety Grades and associated representations are not, in fact,

deceptive; (2) the Community Hospitals failed to identify specific consumers who actually relied on the Safety Grades; (3) Leapfrog's practices are not "unfair" because of the purported lack of consumer harm and alleged countervailing benefits; and (4) the Community Hospitals failed to show aggrievement with admissible evidence. Each of these inquiries "may be decided as a matter of law," *Casey v. Fla. Coastal Sch. of L., Inc.*, 2015 WL 10096084, at *6 (M.D. Fla. Aug. 11, 2015), and the Rule 56 standard is easily satisfied here because Leapfrog identifies no "affirmative evidence," *Crawford-El v. Britton*, 523 U.S. 574, 600 (1998)—let alone "specific facts"—*Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)—creating any genuine dispute as to deception, unfairness, or aggrievement.¹ Its opposition rests entirely on attorney argument and linguistic sleights of hand, neither of which can defeat summary judgment.

A. There Is No Genuine Dispute That The Safety Grades Are Deceptive

Leapfrog's opposition exposes its lack of a legitimate defense on FDUTPA's "deceptive" prong. Rather than identifying record evidence showing that the Safety Grades are non-deceptive—as Rule 56 requires—Leapfrog instead offers reams of generalized argument. But such "attorney arguments do not create a genuine issue of material fact," *M Ship Co. v. Ice Marine Ltd.*, 2008 WL 11403231, at *1 n.4 (S.D. Fla. Nov. 21, 2008), and those arguments are both legally irrelevant and meritless. FDUTPA concerns whether representations are "likely to mislead [a] consumer acting reasonably," not the spin that lawyers put on those representations in litigation. *Waste Pro USA v. Vision Constr. ENT, Inc.*, 282 So. 3d 911, 917 (Fla. 1st DCA 2019). The evidence confirms that Leapfrog is "likely to," and in fact does, mislead consumers. And critically, Leapfrog cites no evidence—none—showing that any of its challenged statements are true.

1. Leapfrog says it does not deceive consumers by claiming that "[t]he Hospital Safety Grade reflects how well a hospital does on safety, not whether they complete the Leapfrog Hospital Survey." Opp. 7. Citing no evidence, Leapfrog contends that this statement is "not synonymous" with saying that "participation does not affect Grades" because "the reason" Leapfrog changed its methodology was to "encourag[e] survey participation." *Id.* That is mere argument, not evidence, and ducks the relevant legal question. Whether a reasonable consumer likely would be misled has nothing to do with the purported "reason" Leapfrog changed its methodology. What matters is

¹ The Community Hospitals' 56.1 statement identified 61 undisputed material facts in support of summary judgment. Of those, Leapfrog admitted 9 as undisputed. The rest of Leapfrog's "disputes" are entirely non-responsive, see R-PSOF ¶¶ 2, 6-19, 21-23, 25-26, 28-30, 34, 38, 41, 42, 48-50, lack supporting evidence, see ¶¶ 6, 13, 19-20, 24, 32, 37, 43-47, 53-61, and/or raise immaterial disputes, see ¶¶ 2-4, 7-8, 17, 21, 27, 33, 35-36, 39-42, 52.

“how a reasonable consumer would interpret” the representation. *Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699, 703 (Fla. 3d DCA 2000); SOF ¶ 47. Any reasonable consumer would understand Leapfrog to be saying that participation does *not* affect a Safety Grade.

But the record shows that non-participation *does* affect Safety Grades, as Leapfrog’s opposition concedes. Leapfrog admits that “[s]ome hospital[s]’ Safety Grades *may feel negative effects* from receiving limited achievement scores and some may not be affected at all.” Opp. 9 (emphasis added). In other words, *some* non-participants may score low enough on non-imputed metrics that arbitrarily assigning them low scores on imputed metrics happens not to affect their overall Grade. That evasive technicality is no defense: misrepresenting a methodology is deceptive regardless of whether it might not impact particular cases. And it *did* matter here; Leapfrog never denies that its new methodology *was* outcome-determinative in reducing each of the Community Hospitals’ Safety Grades. SOF ¶¶ 49-50.² Thus, the only record-supported conclusion is that while Leapfrog tells consumers participation does not matter, its own admissions show the opposite.

