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*.

**NOTICE OF FILING**

Defendant, The Leapfrog Group ("Leapfrog"), by and through its undersigned counsel, hereby files its Notice of Filing regarding the Deposition Transcript of Lauren Bailey for Leapfrog's filed Deposition Designations of Lauren Bailey at ECF No. 179.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 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/ *Jura C. Zibas*
JURA C. ZIBAS

# TRANSCRIPT

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

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

Plaintiffs, : Case No.

v. : 9:25-CV-80526-DMM

THE LEAPFROG GROUP, :

Defendant. :

- - - - - - - - - - - - - - - - x

Wednesday, September 10, 2025

Washington, D.C.

Videotaped Deposition of:

LAUREN L. BAILEY,

called for oral examination by counsel for the Plaintiffs, pursuant to notice, at the law offices of Gibson Dunn & Crutcher, LLP, 1700 M Street, Northwest, Washington, D.C. 20036-4504, before Christina S. Hotsko, RPR, CRR, CA CSR, of Veritext Legal Solutions, a Notary Public in and for the District of Columbia, beginning at 9:06 a.m., when were present on behalf of the respective parties:

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Also Present:
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P R O C E E D I N G S

VIDEO TECHNICIAN: Good morning. We are going on the record at 9:06 a.m. on September 10th, 2025.

Please note that the microphones are sensitive and may pick up whispering and private conversations.

Please mute your phones at this time. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is media unit 1 of the video-recorded deposition of Ms. Lauren Bailey in the matter of Good Samaritan Medical Center, Inc., et al. versus The Leapfrog Group, filed in the United States District Court for the Southern District of Florida, West Palm Beach Division, case number 9:25-cv-80526-DMM.

My name is Orson Braithwaite representing Veritext Legal Solutions, and I am the videographer.

The court reporter is Christina Hotsko

from the firm Veritext Legal Solutions.

Counsel will now state their appearances and affiliations for the record, beginning with the noticing attorney.

MR. CHUNG: Daniel Chung of Gibson Dunn & Crutcher for plaintiffs.

MR. KUNTZ: Andrew Kuntz, Gibson Dunn & Crutcher, for plaintiffs.

MS. BLAIR: Kim Blair, Wilson Elser, for defendants -- defendant.

MS. WOOD: Courtney Wood, Wilson Elser, for defendant Leapfrog.

VIDEO TECHNICIAN: Thank you. Will the court reporter please swear in the witness.

Whereupon,

LAUREN L. BAILEY,

being first duly sworn or affirmed to testify to the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. CHUNG:

Q. Good morning. Could you please state

your full name for the record.

A. Lauren Lytle Bailey.

Q. Have you gone by any other names?

A. No.

Q. Okay. Do you understand that the court reporter sitting next to you is taking down everything that's being said today, all the questions and answers?

A. Yes.

Q. Okay. So before we start, I wanted to go over some basic ground rules for the deposition. Most of the ground rules are just to keep our court reporter sane, so let's start with number one.

Let's try not to talk over each other. So if you can wait for me to finish a question before you answer, and I'll do the same; I'll wait until you finish your answer before I ask the next question because the court reporter can't take down two people talking at the same time.

The next ground rule is to make sure that

your answers are audible and they're words. So try to stay away from uh-huh or huh-uhs because that's hard for the court reporter to take down.

You understand that you're testifying under oath, Ms. Bailey?

A. Yes.

Q. All right. And you understand that by taking that oath you're obligated to provide truthful and accurate answers to the best of your ability?

A. Yes.

Q. Okay. Are you taking any medications or under the influence of any substances or is there any reason that makes it difficult for you to understand the questions I'm asking you or really to understand what's happening today?

A. No.

Q. Okay. If you don't understand one of my questions, please ask me to clarify them. I want to make sure that you understand the questions before you answer them.

Do you understand that?

A. Yes.

Q. Okay. From time to time, Ms. Blair may lodge objections to my questions. In those instances, unless Ms. Blair instructs you not to answer the question, you must answer the question.

Do you understand that?

A. Yes.

Q. Okay. You can take a break whenever you want. Just let us know. The only thing we ask is that we finish a question and answer before taking a break. So no questions pending when we take a break.

Do you understand that?

A. Yes.

Q. Okay. Terrific.

So just some background questions.

Have you ever had your deposition taken before?

A. No.

Q. So this is your first time?

A. Yes.

Q. All right. Did you prepare for your deposition today?
A. Yes.
Q. Okay. How did you go about preparing?
A. Met with our counsel, Kim and Courtney --
Q. Okay.
A. -- who are here in this room.
Q. Approximately how many times?
A. About three times.
Q. All right. And in the course of those about three times you met with your counsel, did you review any documents?
A. Yes. We reviewed documents, e-mails, Slack messages.
Q. Okay. Terrific.
Did you review any documents outside of those preparation sessions with your counsel?
A. Not without counsel, no.
Q. Your educational history. Can you just go over your educational history?
A. Sure. I graduated from Brigham Young University in 2011 with a bachelor of arts in

communications with an emphasis in public relations and a minor in psychology.

Q. Okay. Apart from the bachelor of arts degree from BYU, do you have any certifications or licenses?

A. No.

Q. No? Okay. Any kind of advanced degrees?

A. No.

Q. No? Okay.

Any training in your field that you regularly take?

A. I've regularly stay up to date on trends within public relations. We use online classes, like, from Udemy and things like that just to stay as up to date as possible.

Q. Okay. Now, you mentioned that, with your degree, you had a specialization in public relations.

In the course of your -- and we'll get into your employment history.

In the course of your -- the various jobs you've held, are there any -- has it continued to

focus on public relations?

A. Yes.

Q. Okay. Let's get into your employment history.

So can you just kind of outline for us your employment history?

A. Yes. So when I graduated college, I moved back to Seattle and I worked for Weber Shandwick, which is a large global public relations firm. I was hired into the consumer technology practice. Within a year, when I got a promotion, I changed to the healthcare practice. And I've been working in healthcare PR for 13 years, since then.

So I transferred from the Seattle office in Weber Shandwick to the D.C. office. And a little while later, I got a new job working in-house for Children's National Hospital here in D.C. as a senior media relations specialist. So I managed press that came onsite at the hospital. I did celebrity events, crisis communications, awards, things like that. That's actually how I

became familiar with Leapfrog Group. Children's National Hospital had been awarded the top children's hospital award by Leapfrog. And coincidentally, I had just finished writing a press release about it, and I got an e-mail from a recruiter at the Leapfrog group about a communications position at Leapfrog.

My only contacts with Leapfrog was from that one press release I had written. I thought it sounded interesting, so talked to the recruiter, and I learned a lot more about Leapfrog and a different part of healthcare, which has been really interesting. I'm not sure if you're aware, but Leapfrog represents employers. So we were founded 25 years ago by a lot of big companies, GM, GE, Boeing, Marriott. They got together and they said, we don't know what the quality and transparency of the healthcare in hospitals for our employees is, and we want to change that. And they started Leapfrog in 2000, and we've been around since then.

So again, I've been in healthcare for a long time, but that wasn't a side of it I'd thought of before. So I've been with Leapfrog since 2017.

Q. Okay. And so when you -- at the time when you first heard about f Leapfrog when you were at Children's Hospital, at the time, did Leapfrog have the hospital safety grade program at the time?

A. Yes.

Q. Okay. What was your first position or title at Leapfrog?

A. Communications manager.

Q. Okay. And is that the title you hold today, or has that changed?

A. That's changed.

Q. Okay. And what is -- just tell us kind of the progression since approximately 2017 in terms of titles?

A. Sure. So I started as communications manager in January of 2017. In 2020, I had my first baby and made a decision that fall, for

personal reasons, to work part time. So at that point, I was senior communications advisor until June of 2024, when I was promoted to director of communications, which is my title today.

Q. Okay. So as your -- as director of communications since June of 2024, what are your -- generally speaking, what are your roles and responsibilities?

A. I oversee all external communications. So that is generally public relations, media relations. I manage our agency of record for PR, CURA Strategies. I oversee the content of our website. I oversee social media. I help with speeches. I am in charge of the brand overall, brand guidelines, things like that.

Q. Okay. So in terms of -- in terms of -- and we're taking this from Leapfrog's website -- right? -- the description of your -- are you a member of the executive staff at Leapfrog?

A. I am a member of the management team.

Q. Right.

A. But I know on our website it says

executive staff, and that includes our CEO, VPs and directors.

Q. Okay. According to the website, your -- as director of communications, you oversee all strategic communications for Leapfrog, including media relations, social media, and content development, which is consistent with your testimony.

Does that include communications with hospitals themselves?

A. No.

Q. Okay. Who is in charge of or who oversees communications with the hospitals themselves?

A. Missy Danforth and her team.

Q. Okay. Do you have any interaction with hospitals in your role?

A. Rarely. The only time I do is if I'm working on a case study or something like that.

Q. Okay. And why is it that from -- so why is it that, as director of communications, your role doesn't include communications with

hospitals?

A. We're a really small organization. So it may appear that we have roles that seem different than maybe in large organizations. So I am one person. I have one other full-time staff member. We are the communications team. So we don't have it in our bandwidth.

And the communications we have with hospitals is very technical, so it's managed on the ratings team side.

Q. Okay. You mention that you have one other person on your team.

Who is that?

A. Nate Longmore. He's the communications coordinator.

Q. All right. And what is his role?

A. He is the day-to-day for posting on social media. He is the day-to-day for actually doing the content posting on our website. He does a lot of graphic design and just other communications tasks.

Q. Okay. And he -- is he the only employee

at Leapfrog that reports to you, or do you have other folks reporting to you?

A. He's the only one who reports to me.

Q. And who do you report to?

A. Karen Jupiter.

Q. All right. Anyone else at Leapfrog that you report to?

A. No.

Q. Okay. And Karen Jupiter, what is her role?

A. She's VP of development.

Q. What forms of communication do Leapfrog employees use? And I mean internally within the organization.

A. Outlook for e-mail. And we use Slack.

Q. And Slack is -- for purpose of chatting or instant messaging?

A. Yes.

Q. Okay. Any other messaging platforms or other forms of electronic communication that Leapfrog employees use?

A. No, not that I can think of right now.

Q. Okay. We're going to turn to our first exhibit.

MR. CHUNG: We're going to mark this Exhibit 1.

(Bailey Deposition Exhibit 1 marked for identification and attached to the transcript.)

THE WITNESS: Thank you.

BY MR. CHUNG:

Q. All right. Ms. Bailey, just take a few moments to look through it. Let me know if you recognize it.

A. Yes. I recognize it.

Q. All right. And what is it?

A. It's my performance review from January of this year.

Q. Okay. And so this is -- by this point you had spent several months as director of communications, which is your current role, correct?

A. Yes.

Q. Okay. And who drafted this particular

document?

A. The first part of it is a self-evaluation, so I drafted that part.

Q. Okay. And then the -- there's a second part, right?

A. Yes.

Q. And -- which starts at -- if you look at the bottom -- generally throughout this deposition, I'll be referring -- in terms of page numbers, I'll be referring to what's called a Bates number, which is typically at the bottom right-hand corner.

So the page with Bates number Leapfrog 395525, is this the second half that you're referring to --

A. Yes.

Q. -- of the document?

And the author of that part is Karen Jupiter, the VP of development that you referenced earlier was your supervisor; is that right?

A. Yes.

Q. Okay. I want to direct your attention to the page before that, Bates number Leapfrog 395524. If you can turn to that.

There are a series of bullet points at the top.

If you look at the fourth bullet point it reads, Demonstrate deep knowledge of Leapfrog's programs and initiatives with extensive knowledge of Leapfrog's initiatives, including the hospital safety grade and Leapfrog surveys. I remain a go-to resource for staff seeking guidance or clarity on programs and stakeholder relations.

Do you see that?

A. Yes.

Q. And is that a bullet point that you, yourself, drafted?

A. Yes.

Q. All right. How did you go about -- or how do you go about obtaining deep knowledge of Leapfrog's programs and initiatives in your role?

A. I've been working at Leapfrog for over eight-and-a-half years. So over the time, I have

learned more about Leapfrog's programs. As part of my job, I am in charge of talking points and preparing people for media interviews and speaking engagements, so I have learned a lot throughout the years from a communications perspective.

Q. Okay. Does that include any kind of focused discussion or trainings around the organization's programs and initiatives?

MS. BLAIR: Objection to form.

THE WITNESS: Can you restate the question?

BY MR. CHUNG:

Q. Sure.

Does this deep knowledge come about also as a result of any trainings that you received on the organization's programs and initiatives?

A. No, not that I can recall.

Q. So just kind of on-the-job training is how you obtained this knowledge --

A. Yes.

Q. -- would you say? All right.

If you look at -- we're still in the same document. Turn a couple pages before that. So Bates ending in 5522.

If you look at the second-to-last bullet point there it reads, Draft and edit publications, articles, and blogs. I drafted nine blog posts in 2024, providing valuable thought leadership and supporting Leapfrog's communications efforts.

Does -- are those blog posts written or authored under your own name? Are they ghostwriting for others?

What's the nature of those blog posts?

A. The blog is part of our newsroom. So I when I write, I represent Leapfrog.

Q. Okay. So that's -- so they're -- is your name kind of attached or explicitly named as the author for those blog posts?

A. No. There's no specific author listed.

Q. Okay. The last sentence there regarding the comprehensive brand guide in 2024, is that a written document?

A. It is.

Q. Okay. And what -- can you just describe generally what it is?

A. It's a general brand guide. It's pretty standard in communications. It needed a refresh. The one that we had was in Word. We use Canva for graphic design now, primarily. So we moved -- I moved it into Canva and ensured that we were all on the same page. We've had some new programs in the last couple of years started at Leapfrog that weren't part of the previous brand guide. So just getting it up to date.

Q. What were the new programs that weren't in the previous version of the brand guide?

A. The Recognized Leader Program, which is our partnership with the American Diabetes Association.

Q. Any other programs?

A. Recognizing Excellence in Diagnosis I think would be the other one.

Q. So let's get into the hospital safety grade, which I'm sure you understand is one of

the topics -- right? -- involved in the matter here.

What is Leapfrog's hospital safety grade?

A. It's a letter grade that we assign to all general acute care hospitals in the United States based on patient safety. So we look at accidents, errors, injuries, infections.

Q. And what's the purpose of assigning hospitals a hospital safety grade?

MS. BLAIR: Objection to form.

THE WITNESS: We created the safety grade for consumers. Healthcare ratings can be confusing, and consumers generally understand a letter grade, A, B, C, D, F. So it was created for consumers to have a place to start when they're looking at hospitals.

BY MR. CHUNG:

Q. You just testified that we created the hospital safety grade for consumers.

Who is the "we"?

A. I'm a communications professional, so I'm used to saying "we," as in the Leapfrog Group. I

was not at Leapfrog personally when the safety grade began.

Q. Do you know who -- understanding that you came onboard, you know, after the safety grade was created, do you know who originated or created the hospital safety grade?

A. Leah Binder.

Q. Okay. And -- who is the founder of the organization, correct?

A. She is not the founder. She's the second CEO.

Q. Okay. Why does Leapfrog assign a single letter grade to hospitals rather than using some other form of rating like a numerical rating or a percentage rating?

MS. BLAIR: Objection. Form.

THE WITNESS: I can only speak to that from a communications perspective. And it's just that -- like I said before, that consumers generally understand a letter grade.

BY MR. CHUNG:

Q. Okay. Because it just -- reminds them of

school, basically, it's easy to understand, kind of an A to F concept; is that right?

A. Yes.

Q. Do you know how the cutoff for each grade -- let's say A to B, B to C -- is decided?

A. No. I'm not part of those conversations.

Q. Okay. Does Leapfrog intend for consumers to rely on the hospital safety grade when they make a decision about which hospital to go to?

A. Our communications messaging is that it's a place to start. We recommend that patients look at the safety grade for general patient safety and then use other ratings, including the Leapfrog hospital survey, U.S. News & World Report, et cetera, to look at quality as well.

Q. Okay. So your -- does Leapfrog explicitly tell or advise consumers to look at other hospital ratings other than Leapfrog in making their decisions where to go for their care?

A. Yes. It's part of my regular communications messaging.

Q. Okay. How is it determined which hospitals are assigned a hospital safety grade?

A. In --

MS. BLAIR: Objection to form. Sorry.

THE WITNESS: In my understanding, it's all general acute care hospitals in the U.S.

BY MR. CHUNG:

Q. Okay. Are there -- let's look at another one.

Are there certain hospitals that are not assigned a safety grade?

A. Specialty hospitals, like children's hospitals, critical access hospitals.

Q. You testified earlier when you were in the Children's Hospital system here in D.C. that they received a recognition, correct?

A. No, I didn't say that. I said the safety grade did exist when I was at Children's National, but they're a children's hospital. So they did the Leapfrog hospital survey, and that was the top children's hospital award.

Q. I see. So they submitted a -- they

responded to Leapfrog's survey but did not receive the safety grade; is that correct?

A. Correct. Children's hospitals do not receive a safety grade at this time.

Q. Okay. And how often does Leapfrog release hospital safety grades?

A. Twice a year.

Q. And why is it twice in a year as opposed to annually or more frequently?

A. We want to include the most recent data possible.

Q. Okay. Let's move on to how Leapfrog arrives at hospital safety grades for individual hospitals.

Are you familiar with Leapfrog's scoring methodology behind the safety grade?

A. Yes. From a communications perspective, I am.

Q. Okay. When you say -- you've testified a number of times or you've prefaced your responses with "from a communications perspective."

What does that mean?

A. I am not involved in the technical aspects. I'm not a data scientist. I'm a communications person. So I consider myself an expert in our messaging but not in the data science.

Q. Understood. All right. But you -- at least in our first exhibit, Exhibit 1, in your writeup of your evaluation, you represented that you have deep knowledge, right, of the -- of the organization's programs and initiatives, including the hospital safety grade and the hospital survey; is that right?

A. Yes. Within my role. Yes.

Q. Okay. Why don't we put at least two versions of the scoring methodology as exhibits.

MR. CHUNG: So 41 and 45.

(Bailey Deposition Exhibit 2 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. As we're getting the exhibits, Ms. Bailey, do you have any role in designing

Leapfrog's scoring methodology behind the safety grades?

A. No.

Q. All right. How about any role in implementing that scoring methodology to specific hospitals?

A. No.

Q. Do you have any role with respect to the scoring methodology in terms of its content?

A. No.

Q. Do you have any input on the content or provide feedback on the content?

A. No.

Q. Who at Leapfrog is, number one, involved in the design of the scoring methodology?

A. Missy Danforth and Alex Campione.

Q. All right. And what are their roles?

A. Missy Danforth is the senior vice-president for healthcare ratings. Alex Campione is a program analyst for the safety grade.

MR. CHUNG: All right. So we're going to

mark two exhibits, Exhibits 2 and 3.

And Exhibit 2 will be the spring 2025 safety grade scoring methodology and Exhibit 3 will be the preceding version, the spring 2024 scoring methodology.

(Bailey Deposition Exhibit 3 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Okay. So you mentioned Ms. Danforth and Ms. Campione in being involved in the design of the scoring methodology.

Is there anyone outside -- first of all, is there anyone else within Leapfrog that's involved in the design of the scoring methodology?

A. Leah Binder I'm sure has a role in it.

Q. Okay. Anyone --

A. That's all I can recall.

Q. I'm sorry?

A. That's all.

Q. Okay. Anyone outside of the organization

involved in the design of the scoring methodology?

A. The expert panel has a role in advising on the methodology.

Q. Okay. And that's a good segue.

What is the expert panel?

A. The expert panel is a group of experts who volunteer their time to Leapfrog to advise us on methodology.

Q. Okay. Now, from the website, Leapfrog tells consumers that Leapfrog works under the guidance of an expert panel to select appropriate measures and develop a scoring methodology.

Are you familiar with that language from the website?

A. Yes.

Q. Okay. Did you have a -- were you involved in putting together that particular language?

A. No. It precedes my time.

Q. Okay. Now, there is -- do you understand that there is -- there's a panel that consists of

patient safety experts? Are you aware of that?

A. For the Leapfrog hospital survey.

Q. Okay. Which -- and do you -- are you aware that there was a change in the scoring methodology in the spring to fall of 2024?

Are you aware of that?

A. Yes.

Q. Okay. Were there any experts from the experts panel that were involved in that methodology change in 2024?

A. I don't talk to the expert panel, so I wouldn't know.

Q. Okay.

A. I assume.

Q. Well, I'm not asking you whether you spoke to the expert panel.

Are you aware whether any experts from the expert panel were involved in that methodology change in 2024?

A. I don't know. It wasn't discussed with me.

Q. Okay. How are panelists for that expert

panel selected?

A. I don't know.

Q. Do you know whether any of those panelists are experts in disclosures to consumers?

A. I don't know.

Q. Okay. How about in website design?

A. I don't know.

Q. Digital literacy?

A. I don't know.

Q. All right. Any of those -- do you know whether any of those experts on the experts panel have a background or are experts in communications strategy?

A. I don't know.

Q. Okay. Do those panelists have to come from organizations that participate in the Leapfrog survey?

A. No.

Q. All right. Are there panelists that -- from organizations that do participate in the Leapfrog survey?

A. I believe so. I'm not an expert in everyone who's on the panel.

Q. Okay. Can you think of any members of the expert panel that are from organizations that participate in the hospital survey?

A. Not that I can recall off the top of my head.

Q. Okay. Are you aware of any instances where Leapfrog ended its relationship with a patient safety expert on that expert panel because their organization stopped participating in the hospital survey?

A. I don't know. It would surprise me if so.

Q. Okay. But you're not aware of an instance?

A. I'm not aware, no.

Q. You testified I think in the first or second question on this topic that these expert panelists volunteer their time to Leapfrog; is that right?

A. That's my understanding. Yes.

Q. So are panelists on this expert panel compensated at all?

A. Not to my knowledge.

Q. Are the organizations that they came from compensated in connection with the expert panelists being on the expert panel?

A. Not to my knowledge.

Q. All right. What role does the expert panel play in developing a scoring methodology? And that's the language we just went over from the website.

What's their role in developing a scoring methodology?

A. I only know that generally they advise on measures and help ensure that the safety grade is up to the latest science.

Q. Okay. Who at Leapfrog works with the safety grade? Do you work with them at all?

A. I do not. It's run by Missy Danforth.

Q. All right. Anyone else within Leapfrog that works with them?

A. The safety grade expert panel? Not to my

knowledge.

Q. Okay. So it's just Missy Danforth that works with the safety grade expert panel --

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. -- is that right?

A. To my knowledge.

Q. Okay. So what is the process by which these -- the hospital safety grade experts advise on the hospital safety grade?

A. Can you restate the question?

Q. Is there a process or protocol that Leapfrog follows in getting advice from the patient safety health -- patient safety experts on the experts panel?

A. I don't know.

Q. Are there any regular meetings with these experts?

A. I'm not aware of when they meet.

Q. Okay. If a patient safety -- if the patient safety experts make a recommendation with respect to the scoring method- -- scoring

methodology, is Leapfrog obligated to implement that recommendation?

A. No.

Q. And why not?

A. The Leapfrog hospital safety grade is Leapfrog's program. So Missy Danforth and Leah Binder would have the final decision.

Q. All right. So Leapfrog could reject a -- theoretically could reject a recommendation by the patient safety experts.

A. Theoretically, yes.

Q. Do you know whether, if there's a recommendation from the patient safety experts, whether that recommendation has to be unanimous among the members of that particular panel?

A. I don't know.

Q. Do the safety experts patient have to approve the wording of any change in the scoring methodology that Leapfrog adopts?

A. I don't know.

Q. On the website it says a hospital must have enough safety data available for our experts

to issue them a letter grade.

So is it correct that the patient safety experts themselves issue the letter grades?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know. I'm not involved in the assigning of safety grades.

BY MR. CHUNG:

Q. Does that -- just reading again, A hospital must have enough safety data available for experts to issue them a letter grade.

Is that accurate?

MS. BLAIR: Objection to form.

THE WITNESS: I think it's accurate because it says "our experts." I mean, that could include the expert panel; that could include experts within Leapfrog.

BY MR. CHUNG:

Q. Which experts within Leapfrog are you referring to?

MS. BLAIR: Objection to form as to the document you're reading from.

THE WITNESS: Missy Danforth and Leah

Binder are experts.

BY MR. CHUNG:

Q. Are the patient safety experts involved in the disclosures on Leapfrog's websites?

A. Can you repeat the question?

Q. Are the patient safety experts involved in the disclosures on Leapfrog's websites?

A. I don't know. I don't talk to the expert panel.

Q. So no -- just to be clear, you have no communication whatsoever with members of the expert panel?

A. Not that I can recall unless there's a specific media opportunity or -- but I can't recall something right now.

Q. Let's go to the next document.

MR. CHUNG: Tab 31.

THE WITNESS: Is that Exhibit 2?

MR. CHUNG: Oh, no, we're going to put another document in front of you.

THE WITNESS: Okay. We don't open these.

MR. CHUNG: Yeah. We may go back to

those later.

THE WITNESS: Okay. I'll just put them over here.

MR. CHUNG: So this will be Exhibit 4.

(Bailey Deposition Exhibit 4 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Ms. Binder [sic], we're putting Exhibit 4 in front of you. It's a series of Slack messages.

A. Okay.

Q. Take a few moments to take a look at it. Let me know when you recognize it.

Oh, Bailey, I'm sorry.

All right. So Ms. Bailey, these are Slack Messages from May 1 of this year between you and Ms. Jupiter.

What are you working on with Ms. Jupiter in the course of this Slack conversation?

A. A lot of different things.

Q. Let's go through -- just let me know --

if you can tell us what you're working on.

A. We discussed IPPS, which is a proposed rule with CMS. We provide comment letters.

We discussed some materials with our American Diabetes Association program.

We discussed a contract for a photographer.

Q. Is there also a discussion about a followup statement that Ms. Binder is going to make on the -- on this lawsuit?

A. Do you know what page you're looking at?

Q. Yeah. Why don't I focus you on Leapfrog 9912.

A. 9912? Okay. The last page?

Q. That's right. Yeah.

A. Yes. A statement for our website.

Q. Okay. Now, at about 6:12 p.m. -- just looking at the markers on the right side -- you write, I think we should link to results for each hospital too so people can see their fully transparent grades.

What are you referring to here?

A. From what I remember, the statement that's currently on our website links to each of the five plaintiff hospitals and their safety grades.

Q. All right. And -- so what did you mean by "so people can see fully transparent grades"?

A. The Leapfrog hospital safety grade is fully transparent. Leapfrog stands for transparency, so you'll probably see me saying transparent a lot because we focus on being transparent.

Q. So that's kind of -- that's language that you often use from kind of a communications perspective; is that right?

A. Yes.

Q. Then Ms. Jupiter writes, Not sure we want to link expert panel, followed by we don't really want them contacted.

Why didn't Ms. Jupiter want the expert panel to be contacted in this context?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know. You can see

in here that I was going to link to it. I don't remember -- I don't know what she meant.

BY MR. CHUNG:

Q. All right. And then you write in response, like you just testified, It's on our website so I think it's okay. It is a point we make a lot that we have the national expert panel.

What does that mean? Why is the national expert panel appointment -- a point that Leapfrog makes a lot?

A. It's part of our standard messaging.

Q. Okay. And that standard messaging is what, as relevant to this exchange here?

A. That we have a national expert panel that's part of developing the safety grade methodology.

Q. Again, just going back to what Ms. Jupiter wrote here kind of in the middle of your conversation, Not sure we want to link expert panel. We don't really want them contacted.

Was there a concern between you and Ms. Bailey and others at Leapfrog about members of that expert panel being contacted by the press?

A. I'm Ms. Bailey.

Q. Ms. Bailey -- I'm sorry. Ms. Bailey. We're going to do that again.

A. Okay.

Q. Was there a concern between you and Ms. Jupiter and others at Leapfrog about the press contacting members of the expert panel?

A. I don't know what Karen meant by this.

Q. All right. I'm not asking what Ms. Jupiter meant by this.

But did you have any concerns about members of the expert panel being contacted by the press?

A. No.

Q. How about other members of Leapfrog? Did Ms. Binder have any concerns about the expert panel being contacted by the press?

A. I didn't discuss it with her.

Q. Okay. How about with Ms. Danforth?
A. I didn't discuss it with her.
Q. Ms. Campione?
A. I don't discuss that kind of thing with Alex, no.
Q. Okay. Let's move on to the hospital survey.
What is Leapfrog's hospital survey?
A. It is a voluntary survey that is annual that all hospitals can choose to report to Leapfrog on. And it measures quality and safety.
Q. Do you have any role in designing the hospital survey?
A. No.
Q. Do you have any input on the content of the hospital survey?
A. No.
Q. Have you ever reviewed the hospital survey?
A. I proofread it.
Q. All right. Proofread it. So you have -- so what's the purpose of proofreading it?

A. Catch any typos or anything the ratings team may have missed as far as grammar.

Q. All right. So it's just a hard proofread. Doesn't have anything to do with the content?

A. Correct.

Q. All right. Is there anyone -- so who within Leapfrog is involved in designing the hospital survey?

A. Missy Danforth and Katie Stewart primarily.

Q. And what's Ms. Stewart's role?

A. She is the director of healthcare ratings for Leapfrog.

Q. Is there anyone outside of Leapfrog that's involved in the design of the hospital survey?

A. We have an expert panel for every section of the survey.

Q. And when you say every section of the survey, what do you mean by that?

A. So some examples are medication safety,

maternity care. We have a patient and family expert panel.

Q. Okay. And so each of those areas has a corresponding section in the survey; is that right?

A. Yes.

Q. All right. And what is the role of each of those specific expert panels with respect to their respective sections in the hospital survey?

A. It's very similar to the role with the safety grade. They advise on measures and methodology, share research that they're working on, can stay up to the latest science.

Q. Okay. Do they -- do members of the expert panels have to approve final versions of the Hospital -- of the survey before it's issued?

A. I don't know.

Q. All right. Do the expert panels make recommendations with respect to their respective sections in the hospital survey?

A. As far as I understand, yes, that's their role.

Q. All right. Is Leapfrog obligated to adopt those recommendations?

A. No, not to my understanding.

Q. Are you aware of any instances when a recommendation by the expert panel on the hospital survey was not adopted by Leapfrog?

A. Not that I can recall.

Q. Okay. Do you have any role in reviewing hospitals' responses to the survey?

A. No.

Q. Have you ever done that, reviewed any responses to the hospital survey?

A. No.

Q. Who at Leapfrog is responsible for reviewing those responses?

A. Missy Danforth's team. They work together on it.

Q. All right. Now, Missy Danforth's team. How many -- approximately how many members of the team are there?

A. Eight to ten.

Q. And is it their responsibility to review

the many responses that the organization gets the survey?

A. Yes.

MR. CHUNG: Let's go to the next document.

So this will be Exhibit 5.

(Bailey Deposition Exhibit 5 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Now, Ms. Bailey, I've put in front of you the hospital survey that's taken from the website, a version taken from the website.

Do you recognize it?

A. Yes.

Q. Okay. Now, you see that the survey is approximately 350 pages long.

Do you see that?

A. Yes.

Q. Okay. Have you -- do you know whether Leapfrog has conducted any studies or collected data on how long it takes hospitals to respond to

the survey?

