

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.

**THE COMMUNITY HOSPITALS' REVISED PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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PRELIMINARY STATEMENT

1. This case concerns whether the “D” and “F” hospital “Safety Grades” assigned by Defendant The Leapfrog Group (“Leapfrog”) to the five plaintiff hospitals are deceptive to consumers—including patients choosing where to seek care, physicians deciding where to practice and refer patients, and insurers and employers that use hospital safety information in contracting and network decisions. These failing, so-called “Safety Grades” purport to reflect hospitals’ measured safety performance. In fact, Leapfrog arbitrarily assigned failing safety scores on key safety measures, even though it had no data measuring actual performance in those areas. The five plaintiff hospitals, Good Samaritan Medical Center, Delray Medical Center, Palm Beach Gardens Medical Center, St. Mary’s Medical Center, and West Boca Medical Center (the “Community Hospitals”), are long-standing community institutions that provide essential emergency and inpatient care, including high-acuity and specialty services for medically complex and vulnerable patient populations. *See* Proposed Findings of Fact (“Findings”) I (“Background”), VII (“Leapfrog’s Safety Grades Have Caused Real and Ongoing Harm”).

2. Leapfrog holds itself out as a hospital-safety “watchdog.” Twice each year, in May and November, Leapfrog disseminates “Hospital Safety Grades,” assigning report-card-style letter grades ranging from “A” to “F” to hospitals and urges consumers to “always” rely on the Safety Grades when choosing where to seek care, warning that it can be a “life or death decision.” Leapfrog represents that its Grades reflect hospital performance on “process measures”—including basic safety practices such as hand hygiene (i.e., handwashing)—and presents the resulting letter grade as a safety judgment consumers should trust. *See* Findings I.B (“Leapfrog’s Safety Grades And Survey”), III.B (“Leapfrog Leads the Public to Believe the Safety Grades Reflect Actual Safety Performance—Not Survey Participation”).

3. Leapfrog repeatedly leads consumers to believe (i) that its Safety Grades are supported by sufficient data and that hospitals lacking sufficient data are not graded; (ii) that its Safety Grades reflect how well a hospital performs on safety—not whether it completed Leapfrog’s Hospital Survey; and (iii) that its grading methodology is objective, peer-reviewed, and expert-approved. Those representations frame the net impression consumers take away from a “D” or “F” Grade: that Leapfrog measured safety performance and found the hospital to be unsafe. Leapfrog also represents that hospitals missing data—including more than six process measures—are not

graded. But for non-participating hospitals, Leapfrog nevertheless issued Safety Grades while lacking data for seven measures. *See Findings II.D, III.A–III.C.*

4. The proposed Findings below set forth how Leapfrog’s Fall 2024 methodology change for non-participating hospitals broke Leapfrog’s promises. For participating hospitals, Leapfrog relies heavily on its Hospital Survey (the “Survey”)—an annual questionnaire exceeding 350 pages. For hospitals that choose not to complete the Survey, Leapfrog assigned fixed failing scores on four Survey-dependent measures, despite lacking data to measure those hospitals’ actual performance on those measures. Leapfrog assigned the lowest possible values in the absence of data—characterizing this practice as “imputation”—and then re-weighted those assigned failing scores so they counted more heavily in the hospital’s overall Safety Grade, a “double-whammy” effect that materially drove down the final assigned letter Grade. Leapfrog’s own witnesses acknowledged that this approach functioned as a “non-participation penalty” that “goes away” when a hospital resumes participation—confirming that the Safety Grades were materially driven by participation status rather than measured safety performance on the no-data measures. Because non-participation in Leapfrog’s Survey does not prevent dissemination of a Safety Grade, hospitals cannot avoid or self-cure the severe reputational effects once the misleading letter Safety Grade is issued. *See Findings II.A–II.D, VI.*

5. Leapfrog did not assign the Safety Grades to the Community Hospitals quietly. The evidence shows that Leapfrog amplified and disseminated the “D” and “F” letter Grades it had assigned to them widely through a coordinated media strategy, including through advertising and third-party channels, such as targeted Google advertising in Florida-specific zip codes that displayed the Community Hospitals’ letter Grades when consumers searched hospital names. The letter Safety Grade is what travels: the “D” and the “F.” The limited, opaque disclosures Leapfrog points to related to the four artificially assigned safety measures—in buried footnotes and a dense methodology document—do not accompany the media blitz and are not reasonably accessible or understandable to lay consumers in any event. The Findings also show that, even within Leapfrog’s website, disclosures are internally inconsistent and confusing: a “Declined to Report” footnote appears across virtually all hospitals’ Safety Grade webpages (*including* for participating hospitals) without tying that label to any specific measure or score. At the same time, the Safety Grade webpages for non-participating hospitals include “gas gauge” graphics purporting to signal the hospitals’ performance on key measures for which Leapfrog has no data. In that environment, the

evidence showed that consumers encounter and act on the letter Safety Grade as a safety judgment. It also confirms that buried disclosures do not realistically cure the net impression once the Grade is broadcast into the market. *See* Findings IV (“Leapfrog’s Purported Disclosures: Hidden Footnotes And Buried Documents”), V (“Leapfrog’s Widespread Dissemination And Amplification Of The Community Hospitals’ Safety Grades”).

