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 REPLY IN SUPPORT OF ITS OMNIBUS MOTION IN LIMINE

COMES NOW, Defendant, THE LEAPFROG GROUP, by and through undersigned counsel, hereby file their Reply in Support of their Omnibus Motion in Limine, and in support of such states as follows:

I. The AI generated click-bait Tik Tok Video should be excluded from evidence at the bench trial.

The Tik Tok Video Cannot be Authenticated: Plaintiffs acknowledge they are tasked with the burden of making a prima facie case that the Tik Tok video is what they claim it to be. ECF 118 (Pls.' Resp.) at 8. Plaintiffs allege that at trial, they will introduce the original video file downloaded from the publicly accessible URL, satisfying Rule 1002's best-evidence requirement. However, to this date, Plaintiffs have failed to produce the original video file, and rather produced a copy of the Tik Tok video. Further, regardless of whether Plaintiffs are able to produce such 'original video file', or what this even means, the video still cannot be authenticated. While generally, evidence can be authenticated via means of circumstantial evidence, such evidence still must be reliable circumstantial evidence. Here, Plaintiffs have failed to provide *any* circumstantial evidence to support the admission of the Tik Tok video. Evidence may be authenticated by its "appearance, contents, substance, internal patterns, or other distinctive characteristics…taken together with all the circumstances." Fed. R. Evid. 901(b)(4). In *United States v. Broomfield*, 591 Fed. App'x 847, 851 (11th Cir. 2014), the court affirmed the district court's finding that the government ultimately was able to authenticate the YouTube Video of defendant, which depicted the defendant in possession of a firearm, because there was ample circumstantial evidence in the record, *i.e.* evidence identifying the individual as the defendant, evidence of where and when the video was recorded, and identification of the specific rifle and ammunition in the video.

The question before this Court is whether there is any reliable circumstantial evidence to support a prima facie case that the Tik Tok Video is what the Plaintiffs purport it to be – a video that was relied on by consumers to cause reputational harm to the Plaintiff Hospitals. While some of the Plaintiff witnesses (CEOs of Plaintiff Hospitals) will testify that they personally viewed this Tik Tok video online, none of these witnesses are able to offer any evidence as to who prepared the video, how it was prepared, what data was utilized in preparing the video, etc. In fact, it is unknown whether this video was prepared by a person, or rather was merely prepared by a Tik Tok 'Bot' Account. Other videos released by this account are titled, "Iowa, Gayest Places to Live" ECF 88-76 (Pls. Dec. to Pls. MSJ), which further questions the legitimacy of this Tik Tok account and video. Further, Plaintiff Hospitals are unable to offer any circumstantial evidence that

consumers of the Hospitals watched and/or relied on such videos, causing financial and/or reputational harm to the Hospitals.

The Tik Tok Video is not Relevant: The Tik Tok video should still be barred as it is not relevant under F. R. Evid. 401. In order for evidence to be admissible at trial, such evidence must have any tendency to prove or disprove a fact of consequence. F. R. Evid. 401. As such, in order for the Tik Tok video to be admissible at trial, the Tik Tok video must be relevant to Plaintiffs' FDUTPA claims. "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.*, 2024 WL 4349246, *4 (M.D. Fla. Sep. 30, 2024) (emphasis added); *CMR Constr. & Roofing, LLC v. UCMS, LLC*, 2022 WL 3012298, *3 (11th Cir. 2022) ("[I]n order to satisfy the first element for a claim for both damages and injunctive relief under FDUTPA…the plaintiff must allege that the relevant act or practice was **harmful to a consumer**"). Here, Plaintiffs presented no evidence that any consumer relied on or saw the Tik Tok video, which then led to a reduction in the financial profitability of the Hospitals and/or reputational harm. Instead, Plaintiffs' witnesses offer speculative and tenuous testimony that after the Tik Tok video was released, Palm Beach Gardens Hospital observed that patient complaints increased. ECF 88-90 (PBGMC CEO Dep. Trans.) at 56:14-15. Such testimony is not enough to show that the Tik Tok video is relevant to Plaintiffs' FDUPTA claims. Also, the video does not reference Leapfrog by name once, further negating relevance. Finally, there is absolutely no way to verify who viewed the video, what accounts accessed the video, or whether the Tik Tok video was actually viewed by humans versus Tik Tok generated 'Bots'.