A. I don't believe we've done anything formally.

Q. Okay.

A. No.

Q. Do you know generally -- and this can be a range -- how long it takes for hospitals to respond or fill out the survey?

A. We've heard 40 to 80 hours.

Q. Okay. Where is that from? Where do you hear that from?

A. The ratings team told me that, just talking to hospitals I believe anecdotally.

Q. Okay. Are you aware of any concerns that hospitals have raised about the amount of time or resources it takes to respond to the survey?

A. Any hospital I talk to, they prioritize Leapfrog and patient safety. So to them, it's no time. To them, they spend a lot more time on other ratings than they do on Leapfrog and don't see it as a burden, so I haven't personally heard complaints.

Q. Okay. You testified earlier that you don't speak to hospitals.

So what's the nature of the communications you're referring to here?

A. I testified earlier that I do case studies. So that's the only specific instance I can think of when I would talk to a hospital.

Q. Okay. And what -- did you conduct a case study of how long hospitals or what -- kind of the extent of resources hospitals have to undertake to complete these surveys?

A. No.

Q. So what was the context in which you got -- in which you heard from hospitals that -- about how long it takes for them to fill out this survey?

A. When I'm preparing for a case study, we usually do an interview. And I do a pre-interview, which is very standard in communications, where I just try to understand, you know, their role with Leapfrog. You know, what is your stance on Leapfrog? How long have

you done the survey? What parts of it are most valuable to your organization?

And that helps me, as a communications person, come up with the questions for the formal interview. So we always ask them about the survey as part of that.

Q. Okay. So apart from the conversations you've had with hospitals, have you heard of any concerns or complaints raised by hospitals about the amount of time or resources it takes to respond to the survey?

A. Not personally.

Q. Okay. Have you just -- from colleagues, have you heard about -- heard a complaint or concern along these lines?

A. Not that I can recall.

Q. Okay. Never heard a concern about -- or a complaint about how long it takes?

A. Not particularly from hospital. I don't work on the help desk, so I wouldn't -- I wouldn't know.

Q. Okay. This is not -- this sort of issue

is not -- you mentioned the help desk. What is that?

A. The help desk is in-house for Leapfrog. We use nDesk. So hospitals and ambulatory surgery centers, if they have questions, they reach out to our staff through the help desk and they get back to them.

Q. Okay. Have -- so putting aside kind of how much time it takes to fill out or respond to the survey, have any of the hospitals that you've spoken to expressed concerns or complaint about the content or the fairness of the hospital survey?

A. No.

Q. All right. How about apart from -- putting aside your personal communications with hospitals -- right? -- have you heard from colleagues about hospitals expressing concerns about the fairness of the hospital survey?

A. Not that I can recall.

Q. Okay. So is it -- have you heard -- in your conversations with hospitals, have the

hospitals expressed anything kind of negative or even ambivalent about the hospital survey?

A. Not that I can recall.

Q. Okay. So it's all been positive about the hospital survey; is that right?

A. From a communications perspective? Yes. Because we focus on hospitals that do the survey for the case studies.

Q. Okay. Can you explain that? I'm not quite sure I understand.

A. So as I said before, I do case studies with hospitals occasionally. That's the only time I could think of that I would have a direct conversation with a hospital and would potentially get feedback from them.

But we do case studies on hospitals that complete the survey.

Q. Understood. So is it -- so is it fair to say that, because you conduct case studies of hospitals that complete the survey, that the feedback you receive from those hospitals is positive?

A. Yes.

Q. All right. Have you conducted any case studies of hospitals that did not fill out the survey?

A. Not that I can recall.

Q. Okay. Why not?

A. My job is to promote Leapfrog as a communications person, so it -- it would be -- it's beneficial to do case studies on hospitals that do the survey.

Q. So for these case studies, because it's from a -- for a communications purpose, is the goal with these case studies to basically highlight or showcase hospitals that completed the survey?

A. Yes. And use the survey to spur change --

Q. All right.

A. -- and use it for benchmarking.

Q. And are these hospitals that received an A for their hospital safety grade?

A. They are different programs. The

Leapfrog hospital survey and the Leapfrog hospital safety grade are different.

So we've done case studies on children's hospitals that don't get a safety grade.

We've done case studies on an hospital that had an F on the safety grade and now has an A on the safety grade.

So we've had a lot of different types of stories.

Q. How often does Leapfrog make changes to the hospital survey?

A. I know it's reviewed regularly and changes are made just when necessary. Every year we put out proposed changes if there are any changes that are put out for public comment.

Q. So that's every year because the hospital survey is issued annually, correct?

A. Yes. It is annual.

Q. Can you tell us about -- can you describe for us step by step how that public comment process works?

A. I'm not intimately involved in it, but

from my understanding, we -- my team posts it on the website. And any public comments go through the help desk. So again, Missy Danforth's team reviews the public comments.

Q. All right. So it is -- public comment is invited -- is it just on the website itself, or are there other avenues for inviting public comment?

A. From my understanding, it's through the help desk.

Q. Okay. And who monitors that help desk again?

A. Missy Danforth's team. They all do.

Q. Are any -- are any posts or feedback on the help desk ever elevated to you for communications purposes?

A. Sometimes reporters will reach out on the help desk just because they're in the wrong place, so they get sent to me.

Q. Do you ever -- have you ever monitored the help desk because sometimes reporters or members of the media placed their questions on

the help desk?

A. No. They'll just forward it to me and I e-mail the reporter.

Q. Okay. Are you familiar with Leapfrog's imputation model in its scoring methodology?

A. Yes. Generally.

Q. All right. And what is it, generally?

A. If we have a situation where we don't have the data, we use an imputation model to assign scores.

Q. All right. And how long has Leapfrog used an imputation model in its scoring methodology?

A. I believe at least for as long as I've been at Leapfrog.

Q. Okay. And just to be clear, this is the scoring methodology behind the hospital safety grades, correct?

A. Correct.

Q. Why did -- so let's -- actually, let's move on to the next document.

MR. CHUNG: This will be Exhibit 6.

(Bailey Deposition Exhibit 6 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. So we've put Exhibit 6 in front of you, Ms. Bailey. It's an e-mail exchange from October 24, 2024.

Just let us know when you've had a chance to look at it.

Have you had a chance to review it?

A. Yes.

Q. All right. What's being discussed here?

A. The imputation messaging. So anytime there is a change in the methodology, we try to be as transparent and definitely as accurate as possible, so we update the frequently asked questions on our website, as well as spokesperson talking points, things like that.

Q. Okay. So you write here to Ms. Danforth that you're working on synthesizing for FAQs, messaging, et cetera.

So in terms of this imputation messaging,

where does it show up? You touched on it earlier, but can you kind of list for us where this messaging is incorporated?

A. Off the top of my head, it's in our FAQs -- or at the time of this e-mail, like when the fall 2024 safety grade was issued, it was in our FAQs which we give to every press member that we do any outreach to. It's linked at least twice on our website.

That's all I can think -- it's an internal talking points.

Q. Okay. In the first bullet point you wrote, for purposes of this messaging, Annually, Leapfrog's expert panel and researches at John Hopkins Medicine review the scoring methodology and have recommended modifying the current imputation method used for filling in missing data from hospitals that did not complete the latest Leapfrog survey.

So is it correct that Leapfrog's expert panel that we discussed earlier were the ones that recommended adopting an imputation model?

A. From my understanding, yes.

Q. What is that understanding based on?

A. This messaging that I wrote was based on a much longer writeup that Missy and her team put together. So often my job as communications manager is to take more complicated data science type language and to make it make sense to the lay public.

So that's what I was doing in this e-mail exchange.

Q. Okay. So in that longer writeup that Ms. Danforth and her team put together, Ms. Danforth was -- and that team were representing that the expert panel themselves were recommending -- were recommending this change in the imputation methodology?

A. Yes. That's my understanding.

Q. Did you -- was that consistent with your own understanding, that it was the expert panel that recommended this change in the imputation methodology?

A. Yes.

Q. And what is your personal understanding based on?

A. Being at Leapfrog for as long as I have been. I generally know that the expert panel -- like, what their role is.

Q. All right. And so in this particular instance with the change in the scoring methodology, you -- your understanding was that the expert panelists recommended this change just based on your general understanding of their role?

A. Yes.

Q. Okay. It also says here, just looking at the same sentence, Annually, Leapfrog's expert panel and researchers at John Hopkins Medicine review the scoring methodology.

Is that annual review that's represented here, is it consistent with your personal understanding?

A. Yes.

Q. Okay. It also mentions that it's not just the expert panel but researchers at John

Hopkins Medicine reviewed the scoring methodology and made the recommendation here.

In this instance, do you have an understanding as to why researchers at John Hopkins Medicine were involved as well, in addition to the members of the expert panel?

A. John Hopkins Medicine, the Armstrong Institute for Patient Safety and Quality, they're our research partner.

Q. What does that mean, research partner?

A. So Matt Austin is our research -- so he is a researcher, from my understanding of what he does, and he oftentimes, with me and the rest of the staff, he's sharing the most up-to-date research on things with us. He works with our expert panels. He works closely with Missy Danforth and has, as far as I know, for over 20 years.

Q. So for purposes of the review here of the scoring methodology and the recommendation, is it your -- let me put it another way, Ms. Bailey.

Is it typical for the expert panels --

for John Hopkins Medicine researchers to be involved in this process?

A. Yes.

Q. So for all the -- so it's typical that, annually, John Hopkins Medicine researchers review Leapfrog's scoring methodology and make recommendations?

A. Yes.

Q. So it's not just the expert panel that engages in this; is that your understanding?

A. Yes.

Q. Okay. So this is about a change -- this e-mail is about messaging around a change in the imputation methodology in 2024.

What was that change?

A. It's this last bullet here, where we were changing the way that the data for these four measures -- CPOE, BCMA, ICU physician staffing and hand hygiene -- were scored. So instead of, I believe, four rounds of safety grade data, we changed it to two rounds. And then if we don't have that data, we assign hospitals a point value

equivalent to limited achievement, which reflects the lack of data available.

Q. What do you mean by the four rounds versus the two rounds?

A. So we call -- so we have safety grades twice a year, in the spring and the fall, and we call each of those a round; sometimes call them a cycle.

Q. So what is that -- how is that relevant here to the change in the imputation methodology?

A. Just reading from the paper. I don't -- can you restate the question?

Q. Sure. So what exactly is the change as it relates to the number of rounds?

A. It's less.

Q. So there are fewer rounds -- so there are fewer rounds -- I'm just trying to understand -- right? -- in terms of the number of rounds involved -- right? -- in the safety grades, how that's relevant to the change in the imputation methodology.

A. So there are two steps to the imputation

methodology. Step 1 is using, if we don't have the data for right now -- so, like, for the fall safety grade, the data cutoff point snapshot date is August 31st. So if we don't have the data for 2025 survey, we'll go back to safety grade rounds. So I think six months, six more months. And we can use those scores.

It used to be longer. Again, one of the reasons a safety grade is twice a year is we want to have the most up-to-date information possible. So from my understanding, that's why we made that specific change to step 1 of the imputation model.

Q. Understood.

It also says here -- just going back to Exhibit 6 -- if there's no data available for the measure within the last two safety grade cycles, Leapfrog will assign the hospital a point value equivalent to receiving limited achievement.

So is this -- you just went over step 1. Right?

Is this messaging around step 2 of a new

imputation methodology?

A. Yes.

Q. All right. Limited achievement. What does that mean?

A. Limited achievement is a term that we use in the Leapfrog hospital survey. And these four measures come from the Leapfrog hospital survey.

We have performance categories, so depending on how you score as a hospital, limited achievement is the lowest.

Q. Okay. So where there's no data available for a specific measure -- right? -- at least among the four here involved, within the last two safety grade cycles, is it correct that, under step 2 of this change, Leapfrog will assign automatically to that hospital a limited achievement score for those particular -- for that particular measure? Is that right?

A. Yes. For those four measures.

Q. Just taking a step back, why was it these four metrics -- CPOE, BCMA, IPS and hand hygiene -- why are they the four metrics involved

here?

A. I wasn't part of the conversations exactly to choose measures. I'm not part of that.

But from a communications perspective, these measures are critical to patient safety. We're talking CPOE and BCMA; that's medication safety. Medication errors are the number one most common type of error that happen in a hospital. Very, very important that these systems -- most hospitals have them -- but that they actually work and are protecting patients.

ICU physician staffing. Again, very, very important. There are studies that we reference that having critical care doctors in the ICU taking care of patients can reduce mortality by 40 percent, which is huge for patients.

And hand hygiene, washing your hands, is the most effective way to reduce the spread of infections.

Q. Okay. Well, I'm glad that you went one

by one, but I'm going to take you back through each of them.

A. Okay.

Q. So starting with CPOE, why is it appropriate for Leapfrog to use an imputation model for CPOE?

MS. BLAIR: Objection to form.

THE WITNESS: I can't speak to that. I'm not a data scientist.

BY MR. CHUNG:

Q. Okay. Well, from a communications perspective?

A. I don't know.

Q. Okay. Why is it -- let's put it another way.

Why do you understand it's appropriate for Leapfrog to automatically assign a limited achievement score for CPOE where it doesn't have data according to step 2 of this change in methodology?

MS. BLAIR: Objection to form.

THE WITNESS: From a communications

perspective, okay, would be patients have the most at risk for this and they are the most at risk if we understated a hospital's performance on any of these four measures.

That's my opinion on it.

BY MR. CHUNG:

Q. That's your opinion? Okay.

So what do you mean by understating?

A. So limited achievement, as I testified before, is the lowest achievement. If we overstated that performance, patients have the most to lose if they go into the hospital thinking that this hospital scores high on something that they actually don't report on.

Q. Okay. Is there a concern -- is there a concern at all by automatically assigning the lowest possible score -- right? -- the limited achievement, in the absence of data on CPOE that consumers might be misled?

MS. BLAIR: Objection to form.

THE WITNESS: I don't think so.

BY MR. CHUNG:

Q. Why not?

A. Because we've made it clear on the website that the score is assigned.

Q. Okay. And which website are you referring to?

A. Hospitalsafetygrade.org.

Q. So that's one of the two websites that Leapfrog runs, correct?

A. Correct.

Q. Okay. Same series of questions for BCMA, another one of the four imputed metrics.

Why is it appropriate for Leapfrog to use an imputation model for BCMA with this -- this change two-step process?

MS. BLAIR: Objection to form.

THE WITNESS: The same answer that I had to the CPOE. Again, as I testified before, this has to do with medication safety. It's the most common type of error that happens in hospitals. Patients have the most at risk if these systems aren't working.

BY MR. CHUNG:

Q. Okay. Same question with respect to IPS.

MS. BLAIR: Objection. Form.

THE WITNESS: Same answer. That patients have the most at risk. As I testified before, having critical care doctors in the ICU is very important for patients who are in critical states.

BY MR. CHUNG:

Q. Okay. And then how about for the fourth and final, hand hygiene?

A. Again, patients have the most at risk. Hand hygiene is arguably the most important part of not spreading infections.

Q. Okay. So why does Leapfrog use the imputation model for CPOE, BCMA, IPS, and hand hygiene, but does not use an imputation model for a number of other measures? And in particular, we're looking at safe practice 1, safe practice 2, and total nursing care hours per patient day when there isn't a response from the hospital.

A. I don't know.

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. Okay. Are you -- has Leapfrog received complaints or concerns about the change in the imputation methodology from last year?

A. I'm not aware. I'm not in those conversations.

Q. Not aware of any feedback, negative or at least -- negative feedback or concerns about the change in imputation methodology?

A. No. I don't talk to hospitals in the help desk.

Q. Okay. How about from your colleagues?

A. Not that I can recall.

Q. Do you know whether there are any plans to further revise or update the imputation methodology in the future?

A. I don't know.

Q. Did you have any role in the change to the imputation methodology from last year?

A. No.

Q. Who at Leapfrog was involved in the

change?

A. It would be Missy Danforth, Leah Binder primarily.

Q. All right. Any others within Leapfrog?

A. I'm not sure.

Q. All right. How about from outside of Leapfrog? Anyone involved in the methodology change? We went over some -- we went over the messaging -- right? -- as it relates to the expert panel and the John Hopkins researchers. But apart from those individuals or institutions, any others outside of Leapfrog that were involved in the change to the imputation methodology from last year?

A. I don't know. I don't think so.

Q. Okay. Are you aware whether -- in terms of the expert panel itself, do you know which section or group of the expert panelists were involved in the imputation methodology change?

A. It's the safety grade expert panel.

Q. So none of the other -- you testified earlier, at least with respect to the hospital

survey -- right? -- that there are separate, we'll call them subpanels that are focused on each of the sections.

Were any of those other expert panels involved in the imputation methodology change?

A. I don't know.

Q. Okay. So in terms of the change, why -- as you understand it, why did Leapfrog decide to automatically assign this lowest score, the limited achievement score, for these imputed metrics instead of the average hospital score, as it had done previously?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know.

BY MR. CHUNG:

Q. Was there any -- as the communications director -- right? -- was there any messaging, communications-focused messaging, around that very question, the question being why the change, right?

A. Can you restate that?

Q. Sure.

Was there any messaging -- right? -- from a communications perspective, around the question of why Leapfrog decided to change the imputation methodology from using the average hospital score for step 2 to automatically assign the lowest score under step 2?

A. Nothing beyond what's in Exhibit 6.

Q. Okay. So there's no -- so if we're looking at Exhibit 6 -- right? -- am I correct that there's -- in these bullet point messaging, that there's nothing about -- that goes to why Leapfrog went from just using the average hospital score to automatically assign the limited achievement score?

A. Yeah, no, that's generally too in the weeds for communications messaging.

Q. Why is that too in the weeds?

A. I don't know. I'm not usually -- we don't usually get that specific. As far as communications goes, generally having too much information can be confusing.

Q. But why -- if you could kind of explain

why messaging around that question -- right? -- the question that focuses on the actual change to the imputation methodology, why that would be -- why that would be too confusing to include.

A. I mean, this is a small part of the safety grade. I have a lot of other messaging for the safety grade. This is four of the measures.

So as a communications person, you only have so much attention with people and there's a lot of other messages. So this is what we chose to do.

Q. What are the other messages around the hospital safety grade?

A. What is the hospital safety grade? Why is it important? What types of measures does it include? Have there been any changes -- which is where this comes in. Et cetera.

Q. Did you -- I asked you earlier whether you had heard any feedback or complaints about changes to the imputation methodology. Let me just be a little bit more specific with that

question.

Have you heard from hospitals or just more generally any concerns or complaints about the scores, the limited achievement scores that non-participating hospitals were automatically receiving on these imputed metrics?

A. I can't recall any specifics, no.

Q. Okay. And is it correct that, with this change in the imputation methodology, that hospitals who don't participate in the survey get lower hospital safety grades?

MS. BLAIR: Objection to form.

THE WITNESS: Can you restate the question?

BY MR. CHUNG:

Q. Sure.

And is it correct that hospitals that do not respond to the survey -- right? -- get lower hospital safety grades as a result of this new imputation methodology?

A. Not necessarily lower.

Q. Not necessarily? So can you explain

that?

A. So the -- if you did participate in the hospital survey, you could score limited achievement and you would get the same measure score for these four measures.

So it doesn't necessarily mean it would be better or worse.

Q. Okay. Are you aware that -- was -- what was the purpose of the change in this methodology?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know.

BY MR. CHUNG:

Q. Okay. Are you aware that one of the purposes of the change in methodology was to penalize hospitals that did not participate in the survey?

MS. BLAIR: Objection to form.

THE WITNESS: That's not my viewpoint.

BY MR. CHUNG:

Q. I understand -- I'm not asking for your viewpoint.

Are you aware that that was one of the purposes?

A. No. I don't think it's one of the purposes.

Q. Okay. Are you aware that one of the purposes of the change in the methodology was to induce hospitals to participate in the survey?

A. No.

Q. No, you're not aware of it or, no, that's not one of the purposes?

A. I'm not generally aware of it, no.

Q. What do you mean by generally aware of it?

A. Like, I mean, logically, it is an incentive. It's not the only incentive, major incentive. I'd say the major incentive of doing the survey is to be transparent and to show the public how you're performing.

Q. So -- understand the logic, right? But is that -- the purpose of incentivizing hospitals to participate in the survey, was that a purpose that you and your colleagues at Leapfrog

discussed?

MS. BLAIR: Objection to form. Mis- --

THE WITNESS: Can you restate?

BY MR. CHUNG:

Q. Did you and your Leapfrog colleagues discuss that one of the purposes of the change in methodology here was to induce hospitals to participate in the survey?

A. Our job at Leapfrog is always to have more hospitals do the survey. We would love if every hospital did the survey, so it's always a part of our conversation.

Q. My question is, with respect to the change in the imputation methodology -- right? Understand that, fine, that's generally something that you discuss. Right? But specific to the change in the imputation methodology, did you and your colleagues at Leapfrog discuss that this would be a way to induce more hospitals to participate in the survey?

A. I don't remember having those conversations myself.

Q. Was Leapfrog trying to induce hospitals to participate by automatically giving non-participating hospitals the lowest score on the four imputed metrics?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: I don't know.

BY MR. CHUNG:

Q. You don't know? Okay.

Was Leapfrog -- looking at another perspective, for hospitals that actually participated in the survey, that responded to the survey, was this change in methodology a way to appease those hospitals that were participating in the survey?

A. No, I don't think so.

Q. Okay.

MR. CHUNG: Let's go to the next document.

MS. BLAIR: Daniel, is it okay to take a break?

MR. CHUNG: Yes. Of course. We've been

going for a while.

VIDEO TECHNICIAN: The time is 10:29 a.m. Ending unit 1. We're off the record.

(A recess was taken.)

VIDEO TECHNICIAN: The time is 10:40 a.m. This begins unit number 2. We're on the record.

MR. CHUNG: All right. Ms. Bailey, we're going to mark the next document Exhibit 7.

(Bailey Deposition Exhibit 7 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. And it's an e-mail chain from April of this year, 2025.

Just take a few moments to look at it.

A. Okay. I read it.

Q. All right. So what's being discussed here in this chain?

A. We were doing -- from what I remember, we were preparing a presentation for our board of directors. We had some newer board of directors. We wanted to give them an overview of Leapfrog

programs.

Q. And let's turn your -- and was -- part of this overview, did that include the new imputation methodology?

A. I don't recall.

Q. Okay. Well, let's just focus on a few pieces. In particular, Ms. Binder's -- the initial kind of long e-mail that kicks off the discussion.

So if you look at Bates ending 500, the fourth bullet down of a series in Ms. Binder's e-mail, she notes that -- the most important things to convey in this speech.

So what is "this speech" referring to?

A. Meeting with our board of directors.

Q. Okay. And the fourth bullet down is, Why the imputation strategy is controversial was among the most important things to convey in this speech.

Why was the imputation -- why is or was the imputation strategy controversial?

A. I don't know why she necessarily used

this word. I don't remember exactly what was in this presentation. It was a lot of our standard slides.

But anytime there's a change at Leapfrog, you know, we make sure our board knows about it.

Q. What is your understanding as to why the imputation strategy was controversial?

A. From my history at Leapfrog, anytime there is a change on the survey or the safety grade, it could be controversial. It depends on the person you talk to.

Q. Controversial to whom?

A. I don't know.

Q. Okay. But you said based on your time or your experience at Leapfrog. Right?

So have there been experiences or instances during your time there where a change in the imputation strategy was controversial?

A. I mean, we're talking about the change from fall 2024, and this --

Q. Well, I'm talking about what she is referring to here in the fourth bullet point, why

the imputation strategy is controversial. Right?

So let's just start with have there been instances during your time at Leapfrog where there was controversy around the imputation strategy?

A. I can't recall a specific instance.

Q. Okay. Do you have an understanding as to why Ms. Binder wrote here that this particular -- that why the imputation strategy is controversial was an important thing to convey to the board?

A. If this was written in April, that would mean that it was about to be the second safety grade since the new change. So it still was a new change.

So again, any new changes would be something we would make sure the board knew.

Q. Okay. Was the board involved in the decision to change the imputation methodology?

A. Leah reports to the board, so they're aware of changes.

Q. Okay. Putting aside awareness of the changes, does the board have input into -- did

the board have input into the change in the imputation methodology?

A. I believe so, from what I can remember.

Q. How were they involved? Or what sort of input did they have?

A. It was discussed in board meetings before it went out for public comment.

Q. So this is -- these were discussions before the actual imputation methodology was implemented and finalized?

A. Correct. While we were developing the proposed changes.

Q. Okay. And so what were -- can you describe those discussions with the board about the -- about the proposed or the contemplated change in imputation methodology?

A. I don't remember.

Q. Are you -- do you participate or are you present at Leapfrog board meetings?

A. I take minutes.

Q. So you're there?

A. Yes.

Q. Okay. But you don't remember even just a sketch -- right? -- of discussions at these board meetings about the upcoming change in the imputation methodology?

A. I don't remember. We've had a lot of board meetings since then, and it's a small part of my job.

Q. Okay. In the second-to last bullet point -- we're looking at the same page, Bates 500 -- again, the most important things to convey in this speech are the levers we pull to get hospitals and ASCs to participate.

What were those -- what are or what were those levers?

A. So as I mentioned earlier on, we're founded by employers. And our board represents employers. So they are employers themselves. We also have patient advocates. So, you know, that's the audience that we're talking to and that's the audience that we're talking about with the levers.

So we educate them on why the surveys are

important and how facilities can utilize them and also how employers -- I think, in this instance, we're talking specifically about hospitals and ASCs. Our general messaging focuses on showing your commitment to transparency and that you put patient safety first in talking to hospitals and ASCs, as well as you can use it for benchmarking purposes.

Q. So how are those -- just to kind of break that down, how are those levers to get hospitals and ASCs to participate -- do you take this to mean to participate in the survey?

A. Yes. To participate in the survey.

Q. Okay. So just going back to the question.

How are each of those -- can you just kind of describe how each of those are levers to get hospitals to participate in the survey?

A. I wouldn't use the word "levers." I would use the word, maybe, incentives or advantages. Like how do we -- what are the interests of hospitals, like --

Q. Why wouldn't --

A. -- how do they benefit.

Q. I'm sorry to interrupt you.

Why wouldn't you use the term "levers" that Ms. Binder used here?

A. That's not a word I would use. I don't really know what it means in this context exactly.

Q. Okay. So using incentives -- right? -- as another word, how are each of those incentives to get hospitals and ASCs to participate in this survey?

A. If we're talking about benchmarking, there are a lot of hospitals and ASCs that use their survey results in benchmarking so they can see year over year where the changes are. Especially at the system level. A lot of systems who really embrace transparency will use the survey as a benchmark so they can see with all their hospitals and their systems, you know, where there may be opportunities to improve.

So that's a good incentive for them to

have that.

Q. Is the imputation methodology itself a lever to get hospitals to participate in the survey?

A. It's not one we use in messaging. I wouldn't have been included in this from my knowledge.

Q. Putting aside that it's not included in messaging -- right? -- is it a lever, the imputation methodology itself a lever to get hospitals to participate in the survey?

MS. BLAIR: Objection to form.

THE WITNESS: I'd say it's an incentive.

BY MR. CHUNG:

Q. Okay. And how is it an incentive?

A. Because they have the opportunity to give us more information about patient safety in those measures. Potentially would have the opportunity to score differently, potentially not. There's no guarantee either way.

Q. Okay. At least -- would it be fair to say that it is -- the imputation methodology is

an incentive to hospitals to participate at least so that they don't get automatically scored -- given automatically a limited achievement score in the four imputed metrics?

MS. BLAIR: Objection to form.

THE WITNESS: Can you repeat the question?

BY MR. CHUNG:

Q. Sure.

Is it fair to say that it's an incentive to hospitals to participate in the survey so that they don't get the lowest score on the four imputed metrics?

MS. BLAIR: Objection to form.

THE WITNESS: Possibly.

BY MR. CHUNG:

Q. Okay. She continues -- Ms. Binder in this e-mail continues with, in other words -- well, we're looking at Bates 501. Let's just go on to the next page.

About halfway down there's a paragraph that starts, Then there needs to be a

slide.

Do you see that?

A. Yes.

Q. Okay. Then there needs to be a slide about what Leapfrog does to grade a hospital when they decline to report the survey. I think it's very important for the board to understand what we moved over time toward imputing the lowest level of performance when we don't have recent Leapfrog data.

Why was that important for the board to understand?

A. Again, it was a change. Our board is not made of healthcare professionals. It's made of employers and patient safety advocates. So it's not the same as talking to a data scientist, so she wanted to make sure they understood since it is a change.

Q. Okay. And then she continues, In other words, the slides should not detail the step-by-step imputation process. It should summarize the strategic import of the imputation

process. This has been a shift over time and one with significant policy ramifications for the organization.

First, what was the strategic import that she's referring to here?

A. I don't know.

Q. Don't know?

A. (No verbal response.)

Q. Do you recall having conversations with Ms. Binder about that language around this time?

A. No. I mean, this is like a stream of consciousness e-mail of edits, so I wouldn't take it as a directive.

Q. Okay. What do you mean by a stream of consciousness, stream of edits?

A. There's, you know, two pages, single-spaced, of edits, so she was just quickly writing her edits down.

Q. Okay. What were the significant policy ramifications for Leapfrog that she was referring to here?

A. I don't know.

Q. Okay. Just going back to that sentence, The slide should not detail the step-by-step; imputation process. It should summarize the strategic import of the imputation process.

Why didn't she want the board to be provided detail about the step-by-step imputation process?

MS. BLAIR: Objection to form.

THE WITNESS: They had been provided the step-by-step, in my recollection. At this time, we had one hour to do this presentation, and this was not the only focus of the presentation. So I think she was giving a directive of, you know, she recommends that this is what we show on the slide for purpose of this meeting.

BY MR. CHUNG:

Q. Okay. But where the -- where there's a change -- right? -- in the imputation methodology -- right? -- don't you think it would be important for the board to know what the change itself was in terms of the steps of the imputation methodology?

MS. BLAIR: Objection to form.

THE WITNESS: I mean, from my knowledge, we're talking about, what, April 2025? So it was already in place. So it's not that this was the first time we talked to them. It had been several times --

BY MR. CHUNG:

Q. So --

A. -- in my recollection.

Q. Okay. So you know that they'd -- they had been already given the details about the changes in the steps to the imputation methodology by this time?

A. Yes.

Q. Okay. How?

A. As I testified before, in board meetings.

Q. Okay.

MR. CHUNG: Let's go to the next document. This will be Exhibit 8.

(Bailey Deposition Exhibit 8 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Now, Ms. Danforth [sic], this is a -- it looks like a presentation to the Leapfrog board of directors dated April 28, 2025, that we believe corresponds to the discussion over the e-mail that we were looking at. But if you could take a few moments to flip through it. Let me know if you recognize it.

A. Sure. Ms. Bailey.

Q. Ms. Bailey. All right.

A. Too many.

Q. We'll get there.

Just for the record, what you're looking at, Exhibit 8, we believe is what's discussed and -- but it wasn't technically attached -- right? -- to the e-mail that we saw in Exhibit 7.

MR. CHUNG: And just for counsel, I think the document attached as a child to the e-mail earlier had a technical slip sheet.

MS. BLAIR: Oh, okay.

MR. CHUNG: So this is what we believe -- it's another copy that we believe should have

been attached to that e-mail.

