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.	)

LEAPFROG'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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
Mobile: (312) 259-6414
Kimberly.blair@wilsonelser.com
Attorneys for The Leapfrog Group

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter is set to come before the Court for bench trial on January 12, 2026 on Count I of Plaintiffs' Amended Complaint alleging violations of the Florida Deceptive Unfair Trade Practices Act ("FDUTPA") and Count II for Declaratory Judgment. (ECF No. 74). Defendant, The Leapfrog Group ("Leapfrog"), answered the Amended Complaint and served affirmative defenses, including but not limited to, Anti-SLAPP. (ECF No. 75).

Pursuant to this Court's scheduling order, Defendant hereby submits its Proposed Findings of Fact and Conclusions of Law. (ECF No. 36, ¶10). The Court hereby makes the following findings of fact and conclusions of law as to Count I and II of the Amended Complaint and Defendant's affirmative defense of Anti-SLAPP.

I. SUMMARY OF FINDINGS

1. The Court finds in favor of Defendant, The Leapfrog Group, on Count I.

2. The Court finds that there is no evidence of consumer harm, injury, or detriment caused by Leapfrog, its conduct or practices.

3. The Court also finds that Leapfrog's alleged acts and practices are not deceptive because the website provides transparent information and emphasized disclosures that eliminate the likelihood that a reasonable consumer acting under the circumstances would be deceived.

4. The Court also finds that Leapfrog's alleged acts and practices are not unfair because there is no evidence of substantial consumer harm, the public benefit outweighs any purported consumer harm, and the alleged consumer harm can otherwise be reasonably avoided.

5. The Court also finds that in light of Leapfrog publishing all of its information to the public, including but not limited to its Safety Grades, underlying scored data and methodology, free Survey and other fee tools, Leapfrog's acts and practices do not offend public policy and are not immoral, unethical, oppressive, unscrupulous nor substantially injurious to consumers.

6. The Court also finds that there is no evidence that Plaintiffs were, are or will be aggrieved by Leapfrog, its conduct or practices.

7. Good Samaritan Medical Center is not entitled to injunctive nor declaratory relief.

8. Delray Medical Center is not entitled to injunctive nor declaratory relief.

9. Palm Beach Gardens Medical Center is not entitled to injunctive nor declaratory relief.

10. St. Mary's Medical Center is not entitled to injunctive nor declaratory relief.

11. West Boca Medical Center is not entitled to injunctive nor declaratory relief.

12. The Court finds in favor of Defendant, The Leapfrog Group, on Count II.

13. The Court finds in favor of Defendant, The Leapfrog Group, on its affirmative defense under Florida's Anti-SLAPP statute.

14. Defendant, The Leapfrog Group, is awarded reasonable attorney's fees as the prevailing party on Count I. Fla. Stat. § 501.2105(1).

15. Defendant, The Leapfrog Group, is awarded reasonable attorney's fees as the prevailing party on its affirmative defense for Anti-SLAPP. Fla. Stat. Ann. § 768.295(4).

II. FINDINGS OF FACT

A. PARTIES

16. The Leapfrog Group is an independent, national not-for-profit organization that files annual 1099 tax forms.

17. Leapfrog is incorporated in the District of Columbia, with its principal place of business at 1775 K Street, NW, Suite 400, Washington, D.C. 20006.

18. Delray is incorporated in Florida, with its principal place of business at 5352 Linton Blvd., Delray Beach, Florida 33484. (ECF No. 74 at ¶7).

19. Delray is an accredited hospital with 536 licensed beds. (ECF No. 129 at ¶2).

20. Good Samaritan is incorporated in Florida, with its principal place of business at 1309 N. Flagler Dr., West Palm Beach, Florida 33401. (ECF No. 74 at ¶8).

21. Good Samaritan is an accredited hospital with 333 licensed beds. (ECF No. 129 at ¶6).

22. Palm Beach Gardens is incorporated in Florida, with its principal place of business at 3360 Burns Road, Palm Beach Gardens, Florida 33410. (ECF No. 74 at ¶9).

23. Palm Beach Gardens is an accredited hospital with 199 licensed beds. (ECF No. 129 at ¶9).

24. St. Mary's is incorporated in Florida, with its principal place of business at 901 45th St., West Palm Beach, Florida 33407. (ECF No. 74 at ¶10).

25. St. Mary's is an accredited hospital with 413 licensed beds. (ECF No. 129 at ¶12).

26. West Boca is incorporated in Florida, with its principal place of business at 21644 State Road 7, Boca Raton, Florida 33428. (ECF No. 74 at ¶11).

27. West Boca is an accredited hospital with 195 licensed beds. (ECF No. 129 at ¶15).

B. JURISDICTION

28. The Court has jurisdiction under 28 U.S.C. § 1332. (ECF No. 75 at ¶13).

C. SUMMARY OF ALLEGATIONS

29. Plaintiffs allege Leapfrog solicits healthcare information and then publishes it to consumers while commissioning "deceptive acts and unfair practices against Plaintiffs and the residents of Florida." (ECF No. 74 at ¶90).

30. Specifically, Plaintiffs claim Leapfrog made misleading representations about its Hospital Safety Grades and underlying scoring methodology. (*Id.* at ¶91).

31. Plaintiffs allege Leapfrog accepts money in exchange for "intentionally jiggering its Hospital Safety Grades to benefit the hospitals." (*Id.* at ¶92).

32. Plaintiffs allege Florida consumers harmed by being misled regarding the quality and safety of the hospitals because consumers make decisions about their healthcare that are against their best interests. (*Id.* at ¶99-100).

33. Florida consumers are allegedly harmed by "increasing the incident-to-hospital time" and "causing patients to choose hospitals that do not provide the types of critical care the Plaintiff Hospitals provide." (*Id.* at ¶100).

34. Plaintiffs are allegedly aggrieved due to weakened relationships with physicians, drop in-patient admissions, and complaints from patients. (*Id.* at ¶59-82).

D. FACTUAL BACKGROUND OF LEAPFROG

i. Leapfrog History

35. Leapfrog is a is a not-for-profit organization that was founded in 2000 by a group of employers who came together to address critical, complex public safety issue "severe dysfunction in the health care marketplace." (*See,* Leapfrog History webpage, https://www.leapfroggroup.org/about/history); (Joint Pre-Trial Stipulation, ECF No. 129 at ¶ 19); (ECF No. 101-3, Binder, at 29:2-31:1, 34:9-34:17); (ECF No. 101-4, Danforth, at 35:1-36:1).

36. 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." (*See,* Leapfrog "Mission and Vision" webpage, https://www.leapfroggroup.org/about/mission-and-vision).

37. Leapfrog utilizes 13 separate and distinct expert panels to review and provide guidance on respective sections of the Leapfrog Hospital Survey ("Survey") and a separate expert

panel presides over Leapfrog's Hospital Safety Grades ("Safety Grades"). (*See,* Leapfrog Expert Panelist webpage, https://www.leapfroggroup.org/about/expert-panelists); (Joint Pre-Trial Stipulation, ECF No. 129 at ¶ 19); (ECF No. 101-3, Binder, at 29:2-31:1, 34:9-34:17); (ECF No. 101-4, Danforth, at 35:1-36:1).

38. Dr. Matt Austin of the Armstrong Institute at Johns Hopkins works with Leapfrog through a grant to assist in developing the Survey and Safety Grades. (ECF No. 133-2, Dr. Austin Dep., at 39:7-42:15).

ii. Leapfrog Hospital Survey

39. In 2001, Leapfrog launched its Survey. (*See,* Joint Pre-Trial Stipulation, ECF No. 129 at ¶30).

40. The Survey was developed in consultation with leading researchers and clinicians, and more than 2,400 hospitals participate in the Survey regardless of their eligibility to receive a Safety Grade. (ECF No. 101-3, Binder, at 74:2-4, 287:1-5, 415:15-19); (ECF No. 101-4, Danforth, at 190:1-13, 513:9-14, 550:3-6).

41. The Survey is free, publicly available on Leapfrog's website, and hospital participation is voluntary. (ECF No. 129 at ¶30); (JX-042.0, Survey).

42. The Leapfrog Survey was created to "collect and transparently report hospital and ASC performance, empowering purchasers to find the highest-value care and giving consumers the lifesaving information they need to make informed decisions." (*See*, "Innovators for Leapfrog" Launching webpage, https://www.leapfroggroup.org/news-events/%E2%80%9Cinnovators-leapfrog%E2%80%9D-launching-fuel-investment-patient-safety).

43. Leapfrog reviews its Survey annually and publishes proposed changes to the Survey on its website for public comment before the change is finalized. (ECF No. 101-4, Danforth, at 193:15-195:6, 365:6-365:13); ECF No. 101-3, Binder, at 368:368:2-16).

44. The Survey consists of the following nine sections: Patient Rights and Ethics; Medication Safety; Adult and Pediatric Complex Surgery; Maternity Care; Physician and Nurse Staffing; Patient Safety Practices; Managing Serious Errors; Pediatric Care; and Outpatient Procedures. (ECF No. 101-4, Danforth at 190:4-13); (ECF No. 129, Schedule C, JX-042 at PBHN000002652-PBHN000002658).

45. Each section of the Survey includes various measures that are scored individually, but the Survey, as a whole, is not given an overall composite score. (*See e.g.*, https://ratings.leapfroggroup.org/facility/details/10-0253/jupiter-medical-center-jupiter-fl*).*

46. Leapfrog's scoring methodology for the Hospital Survey is published on its website for consumers to view and download as a pdf. (ECF No. 129 at ¶71); (ECF No. 129, Schedule C, JX-034.0; JX-041.1).

47. Consumers can access published findings from the Leapfrog Hospital Survey by hospital, location or other guided searches on https://ratings.leapfroggroup.org/. (*See*, Amended Complaint, ECF No. 74 at ¶54-55).

