

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' SUPPLEMENTAL MEMORANDUM
REGARDING HEARSAY OBJECTION TO CEO TESTIMONY**

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**SUPPLEMENTAL MEMORANDUM
REGARDING HEARSAY OBJECTION TO CEO TESTIMONY**

The Community Hospitals respectfully submit this supplemental memorandum regarding Leapfrog’s hearsay objection to the testimony of the Community Hospitals’ CEOs recounting their conversations with patients and physicians about the Leapfrog Safety Grades. This testimony is additional, probative evidence of harm to patients, physicians, and the Community Hospitals: it vividly demonstrates that patients and physicians have declined procedures or switched hospitals because of concern or uncertainty regarding whether the Community Hospitals are safe. At trial on January 16, 2026, the Court overruled Leapfrog’s objection, recognizing that the testimony is admissible under at least Federal Rule of Evidence 803(3) as “statements by members of the public indicating their confusion.” Trial Tr. (Jan. 16, 2026) at 86:4–15, 88:14–15.

On January 20, 2026, Leapfrog argued that the Eleventh Circuit’s recent, unpublished decision in *Florida Virtual School v. K12, Inc.*, 2026 WL 127063 (11th Cir. Jan. 15, 2026), undermines this Court’s ruling. Leapfrog has it backwards—this purported “hearsay” case does not contain a hearsay ruling. Instead, it discussed a Fourth Circuit decision that affirmatively supports this Court’s ruling and aligns with several similar decisions within this Circuit and elsewhere overruling hearsay objections to consumer-confusion evidence.

1. Contrary to Leapfrog’s assertion, the Eleventh Circuit did not hold in *Florida Virtual School* that consumer-confusion evidence is inadmissible hearsay. The district court in that case had “expressed hearsay *concerns*” with “twenty-one emails” but “did *not* exclude them on that basis.” *Fla. Virtual Sch.*, 2026 WL 127063, at *10 (emphases added). Instead, the district court determined that the emails—which suggested that consumers conflated two similarly named businesses, “Florida Online School” and “Florida Virtual School”—were “not ‘reliable evidence of confusion’” under the particular circumstances in that trademark case. *Id.* at *4, *10. The Eleventh Circuit simply affirmed that case-specific ruling. *Id.* at *10.

2. The Eleventh Circuit’s discussion of a Fourth Circuit decision (*Lyons*) supports this Court’s ruling on Leapfrog’s hearsay objection. In *Lyons*, as the Eleventh Circuit explained, the Fourth Circuit “determined” that “actual confusion evidence” was “not hearsay.” *Fla. Virtual Sch.*, 2026 WL 127063, at *10 (citing *Lyons P’ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 804 (4th Cir. 2001), *abrogated in part on other grounds by Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 676 n.12 (2014)). In reaching that conclusion, *Lyons* invoked Rules “801(c)” and “803(1).” 243 F.3d at 804; *see id.* (“*Lyons* did not offer the children’s statements or the newspaper

articles to prove the truth of the matter asserted—i.e., that the persons wearing the Duffy costume were in fact Barney—but rather merely to prove that the children and the newspaper reporters *expressed their belief* that those persons were Barney. This was direct evidence of the children’s and reporters’ reactions and not hearsay.”). *Lyons* thus reinforces that the challenged patient and physician statements are admissible under multiple Rules of Evidence.

3. *Florida Virtual School, Lyons*, and this Court’s ruling are consistent with the multiple decisions within this Circuit that have rejected hearsay objections to consumer-confusion evidence. For decades, courts have held, “[i]n accordance with” the “weight of authorities,” that “actual confusion evidence, in the form of testimony by the recipient of the statements of confused consumers,” “is admissible because it falls within the state of mind exception of Fed. R. Evid. 803(3).” *Popular Bank of Fla. v. Banco Popular de P.R.*, 9 F. Supp. 2d 1347, 1361 (S.D. Fla. 1998) (collecting cases). Countless decisions have followed suit. *See, e.g., Lincare Holdings Inc. v. Doxo, Inc.*, 2024 WL 865881, at *2 (M.D. Fla. Feb. 29, 2024) (“customers’ statements to Plaintiffs’ customer representatives are not hearsay or are subject to the [Rule 803(3)] state of mind exception to hearsay”) (collecting cases); *Canes Bar & Grill of S. Fla., Inc. v. Sandbar Bay, LLC*, 343 F. Supp. 3d 1236, 1246 (S.D. Fla. 2018) (“this Court will consider the postings as evidence of actual confusion, as they show the declarants’, or in this case, the social media posters’[,] state of mind”); *You Fit, Inc. v. Pleasanton Fitness, LLC*, 2013 WL 521784, at *5 n.13 (M.D. Fla. Feb. 11, 2013) (anonymous reviews posted online were “not hearsay because they are not being used to prove the truth of the matter asserted in the comment” and instead “demonstrate the consumer’s confusion, a then-existing mental state of the declarant” under Rule 803(3)). These decisions confirm that, whether considered state-of-mind evidence under Rule 803(3) or non-hearsay, consumer-confusion evidence is admissible.

* * *

The Court should maintain its ruling on Leapfrog’s hearsay objection to the CEOs’ testimony regarding conversations with patients and physicians.

Dated: January 21, 2026

Respectfully submitted,

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