THE WITNESS: I'm not sure if this was the final version, but --

BY MR. CHUNG:

Q. Okay.

A. -- generally it looks...

The only piece of this presentation that I really remember is this last piece. And this looks like an old draft.

Q. When you say "last piece," it's the last --

A. The very last -- the common objections to Leapfrog.

Q. Okay.

A. I had a different format, I remember.

Q. The format was different in the final --

A. Yeah --

Q. -- so far as you remember?

A. -- this isn't the final. Yeah, this looks like it was the very first draft.

Q. Okay. Let's go to 1092. Leapfrog 1092. It's a slide titled, Leapfrog Strategy.

A. Okay.

Q. So here, the second bullet point reads, Influence consumer decisionmaking and purchaser payment strategy like contracting, network design, and steerage.

What's being referenced here?

A. So this slide here is referencing back to our founding. So these logos right here are talking about -- these are some of the companies that founded The Leapfrog Group. So we represent employers and purchasers.

So that's what this slide number 2 is about in the context of employers.

Q. Okay. What does it mean by influencing consumer decisionmaking?

A. One of the purposes of Leapfrog is for patients to know that not all hospitals are the same.

Q. Okay. And what does purchaser payment strategy mean?

A. I'm not an expert in this, but I believe the next three that follow explain it. So direct

contracting might be -- maybe you've heard of centers of excellence that some employers set up. Network design is, I think -- I believe designing which hospitals are in the network.

And steerage, kind of the same thing, which hospitals are in the network.

Q. All right. Let's go to 1096.

So Leapfrog By the Numbers is the title of this slide, and you see that it has a series of statistics, Ms. Bailey?

A. Yes.

Q. Okay. So in the center of the top row it says, Leapfrog websites received more than 2.3 million page views per year.

Do you see that?

A. Yes.

Q. Okay. And is that -- that encompasses the two websites that we discussed earlier, correct?

A. From my understanding, yes.

Q. Okay. And do you have -- as part of your role as communications director, you oversee and

manage those two websites; is that right?

A. I do, but our PR firm is the one who looks at Google Analytics, so they would be the one to provide me stats like this.

Q. So the PR firm is CURA Strategies; is that right?

A. Yes.

Q. Okay. So the grade, the hospital safety grade, that Leapfrog gives to hospitals is seen by an audience in the millions of people; is that right?

MS. BLAIR: Objection to form.

THE WITNESS: Our website receives millions of views. Yes.

BY MR. CHUNG:

Q. Okay. So in the bottom row on the right it says, Every year Leapfrog ratings and data are acceptable -- are accessible to 200 million-plus employees, health plan members, and consumers through Leapfrog's various partners and resellers.

Do you see that?

A. Yes.

Q. Okay. So just putting those two statistics together, the 2.3 million views of the websites and then the 200 million-plus employees and the other individuals that are referenced here, is it fair to say that this is the universe of people that at least potentially see the hospital safety grades that are assigned to hospitals?

A. That's my understanding, but there's a very big overlap in that 2.3 million with the 2 million.

Q. 2 million or 200 million?

A. I'm saying, of the 200 million, the website views, it's probably a lot of the same people.

Q. And what makes you say that?

A. You can't see in Google Analytics who it is, who they are, who's clicking on your website, but just based on our communication strategy and how Leapfrog is set up representing employers, the primary way that we reach patients is not

necessarily them knowing what a safety grade is; it's through employers.

Q. Okay. Understood.

Let's go to 1094.

So this is titled, Why hospitals participate in the survey. And then we see a series of statements here.

Are these the different reasons why hospitals participate in the Leapfrog survey, the hospital survey?

A. Yes. This is similar to what we were talking about before with the incentives.

Q. Okay. So fair to say that hospitals -- various hospitals participate in the hospital survey for different reasons?

A. Yes.

Q. All right. Just looking at the page here, do any of the reasons given here include that the hospitals have good patient safety?

A. Can you restate the question?

Q. Sure.

Do any of the reasons enumerated here, included here, include that the hospitals have good patient safety?

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. Is that one of the reasons included here?

A. I don't understand the question.

Q. Sure.

Do you see anywhere -- among the reasons -- right? -- here -- you just testified that these are the various reasons that hospitals participate in the survey, correct?

A. Right.

Q. Right. And this is -- this is a presentation being made to the board of Leapfrog, correct?

A. Correct.

Q. All right. So of the reasons set forth here -- right? -- are there any reasons that point to hospitals having good patient safety?

A. No, not as written on this page necessarily. I guess number 2 could kind of

be, make it easy for the public to find information about their safety and quality.

Q. Okay. But fair to say that hospitals that participate in the survey can do so or actually do so for reasons other than their safety record; is that right?

MS. BLAIR: Objection to form.

THE WITNESS: I don't understand the question.

BY MR. CHUNG:

Q. Right. Are there -- based on what we see on this slide here -- right? -- are there -- is it fair to say that participating hospitals respond to the survey for reasons other than their safety record?

A. Yes. These are some of the reasons.

Q. Okay. Let's go to Bates 1116, which is the last page you were referring to earlier.

A. Okay. Thank you.

Q. This one is titled, Common objections to Leapfrog, and we're looking at Bates Leapfrog 1116.

So again, this is presented to the board.

Is it correct that the statements on this slide are common objections to the Leapfrog survey? Is that right?

A. To be clear, yeah, common objections is a communications term, so it doesn't mean that it's -- we hear it all the time or anything. It's just like an FAQ. So...

Q. Okay. I'm not sure I quite understand that. Why is it like an FAQ?

A. So, like, common objections, it's kind of, like, commonly asked questions, which doesn't mean that they're asked all the time, it's just what we think is important in our messaging.

Q. So why -- why are these objections called common objections?

A. It's just a PR term.

Q. Okay. But fair to say that these are objections or statements that appear in actual feedback?

A. Probably.

Q. Well, where do you obtain these -- how do

you determine whether an objection is common or not?

A. I know it says, "common objection," but it's just a communications term. The way that we came up with these bullets was just talking to staff internally of what do we think that the board should know and be able to answer.

Q. So this is -- so just to ask the question again: Do these objections -- are these objections based on actual objections from hospitals and other parties?

A. Not things necessarily they actually said, just a summary of types of topics.

Q. Okay. So taking what you just said, is it -- it's not uncommon for hospitals to object that Leapfrog data is self-reported?

A. That's a common question that we get.

Q. From hospitals; is that right?

A. I wouldn't necessarily know from hospitals. But from reporters or people who are new to Leapfrog, that's something they want to know about.

Q. Okay. And this is -- you testified earlier that, based on -- at least in part these common objections were based on discussion internally, right, within Leapfrog?

A. Correct.

Q. Right? So was this -- did those -- in the course of those internal discussions, did you learn from your colleagues that this particular objection, that Leapfrog data is self-reported, was one that came from hospitals?

A. No. This was -- I know this one because this is one that reporters will ask.

Q. Okay. So I guess similar question: It's not uncommon for hospitals to object that their quality is evidenced in other ways; is that right?

A. Which bullet are you referring to?

Q. Well, I guess the third one: Our efforts to promote quality is evidenced by many accolades received within the past year, so we don't need to report to Leapfrog.

A. It's -- I'm not saying it's exact. The

reason there are quotes, to be clear, is so that they know this isn't something that Leapfrog is saying. That's why there are quotes in here. It's just a form. It doesn't mean it's a pull quote from a specific hospital or something. Just to be clear.

This is something in general, a sentiment that we've heard before, not me personally, but from the ratings team that we've heard. And we want -- you can't see the answers here, which is -- if you had seen the final draft, I think it would display it more clearly.

But what we're really getting at here is what makes Leapfrog different.

Q. But the question is, is this an objection -- right -- or at least a statement that hospitals have made?

A. In my understanding, yes.

Q. Just going down the line here, is it not uncommon for hospitals to object that their poor safety grade is only because they did not participate in the Leapfrog hospital survey?

A. Yeah. Hospitals have said that.
Q. Okay.
A. In this lawsuit they say that.
Q. And it's not uncommon to hear that consumers are confused by having too many ratings programs; is that right?
A. So the -- I wouldn't say that. I think consumers can get confused. And this answer leads in to why we created the hospital safety grade as a single letter, for them to be more -- it's easier for consumers to understand that.
Q. So where -- so is this objection -- right? -- consumers are confused by having too many ratings programs, why does Leapfrog matter? -- is that coming from hospitals?
A. I don't know.
Q. Where is this coming from? Where is this common objection coming from?
A. Again, this is a collective effort with the Leapfrog team. We've had these for a long time. So they come from various -- some of them could just come from, you know, us talking as a

staff and saying, this is an important message point and something someone might say.

Q. All right. But where is this -- understanding that it may come from your discussions with your colleagues, but where does this objection come from? Where -- kind of -- where was it -- where has it been heard or observed?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: In my opinion, it is the reason we created the safety grade. And this specific line I believe is on our safety grade website.

BY MR. CHUNG:

Q. No, but my question is, where did this statement come from? Where are you hearing this concern or objection?

A. I don't know. Precedes my time.

Q. This slide or this deck precedes your time?

A. No. This line, I said, we've used as a

reason why we created the safety grade, which precedes my time.

Q. Okay. So this is -- I mean, are you testifying that this is kind of -- this bullet point is recycled from previous board presentation decks from before your time?

MS. BLAIR: Objection to form.

THE WITNESS: Our messaging doesn't change very much, so all of these bullets we've been using for a long time.

BY MR. CHUNG:

Q. Okay. So -- but my question is this particular bullet point.

Are you telling us that this is a bullet point that's been recycled or has been used to present to the board since before your time in?

A. I would assume so. I've seen it the whole time I've been at Leapfrog.

Q. Okay. Has Leapfrog received any feedback from insurers regarding the reliability of hospital safety grades for non-responding hospitals?

A. I don't know.

Q. All right. How about from consumers, generally?

A. I haven't seen any. I don't know.

Q. Do you know whether Leapfrog has considered not grading hospitals that don't respond to the survey?

A. I don't know.

Q. Is that something that's ever discussed between you and your colleagues?

A. I personally haven't heard it discussed, no.

Q. Okay. Let's turn to our next document, tab -- let's go with tab 7.

This will be Exhibit 10.

THE REPORTER: 9.

MR. CHUNG: 9, sorry.

(Bailey Deposition Exhibit 9 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Okay. Ms. Bailey, we put in front of you

Exhibit 9, which is The Leapfrog Group and affiliate consolidated financial statements dated June 30, 2024.

Have you seen this document before?

A. I believe I've seen it in the context of it being presented at a board meeting.

Q. And are you -- what involvement do you have at all in putting together the financial statements of the organization?

A. No involvement.

Q. Do you have any input, provide any data, for purposes of putting together the financial statements?

A. No.

Q. Okay. Who is? Who's involved?

A. I know Leah is involved.

Q. Okay. If you look at page 5, or Bates ending in 9789 -- and where you see two Bates numbers in the lower right-hand corner, I'm going to point to the one that's -- the top one. Okay?

A. Okay.

Q. You'll see here that this outlines the

revenue and support for the organization.

Do you see that?

A. Yes.

Q. The first line there, accolade licensing revenue.

What is accolade licensing revenue?

A. The accolade licensing is licensing our safety grade A and our top hospital logos to hospitals.

Q. All right. And is this -- at least based on this document, is this the single biggest revenue source for the organization?

A. Looks like it in this document.

Q. Yeah. So 3. -- about $3.29 million for 2024, correct?

A. Yes.

Q. Okay. And then there's -- the next item down is data licensure.

What is that referring to?

A. We sell our data to, like, solutions providers, health plans, companies like that.

Q. And which data is this referring to?

A. I believe this includes the safety grade and the survey.

Q. Okay. So data collected from hospitals that respond to the survey?

A. Yes.

Q. Okay. And what is the data around the hospital safety grade that's licensed?

A. I don't know the specifics on that.

Q. Okay. But your understanding is that this data licensure revenue encompasses licensing of the hospital safety grade and the data collected from hospitals to the survey?

A. Yes. That's my understanding.

Q. Okay. And is that the -- it looks like that's the second highest revenue source, is that right, $2.17 million for 2024?

A. Yes.

Q. Okay. Membership is the third line down, $1.14 million in revenue.

What does this encompass?

A. I believe it's our partners advisory committee dues.

Q. Okay. And what is the partners advisory committee?

A. So as I mentioned before, our board doesn't include -- if your business is 30 percent or more healthcare, you're not on our board.

So we created the partners advisory committee over ten years ago as a way to have a formal relationship with healthcare companies that want to be involved with Leapfrog. They have no governance over Leapfrog.

Q. Okay. And so these entities or these companies pay a membership fee -- is it an annual membership fee to Leapfrog -- to be part of this partners advisory committee?

A. Yes.

Q. And approximately how much is that membership fee?

A. 35,000 is what I believe it is.

Q. Okay. Just a few lines down there's a revenue source data products and reports that corresponds to about $314,000 in revenue for 2024.

What does this refer to?

A. I don't know.

Q. Now, do you have any involvement in the Leapfrog annual meeting? We understand that the organization has an annual meeting.

A. Yes. As the communications director, I'm involved in the annual meeting.

Q. All right. How are you involved in that, in the annual meeting?

A. I am part of our planning committee. Again, we have a small staff, so we might do things that wouldn't be particular in other groups. We all really work together on this.

So Karen and Angela Hopkins, who is our office administrator, really run point. I help with whatever is needed but, of course, oversee all of the printed publications, all of the marketing, all of the social media, that kind of thing.

Q. All right. And is the annual meeting a source of revenue as well?

A. I don't think we consider it a source of

revenue. All I've heard is that we generally lose money.

Q. All right. But in order to attend the annual meeting, there's a fee required of attendees; is that right?

A. Correct.

Q. Just going -- kind of stepping back, we looked at a few of the line items here on the financial -- from the statement.

How does Leapfrog raise money from the hospital safety grades and the hospital survey specifically?

A. Can you restate your question?

Q. Yes. So how does Leapfrog raise revenue or money from the hospital safety grades and hospital survey?

A. So I see it as we raise revenue so that we can cover the costs of those programs. It costs a lot in staff time, in website, in everything that goes into these programs so it's not --

Q. Ms. Bailey, that's not my question.

How does -- right? How does the organization raise revenue or money from those two programs?

A. I think it's just what's on here.

Q. Okay. Can you just --

A. All of these things.

Q. Can you just describe how it's done?

A. Oh. We just talked about accolade licensing. We just talked about data licensure.

Q. Okay.

A. That's all I know.

Q. Okay. And what is -- can you break down kind of how -- under the types of accolade licensing, how that raises revenue for the organization?

A. I don't understand the question.

Q. All right. Let's put it another way.

How many hospitals pay Leapfrog to advertise their hospital safety grades?

A. I don't know the numbers.

Q. Okay. What does a hospital that does pay Leapfrog to advertise their hospital safety

grade, what do they get through that payment?

A. They get the logo; it's like a badge they can use in advertising.

Q. Okay. Is there any way for a hospital to freely advertise their hospital safety grade without paying Leapfrog?

A. Yes. Many do. That's the part I'm involved in. I'm not involved in accolades. I'm involved in that part, which is we provide detailed press kits for hospitals they use for free.

Q. Okay. Has Leapfrog ever told a hospital to stop advertising a safety grade unless it paid Leapfrog the fee?

A. Not that I can recall.

Q. Do you know whether Leapfrog receives any advertising revenue from hospitals with, let's say, a C or a lower than a C grade?

A. I don't know.

Q. All right. Generally speaking, when -- do you have any kind of statistics or do you know generally whether -- in terms of kind of the

marketing for advertising of the hospital safety grade, does Leapfrog focus on the hospitals that have an A grade?

A. Can you restate? I don't understand the question.

Q. In terms of the marketing -- right? -- for the advertising of the hospital safety grade, does Leapfrog focus on hospitals that have received an A grade? Or does it market more generally to all hospitals that have received a grade?

A. I don't do marketing. But if we're talking about accolade licensing, that's -- A and B are the only logos that I know my team creates.

MR. CHUNG: Let's go to tab 16.

This will be Exhibit 10.

(Bailey Deposition Exhibit 10 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. So Ms. Bailey, Exhibit 10 is a short set of Slack messages. Just let me know when you've

had a chance to look at it.

A. Okay. Yes. I've looked at it.

Q. Okay. So this is from March 21 of 2024, a discussion with Ms. Jupiter.

And you write, at about 11:30 a.m., She wants CURA to be ready to ask and help staff answer common questions we get. Right?

So first of all, what's being discussed here?

A. From what I remember -- so CURA is our PR firm. And we had them come into the office and give staff a presentation about PR 101.

Q. Okay. And so how does this -- the "she" that you're discussing here, is that Leah Binder? She wants CURA to be ready to ask and help staff answer common questions we get.

A. I believe so.

Q. Okay. Now, these are -- when we went over the board presentation earlier -- right? -- you said that -- kind of the common questions or common objections there were based on discussions you had internally within Leapfrog, right?

A. Yes.

Q. Here, the -- what you're writing here is that Ms. Binder wants CURA to be ready and ask and help staff answer common questions we get.

What did you mean by "common questions we get"?

A. So this was for all of our staff. And a good majority of our staff is the ratings team. And part of my job as communications manager -- I mean, director of communications, sorry -- is to make sure we're all on the same page with how we're responding to things. Even if I don't talk to hospitals, they're talking to people, I have an interest in ensuring we're on the same page.

Q. Okay. So the members of the ratings team, this is the team under Ms. Danforth; is that right?

A. Correct.

Q. Okay. And they're interacting or communicating with hospitals?

A. Correct.

Q. All right. And they're the ones -- and

when we say -- when you're writing here to help staff answer common questions we get, does that mean common questions we or you're getting from hospitals?

A. I don't remember exactly what I meant, but I would infer that. Yes.

Q. Okay. You see where you write, just the next line down, So, like, Leapfrog is pay for play, where a hospital gets a bad CMS star rating but an A. Why?

So this is -- the question about pay for play, do you agree that's a common question Leapfrog receives from hospitals?

A. Yes. I mean, that's what this -- it's mentioned a lot in this current lawsuit we're talking about.

Q. Well, we're talking about -- I'm talking about in the context of this Slack messages -- of these Slack messages from March 2024.

So at this time -- right? -- which obviously preceded this lawsuit --

A. Uh-huh.

Q. -- is it fair to say that pay to play, a question whether Leapfrog is pay to play, was common enough that it's listed in the list of commonly asked questions?

A. Yes. I'd say a lot of people are confused about that. There's a lot of ratings, and a lot of them are pay to play. Leapfrog is not.

Q. Okay. The next one down, Or a hospital gets a bad CMS star rating but an A, presumably --

A. Uh-huh.

Q. -- from Leapfrog, right?

A. Uh-huh.

Q. Do you agree that that's a common question Leapfrog receives from hospitals?

A. It was just an example. I don't know if that's a common question. It's just -- I was giving an example to Karen, who is not as familiar with this.

Q. Right. But you started the discussion, or at least kind of introduced these two items as

helping staff answer common questions we get. Right? And I think you testified we get from hospitals. Right?

A. Uh-huh.

Q. So just going back to the original question, is this -- the question of a hospital getting a bad CMS star rating but an A from Leapfrog, is that a common question Leapfrog gets from hospitals?

A. In my knowledge, it actually doesn't happen that often that that's the case.

Q. My question is, is this a question -- a common question you get from hospitals?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: It's part of our commonly asked question, which I explained is a communications term. I don't know how often it's asked. I just know that it comes up in conversations internally, so it's one of my PR priorities.

BY MR. CHUNG:

Q. Okay. Is this -- the pay for play question -- right? -- is Leapfrog a pay for play question [sic], is it a common question or concern that you hear from regional leaders, Leapfrog's regional leaders?

A. Can you restate the question?

Q. Right. The question of or the concern of whether Leapfrog is pay to play -- right? -- is that a concern or question that's relayed to you by Leapfrog's regional leaders?

A. I believe they had heard -- like, some of them have probably heard that before. Because like I said, it can be confusing. There's a lot of ratings, and a lot of them are pay for play. Leapfrog is not.

MR. CHUNG: Let's go to tab --

BY MR. CHUNG:

Q. Ms. Bailey, are you aware that hospitals that participate in the survey are required to affirm that Leapfrog may use the survey information in a commercial manner for profit?

A. Yes. I'm generally aware of that.
Q. Okay. And you're aware that that is explicitly in the hospital survey?
A. I've heard that.
Q. Okay. Do you know how long Leapfrog has required that affirmation from participating hospitals?
A. I don't know.
Q. Does it precede your time, fair to say?
A. I don't know.
Q. Okay. Can a hospital opt out of that affirmation and still respond to the survey?
A. I don't know.
Q. All right. Do you know whether -- have you heard of any hospital voicing concerns or asking that question, can they opt out of that affirmation?
A. I haven't heard of it, no.
Q. All right. Any complaints from hospitals about not being able to opt out of that affirmation?
A. No, I haven't heard of any.

Q. Okay. All right. Going back to kind of the revenue streams that we discussed earlier, am I right that Leapfrog licenses the hospital safety grades to insurance companies? We already talked about hospitals, but do they also license the hospital safety grades to insurance companies?

MS. BLAIR: Objection to form.

THE WITNESS: I know we have before.

BY MR. CHUNG:

Q. Is that still in effect?

A. I don't know who our current licensees are. I'm not involved in that.

Q. Okay. Do you know how -- in your communications director role, do you have -- do you communicate with insurance companies?

A. Not that I can think of.

Q. Okay. Have you ever communicated with insurance companies while at Leapfrog?

A. We have -- some members of our partners advisory committee are from health plans, so I've talked to them before.

Q. All right. And what was the nature of those discussions?

A. Very early on at Leapfrog, there were only 12 staff members, so my job was bigger than it is now, where I oversaw our stakeholder group, so I oversaw our partners advisory committee from 2017 to 2020 and then also our regional leaders.

And during that time, our -- we have co-chairs of all of our committees who are actual members, and the co-chairs were from health plans. So I talked to them about planning our partners advisory committees quarterly.

Q. Okay. So you're at least generally aware that Leapfrog licenses the hospital safety grades to insurance companies, right?

A. Yes.

Q. Okay. How do those licensing deals work?

A. I don't know.

Q. Okay. What do the insurance companies -- what exactly are the insurance companies licensing from Leapfrog?

MS. BLAIR: Objection to form.

THE WITNESS: Data.
BY MR. CHUNG:
Q. Which data?
A. Whatever data they're interested in. I believe it's custom. Customized to the client.
Q. Okay. And this is the survey data collected from hospitals, correct?
A. Yeah, it could be.
Q. Okay. Do they also license the hospital safety grades themselves, the letter grades?
A. They could. Yes.
MS. BLAIR: Objection to form.
BY MR. CHUNG:
Q. Okay. So isn't Leapfrog incentivized to have as many hospitals as possible participate in the survey so that it can convince insurers that the ratings have value?
A. I've never heard that as a primary goal.
Q. Okay. Does Leapfrog license hospital survey data to researchers?
A. Yes.
Q. Okay. And are these researchers -- are

they institutions? Are they sole researchers?

What kind of researchers are they?

A. It's a variety. These sometimes come in through our communications e-mail or through our PR firm. Oftentimes it's even college students. It's anyone who could be working on a research paper and wanting to use Leapfrog data.

Q. And how does Leapfrog market this aspect, the licensing of hospital survey data, to researchers?

A. We don't market it to my knowledge.

Q. So so far as you're aware, these deals come about as a result of researchers approaching Leapfrog?

A. Correct.

Q. All right. And isn't Leapfrog incentivized to have as many hospitals as possible participate in the survey to convince researchers that the data has value?

MS. BLAIR: Objection to form.

THE WITNESS: No, I don't think that's what our focus is. I've never heard that as a

focus.
BY MR. CHUNG:
Q. Okay. Leapfrog also licenses hospital survey data to businesses; is that right?
A. Yes. Like solution providers.
Q. Okay. And you've mentioned solution providers before. But generally, who are these solution providers?
A. I can't speak to who currently licenses. I know that, you know, types of companies might be, like, hand hygiene companies, like, GOJO who owns Purell, like BioVigil, companies who have a solution for hospitals and they want the data.
Q. Okay. Does Leapfrog market this hospital survey data to these solutions providers?
A. I believe so. I'm not involved in the marketing.
Q. Okay. So no with respect to researchers, but yes or maybe with respect to solutions providers; is that --
A. Yes.
Q. Okay. And how does it go about doing

that for the solutions providers?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know. I'm not involved in it.

BY MR. CHUNG:

Q. Okay. Do you know whether the survey data -- the sale of the survey data is marketed to solutions providers as part of their participation in the partners advisory committee?

MS. BLAIR: Objection to form.

THE WITNESS: I know that they get a discount on the data as part of the member benefits.

BY MR. CHUNG:

Q. And how much is that discount?

A. I don't know.

Q. Okay. Are -- in terms of the kinds of businesses that license hospital survey data, do hospitals, competitor hospitals, license hospital survey data? So let me just put it another way.

Do hospitals license the data of competitor hospitals from Leapfrog?

MS. BLAIR: Objection to form.
THE WITNESS: I've never heard of that.
MR. CHUNG: Okay. Let's go to 72.
Exhibit 11.
(Bailey Deposition Exhibit 11 marked for identification and attached to the transcript.)
BY MR. CHUNG:
Q. All right. Ms. Bailey, Exhibit 11 is an e-mail chain from July of 2024.
Okay. Have you had a chance to look through it?
A. Yes.
Q. So let's just start with the first e-mail from Ms. Binder to you --
A. Okay.
Q. -- July 9, 2024. She writes to you, I'm at a meeting July 26 where they ask me to discuss our work with HT and Turquoise Health and compare price transparency and safety grade.
What is or who are HTA and Turquoise Health?

A. HTA is the Healthcare Transformation Alliance.

Turquoise Health, I don't know. I actually didn't write that press release.

Q. Okay. So you don't know who or what Turquoise Health is?

A. I can't remember right now.

Q. Okay. She continues, We did it last year, and there was a press announcement, et cetera. Could you give me the background/press release on -- when you get a chance? They're interested in other possible uses of our data and what can be done to improve survey reporting.

And then she concludes asking for any further ideas from you or others.

And then you then describe in response, Ms. Bailey, I think it's four ideas that we came up with.

Do you see that?

A. Yes.

Q. Okay. And that is to -- and that you

wanted to get feedback from Kush Banerjee; is that right?

A. Yes.

Q. And who is Kush Banerjee?

A. Kush Banerjee is the director of licensure and -- I don't remember his exact title, sorry. He just changed it.

Q. So, generally, what does he do?

A. He oversees the accolades and data licensure programs.

Q. Okay. So this corresponds to the revenue streams we were looking at earlier in the financial statement?

A. Yes.

Q. Okay. So he responds after, it looks like, reviewing four ideas that you came up with for other possible uses of data.

Well, just to --

A. Uh-huh.

Q. -- let's go back to the e-mail -- the second e-mail to Ms. [sic] Banerjee copying Jill Berger. Who is Jill Berger?

A. She's the director of employer and payor engagement, I think is her title.

Q. Okay. And what does that role involve?

A. She oversees our employer panel, as well as our regional leaders.

Q. Okay. And so is this -- and so these four additional ideas for use of the data, for the hospital survey data, these are four ideas that you came up with after brainstorming with Ms. Berger; is that right?

A. Yes. I forgot to mention, she also oversees our Bruce Bradley fellows, who are HR mid-career professionals.

So these ideas -- I vaguely remember this conversation, and these ideas were based on projects that these fellows had done as part of the fellowship.

Q. Okay. Now, Mr. Banerjee responds on July 23rd. He writes -- it's fair to say that he's commenting on the four ideas that you presented to him?

A. Looks like it.

Q. Okay. He writes, Similarly, LF data versus medical device or technologies is interesting to measure a variation effectiveness for the technologies and enable technology companies to engage with us through the PAC or data licensing.

Do you see that?

A. Yes.

Q. Okay. And the PAC, is that a reference to the partners advisory committee?

A. Yes.

Q. Okay. So is he -- what's he saying here?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know. Let me read it again.

BY MR. CHUNG:

Q. Sure.

A. I don't really understand the way he worded this, but it looks like he's talking about medical device --

Q. Yeah.

A. -- companies and --

Q. So is --
A. -- that they could license the data.
Q. I'm sorry. Is he referring to the fourth idea that you raised with him, the Leapfrog data and medical device and technology data?
A. That's what it looks like.
Q. Okay. So what is that -- can you describe what idea that was, what that idea encompassed?
So let's just kind of break it down. Right?
A. Okay.
Q. So is the audience here -- right? -- the potential partners or the purchasers of the data, they are medical device companies and technology companies; is that right?
A. Yes.
Q. Okay. And then it looks like this sub-bullet there, technology's role in enhancing hospital safety and quality, is that just kind of a basic concept behind the idea?
A. Yes. That's what it looks like.

Q. Okay. And then, underneath that, data sources, safety grades, and data on medical devices and healthcare technologies, is that a reference to the types of data sources at Leapfrog that could be marketed to medical device and technology companies, that could be of use to them?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know. I think so.

BY MR. CHUNG:

Q. Okay. Well, this is your idea, so --

A. Well, it's not -- this isn't my idea, so let's be clear. Kush was on paternity leave, and I was trying to fill in something while he was coming back from paternity leave. Normally, he would have brainstormed these ideas. This isn't a regular part of my job. Leah just asked me to talk to Jill.

Q. Okay.

A. And Jill works part time, so she doesn't have time to send e-mails all the time. So this was a compilation. It wasn't necessarily my

idea.

Q. Okay.

A. It was just my job to communicate it. And there's -- a lot of that happens in my job at Leapfrog.

Q. Okay. But these are ideas that, working with Ms. Burger, that you compiled and sent on to Kush, correct?

A. That's what it looks like.

Q. Okay. And so the idea here, Ms. Bailey, that this is a proposal to approach -- potentially approach medical device and technology companies to license safety grade -- the safety grades and data on medical devices and healthcare technologies?

MS. BLAIR: Objection to form.

THE WITNESS: That's what it looks like.

BY MR. CHUNG:

Q. Okay. And to potentially engage medical device and healthcare technologies to become members of the partner advisory committee; is that right?

A. Yes. That was part of Jill's job at the time.

Q. Okay. Now, Mr. Banerjee continues -- just going back to his e-mail, The first two -- so the last paragraph of this e-mail.

The first two are interesting as well, but I don't see that they can have the same impact on driving data licensing and PAC engagement from my revenue lens as the other two.

Is he saying here that the first two of the four ideas that were presented in your e-mail -- and this is the Leapfrog data and public health data and Leapfrog data and social determinants of health data -- right? Those are the first two. That in his view don't have the same impact as the third and fourth ideas from a revenue perspective; is that right?

MS. BLAIR: Objection to form.

THE WITNESS: I take that to mean maybe those are good PR ideas, but not for his job.

BY MR. CHUNG:

Q. Where does he refer to PR?

A. I'm just inferring that because my job is PR. So that's the lens that I have when I do things. Again, I don't normally do stuff like that. I very vaguely remember this. And that's what I take him to mean, is that it probably wouldn't make sense for him, but like I said -- so in the second one, it says, Note, Stacy looked at a fellow project, so that's, again, part of a fellowship. So --

Q. Okay.

A. -- I think he was just saying it wouldn't -- it doesn't make sense for him.

Q. So -- and then you respond up top, Thanks, Kush. Great points re driving data licensing. I think I'll just share 3 and 4 with Leah from that lens. So happy you're back.