6. The record of harm is concrete and consistent. The credible testimony of the Community Hospitals’ CEOs as well as contemporaneous business records show reputational and operational injury following dissemination of the Fall 2024 and later Safety Grades: patients declined or delayed care, some left against medical advice, walk-in volumes declined relative to EMS admissions, procedures were canceled, physicians and staff confronted sustained reputational fallout, and insurers and employers referenced Leapfrog’s Safety Grades in communications urging responses detailing remedial action. Expert testimony confirms that letter grades—especially “D” and “F”—operate as heuristics in difficult healthcare decisions and are likely to distort consumer choice and cause the types of harm reflected in the record. The evidence also showed that these injuries persist and compound over time and cannot be corrected by the hospitals through their own efforts while Leapfrog continues to disseminate its false and misleading Safety Grades. *See* Findings VII, VIII.

7. FDUTPA prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.204(1). In seeking injunctive and declaratory relief, the Community Hospitals must show that Leapfrog’s challenged practices are deceptive or unfair and that the Community Hospitals are “aggrieved by” those practices. Fla. Stat. § 501.211(1); *see* Proposed Conclusions of Law (“Conclusions”) II.

8. The Proposed Findings of Fact and Conclusions of Law below provide a reliable basis to resolve liability and to enter tailored equitable relief consistent with controlling precedent. They address (i) the mechanics of the Fall 2024 approach for grading non-participating hospitals, including assigned made-up component scores for no-data measures (Findings II.A–II.D); (ii) the consumer-facing representations and net impression created by the Safety Grades (Findings III.A–III.C); (iii) why disclosures do not cure the misleading impression once the Grade travels (Findings IV–V); and (iv) concrete, corroborated harm supporting both likely and actual consumer injury (Findings VII). To the extent any evidence describes third-party reactions, it is offered for admissible purposes (including effect on the listener and state of mind) and is corroborated by

contemporaneous business records, insurer/employer communications, and objective volume data. Even if limited weight is accorded to such testimony, the record independently establishes at least likely consumer harm through Leapfrog’s consumer-facing “D” and “F” Safety Grade messaging, widespread dissemination without accompanying methodology, and expert testimony on consumer reliance and predicted market effects—confirmed by objective indicators such as walk-in volume declines and insurer/employer communications. Because Leapfrog’s Safety Grades travel without context, disclosure is not a practical cure. Removal and corrective disclosures are necessary to provide complete relief. *See Findings IV–VII; Conclusions II.A–II.B.*

9. The relief requested is tailored to the proven violation and the ongoing nature of the harm, as the law requires. The Community Hospitals seek an injunction requiring Leapfrog to (i) cease assigning Safety Grades to the Community Hospitals under the current methodology or any similar methodology that assigns failing component scores for measures where Leapfrog lacks data to measure actual performance or otherwise reduces Safety Grades due to non-participation; (ii) withdraw from its websites and cease promoting the Fall 2024, Spring 2025, and Fall 2025 Safety Grades as applied to the Community Hospitals; (iii) issue corrective disclosures to entities that licensed those Safety Grades and include targeted, forward-looking disclosures in future licensing materials to address continuing marketplace confusion. The Community Hospitals also seek a corresponding declaratory judgment. *See Conclusions V.*

10. For these reasons, the Community Hospitals respectfully request that the Court adopt the proposed Findings of Fact and Conclusions of Law below, which are grounded in the trial record and provide a tailored, enforceable basis for injunctive and declaratory relief.

PROPOSED FINDINGS OF FACT

I. BACKGROUND

A. The Parties

11. Plaintiffs—Good Samaritan Medical Center, Delray Medical Center, Palm Beach Gardens Medical Center, St. Mary’s Medical Center, and West Boca Medical Center—are five Community Hospitals that have provided life-saving and essential care to Palm Beach County and the surrounding area for more than 300 years collectively. *See ECF 129 ¶¶ 1–17.* The Community Hospitals have delivered critical care across diverse service lines, including cardiology, pediatrics, geriatrics, obstetrics, oncology, orthopedics, and emergency care. *See PX-395.0 at 2.* Each Community Hospital is accredited by the Joint Commission and other accrediting bodies, and has

received awards and recognition for patient care. *See id.* The Community Hospitals serve many patients with urgent and acute healthcare needs and significant comorbidities, including older and underserved populations. *See, e.g.,* Day 1 Trial Tr. 54:2–24 (Havericak), 140:2–11 (Cazares).¹ The Community Hospitals are part of the Palm Beach Health Network (“PBHN”), the largest healthcare network in Palm Beach County. *See* PX-395.0 at 2.