48. Hospitals, including the Plaintiffs, use the Survey as a benchmarking tool to monitor and improve performance on various measures. (ECF No. 129 at DX-557, DX-559, DX-564, DX-644).

iii. Leapfrog Hospital Safety Grade

49. In 2012, Leapfrog launched its Hospital Safety Grades, a separate and distinct program from the Survey. (ECF No. 101-4, Danforth, 55:6-8).

50. Safety Grades are assigned to eligible general acute-care hospitals across the United States by using a Scoring Methodology. (JX-014.1 at LEAPFROG00036147); (ECF No. 101-3, Binder, at 381:5-20).

51. Leapfrog's Safety Grade methodology is focused on providing a Safety Grade to all eligible hospitals, regardless of whether the hospital voluntarily reports to the Leapfrog Survey.

52. Leapfrog's rationale for grading all hospitals is two-fold: (1) the mission of Leapfrog is to provide a public service in make hospital safety performance data publicly available to all purchasers regardless of whether a hospital refuses to voluntarily provide that data; and (2) the use of Leapfrog's Safety Grade z-score methodology. (ECF No. 101-4, Danforth, at 354:22-355:5).

53. Pursuant to Leapfrog's eligibility requirements, hospitals that are ineligible for Safety Grades include, but are not limited to, critical access hospitals, rural emergency hospitals, long term care and rehab facilities, mental health facilities, federal hospitals, some specialty hospitals, free standing pediatric hospitals, hospitals in U.S. territories, and 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. 129 at JX-014.1 at LEAPFROG00036146).

54. Eligible hospitals receive either an A, B, C, D, or F Safety Grade twice a year, once in the spring and fall. (ECF No. 129 at ¶40).

55. The Safety Grades, measure scores, and the underlying Scoring Methodology are all publicly available for consumers on Leapfrog's website hospitalsafetygrade.org. (ECF No. 129 at ¶¶ 37, 51-54, 67-71).

56. Leapfrog reviews its Scoring Methodology annually and publishes proposed changes to the Scoring Methodology/Safety Grades on its website before the change is finalized.

57. Leapfrog's Scoring Methodology inevitable changes as measures are either developed or retired from CMS and as the healthcare field evolves. (ECF No. 101-4, Danforth at 190:9-13, 300:9-301:22).

58. All hospitals are assigned Safety Grades by using the most recent Scoring Methodology. (ECF No. 129 at ¶ 35).

59. Since Fall 2021, the Safety Grade is made up of 22 measures in total, 12 process/structural measures and 10 outcome measures. (ECF No. 129 at ¶¶ 73-76).

60. The 12 process and 10 outcome measures each make up 50% of the Safety Grade composite score. (ECF No. 129 at JX-014.1 at LEAPFROG00036147).

61. Since the inception of the Safety Grades, the underlying Scoring Methodology uses "primary" and "secondary" data sources. (ECF No. 129 at ¶¶ 76, 78); (ECF No. 101-4, Danforth at 89:2-20).

62. Secondary data sources are used if a hospital chooses not to respond to the Leapfrog Survey. (ECF No. 101-4, Danforth, at 97:21:98-4).

63. Secondary data is sources have changed over time as Leapfrog has either gained or lost access to publicly available data for hospitals. (ECF No. 101-4, Danforth at 98:5-100:8, 101:1-18, 105:20-106:12).

64. Since the inception of the Safety Grade in 2012, Leapfrog has discussed and considered utilizing an imputation method in its Scoring Methodology to solve for missing data. (*See generally*, ECF No. 129 at DX-401); (ECF 88-97, Romano, at 45:13-46:6); (ECF No. 129 at JX-001 at LEAPFROG3088994- LEAPFROG3088995).

65. Leapfrog has historically used an imputation method in the Scoring Methodology to solve for missing data, but the cause of "missing data" has changed over time as Leapfrog either gained or lost access to publicly available data for hospitals. (ECF No. 129, JX-001 at

LEAPFROG3088994- LEAPFROG3088995); (Leapfrog's Deposition Designations, ECF No. 133-2, Dr. Matt Austin at 81:10-83:16, 115:6-121:5, 86:19-87:19); (ECF No. 129, PX-202.0 at LEAPFROG3100668); (ECF No. 101-4, Danforth at 236:18-237:15).

66. For example, from 2012 to 2020, if a hospital chose not to respond to the Survey, Leapfrog used American Hospital Association ("AHA") data as its secondary source to impute a score based on an analysis comparing hospital performance on the Leapfrog Survey and AHA surveys. (ECF No. 129, PX-202.0 at LEAPFROG3100668, LEAPFROG3100670); (DX-401 at LEAPFROG3046954).

67. However, in 2020, Leapfrog lost access to AHA data and explored alternative imputation methods for secondary data sources on the applicable measures. (ECF No. 101-4, Danforth at 236:18-237:15).

68. In Spring 2021, Leapfrog implemented a two-step imputation method as its secondary data source for three of the 22 process/structural measures: Computerized Physician Order Entry ("CPOE"), Bar Code Medication Administration ("BCMA"), and ICU Physician Staffing ("IPS"). (ECF No. 129, Schedule C, DX-427).

69. In Fall 2022, Leapfrog implemented the same two-step imputation method as its secondary data source for the Hand Hygiene measure.

70. Thus, Leapfrog has used a two-step imputation method as its secondary data source for four of the 22 process/structural measures from Fall 2022 to the present: CPOE, BCMA, IPS, and Hand Hygiene (collectively, the "Four Imputed Measures").

1. Spring 2024 Methodology

71. The Spring 2024 Scoring Methodology used 22 measures (12 process/structural and 10 outcome) to calculate the Spring 2024 Safety Grades. (ECF 129, JX-014.1 at LEAPFROG00036147- LEAPFROG00036149).

72. Ten of the 22 measures used data a hospital submitted to the Centers for Medicare & Medicaid Services ("CMS") as the primary data source. (*Id.* at LEAPFROG00036148-LEAPFROG00036149).

73. Twelve of the 22 measures used a hospital's most recent Leapfrog Survey data as the primary data source; however, five of those 12 measures is a hospital's most up to date National Healthcare Safety Network ("NHSN") data that is otherwise publicly available through CMS. (*Id.* at LEAPFROG00036155, LEAPFROG00036157).

74. Thus, only 7 of the 22 measures used in the Spring 2024 Safety Grade relied on Survey data ("Survey Measures") and the other 15 measures used publicly available CMS data. (*Id.* at LEAPFROG00036147- LEAPFROG00036149).

75. The seven "Survey Measures" were: (1) CPOE, (2) BCMA, (3) IPS, (4) Hand Hygiene, (5) Safe Practice 1, (6) Safe Practice 2, and (7) Total Nursing Care Hours per Patient Day. (*Id.* at LEAPFROG00036147- LEAPFROG00036148).

76. If a hospital did not respond to the Survey, then Leapfrog did not consider three of the seven "Survey Measures" when calculating the Spring 2024 Safety Grade—Safe Practice 1: Culture of Leadership Structures and Systems, Safe Practice 2: Culture Measurement, Feedback & Intervention, and Total Nursing Care Hours per Patient Day—and historically Leapfrog has never imputed scores for these three "Survey Measures." *Id.* at LEAPFROG00036147-LEAPFROG00036148, LEAPFROG00036153- LEAPFROG00036154; (Plaintiffs' Deposition Designations, ECF No. 134-1, Matt Austin at 253:13-255:10).

77. Leapfrog used the two-step imputation model for the remaining four "Survey measures," which are the Four Imputed Measures: CPOE, BCMA, IPS, and Hand Hygiene. (ECF No. 129 at JX-014.1 at LEAPFROG00036157- LEAPFROG0003615160).

78. The Four Imputed Measures were scored by using performance categories ("Achieved the Standard," "Considerable Achievement," "Some Achievement," and "Limited Achievement"). (*Id.* at LEAPFROG00036151- LEAPFROG00036152, LEAPFROG00036154).

79. Each performance category is associated with a measure score. (*Id.*).

80. Since the inception of the Safety Grade, the measure scores associated with each performance category have not changed. (ECF No. 101-4, Danforth Dep., at 412:11-20).

81. The performance categories and associated measure scores were determined by an expert panel in consideration of peer-reviewed literation and subject matter expertise. (ECF No. 101-4, Danforth Dep., at 257:15-259:21).

82. Under the Spring 2024 Scoring Methodology, in Step 1, if a non-responding hospital had a score assigned by Leapfrog in the previous four rounds of grades for CPOE, BMCA, IPS, and Hand Hygiene, excluding imputed scores, the hospital was assigned the most recent score on that measure in their current Safety Grade. (ECF No. 129 at ¶88).

83. If Step 1 was inapplicable, then in Step 2 for CPOE, BCMA, and Hand Hygiene, Leapfrog assigned the hospital to a cohort of similar hospitals using three or four hospital

characteristics obtained from the most recent CMS Impact File and the previous year's Survey. (ECF No. 129 at ¶89).

84. Under Step 2, Leapfrog then assigned the non-responding hospital the lower of the two possible mean scores based on the hospital's cohort's performance for CPOE, BCMA and Hand Hygiene. (ECF No. 129 at ¶89).

85. Under Step 2 for IPS, Leapfrog used the CMS Cost Report to determine whether a hospital had one or more medical, surgical, and/or pediatric ICU beds, and if so, the hospital was assigned the associated "Limited Achievement" score. (ECF No. 129 at ¶90).

2. The Proposed Fall 2024 Methodology Change

86. By Spring 2024, Leapfrog's monitoring and analysis of the cohort means indicated that hospitals who participated in the Survey were improving on the Four Imputed Measures.

87. Prior to Spring 2024, Hospitals that participated in the Survey complained to Leapfrog that hospitals who did not respond to the Survey were receiving an undeserved benefit by imputing the cohort means of hospitals who showed a commitment to patient safety and transparency by participating in the Survey for CPOE, BCMA, and Hand Hygiene. (ECF No. 101-4, Danforth at 315:1-316:4); (ECF No. 129, JX-008, at PBHN000018001).