Do you see that?

A. Yes.

Q. Okay. So did you -- why did you only share 3 and 4 with Leah, as opposed to the first and second that Ms. [sic] Banerjee said would not have the same impact from a revenue lens?

A. I don't remember. I just -- it looks like I took his advice on it.

Q. Okay. Do you know whether Leapfrog implemented any of these ideas?

A. I don't know.

MR. CHUNG: Let's go to tab 47.

This is Exhibit 12.

(Bailey Deposition Exhibit 12 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. All right. Ms. Bailey, this is an e-mail chain. You're not on the chain, but let me know if any of it looks familiar to you. The e-mail chain and the attachment.

A. I haven't seen this before, but it looks like they're talking about the budget.

Q. Okay. If you look at the first page Bates ending in 8278, there's an e-mail from Ms. Binder to Ben Choi.

And I understand that Ben Choi was the former CFO, am I right, of the organization?

A. Yeah, the interim.

Q. Interim CFO? Okay.

And she writes here, If we move toward cost reduction as the primary strategy, it will be much more severe than this, but I'm not going there for now. We can address incremental spending issues, but let's not lose focus on what managers should be thinking about 24/7, which is revenues.

That particular sentence, let's not lose focus on what managers should be thinking about 24/7, which is revenues, is that a sentiment or directive that Ms. Binder has shared with you or communicated to you?

A. Not for the communications team, no.

Q. Okay. Have you heard from your colleagues -- right? -- whether they're in finance or in licensing, or really any colleagues, about Ms. Binder communicating this directive to them?

A. No, not that I can recall.

Q. Okay. Any -- is it a -- is generating

revenue -- ways of generating revenue, is it a focus of Ms. Binder in running the organization?

A. Yeah. She's the CEO, so yes.

Q. Okay. And in what -- in your interactions with her, in what ways has she communicated with you that it is a focus?

A. I just know it's part of her job because if we didn't have money, we couldn't run any of our programs.

Q. All right. Are there any specific ways of raising revenue that she -- that you've heard her -- that you've heard her discuss?

A. No, not beyond what we've talked about. Just accolades and data licensure is all I know.

Q. Okay. And in terms of the accolades and data licensure, what has she said about those particular programs for purposes of raising revenue?

A. Just that they are revenue.

Q. Just that they are revenue? Is that what you're testifying to?

A. Right. In the financial statements.

That's the extent that I'm involved in these discussions.

Q. What has she said about raising more revenue through those particular programs?

A. Nothing I can recall to me.

Q. Okay. Maybe not to you but to your colleagues?

A. I don't know.

Q. All right. Has she discussed how to change the hospital grading methodology in order to generate more revenue through the accolade licensing and the data licensure program?

A. Can you restate the question?

Q. Yes.

Has she discussed how the organization can change the grading methodology or the scoring methodology in order to generate more revenue from accolade licensing?

A. I -- no, I don't recall her saying that.

Q. Who is Leapfrog's competition?

A. I've never heard Leah or anyone use the word "competition." There's a lot of ratings

systems out there, but we're all fairly consistent, us and other ratings organizations, that we're different and unique and that consumers should use what resonates with them.

Q. In your view -- putting aside what Ms. Binder might have said or not said, in your view, who are Leapfrog's competitors?

A. I mean, rating -- other large rating systems, like U.S. News and World Report, Healthgrades are the ones that come to mind.

Q. Okay. So those two. Any others?

A. Those are the only that come to mind. But again, we tell people, like, even in our social media, like, look at these ratings. When the new U.S. World and News Report honor roll comes out, we promote it on social media. And they do the same for us. Like, we -- I wouldn't say we're, like, normal competitors. We're a nonprofit, so it's a bit different.

Q. Do you -- does Leapfrog track those competitors, U.S. News and World Report and Healthgrades, in terms of their -- in terms of

the products or developments in their products?

A. I don't know.

Q. Does Leapfrog engage directly with hospitals, whether it's the leadership or administrative staff, to encourage participation in the hospital survey?

A. Can you restate the question?

Q. Yeah.

Does Leapfrog engage directly with hospitals to encourage hospitals to participate in the survey?

A. That's all done through our regional leaders.

Q. Okay. Are there any resources, like toolkits or consultants, that are provided to hospitals to basically help them participate in the survey?

A. Not that I can recall.

Q. Are there any partnerships with employers or insurers or other third parties that use hospital participation in the survey as a criterion for contracting or inclusion in the

network?

A. I don't know.

Q. Does Leapfrog track hospital participation rates over time?

A. Yes.

Q. All right. And what has Leapfrog kind of witnessed in terms of that tracking?

A. Overall, it continues to increase every year. During COVID, we saw it go down, just like everything else in the world.

Q. Okay. And what steps -- where participation declines -- right? -- or fails to meet organizational goals, what does Leapfrog do to address those declines or those changes?

A. From my knowledge, it only happened during the pandemic. And that was a very unique situation, so we kind of let it ride out. And as soon as it was over, participation went back up. That's my understanding.

Q. Okay. Did participation in the hospital survey increase after the fall 2024 change to the imputation methodology?

A. I don't know.

Q. Okay. Has Leapfrog conducted any studies or analyzed whether survey participation improves a hospital's safety grade over time?

MS. BLAIR: Objection to form.

THE WITNESS: Can you restate that?

BY MR. CHUNG:

Q. Yeah.

Has Leapfrog conducted any studies or analyzed whether participation in the survey improves a hospital's safety grade over time?

A. I don't know. I don't think so.

Q. You don't think that Leapfrog has ever studied that?

A. Yeah, I don't know.

Q. Okay. All right. Let's move on to the websites which we've discussed already a bit. So what --

(Discussion off the record.)

MR. CHUNG: We're about to enter a new section. Are you folks okay with taking a break right now for lunch?

MS. BLAIR: Sure.

THE WITNESS: Sure.

MR. CHUNG: Let's do that, then.

VIDEO TECHNICIAN: The time is 11:56 a.m. This ends unit 2. We're off the record.

(A recess was taken.)

VIDEO TECHNICIAN: The time is 12:59 p.m. This begins unit number 3. We're on the record.

BY MR. CHUNG:

Q. So Ms. Bailey, we're now going to discuss the two websites that we referenced earlier.

And am I correct that the two websites that Leapfrog -- operated by Leapfrog are the leapfroggroup.org and the hospitalsafetygrade.org sites? Is that correct?

A. Yes.

Q. So what's the distinction between the two? What's the purpose of each?

A. So on leapfroggroup.org, we house our hospital and ASC survey results.

And on hospitalsafetygrade.org we house the hospital safety grade results.

So the reason why we have the distinction is because they are two distinct programs, so we want to keep them separate.

Q. Okay. On the -- but do both websites -- can a consumer go on both websites and look up their local hospital?

A. Yes.

Q. Okay. And just to be clear, both are operated by Leapfrog, correct?

A. Correct.

Q. And as director of communications, can you just tell us again what is your role with respect to the websites?

A. I oversee the content that's on the website and I work with the ratings team before each survey year when we refresh the survey data and then before each safety grade cycle to do testing to make sure all the data went through correctly.

Q. Okay. And in terms of the content of the websites, to be clear, you oversee the content of both websites; is that right?

A. Correct.

Q. Okay. And how does that work? What is the process by which you oversee the content for both websites?

A. Can you restate the question?

Q. Sure.

What I'm getting at is, how do you do it? How do you oversee the contents of the websites? Are there periodic checks that you conduct? Are there -- how does it work?

A. Okay. So as I've testified before, Leapfrog is a small organization, and we work together in a lot of areas.

So there are sections of our website, particularly leapfroggroup.org, that are actually fully managed by the ratings team. So that would be anything relating -- to do -- like, you actually can fill out your survey through our website. Like, it's all housed there.

So leapfroggroup.org has a lot more in that aspect, and that's managed by the ratings team. So I can't speak for that. We'll

sometimes make some changes, but that's overseen by Missy Danforth and her team.

The other aspects of the website that I am regularly updating would be, like, the newsroom, our blog. Anytime there's things going on that are, you know, PR worthy, they'll go in either of those spots, or maybe both.

I also update the home page quite frequently and updating program pages or things -- the process there is just, if there is a change, we'll update it. If there's a broken link, we'll change it.

Q. Okay. How do you know or how do you monitor or determine whether the website -- and let's just focus on the leapfroggroup.org website -- is up to date.

A. Sorry, can you restate the question?

Q. Sure.

How do you monitor or confirm that the leapfroggroup.org website is up to date at any given time?

A. It's a -- it's a team effort. So we're

all -- we all work on the back end of the website.

Q. Okay. So that's the Leapfrog -- I think you specified your response with respect to the leapfroggroup.org website.

How about the hospitalsafetygrade.org website? How do you oversee or monitor the content on that website?

A. So that website is much more focused. So that is just focused solely on the hospital safety grade. So for that site, we update it twice a year around the launch of a new round of the safety grade.

Q. Okay. And so you are -- you oversee that process?

A. Yes. I work with the ratings team on that.

Q. Okay. So what we're going to do is, because it's, I think, easier to follow, we're going to, instead of using -- relying solely on just printouts from the websites, we're actually going to go on the websites themselves. We're

going to put a laptop in front of you and just kind of --

A. Okay.

Q. -- have you kind of help us navigate through both of the websites. Okay?

A. Okay.

MR. CHUNG: So why don't we do that.

THE WITNESS: Do you want me to put it like this? Or --

BY MR. CHUNG:

Q. No, you can just put it in right front of you.

A. Oh, okay.

Q. All right. So first things first, who designed these websites?

A. I don't know. It was before my time.

Q. Okay. And I think the first thing we're going to do is, are you aware that, upon a -- kind of a basic Google search of hospital safety grade, that the two top website hits that come up are the Hospital Safety Grade and then The Leapfrog Group websites?

A. That makes sense.

Q. Okay. Why don't we just -- go ahead and do that. If you can just type in --

A. Okay.

Q. -- hospital safety grade as a Google search.

And do the search results reflect that --

A. Yes.

Q. -- Hospital Safety Grade up top and then The Leapfrog Group below that?

A. Yes.

Q. Now, before we navigate through the -- actually, what we'll do is, let's look first at the leapfroggroup.org website.

A. Okay.

Q. So if you can click on that. And then what we'll do is...

MR. CHUNG: If you can get tab 19.

(Bailey Deposition Exhibits 13 and 14 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Now, we're also going to put in front of you a couple of exhibits marked Exhibits 13 and 14.

So looking at the leapfroggroup.org webpage, can you just run a search for Delray Medical Center, which is one of the plaintiff hospitals in this matter?

A. Okay.

Q. Okay. And do you see that the first kind of result of the page, after running that search, there's a window that says there are four facilities in your search that declined to respond to Leapfrog's request for patient safety and quality data.

Do you see that?

A. I see Delray Medical Center has declined to respond.

Q. Okay. Got it. And so -- and you understand that Delray Medical Center is one of the plaintiff hospitals --

A. Yes.

Q. -- in this matter, one of the five, correct?

A. Yes.

Q. Okay. And I think you testified that you see -- is it a red box that says, Declined to respond?

A. Yeah. The top is red.

Q. Top is red. Okay.

And does that correspond to Exhibit 13 in front of you?

A. Yes.

Q. Okay. And then underneath that red box that says, Delray Medical Center has declined to respond, it says, What does this mean? Thousands of hospitals nationwide report to Leapfrog hospital survey to help patients and purchasers make better healthcare decisions. This hospital did not participate.

Do you see that?

A. Yes.

Q. Okay. So -- and you can't -- with this pop-up, with the red bar across the top, does

that kind of obscure what's behind the pop-out box in terms of the webpage?

A. It's gray behind the box.

Q. Yup. Okay. So I'm going to ask you to click out of the pop-up.

A. Okay.

Q. And is it correct that, of all the measures that are listed once you pop out of the pop-up -- click out of the pop-up, the webpage says that the hospital declined to respond; is that right?

A. Yes.

Q. Okay. And is that reflected on Exhibit 14 in front of you?

A. Yes.

Q. Okay. Just using the Delray Medical Center example, right?

A. Yes.

Q. Okay. And am I right that there's no hospital safety grade on this page? Am I right?

A. Correct. This is Leapfrog hospital survey data.

Q. Okay. And then if you click on preventing patient harm on that page.

Do you see that?

A. Yes.

Q. Okay. And just as an example, there's a -- under the handwashing metric, it says, Declined to respond.

Do you see that?

A. Yes.

Q. Okay. And there's no imputed score delineated there; is that right?

A. Correct.

Q. Okay. Now, let's turn to -- we're now going to turn to the other website, the hospitalsafetygrade.org-

A. Okay.

Q. -- website. So if you can kind of toggle back and then click on -- I think it was the first --

A. Yeah --

Q. -- result.

A. Sorry, I didn't mean to interrupt you.

At the bottom of -- if you scroll to the bottom of the page that we were just on, it says, See this facility's safety grade. So that's what I clicked on.

Q. Okay. If you can go back to the Google results. Okay?

A. Okay.

Q. And then I think you said that the hospitalsafetygrade.org website was the first hit, right?

A. Yes.

Q. Okay. So let's just go to that.

A. Okay.

MR. CHUNG: This will be Exhibit 15.

(Bailey Deposition Exhibit 15 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. All right. So kind of a similar exercise, Ms. Bailey. If you can run a search for Delray Medical Center on the hospitalsafetygrade.org website.

A. Okay.

Q. And does the page specific to the Delray Medical Center show up?

A. Yes.

Q. Okay. Great.

And is that, what we see on Exhibit 15, what shows up on the computer?

A. Yes.

Q. Okay. And it shows that -- a box, a gray box, that says this hospital grade is F, correct?

A. Yes.

Q. And in particular to the spring 2025, which I believe is the most recent round of safety grades; is that right?

A. Yes.

Q. Okay. So in contrast -- unlike on the leapfroggroup.org website that we looked at earlier, this website does not immediately have a pop-up box indicating that the hospital did not provide data to Leapfrog sufficient to rate the hospital, correct?

A. Correct.

Q. Okay. Now, going to see full score, it shows -- when we click on the tab -- I'm sorry. When we click on tab practices to prevent errors -- do you see that?

A. Yes.

Q. It's the fourth one across, right?

We see, for doctors order medications through a computer, does it show that this hospital scores a 15?

Do you see that?

A. Yes.

Q. And does this measure on the website correspond to CPOE, so far as you understand?

A. Yes.

Q. Okay. And so is this one of the imputed metrics under the new methodology?

A. Yes.

Q. Okay. And then for safe medication administration, which is the next one over -- right? -- am I correct that it shows a score of 25?

A. Yes.

Q. And is the safe medication administration measure, does that correspond to BCMA?

A. Yes.

Q. All right. And then for hand washing, which is the next one over, it shows a score of 15, correct?

A. Yes.

Q. All right. And this measure is -- corresponds to hand hygiene that we already discussed, correct?

A. Yes.

Q. All right. And these are all -- the ones we've gone over so far, the three, are all, again, imputed metrics under the new methodology, correct?

A. Yes.

Q. All right. Now, if we go under the next tab, doctors, nurses, and hospital staff, the one on the right, there's a measure underneath specially trained doctors for ICU patients.

Do you see that?

A. Yes.

Q. And do you see that the score there for -- is a 15? Is that right?

A. It's a 5.

Q. 5, I'm sorry.

It's a 5, correct?

A. Yes.

Q. And does this measure correspond to IPS?

A. Yes.

Q. All right. And then for -- and again, is this also one of the imputed metrics under the methodology?

A. Yes.

Q. All right. And so for all of these scores, the scores for Delray Medical Center under these four imputed metrics, these are all limited achievement scores, correct?

A. For the survey. Yes.

Q. Yes. For the survey. Right.

And if you look at the gas gauge type, kind of the -- the picture or the scores for these four imputed metrics, they're all set to the lowest possible value.

Do you see that? Is that right?

A. Yes. Worse than average.

Q. Right. Worse than average. And they're kind of -- the gas gauge is to the red, to the left, right?

A. Yes.

Q. Okay. But they're not -- there isn't any wording in those gas gauges along the lines of decline to report, right, or not enough data, correct?

A. Not on the gas gauge.

Q. Not in the gas gauge. Right.

So -- but there are certain measures on this website where it is indicated that the hospital declined to report; is that right?

A. Correct.

Q. Okay. And can you give us one or two examples of -- for which measures that declined to report pictorial shows up?

A. On this page, the one right now, it's effective leadership to prevent errors and nursing and bedside care for patients.

Q. Okay. And so it's only at the -- we're looking right now above the fold, the webpage above the fold; is that right?

A. I don't -- that's a newspaper term, so I don't...

Q. Okay. That's a really unfair response.

So we're looking at kind of the webpage as the consumer sees it, right?

A. Yes. We're reading the webpage.

Q. All right. So are there any disclosures -- just looking at the webpage now, without scrolling at all -- right? -- are there any disclosures on the webpage about -- that disclose that the hospital here, in this case Delray Medical Center, did not provide data to The Leapfrog Group?

A. There's only an asterisk, which is the normal communication that there's more information below.

Q. Okay. That asterisk corresponds to a footnote, correct, toward the bottom of the page as you scroll down to the bottom of the page,

correct?

A. Yes.

Q. All right. And you're familiar with all of this because you oversee this website and the other website, correct?

A. Correct.

Q. Okay. So -- and it's at the bottom of the page in -- let's just go to it -- in the smaller font where Leapfrog discloses that this hospital did not provide data to The Leapfrog Group, correct?

A. In notes and definitions, we're referring to number 4 --

Q. Right.

A. -- which is an asterisk in bold red.

Q. Okay. And it says, Hospital declined to report the performance on this measure, so a score was assigned to reflect lack of information available, correct?

A. Correct.

Q. And this footnote is in reference to the four imputed metrics that are laid out above it,

correct?

A. Correct. There's an asterisk that -- yes.

Q. Right. Now, does this -- the footnote, however, does not explain how that score was assigned, correct?

A. Correct.

Q. Okay. So we have looked at -- we've kind of scrolled through it and we've looked at each of the two Leapfrog websites, or the websites that are operated by Leapfrog.

Why doesn't Leapfrog use the same disclosures as they relate to hospitals that don't participate in the survey -- right? -- why doesn't Leapfrog use the same disclosures on each website?

MS. BLAIR: Objection to form.

THE WITNESS: They're complete -- they're different programs. So the Leapfrog hospital survey is a different program than the Leapfrog hospital safety grade. The Leapfrog hospital survey includes safety and quality.

BY MR. CHUNG:

Q. Okay. But we looked at -- so how does that explain the difference between the website -- the two websites as we just went over, the parts that we went over?

A. They're different. So maybe a better way to say it: So the survey is voluntary. Hospitals choose or not choose to do the survey.

The safety grade is not voluntary. The safety grade was designed so that it was assigned to all general acute care hospitals for patients to get as much information as possible.

Q. Okay. Was there ever a concern at Leapfrog -- right? -- that consumers or visitors to both websites would be confused about the imputed metric scores for hospitals that did not participate in the hospital survey?

MS. BLAIR: Objection to form.

THE WITNESS: Can you restate the question?

BY MR. CHUNG:

Q. Yes.

Was there ever any concern at Leapfrog that visitors to the websites, including consumers, would be confused about imputed metric scores for hospitals that did not participate in the hospital survey?

A. No. That's the reason we did the asterisk with the note. We feel that it's a clear description that this was a score that was assigned.

Q. Okay. Though the footnote -- the asterisk and the footnote does not describe how that automatic low score was assigned, correct?

MS. BLAIR: Objection to form.

THE WITNESS: That's in our methodology. We only have a certain amount of real estate on the website. It wouldn't make sense -- it's something in communications that's also important to know -- this is our philosophy in communications just generally in the field, actually6 -- is that too much information can actually be more confusing to consumers.

Consumers don't generally understand

what "imputed" means, but they understand basic language, that this hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available.

BY MR. CHUNG:

Q. Okay. So I'm just going to ask the question again: Was there ever any concern -- right? -- at Leapfrog that visitors to the websites might be confused about the imputed metric scores for hospitals that didn't report to the survey?

A. Well, we made this so that they wouldn't be confused.

Q. So the question -- yes? No? Were there concerns or were there not concerns?

A. There were concerns, which is the reason why we did the asterisk and disclosed it in bold red as clear as possible.

Q. When you say as clear as possible, what do you mean by that?

A. Like, we have it in bold in red, which

will draw people's eyes.

Q. Okay. But the -- it doesn't -- but the footnote does not describe how that lowest possible score was assigned to the hospital, correct? Just to be clear.

MS. BLAIR: Objection to form.

THE WITNESS: Can you restate the question?

BY MR. CHUNG:

Q. Yes. But am I correct that that footnote does not inform the consumer -- right? -- the visitor to the website how that lowest possible score was assigned to that hospital, correct?

MS. BLAIR: Objection. Form.

THE WITNESS: That's not the purpose of this part of the website.

BY MR. CHUNG:

Q. Okay.

A. It's the methodology.

Q. And so are -- when you say that's not the purpose of the website, are consumers expected,

then, to be knowledgeable about the methodology?

A. No, I'm not saying that. Like, if you look at all of the measures, it doesn't very clearly explain how each thing was scored. We put the most clear information possible for each of the measures for consumers.

Q. Okay. Has Leapfrog -- all right. So you testified about kind of -- well, has Leapfrog received any feedback, first of all, from hospitals regarding any confusion or inconsistencies between the information presented on the two websites?

A. Not that I can recall.

Q. Okay. How about any feedback -- has Leapfrog received any feedback from patients -- right? -- consumers, regarding confusion or possible inconsistencies between the information presented on the websites?

A. Not that I can recall.

Q. Okay. Have you -- has Leapfrog received any feedback from any party about confusion or potential inconsistencies in the information

presented between the two websites?

A. Not that I can recall.

Q. Okay. Has Leapfrog ever conducted any testing or surveys or other research to assess whether consumers see the disclosures on each website as opposed to -- Ms. Bailey, as opposed to just seeing, for one, the grade -- right? -- on the website?

So the question is, yeah, has Leapfrog ever studied whether consumers actually -- whether they actually look at or see the disclosures on each of the websites?

A. I know that when the website was created, I wasn't here. But from -- my understanding is that we hired a low literacy expert. We also had focus groups.

And the whole structure in general of the website has not changed since then. So it was developed with feedback from those experts.

Q. So -- I think you said low literacy expert.

What is that?

A. We want to ensure that our website is written to an eighth grade level of education.

Q. Okay. Is another word for that digital literacy expert?

A. I don't know.

Q. Okay. Has there been -- do you know when, approximately, that low literacy expert was retained to advise on the website?

A. It was whenever we created this website, and it was prior to my time at Leapfrog.

Q. Okay. Do you know whether that expert looked at both websites or just one of them?

A. I don't know.

Q. All right. Have there been -- during your time at Leapfrog over the last several years, has a low literacy or a digital literacy expert ever reviewed either or both of these websites?

A. Not to my knowledge. We haven't made substantial changes to how the data is displayed.

Q. Okay. Do you think it's realistic to assume or to think that visitors, particularly

one with -- let's assume one with an eighth grade literacy level -- right? -- low literacy, will read a footnote at the bottom of the page on the hospitalsafetygrade.org website?

A. I think -- yes, I think someone at an eighth grade level would understand what an asterisk means, and if they were interested, they could learn more, scroll down.

Q. Okay. Do you -- so I'll ask it again.

Do you think it's reasonable or realistic for such a consumer with the eighth grade literacy level to read through that entire page, to scroll down and then study the information at the bottom of the page?

A. Yes. I think if they're interested in the data, they'll read it.

Q. Okay. Does Leapfrog want consumers to believe that the imputed metrics are based on actual data?

MS. BLAIR: Objection to form.

THE WITNESS: No. I mean, we really -- we clearly say on this, a score was assigned to

reflect the lack of information available.

BY MR. CHUNG:

Q. Okay. And it's not disclosed here that -- is it disclosed anywhere on the Hospital Safety Grade website that the scores, the limited achievement scores are automatically assigned to these hospitals on these imputed metrics?

A. Can you say that again?

Q. Yeah. Is it anywhere disclosed -- is it disclosed on the website, the hospitalsafetygrade.org website, that non-participating hospitals are automatically assigned a limited achievement score on these imputed metrics?

A. I think that it's clear because it says, again, a score was assigned. And then if you see this hospital score and you see worst hospital score, you see that it was the lowest.

Q. Okay. Has Leapfrog ever considered standardizing the disclosures or the presentation of information across these two websites as it relates to non-responding hospitals?

When I say non-responding, hospitals that didn't respond to the hospital survey.

MS. BLAIR: Objection. Form.

THE WITNESS: Can you say the question again.

BY MR. CHUNG:

Q. Sure has Leapfrog ever considered standardizing -- right? -- making consistent between the two websites the disclosures or the presentation of information as it relates to hospitals that do not participate in the hospital survey?

MS. BLAIR: Objection to form.

THE WITNESS: Because they're different programs -- Leapfrog hospital safety grade and Leapfrog hospital survey are different -- no.

BY MR. CHUNG:

Q. Okay. Let's talk about Leapfrog's marketing.

So are you -- you're the communications director. Do you have responsibilities with respect to Leapfrog's marketing function?

A. Marketing is different than communications, so --

Q. Okay.

A. -- I wouldn't consider that, no. What's your definitions of marketing?

Q. Who's in charge of marketing?

A. We don't have a marketing person.

Q. All right. And you mentioned that -- other than CURA Strategies, are there any other outside contractors or consultants that provide, you know, public relations or communications services?

A. We have a few services that we will use. CURA Strategies is our agency of record.

We work with Nonprofit Megaphone, which is a vendor who helps us with our Google ads. We have a Google ad grant since we're a nonprofit.

We work with North American Network, which is a radio vendor, around the safety grade to help us get the safety grade out.

We work with ForeMedia, which kind of does the same thing but for broadcast TV.

Q. Okay.

MR. CHUNG: Let's go to tab 22. This will Exhibit 16.

(Bailey Deposition Exhibit 16 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. All right. Ms. Bailey, I've put in front of you Exhibit 16, which is titled, 2025 Regional Leader Communications Toolkit: Launching Leapfrog Surveys.

Take a few moments. Let me know if it looks familiar to you.

A. Yes. I'm familiar with this.

Q. Okay. Is this a document that provides instructions to Leapfrog regional leaders on how to market the hospital survey?

A. I wouldn't use the word "market." There's no money exchanged in our relationship with regional leaders.

This is a toolkit that lives on their intranet, you could call it, on our website, and

they can refer back to it throughout the year.

One of the primary responsibilities of regional leaders are really to represent Leapfrog in their markets, and so a really big part of that is sending out physical letters to all the hospitals on their rosters. So for our regional leader in Seattle, they do all of the hospitals in Seattle. And they also have ambulatory surgery centers on their rosters.

Q. And so what is the purpose of regional leaders reaching out to hospitals in their markets?

A. Healthcare is local.

Q. So what's the purpose?

A. The purpose is that they represent Leapfrog in their markets and they are -- as employers, they represent employers in their markets. So Leapfrog, again, was founded by employers. And so the ask to participate in the survey comes from the employer community.

Q. All right. So just in short, they are -- the regional leaders are responsible for

communicating with hospitals in their market to try to get them to participate in the survey, correct?

A. Yes. They send letters. Yes.

Q. Now, how do they -- what are the typical kind of ways in which regional leaders try to achieve that?

A. Most of them just send letters, physical letters and e-mails.

Q. And does this toolkit -- it looks like this toolkit includes suggestions of how to format those letters --

A. Yes.

Q. -- or word those letters, correct?

A. Yes.

Q. Okay. If you look at, later in the document, Bates ending 517, there's a chart.

A. Yes.

Q. And it's beginning to sound like a broken record, but it's titled, Common objections and frequently asked questions about Leapfrog and its ratings.

Do you see that?

A. Yes.

Q. Okay. And there's a table that goes on for, I think, several pages --

A. Yes.

Q. -- till the end of the document, correct?

The -- on this first page, the second row, reads, under objection, Leapfrog data is self-reported and, therefore, unreliable.

Do you see that?

A. Yes.

Q. And that is a common objection that we've seen kind of in prior documents, including the presentation to the board that we looked at, correct?

A. The presentation to the board came from this document. Yes.

Q. Okay. Now, turning to -- and is it -- looking at this document now, for this toolkit for regional leaders, is this objection, Leapfrog data is self-reported and, therefore, unreliable, an objection that -- a common objection from

hospitals?

A. We've -- I testified before about this, that, yes, we've heard this.

Q. Okay. Turning to the next page, so Bates ending 518, it is the fifth objection down. It reads, We believe something on the survey is not risk-adjusted adequately and/or invalid or unscientific.

Do you see that particular objection?

A. Yes, I do.

Q. Okay. And is it correct that that is another common objection to the Leapfrog survey from hospitals?

A. Again, in my testimony earlier, common is -- common objections is just a PR term. It doesn't mean we hear it all the time. It means we think it's important for regional leaders to have the answer to this question. Maybe we've heard it before; maybe it was discussed with staff that it could be asked.

Q. Okay. So this is -- but where does this common objection come from?

A. We came up with these as staff members.

Q. So this is not based at all on feedback or anything you've heard from hospitals; is that your testimony?

A. I testified already about this, that, yes, it is based on maybe conversations people have had. It's not direct quotes. It's in combination of maybe things we've heard over the last, you know, 25 years and we are compiling them into a PR document.

Q. All right. And what is the purpose of -- what's the purpose of listing out all of these common objections for the regional leaders?

A. It helps to have all of our messaging in one place. It's just a strategy that we use. Again, this lives on the intranet. So we have a very small staff. We have limited resources. There's more regional leaders than there are Leapfrog staff members, to be clear, so we don't have the ability to, you know, be available all the time to answer every question, so this saves us a little time for them to have the common --

you know, our idea of what potentially they could be asked, and they have an approved response.

And if they ask anything beyond this, they know that they go -- they come to us.

Q. Okay. So -- you're right, that for each of these common objections, there is a proposed -- a proposed or recommended response next to it, correct?

A. Yes.

Q. And am I correct that the purpose of providing the common objections and the responses is to give regional leaders a tool or a proposed response in the event that a hospital voices one or more of these common objections, correct?

A. Or one of their employers.

Q. Okay. But the hospitals as well, correct?

A. Yes.

Q. All right. And the purpose of providing these responses to the objections is it helps regional leaders enlist more hospitals to participate in the survey, correct?

A. Yeah. It helps them with their outreach efforts.

Q. Okay. And the more hospitals that respond to the survey, the more data that's submitted to Leapfrog in conjunction with those responses, correct?

A. Correct. But if you look at the safety grade, 80 percent of hospitals respond, so we already have a very full data set.

Q. Okay. It's also correct that -- can you say that again? That 80 percent -- I'm sorry, I didn't catch that response.

A. Yes. I believe that it's 80 percent of hospitals report to Leapfrog that get a safety grade.

Q. Okay. But there are still hospitals that don't respond to the survey, correct?

A. Correct.

Q. All right. And there are hospitals that have responded in the past but at some point stopped responding to the survey, correct?

A. I've heard of that happening. Yes.

Q. And so one of the purposes of providing this toolkit of common objections and responses to the regional leaders is to try to convince those hospitals either to participate in the survey in the first instance or resume their responses to the survey, correct?