That is why Leapfrog does not even attempt to defend its actual representation—that scores do “not” reflect “whether [hospitals] complete the ... Survey,” SOF ¶ 47—and instead defends the distinct new propositions that “participation does not *necessarily* affect a hospital’s grade” and “does not, *per se*, affect” Safety Grades. Opp. 8, 9 (emphases added). Nowhere does Leapfrog explain (with record evidence or otherwise) where it made those novel, cagey distinctions clear to consumers. Because it never did. It simply tells them, flatly but falsely, that participation does “not” affect Grades. Leapfrog’s public-facing statements contain none of its new qualifications.

2. Leapfrog also has no real response to its false assertion that it does not assign Safety Grades to hospitals when it lacks sufficient data. SOF ¶¶ 13, 17-18. Leapfrog claims that “[a] hospital must have enough safety data available for our experts to issue [it] a letter grade,” so “[h]ospitals missing more than six process measures ... are not graded.” SOF ¶ 17. In reality, Leapfrog grades nonparticipants despite lacking data on *seven* measures. MSJ Br. 11. That is not “a mere conclusion,” Opp. 10, but comes straight from *Leapfrog’s own Answer*. That document makes clear that, for nonparticipants, Leapfrog “abandons three measures,” uses imputation for four, and that imputation is how Leapfrog assigns “a value for a measure when [Leapfrog] *lacks any data*

² Leapfrog deflects by noting that Delray and West Boca received “D” Safety Grades in Spring 2024 and therefore were already “failing” before receiving “F” Safety Grades in Spring 2025. Opp. 9. That observation is beside the point. Their Safety Grades (like those of the other Community Hospitals) dropped a full letter grade after Leapfrog adopted its arbitrary Fall 2024 methodology, SOF ¶ 50, and downgrading from a “D” to an “F” is obviously harmful.

pertaining to it.” Answer ¶¶ 21-22 (emphasis added). “A fact admitted by [an] answer is no longer a fact in issue,” *Hill v. FTC*, 124 F.2d 104, 106 (5th Cir. 1941), and is “‘beyond the power of evidence to controvert,’” *Cooper v. Meridian Yachts, Ltd.*, 575 F.3d 1151, 1178 (11th Cir. 2009). Leapfrog’s claim that it “*does* have data for the four ‘imputed measures,’” Opp. 11, contradicts “its admission” and thus cannot “create a genuine dispute of material fact,” *RJ’s Int’l Trading, LLC v. Crown Castle S. LLC*, 2021 WL 12323951, at *5 (S.D. Fla. Nov. 15, 2021).

In any event, the snippets of CEO Leah Binder’s deposition Leapfrog now tries to rely on, *see* Opp. 10-11, do not create a genuine issue on whether “imputed data” is real data. Leapfrog’s science advisors, including Dr. Patrick Romano and Dr. Matthew Austin, confirmed imputed scores are *not* based on real-world data, since their “purpose” is “not accuracy.” SOF ¶ 38. As Dr. Austin explained, imputing failing scores is “based on a *lack* of data,” so Leapfrog does not have “any information to know how” nonparticipants actually perform on those measures. SOF ¶ 16. Those admissions foreclose any claim that Leapfrog has sufficient data to grade nonparticipants. There is no genuine dispute that it does so even when missing data on more than six measures.

3. Leapfrog effectively concedes deception on its claim that its methodology is “peer reviewed.” SOF ¶ 45. If that claim were true, one would expect Leapfrog to point to *something*—an article, a memo, an email—in support. Yet it does not, because the evidence shows the opposite: Leapfrog’s Expert Panel *never considered* the Fall 2024 Safety Grade methodology at issue in this case. SOF ¶ 45. So Leapfrog again forgoes evidence in favor of attorney argument. Leapfrog says its website is not deceptive because it “just says that the methodology has been peer reviewed”—that is, a *prior* version, but not “the current ... methodology,” was peer reviewed. Opp. 11 (quoting ECF 88-84 at 88:16-18). In reality, the website states that “[t]he Hospital Safety Grade *uses*”—present tense—“a public, peer-reviewed methodology,” R-PSOF ¶ 46 (emphasis added), without any indication that it refers to a superseded methodology rather than the current one. Statements that convey a misleading impression are deceptive even if purportedly accurate in some technical, narrow sense; FDUTPA prohibits “implicit deception” as well as explicit misstatements. *Office of Att’y Gen. v. Moving & Storage Acct. Inc.*, 2020 WL 7427021, at *4 (S.D. Fla. May 28, 2020). Because Leapfrog falsely portrays its current methodology as peer reviewed—and because Leapfrog fails to adduce any record evidence showing that is so—there is no genuine issue here.³