12. Defendant Leapfrog is a 501(c)(3) corporation based in Washington, D.C., whose stated “mission” is to “us[e] transparency to support informed health care decisions.” PX-824.0 at 2; *see also* ECF 129 ¶ 18. Leapfrog was originally founded by “employers and other purchasers” who decide where to direct members of their health plans for care. Day 3 Trial Tr. 85:11–12 (Binder). Leapfrog’s 2024 IRS Form 990 reports annual revenue of nearly \$8.4 million. PX-824.0 at 9.

B. Leapfrog’s Safety Grades And Survey

13. Leapfrog assigns “Safety Grades”—“A,” “B,” “C,” “D,” or “F”—to general acute-care hospitals across the United States twice a year: once in the Spring and once in the Fall. *See* ECF 129 ¶¶ 38–40. Leapfrog typically releases the Spring Safety Grades in early May and the Fall Safety Grades in mid-November, releasing them on an embargoed basis to the press and hospitals in April and October. *See, e.g.,* PX-330.0 at 25 (Spring 2024); PX-398.0 at 3 (Fall 2024); PX-410.0 at 1 (Spring 2025).

14. Leapfrog created a Survey, consisting of a questionnaire exceeding 350 pages that it uses to collect data annually from participating hospitals. *See* JX-042.0 at 1–8.

15. The Survey covers a broad array of measures and requires that hospitals compile and submit extensive information concerning their policies, technologies, clinical processes, reporting mechanisms, leadership structures, staffing models, and other operational areas. *See id.* at 36–314.

16. In addition, Leapfrog requires hospitals participating in the Survey to affirm—nine different times—that Leapfrog may use the hospital’s submitted information “in a commercial manner for profit.” *Id.* at 46, 68, 99, 158, 194, 232, 265, 278, 315. These authorizations permit Leapfrog to incorporate Survey data into revenue-generating products marketed and sold to third parties. *See infra* ¶ 121.

¹ Citations to the trial transcripts correspond to the respective transcripts for each day of trial: Day 1 is January 16; Day 2 is January 20; Day 3 is January 21; Day 4 is January 22; and Day 5 is January 23.

17. Leapfrog conveys to the public that it calculates the Safety Grades using twenty-two measures that rely on data obtained through the Survey, as well as other data sources Leapfrog selects, and results in a single letter Safety Grade. *See* ECF 129 ¶¶ 73–76; JX-041.1 at 5.

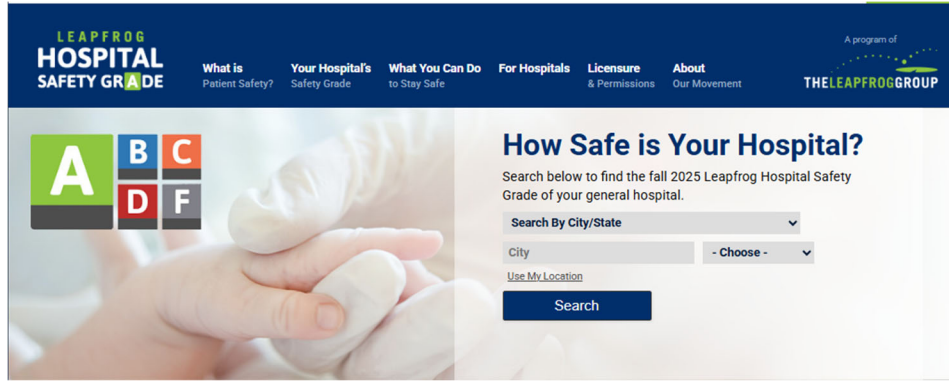
18. Leapfrog assigns Safety Grades to hospitals regardless of whether a hospital elects to participate in the Survey. *See* ECF 129 ¶ 36; JX-041.1 at 16; *see also, e.g.*, PX-034.2 (assigning a Safety Grade to non-participating hospital Delray Medical Center).

19. Leapfrog developed the Safety Grade in or around 2011 with the assistance of an Expert Panel convened to design a composite measure of hospital safety. *See* PX-202.0 at 1–2; Day 3 Trial Tr. 177:14–19 (Danforth); Day 3 Trial Tr. 110:1–3 (Binder). The Expert Panel’s work, including its approach to handling missing data, was memorialized in a 2013 peer-reviewed publication. *See* PX-202.0. That publication reflected the Expert Panel’s judgment that Safety Grades should be based on “the available data,” such that “the composite scores were based on what was known about the hospital’s performance, with no penalties for missing data” and “to avoid creating a structural bias in favor of Leapfrog-reporting hospitals.” *Id.* at 4.

20. Leapfrog materially departed from that framework in Fall 2024 by adopting a new approach that penalizes hospitals that do not complete the Survey. *See infra* ¶¶ 30–68. This revised methodology was not peer reviewed, approved by Leapfrog’s Expert Panel, or voted on by its Board of Directors. ECF 163-1 (Austin Tr.) 90:15–17 (testifying the new approach “has not” been peer reviewed), 285:7–15 (“We did not query the [E]xpert [P]anel about whether they approved [the methodology] or not.”;² Day 3 Trial Tr. 193:22–194:1 (Danforth) (the methodology implemented was “not the imputation model” that was “brought to the [P]anel in 2024”); ECF No. 163-2 (van Caulil Tr.) 105:18–22 (“[T]here was no board vote in June 2024 on whether LeapFrog should change its safety grade methodology.”).