A. Yes. It's important to our mission --

Q. All right.

A. -- that hospitals are transparent.

Q. It's also important to your mission to have as many hospitals participate in the survey as possible, correct?

A. Yes. We would love if all hospitals did in the survey. We would have a lot of data for patients.

Q. All right. And it also allows -- the more hospitals that participate in the survey, the more data from those hospitals you have, correct?

A. Correct.

Q. And the more data you have, the more you can license that data to third parties; is that

correct?

MS. BLAIR: Objection to form.

THE WITNESS: No, I wouldn't agree with that. We don't -- we don't charge more based on how much data is available.

BY MR. CHUNG:

Q. That's not my question. The question is, the more data, hospitals' data you have available, the more marketable that data is to third parties, correct?

MS. BLAIR: Objection to form.

THE WITNESS: Yes. But I'd say it's already very marketable. We already have a lot of hospitals participating.

BY MR. CHUNG:

Q. Okay. Does Leapfrog pay for search engine optimization for either or both of its websites?

A. We just started this in July of this year.

Q. All right. And what exactly is it paying for in terms of that search engine optimization?

A. We're on month two of it, so I'm not completely well versed. This is something that Nate Longmore, our communications coordinator, works on with Nonprofit Megaphone. It's a service that they provide.

As of right now, we're in the very early stages. So when you're in the very early stages of SEL, my understanding is that, first, we're looking for any pages that have broken links that we may have missed or things like that to clean up, and then we kind of move on from there.

Q. Okay. And is that for both websites?

A. I believe so.

Q. All right. Does Leapfrog partner with any journalists or media outlets in anticipation of publishing the hospital safety grades?

A. I would not use the word "partner." We do pitch media, yes.

Q. All right. And approximately how many journalists or these media outlets do you pitch -- pitch what, exactly?

A. Leapfrog hospital safety grades and

trends in the safety grades. And again, healthcare is local, and so it's a really important of [sic] our strategy to get the safety grades out to these local publications.

Q. Okay. Does Leapfrog embargo the hospital grade results with these media outlets and journalists?

A. Yes.

Q. And why does it do that?

A. To give the reporters more time to work on their stories.

Q. All right.

MR. CHUNG: Let's go to tab 42.

(Bailey Deposition Exhibit 17 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. We're going to look at a few other sections of the websites, Ms. Bailey.

A. Okay.

Q. We're going to look at printouts.

And this is 17, I think.

Okay. Exhibit 17 is taken from the hospitalsafetygrade.org website.

Do you recognize it?

A. Yes.

Q. Okay. It's a section, How to use the grade.

And if you look at page 4 of the document, in the second paragraph under the heading What About Past Grades, in the second paragraph there's a sentence that reads, Patients should always decide on where to receive care based on a hospital's current safety grade.

Do you see that?

A. Yes.

Q. Okay. So is the message to the consumers here that a drop in a hospital's safety grade means that the hospital has become more dangerous?

A. That's not what that says. It says in the context -- this is the context of past grades. If you look at the beginning, it says, What about past grades? So on the website, you

can click, View past grades. So we're saying, look at the current safety grade; don't rely on the old safety grade. The new data will be more reflective of your experience today.

Q. Okay. So if -- my question is, is the message here -- or one of the messages from this sentence, from this section, that if the current safety grade is lower or has dropped -- right? -- from previous safety grades, that that hospital has become more dangerous? Is that part of the message?

A. Not that it's become more dangerous, but their patient safety has decreased.

Q. Okay. Does the messaging also include that the consumer, as a result of seeing this decrease or the drop in the safety grade, should be more cautious about visiting that hospital?

A. Consumers should be cautious when visiting any hospital. And we're very clear that no hospital is perfectly safe. Not A-hospitals; no hospital is safe. You should always be cautious. We have a lot of tools on our website

for questions you should ask.

Q. I'm asking specific -- not generally, Ms. Bailey, but specific to the message here that we just went over.

Is the message or part of the message at least that a consumer should, upon seeing this change in the safety grade, be more cautious about visiting that hospital?

A. Yes. We're not saying you shouldn't go to a hospital. We're just saying, be aware of the safety; ask questions.

Q. Okay. There is -- if we turn to the previous page, so page 3 of the document, under What measures are most important, there's a handwashing bullet point.

Do you see that?

A. Yes.

Q. And handwashing is one of the imputed metrics that we've gone over; is that right?

A. Yes.

Q. Now, it says, Does your hospital have a handwashing policy to ensure that all staff

members are washing their hands before and after patient contact.

Do you see that?

A. Yes.

Q. All right. So is Leapfrog telling consumers here that one of the most important measures they should consider when choosing a hospital is handwashing?

A. Yes.

Q. Okay. Does it disclose here at all that Leapfrog, under its imputation methodology, automatically gives non-participating hospitals the lowest grade possible on handwashing?

A. No. That wouldn't make sense in this context.

Q. But no, correct?

A. No.

Q. That's not disclosed. All right.

MR. CHUNG: Let's go to document 43. This will be Exhibit 18.

(Bailey Deposition Exhibit 18 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Okay. This is another section or excerpt of the Hospital Grade -- Safety Grade website titled, Choosing the best hospital.

Are you familiar with this section of the website?

A. Yes.

Q. Okay. And is this a part of the website that you oversee for content?

A. This is a page that we would consider evergreen content. So I don't remember personally making edits to this page.

Q. What do you mean by evergreen content?

A. It's something that -- I mean, I would, like, triple check, but it's something that really wouldn't change. A lot of our content on some of the first half in the safety grade is just, like, consumer information.

Q. Okay. So this is Exhibit 18.

So is it your testimony that you, yourself, don't monitor this particular page for any updates or whether it's accurate?

A. I mean, we look at the whole website all the time, but I don't remember making changes to this page personally.

Q. Okay. If you look at the first page, the second paragraph, it reads, Your choice of hospitals -- your choice of hospital could be a life or death decision.

Do you see that?

A. Yes.

Q. All right. Is that messaging designed to scare consumers upon reading -- coming to the website?

MS. BLAIR: Objection to form.

THE WITNESS: I wouldn't use the word "scare." It's to make them understand it's an important decision.

BY MR. CHUNG:

Q. Okay. Is it, in fact, a life or death decision, in your view?

A. Yes. It can be.

Q. Okay. To put it another way, does Leapfrog expect consumers not to be scared when they read that?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know.

BY MR. CHUNG:

Q. Is this message, Your choice of hospital could be a life or death decision, is it designed to encourage consumers to use Leapfrog's hospital safety grades when choosing a hospital?

A. Yes.

MR. CHUNG: Let's go to tab 44. This will be Exhibit 19.

(Bailey Deposition Exhibit 19 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. So Exhibit 19 is another section of the same website. It's the frequently asked questions about the Leapfrog hospital safety grade.

Do you recognize this section?

A. Yes.

Q. All right. Is this evergreen as well or --

A. No.

Q. All right. And so is this a section that you check for accuracy and that it's up to date?

A. We update it before each safety grade round.

Q. Okay. And do you also check for accuracy?

A. Can you restate the question?

Q. Yes. Do you check this section, this FAQ section, for accuracy?

A. Yes.

Q. Okay. How often do you do that?

A. Prior to each safety grade round, we update the FAQs.

Q. Okay. Let's look at the second page.

This section tells the consumers or readers that patients are twice as likely to die of a prevental [sic] problem at a C, D, or

F-hospital than an A-hospital.

Do you see that?

A. Yes.

Q. All right. So similar question: Is the strategy here to scare consumers away from hospitals with C, D, or F safety grades?

MS. BLAIR: Objection to form.

THE WITNESS: It is not. It's just to give information that not all hospitals are the same.

BY MR. CHUNG:

Q. Do you think that this is an effective way of -- of communicating that, that not all hospitals are the same?

A. Can you restate your question?

Q. Do you think this sentence is an effective way of communicating that not all hospitals are the same?

A. Yes. That hospitals differ in their patient safety.

Q. Why not just -- why not just tell the consumer not all hospitals are the same, as

opposed to telling them that -- or representing to them that patients are twice as likely to die of a preventable problem at a C, D, or F?

MS. BLAIR: Objection to form.

THE WITNESS: Can you restate the question?

BY MR. CHUNG:

Q. Yeah. Why not -- just kind of presenting your own testimony, why not just tell consumers that not all hospitals are the same?

MS. BLAIR: Objection to form.

THE WITNESS: We do say that as well. But this is a study from John Hopkins that we cite.

BY MR. CHUNG:

Q. Okay. Does Leapfrog want consumers to think that visiting a hospital with a D or F grade could seriously injure or kill them? Is that part of the messaging?

A. The messaging is that you're more likely, based on the preventable problems that are represented in the safety grade.

Q. All right. And like the other message, is this messaging designed to encourage consumers to use the hospital safety grades when choosing a hospital?

A. Yes.

Q. Now, the website also tells consumers that the hospital safety grade reflects how well a hospital does on safety, not whether they complete the Leapfrog hospital survey.

Are you familiar with that?

A. Where are you reading from?

Q. This is from the frequently -- this is actually --

A. Oh, it's --

Q. -- on page 3, I'm sorry.

A. Thank you.

Q. I should have directed you to that.

A. Thank you.

Q. So page 3, under that question, Does a hospital get a better safety grade if it reports the Leapfrog hospital survey -- there's a sentence right underneath it.

Do you see that?

A. Yes.

Q. Okay. It's -- is that true?

A. Yes.

Q. All right. But if a hospital does not respond to the survey or does not complete the survey, it automatically receives the lowest possible score on the four imputed metrics, correct?

A. Just on those four metrics. Yes.

Q. Okay. And these are among the most important metrics, I think you testified earlier, correct?

A. Correct. But there are hospitals, let's be clear, that don't get a safety grade that still get an A. It's not automatically that you get a bad grade.

Q. But on those four critical imputed metrics, these non-participating hospitals are given the lowest possible score without the benefit of any actual data on those four metrics, correct?

A. Correct. They're assigned that score.

MR. CHUNG: Let's go to tab 58.

So this will be 20.

(Bailey Deposition Exhibit 20 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. So Ms. Bailey, Exhibit 20 is -- you've got an e-mail chain from October 29 of 2024, and then there's an attachment to it with what looks like a markup of an FAQ about the hospital safety grade.

A. Yes.

Q. So take a few moments. Let me know when you've had a chance...

A. Yes.

Q. Okay. Do you recognize what's being discussed in this e-mail chain?

A. Yes.

Q. So it appears that this is discussion around frequently asked questions about the Leapfrog hospital safety grade, correct?

A. Yes. The document we were just looking at.

Q. Okay. This is coming off of the website, the section that we just looked at, in Exhibit 19, right?

A. Yes.

Q. All right. Now, if you look at the page Bates ending 7096, it's the first page of the markup of the FAQs.

And just to be clear, are the edits that we see here on this document -- whose edits are these?

Are they Ms. Binder's edits?

A. Yes. And this was to the fall 2024 FAQs. And the one we just looked at was the spring 2025 FAQs.

Q. Okay. So on the first page of -- so Bates ending 7096, toward the bottom there, one of the FAQs is, Why did hospital X get an F and why did hospital Y get an A?

Do you see that?

A. Yes. A little hard to read.

Q. Yes, I'm sorry. It's a little bit faint.

In brackets it says, Answer these questions by being very specific about how the asked-about hospital did on specific measures but don't say how those measures caused the bad grade. In other words, talk about the safety measures, not the methodology.

Do you see that?

A. Yes. It's hard to read.

Q. Okay. Why did Ms. Binder not want to talk about the methodology?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know.

BY MR. CHUNG:

Q. Okay. On the next page, 7097, there's another header titled, Does a hospital get a better safety grade if it reports the Leapfrog hospital survey?

Do you see that?

A. Yes.

Q. Okay. It's the very next one.

And then underneath it, the markup reads,

The hospital safety grade reflects how well a hospital does on safety, not whether they complete the Leapfrog hospital survey.

That corresponds to the sentence or the response that we read on the preceding exhibit, correct?

A. Yes. It looks like it's the same.

Q. So is that Ms. Binder's kind of edit with respect to that FAQ?

A. Let me see. Track changes are hard sometimes.

It looks like she actually may have just moved that from -- if you look two paragraphs down -- sorry, this is kind of hard to explain -- it says, Does a hospital get a better safety grade if -- do you see how that's X'd out? I think she just moved that paragraph up.

Q. Okay.

A. It's really hard to read with the crosses, so I can't really tell if there are differences or not.

Q. All right. When you saw the edit or her

comment about not wanting to talk about methodology in the first part of the markup as to why did hospital X get an F while another hospital got an A -- right? -- did that concern you at all about not -- about the consumer here not getting an explanation for how the hospital gets a grade under the new methodology?

MS. BLAIR: Objection to form.

THE WITNESS: No. I don't think she meant that by -- what I take from this is that this is an FAQ document. It's meant for reporters. We keep it short. They get the methodology printout as well separately. Every reporter gets that.

BY MR. CHUNG:

Q. Well, I thought that this FAQ was on the website.

A. It is.

Q. Isn't it addressed to consumers, visitors to the website?

A. It is. It has multi purposes. We send it to reporters as well.

Q. Okay. But the content here is on the website, correct?

A. It's also on the website, yes.

Q. Okay. So we're staying on this document, the markup of the FAQs. Let's go to Bates ending in 7098, so the very next page.

There is -- one of the questions is, Are there methodology changes in the fall 2024 Leapfrog hospital safety grade?

Do you see that?

A. Yes.

Q. Okay. Now, the original -- so if you kind of try to kind of parse out what's been deleted or edited -- right? -- part of the original language here -- actually, do you know who in the first instance drafted the FAQs as well as the responses?

A. Me, in combination with Nate.

Q. Okay. And is -- are those -- is that kind of taken what Ms. Binder edited here taken directly from the website? Is she editing what's on the website?

A. This right here is in addition to the FAQs.

Q. All right. So this is new material?

A. Yes. This corresponds with -- I don't know what exhibit at this point, but the e-mail to Missy where we were talking about messaging for the imputation change.

Q. Okay.

A. That's where this came from.

Q. So if you look at the language that's been struck -- right? -- it reads, The Leapfrog Group aims to provide the public with timely, transparent information on hospitals' safety performance. To uphold this commitment, Leapfrog utilizes the best available data for calculating hospital safety grades. Annually, Leapfrog's expert panel and researchers at John Hopkins Institute for Patient Safety and Quality -- actually, it's the Armstrong Institute, right?

A. Yes.

Q. -- and Leapfrog's expert panel and researchers at the Armstrong Institute review the

scoring methodology and have recommended modifying the current imputation method used for filling in missing data from hospitals that did not complete the latest Leapfrog survey.

Do you see that?

A. Yes.

Q. Okay. Now, according to the edits here -- right? -- to the red-line here, what comes out of it is in line with the recommendations from the national expert panel and John Hopkins advisors, Leapfrog changed the way it estimates performance for hospitals that declined to report to the Leapfrog hospital survey.

So why was that change made from basically an answer that says that the expert panel, John Hopkins, Armstrong Institute, and researchers have recommended modifying the current imputation model -- right? -- to in line with recommendations from the national expert panel and John Hopkins advisors, Leapfrog changed the way it estimates performance?

Do you have an understanding as to why the change was made from the experts and John Hopkins making that recommendation -- right? -- to Leapfrog changing the way -- changing the imputation methodology in line with the recommendation from the experts?

A. I don't know. And this isn't the final, so it's -- I don't remember what the final text even said.

Q. Okay. Putting aside whether it's final or not, do you have an understanding as to why that change was made?

A. No, I don't.

Q. Okay. Then we see for four out of the 30 measures -- and we see the four imputed metrics -- right? --

A. Yes.

Q. -- that we've already discussed -- Leapfrog will first check the last two safety grade cycles for available data. If none exist, hospitals will receive a point value of 15 for the measure, the lowest performance category.

This reflects analysis of actual performance of hospitals with prior missing data as well as expert consultation.

Do you see that?

A. Yes.

Q. Okay. How does this -- as you understand it, how does this -- the description of the change in imputation methodology, how does it reflect analysis of actual performance of hospitals with prior missing data?

A. I don't know. I didn't write it. I don't know what she meant.

Q. Okay. And how does it reflect expert consultation?

A. I don't know. Among our expert -- aside from our expert panel, I don't know.

Q. Okay. But this is -- as communications director, these frequently asked questions that go out to, I think, by your testimony, to reporters as well as to consumers on the website, this is one of your responsibilities, correct?

A. Correct. But these are Leah's edits, and

I don't remember what we decided on.

Q. Are you responsible for understanding Leah's edits?

A. Not necessarily what she meant by it always. If we don't understand something, we'll go to her and talk to her about it, but it looks like Nate is the one who had those conversations.

Q. And Nate is a communications -- I think manager?

A. Coordinator.

Q. -- coordinator who reports to you, correct?

A. Correct.

Q. So as his manager, as his supervisor, do you have responsible for at least understanding Ms. Binder's edits?

A. I think it's unrealistic that I'd understand her intention of every single edit she makes.

Q. Okay. Is this an important edit?

A. I don't know.

Q. Do you agree that the change in the

imputation methodology in 2024 was an important change to the methodology?

A. Yes. And this isn't the final. I don't -- I honestly do not remember what the final text was.

Q. Right. I'm not asking about the final text. We're just focusing on this document here.

So given that the change in the imputation methodology in the fall of 2024 was an important change, was it important for you to understand the messaging around that change in the imputation methodology?

A. Yes.

Q. Okay. And was it important for you to understand how the leader of the organization, Leah Binder, viewed that change in the imputation methodology?

A. Yes.

Q. All right. And was it important for you to understand changes or edits she was making to the messaging around that change in the imputation methodology?

A. Yes.

Q. Okay. But your testimony here today is that you do not understand where these changes are coming from?

MS. BLAIR: Objection to form.

THE WITNESS: This line right here, I mean, this was an edit almost a year ago. I don't remember edits from a year ago.

BY MR. CHUNG:

Q. Okay. Does this -- sitting here today, looking at these edits, does it raise any concerns for you about whether Leapfrog was being transparent about the effect of the methodology change?

A. No. My understanding is Leah hasn't shown me any instances where she's trying to not be transparent. Our goal is always transparency.

Q. I'm not talking about generally. Right? Looking at these edits here -- right? -- which I understand, based on your testimony, you don't remember -- right?

But reading these changes here today, do

they give you pause or any concerns about whether Leapfrog was being transparent about the effect of the methodology change?

A. No.

MS. BLAIR: Objection to form.

THE WITNESS: No.

BY MR. CHUNG:

Q. Okay. I think we went into this a bit previously, but what processes does Leapfrog have in place for soliciting or collecting consumer patient feedback regarding the scoring methodology and the hospital safety grades?

A. We publish proposed changes to both annually, from what I can recall at the moment. It's published on our website, on our home page. I mean, technically, anyone could submit a public comment.

Q. Okay. Has Leapfrog received -- and is that -- that's directly through the website, correct?

A. Correct.

Q. Other than the website, is there any

affirmative outreach by Leapfrog to hospitals or other third parties about -- to solicit feedback about changes in the scoring methodology or the hospital safety grades?

A. It's all through their proposed changes. So we'll send it out through our e-mail newsletters, through social media. We'll send it to our stakeholders.

Q. Okay. Has Leapfrog ever put together any panels or committees or working groups to discuss or address consumer feedback about the scoring methodology or the safety grades?

A. Can you repeat the question?

Q. Sure.

Has Leapfrog ever convened any panels or committees or working groups to assess consumer feedback about the scoring methodology or the safety grades?

A. In my understanding, creating the patient and family expert panel was a piece of that.

Q. Okay. And how was -- can you just go more into that?

A. I don't know any more about that. I just know we created it to have a direct conversation with patients and families.

Q. Okay. Have there been any instances where consumer feedback has led to a change or a revision in Leapfrog's scoring methodology?

A. Not that I can recall.

Q. All right. Any instances where consumer feedback has led to a change in the way hospital safety grades are assigned or reported?

A. Not that I can recall.

Q. Okay. Does Leapfrog have any formal policies or guidelines that govern how consumer feedback is to be considered or incorporated into the scoring methodology of the safety grades?

A. I don't know.

Q. Can you think of any instances where consumer feedback was explicitly rejected or disregarded in the process of updating or maintaining the scoring methodology?

A. Not to my knowledge.

Q. Are you aware of any instances in which

patients or members of the public have told you, told Leapfrog, that they've delayed necessary medical care as a result of the safety grades?

A. Not that I can recall.

Q. All right. Are you aware of any instances in which patients or members of the public have reported forgoing necessary medical care as a result of Leapfrog's safety grades?

A. Not that I can recall.

Q. Are you aware of any instances in which patients or members of the public have reported having to transfer to a hospital that they had previously avoided based on Leapfrog's safety grade?

MS. BLAIR: Objection to form.

THE WITNESS: Can you restate the question?

BY MR. CHUNG:

Q. Yes.

Are you aware of any instance when a patient of -- a patient or a member of the public telling Leapfrog that they had to transfer to a

hospital that they had previously avoided because of the safety grade assigned to that hospital?

A. Sorry, I don't understand the question.

Q. Okay. We can move on.

A. Okay.

Q. Has Leapfrog received any feedback from patients or their families indicating that the safety grades have caused confusion about which hospital to go to?

A. Not that I can recall.

Q. All right. Any feedback or complaints from patients and their families that safety grades have led them to make unsafe healthcare decisions?

A. Not that I can recall.

Q. Okay. Has Leapfrog -- has Leapfrog heard from any patients or family members about instances that they had to travel further to hospitals as a result of the hospital safety grades?

A. Yes. I've done that myself for planned care.

Q. I'm not talking about yourself. I'm talking about patients or their family members.

Have you heard any instances like that?

A. We have a story in our annual report, our last annual report, about a patient who traveled to a hospital that had an A when he was injured for something. It was a non-emergent injury.

Q. Okay. Any instances for an emergent injury where a patient had to travel further to a hospital based on the hospital safety grade?

A. No, I have not heard of that. And our messaging explicitly says go to the closest hospital in an emergency.

Q. Okay. Where is that messaging?

A. It's in the -- about the gray tab. Like, the first tab on -- I'm visualizing it. It's the first tab on our website. And it's a very normal part of our communications, our talking points.

Q. Okay. Are you aware of any cases where patients have gone to hospitals based on Leapfrog's safety grades to hospitals that were under investigation or had significant safety

concerns?

A. Can you repeat the question?

Q. Yeah. Are you aware of any cases where, based on Leapfrog's safety grades, patients have gone to hospitals that were under investigation or had significant safety concerns?

A. Not that I can think of.

MR. CHUNG: Let's go to tab 29.

This will be Exhibit 21.

(Bailey Deposition Exhibit 21 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. All right. Ms. Bailey, Exhibit 21 is an e-mail chain from February of 2023.

A. Okay. I've read it.

Q. So in this e-mail chain -- it's a thread about a reporter asking why a hospital -- the Mission Hospital in Asheville, North Carolina -- had received A grades -- right? -- from Leapfrog, despite low ratings from CMS for patient experience and reports of poor quality care.

First of all, do you remember what's kind of generally being discussed in this e-mail chain?

A. Generally.

Q. Okay. So on the first page -- so Bates ending 649 -- Ms. Binder responds to Elizabeth Harmon and Patrice Brown.

Who are Elizabeth Harmon and Patrice Brown?

A. Elizabeth Harmon was the senior communications coordinator, I believe, was her title.

Patrice Brown was the chief operating officer.

Q. Okay. She writes, Missy or I can do this. I really like help from a PR firm refining our talking points because this is officially a serious PR issue.

Why was this a serious PR issue?

A. This -- hold on, let me look at this again.

Q. Let me just put it another way.

Was -- just reading Ms. Binder's e-mail response here, was this a serious PR issue because of potential news around Leapfrog's methodology not being supported by CMS?

A. No.

Q. How do you know that?

A. I don't take it as that. I mean, that's not my interpretation.

Just -- I interpret this as -- and this was a couple of years ago, so I'm trying to remember.

I interpret this as let's discuss the messaging around A-hospitals. We know no hospital is perfectly safe, not even an A-hospital. We need to make sure we're on the same page.

That's what I take this as.

Q. Okay. But there are -- if you look at the reporter's e-mail here, what's kind of cut and pasted from what the reporter wrote, there are specific allegations here, correct --

A. Yes.

Q. -- that Mission -- that the hospital at issue gets only two stars from CMS for patient experience, yet Leapfrog, which intends to rank for patient safety and regularly rates Mission an A, and that rating is used by Mission in its marketing.

So how is that disjunction or disparity a serious PR issue?

A. I take it, again, as Leah just said, we need to discuss -- I don't know, this was a couple of years ago, but this isn't something that comes up all the time. So I took it as her saying, you know, this is something we do need to discuss and take seriously.

Q. Okay. Was she -- there's another sentence in that same paragraph from the reporter's allegations: But I would like to know how much of Leapfrog's annual revenue is earned from fees that hospitals pay for using its rating in their marketing.

How is that -- how did that contribute to this being a serious PR issue?

A. I don't remember that part of this.

Q. Okay. Was there a concern that the public relations or the PR around this issue would allege that Leapfrog was a pay-to-play scheme?

A. No, I don't think so.

Q. Okay. He go on to write, I'd also like to learn if there are other ways in which Leapfrog earns fees from the hospitals that it rates.

What was the serious PR issue around that allegation?

A. I don't think --

MS. BLAIR: Objection to form.

THE WITNESS: I don't think that's a serious PR issue.

BY MR. CHUNG:

Q. Why not?

A. We're transparent about this stuff. I don't see it as a PR issue.

Q. Okay. What did Ms. Binder think was a serious PR issue around this allegation?

A. I don't know. I told you my opinion, that I think it's just the two stars from CMS. Although in this e-mail, it says, for patient experience, which is just one part of the Leapfrog hospital safety grade.

Q. Is -- Ms. Binder [sic], we've looked at common objections, you know, common issues previously, and one of them was allegations that Leapfrog was pay to play, correct? We've seen that.

A. Correct. Ms. Bailey.

Q. Ms. Bailey. I'm sorry.

Is this an example of one of the common objections or observations from the public about Leapfrog being a pay-to-play scheme?

A. Which? Can you specifically say which part for me?

Q. The part that we just read: But I would like to know how much of Leapfrog's annual revenue is earned from fees that hospitals pay for using its rating in their marketplace [sic]. I'd also like to learn if there are other ways in

which Leapfrog earns fees from hospitals that it rates.

A. I infer the patient was trying to understand -- again, there's a lot of ratings out there that are completely pay for play, like Healthgrades, so I think there is some clarification there that we likely made. I wasn't part of this.

Q. Okay. Has Leapfrog ever issued a correction or a retraction of a safety grade after learning that the grade it issued may have misrepresented a hospital's actual safety or quality of care? Has that ever happened?

A. Not that I can recall. Not that I can recall.

Q. Okay. Has there ever been discussion among your colleagues of the potential public health risks associated with publishing safety grades for hospitals where it lacks sufficient or reliable data?

A. Can you restate the question?

Q. Yes.

Has there been any discussion among your colleagues about the potential public health risks associated with publishing safety grades for hospitals where Leapfrog lacks sufficient or reliable data?

A. I don't know.

Q. Okay. Is that -- given part of what we've been discussing during this deposition is about non-participating hospitals -- right? -- and that they're automatically assigned the lowest possible score in the four imputed metrics where there isn't data, has there ever been any discussion among you and your colleagues about whether assigning that lowest score on imputed metrics might present a public health risk?

A. Not that I can recall.

Q. All right. I asked you, I think, previously whether you're aware of any feedback or complaints from hospitals regarding the accuracy or fairness of their assigned safety grades, but I'll ask again.

Are you aware of any feedback or

complaints from hospitals along those lines?

A. Can you restate the question?

Q. Yes.

Are you aware of any feedback or complaints from hospitals regarding the accuracy or fairness of the safety grades assigned to them?

A. Besides the obvious, we're sitting in this room today because your clients are very unhappy with their safety grades.

Q. Apart from the -- the plaintiff hospitals involved here.

A. Not that I can recall.

Q. Okay.

MR. CHUNG: Let's go to tab 23.

This is Exhibit 22.

(Bailey Deposition Exhibit 22 marked for identification and attached to the transcript.)

THE WITNESS: Okay. I've read it.

BY MR. CHUNG:

Q. Okay. Ms. Bailey, have you seen this --

the comment here, or this -- the feedback from the help desk?

A. No.

Q. Do you recognize the format of this document, that it's a comment submitted to the help desk?

A. I don't look at the help desk, but I can infer that it's from the help desk. Yes.

Q. All right. Now, the commenter here writes that they're disappointed with the 2024 proposed changes.

And I should note, this is from May 21 of 2024.

And she writes that the changes will penalize hospitals that do not submit a Leapfrog survey. The public will not understand nor dig into methodology of these grades, and hospitals will be falsely represented with a lower grade because they chose not to complete a survey.

Is that -- have you seen this feedback before?

A. No, I haven't seen feedback from this.

Q. Okay. Is it a fair -- do you think that's a fair characterization, that the proposed changes in the imputation methodology will penalize hospitals that do not submit a Leapfrog survey by automatically assigning them the lowest possible score on the four imputed metrics?

A. Can you restate the question?

Q. Yes.

Do you think it's a fair assessment, a fair statement here, that the changes here will penalize hospitals that do not submit a Leapfrog survey?

A. No. I mean, I wouldn't agree with that.

Q. Okay. Why not?

A. I mean, I don't see it that way.

Q. Aren't -- well, aren't the hospitals, in fact, being penalized for not participating in the survey by being automatically assigned these lowest possible scores on the four metrics?

MS. BLAIR: Objection to form.

THE WITNESS: I don't see it that way.

BY MR. CHUNG:

Q. Okay. How about the statement here that the public will not understand nor dig into the methodology of these grades?

I think you would agree with that, right?

A. It --

MS. BLAIR: Objection to form.

THE WITNESS: You'll see that Missy -- I don't understand exactly how this works, but it looks like Missy said that we should do a symbol.

So this was part of the -- from what I understand. I'm not involved in looking at the comments, but what I would -- here -- would -- what Missy said above, which -- let's make sure it's clear on the website.

That's what I take from that.

BY MR. CHUNG:

Q. My question is -- I'm not -- we haven't gotten to Missy's comment and your response yet. Right?

But the comment or statement here that the public will not understand nor dig into the

methodology of these grades -- right? -- wouldn't you agree with that?

A. No.

MS. BLAIR: Objection to form.

THE WITNESS: I don't know if the public will look into it or not.

BY MR. CHUNG:

Q. Okay. Well, you're a communications director, right? I mean, you are -- you're a communications professional.

Isn't it part of your expertise to at least have a hypothesis as to what the public will understand or delve into?

A. I mean, I don't -- I don't know what any one person is going to understand or not understand. My goal is just always to be as transparent as we can be on the website.

Q. Right. But I think you've testified, I think, repeatedly throughout your deposition that describing the steps in the changed imputation methodology is too in the weeds, correct?

A. Correct.

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. All right. And I think that's consistent with what the commenter here is saying, that the public will not understand nor dig into the methodology of these grades, correct?

A. Can you restate that?

Q. Yeah.

And is that -- the position you've taken with respect to the changes in the imputation methodology being too in the weeds, that's basically what the commenter is saying here, right? That the public will not understand nor dig into the methodology of these grades, correct?

