

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

CASE NO. 9:25-CV-80526-DMM

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

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendant.

**THE COMMUNITY HOSPITALS' REPLY
IN SUPPORT OF MOTION FOR PARTIAL RECONSIDERATION**

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REPLY

Leapfrog’s bid to defeat the Community Hospitals’ motion for reconsideration fails. The response rests on an unacknowledged but self-evident contradiction. Leapfrog says that the Eleventh Circuit’s decision in *FTC v. Corpay, Inc.*, 2026 WL 35708 (11th Cir. Jan. 6, 2026), cannot be used to interpret the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) because the decision was issued after July 1, 2017. Response 3. Leapfrog then says that *Corpay* is irrelevant because it concerns the meaning of “[l]ongstanding” language from the Federal Trade Commission (“FTC”) Act that has existed since the 1994 amendments to the statute. Response 4. Leapfrog is speaking out of both sides of its mouth—and is wrong at each end.

The Community Hospitals are not arguing that the *Corpay* decision *changed* how the FTC Act directs courts to assess consumer injury. *Contra* Response 2. To the contrary, the Community Hospitals are arguing that *Corpay* is an intervening decision that restates and clarifies *existing* law about the evidence required to prove consumer harm under the FTC Act—including the Act as it existed as of July 1, 2017. In particular, *Corpay* rejected “dicta” from a prior Eleventh Circuit decision, *LabMD, Inc. v. FTC*, 894 F.3d 1221 (11th Cir. 2018), suggesting that the FTC must satisfy the extra-textual requirement of showing that a claimed violation is “well-established.” *Corpay, Inc.*, 2026 WL 35708, at *20. *Corpay* made clear that the applicable test derives from “the plain text of the governing statute”—the FTC Act—including its statement that a practice is “unfair” if it “causes *or is likely to cause* substantial injury to consumers.” 2026 WL 35708, at *21, *18 (emphasis added). *Corpay* thus confirms the standard for unfairness claims by making clear that the proper test is simply the statutory text of the FTC Act as it has existed for decades. Because that test existed as of 2017, “it was incorporated into Florida law” under the very precedent Leapfrog cites. *Porsche Cars N. Am., Inc. v. Diamond*, 140 So. 3d 1090, 1097 (Fla. 3d DCA 2014).

Leapfrog attempts to obfuscate that straightforward conclusion with various irrelevant arguments. For example, it notes that FDUTPA has a private right of action and provides for damages while the FTC Act does not. Response 2 & n.1. Yet that obviously was known to FDUTPA’s drafters, who nonetheless repeatedly emphasized that FDUTPA is supposed to track how the FTC Act functions. *See* Fla. Stat. § 501.202(3) (FDUTPA “shall be construed liberally ... [t]o make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.”); *see also* Fla. Stat. § 501.203(3)(a)-(c) (defining a

“[v]iolation” of FDUTPA to include a violation of the pre-2017 FTC Act and associated “standards” and “rules”).

Leapfrog also rehashes caselaw citations from its summary-judgment briefing to suggest that Florida courts have rejected a “likely to injure” standard. Response 4 (citing *Stewart Agency, Inc. v. Arrigo Enterprises, Inc.*, 266 So. 3d 207 (Fla. 4th DCA 2019) and *CMR Construction & Roofing, LLC v. UCMS, LLC*, 2022 WL 3012298 (11th Cir. July 29, 2022)). Yet neither case even addresses whether a plaintiff must prove *actual* as opposed to *likely* consumer injury, and the claims in each case failed on other threshold grounds. The *CMR* plaintiff did not allege harm (whether actual or likely) to *any* consumer; the plaintiff simply contended that *it* was a consumer and then made no effort to show it consumed the relevant services. 2022 WL 3012298, at *5. And *Stewart* found no injury to consumers because the plaintiff failed to show “any misrepresentations” in the first place concerning vehicle sales. 266 So. 3d at 214-15.

Leapfrog’s position is, at bottom, that the consumer-injury inquiry should function in a radically different manner in the FTC Act and FDUTPA contexts. There is no legal basis for that balkanized regime. In *both* contexts—for unfairness claims as with deception claims—the question is simply whether the defendant’s conduct caused or was “*likely to cause* substantial injury to consumers.” *Corpay, Inc.*, 2026 WL 35708, at *18 (emphasis added). Recognizing that reality does not require incorporation of “any and all decisions of the [FTC] or federal courts interpreting the FTC Act,” Response 3, but merely giving “great weight” to the same principles FDUTPA’s drafters instructed should control, Fla. Stat. § 501.204(2). Leapfrog has no logical explanation for why those drafters would have intended to diverge from federal-law principles while codifying a liberal remedial regime expressly designed to track the same federal statute Leapfrog claims is irrelevant.

For these reasons, the Community Hospitals’ motion for partial reconsideration should be granted.

Dated: January 16, 2026

Respectfully submitted,

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By: /s/Mary Beth Maloney

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2026, a true and correct copy of the foregoing was served on all counsel or parties of record via the ECF filing system.

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