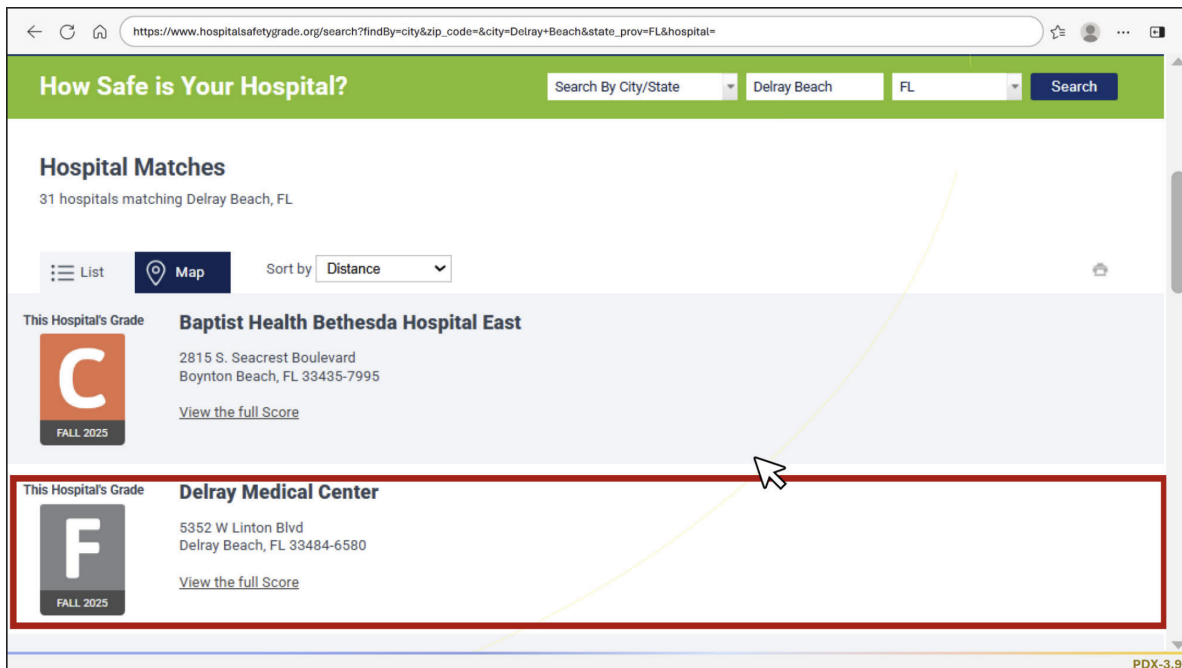
21. Leapfrog has a consumer-facing website, hospitalsafetygrade.org, dedicated to Safety Grades. *See* PX-033.0. Each hospital’s Safety Grade is prominently displayed on various webpages across the website. *See, e.g.*, PX-033.1 at 1–7; PX-034.2 at 1. The home page of that website invites consumers to search for their hospital by name or location and features a centrally placed search bar to facilitate that process below the question, “How Safe is Your Hospital?” *See* PX-033.0 at 1.

² All deposition testimony cited herein was received and played at trial.



PX-033.0 at 1.

22. After consumers enter identifying information relevant to their search, the website displays search results listing hospitals that match the query, each accompanied by a prominently displayed Safety Grade. *See, e.g.*, PX-033.1.



PDX-3.9.

23. When a consumer selects a hospital from the search results, the website navigates to a dedicated Safety Grade webpage for that hospital. At the top of that webpage, Leapfrog prominently displays the hospital's Safety Grade and presents it as a categorization of the hospital's overall safety. *See, e.g.*, PX-034.2 at 1.

LEAPFROG HOSPITAL SAFETY GRADE

A program of
THE LEAPFROG GROUP

Delray Medical Center
5352 Linton Boulevard
Delray Beach, FL 33484-6580

[View this hospital's Leapfrog Hospital Survey Results](#)

This Hospital's Grade

F

FALL 2025

[► Show Recent Past Grades](#)

[Detailed table view](#)

NEW [Order 2½ years of detailed scoring for this hospital for \\$2.95](#)

[Learn how to use the Leapfrog Hospital Safety Grade](#)

PX-034.2 at 1.

24. Leapfrog expects and intends consumers to rely on the Safety Grades. Leapfrog's Vice President of Development, Ms. Jupiter, confirmed that Leapfrog *wants* consumers to rely on the Safety Grades when choosing hospitals. Day 3 Trial Tr. 7:6–11 (Jupiter).

25. Leapfrog's consumer-facing materials make that objective clear. On its website, Leapfrog tells consumers that they should “always” rely on the Safety Grades when making healthcare decisions, PX-023.0 at 4, and describes the Safety Grades as the “first tool patients should use to select a hospital,” PX-021.0 at 3.