88. Most of the cohort mean scores had crept up so high that hospitals who received Step 2 for CPOE, BCMA, and Hand Hygiene were receiving scores equivalent to "Achieved the Standard" or 100 out of 100 points. (*See generally*, ECF No. 129 at PX-204); (ECF No. 101-4, Danforth at 361:1-362:17); (ECF No. 133-2, Dr. Matt Austin at 117:17-118:21).

89. On April 12, 2024, Leapfrog went to its Hospital Safety Grade Expert Panel to propose and develop a solution to solve for this inequity. (ECF No. 129 at ¶ 91).

90. The Expert Panel confirmed there was no evidence to support imputing perfect or nearly perfect scores on the Four Imputed Measures for hospitals that do not respond to the Survey. (ECF No. 133-2, Austin Dep., at 192:17-193:12); (ECF No. 101-4, Danforth Dep., at 361:1-7).

91. Under the guidance of the Expert Panel, Leapfrog published the proposed changes to the Fall 2024 Scoring Methodology for public comment. (ECF No. 101-41).

92. Leapfrog received both positive and negative feedback regarding the change. (ECF No. 129 at JX-032).

93. Leapfrog published its final changes to the Fall 2024 Scoring Methodology, which included addressing the most common public comments or inquiries. (*See generally*, ECF No. 129 at PX-319); (PX-520.0).

94. Leapfrog extended the time for hospitals to submit a 2024 Survey in light of the changes. (ECF No. 129 at DX-464).

95. Under the guidance of the expert panel, Leapfrog implemented its Fall 2024 Scoring Methodology. (ECF No. 129 at DX-464).

96. No expert panelist contested the final changes to the Fall 2024 Scoring Methodology. (ECF No. 101-4, Danforth, at 69:20-70:15, 244:13-15).

97. The purpose of the Fall 2024 Scoring Methodology change was not to drive revenue nor to penalize hospitals. (ECF No. 101-4, Danforth, at 458:1-21, 568:1-20, 569:3-571:11).

3. Fall 2024 Scoring Methodology

98. The Fall 2024 Scoring Methodology encompassed two thoughtful, targeted changes.

99. First, under Step 1, if a non-responding hospital had a score assigned by Leapfrog in the previous two (rather than four) rounds of grades for CPOE, BMCA, IPS, and Hand Hygiene, excluding imputed scores, the hospital was assigned the most recent score on that measure in their current Safety Grade. (ECF No. 129 at ¶ 82).

100. Second, if Step 1 was inapplicable, then in Step 2 for CPOE, BCMA, and Hand Hygiene, hospitals were assigned the associated "Limited Achievement" score (like IPS under the Spring 2024 Scoring Methodology). (ECF No. 129 at ¶ 85).

101. Aside from these two targeted changes, eligibility, weighting, measures, and performance categories remained unchanged.

102. Leapfrog imputes "Limited Achievement" for the Four Imputed Measures because they are considered structural measures for which Leapfrog can determine the hospital has the structure in place, but is purposefully choosing not to be transparent with its data. (ECF 88-97, Romano Dep., at 120:17-121:22).

103. "Limited Achievement" scores account for and give credit to hospitals for having a CPOE and BCMA system, Hand Hygiene Policy, and ICU. (ECF No. 101-4, Danforth, at 256:1-257:20).

iv. Leapfrog Survey Website

104. Leapfrog owns and operates the website leapfroggroup.org. (ECF No. 129 at ¶45).

105. Consumers can navigate through https://www.leapfroggroup.org/ to access a hospital's Survey scores at https://ratings.leapfroggroup.org/ ("Survey Website).

106. On the Survey Website a consumer can search for a hospital by facility name, location, or a more targeted and guided search. (*See*, https://ratings.leapfroggroup.org/).

107. The Survey Website reflects a "hospital's progress" on "Leapfrog's standard" for each measure in its respective category, including patient safety, specialty care, and surgery. (*See e.g.*, https://ratings.leapfroggroup.org/facility/details/10-0253/jupiter-medical-center-jupiter-fl).

108. Every measure on the Survey Website provides a description of "Leapfrog's Standard." (*Id.*).

109. If a consumer searches for a hospital that did not respond to the Survey, the consumer is greeted with a red pop-up that indicates that hospital "DECLINED TO RESPOND" and an explanation stating "Thousands of hospitals nationwide report to the Leapfrog Hospital Survey to help patients and purchasers make better health care decisions. This hospital did not participate." (ECF No. 74 at ¶54); (*See e.g.*, https://ratings.leapfroggroup.org/facility/details/10-0268/west-boca-medical-center-boca-raton-fl).

110. After dismissing the pop up, the consumer can view each of the measures, but under "Hospital's Progress" it states "DECLINED TO RESPOND" in red. (ECF No. 74 at ¶55); (*See e.g.*, https://ratings.leapfroggroup.org/facility/details/10-0268/west-boca-medical-center-boca-raton-fl).

111. The Survey Website does not "rate" hospitals. (https://ratings.leapfroggroup.org/).

112. The Survey Website does not display Safety Grades. (ECF No. 129 at ¶48).

113. The Survey Website reflects a "hospital's progress" on "Leapfrog's standards" for measures that are not included in the Safety Grades. (*Id.*).

v. Leapfrog Hospital Safety Grade Website

114. Leapfrog owns and operates hospitalsafetygrade.org. (ECF No. 129 at ¶45).

115. Leapfrog publishes its Safety Grades on https://www.hospitalsafetygrade.org/ ("Safety Grade Website).

116. On the Safety Grade Website, consumers can search for a hospital by city, state, zip code, or hospital name. (*Id.* at ¶49); (ECF No. 129, Schedule B- Leapfrog Trial Exhibits at DX-300).

117. After searching a hospital, a consumer is greeted with a "Terms of Use" pop up that notifies a consumer that the data available is for personal use only. (*See e.g.*, https://www.hospitalsafetygrade.org/search?findBy=hospital&zip_code=&city=&state_prov=&hospital=West+Boca+Medical+Center).

118. After dismissing the pop up the consumer is shown that hospital's Safety Grade with a hyperlink to "view the full score." (ECF No. 74 at ¶51); (*See e.g.*, https://www.hospitalsafetygrade.org/search?findBy=hospital&zip_code=&city=&state_prov=&hospital=West+Boca+Medical+Center).

119. If a consumer clicks or taps on a hospital's name, assigned Safety Grade, or "View the fully score," the consumer is brought to that hospital's profile webpage. (ECF No. 129 at ¶51 and DX-300).

120. A hospital's profile webpage on the Safety Grade Website displays the hospital's most recent Safety Grade at the top of the page. (*Id.* at ¶52 and DX-300).

121. When a consumer clicks or taps on "Show Recent Past Grades" at the top of a hospital's profile webpage, the last seven rounds of that hospital's Safety Grades (Spring 2022 to Spring 2025) appear. (*Id.* at ¶53 and DX-300).

122. When a consumer clicks or taps on "View this hospital's Leapfrog Hospital Survey Results" at the top of a hospital's profile webpage, a new webpage opens up bringing the user to that hospital's Survey scores on ratings.leapfroggoup.org. (*Id.* at ¶54).

123. On the hospital profile webpage, there are five tabs titled "Infections," "Problems with Surgery," "Safety Problems," "Practices to Prevent Errors," and "Doctors, Nurses & Hospital Staff." (*Id.* at ¶55 and DX-300).

124. When a consumer clicks or taps on one of the five tabs, they are shown measures included in the tab category and a corresponding red, yellow, and green "gas gauge" for each measure. (*Id.* at ¶56 and DX-300).

125. The "gas gauge" visually represents how Leapfrog has scored a hospital's performance on a measure. (*Id.* at ¶57 and DX-300).

126. Red conveys that Leapfrog has scored a hospital "Worse Than Average" performance; yellow conveys that Leapfrog has scored a hospital average performance; green conveys that Leapfrog has scored a hospital "Better Than Average" performance. (*Id.* and DX-300).

127. Beneath the "gas gauges" is a legend that states the gas gauges depict how the "Hospital Performs" on the Leapfrog standards based on a scale of "Worse Than Average" to "Better Than Average." (*Id.* at ¶58 and DX-300).

128. A consumer can view a hospital's measure score by clicking or tapping the corresponding "gas gauge" graphic. (*Id.* at ¶59 and DX-300).

129. Each measure webpage shows "This Hospital's Score," "Best Hospital's Score," "Average Hospital's Score," and "Worst Hospital Score"; describes the measure; and includes "Notes and Definitions" footnotes beneath the measure descriptions. (*Id.* at ¶60 and DX-300).

130. The scores for the Four Imputed Measures, CPOE, BCMA, Hand Hygiene, and IPS, can be found by clicking or tapping into the respective measures "Doctors order medications through a computer," "Safe medication administration," "Handwashing," and "Specially trained doctors care for ICU patients." (*Id.* at ¶61 and DX-300).

131. If a hospital does not respond to the Leapfrog Survey but is still assigned a Safety Grade, every measure webpage for a non-responding hospital includes a red, bolded footnote under "Notes and Definitions," stating that hospital "**Declined to Report: The hospital was asked to provide this information to the public, but did not."** (*Id.* at ¶62 and DX-300).

132. When a user clicks or taps on one of the Four Measures for a non-participating hospital, an asterisk (*) appears next to the measure score underneath "This Hospital's Score." (*Id.* at ¶63 and DX-300).

133. The asterisk (*) is associated with a red, bolded footnote stating, "***The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available**" that is reflected in the "Notes and Definitions." (*Id.* at ¶64 and DX-300).

134. The additional footnote stating "***The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available**" does not appear for any measure for which the imputation method was not used. (*See e.g.*, https://www.hospitalsafetygrade.org/h/west-boca-medical-center?findBy=hospital&hospital=West+Boca+Medical+Center&rPos=0&rSort=grade).

135. If a hospital does not respond to the Survey, measures "Effective leadership to prevent errors," "Nursing and Bedside Care for Patients," and "Staff work together to prevent

errors," show a question mark displayed with "Declined to Report" over the respective gas gauge on these measures for that hospital. (ECF No. 129 at ¶66 and DX-300).