The Tik Tok Video constitutes Hearsay which must be barred at Trial & Runs afoul of F. R. Evid. 403: Plaintiff argues that the Tik Tok video is not hearsay, because Plaintiffs attempt to utilize it to show its effect on the hearer, which under Plaintiff's FDUPTA claims, must be the consumer. However, again, Plaintiffs have failed to present evidence that *any* consumer of the Plaintiff Hospitals or any relevant "hearer" either watched or relied on the video. As such, the video is not merely being presented to show its effect on the "hearer", as none have been identified. Instead, Plaintiff is attempting to utilize the video to provide some type of evidence that Plaintiff Hospitals were harmed by Leapfrog's Grading System (given that Plaintiffs have presented virtually no evidence of harm to the consumer or the Hospitals). Further, Plaintiffs attempt to have this video admitted for purposes of establishing that it was viewed one million + times – it is clear

that Plaintiffs are utilizing the video for the truth of the matter asserted. Further, Plaintiff alleges that there is no risk of unfair prejudice to the Defendant because this matter is proceeding to a bench trial, and as such, there is no risk of confusion/prejudice to the factfinder. At a bench trial, the factfinder is the judge, who is presumed capable of weighing evidence appropriately and disregarding any improper references. Generally, courts have found that Rule 403's weighing of probative value against prejudice as inapplicable to bench trials. See, *Gulf States Utils Co. v. Ecodyne Corp.*, 635 F.2d 517 (5th Cir. 2017). However, courts have found that the portion of F. R. Evid. 403 regarding cumulative evidence and evidence that is a waste of time as applicable to bench trials, and that such evidence may still properly be excluded at bench trials. *Id.* at 519. Here, the Tik Tok video is not only prejudicial under F. R. Evid. 403, but also a waste of time, as there is absolutely no evidence to suggest that any consumers of the Plaintiff Hospitals saw or relied on this video.

II. Testimony that any patients of the Plaintiff Hospitals brought the Leapfrog Safety Grade to the attention of hospital staff or that any specific patient was harmed by the Safety Grades must be barred.

Plaintiffs have failed to introduce admissible evidence that specific consumers of Plaintiff Hospitals, including particular patients, were misled and/or harmed by the Leapfrog Safety Grades.

Plaintiffs argue that there is no requirement under FDUTPA to show the individual consumers actually relied on an illegal misrepresentation, and rather a likelihood of consumer confusion is a sufficient basis for injunctive relief. ECF 118 (Pls.' Resp.) at 11. However, despite Plaintiffs' contentions (and as further outlined in the briefing on the Cross Motions for Summary Judgment), Plaintiffs' analysis conflates the "likely to mislead" standard that relates to judging whether conduct is *deceptive* with the **wholly distinct requirement** of showing that consumers were actually injured by the allegedly unfair or deceptive conduct. In other words, even if Plaintiffs could show that Leapfrog engaged in deceptive or unfair conduct (they cannot), they would *still* need to present evidence that "at least one" consumer incurred a non-speculative injury or harm *resulting from* that deceptive or unfair conduct. *See, Stewart Agency, Inc. v. Arrigo Enters.,* 266 So. 3d 207, 214 (Fla. Dist. Ct. App. 2019) (FDUTPA claim for injunctive relief requires showing of injury to both claimant and Florida consumers). As such, Plaintiffs must provide admissible evidence of patient or consumer harm, which they failed to do.