26. Leapfrog further encourages consumers to rely on the Safety Grades. For example, Leapfrog tells consumers on its website that choosing a hospital can be a “life or death decision,” PX-022.0 at 1, and that they are “twice as likely to die” at a “D” or “F” hospital than at an “A” hospital, PX-021.0 at 1; *see also* Day 3 Trial Tr. 8:17–9:16 (Jupiter) (confirming “Leapfrog wants consumers to think that visiting a hospital with an F grade could seriously injure or even kill them”). The Community Hospitals' marketing and consumer choice expert, Dr. Jonah Berger, testified that this type of messaging would “concern” consumers and “shape” their hospital choices accordingly. Day 2 Trial Tr. 33:4–5 (Berger).

27. Consistent with this testimony, Leapfrog’s CEO, Leah Binder, confirmed that “millions” of consumers have used Leapfrog’s Safety Grades to make healthcare decisions. Day 3 Trial Tr. 63:17–25 (Binder).³

28. Leapfrog itself highlights the story of a patient who “needed a hospital” and drove 400 miles to the nearest “A” hospital after realizing “the hospitals closest to him did not perform well” on the Safety Grades. PX-221.0 at 4.

* * *

29. Leapfrog’s Safety Grades are understood as measures of hospital safety performance, and Leapfrog expressly instructs consumers to rely on those Grades when making healthcare decisions. For hospitals that do not participate in Leapfrog’s Survey, however, Leapfrog assigns Safety Grades using assumed or “imputed” failing scores for key Survey-dependent measures despite lacking hospital-provided performance data for those measures. As a result, the Grades issued to non-participating hospitals reflect Survey non-participation and a non-participation penalty imposed through made-up scores for those no-data measures. Because the Safety Grades are disseminated and relied upon as measures of safety performance, assigning failing scores without hospital-specific data creates a predictable mismatch between what the Grade conveys to consumers about hospital safety and what Leapfrog actually measured.

II. THE REALITY OF LEAPFROG’S GRADING PRACTICES

30. In Fall 2024, Leapfrog adopted a “drastic” new methodology applicable to hospitals that do not participate in its lengthy Survey. JX-011.0 at 3. Under this revised approach, Leapfrog assigns non-participating hospitals the lowest possible scores on four Survey-dependent measures for which it lacks hospital-provided performance data, and re-weights those measures so that they collectively account for nearly one-third of the hospital’s overall Safety Grade.

A. The Non-Participation Penalty

31. Under the revised methodology, Leapfrog automatically assigns non-participating hospitals the lowest possible score on four of the measures it uses to assign a Safety Grade (the “Four Measures”). *See* JX-034.0 at 15. The Four Measures are:

- a. Computerized Physician Order Entry (“CPOE”), which measures whether a hospital uses an electronic system to record physician orders. *See* PX-034.5 at

³ The Community Hospitals respectfully submit that the trial transcript incorrectly states Ms. Binder testified that this is “not” something she would have said.

1–2. On its consumer-facing website, Leapfrog describes CPOE as “Doctors order medications through a computer.” *See, e.g., id.* at 2.

- b. Bar Code Medication Administration (“BCMA”), which measures whether staff confirm medication through bar code scanning. *See id.* at 3–4. On its consumer-facing website, Leapfrog describes BCMA as “Safe medication administration.” *See, e.g., id.* at 4.
- c. ICU Physician Staffing (“IPS”), which measures intensivist staffing at the ICU. *See* PX-034.6 at 7–8. On its consumer-facing website, Leapfrog describes IPS as “Specially trained doctors care for ICU patients.” *See, e.g., id.* at 8.
- d. Hand Hygiene Score (“Hand Hygiene”), which measures the policies and training for hand hygiene. *See* PX-034.5 at 7–8. On its consumer-facing website, Leapfrog describes this measure as “Handwashing.” *See, e.g., id.* at 8.

32. For hospitals participating in the Survey, the scores on the Four Measures are based on the Survey data they submit. JX-034.0 at 5–6, 9 (CPOE), 10 (BCMA and IPS), 12 (Hand Hygiene).

33. For non-participating hospitals, Leapfrog lacks hospital-provided performance data for these Survey-dependent measures and assigns fixed “Limited Achievement” values instead. *See* JX-034.0 at 15. “Limited Achievement” corresponds to numerical scores of 15 of 100 for CPOE; 25 of 100 for BCMA; 5 of 100 for IPS; and 15 of 100 for Hand Hygiene:

Measure	Leapfrog Hospital Survey Performance Category	Corresponding Safety Grade Measure Score
CPOE	Limited Achievement	15
BCMA	Limited Achievement	25
IPS	Limited Achievement	5
Hand Hygiene	Limited Achievement	15

Id.

34. These “Limited Achievement” values are fixed defaults applied based on Survey non-participation, not hospital-specific measurement or estimation. *See infra* ¶¶ 35–41, 117–40.