³ Leapfrog claims to dispute the point, R-PSOF ¶ 45, with Dr. Austin’s testimony, but acknowledges he “conceded

4. Leapfrog also identifies no genuine dispute that its “gas gauge” graphics are deceptive and misleading. Those graphics falsely claim that a “Hospital Performs ... Worse Than Average” on the imputed metrics, SOF ¶ 40, R-PSOF ¶ 40, despite Leapfrog’s lack of data substantiating that nonparticipants in fact perform worse—creating the false impression that the hospital *did* report negative information on the supposedly “failing” imputed gauges. SOF ¶ 40. Yet the undisputed record shows that the failing gas-gauge visuals are based solely on imputation, SOF ¶¶ 35, 40; R-PSOF ¶¶ 35, 40, which itself rests on no underlying data, SOF ¶¶ 16, 44; R-PSOF ¶ 44. So the graphic falsely conveys performance information that Leapfrog acknowledges it does not have—which is deceptive as a matter of law.

Seeking to dodge that problem, Leapfrog defends a brand-new explanation of the gauges found nowhere on the relevant webpages. It says the gauges are not deceptive because they “accurately reflec[t]” that a hospital received “comparatively a ‘worse than average’ score to other hospitals for that measure.” Opp. 12-13. But that is no answer either. Leapfrog points to *nothing* in the record suggesting that consumers understood the gauges to merely depict hospitals’ relative placement within an imputation-driven scoring system, rather than how those hospitals actually perform on the listed measures in the real world.

In fact, Leapfrog says the very opposite on the same pages. The “legal disclaimer” under the gas gauges falsely asserts that Leapfrog “scores hospitals on their overall performance in keeping patients safe.” RSOF ¶ 6. That unqualified representation—that Leapfrog’s measures depict a hospital’s *actual* performance—tells consumers the gauges reflect real-world performance, not scores assigned solely because Leapfrog lacks data.

And Leapfrog’s arguments about the other disclaimer are beside the point. That disclaimer merely asserts that “[t]he hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available.” Opp. 10 (citing ASOF ¶ 6); Opp. 12. But that statement merely says a score “was assigned” without explaining how—Leapfrog arbitrarily awarded a limited-achievement score even though it has no supporting data, SOF ¶ 16—

that the imputation methodology is not peer reviewed,” Opp. 11. He testified it is not deceptive to call the methodology “peer reviewed” because a *prior version* was peer reviewed in 2013 and Leapfrog’s “general approach remain[ed] consistent.” Opp. 11 (quoting ECF 88-84 at 88:16-18). This is wrong, as Leapfrog’s own motion in limine concedes. See ECF 98 at 13 (Leapfrog’s “prior Safety Grade methodologies” are “*not* the Safety Grade Methodology in place as of Fall 2024 which is at issue in this litigation”). And Leapfrog personnel undisputedly described the 2024 methodology as a “Drastic Change,” “a very big deal,” and one that “dramatically lowers imputed scores for certain measures” for non-participating hospitals. Compare SOF ¶¶ 29, 36, 39, with R-PSOF ¶¶ 29, 36, 39.

and thus does nothing to dispel the misleading impression that the gauges represent real-world performance. Without disclosing that the “assigned” score is a failing value derived entirely from imputation, that partial disclosure simply highlights Leapfrog’s “deceptive non-disclosure.” *Suris v. Gilmore Liquidating, Inc.*, 651 So. 2d 1282, 1283 (Fla. 3d DCA 1995).

5. Leapfrog argues that its misrepresentations are harmless because it discloses its “Scoring Methodology.” Opp. 7, 8, 10. That argument does not create a genuine dispute. That document is buried *elsewhere* on Leapfrog’s website; consumers must navigate away from the failing Safety Grades and gas gauges to a separate web page to see it. ASOF ¶ 7. The Grades and gauges are misleading “regardless of additional disclosures” if consumers viewed them “without scrutinizing” the Scoring Methodology, *Bohlke v. Shearer’s Foods, Inc.*, 2015 WL 249418, at *9 (S.D. Fla. Jan. 20, 2015), and Leapfrog points to *nothing* suggesting that consumers routinely dug up (much less understood) that separate document. Indeed, only about *three percent* of those who view the Hospitals’ Grades download the Scoring Methodology document, and Leapfrog’s own CEO conceded that the document “is not that accessible to the average layman,” RSOF ¶ 7—points that eliminate any factual dispute on whether the disclosure cures the deception. Leapfrog’s rarely accessed and admittedly impenetrable methodology document cannot immunize its deceptive representations.

