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

Case No. 9:25-cv-80526-DMM

GOOD SAMARITAN MEDICAL CENTER,
INC., et al.,

Plaintiffs,
v.

THE LEAPFROG GROUP,

Defendant.
____/

DEFENDANT'S RESPONSE IN OPPOSITION
TO PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION

Despite filing this lawsuit under a consumer protection statute, Plaintiffs have consistently taken the position that it does not have to show actual consumer harm (*see, e.g.*, ECF 115 at 21 (arguing that unfairness "does not definitively require consumer injury")). In its January 7, 2026, Order on Cross Motions for Summary Judgment (the "SJ Order") (ECF 139), the Court, applying existing Florida law, recognized the importance of consumer injury in any FDUTPA claim, but distinguished the burden of proof standard in deception claims versus unfairness claims. Specifically, the Court held that a deception claim requires a showing that the deception is "likely to cause injury to a reasonable relying consumer," while "[a]n 'unfair' practice requires substantial injury to consumers – i.e., actual patient harm." (*Id.* at 8-9).

Realizing on the eve of trial that they have no evidence of consumer harm, Plaintiffs are now employing a "throw everything at the wall and see what sticks" approach, including belatedly seeking to identify never-disclosed trial witnesses and documents while also asking this Court to reverse its SJ Order regarding the burden of proof. In particular, through their Motion for Partial Reconsideration (the "Motion for Reconsideration") (ECF 152), Plaintiffs ask the Court to reconsider its holding that substantial injury to consumers in the form of actual patient harm is required to succeed on an unfairness claim. As a basis for this request, Plaintiffs argue that a new Eleventh Circuit opinion applying the Federal Trade Commission Act ("FTC Act") to a dispute in Georgia – *FTC v. Corpay, Inc.*, 2026 WL 35708 (Jan. 6, 2026) – provides an intervening change in controlling law that supersedes the existing Florida law recognized by this Court. (ECF 152 at 2-3) In reality, and as explained below, *Corpay* changes nothing. Thus, the Motion for Reconsideration should be denied.

Legal Analysis

I. *Corpay* Is Not An Intervening Change In Controlling Law Because It Is Not A FDUTPA Case And Has Not Been Adopted By The Florida Legislature.

FDUTPA is a distinct Florida statute with distinct rights of action from the federal FTC Act. Specifically, FDUTPA provides a private right of action and backward-looking damages provisions, both features that the FTC Act does not provide.[1] *Corpay* addresses only the FTC Act and not FDUTPA or any other Florida law. Nonetheless, Plaintiffs argue that *Corpay* is an intervening change in controlling law. To arrive at this argument, Plaintiffs quote Florida Statute Section 501.204(2) as providing that, in construing FDUTPA, "great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts." (*See* ECF 152 at 3). But Plaintiffs conveniently omit the last few words from Section 501.204(2). What the statute actually

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[1] FDUTPA allows "anyone aggrieved by a violation" of the act to bring an action for declaratory judgment or injunctive relief, Fla. Stat. § 501.211(1), and any "person who has suffered a loss as a result of a violation" of the act to recover actual damages, *id.* at 501.211(2). By contrast, the FTC Act does *not* include a private right of action or a damages remedy, and its broad scope of enforcement powers was intended to be restrained by the professional judgment and discretion of the FTC. *See Holloway v. Bristol-Myers Corp.*, 485 F. 2d 986, 997-98 (D.C. Cir. 1973) (noting that Congress declined to include a private right of action and "focused on the FTC as an exclusive enforcement authority" to avoid the "burden" private litigants would impose on defendants and the judicial system); *id.* at 1000, fn. 63 ("It was never the intention of Congress that the [FTC] should be a forum where private disputes or controversies between competitors should be settled . . . .").

says is "great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts . . . ***as of July 1, 2017***." Fla. Stat. § 501.204(2) (2025) (emphasis added). Plaintiffs also fail to mention or cite Florida Statue Section 501.203(3), which similarly provides that the definition of a "violation" of FDUTPA may be based upon the "standards of unfairness . . . set forth and interpreted by the Federal Trade Commission or the federal courts" in effect "***as of July 1, 2017***." Id. § 501.203(3) (emphasis added). To the extent *Corpay* can be construed as changing or newly interpreting the FTC Act, its 2026 interpretation of the FTC Act does not alter Florida's construction of FDUPTA.