35. As Leapfrog witnesses confirmed, the assignment of these scores did not involve any actual measurement of hospital performance. Alexandra Campione, a program manager at Leapfrog, wrote contemporaneously that this new approach involved “arbitrarily assigning” non-participating hospitals the worst possible scores on the Four Measures. JX-031.0 at 1. At trial, Ms. Campione confirmed that the assignment of “Limited Achievement” for non-participating

hospitals is “mathematically arbitrary.” Day 2 Trial Tr. 289:13–15 (Campione). Leapfrog personnel discussed how to describe these assigned values on its website, reflecting internal recognition that the values were assigned rather than measured. *See* JX-031.0 at 1–6; *see also infra* ¶¶ 55–64.

36. Contemporaneous documents and witness testimony make clear that this arbitrary assignment was intended as a penalty for non-participation. Dr. Patrick Romano, a member of Leapfrog’s Expert Panel, wrote at the time that the purpose of the revised approach was to “penalize nonparticipants” and that the “consequences of nonresponse will become readily apparent.” JX-022.3 at 1. He further warned Leapfrog against a “backdoor approach to penalizing nonparticipation”: “[I]f you want to penalize nonparticipants, then don’t pretend you are imputing missing values in a statistically optimal way. Just be honest about your goal.” *Id.* (discussing Leapfrog’s “strategic objective of penalizing nonparticipants” and stating that “if the goal is to penalize nonparticipants, you might as well do so in a clear and unmistakable manner”).

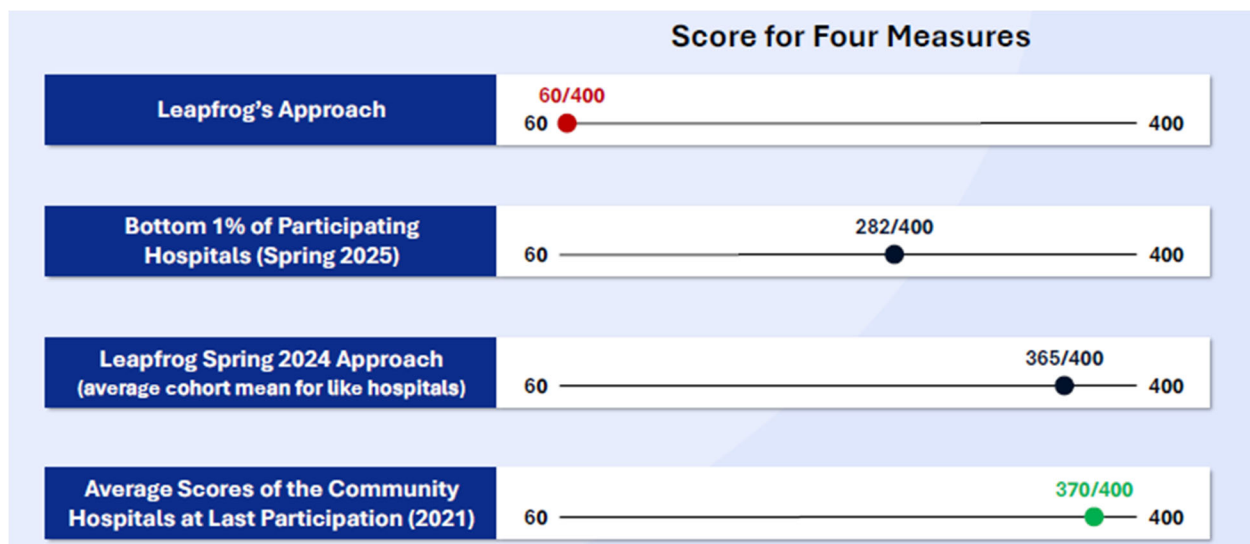
37. Dr. Romano’s statement would prove prescient, including with respect to his own hospital, UC Davis Medical Center. UC Davis made a “business decision” to stop participating in Leapfrog’s Survey prior to Fall 2024. Day 2 Trial Tr. 166:24–167:3 (Romano); *see also* PX-501.0 at 1. After Leapfrog implemented the non-participation penalty, Dr. Romano wrote to his colleagues at UC Davis explaining “the consequences of [their] nonparticipation”: UC Davis received a “D” Safety Grade—a grade that Dr. Romano called “embarrassing.” PX-501.0 at 2. As Dr. Romano explained, the “real killer” of the hospital’s Safety Grade was only one thing: its “nonparticipation.” *Id.*

38. Dr. Romano confirmed at trial that the revised approach amounted to a penalty for non-participation. As he explained, the approach imposed a “predictable, a temporary, and a specific consequence” for non-participation, and that “as soon as a hospital chooses to participate in the survey program again, the penalty goes away.” Day 2 Trial Tr. 180:2–17 (Romano). Dr. Romano further testified “it is very clear that there is a benefit to participation.” Day 2 Trial Tr. 156:10–11 (Romano). The consequence is therefore avoidable through Survey participation and turns on participation status, not measured safety performance.