6. Unable to defend its deception, Leapfrog changes the subject: It says the Community Hospitals failed “to show that [a] consumer relied on a Leapfrog Safety Grade to their detriment.” Opp. 7. That position clashes with Leapfrog’s own public messaging: Leapfrog urges consumers to “always decide on where to receive care based on a hospital’s current Safety Grade,” SOF ¶ 8, promotes and disseminates its Safety Grades to consumers through coordinated media campaigns, SOF ¶ 51; R-PSOF ¶ 51, and now claims in litigation that no consumers actually rely on those same Safety Grades. That facially implausible assertion is irrelevant and wrong.

FDUTPA does not require showing that individual consumers “actually relied” on an “illegal misrepresentation.” See *Carriulo v. Gen. Motors Co.*, 823 F.3d 977, 986 (11th Cir. 2016); accord *Turner Greenberg Assocs., Inc. v. Pathman*, 885 So. 2d 1004, 1009 (Fla. 4th DCA 2004) (“[A] demonstration of reliance by an individual consumer is not necessary in the context of FDUTPA.”). Instead, the Florida Supreme Court asks whether ““there is a representation, omission, or practice that is *likely* to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.”” *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003) (emphasis added). So “[a] likelihood of consumer confusion is a sufficient basis for

injunctive relief under FDUTPA.” *Ghostbed, Inc. v. Casper Sleep, Inc.*, 2016 WL 4145909, at *3 (S.D. Fla. July 19, 2016). That accords with the FTC Act (which FDUTPA tracks, MSJ Br. 14), and FDUTPA’s text, which permits enjoining practices “likely to violate” the law—not just already-consummated violations, Fla. Stat. § 501.211(1). Leapfrog’s contrary rule would undermine FDUTPA by perversely barring plaintiffs from enjoining fresh misrepresentations, and instead would require permitting deception to fester so that injured consumers could accumulate.⁴

In any event, the Community Hospitals *did* introduce admissible evidence of how consumers were misled, which Leapfrog either ignores or erroneously deems “hearsay.” At the outset, Leapfrog wrongly narrows the term “consumers” to “patients.” Opp. 14. But FDUTPA defines “consumer” broadly to include any “individual,” “business,” “corporation,” “or any other group or combination,” Fla. Stat. § 501.203(7), at least where those entities are not themselves the “provider” of the challenged service, *State Farm Mut. Auto. Ins. Co.*, 2024 WL 4349246, at *5. The Community Hospitals’ evidence readily clears that threshold.

First, patients were deceived into switching to competitor hospitals. The Community Hospitals’ CEOs testified (undisputedly) that admissions declined, *see, e.g.*, SOF ¶¶ 57, 59-60, shortly after Leapfrog blasted the Safety Grades throughout Florida, SOF ¶¶ 58-59; *accord* R-PSOF ¶¶ 57-60. That “temporal” proximity is “powerful evidence” of causation. *In re Stand ‘N Seal Prods. Liab. Litig.*, 623 F. Supp. 2d 1355, 1374 (N.D. Ga. 2009). The CEOs also directly testified that, for example, “patients” were “voicing complaints about the hospital’s low safety score.” ECF 88-90 (Cazares), at 89:20-21. Those complaints obviously do not concern “the truth of the matter asserted,” Fed. R. Evid. 801(c)(2) (*i.e.*, that a hospital actually performs poorly on patient safety, which the Hospitals vigorously dispute), but show consumers were duped into believing the hospitals are unsafe—which is admissible and directly relevant to FDUTPA. *See Lincare Holds., Inc.*