Instead, Plaintiffs cite to the testimony of two CEOs of the Plaintiff Hospitals that certain unidentified "patients" were nervous or had anxiety about coming to Delray Hospital and/or Palm

Beach Gardens Medical Center (PBGMC) due to the Leapfrog grades. ECF 88-93 (Delray CEO Dep. Trans.) at 250:4-6; ECF 88-90 (PBGMC CEO Dep. Trans.) at 35:19-36:1. These witnesses were unable to offer any testimony/evidence regarding the identity of these patients. In fact, Plaintiff Hospitals have never identified any of these purported consumers in any documents, let alone obtained their testimony or disclosed any consumer as a trial witness. Additionally, Plaintiffs have not presented any evidence that these mystery "patients" ever encountered Leapfrog's website or grading system. Further, none of the testimony detailed any alleged harm or injury suffered by these unknown consumers related to this fear or apprehension to seek treatment at Plaintiff Hospital facilities (*i.e*, foregoing medical treatment at one of the Plaintiff Hospitals caused these patients to suffer an adverse medical event or injury). Finally, such discussions that these CEOs had with alleged patients are inadmissible as they constitute hearsay under F. R. Evid. 801.

Given that none of Plaintiffs' lay witnesses have testified regarding first-hand or personal knowledge they have regarding any specific patient that was harmed by the Leapfrog Safety Grade assigned to any of Plaintiff Hospitals, and no documents have been produced providing any such evidence, such testimony or reference(s) must be barred, as purely speculative and outside the bounds of the lay witness' knowledge pursuant to F. R. Evid. 701. It logically follows that any such testimony by Plaintiffs' experts must also be similarly barred, as the experts' testimony must be based on sufficient facts or data under F. R. Evid., 702 and cannot be based on conjecture or speculation.

III. Plaintiffs failed to present any evidence of harm to Community Hospitals, i.e. declining admissions, loss of market share, or decreased revenue, and any such testimony/reference of such should be barred at trial.

Plaintiffs argue that they do not need to establish actual, quantified damages to prevail on their FDUTPA claim for declaratory relief and injunctive relief. However, Plaintiffs entirely fail to acknowledge that they must prove specific damage done to consumers in the market to succeed on their FDUTPA claim **and** that the Plaintiff Hospitals were aggrieved. "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.*, 2024 WL 4349246, *4 (M.D. Fla. Sep. 30, 2024) *see also, Stewart Agency, Inc. v. Arrigo Enters.,* 266 So. 3d 207, 214 (Fla. Dist. Ct. App. 2019) (FDUTPA claim for injunctive relief requires showing of injury to both claimant and Florida consumers). Florida courts have clearly held that "for someone to be aggrieved, the injury claimed to have been suffered cannot be merely speculative." *Marcias v. HBC of Florida, Inc.*, 694 So. 2d. 88 (Fla. 3d DCA 1997). As such, Plaintiff must provide actual

evidence that the Plaintiff Hospitals were aggrieved, *i.e.* suffered some type of declining admissions, loss of market share, or decreased revenues, as a result of Leapfrog's Grading System.

Plaintiffs argue that nonetheless, they have provided evidence of the harm experienced in the form of vague and generalized testimony from Hospital CEOs that Leapfrog's Grading System prompted patients, physicians and community members to express concern, confusion, and reluctance to seek care. ECF 118 (Pls. Resp.) at 20. However, none of this testimony establishes an actual harm that the Plaintiff Hospitals suffered as a result of Leapfrog's Grading System. Further, not one of Plaintiffs' witnesses have identified any of these alleged "patients", physicians and/or community members by name. Plaintiffs cite to the testimony of Good Samaritan CEO Sheri Montgomery who testified that "physicians told her that they are getting on staff at a local competitor hospital because Good Samaritan received an F Safety Grade from Leapfrog. *Id.* at 13. First, such testimony is inadmissible as it constitutes hearsay under Fed. R. Evid. 801. Further, such testimony is entirely speculative, as Plaintiffs have failed to provide the names of any such physicians that have applied for staff privileges at a competitor hospital or whether any such physicians have quit or refused to work at the Plaintiff Hospitals, thereby resulting in actual harm to Plaintiff Hospitals. Further, it is common and typical for physicians to have privileges at multiple hospitals, and does not establish that Plaintiff Hospitals were harmed.