136. Clicking a link at the top of a hospital's profile webpage that says "Detailed table view" takes a consumer to a new webpage that contains two tables displaying the hospital's most recent numerical score on each measure. (*Id.* at ¶67).

137. Each table has seven columns: "Measure," "The Hospital's Score." "Worst Performing Hospital," "Avg. Performing Hospital," "Best Performing Hospital," "Data Source," and "Time Period Covered." (*Id.* at ¶68 and DX-300).

138. Each "Measure" listed in the table includes a tooltip titled "What's This?" that provides a description of that specific measure when a user hovers over the tooltip. (*Id.* at ¶69 and DX-300).

139. Under the second table (process measures) of a hospital's "Detailed table view" webpage, there is a hyperlinked text that reads, "For a full description of the methodology, click here." (*Id.* at ¶70 and DX-300).

140. Clicking or tapping the link takes the consumer to a PDF version of Leapfrog's current "Scoring Methodology" document. (*Id.* at ¶71 and DX-300).

141. Consumers can read the publicly available methodology document to see the measure scores associated with each of the performance categories for the Four Imputed Measures. (ECF No. 129, Schedule C-The Parties Joint Exhibits, at JX-034.0; JX-041.1).

vi. Statements on Leapfrog's Safety Grade Website

142. Access to Leapfrog's websites is free for all consumers.

143. Leapfrog explains to consumers the difference between the Survey and the Safety Grade. (*See*, https://www.hospitalsafetygrade.org/frequently-asked-questions).

144. Leapfrog explains to consumers that reporting to the Leapfrog Survey "doesn't automatically improve a hospital's Safety Grade. If a hospital does well on the Leapfrog Hospital Survey that can improve their Grade, but if they do poorly it can hurt their Grade." (*Id.*).

145. Leapfrog explains to consumers that the "Hospital Safety Grade website gives people free access to all the information used to evaluate each hospital, so people should study the Grade as well as other ratings and information and decide for themselves where to seek care." (*Id.*).

146. Leapfrog explains to consumers that some hospitals do not receive a Safety Grade because there is not enough data publicly available to be eligible for a Safety Grade, but the "absence of a Grade does not mean a hospital is unsafe." (*Id.*).

147. Leapfrog explains to consumers that "[m]ost of the data Leapfrog uses comes from CMS, and in some cases, CMS does not publish adequate safety data on an individual hospital. Sometimes the hospital is too small to issue reliable numbers, or the hospital does not offer services relevant to the safety data. For instance, a hospital without an Intensive Care Unit (ICU) cannot report ICU safety measures." (*Id.*).

148. Leapfrog's website explains to consumers "How to Use the Grade." (*See e.g.*, https://www.hospitalsafetygrade.org/how-to-use-the-grade); (ECF No. 129 at p. 71, DX-305).

149. Leapfrog advises consumers that instead of relying on past grades, "[p]atients should always decide on where to receive care based on a hospital's current Safety Grade. However, past grades can tell you a lot about that hospital's track record in keeping its patients safe from errors, injuries, accidents and infections." (*Id.*).

150. Leapfrog explains to consumers "About the Grade" including how it was developed. (*See e.g.*, https://www.hospitalsafetygrade.org/about-the-grade); (ECF No. 129 at p. 71, DX-304).

151. Leapfrog explains to consumers "How the Leapfrog Hospital Safety Grade is produced" including descriptions of the domains, eligibility requirements, and where data comes from. (*Id.*).

152. Leapfrog encourages consumers to look at both the Safety Grades on hospitalsafetygrade.org and the Survey scores on leapfroggroup.org. (ECF No. 129 at p. 71, DX-306); (*See e.g.*, https://www.hospitalsafetygrade.org/choosing-the-best-hospital).

153. Leapfrog provides consumers links for helpful resources, contacts for Leapfrog, the scoring methodology, explanation of grades, planned changes, and a key for the measures. (*See e.g.*, https://www.hospitalsafetygrade.org/for-hospitals); (ECF No. 129 at p. 71, DX-307).

154. Leapfrog explains to consumers that the "Safety Grade provides data and research to help you make informed decisions about a critical aspect of your hospital stay – safety" and that the "goal of the Leapfrog Hospital Safety Grade is to reduce preventable deaths from hospital errors and injuries by publicly recognizing safety and exposing harm." (ECF No. 129 at p. 71, DX-308); (*See*, https://www.hospitalsafetygrade.org/why-the-hospital-safety-grade-works*)*.

155. In effort to explain the Safety Grades, Leapfrog publishes its cut points for each grading cycle. (ECF No. 129 at p. 71, DX-310); (*See*, https://www.hospitalsafetygrade.org/media/file/ExplanationofSafetyGrades_Spring2025.pdf).

156. Leapfrog explains its "Licensure" and "Permissions" for data users. (ECF No. 129 at p. 71, DX-309); (*See*, https://www.hospitalsafetygrade.org/Licensure).

157. Leapfrog's website references a white paper written by Johns Hopkins. (*See e.g.*, https://www.hospitalsafetygrade.org/LivesLost).

158. To date, Dr. Matt Austin stands by the findings in the white paper. (ECF No. 133-2, Austin Dep., at 106:2-107:1).

vii. Leapfrog Revenue

159. Leapfrog's two main revenue sources are data and accolade licensing. (ECF No. 101-3, Binder Dep., at p. 32:16-33:1); (ECF No. 88-68, Banerjee Dep., at p. 82:1-6).

160. Accolade licensing allows a hospital to purchase the right to use a Leapfrog trademark to promote their Safety Grade, Diabetes Recognition, or Top Hospital Award. (ECF No. 129 at DX-309).

161. Data licensing allows a purchaser access to the most recent available data that is available on the each of Leapfrog's respective websites, hospitalsafetygrade.org and/or the ratings on leapfroggroup.org. (ECF No. 129 at DX-309); (ECF No. 101-3, Binder Dep, at 272:16-273:3).

162. Data licensing does not provide or allow the licensee access to any hospital's raw data that was provided in response to the Leapfrog Survey. (ECF No. 88-86, Banerjee Dep., at 54:11-21; 211:4-16).

163. Datasets are not priced by the number of hospitals that participate in the Survey nor by the number of Safety Grades published by Leapfrog. (ECF No. 88-86, Banerjee Dep. at 82:4-20).

164. Leapfrog's value-based purchasing program reports are a series of reports that reflect a zero to 100 composite score for facilities using the Survey. (ECF No. 88-86, Banerjee Dep. at 209:5-18).

165. Leapfrog currently has one customer in the value-based purchasing program. (ECF No. 88-86, Banerjee Dep., at 236:2-8).

166. Leapfrog encourages hospitals to promote their Safety Grades by providing hospitals with free tools like template ads, announcements, and press releases. (ECF No. 88-86, Banerjee Dep., at 34:3-34:13).

167. A hospital need only pay for an accolade license if it wishes to use Leapfrog's intellectual property, i.e. logos, in connection with its advertising of its Hospital Safety Grade. (ECF No. 88-86, Kush Dep., at 34:3-34:13).

168. Leapfrog data sets are free for regional leaders, the partner advisory committee members, and academic researchers. (ECF No. 88-86, Banerjee Dep. at 68:3-13; 216:10-17).

169. Leapfrog is a not a "pay for play."

170. There was no evidence presented that hospitals pay money to Leapfrog in exchange for better grades.

171. Leapfrog does not provide or charge money for consulting services. (ECF No. 101-3, Binder Dep, at 87:11-21).

172. Leapfrog does not accept money in exchange for better Safety Grades.

viii. Hospitals Use Leapfrog

173. All Plaintiff hospitals historically participated in the Leapfrog Survey. (ECF No. 129 at ¶ 93).

174. In 2021, all Plaintiff hospitals made a conscious, informed business decision to stop participating in the Survey.

175. The Plaintiff hospitals' participation in the Leapfrog Survey is not allowed by Tenet Corporate office. (Leapfrog's Deposition Designations, ECF No. 133-1, Gina West at 157:5-22, 224:4-16).

176. After the Plaintiff hospitals stopped responding to the Survey, they still used the Survey and the Safety Grade measures to benchmark themselves internally. (ECF No. 129 at DX-557, DX-559, DX-564, DX-644).

177. The Plaintiff hospitals use the Safety Grade calculator to project grades based on improving or declining on different measures. (ECF No. 129 at DX-526; DX-524; DX-527).

178. The Plaintiff hospitals communicated to staff and boards what their grades will be or could be if they participated in the Survey. (ECF No. 129 at DX-624).

179. Despite the use of the Survey for benchmarking purposes, all five of the Plaintiff hospitals testified they receive no benefit from the Leapfrog Survey. (ECF No. 88-95, McCauley

Dep, at 136:22-137); (ECF No. 88-96, Montgomery Dep. at 202:19-24); (ECF No. 88-93, Havericak Dep., at 90:18-24).

ix. Leapfrog Safety Grade Statistics

180. In Spring 2025, Leapfrog assigned 2,829 hospitals Safety Grades and of those hospitals that received a grade only 592 of them did not respond to the Survey. (PX-426 at p. 2).

181. In Spring 2025, only 8.09% of graded hospitals received either a "D" or "F" Safety Grade. (*Id.*).

182. In Spring 2025, only 19 of 2,829 graded hospitals received an "F" Safety Grade. (*Id.* at p. 3) and three of those 19 were the Plaintiffs (Delray, Palm Beach, and West Boca). (X-Grades).

183. When comparing Fall 2024 and Spring 2025 scores, the overall means improved on 17 measures. (PX-426 at p. 8).

184. In Spring 2025, Leapfrog graded 191 Florida hospitals and 70 of those hospitals received an "A" Safety Grade. (*Id.* at p. 13).

185. Florida has one of the highest Survey participation rates in the country. (Missy)

186. Of the 191 hospitals in Florida that received a Spring 2025 Safety Grade, only 10 did not submit a Survey and five of those are the Plaintiffs. (ECF No. 129, Schedule C, DX-101; PX-426).