Indeed, the Florida Supreme Court has made clear that FDUTPA *cannot* be interpreted as adopting, in a forward-looking manner, any and all decisions of the Federal Trade Commission or federal courts interpreting the FTC Act after the Florida Legislature enacted or last amended FDUTPA; to interpret the statute in such a manner would make it constitutionally invalid. *See Dep't of Legal Affairs v. Rogers*, 329 So. 2d 257, 267 (Fla. 1976) ("To preserve the constitutional validity of the act, we would have to say that the legislative enactment intended only decisions made prior to its enactment."); *see also Porsche Cars North America, Inc. v. Diamond*, 140 So. 3d 1090, 1097 (Fla. 3d DCA 2014) (The time-limit contained within Section 501.204 is legislatively required because "a statute simply adopting all future changes to federal law would be an unconstitutional delegation of the power to legislate.").

To date, the Florida legislature has adopted the FTC's and federal courts' interpretations of unfairness up through July 1, 2017. *See* Fla. Stat. § 501.203(3); Fla. Stat. § 501.204(2). *Corpay* was decided on January 6, 2026. Thus, to the extent *Corpay* changes or adds to existing federal interpretations of the FTC Act, it is not incorporated into Florida law and cannot "supersede" previous FDUTPA decisions under existing law. The Florida Legislature may, of course, choose to adopt *Corpay* and other recent FTC interpretations in the future, but at present it has not done so. Thus, the Motion for Reconsideration should be denied.

II. *Corpay*'s Mere Quotation Of A Longstanding Federal Statute Is Not A Basis For Reconsideration And Does Not Supersede Existing Florida law.

Section 45(n) of the FTC Act, 15 U.S.C. §45(n), was enacted in substantially its current form – including the "causes or is likely to cause substantial injury to consumers" language cited by Plaintiffs – in 1994. *See* Federal Trade Commission Act Amendments of 1994, Pub. L. No. 103-312, § 9, 108 Stat. 1691. Nearly 10 years later, the Florida Supreme Court interpreted FDUTPA in *PNR, Inc. v. Beacon Property Management, Inc.*, 842 So. 2d 773, 777 (Fla. 2003), and, as the SJ Order recognizes, recognized that consumer harm is required to advance a FDUTPA claim for "unfair" practices. (ECF 139 at 9). *See also Porsche Cars North America*, 140 So. 3d at 1097-98 (holding, in 2017, that the standards enunciated in *PNR* had become outdated, and that to establish an "unfair" practice a plaintiff must show (1) substantial consumer injury, (2) not outweighed by countervailing benefits to consumers or competition, (3) that was not reasonably avoidable); *SMS Audio, LLC v. Belson*, 2017 WL 11631378, at *4 (S.D. Fla. Apr. 25, 2017) (Middlebrooks, J.) (discussing *Porsche Cars North America* and other post-*PNR* Florida state court decisions "which more definitively require[] consumer injury" to establish "unfair" conduct).

In the more than 30 years since the relevant language was added to the FTC Act, courts interpreting FDUTPA have held that actual consumer harm is required to succeed on a FDUTPA unfairness claim. *See Stewart Agency, Inc. v. Arrigo Enterprises, Inc.*, 266 So. 3d 207, 214-15 (Fla. 4th DCA 2019) (holding non-speculative consumer injury to be a requirement of declaratory judgment or injunction for violation of FDUTPA); *see also CMR Construction & Roofing, LLC v. UCMS, LLC*, 2022 WL 3012298, at *3 (11th Cir. July 29, 2022) (to support an unfair practice claim, "the plaintiff must allege that the relevant act or practice was harmful to a consumer").

Corpay's bare bones recitation of the federal statute does nothing to overturn this existing Florida law or the Court's interpretation of it. Thus, the Motion for Reconsideration must be denied.

Conclusion

To the extent the Eleventh Circuit's decision in *FTC v. Corpay, Inc.*, 2026 WL 35708 (Jan. 6, 2026), can be construed as changing or adding to the existing federal law interpreting the FTC Act, *Corpay* does not change the meaning of FDUTPA because it has not been incorporated by the Florida Legislature. Further, *Corpay*'s recitation of federal statutory language that has existed for over 30 years does not alter the burdens imposed by FDUTPA and recognized by the Florida Supreme Court and other Florida appellate courts. Accordingly, Plaintiff's Motion for Reconsideration should be denied.

Dated: January 16, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 16, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System which will send an electronic notification of such filings to all counsel of record in the Court's ECF filing system.

/s/ *JURA C. ZIBAS*
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