Plaintiffs do not dispute that their CEOs testified to increased revenue at their Hospitals following the Fall 2024 Safety Grades. Instead, Plaintiffs argue that such profit does not negate a harm suffered. Plaintiffs argue that they suffered generalized reputational harm, without any supporting evidence. It appears that this "harm" is merely due to the fact that Plaintiff Hospitals and their CEOs had to answer questions from their internal boards and physicians regarding the Leapfrog Safety Grades. However, Plaintiffs have not shown that they were actually "aggrieved" or suffered any harm due to the Leapfrog Fall 2024 Safety Grades. In fact, Plaintiffs produced evidence that directly contradicts their alleged "reputational harm". Plaintiffs produced Tenet Brand Health Tracker documents, a document generated quarterly summarizing the findings of Brand Health, a third party commissioned by Tenet to track the overall health of their brands in key markets, including the Palm Beach Hospital Network ("PBHN") which encompasses the five Plaintiff Hospitals. The findings incorporate a 'Net Promoter Score', which is a calculated metric indicating loyalty and satisfaction to a brand using percentage likely to recommend the hospitals. In Quarter 3 of 2024, PBHN's Net Promoter Score was noted as +30. Then, in Quarter 2 of 2025

(after the Leapfrog Spring Grades were released), PBHN's Net Promoter Score was +34, which is an obvious increase.[1] Such scores directly contradict Plaintiffs' theory that they suffered "reputational harm" as a result of the Safety Grades.

IV. Testimony/reference by Plaintiffs' and their witnesses that Plaintiffs were performing above 'Limited Achievement' on the Four Imputed Measures should be barred as speculative.

If a hospital does not respond to Leapfrog Hospital Survey, Leapfrog uses 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. Hand hygiene is made up of two core components: monitoring (touching and hand washing) and feedback (gathering data and properly reporting it internally). ECF 101-4 (Def. Dec. to Def. MSJ) at 157:11-158:13. IPS measures, *inter alia,* how hospitals staff their adult medical-surgical ICUs and pediatric medical-surgical ICUs (i.e. does a hospital utilize board-certified intensivists). (*Id.* at 153:16-21). BCMA measures whether hospital staff properly scan both a patients ID band as well as a barcode on the medication to confirm correct medication and dosage is administered. (*Id.* at 148:2-9). CPOE measures whether a hospital has proper structures in place to prevent adverse medications being administered to patients. (*Id.* at 78:9-18). Here, Plaintiffs argue that whether they would have scored high or low on the Four Measures is not an essential or relevant aspect of this case. This position is clearly disingenuous, as Plaintiff Hospitals' entire theory is that Leapfrog's grading method is unfair because they would have scored higher than the 'Limited Achievement' grade received in the Fall 2024 Safety Grades, had they chosen to participate. Regardless of whether such topic is relevant, Plaintiffs cannot introduce a speculative and unsupported theory that they would have scored better than 'Limited Achievement' on the Four Imputed Measures, because Plaintiffs have failed to produce any evidence to support such contention.

Plaintiffs argue that Leapfrog cannot at the Motion *in Limine* stage ask this Court to determine the sufficiency of the evidence or merits of an issue. However, this is not what Leapfrog's Motion seeks to do. Instead, Leapfrog argues that Plaintiffs have failed to produce *any* evidence that had Plaintiff Hospitals participated in the 2024 Fall Safety Grades, that they would have scored high on the Four Imputed Measures, and as a result, any testimony or reference thereto is entirely

[1] These Quarterly Reports are not being filed as Exhibits to this Reply as they have been designated as 'confidential' by Plaintiffs but are available for the Court's review upon request.