⁴ Leapfrog cites *no* contrary Florida Supreme Court case, and none of its other cited decisions undermines the Community Hospitals’ analysis. *Novo Nordisk, Inc. v. Brooksville Pharms., Inc.*, 785 F. Supp. 3d 1123, 1146 (M.D. Fla. 2025), merely involved the “hypothetical possibility of some future injury” to consumers, and in any event that decision’s FDUTPA analysis is both vacated and “*dicta*,” 2025 WL 2306505, at *2, *4 (M.D. Fla. June 30, 2025). *Stewart Agency, Inc. v. Arrigo Enterprises, Inc.*, 266 So. 3d 207, 214 (Fla. 4th DCA 2019), found no injury to consumers because “there was no evidence” of “any misrepresentations.” In *CMR Constr. & Roofing, LLC v. UCMS, LLC*, 2022 WL 3012298, at *5 (11th Cir. July 29, 2022), and in *State Farm Mut. Auto. Ins. Co. v. At Home Auto Glass, LLC*, 2024 WL 4349246, at *5 (M.D. Fla. Sept. 30, 2024), the plaintiffs (a roofing company and an insurer) alleged only that *they* (and no one else) were consumers, but failed to show that *they* consumed roofing and insurance services. *Caribbean Cruise Line, Inc. v. Better Business Bureau of Palm Beach Cnty., Inc.*, 169 So. 3d 164, 169 (Fla. 4th DCA 2015), affirmed the “likely to mislead” standard and never purported to require a showing of individualized actual reliance. And *Qunjian v. Globoforce*, 89 F.4th 852, 861 (11th Cir. 2023), framed the standard exactly as do the Community Hospitals, looking to whether actions “injured or were likely to injure consumers.” *Id.* (emphasis added).

v. Doxo, Inc., 2024 WL 865881, at *2 (M.D. Fla. Feb. 29, 2024) (collecting cases). Nor does FDUTPA require evidence of adverse medical outcomes at competitors; deception of the public is the harm under FDUTPA. It is deceptive, for example, to *trick* consumers into using a service even if they “were happy with” it. *Latman*, 758 So. 2d at 702. *Second*, physicians were likewise deceived, since they chose to sign up with an “A”-rated competitor. *Compare* SOF ¶ 57, with R-PSOF ¶ 57 (identifying no dispute). *Third*, an insurer (Humana) was deceived into believing two of the Hospitals are unsafe, prompting it to send concerned letters to each. *Compare* SOF ¶¶ 56, 60, with R-PSOF ¶¶ 56, 60 (failing to dispute Humana letters). Those letters show Humana was misled by the Safety Grades, not the truth of any underlying safety claim. *Fourth*, the Hospitals are themselves injured consumers of Leapfrog’s Safety Grades. *See infra* 9-10. Despite arbitrarily positing that only “patients” can be consumers, Opp. 14, Leapfrog immediately thereafter admits that hospitals also consume its products, *id.* (noting that “hospitals use” the Survey for “benchmarking”). That the Hospitals were not themselves deceived about their own quality of care is irrelevant, since “subjective reliance” is not required under FDUTPA. *Webber v. Esquire Deposition Servs., LLC*, 439 F. App’x 849, 851 (11th Cir. 2011) (*per curiam*).

B. There Is No Genuine Dispute That The Safety Grades Are Unfair

Leapfrog also has failed to raise any genuine dispute that the Safety Grades are an “arbitrarily assign[ed]” “penalty” “based on a lack of data,” the “purpose” of which “is not accuracy.” *Compare* SOF ¶¶ 16, 34, 38, with R-PSOF ¶¶ 16, 34, 38. Leapfrog asserts that “the imputation model was not intended to ‘punish,’” Opp. 10, but identifies *no* record support. And it agrees that its revenues hinge on how widely its Survey is used. SOF ¶ 20; R-PSOF ¶ 21.

The most Leapfrog can say is that employee Alexandra Campione later “clarified” her admission that the Safety Grades are arbitrary by claiming she was merely saying the *points* assigned are “arbitrary ... from a mathematical standpoint,” Opp. 12, *i.e.*, giving “15 points, not 16 points” as the lowest-achievement score. ECF 88-88 (Campione) at 391:9-14. But her testimony does not contradict her contemporaneous internal statement that Leapfrog was “arbitrarily assigning [hospitals] the points associated with the bottom scoring category (‘limited achievement’),” since the “data” they were imputing to nonparticipants was “random.” SOF ¶ 34; R-PSOF ¶ 34. Her concern was clear: Leapfrog was flunking hospitals without supporting data.