187. Of the 10 that did not submit the Survey, all 5 non-plaintiff hospitals received a C and all used Step 2 imputation. (ECF No. 129, Schedule C, DX-101; PX-426).

188. The non-plaintiff Florida hospitals that did not submit a Survey had the same scores imputed for the Four Imputed Measures as the Plaintiff hospitals, but the non-plaintiff hospitals received "C" Safety Grades rather than "D" or "F" Safety Grades like each of the Plaintiff hospitals. (ECF No. 129, Schedule C, DX-101; PX-426).

E. THE PLAINTIFF HOSPITALS ARE POOR PERFORMERS

i. DELRAY MEDICAL CENTER

189. In Spring 2024, Delray Medical Center received a "D" Safety Grade. (ECF No. 129 at DX-314).

190. In Fall 2024, Delray Medical Center received a "F" Safety Grade. (ECF No. 129 at DX-314).

191. Delray had a failing Safety Grade before the Fall 2024 Methodology change.

192. In 2025, Delray Medical Center received a 1 Star (out of 5) CMS rating overall. (ECF No. 129 at DX-203).

193. In 2025, the Mayo Clinic rated Delray Medical Center in the bottom 5% when compared to all hospitals. (ECF No. 129 at DX-707).

194. In April 2023, Delray was below the national average on, including but not limited to, several PSI measures, HAI outcomes, and Patient Experience data. (ECF No. 129 at DX-803).

195. In April 2024, Delray was below the national average on, including but not limited to, several PSI measures, HAI outcomes, and Patient Experience data. (ECF No. 129 at DX-813).

196. Delray Medical Center did not present any evidence that it would have scored higher than "Limited Achievement" on the Four Imputed Measures.

197. Delray Medical Center did not present any evidence that its Safety Grades are undeserved or otherwise unfair.

198. Delray Medical Center admits Leapfrog provides it no benefit or anything of value. (ECF 88-93, Havericak Dep., at 90:18-24).

ii. WEST BOCA MEDICAL CENTER

199. In Spring 2024, West Boca Medical Center received a "D" Safety Grade. (ECF No. 129 at DX-312).

200. In Fall 2024, West Boca Medical Center received a "D" Safety Grade. (ECF No. 129 at DX-312).

201. The Fall 2024 Methodology Change had no impact on West Boca's Hospital Safety Grade. (ECF No. 129 at DX-312).

202. In 2025, West Boca Medical Center received a 2 Star (out of 5) CMS rating overall. (ECF No. 129 at DX-203).

203. In 2025, the Mayo Clinic rated West Boca Medical Center in the bottom 25% when compared to all hospitals. (ECF No. 129 at DX-705).

204. In April 2023, West Boca was below the national average on, including but not limited to, several PSI measures, HAI outcomes, and Patient Experience data. (ECF No. 129 at DX-803).

205. In April 2024, West Boca was below the national average on, including but not limited to, several PSI measures, HAI outcomes, and Patient Experience data. (ECF No. 129 at DX-813).

206. West Boca Medical Center did not present any evidence that it would have scored higher than "Limited Achievement" on the Four Imputed Measures.

207. West Boca Medical Center did not present any evidence that its Safety Grades are undeserved or otherwise unfair.

208. West Boca Medical Center admits Leapfrog provides it no benefit or anything of value.

iii. ST. MARY'S MEDICAL CENTER

209. In Spring 2024, St. Mary's Medical Center received a "C" Safety Grade. (ECF No. 129 at DX-316).

210. In Fall 2024, St. Mary's Medical Center received a "D" Safety Grade. (ECF No. 129 at DX-316).

211. In 2025, St. Mary's Medical Center received a 1 Star (out of 5) CMS rating overall. (ECF No. 129 at DX-203).

212. In 2025, the Mayo Clinic rated St. Mary's Medical Center in the bottom 11% when compared to all hospitals. (ECF No. 129 at DX-709).

213. St. Mary's Medical Center did not present any evidence that it would have scored higher than "Limited Achievement" on the Four Imputed Measures.

214. In April 2023, St. Mary's was below the national average on, including but not limited to, several PSI measures, HAI outcomes, and Patient Experience data. (ECF No. 129 at DX-803).

215. In April 2024, St. Mary's was below the national average on, including but not limited to, several PSI measures, HAI outcomes, and Patient Experience data. (ECF No. 129 at DX-813).

216. St. Mary's Medical Center did not present any evidence that its Safety Grades are undeserved or otherwise unfair.

217. St. Mary's Medical Center admits Leapfrog provides it no benefit or anything of value. (ECF No. 88-95, McCauley Dep., at 136:22-137).

iv. PALM BEACH GARDENS MEDICAL CENTER

218. In Spring 2024, Palm Beach Gardens received a "C" Safety Grade. (ECF No. 129 at DX-315).

219. In Fall 2024, Palm Beach Gardens received a "F" Safety Grade. (ECF No. 129 at DX-315).

220. In 2025, Palm Beach Gardens received a 1 Star (out of 5) CMS rating overall. (ECF No. 129 at DX-203).

221. In 2025, the Mayo Clinic rated Palm Beach Gardens in the bottom 4% when compared to all hospitals. (ECF No. 129 at DX-708).

222. In April 2023, Palm Beach Gardens was below the national average on, including but not limited to, several PSI measures, HAI outcomes, and Patient Experience data. (ECF No. 129 at DX-803).

223. In April 2024, Palm Beach Gardens was below the national average on, including but not limited to, several PSI measures, HAI outcomes, and Patient Experience data. (ECF No. 129 at DX-813).

224. Palm Beach Gardens did not present any evidence that it would have scored higher than "Limited Achievement" on the Four Imputed Measures.

225. Palm Beach Gardens did not present any evidence that its Safety Grades are undeserved or otherwise unfair.

226. Palm Beach Gardens admits Leapfrog provides it no benefit or anything of value.

v. GOOD SAMARITAN MEDICAL CENTER

227. In Spring 2024, Good Samaritan received a "C" Safety Grade. (ECF No. 129 at DX-313).

228. In Fall 2024, Good Samaritan received a "F" Safety Grade. (ECF No. 129 at DX-313).

229. In 2025, Good Samaritan received a 1 Star (out of 5) CMS rating overall. (ECF No. 129 at DX-203).

230. In 2025, the Mayo Clinic rated Good Samaritan in the bottom 12% when compared to all hospitals. (ECF No. 129 at DX-706).

231. In April 2023, Good Samaritan was below the national average on, including but not limited to, several PSI measures, HAI outcomes, and Patient Experience data. (ECF No. 129 at DX-803).

232. In April 2024, Good Samaritan was below the national average on, including but not limited to, several PSI measures, HAI outcomes, and Patient Experience data. (ECF No. 129 at DX-813).

233. Good Samaritan did not present any evidence that it would have scored higher than "Limited Achievement" on the Four Imputed Measures.

234. Good Samaritan did not present any evidence that its Safety Grades are undeserved or otherwise unfair.

235. Good Samaritan admits Leapfrog provides it no benefit or anything of value. (ECF 88-96, Montgomery Dep., at 202:19-24).

F. NO EVIDENCE OF CONSUMER HARM

236. Delray Medical Center did not present evidence of a single consumer or patient that was deceived by its Safety Grades. (ECF No. 129 at pp.103-104).

237. Delray Medical Center did not present evidence of a single consumer or patient that was harmed by its Safety Grades. (ECF No. 129 at pp.103-104).

238. West Boca Medical Center did not present evidence of a single consumer or patient that was deceived by its Safety Grades. (ECF No. 129 at pp.103-104).

239. West Boca Medical Center did not present evidence of a single consumer or patient that was harmed by its Safety Grades. (ECF No. 129 at pp.103-104).

240. St. Mary's Medical Center did not present evidence of a single consumer or patient that was deceived by its Safety Grades. (ECF No. 129 at pp.103-104).

241. St. Mary's Medical Center did not present evidence of a single consumer or patient that was harmed by its Safety Grades. (ECF No. 129 at pp.103-104).

242. Palm Beach Gardens did not present evidence of a single consumer or patient that was deceived by its Safety Grades. (ECF No. 129 at pp.103-104).

243. Palm Beach Gardens did not present evidence of a single consumer or patient that was harmed by its Safety Grades. (ECF No. 129 at pp.103-104).

244. Good Samaritan did not present evidence of a single consumer or patient that was deceived by its Safety Grades. (ECF No. 129 at pp.103-104).

245. Good Samaritan did not present evidence of a single consumer or patient that was harmed by its Safety Grades. (ECF No. 129 at pp.103-104).

G. NO EVIDENCE OF PLAINTIFF HARM

246. The market share for these five hospitals has increased since the Fall 2024 Leapfrog Hospital Safety Grades was released in November 2024. (ECF No. 129 at DX921).

i. DELRAY MEDICAL CENTER

247. Delray Medical Center did not lose any physicians because of its Safety Grades. (ECF No. 88-93, Havericak Dep, at 254: 10-12; 261:14-17).

248. Delray Medical Center did not identify any patient who refused to treat at Dleray because of its Safety Grades. (ECF No. 88-93, Havericak Dep, at 253:1-15).

249. Delray's revenue has increased. (ECF No. 88-93, Havericak Dep, at 66:5-7).

250. Nursing retention has not declined at Delray due to its Safety Grades. (ECF No. 88-93, Havericak Dep, at 38:3-19; 51:3-13; 261:18-21).

251. Transfer rates from other hospitals to Delray have been consistent since January 2024. (ECF No. 88-93, Havericak Dep, at 61:2-62:9).

252. Delray has had no issues recruiting board members as a result of its Safety Grades. (ECF No. 88-93, Havericak Dep, at 41:2-4).

253. Delray's Google Reviews have increased from 1.7 stars in September 2024 to 4.5 stars as of September 2025. (ECF No. 88-93, Havericak Dep, at 49:4-12.