A. Yes.

Q. Okay. And is it -- the next part of the sentence here, that hospitals will be falsely represented with a lower grade because they chose not to complete a survey, isn't that a fair observation, given that the public will not understand how they got the grade in the first

place?

MS. BLAIR: Objection to form.

THE WITNESS: I don't think so. I don't think that it's necessarily falsely representative if a hospital did the survey; you get the same score.

BY MR. CHUNG:

Q. Okay. But for those hospitals that do end up getting a lower score -- right? -- isn't it true -- isn't it a fair assessment that that score is a false representation of that hospital?

MS. BLAIR: Objection to form.

THE WITNESS: I don't think so.

MR. CHUNG: Let's go on to the next tab, 24.

BY MR. CHUNG:

Q. Actually, before we go on to the next one, the next sentence in the comment is the survey is -- we're still on Exhibit 22 -- the survey is extremely time-sensitive [sic] and in a time when hospitals are barely breaking even financially; they do not have the resources to

commit to this survey.

Is that -- what is your reaction to that statement?

A. My reaction to that statement is that the opposite of that is also true: If hospitals -- we've seen hospitals that do prioritize patient safety make the time for this, and they spend a lot less time on Leapfrog than a lot of other ratings.

Q. Okay. But what do you make of this particular statement itself? Is the survey extremely time-intensive?

A. I don't think it is.

Q. Okay. And what is that based on?

A. My opinion.

Q. What is that opinion based on?

A. That we've heard from hospitals it takes 40 to 80 hours, and we're talking about an entire year.

Q. Okay.

A. So I don't think that's a lot of time.

Q. All right. Have you heard also of

hospitals that do not have the resources to commit to responding to the survey?

A. No, not personally, no.

Q. Okay.

MR. CHUNG: All right. Let's move on to 24, which will be Exhibit 23.

(Bailey Deposition Exhibit 23 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Now, Exhibit 23 is another comment submitted through the help desk, we believe, in response to the planned safety grade methodology changes in 2024.

And Ms. Bailey, if you look at the -- kind of the last entry there, it reads, We strongly disagree with the proposed fall 2024 step 2 imputation.

Do you see that?

A. Yes.

Q. Okay. If Leapfrog is going to implement this change, they need to offer hospitals an

option to opt out of being graded rather than penalize a hospital for not submitting the resource-intensive survey.

Do you see that?

A. Yes.

Q. Okay. What is your reaction to that particular comment?

MS. BLAIR: Objection to form.

THE WITNESS: My initial reaction is that a theoretical option to opt out is completely against the whole point of the safety grade, which is to assign grades to hospitals and have as much data as possible for patients.

BY MR. CHUNG:

Q. Okay. So part of -- I think you said that one of the aims of the hospital safety grade is to have as much data as possible for patients, correct?

A. Correct.

Q. All right. But where, for non-participating hospitals, the hospital safety grades are based at least in part -- right? -- on

the absence of data, does that achieve that mission?

MS. BLAIR: Objection to form.

THE WITNESS: I mean, I was specifically talking about grades, like having more hospitals graded available.

BY MR. CHUNG:

Q. Okay. But for a number of those hospitals that are being graded -- right? -- that didn't participate in the survey, that's not based on actual data, correct?

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. At least with respect to the four imputed metrics; is that right?

A. It's our methodology.

Q. Okay. Hospitals who do not -- I'm just reading further here: Hospitals who do not have the resources to do the survey annually should not be so adversely punished, especially in the post-COVID era where resources are increasingly hard to come by and retain.

What's your reaction to that comment?

A. My reaction to that comment is that -- I mean, I think they're talking about burden -- right? -- of the survey. And we look at burden differently at Leapfrog. We don't look at burden as how long it takes a hospital to fill out a survey. We think of burden -- of [sic] patients of having the absence of that data.

Q. Okay. So the fact that a hospital does not have resources or resources can -- are taken away from actual care of patients is not a factor that concerns Leapfrog?

MS. BLAIR: Objection to form.

THE WITNESS: In my understanding, it's not the actual clinicians who are doing the survey. They're not the ones providing patient care, in my understanding.

BY MR. CHUNG:

Q. Okay. What is your understanding as to who is responding to the survey, then?

A. It's quality people. People are specifically hired to do ratings programs, from

my knowledge of working in a hospital.

Q. There are -- so you're saying that there are -- so no patient care resources are diverted at all when having to respond to the survey? Is that your testimony?

A. I'm not saying that. I'm not an expert in hospitals.

I'm saying, from my understanding, it's not the same people who are, you know, performing surgeries that are doing the survey.

Q. Okay.

MR. CHUNG: Let's go to tab 25. This will be Exhibit 24.

(Bailey Deposition Exhibit 24 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Similarly, Ms. Bailey, another comment in response to the change in methodology in 2024.

So if you look at the second page toward the bottom, the comment reads, Imputation step 2 model.

Do you see that?

A. Yes.

Q. Yes. And the commenter -- commentator writes, We feel like this model is unnecessarily punitive. We often skip survey submission because the responses provided for IPS, hand hygiene, BMCA [sic] and CPOE are largely unchanged in the two-year period that was allotted before negatively impacting grades, and the FTE resource commitment to complete the survey is already significant. There's no value added by completed a survey every year or every other year when practices in our hospitals have not changed.

Is that a fair response to the change in the imputation methodology? The -- first, that the model is unnecessarily punitive?

A. I mean, I don't agree with that.

Q. Why don't you agree with that?

A. I've already testified that I don't think it's unnecessarily punitive.

Q. Okay. What about the fact that at least

this particular hospital skips survey submission because the responses provided for the four imputed metrics is largely unchanged in the two-year period?

MS. BLAIR: Objection.

BY MR. CHUNG:

Q. What's your reaction to that?

A. That I have -- I don't have any information about that. I wouldn't be able to speak to if it's accurate or not.

Q. If it is accurate, is it a fair criticism of the change in the imputation methodology?

MS. BLAIR: Objection to form.

THE WITNESS: I don't think so.

BY MR. CHUNG:

Q. And why not?

A. I don't -- I mean, I don't know -- I don't run a hospital, so I don't know how this is. I just know that these measures are important, and our goal at Leapfrog is to have the most up-to-date data possible.

Q. Right. But where that data for the four

imputed metrics has been largely unchanged in the two-year period -- right? -- is it a fair reason for a hospital then to not respond to the survey in a given year?

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. Especially where there are resource constraints.

A. I don't know that it's not unchanged.

Q. I'm just asking you, if we assume that what the commenter here is saying is true.

A. I don't know.

Q. Okay.

A. Not my area.

MR. CHUNG: Exhibit 25.

(Bailey Deposition Exhibit 25 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. All right. Ms. Bailey, different format here, but another response to the change -- proposed change in imputation methodology. This

is from June 2024 from Ascension.

Are you familiar with Ascension?

A. Just that it's a hospital system.

Q. Okay. Now, this is coming from the chief advocacy officer, a Peter Leibold.

At the bottom of the first page of this letter he writes, Ascension cannot support Leapfrog's proposed update and strongly encourages Leapfrog to refrain from implementing it. We fundamentally believe that the hospital safety grade and the hospital survey should remain separate. The survey should not affect the grades. We don't -- we believe this is not in the best interest of public policy as not all the hospitals have the information or capabilities to complete the hospital survey. We further believe it is unreasonable for an optional survey to have such a significant impact.

Is it your view that the survey is optional?

A. Yes. It's voluntary.

Q. Okay. But where -- after the change in the imputation methodology in 2024, is it fair to say that the survey has effectively become a required one for hospitals?

A. No, I don't think so.

MS. BLAIR: Objection.

Sorry. Objection to form.

BY MR. CHUNG:

Q. Go ahead.

A. There's still hospitals that get As that don't do the survey.

Q. Okay. But where a non- -- formerly a non-participating hospital risks a lower grade because it's automatically assigned the lowest possible grade on four imputed metrics, is it fair to say that more hospitals will feel that this is a required survey, as opposed to an optional survey?

A. I don't know how hospitals will feel. It's four of, you know, up to 32 measures.

Q. Okay. But by your own testimony, these -- the four measures are among the most

critical for purpose of patient safety, correct?

MS. BLAIR: Objection to form.

THE WITNESS: Yeah. Yes.

BY MR. CHUNG:

Q. Isn't that part of the reason that they were -- that they are the -- four of the metrics that were selected for this imputation methodology?

MS. BLAIR: Objection to form.

THE WITNESS: Yes. It still doesn't change that it's just four of up to 32.

BY MR. CHUNG:

Q. Okay. But getting the lowest possible -- automatically getting the lowest possible score on those four imputed metrics does increase the risk that the hospital will get a lower resulting safety grade; is that fair?

MS. BLAIR: Objection to form.

THE WITNESS: Not necessarily.

MR. CHUNG: Okay. Let's go to tab 27. This will be 26.

(Bailey Deposition Exhibit 26 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Okay. Another comment and response to the proposed imputation methodology.

So if you look at the final entry on the second page, Ms. Bailey, the commenter here outlines a number of what she calls more accurate options.

Do you see that?

A. I'm not there yet.

Q. Okay.

A. Oh, I see the line now. Okay.

Q. Okay.

A. It starts with "rather"?

Q. Yup.

A. Is that where you're at?

Okay.

Q. And my question is, were any of these alternatives discussed at Leapfrog?

A. I don't know.

MR. CHUNG: Let's go to -- let's skip that.

THE WITNESS: Can we take a break next time we're pending?

MR. CHUNG: We can take a break right now.

THE WITNESS: Great.

VIDEO TECHNICIAN: The time is 2:49 p.m. This ends unit 3. We're on the record.

(A recess was taken.)

VIDEO TECHNICIAN: The time is 3:04 p.m. This begins unit number 4. We're on the record.

MR. CHUNG: All right. Ms. Bailey, we're going to put another document in front of you marked 27, Exhibit 27.

(Bailey Deposition Exhibit 27 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. It's another Slack chat between yourself and, I think, Katie Stewart.

A. Okay.

Q. And to start with, who is Katie Stewart?
A. Katie Stewart is the director of healthcare ratings.
Q. And she works under Ms. Danforth; is that right?
A. Yes.
Q. Why don't you take a few moments to review that.
And so this is from November 15, 2024. I want to direct your attention -- at 2:46 p.m., it looks like Ms. Stewart asks you, Any thoughts on what to say when a reporter is interested in two hospitals that got worse because of the imputation change?
Is this a particular -- specific instance that she's referring to, so far as you're aware?
A. I don't remember this conversation, but that's what I would infer, yes.
Q. Okay. And you respond, I know Leah said she didn't want to lean in on the transparency side, but that's what this is.
What did you mean here when Leah said she

didn't want in on the transparency side? Do you remember?

A. I don't really remember this.

Q. Okay. Do you remember her saying that she didn't want to lean in on the transparency side?

A. I don't recall this -- like, talking about this specifically.

Q. Okay. If we go down several lines, at 2:52 -- or, actually, up at 2:51, Ms. Stewart writes, Not sure what else we can say.

And she continues, They should report. LOL.

And you respond, Right. Totally. We are focused on accuracy and having the most recent data possible.

Does that refresh your recollection as to what Ms. Binder was saying when she did not want to lean in on the transparency side?

A. I really don't remember that conversation. I remember the second half of that sentence, that we want to encourage hospitals to

be transparent and report their data.

That's in line with our regular messaging.

Q. Okay. But you don't recall what Leah specifically was saying about not wanting to lean in on the transparency side?

A. I don't remember. This was almost a year ago.

Q. Okay.

A. I don't remember.

MR. CHUNG: Let's go to 59.

The story as well.

This will be 28 and 29.

(Bailey Deposition Exhibits 28 and 29 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. So Exhibit 28 is an e-mail chain. Exhibit 29 is basically a statement, a public statement, that's referenced in the e-mail chain.

So just take a few moments to review that.

A. So I vaguely recall this.

Q. Okay. So you have a vague recollection as to what's being discussed here.

A. Yes.

Q. So what is being discussed? And then we'll go into more specifics.

A. A media request from AL.com, which is an outlet in Alabama, about a Huntsville hospital.

Q. Okay. And is it that this Huntsville hospital was issued a statement disputing Leapfrog's spring 2025 hospital safety grade that penalized the hospital for not completing the survey? Is that what this is about?

MS. BLAIR: Objection to form.

THE WITNESS: From reading the context of the e-mail and from what I remember, it was actually -- the reporter first did a story about their F, and then, in response, the hospital did this statement.

BY MR. CHUNG:

Q. Okay.

A. That's my understanding.

Q. Have you had a chance to review the statement as well that's Exhibit 29.

A. It's been a few months, so let me dig in.

Q. Okay. So Ms. Bailey, just focus in on the first instance in the first paragraph of the statement.

A. Okay.

Q. And this is a statement issued by Huntsville Hospital.

The first paragraph reads, The Leapfrog survey is not an accurate measure of patient safety at Huntsville Hospital. The hospital did not complete this voluntary 353-page survey, yet Leapfrog chose to publish a rating with incomplete information. This process is unfair to the thousands of dedicated clinicians working around the clock to care for the community and response -- and respond to the emergencies anytime they are called.

So is that kind of the gist of what the reporter wants Leapfrog to respond to?

A. It looks like the reporter is just asking

for more data about the hospital.

Q. Okay.

A. And then how does Leapfrog respond to the issues raised in the statement. That's what they asked.

Q. All right. If you look at -- in the e-mail chain, Bates ending in 1050, you write June 4, 2025, to members of CURA Strategies, Alexander [sic] Campione, Nate Longmore, and Karen Jupiter.

You write, in the middle of your e-mail, Leah is out until Tuesday. I'm not sure that this warrants her needing to do a statement. We'd like to keep this out of the press as much as possible.

Why did you want to keep this out of the press as much as possible?

A. It's not standard practice that we publicize F grades.

Q. Okay. Is this -- is this publicizing an F grade? Is that what is at issue here?

A. I mean, the original story that we're

talking about in this, from Huntsville Hospital, is a story just about one F-hospital, and that's not something that we proactively will pitch. Our pitches are typically -- our priority is focused on promoting positive stories, A-hospitals.

Q. Okay. Even in response to a statement, a public statement, from the hospital?

A. Can you restate your question?

Q. Yeah.

So even where the hospital has made a public statement -- right? -- challenging its grade and the process --

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. -- you wanted to -- well, let me put it another way.

What is the "this"? When you read that sentence, We'd like to keep this out of press as much as possible.

Right? So there's no -- I don't think this is referring to a proactive press effort on

this issue. But how -- why did you want to keep this out of the press as much as possible?

A. Just from my memory, specifically we just didn't want more stories about F-hospitals in the news.

Q. Okay. Did you -- was it keeping stories about F-hospitals out of the news or was it keeping stories out of the hospitals challenging their hospital safety grades out of the news? Or both?

A. From what I remember, it was the first, keeping the -- like, our focus is not the F-hospitals. We didn't want more stories in the press about F-hospitals.

Q. Okay. Now, you suggested that, in response, that the focus should be on how the hospital is now going to participate in the Leapfrog survey.

Do you see that?

A. Yes.

Q. Do you have an understanding as to why where the hospital -- here, Huntsville

Hospital -- has called the Leapfrog survey not an accurate measure of patient safety and that the process is unfair -- do you have an understanding as to why the hospital would now agree to commit significant resources to complete the survey?

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. Why is it doing that?

MS. BLAIR: Same objection.

THE WITNESS: I don't know why they're doing the survey. They put in their statement they're going to do the survey. I only know what's written on this paper.

BY MR. CHUNG:

Q. All right. Fair to say that they're feeling coerced into completing the survey?

MS. BLAIR: Objection to form.

THE WITNESS: I wouldn't say that, no.

BY MR. CHUNG:

Q. Have you gotten any sort of feedback from hospitals that they feel like they're being coerced into the survey because of this

methodology change?

A. Not that I can recall.

Q. Okay.

MR. CHUNG: Let's go to tab 60.

BY MR. CHUNG:

Q. Actually, before we go there, let's go -- we have another document relating to this Huntsville, Alabama -- Huntsville Hospital.

A. Okay.

MR. CHUNG: And this will be Exhibit 30.

(Bailey Deposition Exhibit 30 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Now, relatedly, Ms. Bailey, Exhibit 30 is an article I believe from AL.com as a follow-up to this exchange regarding the Huntsville Hospital.

Just let me know if you've seen it before.

A. Yeah, that's what it looks like.

Q. Okay. And you'll see that it's based on

an interview with the Huntsville Hospital CEO Jeff Samz; is that right?

A. Yes.

Q. And you'll see on the third page of the document, in the middle of the page, he's quoted, Now, because of the coercive nature of Leapfrog creating a false score that is going to coerce our hospital into completing a survey, I'm going to take resources that could be used for patient care or doing something productive and I'm going to have to dedicate them for months to fill out a survey. So publishing a score that is, by the way they do it, low creates a false perception of the safety of the organizations that don't participate in the survey.

Does this refresh your recollection as to why the Huntsville Hospital decided eventually to fill out the survey?

A. I don't know that they have done the survey. I only know what we're reading. I don't have any other context.

Q. Okay. So this doesn't refresh your

recollection as to why they decided to eventually submit to the survey?

A. I don't know if they do do the survey today, and I don't know anything besides what we're reading.

Q. Okay. So you've never -- you haven't seen this article before?

A. I have seen this article. I'm just saying I don't know anything beyond what we're reading in this.

Q. Okay. Do you know whether there have been any discussions with the Huntsville Hospital -- with the CEO or other members of the staff about their decision to respond to the survey eventually?

A. I don't know, actually.

Q. Okay.

MR. CHUNG: Let's move on to 60. So this will be Exhibits 31 and 32.

(Bailey Deposition Exhibits 31 and 32 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. All right. Ms. Bailey, Exhibits 31 and 32 are an e-mail chain and then an article that's referenced in that e-mail chain arising from an e-mail with a healthcare reporter in Cleveland about another hospital disputing its spring 2025 hospital safety grade.

And I want to direct you first to the e-mail from Julie Washington from Cleveland.com.

A. Yes.

Q. And this is on Bates ending 7440.

She addresses you, Hi, Lauren. I am a healthcare reporter at the Cleveland Plain Dealer and Cleveland.com, and I'm wanting to -- and I'm writing about the spring Leapfrog grades. A local hospital leader made the statement below, and I wanted to run it past you because it doesn't align with an explanation from Leapfrog's CEO Leah Binder that I saw in Becker's. Can you please clarify?

So -- it looks like Ms. Washington excerpts from a statement from a local hospital

leader: In the past, Leapfrog carried forward past responses for hospitals that did not fill out a survey. Now, the safety nonprofit will no longer carry four-year-old scores, and they basically assign you the lowest ranking of the people who completed the survey.

Do you recall, at least generally, this discussion?

A. Yes. I remember generally.

Q. Okay. Now, what -- the second document, so Exhibit 32, is the -- what we understand to be the Becker's article that Ms. Washington is alluding to. Okay? And it quotes Ms. Binder.

Do you see that?

A. Yes. I'm just reading it.

Q. In the fourth paragraph down it says -- or she says, We use the Leapfrog data when we have that data. We impute scores for the data when we don't have it. I think that the measures that the hospitals are concerned about are four out of the 30 measures we use in the hospital safety grades.

Do you see that?

A. Yes.

Q. Okay. Is this the statement the reporter was referring to as not aligning with what she was hearing from the hospital?

A. I'd assume so. She's quoted one more time in the next page.

Q. Okay.

A. Or two more times.

Q. Have you -- it sounds like you've interacted with this reporter before, who's a healthcare reporter for the Cleveland Plain Dealer. Am I right?

A. Most likely. We talk to a lot of reporters, so I don't remember specifically. But Cleveland.com is an outlet that covers Leapfrog. Yes.

Q. Okay. So if the healthcare reporter here thought that these statements did align -- I mean, what's your view as to whether ordinary consumers or patients would think? Wouldn't they also believe that these statements didn't align?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know what the first statement is that we're comparing. I don't see what the first statement is.

BY MR. CHUNG:

Q. The first statement from -- the excerpt from the hospital itself. At the bottom --

A. Where?

Q. -- of Bates ending 7440.

A. 7440?

Q. Yes.

A. Oh, this (indicating)?

Q. Correct. Yeah. Below the...

A. I mean, that's not accurate, what the hospital said. We do still use past scores; it's just a different time period.

Q. Right. That's if -- that's with respect to step 1 of the imputation methodology, correct?

A. Right. That's what it looks like the hospital is referring to, is step 1.

Q. Okay. But what -- doesn't this actually refer to step 2, actually?

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. If your old scores aren't applicable under step 1, the hospital is assigned a lowest ranking of all the hospitals who complete the survey, correct?

A. I mean, to me, it sounds like this hospital is confused. They didn't know that step 1 was still in place.

I'm not sure. I don't know what the hospital meant.

Q. Okay. Ms. Washington is asking you, though -- she's observing that it does not align with Ms. Binder's explanation, correct, in Becker's.

A. That's what she's saying. Yes.

Q. Okay. So do you agree with her that the two statements did not align?

MS. BLAIR: Objection to form.

THE WITNESS: I mean, I agree that the hospital seems to be confused.

BY MR. CHUNG:

Q. Okay. How are they confused?

A. I just testified to that, that it seems that they don't understand that the step 1 of the imputation still exists.

Q. Okay. But is it incorrect that if -- that, in step 2, hospitals are assigned the lowest possible grade or the lowest ranking of the people who completed the survey?

A. Yeah, that's correct.

Q. Okay. So does that align with Ms. Binder's statement from the Becker's article that we use the Leapfrog survey when we have that data; we impute scores for the data when we don't have it?

Does Ms. Binder, in the Becker's article, say anything about assigning those non-reporting hospitals the lowest possible score?

A. Not in the quote, but I'm -- like, she very well might have said it in an interview. We can't control what pieces the reporter decides to quote.

Q. Understood. But in what was published in the article, it's not mentioned at all, it's not disclosed at all, by Ms. Binder that the lowest possible score is assigned to those non-participating hospitals on those four metrics, correct?

A. She didn't quote that part, but like I said, Leah very well could have said it. We can't control what a reporter reports.

Q. Do you know if she did?

A. I don't know. I don't staff her interviews. You'd have to ask her.

Q. Okay. So the hospital -- so I think your testimony is that the hospital at issue here is confused about the methodology; is that right?

A. That's what I -- that's how I read it. And that's how I read it at the time, too.

Q. Going back to one of my questions earlier: If a hospital is confused about the methodology, do you expect consumers -- isn't it fair to say that consumers would be confused by the methodology as well?

MS. BLAIR: Objection to form.

THE WITNESS: She's saying a local hospital leader. I have no idea who this person is, what their role is. They could very well have the same knowledge as a consumer, so I can't draw that inference.

MR. CHUNG: Okay. Let's go to tab 61. This will be 33, Exhibit 33.

(Bailey Deposition Exhibit 33 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Okay. Exhibit 33 is an e-mail chain from June 2024. And then you'll see a second part of the document, Final updates to Leapfrog hospital safety grade methodology for fall 2024.

Do you recognize this document?

A. I've seen it before. Yes.

Q. Okay. And what is it?

A. It looks like it's a draft of the final updates for the safety grade methodology for fall 2024.

Q. Okay. So on the page ending Bates 0454, Ms. Danforth writes to Ms. Binder, Mr. Austin, and copying Alexandra Campione, Hi, Leah and Matt. Alex did a great job responding to the public comments we received and finalizing the changes to the fall 2024 hospital safety grade methodology.

Is that correct? Is that -- Alexander [sic] Campione was responsible for responding to the public comments here?

A. I don't know. I'm not her manager. I don't know what she does. Like, I don't -- I don't know.

Q. You don't know what she does?

A. Like, I don't know how they divide up roles, but that's -- it looks like that's what Missy said. So...

Q. Okay. Did you -- let's put it another way.

As director of communications, did you regularly communicate with Ms. Campione about the change to the imputation methodology?

A. We talked about the changes. We -- not that I recall we talked about the public comments. That's typically separate.

Q. Okay. So do you know whether Ms. Campione finalized the changes to the imputation methodology?

A. I don't -- I don't know. That's what this says. It looks like she proposed this draft of the final changes, and they potentially provided edits. I don't think I was on this e-mail chain.

Q. Okay. Just looking at the next e-mail -- so Bates ending 0453 -- Ms. Binder writes, responding to Ms. Danforth, Thanks, Missy and Alex. This is a hard one to do.

Did you have an understanding as to what she meant by that?

A. I don't know what she meant.

Q. Okay. Did you have any conversations with Ms. Campione about this being a particularly difficult project to work on? The imputation methodology.

A. I don't -- I don't recall.

Q. Okay. You don't recall having any conversations like that with Ms. Campione?

A. We talked about the messaging. Any change comes with different challenges. I don't recall any.

Q. Any change comes with -- I don't understand.

A. Like -- can you restate your original question?

Q. Yeah.

Did you have any discussions with Ms. Campione about difficulties -- right? -- or challenges relating to the changes to the imputation methodology in fall 2024?

A. Yeah, I don't recall this specifically. I know that anytime we're getting a final update done, it can be challenging. There's a lot of people you have to collaborate with, and it's a big project. I think -- I mean, that's what I think.

Q. Generally speaking? I'm asking specific

to this particular change in the imputation methodology.

A. I don't know.

Q. You don't know?

A. I just said what I know.

Q. Okay. All right. Let's discuss the lawsuit itself.

When did you first learn about the lawsuit that's in front of us?

A. On April 30th.

Q. And was that the date the lawsuit was filed?

A. I think so.

Q. Okay. How did you learn about the lawsuit?

A. I was up late getting the website ready for the safe grade launch the next morning and got a call that it had been filed.

Q. Okay. Have you been involved in Leapfrog's response to the lawsuit?

A. From a communications perspective, yes.

Q. Okay. And what do you mean by that, from

a communications perspective you've been involved in the response to the lawsuit?

A. Well, in a lot of ways, there was -- we needed a public relations response right away because there were very aggressive lies being told by, actually, your firm in the media, and we needed to reply right away. So that was a public relations concern.

Q. Okay. So what specific things did you do as part of that effort?

A. We that evening, from my recollection, put a short statement up on the website. The next day we did a more detailed statement when we had a little more time.

We reached out to local reporters with publicly filed -- your publicly filed complaint.

Q. Anything else?

A. That's what I can recall right now.

Q. Okay. Who else has worked with you on this response to the lawsuit from a communications perspective?

MS. BLAIR: I'm going to just object to

the extent any of your communications involved lawyers. But you can answer it to the extent it did not involve communications with lawyers.

MR. CHUNG: Yes.

THE WITNESS: Can you repeat the question?

BY MR. CHUNG:

Q. Yes.

Who else has worked with you on this response to the lawsuit from a communications perspective?

A. Generally, CURA Strategies. Leah Binder has been involved. Missy Danforth, Karen Jupiter.

Q. Okay. And has the -- and CURA Strategies, am I correct that they have been -- that they were Leapfrog's PR consultant even before this lawsuit?

A. Yes. We've been working with them for a few years.

Q. And what role does CURA Strategies serve in the context of the response to the lawsuit?

A. They manage the majority of our media relations. So in this case, they did the same. They did some research on what the local media is like in the area and sent our statement and your clients' complaint.

Q. Okay. Do you remember whose idea it was to hire CURA in the first place? I'm not talking about with respect to the lawsuit, but just going back to when they first were hired.

A. It was a joint decision. I -- we did an RFP. We do RFPs every three to four years with our PR firms. This is the third firm I've worked with since I've been at Leapfrog.

Q. And what were the other two -- so there were two predecessor public relations firms that Leapfrog worked with before CURA Strategies?

A. Yes.

Q. Okay. And which firms were those?

A. The Stern Group was the first one when I first started. And then JPA Health Communications. And now CURA Strategies.

Q. So why did you move on from those two

other PR firms to CURA Strategies?

A. For Stern, they were hired before I started at Leapfrog. It's very normal for a comms manager to start and to choose a new firm. So I, as soon as I got comfortable with my job, did an RFP and chose a firm that I thought would meet our needs more.

With JPA, there was a lot of staff turnover at the agency, very normal for PR firms. They weren't meeting our needs. Decided to do an RFP. Chose CURA Strategies.

Q. Okay. And you've testified that you've worked with CURA Strategies for a few years now.

Is it since 2023?

A. Yes. Yes.

Q. Okay. So you've worked -- so CURA Strategies has been the only PR consultant since 2023 for Leapfrog; is that correct? Have there been any other PR consultants that you've worked with during that time?

A. Not that I can recall.

Q. Okay. So do you have a sense of how much

Leapfrog has paid CURA Strategies since 2023 while they've been the PR consultant?

A. We pay them about $1500 a month as a retainer.

Q. Okay. Does --

A. Sorry, I meant 15,000. Is that what I said?

MS. BLAIR: No. You said --

THE WITNESS: Sorry. 15,000 is how much we pay.

BY MR. CHUNG:

Q. Okay. So is it just -- over the last two or so years, is it correct that Leapfrog has spent about $400,000 on CURA Strategies?

A. I'm not great at mental math, but that seems correct.

Q. Okay. And then, going forward, do you have a budget for how much you're spending on CURA Strategies?

A. In our budget, it's still the 15,000 a month.

Q. Okay. And for 2025 and 2026, is it

accurate that Leapfrog has budgeted about $180,000 for CURA Strategies?

A. Per year?

Q. For 2025 to 2026. Yes.

A. Per year, that seems right.

Q. Okay. So that roughly translates to about the $15,000 per month kind of retention arrangement you have with CURA Strategies?

A. Correct.

Q. Okay. How would you describe -- you testified that you've been involved in the communications aspect -- right? -- of responding to the lawsuit.

How would you describe Leapfrog's communication strategy regarding the lawsuit?

MS. BLAIR: Objection to form.

Also, to the extent it calls for any attorney-client communications, do not reveal those. But to the extent it calls for -- you can answer that without revealing conversations your attorney, you need to answer.

MR. CHUNG: Yup.

BY MR. CHUNG:

Q. I'm not interested in conversations with counsel.

A. Right.

Q. But how would you describe that -- the communication strategy of the organization regarding the lawsuit.

A. I think our public statement on our website is a great example of what our strategy is, which is just to counter the false claims in the complaint and to stand -- that we stand behind our missions, that we are transparent, that we are accurate.

Q. Okay. Has Leapfrog sought to promote negative publicity regarding the five plaintiff hospitals?

A. To counter false claims that we were attacked with.

Q. Okay. And how have you gone -- how have you achieved that, promoting negative publicity about the five plaintiff hospitals?

MS. BLAIR: Objection to form.

THE WITNESS: I wouldn't say that -- can you say it again?
BY MR. CHUNG:
Q. Yes.
How have you gone about doing that, promoting negative publicity regarding the five plaintiff hospitals?
MS. BLAIR: Same objection.
THE WITNESS: I wouldn't say negative publicity. I mean, we've said -- we promote the statement that's on our website, which is just reiterating that these are the grades, that they are poor grades. We stand behind our methodology. You know, click on the safety grade link and see their full grade.
BY MR. CHUNG:
Q. And that is -- that's just on the website, correct?
A. Yes. It's a statement on the website and we direct press to that.
Q. Okay. Any other measures that you have taken with respect to promoting negative

publicity about the plaintiff hospitals in response to the lawsuit?

MS. BLAIR: Objection to form.