Leapfrog thus fails to dispute, with any record evidence, that its new methodology is a penalty, based on no data, to coerce participation. Under the Florida Supreme Court’s controlling

test, that conduct ““offends established public policy”” and is “oppressive” and “unscrupulous.” *PNR, Inc.*, 842 So. 2d at 777. It offends public policy because FDUTPA was enacted to countermand such “deceptive and bullying conduct.” *Marco Island Cable v. Comcast Cablevision of S., Inc.*, 312 F. App’x 211, 214 (11th Cir. 2009). It is “oppressive” because it is designed “to induce” participation, *id.*, on pain of made-up, reputation-damaging Safety Grades. And it is “unscrupulous” due to Leapfrog’s dishonesty about what its Safety Grades actually represent.

The alternative, three-factor test leads to the same result. Leapfrog again asserts no consumer harm, Opp. 14, which is wrong. *See supra* 7-8. Leapfrog also claims its Survey has “countervailing benefits” because some hospitals purportedly use it “as a benchmarking tool” to “improve on their own patient safety measures.” Opp. 14. But any public benefit must derive from the specific unfair practices challenged here—not its Survey in the abstract. There is “no countervailing benefi[t]” to “intimidating, threatening, and coercing consumers,” *FTC v. World Patent Mktg., Inc.*, 2017 WL 3508639, at *16 (S.D. Fla. Aug. 16, 2017), and ““[c]onsumer deception, by its very nature, is against the public interest,”” *Osmose, Inc. v. Viance, LLC*, 2009 WL 10665750, at *10 (N.D. Ga. Mar. 20, 2009). Leapfrog claims that hospitals and patients “could reasonably avoid” these unlawful practices, citing irrelevant disclaimers on its website. Opp. 15. But Leapfrog never explains the *factual* basis for that conclusion, and never disputes that it wages an all-out media campaign to promote and disseminate the Safety Grades in Florida. SOF ¶¶ 51-53; R-PSOF ¶ 51. And the made-for-litigation claim that its Survey is “voluntary” ignores the record evidence of the coercive pressure Leapfrog purposely places on hospitals to participate. SOF ¶¶ 38-39.

C. There Is No Genuine Dispute On Aggrievement

There is also no genuine dispute that the Community Hospitals are “aggrieved” by Leapfrog’s unlawful practices. “[A]ggrievement” under FDUTPA is “expansive,” requires merely some “specific ... grievance,” and, for injunctions, does not require showing economic harm. *Ahearn v. Mayo Clinic*, 180 So. 3d 165, 172-73 (Fla. 1st DCA 2015); MSJ Br. 8. Leapfrog contends the Hospitals were not aggrieved because: (1) certain evidence is “inadmissible hearsay”; (2) *overall* revenues or admissions are “not down”; and (3) reputational harms are purportedly attributable to other causes (*i.e.*, “CMS star ratings”). Opp. 17. Each fails as a matter of law.

First, the Community Hospitals’ aggrievement evidence is not “hearsay.” Take the letters from Humana, a prominent insurer. Expressly referencing Leapfrog’s Grades, Humana implored the Hospitals to reassess “your performance on safety measures” and adopt a “strategy to improve

performance.” SOF ¶¶ 56, 60; ECF 88-52; ECF 88-53. Those letters show that Leapfrog misled Humana into believing the Hospitals are unsafe, not that they in fact *are* unsafe. So too with the TikTok video (noting the precise Grades certain Hospitals were assigned, SOF ¶ 52), and a competitor’s efforts to market itself as the area’s only “A”-graded hospital, SOF ¶ 54. The Hospitals are offering those statements to show reputational impact, not that they in fact are the “worst” or inferior to a competitor. And the CEOs’ testimony on reputational harms (alone sufficient for injunctive relief, *see* MSJ Br. 15), declining admissions, and resource diversion to handle complaints plainly could “be reduced to admissible form” with testimony “at trial,” *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1294 (11th Cir. 2012). Leapfrog fails to controvert any of this evidence.

Second, Leapfrog’s claim that the Community Hospitals were not harmed because certain *overall* metrics remained positive is legally irrelevant. That a plaintiff may have “generated a net profit ... does not demonstrate that [it] suffered no harm.” *Wyndham Vacation Ownership, Inc. v. Slattery, Sobel & Decamp, LLP*, 2024 WL 5703196, at *11 (M.D. Fla. Aug. 14, 2024); *accord Pals Grp. v. Quiskeya Trading Corp.*, 2017 WL 5598721, at *4 (S.D. Fla. Nov. 20, 2017).