254. The Delray brand has increased since January 2024. (ECF No. 88-93, Havericak Dep, at 51-15:53-16.

255. Admissions at Delray are up in all areas. (ECF No. 129 at PX-466); (ECF No. 88-93, Havericak Dep, at 257:22-25).

ii. WEST BOCA MEDICAL CENTER

256. West Boca Medical Center did not lose any physicians because of its Safety Grades. (ECF No. 88-92, Hanlon Dep., at 88:9-18).

257. West Boca Medical Center did not identify the name any patient who refused to treat at Dleray because of its Safety Grades.

258. West Boca Medical Center's revenue has increased. (ECF No. 88-92, Hanlon Dep., at 87:16-19).

259. West Boca Medical Center's Google Reviews have increased. (ECF No. 88-92, Hanlon Dep., at 116:9-11).

260. The West Boca Medical Center brand has increased since January 2024. (ECF No. 88-92, Hanlon Dep., at 116:2-16).

iii. ST. MARY'S MEDICAL CENTER

261. St. Mary's Medical Center did not lose any physicians because of its Safety Grades.

262. St. Mary's Medical Center did not identify any patient who refused to treat at Dleray because of its Safety Grades. (ECF No. 88-95, McCauley Dep., at 231:13-233:5).

263. St. Mary's revenue has increased. (ECF No. 88-95, McCauley Dep., at 105:10-12).

264. Nursing retention has not declined at St. Mary's due to its Safety Grades. (ECF No. 88-95, McCauley Dep., at 74:11-24).

265. St. Mary's has had no issues recruiting board members as a result of its Safety Grades. (ECF No. 88-95, McCauley Dep., at 56:4-6).

iv. GOOD SAMARITAN MEDICAL CENTER

266. Good Samaritan did not lose any physicians because of its Safety Grades. (ECF 88-96, Montgomery Dep., at 297:16-18; 299:23-300:7).

267. Good Samaritan did not identify any patient who refused to treat at Good Samaritan because of its Safety Grades. (ECF 88-96, Montgomery Dep., at 296:9-14; 296:15-23; 299:9-14).

268. Good Samaritan's revenue is not down as a result of its Safety Grades. (ECF 88-96, Montgomery Dep., at 66:13-18).

269. Good Samaritan's EBITDA was not down from 2024 to 2025. (ECF 88-96, Montgomery Dep., at 66:13-18).

270. Nursing retention has not declined at Good Samaritan due to its Safety Grades. (ECF 88-96, Montgomery Dep., at 67:24-68:5).

271. Good Samaritan has had no issues recruiting board members as a result of its Safety Grades. (ECF 88-96, Montgomery Dep., at 80:19-85:7).

272. Good Samaritan's Google Reviews have not been impacted by its Safety Grades. (ECF 88-96, Montgomery Dep., at 95:11-13).

v. PALM BEACH GARDENS MEDICAL CENTER

273. Palm Beach Gardens Medical Center did not lose any physicians because of its Safety Grades. (ECF 88-90, Cazeres Dep. at p. 56:2-4).

274. Palm Beach Gardens Medical Center did not identify any patient who refused to treat at Palm Beach Gardens because of its Safety Grades. (ECF 88-90, Cazeres Dep. at p. 34:10-35:11).

275. Palm Beach Gardens Medical Center revenue is not down as a result of its Safety Grades. (ECF 88-90, Cazeres Dep., at 56:2-4).

276. Nursing retention has not declined at Palm Beach Gardens Medical Center due to its Safety Grades. (ECF 88-90, Cazeres Dep. at p.58:16-21).

III. CONCLUSIONS OF LAW

A. COUNT I, FDUTPA, ELEMENTS OF THE CLAIM AND BURDEN OF PROOF

277. The Florida Deceptive Unfair Trade Practices Act ("FDUTPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.204(1).

278. Through FDUTPA, the Florida legislature intends to "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. § 501.202(2).

279. Florida Courts have held that "an entity does not have to be a consumer in order to have standing to bring a FDUTPA claim." *Caribbean Cruise Line, Ind. v. Better Bus. Bureau of Palm Beach County, Inc.*, 169 So. 3d 164, 169 (Fla. 4th DCA 2015). "[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**." *CMR Constr. & Roofing, LLC v. UCMS, LLC*, 2022 WL 3012298, *3 (11th Cir. 2022) (emphasis added); *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).

280. 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 (emphasis in original).

281. Plaintiffs must "prove that *there was an injury or detriment to consumers* in order to satisfy all elements of a FDUTPA claim." *Id.* (emphasis in original).

282. Plaintiffs are required to show "'probable, not possible, deception' that is 'likely to cause injury to a reasonable relying consumer.'" *Piescik v. CVS Pharm., Inc.*, 576 F. Supp. 3d 1125, 1132 (S.D. Fla. 2021) (internal citation omitted).

283. Courts use an objective test to "determine whether 'the alleged practice was likely to deceive a consumer acting reasonably in the same circumstances.'" *Id.* (citation omitted).

284. The Florida Supreme Court defines an unfair practice as "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.*, 842 So. 2d 773, 777 (Fla. 2003) (citation omitted; emphasis added).

285. 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." *SMS Audio, LLC v. Belson,* 2017 WL 11631378, *10 (S.D. Fla. April 24, 2017). (emphasis added).

286. Although FDUTPA does not require an entity to be a consumer to have standing to sue, "all claimants must 'prove…an injury or detriment to consumers in order to satisfy all of the elements of a FDUTPA claim.'" *S. Broward Hosp. Dist. V. ELAP Servs., LLP,* 2023 U.S. Dist. LEXIS 177407 (S.D. Fla. September 29, 2023); quoting *Caribbean Cruise Line,* 169 So. 3d at 169 (citation omitted).

287. "[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." *CMR Constr. & Roofing, LLC v. UCMS, LLC*, 2022 WL 3012298, *3 (11th Cir. 2022).

288. "[T]o state a claim for equitable relief, an entity must show (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." *Stewart Agency, Inc.*, 266 So. 3d at 214.

289. 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) ("The clear intent of [FDUTPA] as expressed by its plain language is to provide both equitable and legal remedies to private consumers who are aggrieved parties and/or have sustained **actual losses** because of a violation(s) under FDUTPA") (emphasis added).

290. The following definition of "aggrieved" applies to companies: "'having [their] legal rights [] adversely affected; having been harmed by an infringement of legal rights.'" *Stewart Agency, Inc.*, 266 So. 3d at 213-14.

291. "[A] plaintiff is 'aggrieved' under FDUTPA when the deceptive conduct alleged has caused a **non-speculative injury** that has affected the plaintiff beyond a general interest in

curbing deceptive or unfair conduct.'" *Cravens v. Garda CL Se., Inc.*, 2024 WL 5058304, *36; quoting, *Farmer v. Humana, Inc.*, 582 F. Supp. 3d 1176, 1190 (M.D. Fla. Jan. 25, 2022); *Superior Consulting Servs., Inc. v. Shaklee Corp.*, 2017 WL 2834783, * (M.D. Fla. June 30, 2017) (emphasis added).

292. "The FDUTPA 'is designed to protect not only the rights of litigants, but also the rights of the consuming public at large.'" *Gastaldi v. Sunvest Cmtys. USA, LLC*, 657 F. Supp. 2d 1045, 1057 (S.D. Fla. 2009).

293. Plaintiffs who are "*aggrieved by a violation of FDUTPA* may seek declaratory and/or injunctive relief under the statute." *Id.* (emphasis added).

B. PLAINTIFFS ARE NOT CONSUMERS OF LEAPFROG AND PLAINTIFFS FAIL TO DEMONSTRATE CONSUMER HARM.

294. The Plaintiff hospitals are neither a reasonable consumer of the Safety Grades nor a consumer of the Safety Grades at all. *See, e.g., S. Broward Hosp.* at *29-31 (finding the plaintiff hospital not to be a consumer of defendant's services after plaintiff's corporate representative testified that plaintiff "received no 'benefit or anything of value' from defendants").

295. Likewise, here, every one of the Plaintiff hospital's corporate representatives (CEOs) testified that Leapfrog does not provide a benefit or provide value to the hospital.

296. The Court therefore concludes that each Plaintiff is not a consumer of Leapfrog.

297. "Plaintiff has standing to pursue FDUTPA claims so long as it can demonstrate 'an injury or detriment to consumers.'" *S. Boward Hosp.*, at *30 (quoting *Caribbean Cruise Line*, 169 So. 3d at 169).

298. Plaintiffs have otherwise not established consumer harm or substantial likelihood of consumer harm to reasonable consumers of Leapfrog's Safety Grades. *Id.* at *31.

299. Plaintiffs' inability to show actual or likely consumer harm is fatal to its FDUTPA claim. *See*, *Tymar Distribution LLC v. Mitchell Grp. USA, LLC*, 558 F. Supp. 3d 1275, 1289 (S.D. Fla. 2021) ("plaintiffs must point to specific damages done to consumers in the market" to allege consumer harm under FDUTPA) (cleaned up); *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).

300. Since Plaintiffs are non-consumers, they must demonstrate actual consumer harm but have not.

301. Plaintiffs evidence of consumer harm is not convincing. *See e.g., S. Broward Hosp.* at *32 (evidence of billing members and emails showing that the defendant "could" or "would" bill patients but did not is inadequate to prove consumer harm); *see also, Novo Nordisk, Inc. v. Brooksville Pharms., Inc.*, 785 F. Supp. 3d 1123, 1132 (M.D. Fla. May 12, 2025) (the Court held that plaintiffs handful of email complaints were insufficient to prove actual consumer harm and that plaintiffs are required to show more than a hypothetical that the purported conduct is "likely to cause consumer harm," which is the motion to dismiss standard).

302. In *Novo*, the Court further held that Novo's presentation of some "hypothetical possibility of some future injury to Florida consumers" was insufficient to survive summary judgment, and that Novo's identification of 5 Brooksville-customer complaints (out of 24,000 customers) about "ineffective" prescriptions did not constitute "evidence that a Florida consumer suffered actual harm from Brooksville's misbranded semaglutide." *Id.*, 1146; *see also, Id.*, 1147 ("After extensive discovery and exhaustive briefing, [Novo's] failure to provide any evidence of consumer harm entitles [Brooksville] to summary judgment on [Novo's] FDUTPA claim").