39. The numerical effect of the revised approach functions as a non-participation penalty. Under Leapfrog’s methodology, non-participating hospitals automatically receive a total of 60 out of 400 possible points across the Four Measures—the lowest available score on the Four Measures. *See* JX-034.0 at 9–12; JX-041.1 at 10–13; Day 1 Trial Tr. 184:18–25 (Nicholson). By

contrast, in Spring 2025, the bottom one percent of participating hospitals received an average of 282 out of 400 points on those same Four Measures—more than a 400 percent difference based solely on Survey participation. *See* PX-412.0; DX-101; *see also* Day 1 Trial Tr. 188:14–25 (Nicholson) (“This means this nonparticipation penalty gives nonparticipating hospitals literally a worse score than the worst performing participating hospitals”). Moreover, not a single participating hospital has received 60 out of 400 points across the Four Measures, PX-412.0—confirming Leapfrog’s “imputation” of “Limited Achievement” for the Four Measures has no connection to actual performance at any hospital nationwide. Day 1 Trial Tr. 187:16–188:2, 188:14–16 (Nicholson). The record evidence showed that the combination of “Limited Achievement” across all Four Measures is unique to non-participating hospitals. *See* PX-412.0; Day 1 Trial Tr. 187:16–188:2, 188:14–16 (Nicholson).

40. Indeed, when the Community Hospitals last participated in the Survey, they averaged 370 out of 400 points across the Four Measures, underscoring the difference between their Survey-based scores and the fixed “Limited Achievement” values automatically assigned to non-participating hospitals. *See* PX-412.0; *see also* Day 1 Trial Tr. 186:16–21 (Nicholson).



PDX-6.39 (citing JX-041.1; PX-412.0; DX-101).

41. Leapfrog’s own expert, the epidemiologist Dr. Anthony Harris, admitted that this disparity is “bizarre” and agreed with the Court that “it seems illogical statistically that [the score] would be that low.” Day 4 Trial Tr. 99:17–19 (Harris) (“You are saying is [sic] it seems illogical statistically that it would be that low. I agree with you, that it seems bizarre it would be less than one percent[.]”). As the Community Hospitals’ health economics expert, Dr. Sean Nicholson,

summarized at trial, the penalty Leapfrog imposes on non-participating hospitals is “severe and substantial.” Day 1 Trial Tr. 187:23–24 (Nicholson).

B. The “Double Whammy”: Automatic Failing Scores Plus Increased Weighting

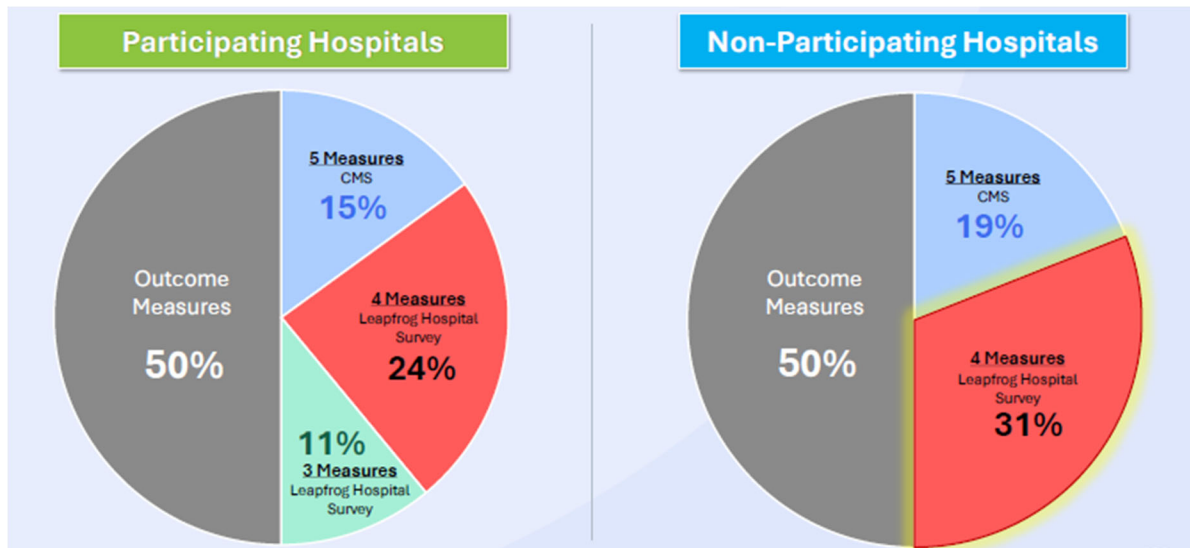
42. The non-participation penalty is further magnified by the weight assigned to the Four Measures.

43. Under Leapfrog’s Safety Grade methodology, individual measures are assigned weights that determine how much each measure contributes to the composite Safety Grade. *See* JX-034.0 at 19. Participating hospitals are graded using twenty-two total Safety Grade measures. *See id.* at 5–7.