Third, whether an independent publication (such as “CMS star ratings,” Opp. 18) “also contributed” to these injuries “is beside the point,” since illustration of “proximate cause” does not require showing that Leapfrog was the “sole cause.” *Cox v. Adm’r U.S. Steel & Carnegie*, 17 F.3d 1386, 1399 (11th Cir. 1994) (emphasis added). The only question is whether Leapfrog’s acts causally contributed to the harm—as to which there is no genuine dispute.

II. LEAPFROG’S “AFFIRMATIVE DEFENSES” ARE MERITLESS

Leapfrog’s opposition ignores its “good faith” defense, which should be “deemed abandoned.” *GolTV, Inc. v. Fox Sports Latin Am. Ltd.*, 277 F. Supp. 3d 1301, 1311 n.7 (S.D. Fla. 2017). Good faith is irrelevant under FDUTPA, MSJ Br. 19, and foreclosed by Leapfrog’s willful deception. Leapfrog also cites nothing showing that mitigation of damages applies to an *injunction*; its own case shows the opposite. *See Team Sys. Int’l LLC v. Aquate Corp.*, 682 F. App’x 820, 824 (11th Cir. 2017) (“[O]ur review focuses solely on the court’s damages analysis.”). Nor does Leapfrog dispute that its misnomer “affirmative defense” of anti-SLAPP hinges on whether this case implicates its “constitutional rights of free speech,” Fla. Stat. § 768.295(1)—a notion this Court already rejected, Dkt. 41 at 5-6, and which Leapfrog supplies no basis to reexamine.

CONCLUSION

The Community Hospitals’ motion for summary judgment should be granted.

Dated: November 19, 2025

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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.

**THE COMMUNITY HOSPITALS' RESPONSE TO DEFENDANT'S ADDITIONAL
FACTS IN RESPONSE TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS**

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1. **UNDISPUTED** that the first page of the Leapfrog document “Fall 2024 Proposed Changes to Public Comments” (ECF No. 105-3 at 8624) purports to reflect four “proponents” of the Fall 2024 Safety Grade methodology change. The Community Hospitals otherwise dispute Statement No. 1 on the ground that the purported quotation reflected in the Statement appears nowhere within ECF No. 105-3. The Community Hospitals otherwise object to Statement No. 1 on the ground that the wording is vague and confusing and omits the remainder of the document (ECF No. 105-3 at 8625-27), which reflects six commenters who objected to the Fall 2024 Safety Grade methodology change. Any dispute of fact with respect to Statement No. 1 is immaterial.

2. **UNDISPUTED** that Leapfrog claims it was founded to fix lack of transparency and accountability in healthcare and that it claims its mission is to “trigger giant leaps forward in the safety, quality and affordability of U.S. health care.” ECF No. 105-4 at 3. The Community Hospitals object to Statement No. 2 on the ground that the cited document, ECF No. 105-4, does not support the premise that Leapfrog was founded to address the lack of transparency and accountability in healthcare. Further, ECF No. 105-4 is titled “Mission and Vision,” and not “Leapfrog History Page,” as Leapfrog claims in Statement No. 2. Any dispute of fact with respect to Statement No. 2 is immaterial.

3. **UNDISPUTED**, BUT INCOMPLETE. For hospitals that did not participate in Leapfrog’s Hospital Survey, and for which Leapfrog did not have historical data from the last two rounds of the Safety Grade, the “imputation method” used for CPOE, BCMA, IPS, and Hand Hygiene prior to Fall 2024 did not automatically assign such hospitals the point value equivalent to “Limited Achievement” scores. ECF No. 105-2 at 9287; ECF No. 88-28 at 3058.

4. **UNDISPUTED**, to the extent Statement No. 4 can be read to say that the Spring 2024 grading methodology document (ECF No. 105-2) describes Step 1 imputation as it existed at that time, lists the CPOE, BCMA, and Hand Hygiene scores for 12 different cohorts, states Leapfrog uses the “CMS Cost Report” to impute an IPS score to non-participating hospitals, and describes each “performance category” as being associated with a specific measure score, *e.g.*, “Achieved the Standard” has a measure score of 100. ECF No. 105-2 at 9281-84, 9287, 9289-90. The Community Hospitals otherwise object to Statement No. 4 as vague and confusing. Any dispute of fact with respect to Statement No. 4 is immaterial.