303. The Plaintiff Hospitals have identified only a smattering of hearsay statements and documents wherein their CEOs state that patients reported complaints to doctors or expressed to doctors and to others that they were disinclined to use the Plaintiff Hospitals as a result of the Safety Grades.

304. The Plaintiff Hospitals even cite instances where patients express pleasure with their experiences at the Plaintiff Hospitals.

305. The Court therefore concludes that Plaintiffs cannot prove this Court's first inquiry on element one, consumer injury or detriment, and a judgment for Leapfrog is warranted on this basis.

C. LEAPFROG'S ACTS AND PRACTICES ARE NOT DECEPTIVE.

306. Leapfrog's acts and practices are not deceptive because it provides substantial transparent, free, readily accessible, and comprehensive information and explanations to reasonable consumers as it relates to Leapfrog's Hospital Safety Grades.

307. Judgment for Leapfrog on Count I, FDUTPA, is therefore warranted on element two, a deceptive 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 (emphasis in original).

308. Element two, deception, is a two-party inquiry for which Plaintiffs cannot prove either (1) likely to mislead a consumer acting reasonably; and (2) consumer detriment.

309. In *Piescik*, the Southern District held that all the information available to consumers and the context in which that information is provided must be considered, and that claims of deception resting on unreasonable or fanciful interpretations of labels or other advertising fail. 576 F. Supp. 3d at 1132-33 (collecting cases).

310. In *Piescik*, the defendant (CVS) moved to dismiss, arguing that the plaintiff's belief that a reasonable consumer of hand sanitizer would take the "99.99% of germs" claim as fact was objectively unreasonable based on common knowledge, and also because of the asterisk next to the 99.99% claim led to a disclosure on the back label. *Id.* at 1132.

311. The Court further explained that the "information available" to consumers informing the reasonable-consumer inquiry is not limited to the label itself, and that "true information or a disclaimer can rebut a claim of deception." *Id.* at 1133; citing *Freeman v. Time Inc.*, 68 F. 3d 285, 289-90 (9th Cir. 1995).

312. The Court held that a reasonable consumer would not assume that a hand sanitizer product with such a label encompassed "all conceivable disease-causing microorganisms, regardless of whether they are commonly found on the hands," and noted "the asterisk on the back of the hand sanitizer clearly discloses to the consumer that it does not kill 99.99% of *all* germs, and a reasonable consumer would not be expected to ignore the asterisk and the information it leads to." *Id.* at 1133. The claim was dismissed with prejudice. *Id.*, 1133-36.

313. Since the *Piescik* case was dismissed with prejudice, a judgment for Leapfrog is warranted.

314. Leapfrog provides far more than the information available to the consumers in *Piescek* and, thus, the undisputed facts here present *even stronger* grounds to hold that Leapfrog's purported conduct was not deceptive to a reasonable consumer of its products.

315. Leapfrog's hospitalsafatygrade.org website that publishes the Safety Grades included, *inter alia*, that: (i) the imputed score for non-participating hospitals is shown as equivalent to the worst score; (ii) non-reporting hospitals' Grades feature, *inter alia*, bold and red

disclosures with an asterisk stating "***The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available.**"; (iii) a detailed table view of all the underlying scores that go into the Safety Grade for that hospital, comparison to other hospitals, the data source, and the time period covered; (iv) navigation of the Grades and measure-by-measure scores leads to a link allowing access to the full, 29-page Methodology; and (v) various other tools that show "how to use the Leapfrog Hospital Safety Grade," frequently asked questions, and "About the Grade."

316. As in *Piescik*, any potential to deceive a reasonable consumer of Leapfrog's products is ameliorated by additional information denoted by an asterisk, and by the substantial additional material provided. A reasonable consumer is not expected to ignore this asterisk. *Piescik*, 576 F. Supp. 3d at 1133.

317. Whether a reasonable consumer would be deceived is a totality-of-the-information inquiry, and must account for the type of consumer.

318. Thus, Leapfrog uses various pages on its website for varying comprehension levels, including the "gas gauge" pages for reasonable lay consumers, detailed table view for an intellectually curious consumer, and the detailed methodology page for an advanced consumer.

319. The *Piescik* court relied on *Moore v. Trader Joe's Co.*, wherein the Ninth Circuit affirmed dismissal of the plaintiff's charge that Trader Joe's labeling of honey as "100% New Zealand Manuka Honey" and listing "Manuka Honey" as the sole ingredient was misleading to a reasonable consumer. 4 F. 4th 874 at 876-77, 879-80 (9th Cir. 2021).

320. The Ninth Circuit explained that a reasonable consumer of a niche product like the Trader Joe's honey would know that it is impossible to produce "pure" batches of honey derived solely from the Manuka flower, and that the relatively cheap price would further signal a **reasonable consumer of that honey** that the jar does not contain 100% Manuka honey. *Id.* at 881 (emphasis added).

321. Indeed, the inquiry is whether a reasonable consumer of the *subject product* would be misled considering all the information available to him or her. *See, Id.* at 884 (consumers of "a niche, specialty product, are undoubtedly more likely to exhibit a higher standard of care").

322. A reasonable consumer of health care information such as the Safety Grades would exhibit a higher standard of care and awareness when choosing where to receive their medical treatment, and Leapfrog's provision of substantial and transparent information (including

delineating between absent data, damning data, and imputed data) allows these consumers to fully and comprehensively inquire and educate themselves about the material that they are consuming. *Moore*, 4 F. 4th at 884; quoting, *Danone, US, LLC v. Chobani, LLC*, 362 F. Supp. 3d 109, 123 (S.D.N.Y. 2019) ("Consumers of Manuka honey, a niche, specialty product, are undoubtedly more likely to exhibit a higher standard of care than 'a parent walking down the dairy aisle in a grocery store, possibly with a child or two in tow,' who is 'not likely to study with great diligence the contents of a complicated product package'").

323. Consumers are familiar with rating websites, and considering all the information available, reasonable consumers of rating systems are aware that each system only considers certain criteria.

324. The Court finds the qualifications of Michael Vredenburgh sufficient to qualify him as an expert in the field of website design, digital low literacy and user experience. (ECF No. 96-5).

325. The Court finds that Michael Vredenburgh's expert opinion that the Leapfrog Hospital Safety Grade Website (www.hopsitalsafetygrades.org) ensures high clarity and transparency for reasonable consumers to be reliable, persuasive and unrebutted. (ECF No. 96-5).

326. The Court finds that Michael Vredenburgh's expert opinion that the scores for BCMA, CPOE, Hand Hygiene and ICU Physician Staffing are readily clear to users with basic reading comprehension to be reliable, persuasive and unrebutted. (ECF No. 96-5).

327. The Court finds that Michael Vredenburgh's expert opinion that in evaluating the clarity, transparency, and usability of the Leapfrog Hospital Safety Grade website, a reasonable consumer with at least an 8th-grade reading level would understand from reviewing the BCMA, CPOE, Hand Hygiene and ICU Physician Staffing measures that a minimum value was assigned when hospitals declined to provide data to Leapfrog. (ECF No. 96-5).

328. Thus, a consumer of Leapfrog *Safety* Grades can reasonably conclude that the grade itself measures aspects of patient *safety*.

329. The Court therefore concludes that Plaintiffs cannot prove this Court's first inquiry on element two (deception), likely to mislead a consumer acting reasonably in the circumstances and a judgment for Leapfrog on Count I should therefore be entered on this basis.

330. Plaintiffs are otherwise not a consumer of Leapfrog and there is no evidence of this Court's second inquiry on element two (deception), consumer detriment.

331. Plaintiffs have not offered evidence of a single consumer (or patient) that considered or relied on their Safety Grades to their detriment or caused consumer harm.

332. The Court therefore concludes that Plaintiffs cannot prove this Court's second inquiry on element two (deception), consumer detriment, and a judgment for Leapfrog on Count I should therefore be entered on this basis.

D. LEAPFROG'S ACTS AND PRACTICES ARE NOT UNFAIR.

333. Leapfrog's acts and practice are not unfair because the underlying Scoring Methodology treats all hospitals the same based on the informed business decision the hospital makes and consumers are otherwise fully informed on how the Safety Grades are calculated.

334. Leapfrog's practices are transparent and far from "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.,* 842 So. 2d 773, 777 (Fla. 2003) (citation omitted; emphasis added).

335. Leapfrog's practices likewise have not caused any substantial consumer injury and even if any consumer injury were demonstrated, it would be outweighed by any countervailing benefits to consumers or competition that the practice produces, which can otherwise be reasonably avoided by consumers.

336. Judgment for Leapfrog on Count I, FDUTPA, is therefore warranted on element three, an unfair 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." *SMS Audio, LLC v. Belson*, 2017 WL 11631378, *10 (S.D. Fla. April 24, 2017). (emphasis added).

337. First, Plaintiffs have never identified a single consumer injured by a Leapfrog practice that is allegedly unfair.

338. Even if patients were refusing to treat at an "F" hospital, like Delray Medical Center, the Plaintiffs fail to show how a patient treating at an "A" hospital, like Jupiter Medical Center, harms the consumer in any way.

339. The Plaintiff Hospitals do not allege or otherwise provide proof showing that patients are refusing to treat at the Tenet Hospitals because of the Safety Grades, nor any evidence that those patients are then harmed when treated at a competitor hospital.

340. 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 Cmty. Health Ctrs., Inc. v. DiamondDog Servs., Inc.*,2024 WL 3278579, *10 (M.D. Fla. July 2, 2024) (dismissal of plaintiff's FDUTPA claim after determining that plaintiff only alleged harm the defendant caused the *plaintiff* but failed to plead consumer injury).

341. The Court therefore concludes that Plaintiffs cannot prove this Court's first inquiry on element thee (unfair), substantial consumer injury, and a judgment for Leapfrog on Count I should therefore be entered on this basis.