speculative and unsupported. Plaintiffs argue that they have "produced over eighty documents showing that, if they had responded to the Survey, they would have scored highly on the Four Measures." ECF 118 (Pls. Resp.) at 16. However, Plaintiffs fail to identify what any of these "eighty documents" are, or how they provide any support for Plaintiffs' theory that they would have scored higher on the Four Measures if they participated in the Survey. In fact, Plaintiffs have produced documents that are directly contrary to this position, showing that Plaintiff Hospitals likely would have scored low on the Four Measures. For example, in April of 2023, Regina West (Quality Director of PBHN) sent an email to Plaintiff Hospitals representatives, noting that all five hospitals scored at "C" level, and that "West Boca would need to participate in the Fall 2023 survey and change their BCMA & IPS performance, as well." (Ex. 1 (4/17/2023 Email from Regina West). This correspondence signals issues with West Boca's performance in areas measured by the Four Imputed Measures. Further, the CEOs, who testified as the Corporate Representatives of Plaintiff Hospitals, testified that they had no knowledge as to how the Plaintiff Hospitals would have performed on Leapfrog's Four Imputed Measures. ECF 101-26 (Good Samaritan CEO Dep. Trans.) at 202; ECF 101-24 (Delray CEO Dep. Trans.) at 125-126; ECF 101-25 (West Boca CEO Dep. Trans.) at 52; ECF 101-23 (St. Mary's CEO Dep. Trans.) at 169, which is further evidence that any reference or testimony by Plaintiffs or Plaintiffs' experts that they would have performed well on the Four Imputed Measures as speculative and should be barred.

V. Plaintiffs should be barred from testifying or referencing prior and unrelated articles/complaints analyzing Leapfrog Safety Grade methodologies prior to the Fall 2024 Safety Grade Methodology at issue.

Plaintiffs attempt to assert that "TLG's misinformative 'Safety Grades' have been repeatedly condemned by leading healthcare organizations and academic researchers for precisely the dangers they pose. ECF 74 (Am. Complaint) at ¶ 4. The articles discussed in ¶ 4 of the Amended Complaint analyze prior Safety Grade methodologies and not the Safety Grade methodology in place as of Fall 2024, which is the sole methodology at issue in this lawsuit. Plaintiffs' attempt to introduce articles/references to Leapfrog's prior methodologies are entirely irrelevant to the issues raised in this litigation. To wit, Plaintiffs rely on articles more than a decade old, based on outdated measures to purportedly support the sweeping conclusion that Leapfrog's methodology is unfair and deceptive. These articles provide no probative value into the issues before this Court related to the Fall 2024 methodology. In fact, Plaintiffs' own experts admit that the articles are outdated and not analyzing the current methodology at issue. For example, Plaintiffs' expert, Sean

Nicholson, testified that Smith and Hwang articles assessed a Leapfrog Methodology that was at least eight years old, and not dealing with the 2024 Fall Safety Grades. ECF 114-6 (Nicholson Dep. Trans.) at 86. Mr. Nicholson admits that he relies and cites to articles critical of Leapfrog from 2014, 2017 and 2019. (*Id*. at pgs. 114-115).

Further, despite Plaintiffs' contentions, Leapfrog has not attempted to introduce or invoke articles analyzing or assessing Leapfrog's prior methodologies. Plaintiffs argue that Leapfrog bootstraps its prior methodologies to endorse the current methodology, which makes references to prior articles methodologies relevant to this lawsuit. ECF 118 (Pls.' Resp.) at 18. However, this is an inaccurate representation by Plaintiffs. The Fall 2024 Safety Grades are the only methodology at issue in this lawsuit. As typical, Plaintiffs distort Leapfrog's website references to the 2019 White Paper published by the Armstrong Institutes. Plaintiff's deposed Matt Austin ad nauseum about the reference on the website and its applicability to the 2024 methodology. Mr. Austin succinctly testified that "We have done some early analysis around [the statements in the White Paper] based on 2025 and these statements would remain the same. ECF 101-6 (Dr. Austin Dep. Trans.) at 106:2-107:1). The Plaintiffs' false equivalency of comparing the White Papers, which its author testified is valid in 2025 after analysis, to articles from years ago without any additional analysis to confirm the findings are still legitimate based on the Fall 2024 methodology is without merit.