THE WITNESS: We ran some Google ads.

BY MR. CHUNG:

Q. Can you tell us about that?

A. We have a Google ad grant, and we regularly have, I'd say, like, 170-ish Google ads running at a time, and we change them up, depending on what's going on. Usually, because of what we do, we want people to be searching their local hospital ratings.

So it's normal for us for about, I'd say, half or more of those Google ads to be directly linking to hospitals' survey results or safety grade results. So we had -- for just a couple of the months, we had five of those running towards the plaintiff hospitals.

Q. Okay. And how was that -- so just to be clear, this Google ad strategy was if -- can you just kind of go step by step what you had Google do with respect to the strategy?

A. We have a -- Nonprofit Megaphone is the one that administrates -- administers the ads. But as far as my knowledge goes, it's just a direct link to the safety grades for the five hospitals.

Q. Okay. How do -- when does this direct link show up, according to the strategy, according to what you're describing?

A. I don't know. I assume -- I'm not a Google ad expert, so we have a contractor who works on it.

From my understanding, it's when you Google the hospital, I think.

Q. So when you run a Google search for one of the hospital names, the hospital safety grade will show up? How does it work exactly?

A. From my understanding, in Google ads, you'll see "sponsored," and you can click on it. So it would say, Leapfrog hospital safety grade.

Q. So upon a Google search for one of the plaintiff hospitals, a sponsored advertisement linking to that particular hospital's hospital

safety grade will show up for the person running the search, correct?

A. Yeah, not every person, but yes.

Q. What do you mean by not every person?

A. Like, if you look at the analytics, I think five people saw it, so clearly it's not every person. I hope -- I mean, I think there's more than five people searching for these hospitals. So...

Q. Okay. Who -- so who was responsible -- kind of who was tasked with devising Leapfrog's communication strategy regarding the lawsuit?

A. Can you restate the question?

Q. Yeah.

Who was tasked? Was there a specific person that was tasked with putting together Leapfrog's strategy regarding the lawsuit?

A. I'd say me. It's my primary responsible.

Q. Okay. How was Leah Binder involved in it, if at all?

A. She's involved in almost everything at Leapfrog.

Q. Okay. So how was she involved in the communication strategy?

A. Approving it. Giving input.

Q. Okay. Was it also approved by Leapfrog's board?

A. The board usually doesn't get involved in these kinds of things, but the board knew what we were doing.

Q. Okay. Did they know that you were engaging in this Google ads strategy as well?

A. I'm not sure. It's a very, very small part of what we've been doing. It wasn't the focus. It was just one tiny part of it.

Q. Okay. So the question is, was the board aware of this Google ad strategy?

A. I don't know. They don't know everything -- we don't tell them every single thing we are doing. That would be way too much information.

Q. Okay.

A. But we give them in our quarterly reports, which I believe you've seen, we give

Google ad and Google analytics information.

Q. Okay.

MR. CHUNG: Let's go to tab 30. This will be Exhibit 34.

(Bailey Deposition Exhibit 34 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Exhibit 34 is an e-mail chain from March of 2025.

What's being discussed here with Ms. Jupiter?

A. I don't remember. I don't remember this.

Q. In the first sentence you write that you looked at articles that Ms. Jupiter sent you; is that right?

A. That's what I said. Yes.

Q. Okay. Do you have an understanding as to why Ms. Jupiter was sending these articles to you?

A. I don't remember this. Let me read it.

Q. Okay. Take your time.

A. I don't remember this.

Q. Okay.

A. Looking at the time frame, it looks like it may have had something to do with the letter sent from your client.

Q. What do you mean by that?

A. Just looking at the time frame in March, that I know that there were letters sent.

I wasn't involved in it, but I know that a lot of these things were referenced in the complaint letters.

Q. So are these -- are these articles, are these references to instances in the past when hospitals or other parties had criticized or challenged Leapfrog's hospital safety grade system?

MS. BLAIR: Objection to form.

THE WITNESS: I think that they were -- it looks it me that they were things that, yeah, your firm brought up in the complaint, in the letters.

BY MR. CHUNG:

Q. Okay. And how generally did -- how generally did Leapfrog respond to these types of complaints?

MS. BLAIR: Objection to form.

THE WITNESS: I don't understand the question.

BY MR. CHUNG:

Q. How did -- with respect to all these prior instances of hospitals challenging or complaining about the hospital safety grades, what was Leapfrog's general strategy of responding to these complaints?

A. I mean, these are ten -- eight, ten very unique situations. There isn't a -- like, we handle everything on a case-by-case basis. I...

Q. How were they very unique situations?

A. We're talking about eight different instances. We're -- like, they're all different bullets. There's no connection that I see.

Q. Okay. But how are they -- why do you say that they're very unique? What about them makes

you say that they're very unique?

A. They're different. Like, we're talking about a study, talking about a report. And I don't have any of the attachments, I can't tell you specifics on these. I don't remember all of these.

Q. Okay.

A. Mission Hospital, which we mentioned earlier...

Q. So you don't have a recollection as to why Ms. Jupiter was collecting and sending you these articles?

A. I don't remember.

Q. Okay.

MR. CHUNG: Let's go on to 32. This will be Exhibit 35.

(Bailey Deposition Exhibit 35 marked for identification and attached to the transcript.)

MR. CHUNG: Let's do 33 as well, the talking points.

(Bailey Deposition Exhibit 36 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. So Exhibit 35 and 36, we have got an e-mail chain with Ms. Jupiter sending updated talking points to regional leaders -- right? And then Exhibit 36 are the talking points themselves.

Do you recognize these documents?

A. Yes.

Q. All right. Why are talking points about the lawsuit being sent to Leapfrog's regional leaders?

A. In my understanding, we wanted them to be informed in case they had questions.

Q. Okay. What's in those talking points?

A. Really nothing different than what's in our public statement on our website.

Q. Okay.

A. It's just organized a little differently.

Q. Can you just tell us what's in the

talking points?

A. Sure. Starts with top-line messaging. We talk about hospital-specific performance. And then a section countering false claims.

Q. All right. So the top line, I think, is -- the top-line message is, We encourage you to focus on the very poor performance of these hospitals on patient safety, first and foremost, correct?

A. Oh, you're reading the --

Q. Yeah, the talking points --

A. The preamble?

Q. -- Exhibit 36.

Do you see that?

A. Yes, I see that.

Q. Okay. And you are -- above that you say that We prefer you to avoid talking directly to the press about the lawsuit. Instead, you may direct them to Lauren -- to you.

Why did you express a preference to have them avoid talking directly to the press about the lawsuit?

A. Just standard operating procedure for us.

Q. And why is that standard operating procedure? Is that standard operating procedure specific to the regional leaders?

A. For the regional leaders, yes. I mean, they don't know everything about Leapfrog and they really only know what their coalition does. So that's just standard operating procedure for press. We always prefer that they direct them to us.

Q. Okay. Now, turning to the second bullet point under the countering false claims -- this is on the second page, Bates ending 6116 -- you'll see there that Hospital participation in the Leapfrog hospital survey has no automatic up or down impact on a hospital's safety grade.

Do you see that particular bullet point?

A. Yes.

Q. All right. But doesn't declining to participate in the survey automatically drop four of the metrics down to the limited achievement score?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: Yeah, I've already talked about this. No, it -- I stand by the statement, it doesn't have an automatic up or down impact. A hospital could do the survey and score the same.

BY MR. CHUNG:

Q. That's not my question.

So my question was, doesn't declining to participate in the survey automatically drop four of the metrics down to the limited achievement score?

A. No, it's not automatic. Because if they -- if they had the data and they scored that, it would be...

Q. That's --

A. I don't understand the question.

Q. No.

My question is, for hospitals that do not participate in the survey -- right? -- aren't their scores on the four imputed metrics

automatically assigned the limited achievement score?

A. For those four --

Q. Yes.

A. -- not for the entire safety grade.

Q. That's been my question. For those four --

A. Okay.

Q. -- imputed metrics.

A. Yes, for its four imputed metrics.

Q. Okay. So with respect to this bullet point here that you're asking the regional leaders to basically disseminate, is it accurate to say that hospital participation or non-participation in the survey has no automatic up or down impact on a hospital's safety grade?

A. Yes. I already said yes. We stand by these.

Also, we're telling them, do not talk to people. This is just giving them background information.

Q. Okay. Would you agree that

non-participation in the survey at least raises the risk of that hospital getting a lower overall hospital safety grade?

A. Possibly. As I've testified before, there are hospitals that get As that don't do the survey.

Q. Okay.

MR. CHUNG: Let's go to tab 34. This will be Exhibit 37.

(Bailey Deposition Exhibit 37 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. So it's an e-mail chain from May of 2025, and it looks like CURA Strategies, a Lula Hailesilassie, is attaching a day one coverage report from the hospital safety grade announcement.

Do you see that?

A. Yes.

Q. Okay. And then you, responding to -- or forwarding this to Ms. Binder, Flagging this in

case you didn't see it. There hasn't been anything new today on the lawsuit that we've seen in the press.

Do you see that?

A. Yes.

Q. Okay. And Ms. Binder responds, Thanks, Lauren. This coverage is great. Let's make a goal to have one story at minimum every three days about Tenet or one of the hospitals.

Now, you forward that message to Ms. Jupiter with just an ellipses, dot-dot-dot.

What did you mean by that?

A. From what I can recall, like, we need to talk about this.

Q. To Ms. Jupiter?

A. Yes.

Q. What do you mean by -- what did you need to talk about?

A. Just I had never heard Leah say this before. So -- she's my boss. I want to talk to her about it.

Q. What about this directive did you need to

talk about, making it a goal to have one story at a minimum every three days about Tenet or one of the hospitals?

A. Just that it was something that Leah said and we hadn't discussed the strategy and I wanted to talk to my boss about it. That -- I...

Q. Did you have concerns about what Leah was directing you to do?

A. I don't think I understood. And we didn't do it, so...

Q. I'm not asking whether it eventually happened or whether you eventually did it.

But did you have concerns about what Leah was directing you to do here?

A. I didn't understand the goal of it. This -- I can't recall exactly what -- this week was incredibly stressful for us.

Q. Okay. So you didn't understand the goal of it.

Did Ms. Jupiter share that concern about what the goal of having this many stories was?

A. I don't recall this specific conversation

that we had. I only recall the outcome.

Q. Did you raise your question with Leah as to what the goal of this strategy was?

A. I'm sure I did. I don't remember exactly. Like I said, I only remember the outcome.

Q. Okay. Not asking about the outcome. Right?

What do you remember about discussions you had with Ms. Binder about this strategy? And the strategy, to be specific, is what she's directing you to do here, right? One story -- at least one story every three days about Tenet or one of the hospitals.

A. From what I remember about the conversation, the follow-up conversations we had, understanding what she meant from it was simply that we needed to do what we could to counter all the false claims that were out there. We didn't know what else was coming. We saw Mary Beth Maloney saying a lot of very untrue things in the press. We didn't know what else was planned.

Leah wanted to make sure we had a plan and that we could defend ourselves.

That's what she meant, in my understanding.

Q. So how was having one story at minimum every three days about Tenet or one of the hospitals consistent with that, with what you just described?

A. I mean, I'd say just, again, getting our side out there. And to me, it was about the safety grades. I mean, if you look at our statement, that's the very first thing, we stand behind our safety grades, here's a link to them, making sure the press locally know what the safety grades were.

Q. Okay. Did you talk to Ms. Jupiter about Ms. Binder's request after you had forwarded this e-mail?

A. I really -- I don't remember the specifics.

Q. I understand. But a moment ago you didn't remember your discussions with -- anything

about your discussions with Ms. Binder, but then you actually described them later on.

So can you give another shot at trying to remember discussions with Ms. Jupiter about this?

MS. BLAIR: Objection to form.

THE WITNESS: I told you I remembered the outcome, and the outcome was that discussion I just explained. And that's all I remember.

BY MR. CHUNG:

Q. Okay. What kinds of stories? So the directive here is to have one story at minimum every three days about Tenet or one of the hospitals, right?

A. That's what it says.

Q. All right. What about Tenet and/or the hospitals did Ms. Binder want stories about every few days?

A. I don't recall. We didn't do it, so I -- I don't know what she meant, specifics.

Q. Okay.

MR. CHUNG: Let's go to tab 35. This is Exhibit 38.

(Bailey Deposition Exhibit 38 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. So this is an e-mail chain from June 3rd, 2025 -- or May and June 2025.

And in the top e-mail, Ms. Bailey, to Ms. Jupiter, there is a section about the lawsuit itself, correct?

A. Correct.

Q. We've also been proactively pitching updates around the Tenet Healthcare lawsuit to national and local press to own the narrative.

Do you see that?

A. Yes.

Q. Okay. So these are outreaches to national and local press outlets proactively to give them updates, correct?

A. It's what I testified to before, that we were sending the complaint and our statement. Again, in this situation, we're being attacked by a large healthcare system. We're a very small

nonprofit. We're doing anything we can to defend ourselves and our reputation because this is a huge reputational risk for us.

Q. Right. So what you just testified to now and earlier were basically reactive strategy, right? Reactive outreaches to press outlets to counter what you're alleging are falsehoods, correct?

A. Correct. Depends on how you look at it.

Q. So -- but here, what you're describing to Ms. Jupiter are proactive pitching updates around the Tenet Healthcare lawsuit to all these press outlets to own the narrative.

A. Right.

Q. Do you see that?

A. Yes.

Q. So this is -- fair to say that this is a different, but complementary strategy to the reactive measures that you described?

A. It's the same strategy. I think it just depends on how you look at it. We're at a disadvantage when we're the ones being sued and

we're the ones being attacked in the press.

And so yes, I could see how you could see that you might think it's reactive. But when I use this word, proactive, what I remember is that we wanted to send the complaint and countering the false claims to reporters before we got a reactive question from them.

Does that make sense?

Q. So what were you -- so you sent them the complaint and the Leapfrog statement.

What else were you sending to these press outlets in this proactive approach?

A. That's all I recall. Just anything that's publicly filed.

Q. Okay. You're saying here that you're proactively pitching updates around the Tenet Healthcare lawsuit to national and local press.

What were these updates?

A. Anything that's publicly filed in the suit.

Q. Okay. So can you give us -- can you kind of outline for us what those updates were?

A. I am not a lawyer, so I don't know these terms.

Q. I don't think you have to have a lawyer.

A. There was a -- well, there are. There are documents that were filed by you, your firm.

Q. Okay.

A. So --

Q. So what were those --

A. Preliminary injunction. I remember that one.

Q. Yeah.

A. I don't remember the rest of them.

Q. Okay. In addition to providing filings -- right? -- from the lawsuit, were you supplying these -- the national and local press outlets with any other information or commentary on the filings?

A. Leah did some interviews.

Q. Okay. How was -- just looking at the second part of this sentence, you're pitching -- proactively pitching updates to own the narrative.

How was Leapfrog trying to own the narrative? What was this referring to?

A. Just a standard PR term. Again, in the situation we're in, we're in the disadvantage. We're the ones being sued. We're the ones being attacked in the press. We're a very small nonprofit. Our strategy was to do what we could to own the narrative, to stand up for ourselves, to show that we are transparent.

Q. Okay. How were -- what was the narrative that you were trying to own?

A. That our safety grades are transparent and accurate; we're not pay to play.

Q. Okay. Was part of that -- was part of that -- did you include in that narrative how non-participating hospitals are assigned their safety grades?

A. I don't recall. I don't think so.

Q. Okay. Was that, I think in your words earlier, too detailed to be included in the narrative?

MS. BLAIR: Objection to form.

THE WITNESS: That wasn't the story that we were pitching.

BY MR. CHUNG:

Q. Okay. Because it was inconvenient to your story, correct?

MS. BLAIR: Objection to form.

THE WITNESS: No. We're pitching the story that your firm is attacking our small nonprofit that's trying to do a public service. That's the story we're pitching.

BY MR. CHUNG:

Q. Okay. But as part -- what you're calling an attack, wasn't that an attack on Leapfrog's methodology for arriving at safety grades for non-participating hospitals? Wasn't that part of what you're calling the attack on Leapfrog?

A. The attack I'm referring to is what Mary Beth Maloney did in the press.

Q. Okay. But I'm asking you, wasn't the attack that you're alleging that you were responding to -- right? -- part of that attack was a criticism or a challenge to Leapfrog's

methodology for non-participating hospitals; isn't that correct?

A. I mean, your complaint was over 50 pages long. We're not going to outline every single thing in it, but we attached it, shared it with reporters proactively.

Q. Okay. I'm asking you to respond to my question. All right?

Wasn't the criticism or challenge to the methodology for non-participating hospitals part of what you're calling the attack on Leapfrog?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: It was one of the elements in this 50-plus page complaint. Yes.

BY MR. CHUNG:

Q. Okay. And it wasn't part of your narrative to comment -- to even comment on that criticism of the methodology, correct?

MS. BLAIR: Objection to form.

THE WITNESS: It wasn't our primary focus.

BY MR. CHUNG:

Q. Okay. And is it fair to say that it wasn't part of your primary focus because it was, in fact, a valid criticism of -- of the methodology?

MS. BLAIR: Objection to form.

THE WITNESS: No.

MR. CHUNG: Okay. Let's go to 36. Tab 36.

This is Exhibit 39.

(Bailey Deposition Exhibit 39 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Ms. Bailey, Exhibit 39 is an e-mail exchange with CURA Strategies, and it includes a meeting agenda with Leapfrog and CURA.

Do you see that?

A. Yes.

Q. All right. And on that agenda, there are a handful of items.

The Tenet lawsuit coordination, what is

that referring to?

A. What we just talked about, the press strategy.

Q. Okay. And underneath that it looks like kind of an indentation: Patient story.

What is that referring to?

A. We, at the time -- so May 8th -- again, this was the first week of the lawsuit. We were really trying to figure out what our strategy was, what was going on. We were considering looking at patient stories. We had several patients reach out to us with stories. We were looking into that. We didn't pitch any to press at this time.

Q. Okay. So this particular bullet point or this idea did not come to fruition eventually?

A. Not at this time.

Q. Okay. And why not?

A. We just decided not to pursue it right now.

Q. Understood that you decided not to pursue it. But why not?

A. We just -- we just didn't do it. I don't -- there were so many things going on at this time, it just didn't -- it was not the priority anymore.

Q. Were there not enough patient stories to support that project?

A. No, that's not it.

Q. Were the --

A. We just -- sorry, go ahead.

Q. Were the patient stories not what you were looking for in terms of this strategy?

A. No. We were just brainstorming strategies and decided to not go with that one.

Q. Okay. The second kind of indented point is paid media campaign.

What is that referring to?

A. The Google ads.

Q. Okay. The Google ads that you were testifying to earlier where the hospital safety grades for the five hospitals pop up upon a search for those hospitals?

A. Correct.

Q. Okay. Any other aspects of a paid media campaign that this included?

A. Not that I can recall.

MR. CHUNG: Let's go to tab 37. This will be Exhibit 40.

(Bailey Deposition Exhibit 40 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. Okay. This is a series of Slack messages between yourself, Ms. Jupiter, and Nate Longmore from May 12 of 2025.

A. Yes. I vaguely remember this.

Q. Okay. What's being discussed here?

A. I believe we were on the call -- a call, and we were discussing the Google ads.

Q. Okay. And you write -- or Ms. Jupiter writes up top, She has no clue how this works.

Who is the "she" she's referring to?

A. I think Leah. She doesn't know how Google ads work.

Q. Okay. So just to be specific, what is

she referring to? What does Ms. Binder have no idea -- has no clue about how what works?

MS. BLAIR: Objection. Form. Asked and answered.

THE WITNESS: Yeah, I just said. The Google ads -- she doesn't understand how Google ads work.

BY MR. CHUNG:

Q. What is she not understanding about it?

A. She doesn't understand, like, how they work. Like, just generally how they work.

Q. Okay. What did you -- you responded with this emoji on the next line. What did you mean by that emoji?

A. I don't know. It was a really stressful call. I send a lot of emojis. I can't even tell what it is.

Q. Okay. And Ms. Jupiter next asks, Why, though? What would be the point?

And you responded, I don't get it.

And you note, further below, I'm afraid to ask.

What did you not get?

A. I don't recall everything about this conversation. There was back and forth about what we would do with Google ads. I...

Q. Okay. Were you expressing that you did not get or you did not understand what Ms. Binder was trying to achieve with this Google ads idea?

A. That's what it looks like. Yeah.

Q. Okay. And what were you afraid to ask?

A. I don't remember.

Q. Okay. Why were you afraid to ask?

A. I don't remember.

Q. Now, further down, you wrote that Leah said she wants to know if we can do ads where, if someone searches those five hospitals, it shows an ad with their safety grade URL and says they have an X grade.

Why did Ms. Binder want to know if we can do ads where, if someone searches those five hospitals, it shows an ad with their safety grade URL? Why did she want to know about this?

A. I was just recapping to Nate what she had

said because his WiFi was unstable, so it's just what I testified to before.

Q. Yeah, but why did Leah want to know about this?

MS. BLAIR: Objection to form.

THE WITNESS: Can you restate the question?

BY MR. CHUNG:

Q. Yeah.

So you wrote, Leah said she wants to know -- right? -- if we can do ads -- I'm not going to repeat everything, but just this line here.

Why did she want to know this?

A. She wanted us to do it.

Q. Okay. Did Ms. Binder want to further publicize the hospital safety grades?

A. I already testified to what we did the Google ads for. But again, at this time, we were being attacked in the press. And we're a small nonprofit. Trying to figure out what resources we have.

Q. So my question was, did Ms. Binder want to further publicize the plaintiff hospitals' safety grades through this Google ads proposal?

A. Yes. We want to publicize the safety grades.

Q. Okay. And was the purpose of that, a further publicizing the plaintiff hospitals' safety grades, to show more people the safety grades that had been assigned to these plaintiff hospitals?

A. I think more than anything it was just feeling like there was something that we could do in the midst of feeling attacked, and this was something we could do. Got five clicks. Not like a ton of people saw the ads.

Q. But putting aside kind of the result here -- right? -- was the idea behind tying these safety grades to the Google ads was to get the maximum possible impact?

MS. BLAIR: Objection. Form.

THE WITNESS: Can you restate the question?

BY MR. CHUNG:

Q. Were you trying to reach as many people as possible in publicizing the hospital safety grades of these hospitals?

A. Clearly, we weren't, since we got five clicks, it wasn't, like, we put a lot of effort towards it, so no.

Q. I'm not talking about the results. Right? But was the goal here to reach as many people as possible?

A. I don't think so.

Q. Okay. Then what was the goal here?

A. I don't know what the goal was. That's what this whole Slack conversation is about.

Q. All right. Did you think this was a good idea?

A. At this point, like I said, this was a super-stressful meeting. It was a very stressful couple of weeks. I'm one of two communications persons dealing with all of this stuff. Like, I was just trying to figure out my life in general at this point.

Q. Ms. Binder [sic], that's not responsive. Did you think that this was a good idea?

MS. BLAIR: Objection to form.

THE WITNESS: Ms. Bailey.

BY MR. CHUNG:

Q. Ms. Bailey. I'm sorry.

Did you think that this was a good idea?

A. I didn't think it would make an impact, no.

Q. Okay. What did Ms. Jupiter think about this idea?

MS. BLAIR: Objection to form.

THE WITNESS: She doesn't understand Google ads, so she -- I mean, it's clear in the Slack conversation she had no idea what was going on.

BY MR. CHUNG:

Q. Okay. Let's go to the next page of the Slack messages. This is Bates ending 1321. Okay? And there's a continuing discussion, it looks like, of this Google ads idea.

And at 2:36 p.m., Ms. Jupiter writes, So

she just wants to harass them?

And Mr. Longmore responds, I love that the strategy is to become a Disney villain.

Is the "she" here Ms. Binder that they're referring to?

A. Yes. I think Karen was trying to figure out what she was saying.

Q. Okay. And is the "them" the plaintiff hospitals?

A. I assume so, yes.

Q. Okay. Was that the view -- was that your view, that Ms. Binder was -- just wanted to harass the plaintiff hospitals by having their hospital safety grades pop up with Google searches?

A. My view is that we were trying to do what we could to defend ourselves.

Q. I'm talking about specifically with this idea. Right? With the -- with the Google results.

Was it your view that this was just a measure to just harass the plaintiff hospitals?

A. No, I don't think so.

Q. Okay. So it wasn't -- it looks like it was Ms. Jupiter's view that this was a form of harassment; is that right?

A. She was --

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. Is that --

A. She wasn't asking. I don't think she -- she wasn't saying that she was harassing them. She was asking what is the strategy; what is she saying? That was my interpretation of her message.

Q. Okay. In discussions -- putting aside the Slack messages, did Ms. Jupiter express to you that she believed that this strategy was just harassment of the hospitals?

A. No. I don't remember her saying that.

Q. Okay. Now, Mr. Longmore writes, I love that the strategy is to become a Disney villain.

What did Nate mean here?

MS. BLAIR: Objection.

BY MR. CHUNG:

Q. Or Mr. Longmore.

MS. BLAIR: Objection to form.

THE WITNESS: Nate, he's just making a joke. He -- that's kind of his mood in the office. He just tries to lighten the mood. We were extremely stressed out these weeks, and that's just -- it's a normal -- he just makes jokes.

BY MR. CHUNG:

Q. Okay. Do you agree that, with this Google results strategy, that Leapfrog was responding to this lawsuit by becoming a Disney villain? Did you agree with this sentence?

MS. BLAIR: Objection.

THE WITNESS: No. I knew it was a joke. Like, that's how I read it. I read it as a joke.

BY MR. CHUNG:

Q. Okay. But it follows Ms. Jupiter's comment that she was wondering whether Ms. Binder just wanted to harass the hospitals -- right? -- with this Google ads idea; is that right?

A. Yes. He sent it right after.

MR. CHUNG: Let's go to tab 39. This will be Exhibit 41.

(Bailey Deposition Exhibit 41 marked for identification and attached to the transcript.)

THE WITNESS: Can I ask the time? I'm just curious how much time has passed.

VIDEO TECHNICIAN: 5 hours and 49 minutes.

THE WITNESS: Thank you.

BY MR. CHUNG:

Q. Okay. Exhibit 41 is an e-mail chain involving Nonprofit Megaphone. I think you testified to it earlier, but what is Nonprofit Megaphone?

A. They're a vendor that administrates our Google ads.

Q. Okay. And just looking through this e-mail chain, is this a discussion about how Nonprofit Megaphone is helping you use the grant from Google for nonprofits?

A. Can you restate the question?

Q. Yes. Is this a discussion about how Nonprofit Megaphone is helping Leapfrog use a grant from Google for nonprofits?

A. Yes. It's about our Google ads.

Q. Okay. So what is -- I want to direct your attention to -- so what exactly are the services that Nonprofit Megaphone provides to Leapfrog? What do they do for you?

A. We tell them what we want to promote, and they develop and administer the Google ads based on the money we get from Google every month as part of our grant.

We can only publicize our website. That's what we do.

Q. Okay. Turning your attention to Bates ending in Leapfrog 1876.

A. Okay.

Q. You'll see there's an e-mail from you to Noah Shelgren at Nonprofit Megaphone and others.

There's a list of what looks like ZIP codes -- right? -- and cities and states.

What's the purpose of all of this?

A. It looks like we are geotargeting these markets.

Q. Okay. So this is a way for -- this is a list of markets that -- what is -- what do you mean by geotargeting markets?

A. Just what I said in my e-mail, that it was the -- so the Google ads that we have been discussing --

Q. Right.

A. -- would just go to these specific markets.

Q. Okay. And so when you look at the preceding page, Bates ending in Leapfrog 1875, Mr. Longmore's e-mail to Noah, he writes, We'd also like to set it up so that, when someone searches for any of the five specific hospitals, it shows an ad displaying their hospital safety grade.

Do you see that?

A. Yes.

Q. And this is kind of the proposal or the

idea that we've been discussing so far, correct?

A. Yes.

Q. Okay. And then the five plaintiff hospitals are listed there?

A. Yes.

Q. Okay. Now, Mr. Shelgren responds, Hi, Nate -- and this is going on to Bates ending in 1874 -- I believe we should be able to do this. It's possible that Google might flag specific hospital names, but as far as I know, this wouldn't break any of the regulations for the grant.

What do they mean by that?

MS. BLAIR: Objection to form.

THE WITNESS: I'm actually not sure because we do regularly run links to specific hospitals' ratings, so I'm actually not sure.

BY MR. CHUNG:

Q. Okay. How much in the Google grant money has Leapfrog spent on the response to this lawsuit?

A. For the Google grant?

Q. Yes.

A. Does it say in here? Not a lot. Looks like 75 percent impressions and five clicks. That's very, very low in comparison to the rest of our ads.

I don't know what that equates to in dollars.

Q. Okay.

MR. CHUNG: Let's move on to tab 50.

BY MR. CHUNG:

Q. Okay. Before, actually, we go into the document, we discussed earlier about the board meetings.

How often does Leapfrog's board of directors meet?

A. Quarterly.

Q. And do you help prepare materials for these board meetings?

A. Sometimes I help prepare the communications updates as part of Leah's CEO reports.

Q. And do you attend the meetings?

A. Yes. I take minutes during the meetings.
Q. So every quarterly board meeting, you're there taking minutes at the meetings, correct?
A. Unless I am out for some reason. Yes.
Q. Okay. Do you ever present at the meetings?
A. Not usually.
Q. All right. In the case -- in the instances that you do, what do you typically present on?
A. I don't recall having a specific presentation. Typically, I'm just there to take minutes.
Q. Okay.
MR. CHUNG: So I -- this will be Exhibit 42.
(Bailey Deposition Exhibit 42 marked for identification and attached to the transcript.)
BY MR. CHUNG:
Q. So Ms. Binder, this is a document -- Ms. Bailey, this is a document that was produced

to us. It had a file name, board notes for ME 6/25.

We don't have a parent e-mail or anything that this was attached to.

But with that said, is this document familiar to you?

A. Let me read it.

Q. Sure. And I can represent that this document, actually, came from your custodial files.

A. Okay. Yes, it looks like it's maybe pasted from an e-mail with counsel.

Q. Okay. So is this document familiar to you?

A. Not immediately.

Q. Okay. Did you participate in drafting this document?

A. I don't remember this document.

I don't know where this document originated from, but --

Q. Okay. Does the document, just reading through the document, refresh your recollection

as to whether you presented at any board -- at a board meeting regarding communication strategies?

A. We did have a special meeting with the board about the lawsuit with counsel.

Q. Okay. So I'm just going to focus on a few items here.

So under the -- on the first page, Bates ending 21, there's a slide 2. Right? Do you see that?

A. Yes.

Q. Up top. It reads, Our overall goal is to make it clear to all hospitals that Leapfrog will not compromise or back down. We will make it painful for Tenet by drawing further attention to their very poor performance with strategic media coverage in local and national press?

Do you see that?

A. Yes.

Q. Okay. Is it correct to say that Leapfrog's use of the Google advertisements was part of this plan to make it painful for the plaintiff hospitals?

A. That's -- no, that's not what we said. We're talking specifically about media coverage in this.

Q. Okay. So media coverage does not include the Google advertisement strategy?

A. I wouldn't include that as part of media coverage.

Q. All right. But the media coverage itself, does that include the efforts to put out a story about Tenet or one of the plaintiff hospitals at minimum every three days? Is that part of the strategy to make it painful for the hospitals?