342. Second, Plaintiffs have no evidence on the requirement that the injury "not be outweighed by any countervailing benefits to consumers or competition that the practice produces." *SMS Audio* at *3.

343. The purpose of the Safety Grade is to "educate and encourage consumers to consider safety when selecting a hospital for themselves or their families." (ECF No. 129 at JX-041.1).

344. Safety Grade fosters market incentives for hospitals to prioritize safety. (ECF No. 101-4, Danforth Dep., at 61:21-62:7); (ECF No. 88-97, Romano Dep., at 29:1-7, 235:14-25).

345. Leapfrog has received feedback over the years from hospitals advising that they use the Hospital Survey as a benchmarking tool on how to improve on their patient safety measures. (ECF No. 133-2, Dr. Matt Austin, at 387:4-15. 390:7-21); (ECF No. 101-3, Binder, at 369:1-370:13).

346. The Plaintiff Hospitals themselves used the Survey as an internal tool to benchmark their patient safety progress. (ECF No. 129 at DX-557, DX-559, DX-564, DX-644).

347. The mere fact that year-over-year improvements to mean "cohort" scores for Survey-participant hospitals occurred also proves the benefit that Leapfrog's purported conduct conferred.

348. Thus, not only do patients benefit from receiving access to hospital's patient safety data, but the Hospital Survey also provides a free tool for hospitals to improve patient safety. (SOF ¶6).

349. "Unfair practices" generally offend public policy and are immoral, unethical, oppressive and unscrupulous. *Alhassid v. Nationstar Mortg.* LLC, 771 Fed. Appx. 965, 969 (11th Cir. 2019).

350. But the Plaintiff Hospitals cannot set forth a single fact that Leapfrog, a non-profit providing substantial information to the public about healthcare facilities' safety, engaged in conduct fitting any of those categories.

351. The Court therefore concludes that Plaintiffs cannot prove this Court's second inquiry on element thee (unfair), consumer injury is not outweighed by any countervailing benefit to consumers, and a judgment for Leapfrog on Count I should therefore be entered on this basis.

352. Third, Consumers (*e.g.*, prospective patients) could easily avoid this purported injury by navigating Leapfrog's various webpages and explanations of its Methodology contained therein.

353. More specifically, at the bottom of each page of its websites, Leapfrog expressly states, *inter alia*, "Individuals are solely responsible for any and all decisions with respect to their medical treatment.

354. Disclosures note that neither Leapfrog nor its affiliates are responsible for any damages or costs that may be incurred with respect to use of this site.

355. Leapfrog advises consumers to "never disregard, avoid or delay in obtaining medical advice from a doctor or other health care professional because of material on this site, as the site is not intended to be a substitute for professional medical advice."

356. Leapfrog is clear that when deciding 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."

357. Leapfrog's transparent disclosure of its methods cannot be genuinely described as "unfair." *See, e.g.*, *Medmoun v. Home Depot U.S.A., Inc.*, *14-15 (M.D. Fla. May 7, 2022) (where documents that Home Depot provided to the consumer informed the consumer of the very information that was allegedly unfair under the FDUTPA, dismissal was proper as the harm could have been reasonably avoided).

358. The Court therefore concludes that Plaintiffs cannot prove this Court's third inquiry on element thee (unfair), consumer injury could not be reasonably avoided, and a judgment for Leapfrog on Count I should therefore be entered on this basis.

E. PLAINTIFFS ARE NOT AGGRIEVED.

359. Each Plaintiff fails to prove that they were "aggrieved" by the Safety Grade.

360. Judgment for Leapfrog on Count I, FDUTPA, is therefore warranted on element four, Plaintiffs were not "aggrieved by" the Safety Grades.

361. "[T]o state a claim for equitable relief, an entity must show (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." *Stewart Agency, Inc.*, 266 So. 3d at 214.

362. Because the Tenet Hospitals are business entities and do not "share the characteristics of humans, such as being 'angry or sad'" the following definition of "aggrieved" applies: "'having [their] legal rights [] adversely affected; having been harmed by an infringement of legal rights.'" *Id.* at 213-14.

363. Plaintiffs must show that they were suffered a direct, non-speculative and actual harm as a result of the alleged conduct but have not. *See e.g., Cravens v. Garda CL Se., Inc.*, 2024 WL 5058304, *36 (finding that an "aggrieved" plaintiff must prove non-speculative injury).

364. The Court may look no further than Delray Medical Center and West Boca Medical Center who both received a failing "D" Safety Grade *before* and *after* the alleged "unfair" Fall 2024 Scoring Methodology change.

365. All five of the Plaintiff Hospitals' CEO's signed declarations early in this litigation, averring that the Safety Grades have harmed their hospital's reputation and goodwill, but then could identify any non-speculative or admissible evidence in support.

366. None of the Plaintiffs' CEOs (who are the corporate representatives) could identify any actual financial harm suffered beyond a speculative level and all even admit revenue is up.

367. Plaintiffs' complaints of lost goodwill and/or reputational harm is wholly unsupported by evidence of a loss of business value.

368. The Court finds the qualifications of Mark Rule sufficient to qualify him as an expert in the field of economics, specifically regarding what must be shown by a corporation to substantiate lost good will or reputational harm. (ECF No. 96-4).

369. The Court finds that Plaintiffs have failed to perform any necessary causal analysis between purportedly lost business value and TLG's actions and thus Plaintiffs have failed to demonstrate that they have suffered any injury as a result of the alleged actions of TLG. (ECF No. 96-4).

370. Four of the five Plaintiff hospitals received a 1 Star overall CMS rating with only one Plaintiff hospital receiving a 2 Star overall CMS rating.

371. According to the Mayo Clinic, not a single Plaintiff hospital is rated above the bottom 29% overall when compared to all hospitals with some of the Plaintiff hospitals not even achieving above the bottom 7% overall.

372. Since Plaintiffs fail to offer any evidence that they were aggrieved *by* a violation of FDUTPA, Plaintiffs are not entitled to injunctive relief. *Gastaldi*, 657 F. Supp. 2d at 1057.

373. Since the "FDUTPA 'is designed to protect not only the rights of litigants, but also the rights of the consuming public at large,'" there is no evidence of any consumer harm, and Leapfrog's practices outweigh any purported consumer harm, Plaintiffs claim for injunctive and declaratory relief is unwarranted. *Gastaldi,* 657 F. Supp. 2d at 1057.

374. The Court therefore concludes that Plaintiffs cannot prove this Court's inquiry on element four, whether each Plaintiff is "aggrieved", and a judgment for Leapfrog on Count I should therefore be entered on this basis.

375. West Boca Medical Center is not entitled to injunctive relief.

376. Delray Medical Center is not entitled to injunctive relief.

377. Good Samaritan Medical Center is not entitled to injunctive relief.

378. St. Mary's Medical Center is not entitled to injunctive relief.

379. Palm Beach Gardens Medical Center is not entitled to injunctive relief.

F. COUNT II, DECLARATORY JUDGMENT, ELEMENTS OF THE CLAIM AND BURDEN OF PROOF.

380. Pursuant to Declaratory Judgment Act, 28 U.S.C. § 2201, a court may declare the rights and other legal relations of any interested party in a case of an actual controversy within its jurisdiction. (FAC, ¶104).

381. Since Plaintiffs fail to offer any evidence that they were aggrieved *by* a violation of FDUTPA, Plaintiffs are not entitled to declaratory relief. *Gastaldi*, 657 F. Supp. 2d at 1057.

382. Since Plaintiffs failed to prove Count I, FDUTPA, a judgment for Leapfrog on Count II should therefore be entered on this basis.

G. AFFIRMATIVE DEFENSE, ANTI-SLAPP, ELEMENTS OF THE CLAIM AND BURDEN OF PROOF.

383. Florida's Anti-SLAPP statute prohibits "fil[ing]…any lawsuit… against another person or entity [1] without merit and [2] primarily because such person or entity has exercised

the constitutional right of free speech in connection with a public issue…as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution." Fla. Stat. §758.295(3).

384. A cause of action is "without merit" if it fails to state a claim or if the defendant(s) prevail on the claim at trial. *See, e.g., Flynn v. Wilson*, 398 So. 3d 1103, 1115 (Fla. 2d DCA 2024).

385. Florida's anti-SLAPP statute broadly defines "free speech in connection with public issues" to include "any written or oral statement that is protected under applicable law and . . . is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work." Fla. Stat. § 768.295(2)(a).

386. "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community." *Martin*, at *3, 8; citing *Snyder v. Phelps*, 562 U.S. 443, 453 (2011).

387. A judgment for Leapfrog on Count I, FDUTPA, proves Plaintiffs cause of action is "without merit;" therefore, the Court finds element one of Leapfrog's Anti-SLAPP affirmative defense is satisfied.

388. The evidence shows that Leapfrog's mission is premised on free speech in connection with a public issue, is intended to assist the public in assessing their healthcare options and healthcare safety and provides a public benefit; therefore, the Court finds element two of Leapfrog's Anti-SLAPP affirmative defense satisfied.

389. Leapfrog first raised its Anti-SLAPP defense in its motion to dismiss, which was not ruled on by the Court. (*See*, motion at ECF No. 39, p. 21; and Cout Order on the motion at ECF No. 41).

390. After Plaintiffs withdrew its claim for monetary damages through the operative Amended Complaint, Leapfrog renewed its Anti-SLAPP defense in its Answer. (ECF No. 75 at pp. 47-48).

391. The Court therefore concludes that Leapfrog proved its Anti-SLAPP affirmative defense and a judgment for Leapfrog should therefore be entered on this basis.

392. The Court awards Leapfrog its attorney's fees. Fla. Stat. §758.295(4).

ENTERED:

DATE: _____ _____

Hon. Donald M. Middlebrooks
United States District Judge

Respectfully submitted,

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)
Attorneys for Defendant, The Leapfrog Group

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2026, a true and correct copy of the foregoing was served on all counsel or parties of record via the ECF filing system.

By: /s/ *Kimberly E. Blair*
KIMBERLY E. BLAIR