To allow Plaintiffs and their experts to introduce testimony/evidence of articles or complaints regarding outdated and inapplicable methodologies would run afoul of F. R. Evid. 403, as it would be entirely unclear to this Court what specific portions of the methodology changed from the date of those prior articles versus present time. Under F. R. Evid. 403, a court may exclude evidence even if deemed relevant if its probative value is substantially outweighed by danger of confusing the issues, causing undue delay or wasting time. It would confuse the issues and be a colossal waste of both the parties and this Court's time to allow references to these prior articles/complaints analyzing prior methodologies not at issue, and would extend the length of the bench trial. The evidence should solely focus on the Fall 2024 Safety Grade Methodology and onward.

VI. Any references or testimony by Plaintiffs' witnesses that Leapfrog takes money in exchange for better grades, or a "pay-to-play" scheme should be barred at trial.

In an attempt to circumvent the valid points raised in Leapfrog's Motion *in Limine*, Plaintiffs disingenuously argue that they merely reference and argue that Leapfrog's financial structure creates powerful incentives that undermine the objectivity and public-spiritedness it professes.

ECF 118 (Pls.' Resp.) at 19. However, Plaintiffs conveniently leave out the fact that they have continually referenced Leapfrog's grading system as a "brazen pay-to-play" scheme in its Complaint, press releases and interviews by its counsel. In Plaintiff's Amended Complaint, Plaintiffs alleges "[t]hrough a brazen pay-to-play scheme, TLG pressures hospitals to participate and pay, or else suffer devastating and misleading public 'safety' grades." ECF 74 (Am. Complaint) at 2. Further, in a press release issued by Plaintiffs related to this lawsuit, they state that "Leapfrog aggressively pushes hospitals to pay for its consulting services and promotional licenses **in exchange for better grades**" and "[t]he hospitals are taking legal action to expose this scheme, protect patients, and restore integrity to the way healthcare information is shared in this county. Public confidence in our healthcare system depends on accuracy, fairness, and truth – not **pay-for-play** ratings and deceptive tactics." See, Ex. 2 (PBHN Press Release), at 1. When asked what the "brazen pay-to-play scheme" is, each CEO had a different interpretation of that phrase. *See* ECF 101-25 (West Boca CEO Dep. Trans.) at 67:1-23 (stating that it "costs [WBMC] to pay or [sic] employees to compile the information); ECF 101-27 (PBGMC CEO Dep. Trans.) at 62:7-63:23 (arguing Leapfrog is paid through receipt of hospital data and use of Leapfrog's Safety Grade accolade); ECF 101-26 (Good Samaritan CEO Dep. Trans.) at 191:11-25; (stating that the "scheme" compromises participation and data sharing but not the Safety Grade accolade); ECF 101-23 (St. Mary's CEO Dep. Trans.) at 123:5-19 (testifying that Leapfrog's consulting is the pay-to-play scheme); ECF 101-24 (Delray CEO Dep. Trans.) at 87:9-88:3 (stating only that not participating causes reputational damage and harm as to her understanding of "pay to play"). The use of this phrase in publicly facing and filed documents without any evidence has been done for the sole reason to discredit Leapfrog with the public and prejudice this Court. A common and wholly unsupported theory of Plaintiffs' lawsuit is that Leapfrog accepts payments from hospitals in exchange for better grades.