A. That didn't -- that wasn't our strategy. That's just something that was brought up in an e-mail.

Q. Right. But was that the intent of that strategy, to make it painful for the hospitals?

A. Again, we're being attacked by Tenet Healthcare, one of the biggest systems in the country. We're a small nonprofit. So we're trying to defend ourselves. That's what this

means to me.

Q. But would you agree here -- right? -- that the intent behind that strategy was to make it painful for Tenet by drawing further attention to their very poor performance?

MS. BLAIR: Objection to form.

THE WITNESS: Again, we're just defending ourselves.

BY MR. CHUNG:

Q. Okay. Can you just respond to the question?

Is this an accurate description of the media strategy, to make it painful for Tenet and the plaintiff hospitals?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: I mean, that's what's written.

BY MR. CHUNG:

Q. Okay. Do you recall -- many of these -- of what's -- much of what's in this document seems to correspond to slides.

Do you remember preparing a slide presentation that corresponds to these comments?

A. Vaguely. Again, this looks like it's referring to a meeting that we had with counsel.

Q. Now, when we move -- if we go to the third page of the document -- this is Bates ending 2158, Ms. Bailey -- it reads, Here's an overview of what's next for our media strategy. Leah wrote an op-ed about an experience she had with her grandmother at Delray, one of the hospitals in the suit, in 2014 when they had an A grade. We are actively pitching this to local press now.

Were you involved in putting together that op-ed?

A. Leah wrote it, I edited it, and Kara pitched it.

Q. Okay. Next, we will file our motion to dismiss, as Kim mentioned, this week and will share that with reporters.

And then, the third paragraph there is, Leah and Karen van Caulil are visiting Jupiter

Medical Center, which is a straight-A-hospital in the area, with some of Karen's employer members. We will pitch some in-person media interviews for Leah while she's in town.

That particular paragraph, who is Karen van Caulil?

A. She's on our board and she's our regional leader for Florida.

Q. All right. And Jupiter Medical Center, is that one of the hospitals in the same market or similar market as the five plaintiff hospitals?

A. To my understanding, yes.

Q. Okay. So it's one of the kind of competitor hospitals to at least one of the plaintiff hospitals; is that right?

MS. BLAIR: Objection to form.

THE WITNESS: I don't know who the competitor hospitals are, but I know it's in the area.

BY MR. CHUNG:

Q. Okay. And so this is under an overview

of what's next for the media strategy.

How was this visit by Ms. Binder and Ms. van Caulil to Jupiter Medical Center part of the media strategy related to the lawsuit?

MS. BLAIR: Objection to form.

THE WITNESS: This didn't end up happening -- sorry, what was the question?

BY MR. CHUNG:

Q. My question is, putting aside whether it happened or not --

A. Right.

Q. -- right? -- how was this visit by Ms. Binder and Ms. van Caulil to Jupiter Medical Center part of the media strategy in response to the lawsuit?

MS. BLAIR: Objection to form.

THE WITNESS: I testified before that, generally, our strategy for media is we prefer to talk about improvement, positive stories. This is a positive story in the market. So -- counteracting some negative stories.

BY MR. CHUNG:

Q. Were there negative stories about Jupiter Medical Center that you were trying to counteract as part of the lawsuit?

A. Oh, no, that's not what I meant. I meant the other stories in the market are all about D- and F-hospitals.

Q. Okay. So how was a visit to Jupiter Medical Center part of this media strategy related to the lawsuit?

MS. BLAIR: Objection to form.

THE WITNESS: We were going to pitch it to -- it says right here, we're going to pitch it to press that we're going to Jupiter Medical Center.

BY MR. CHUNG:

Q. I understand that's what it says. But why? Why was a visit to Jupiter Medical Center part of the media strategy for responding to the lawsuit?

MS. BLAIR: Objection to form.

THE WITNESS: Like I said before, we --

our strategy was to tell a positive story in the market.

BY MR. CHUNG:

Q. Okay. Was the purpose here to highlight Jupiter Medical Center and to steer patients or consumers away from the plaintiff hospitals?

A. No.

Q. Okay. So I'm going to ask again: What was the purpose, in the context of the lawsuit, of Ms. Binder and Ms. van Caulil visiting Jupiter Medical Center --

MS. BLAIR: Objection to --

BY MR. CHUNG:

Q. -- and pitching in-person media interviews there?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: Just to highlight a straight-A-hospital.

BY MR. CHUNG:

Q. Okay. So by highlighting a straight-A-hospital -- in this case, not just any

straight-A-hospital; Jupiter Medical Center, competitor hospital to plaintiff hospitals -- what other reason is there, as it's relevant to the media strategy, than to dissuade consumers from going to the plaintiff hospitals?

A. I don't think, and I never thought, that them going to Jupiter Medical Center would dissuade patients or persuade them.

Q. So what was the purpose of, in your words, highlighting Jupiter Medical Center in the context of this media strategy?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: To display a hospital that has a straight-A and -- in the area and that does well in the -- on the safety grade.

BY MR. CHUNG:

Q. Right. To -- that does well on the safety grade in contrast -- right? -- to how the five plaintiff hospitals did on their hospital safety grade; is that correct?

MS. BLAIR: Objection to form.

THE WITNESS: No, we weren't going to pitch that contrast story, no.

BY MR. CHUNG:

Q. What other purpose can there be, then, in the context of the media strategy for this litigation?

A. That's what we decided -- like, that -- we didn't do it, but that was what we wanted to do. We were looking for any other types of stories in the market. This was a straight-A-hospital. Something we could talk about to get Leapfrog's name out in local press. It's not about the reputation of another hospital. It's about Leapfrog's reputation.

Q. Okay. And it just so happens you're focusing on a hospital that is a direct competitor of certain of the plaintiff hospitals; is that right?

A. Again, Mary Beth Maloney was attacking Leapfrog in that market. We're looking for ways to show Leapfrog's reputation. One way, by telling a positive story in the market.

Q. Okay.

MR. CHUNG: Let's go to tab 51 and 52.

All right. This will be Exhibits -- let's go with the e-mail first -- 43 and 45. 43 and 44.

(Bailey Deposition Exhibits 43 and 44 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. All right. So Ms. Bailey, Exhibits 43 and 44 are an e-mail as well the Leah Binder op-ed in the Palm Beach Post I think that you alluded to earlier -- or that we were discussing earlier.

A. Yes.

Q. And I think you testified that you helped at least edit this op-ed; is that right?

A. Yes.

Q. And whose idea was it to do this op-ed?

A. Leah's.

Q. And why was the Palm Beach Post selected for placement of the op-ed?

A. There aren't that many outlets in Palm Beach. It's just the one that accepted op-eds.

Q. Okay. And in your e-mail, you write that you think that the Palm Beach Post is the good target for this since they are so hyper-local.

Do you see that?

A. Yes.

Q. Why was being hyper-local a good thing for purposes of placing this op-ed?

A. Again, healthcare is local. So if we're talking about a hospital, we want to place it in that market.

Q. What do you mean by healthcare being local? Why is that important?

A. Generally, people aren't traveling from different markets to go to a hospital. So...

Q. Okay. So because healthcare is local, meaning that generally people are not traveling long distances to visit hospitals, the purpose of -- is it correct that placing it in the Palm Beach Post, the goal was reach local consumers; is that right?

A. Yes.

Q. Okay. And to get Leapfrog's message about the lawsuit to those local consumers in the Palm Beach area, correct?

A. Yes.

Q. All right. And to -- and these are consumers -- this is a relevant universe of consumers of the five plaintiff hospitals, correct?

A. Can you restate the question?

Q. Right.

This is the universe of consumers that are going or not going to the five plaintiff hospitals, correct?

A. It's Palm Beach, so I assume yes.

Q. Okay. And that -- not only for these five plaintiff hospitals but for Jupiter Medical Center as well, correct?

A. We don't talk about Jupiter in this, but I assume that --

Q. That they're in this market, correct?

A. I think they are.

Q. They're in the market covered by the Palm Beach -- by the Palm Beach Post here?

A. I don't know that for sure. I know that they're close. I don't know Florida geography.

Q. Okay. So in the course of drafting this -- the op-ed, was discussing or talking about Leapfrog's change in imputation methodology ever discussed as a possibility?

A. No. Leah drafted this independently. I just looked at the draft that we see in this e-mail here.

Q. Okay. Did you have -- did you ever propose to or suggest to her maybe we should disclose or be transparent about the imputation methodology in your op-ed?

A. We never really talked about her op-ed. She said she wanted to write an op-ed. She wrote it and she sent it to me. We didn't have conversations prior to this e-mail that I recall.

Q. Okay. So was the -- was one of the purposes of the op-ed to basically impact the reputation of the plaintiff hospitals here within

the Palm Beach market?

A. I don't see it that way. I see it as, again, we're getting our side of the story out.

Q. Right. But do you see -- but is it fair to say that at least one of the impacts of this op-ed is to affect the reputation of the plaintiff hospitals? Is that fair to say?

A. I mean, I don't think so. She talks about how they -- how Delray Medical Center had an A; her own grandmother went there. So I don't think that's a reputation.

Q. Right. But she also focuses on the performance -- right? -- of these hospitals; is that right?

A. Right.

Q. Right. So by focusing on the performance, isn't at least one of the potential impacts of that focus to impact the reputation of the plaintiff hospitals?

A. Maybe. I mean, the sole focus is promoting Leapfrog.

Q. Okay.

MR. CHUNG: Let's go to -- actually, we've been going a while. Why don't we take a short break and come back.

THE WITNESS: Okay.

MR. CHUNG: So off the record.

MS. BLAIR: The time is 4:47 p.m. This ends media 4. We're off the record.

(A recess was taken.)

VIDEO TECHNICIAN: The time is 5:02 p.m. This begins unit number 5. We're on the record.

(Bailey Deposition Exhibit 45 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. All right. Ms. Bailey, you have Exhibit 45 already in front of you. It is a -- e-mails exchanged between Ms. Van Caulil and Leah Binder regarding Ms. Binder's plan to visit Jupiter Hospital.

Do you see that?

A. Yes.

Q. Okay. I want to direct your attention to

the second page Bates ending Leapfrog 8771.

And Ms. Binder writes here, We are thinking of reaching out to Jupiter Medical Center to see if they'd give a tour to me, and hopefully you and some of your members. They are a straight-A-hospital and happen to be in Palm Beach County. Do you know them at all?

Do you see that?

A. Yes.

Q. Okay. And this is in May of 2025, right? After the launch of the lawsuit; is that right?

A. Yes.

Q. Okay. And as we saw earlier in the exhibit regarding the board presentation, a potential visit, or at least the visit and media strategy around Jupiter Medical Center, was part of the PR strategy in response to the lawsuit, correct?

A. Yes.

Q. Okay. And so are these discussions about that particular strategy, about the potential visit to Jupiter Medical Center?

A. Yes. It's what it looks like.

Q. Okay. Now, she goes on to write, The key issue is keeping the safety grade in the news in Palm Beach County.

Do you see that?

A. Yes.

Q. All right. Why was keeping the safety grade in the news in Palm Beach County a key issue, as Ms. Binder writes here?

A. Similar to what I testified to earlier, that there was a lot of news in the Palm Beach area. It was all focused on D- and F-hospitals. We wanted a story out there about A-hospitals.

Q. All right. So there was a lot of -- now, these -- the coverage of the D- and F-hospitals in the Palm Beach market that you're referring to are the plaintiff hospitals, correct?

A. Right. As a result to your clients filing the lawsuit. Yes.

Q. So there was -- as you say, there was some amount -- there was coverage already in the market -- right? -- about the grades that had

been assigned to those particular hospitals, correct?

A. Yes.

Q. Right. And the -- the purpose of -- the purpose of this visit or this planned visit to Jupiter Medical Center was because Jupiter Medical Center was a, as it's written here, a straight-A-hospital, right?

A. Yes.

Q. Okay. And straight-A-hospital is -- does that mean that Jupiter Medical Center had received a series of As over a period of time for its hospital safety grade?

A. Yes.

Q. Right. And this is -- Jupiter Medical Center is in the same kind of market as at least some of the plaintiff hospitals, correct?

A. Yes.

MS. BLAIR: Objection to form.

BY MR. CHUNG:

Q. And so the purpose here was to essentially provide a contrast -- right? --

between a straight-A-hospital and the D- and F-hospitals that had already been covered in the market, correct?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: Right. It was to tell another Leapfrog story in the market but of an A-hospital.

BY MR. CHUNG:

Q. Okay. And so Leapfrog wanted to keep the safety grade in the traditional news media, like in the Palm Beach Post; was that part of kind of the strategy here?

A. Right. Yes.

Q. All right. Is that true of the online news media as well?

A. Yes. That's news media.

Q. Okay. How about social media? Was it a goal here to keep the safety grade in the news as it's reflected in social media?

A. No, that's not part of this.

Q. Okay. I think you had testified that one

of your responsibilities as communications director is over social media, correct?

A. Yes. I oversee it.

Q. And what about social media do you oversee?

A. The strategy.

Q. What do you mean by that?

A. Like, Nate Longmore does the everyday posting. I don't micromanage everything he posts, but we talk weekly about what's planned for social media and brainstorm ideas.

Q. All right. Is it correct that Leapfrog wanted to have people in this market or in Florida talking about the Leapfrog grades on social media?

A. I don't recall that. This is just talking about media. That's what our focus --

Q. Just media generally; is that right?

A. Social -- sorry. We're talking about traditional media in this.

Q. Okay. Was there anything that Leapfrog did to try to get the plaintiff hospitals' grades

in the news on social media?

A. We posted our statement on social media. That's all I can recall.

Q. Okay. And was the goal for other -- for social media outlets or influencers or other social media accounts to pick up on that posting?

A. No. It was to let our constituents know that we're in this lawsuit.

Q. Okay. Are you aware that there is a TikTok posting that broadcasts the hospital safety grades for the plaintiff hospitals? Are you aware of that TikTok posting?

MS. BLAIR: Objection to form.

THE WITNESS: We don't deal with TikTok really at all at Leapfrog, so I wouldn't --

BY MR. CHUNG:

Q. I'm not asking whether you deal with TikTok. Are you aware that there's a TikTok posting out there that basically broadcasts or publicizes the D and F grades for the plaintiff hospitals?

MS. BLAIR: Objection to form.

THE WITNESS: No, I don't recall seeing it.

BY MR. CHUNG:

Q. Okay. You do realize -- I just want to confirm that you realize that you're testifying under oath.

A. Yes.

Q. Okay. And you're testifying that you're not aware of any TikTok posting as it relates to the D and F grades for these plaintiff hospitals?

A. Like, there might be TikToks out there, but we don't have a TikTok account. We don't reach out to TikTokers, so I don't -- I don't understand the question.

Q. I'm not asking -- are you aware of any TikTok postings -- right? -- that include or broadcast the D and F safety grades for the five plaintiff hospitals?

A. I don't know about the five plaintiff hospitals in general. The only thing I could think of that might be on TikTok is, like, the really click-baity TikToks that --

Q. Okay.

A. They might pick up the safety grade, but I don't --

Q. Are you aware of any click-baity TikTok postings that have included or broadcast the D and F grades for the plaintiff hospitals?

A. I don't recall the exact -- I mean, I think -- there may have been something on TikTok. I can't recall the exact TikTok. I don't -- I don't understand the question.

Q. The question is, have you seen or heard of any TikTok postings or TikTok accounts that have -- that have broadcast or have mentioned the D and F grades for the plaintiff safety -- the plaintiff hospitals?

A. Have I heard of?

Q. Yes.

A. Maybe.

Q. Okay.

MR. CHUNG: Tab 64. Okay. This will be Exhibit 46.

(Bailey Deposition Exhibit 46 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. All right. This is an e-mail chain from June of 2025. And I want to direct your attention to the e-mail from Ms. van Caulil on the first page where she writes, I have an enthusiastic "yes" from Susan McBroom, the director of human resources at Patriot Rail. She serves on my board and executive committee, and this year they won our "most engaged employer" award. Waiting to hear back from Nancy Bolton at Palm Beach Schools.

Do you see that?

A. Yes.

Q. Okay. And are these -- what is Patriot Rail?

A. I don't know.

Q. Okay. How about Palm Beach Schools? How are they relevant to Leapfrog?

A. It looks like they're some of the

employer members of the Florida Alliance for Healthcare Value.

Q. Okay. Patriot Rail as well?

A. That's what it appears.

Q. Okay. Why was Ms. van Caulil scheduling these entities to attend the planned visit to Jupiter Medical Center by Ms. Binder?

A. It's normal. Again, Leapfrog represents employers. So if we're going to a hospital, typically with a regional leader, we'll have them invite employer members.

Q. Okay. Has Ms. van Caulil been contacting other Florida employers about the plaintiff hospitals in particular?

A. I don't know.

Q. Okay. Is that part of -- a part of the communications strategy?

A. Can you restate the question?

Q. Is part of the communications strategy in the context of the lawsuit to have regional leaders reach out to employers within their networks about the lawsuit?

A. Not that I can recall about the lawsuit.

Q. Okay. Has Ms. van Caulil been contacting other -- so was -- are there any other employers within the network that Ms. van Caulil contacted about possibly joining this Jupiter Medical Center visit?

A. I don't see anything else in this e-mail. I don't know anything beyond this e-mail.

Q. Okay. Has Leapfrog in any way broadcast or shared specifically the D and F grades of the plaintiff hospitals to employers within these networks?

A. Can you restate the question?

Q. Yeah.

Has Leapfrog in any way publicized or broadcast the D and F grades for the plaintiff hospitals to employers within the Florida network?

A. Not that I can recall. We have a statement on our website.

Q. Okay. Has it engaged in any direct outreach to employers in Florida within this

network about this lawsuit?

A. Not that I know of.

Q. Well, you're the director of communications. Do you know whether that's happened?

A. I don't know. I don't know.

Q. Was that part of the strategy, though? A communications strategy?

A. No.

Q. All right.

MR. CHUNG: Let's go to tab 78.

Okay. This will be Exhibit 47, I think.

(Bailey Deposition Exhibit 47 marked for identification and attached to the transcript.)

BY MR. CHUNG:

Q. So Ms. Bailey, Exhibit 47 that you have in front of you is -- I can represent to you that this is another Slack conversation that was produced to us yesterday by CURA Strategies, Leapfrog's PR firm.

Now, do you -- are you on any Slack

conversations with members -- with personnel from CURA?

A. No.

Q. No? Okay. So for the Slack messaging that you engage in, that's all internal to Leapfrog; is that right?

A. Yes.

Q. Okay. I want to direct -- this is kind of a long document. I want to direct your attention to the page with Bates 000466.

And who is Sarah Farinelli?

A. She's our day-to-day account lead at CURA.

Q. Okay. And Lula -- whose name we've seen a number of times -- who is Lulu?

A. She's another member of the team.

Q. And then Anne. Does that ring a bell?

A. Yes. She's the CEO of CURA Strategies.

Q. All right. How about Ariel Le?

A. I actually don't know her.

Q. Okay. So we're looking here, just based on kind of the format of the document here, from

July 2025, going on to the next page Bates ending 467. I just want to turn to the next page.

And it says, under Anne, FYI from Lauren. Hi, Anne and Sarah. We just received notice that our motion to dismiss was unfortunately denied. I wanted to give your team a heads-up in case you receive any press inquiries. Please let us know if anyone reaches out to you. We are regrouping internally on Thursday afternoon and then I'll follow up with any PR next steps. Best, Lauren.

Does this refer to an e-mail or some sort of message that you sent to CURA after the motion to dismiss in this case was denied?

A. That's what it looks like, yes.

Q. Okay. Do you recall sending this message, at least the substance of the message, just letting CURA know about the status of the motion to dismiss?

A. Yes.

Q. Okay. And then Ms. Farinelli or -- Sarah Farinelli responds, Crap. I was so sure it would be dismissed.

If we look down several -- or in the middle of the page, Stephanie Wright.

Who is Stephanie Wright?

A. She's another member of the team.

Q. Okay. And she writes, On Leah's e-mail, I agree about having talking points ready, but I don't know about complaining to Bloomberg. It would be different if they had gone to the other side for comment.

Do you see that?

A. Yes.

Q. And is she -- is Ms. Wright referring to -- it looks like an e-mail that Ms. Binder sent to CURA; is that right?

A. Yes.

Q. Okay. Do you recall this e-mail that Ms. Binder sent to CURA?

A. Yes. Generally.

Q. All right. What was it about? We don't have the e-mail, but what was it about?

A. So if you look at the Slack message right before -- sorry.

Q. Yeah.

A. Yeah, so there's a story in Bloomberg Law that came out and, from what I remember, Sarah sent an e-mail flagging the news coverage, which is normal. Anytime there's a new news story, lawsuit or not, CURA will flag it to us; it's part of their job responsibilities.

Q. Yes.

A. We were not contacted by Bloomberg Law. So -- sometimes when there are stories that come out and we weren't contacted, it can be frustrating.

Q. Okay.

A. That's what I remember.

Q. Now, the CURA personnel here continue the discussion. And Ms. Farinelli writes, What does complain to Bloomberg mean? They didn't feature commentary from Tenet either, just pulled from the legal docs.

A. Uh-huh.

Q. Do you recall that being part of the discussion with CURA around the motion to dismiss

coverage?

A. Yes. Yes. I remember more about this now.

So I believe when Leah had sent this e-mail that they're referencing, this was behind a paywall, and I don't think she had seen the full article. I think she just opened it and read a few lines and she hadn't seen it in full context and was assuming, I think, that the reporter had interviewed the plaintiffs but not us.

And I think that's what they're discussing.

Q. Okay. So if you go on to the next page, Bates ending CURA 468, Anne -- and what's Anne's last name? I'm sorry.

A. Why am I blanking on her last name?

Q. That's fine. This is not a name memory test.

A. It may come to me. I'm sorry. It's been a lot of hours at this point.

Q. So -- Anne Woodbury.

A. Thank you. Thank you. I know her. I just...

Q. So Ms. Woodbury -- I'm just trying to be polite here -- she writes --

A. Thank you.

Q. -- the fact that it is Bloomberg, too, I think is influencing her. She wants to hurt Tenet and, to do that, she has to hit them financially.

Do you see that?

A. Yes.

Q. All right. So after this motion to dismiss was denied, is it correct that Ms. Binder's goal was to hurt Tenet financially?

A. No, I don't agree that that was her goal.

Q. All right. Where is -- where is Anne Woodbury getting this from, then?

A. I don't know. Like, I don't understand the jump that happened in this Slack --

Q. Okay.

A. -- conversation.

Q. Well, we've gone over -- in terms of the

strategy of linking the D and F grades for the plaintiff hospitals to Google search results -- right? -- wasn't the -- fair to say that at least one of the purposes or goals of that strategy was to hurt Tenet, correct?

A. Yes. Defending ourselves.

Q. Okay. Is it also fair to say that by -- is it also fair to say that the -- putting out kind of negative publicity or stories -- one of the purposes -- I'm not saying the sole purpose -- that one of the purposes of trying to get a story out about Tenet or one of the hospitals at a minimum every three days was to hurt Tenet? Is that fair?

MS. BLAIR: Objection to form.

THE WITNESS: Yes. We didn't do it.

BY MR. CHUNG:

Q. Okay. And is it fair to say that by -- at least this plan -- that one of the purposes of this planned visit to Jupiter Medical Center, as you said, was to highlight Jupiter, which was a straight-A-hospital, correct?

A. Yes.

Q. Right. And Jupiter Medical Center is in the same Palm Beach market of -- with at least some of the plaintiff hospitals, correct?

A. Yes.

Q. And at least one of the purposes of that planned visit was to basically provide a contrast between a straight-A-hospital -- Jupiter Medical Center -- and the D- and F-hospitals that were the plaintiff hospitals, correct?

MS. BLAIR: Objection to form.

THE WITNESS: We were not talking about the plaintiff hospitals as part of the visit. No. We were just focusing on Jupiter.

BY MR. CHUNG:

Q. Okay. But would you say it's common knowledge that Jupiter Medical Center and the plaintiff hospitals are competitors in the Palm Beach market?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: Yes, I know that they're in

the same market.
BY MR. CHUNG:
Q. Okay. What is -- Leapfrog is a nonprofit organization, correct?
A. Yes.
Q. All right. And it's also tax-exempt; is that right?
A. Yes.
Q. All right. What is kind of the stated goal of Leapfrog, consistent with this nonprofit status?
A. Our mission is to improve American healthcare through transparency.
Q. Okay. Do you know why it gets its tax-exempt status?
A. Because we're a nonprofit.
Q. Okay. Do you -- I want to get your view on this.
Do you think that paying a PR firm like CURA Strategies to generate bad media against the hospitals here is consistent with that nonprofit purpose?

MS. BLAIR: Objection to form.

THE WITNESS: Our mission is to promote our ratings, and we're promoting our ratings.

BY MR. CHUNG:

Q. Okay. But do you think that paying a public relations firm to generate negative publicity, bad media, against hospitals is consistent with that purpose?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: I don't understand the question. Can you restate it?

BY MR. CHUNG:

Q. Well, I think -- what did you -- your testimony regarding that -- you testified that your mission, Leapfrog's mission, is to promote ratings, right? You are promoting your ratings; is that right?

MS. BLAIR: Objection to form.

THE WITNESS: We're promoting our programs, yes.

BY MR. CHUNG:

Q. Okay. I think your testimony is that you're promoting specifically ratings, correct?

A. Yes. Our programs are ratings programs. Yes.

Q. Okay. And those ratings programs depend on participation by as many hospitals as possible, correct?

MS. BLAIR: Objection to form.

THE WITNESS: No. Leapfrog hospital safety grades are assigned.

BY MR. CHUNG:

Q. Okay. But the -- but in terms of the survey -- right? -- that depends on responses -- the success of the survey program depends on more -- as many hospitals participating in that survey as possible, correct?

MS. BLAIR: Objection to form.

THE WITNESS: Yes. We want hospitals to participate in the survey.

BY MR. CHUNG:

Q. Okay. And so is generating -- is

generating bad media against hospitals that do not participate in hospitals [sic], is that consistent with that mission to get as many hospitals to participate in the survey as possible?

MS. BLAIR: Objection to form.

THE WITNESS: Our mission is not to get -- that is not our mission. Our mission is to improve healthcare through transparency. We're talking about two different programs.

In the press we're talking -- what we're talking about right now with the plaintiff hospitals is the safety grade, not the survey.

BY MR. CHUNG:

Q. All right. But in order to -- I think we're also talking about a survey as well. This is -- these are hospitals that did not -- that did not participate in the survey, correct?

A. Yes, but it's a different program. We're not talking about the survey. We're talking about the safety grade.

Q. When we're talking about the safety

grade, which context are you talking about?

A. You just said we're generating press about the plaintiff hospitals. We're talking about the safety grade.

Q. Right. But these are safety grades for hospitals that did not participate in the survey, correct?

A. Correct, but that's a different issue.

Q. And these hospitals, because they didn't participate -- or at least in part because they didn't participate in the survey, they received the D and F grades, correct?

MS. BLAIR: Objection to form. Asked and answered.

THE WITNESS: Like I've said before, we don't know that their grade would change if they participated in the survey.

MR. CHUNG: Okay. Why don't we take a short break. I think we're almost done. Why don't we take a short break.

MS. BLAIR: Okay.

VIDEO TECHNICIAN: The time is 5:27 p.m.

We're off the record.

(A recess was taken.)

VIDEO TECHNICIAN: The time is 5:32 p.m. We're on the record.

BY MR. CHUNG:

Q. So Ms. Bailey, on the topic of your compensation from Leapfrog, are there certain key performance indicators that at least influence or guide how much compensation you get from Leapfrog?

A. Not beyond just fulfilling what's in my job description.

Q. Okay. So just specifically, are -- you know, the number of kind of views that the Leapfrog websites get, is that a key performance indicator or at least an indicator that you look to or your supervisors or your managers look to in terms of your performance?

A. Not in terms of my performance that I can think of. We do track it and report it to the board quarterly.

Q. Okay. Is that something that you'll look

to as at least one measure of -- of how the communications strategy or the function of Leapfrog is performing?

A. Yes. At least one of the aspects. Yes.

Q. Okay. What other kind of metrics -- right? -- or indicators do you track or do you view as some indicator of how well the communications function or strategy is working at Leapfrog?

A. What we regularly track are social media metrics, engagement rate on social media. We track really basic Google analytics. By "we" I mean CURA tracks that for that and reports to us on a quarterly basis, which we report it to the board. Really basic things like page views, length of time on a page, top referral sources, and then media coverage.

Q. Okay. And so is the goal then with respect to those metrics, whether it's on the webpage or social media, to increase that engagement as much as possible as part of the communications strategy?

A. Can you restate the question?
Q. Yeah. Is the goal with respect to the metrics to increase those metrics?
A. Yes.
Q. Okay. And the -- and the idea behind increasing those metrics is to reach as many consumers as possible; is that the idea?
A. Right. We want to increase our reach. Yes.
Q. Okay. And that includes increasing the reach and impact of the hospital safety grades; is that right?
A. Can you restate the question?
Q. And is part of that -- increasing the reach wanting to broadcast as much as possible the hospital safety grades program?
A. Yes.
Q. Okay. And as -- okay.
The -- I think last -- this past year, your compensation was -- or your base compensation was $160,000; is that right?
A. Yes.

Q. Okay. And did you -- we understand that you -- a bonus of 10 percent of that salary, of $16,000, was authorized?

A. Yes.

Q. Okay. And so what do you understand to be kind of the reason for getting that bonus? Why were you awarded that bonus?

A. My understanding is that it was just always part of -- like, when I signed the contract -- signed the offer letter to be a director of communications, my understanding was that probably most years I would get that bonus as long as I did my job.

Q. Okay. Are you aware whether other personnel, whether they're managers or executives at Leapfrog, whether their compensation is tied to certain metrics?

A. I don't know.

Q. Okay. So you're not aware how -- whether, let's say, for example, Ms. Binder's compensation is tied to reaching certain milestones or metrics?

A. I'm not sure.

Q. Okay. Your salary and the bonus, the 160,000 and the $16,000 bonus, relatively speaking, is that kind of high, mid, low for a role of your type?

A. I'd say average.

Q. Average? Okay.

MR. CHUNG: No further questions. Thank you.

THE WITNESS: Oh. Okay.

MS. BLAIR: That's it. I will order a rough draft, as well as regular delivery of an e-tran.

VIDEO TECHNICIAN: The time is 5:36 p.m. This concludes today's deposition. We're off the record.

(Whereupon, at 5:36 p.m., the videotaped deposition of LAUREN L. BAILEY was concluded.)

CERTIFICATE OF NOTARY PUBLIC

I, CHRISTINA S. HOTSKO, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said statement is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this statement was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

September 12, 2025

CHRISTINA S. HOTSKO
Notary Public in and for the
District of Columbia

My commission expires:
1 January 2027

Good Samaritan Medical Center Inc, Et Al. v. The Leapfrog Group

Lauren L. Bailey Job No. 7574631

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Lauren L. Bailey Date

Good Samaritan Medical Center Inc, Et Al. v. The Leapfrog Group
Lauren L. Bailey 7574631

ACKNOWLEDGEMENT OF DEPONENT

I, Lauren L. Bailey, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____

Lauren L. Bailey Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS

_____ DAY OF _____, 20___.

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NOTARY PUBLIC

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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VERITEXT LEGAL SOLUTIONS

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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