5. **UNDISPUTED**.¹

6. **UNDISPUTED**, BUT INCOMPLETE, to the extent Statement No. 6 can be read to say that the Safety Grade webpage on hospitalsafetygrade.org shows five tabs—Infections, Problems with Surgery, Safety Problems, Practices to Prevent Errors, and Doctors, Nurses & Hospital Staff—and for nonparticipating hospitals the website includes a footnote at the bottom of the page that says, “Declined to Report: The hospital was asked to provide this information to the public, but did not,” and that only when certain measures under the “Practices to Prevent Errors” tabs are selected—specifically “Doctors order medications through a computer,” “Safe medication administration,” or “Handwashing”—there is a footnote at the bottom of the webpage that reads, “The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available.” The Safety Grade webpage also represents to viewers that Leapfrog “scores hospitals on their overall performance in keeping patients safe from preventable harm and medical errors.” ECF No. 105-5 at 3; ECF 88-69 at 3; 88-70 at 3, 88-71 at 3, 88-72, 88-73 at 3. The Community Hospitals otherwise object to Statement No. 6 as vague and confusing. The Community Hospitals also object that ECF No. 105-5 does not support the statement as written. Any dispute of fact with respect to Statement No. 6 is immaterial.

7. **UNDISPUTED**, except to the extent Leapfrog asserts disclosure of its Safety Grade scoring methodology (ECF No. 105-6 at 2-3) cures consumer deception. Leapfrog’s CEO Leah Binder admitted that “the document on scoring methodology is not that accessible to the average layman,” *see* ECF 88-87 (Binder) at 409:12-16, and analytics data shows that only about three percent of users who navigated to the Community Hospitals’ Safety Grade website pages on hospitalsafetygrade.org download the document, *see* Ex. 1 at 4707² (Delray Grade and Detail Table Views), Ex. 2 at 4708 (Delray Methodology Downloads), Ex. 3 at 4711 (Good Samaritan Grade and Detail Table Views), Ex. 4 at 4710 (Good Samaritan Methodology Downloads), Ex. 5 at 4714 (Palm Beach Grade and Detail Table Views), Ex. 6 at 4713 (Palm Beach Methodology Downloads), Ex. 7 at 4716 (St. Mary’s Grade and Detail Table Views), Ex. 8 at 4718 (St. Mary’s

¹ ECF No. 105-5 does not state “view full score,” and the navigational portion of the website referred to states “view the full score,” though that difference is immaterial.

² Citations to “Ex.” refer to Exhibits to the Declaration of Mary Beth Maloney in Support of the Community Hospitals’ Response to Defendant’s Additional Facts in Response to Plaintiffs’ Statement of Material Facts. Citations to Exhibits with a Bates stamp refer to the last four digits of the Bates stamp.

Methodology Downloads), Ex. 9 at 4721 (West Boca Grade and Detail Table Views), Ex. 10 at 7420 (West Boca Methodology Downloads). The Community Hospitals otherwise object to Statement No. 7 as vague and confusing.

8. **DISPUTED**, BUT IMMATERIAL. Statement No. 8 is unsupported. Leapfrog's cited document, ECF No. 105-7, reflects that the Community Hospitals' Safety Grades were consistent "before 2024." *See, e.g.*, ECF No. 105-7 at 5534 (reflecting consistent "C" Safety Grades "before 2024"); *id.* at 5370 (same); *id.* at 6225 (same); *id.* at 6504 (same); *id.* at 6351 (same). Any dispute of fact with respect to Statement No. 8 is immaterial.

9. **UNDISPUTED** that West Boca Medical Center received "D" Safety Grades in Spring 2024 and Fall 2024. ECF No. 105-7 at 6504.

10. **UNDISPUTED** to the extent that "The pre-Fall 2024 Methodology change" refers to the change to the automatic assignment of "Limited Achievement" scores for the CPOE, BCMA, IPS, and Hand Hygiene measures for hospitals that did not participate in Leapfrog's Hospital Survey, and for which Leapfrog did not have historical data from the last two rounds of the Safety Grade, and that was used to assign the Community Hospital's Safety Grades for Fall 2024 and Spring 2025. ECF No. 105-2 at 9287; ECF No. 88-28 at 3058; ECF No. 88-44 at 7526-27.

Dated: November 19, 2025

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