Plaintiffs misleadingly cite to an incomplete portion of an email sent by Leapfrog's panelist, Dr. Patrick Romano. The full sentence, which was only partially referenced by Plaintiffs, reads as follows: "their (Leapfrog) business model, as you know, depends on producing data that add value for health plans and employers…and the data are not valuable is participation is low." (ECF 88-34). This does not support a "pay-to-play" scheme, but merely references that a portion of Leapfrog's business model naturally depends on producing data, which in turn adds value for health plans and employers. Plaintiffs harp on various exhibits and testimony, none of which

support that Leapfrog accepts any type of payment in exchange for better grades of hospitals. Plaintiffs argue that Leapfrog is requesting that this Court render an opinion on the sufficiency of the evidence before trial – this is inaccurate. Leapfrog argues that Plaintiffs have failed to present *any* evidence during the course of discovery, either through documentation or admissible testimony, to support their contention that Leapfrog takes money in exchange for providing hospitals with better grades or that Leapfrog participates in a "pay-to-play" scheme, and such statements should be barred. In fact, the CEOs of the Plaintiff Hospitals testified that they are unaware of any payment for better grades, and they could not articulate any "pay-to-play" scheme that Leapfrog allegedly engages in, ECF 101-26 (Good Samaritan CEO Dep. Trans.) at 252; ECF 101-24 (Delray CEO Dep. Trans.) at 239; ECF 101-25 (West Boca CEO Dep. Trans.) at 110; ECF 101-23 (St. Mary's CEO Dep. Trans.) at 125, further supporting that this Court should bar any such reference. Leapfrog is not seeking to bar Plaintiffs from advancing a theory (albeit unsupported) that the methodology is built around revenue; however, the "brazen pay-to-play" allegations are unsupported, unwarranted and only made for the purpose of publicly harassing and prejudicing Leapfrog.

WHEREFORE, Defendant, The Leapfrog Group, respectfully requests that this Court grant its Omnibus Motion in Limine as set forth in the Proposed Order.

Dated: December 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2025, a true and correct copy of the foregoing was served on all counsel or parties of record via the ECF system.

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

EXHIBIT 1

Message

From: Kuret, Carola [Carola.Kuret@tenethealth.com]
Sent: 4/17/2023 7:42:34 PM
To: West, Regina [Regina.West@tenethealth.com]; Nunes, Andrea [ANDREA.Nunes@tenethealth.com]; WEHMEYER, HEATHER [heather.wehmeyer@tenethealth.com]; Pool, Taylor [Taylor.Pool@tenethealth.com]; Mcdonald, Kathleen [Kathleen.Mcdonald@tenethealth.com]
Subject: RE: Leapfrog Market Analysis

Nice, thank you

From: West, Regina <Regina.West@tenethealth.com>
Sent: Monday, April 17, 2023 3:40 PM
To: Nunes, Andrea <ANDREA.Nunes@tenethealth.com>; Kuret, Carola <Carola.Kuret@tenethealth.com>; WEHMEYER, HEATHER <heather.wehmeyer@tenethealth.com>; Pool, Taylor <Taylor.Pool@tenethealth.com>; Mcdonald, Kathleen <Kathleen.Mcdonald@tenethealth.com>
Subject: Leapfrog Market Analysis

Hi, fellow quality leaders – I completed an analysis of our Leapfrog scores for Spring 2023.

- All 5 hospitals scored at "C" level
- The largest opportunity continues to lie in Patient Experience (PE). Moving performance to "average" would significantly impact our letter grades. West Boca would need to participate in the Fall 2023 survey and change their BCMA & IPS performance, as well. I am making a request for consideration for them. It does not seem like the rest of us would be positively impacted by the participation.

Thank you,

Gina West
PBHN Market Quality Director
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West Palm Beach, FL 33401
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F: (561) 650-6249
Email: Regina.West@tenethealth.com
Delray | Good Samaritan | Palm Beach Gardens | St. Mary's | West Boca

EXHIBIT 2

Five Hospitals within Palm Beach Health Network File Legal Complaint Against The Leapfrog Group Over Deceptive and Dangerous Rankings

Apr 30, 2025

Leapfrog's deceptive scoring system puts patients' lives at risk by only rewarding hospitals with passing grades that either pay or supply free data for their flawed survey

Palm Beach, Fla. – April 30, 2025 – Delray Medical Center, Good Samaritan Medical Center, Palm Beach Gardens Medical Center, West Boca Medical Center, and St. Mary's Medical Center, trusted leaders in healthcare and patient safety, announced today that they have filed a legal complaint against The Leapfrog Group ("Leapfrog") alleging that the organization's hospital patient safety ratings are inaccurate, corrupt, and misleading. The Palm Beach Health Network hospitals assert that these deceptive rankings not only harm their reputation but also misinform patients and the community about the quality of care provided at its facilities, putting lives at risk.

The legal action comes after repeated efforts by the hospitals to engage with The Leapfrog Group to address concerns regarding its flawed rating methodology. Leapfrog did not punish the plaintiff hospitals for the past four years that they did not respond to its voluntary data requests, until last year when they changed their criteria to deliberately fail non-participating hospitals.

According to the complaint, Leapfrog fails to fairly evaluate hospitals that do not complete its hospital survey, and rather than indicating that there is insufficient data to issue a grade to non-participating hospitals, it instead assigns a score equivalent to the "Worst Hospital's Score" on several measures. This flawed methodology does not accurately reflect hospitals' performance or patient outcomes.

"Patient safety and clinical excellence are at the core of everything we do", said Sheri Montgomery, CEO of Good Samaritan Medical Center. "Our hospitals are continuously working to improve the patient experience and have been recognized repeatedly for our leadership in quality, innovation, and compassionate care. We will not allow that record to be smeared by The Leapfrog Group's reckless, self-serving, and fundamentally dishonest ratings system."

Leapfrog's so-called grades are not grounded in credible science or independent analysis – they are riddled with falsehoods, distorted by undisclosed financial incentives, and misused to pressure hospitals and mislead the public. This is not transparency – it's a marketing scheme masquerading as public health advocacy.

Leapfrog aggressively pushes hospitals to pay for its consulting services and promotional licenses in exchange for better grades. Those who decline to participate are punished with artificially low ratings – false and damaging scores that erode patient trust and undermine access to care. Patients are the ones who suffer most when misinformation is passed off as fact.

The hospitals are taking legal action to expose this scheme, protect patients, and restore integrity to the way healthcare information is shared in this country. Public confidence in our healthcare system depends on accuracy, fairness, and truth – not pay-for-play ratings and deceptive tactics.

Key Issues Raised in the Complaint

- **Flawed Methodology:** The Leapfrog Group uses incomplete, outdated, or non-existent data to calculate its ratings, leading to inaccurate assessments of hospital performance and deceiving patients.
- **Lack of Transparency:** The organization publishes these false and inaccurate rankings on a consumer-facing page, suggesting that hospitals have received failing grades when in reality many have declined to participate in the organization's hospital survey. Worse still for patients, Leapfrog rewards hospitals that participate in their survey and either pay or supply free data to Leapfrog with "A"s and "B"s, even when those hospitals pose significant risk to patient safety.
- **Harm to Patients:** Misleading ratings can erode public trust in hospitals and cause patients to make decisions based on incomplete or inaccurate information, potentially compromising their care.

Palm Beach Health Network is the largest healthcare provider in Palm Beach County and provides the area's only Level 1 Trauma Centers, Comprehensive Stroke Centers, and Children's Hospital. Many of the plaintiff hospitals have earned recognition from other independent, accredited organizations for their commitment to excellence in healthcare. They receive patient transfers for critical, higher level of care services for the sickest and most vulnerable patients more often than other hospitals in the area. And while they recognize, like all hospitals, that they have work to do to ensure their patients receive the highest possible care, they will no longer accept Leapfrog's misleading rankings that endanger public trust and patient lives.

"We owe it to our patients, physicians, staff, and community to challenge these unfair ratings," said Montgomery. "Leapfrog's false and deceptive pay-to-play ranking system puts patient lives in danger and we will finally hold them accountable."

Stronger Together. For You.

#PBHNProud