44. For non-participating hospitals, Leapfrog removes three measures⁴ from the calculation (reducing the measure set from 22 to 19), and redistributes the weight of the removed measures across the remaining measures. *See id.* at 5–6, 19, 22; Day 1 Trial Tr. 182:20–183:8, 216:18–25 (Nicholson). As a result, the Four Measures for which non-participating hospitals receive automatic and fixed failing scores collectively account for 30.6 percent of the overall Safety Grade (or approximately one-third). *See* JX-034.0 at 19, 22; Day 1 Trial Tr. 182:20–183:8 (Nicholson); Day 4 Trial Tr. 85:25–87:19 (Harris).

45. Expert witnesses agreed that, under the revised approach, the Four Measures collectively account for approximately 31 percent of a non-participating hospital’s overall Safety Grade, compared to approximately 24 percent for a participating hospital. *See* Day 1 Trial Tr. 182:20–183:8 (Nicholson); Day 4 Trial Tr. 85:25–87:19 (Harris); Harris Demonstrative at 6.

⁴ The three eliminated measures are: (1) “Safe Practice 1: Culture of Leadership Structures and Systems”; (2) “Safe Practice 2: Culture Measurement, Feedback & Intervention”; and (3) “Total Nursing Care Hours per Patient Day.” JX-034.0 at 11. For hospitals participating in the Survey, the scores on each of these three measures are based on Survey data. *See id.* at 5–6, 11.



PDX-6.40 (citing JX-034.0).

46. The combined effect of assigning automatic and fixed failing component scores on the Four Measures and increasing their weight for non-participating hospitals is substantial. *See* Day 1 Trial Tr. 198:11–12 (Nicholson) (“There is an enormous difference that comes from the nonparticipation penalty.”), 188:17–19 (“[N]onparticipating hospitals literally receive a worse score than the worst performing participating hospital.”), 198:7–8 (“96 percent of non-participating hospitals are receiving grades of C, D, or F from Leapfrog.”), 198:9–12 (without the non-participation penalty, “71 percent” of non-participating hospitals “get an A or B”), 198:13–17 (the Community Hospitals would have each received at least a “C” without the non-participation penalty).

47. Since Fall 2024, not a single non-participating hospital has received an “A” Safety Grade while subject to the non-participation penalty on all Four Measures. *See* Day 1 Trial Tr. 189:3–5 (Nicholson). By contrast, in Spring 2025, not a single *participating* hospital received an “F” Safety Grade, demonstrating starkly divergent outcomes depending on Survey participation. Day 1 Trial Tr. 189:5–6 (Nicholson).

48. The effect of the non-participation penalty is also reflected in the Community Hospitals’ Safety Grade history. Prior to 2021, the Community Hospitals consistently received Safety Grades of “A,” “B,” or “C.” *See* PX-239.0.

C. The Impact The Fall 2024 Penalty Scoring Had On The Community Hospitals' Safety Grades

49. In 2021, during the COVID-19 pandemic, the Community Hospitals stopped participating in the Survey to reallocate staff and resources to patient care and quality initiatives during that period of operational strain. *See, e.g.*, Day 1 Trial Tr. 92:3–9 (Havericak).

50. Since Leapfrog imposed the non-participation penalty in Fall 2024, the Community Hospitals' Safety Grades have dropped to "D" or "F." *See* PX-239.0; PX-412.0. These declines followed Leapfrog assigning fixed "Limited Achievement" scores for the Four Measures and re-weighting those measures for non-participating hospitals. *See supra* ¶¶ 30–48; JX-034.0 at 15, 19, 22.

51. By Spring 2025, each Community Hospital's Safety Grade had dropped by at least one letter from its Grade in Spring 2024—the last grading cycle before Leapfrog imposed the non-participation penalty. ECF 129 ¶ 151; PX-412.0. In Spring 2024, before Leapfrog imposed the non-participation penalty, Delray received a "D"; Good Samaritan received a "C"; Palm Beach Gardens received a "C"; St. Mary's received a "C"; and West Boca received a "D." *Id.* In Spring 2025, after the non-participation penalty was imposed, Delray received a "F"; Good Samaritan received a "D"; Palm Beach Gardens received a "F"; St. Mary's received a "D"; and West Boca received a "F." ECF 129 ¶ 151; PX-412.0.

52. The Community Hospitals' CEOs each testified that this drop was directly attributable to non-participation in the Survey. *See* Day 1 Trial Tr. 89:22–24, 110:8–13 (Havericak); Day 1 Trial Tr. 142:21–25, 146:1–11 (Cazares); Day 1 Trial Tr. 242:16–20 (McCauley); Day 2 Trial Tr. 98:1–4, 103:7–10 (Hanlon); Day 2 Trial Tr. 213:14–15 (Montgomery).

53. That testimony is supported by contemporaneous documents, expert testimony, and Leapfrog's own witnesses. In Fall 2024, Regina West, Quality Director of PBHN, used Leapfrog's own score calculator and assumptions (e.g., Leapfrog's own tool) to generate a "What If" analysis showing that all the Community Hospitals would have received a "C" Safety Grade had they participated in the Survey. *See* DX-634 at 2.

54. Dr. Nicholson's counterfactual analysis corroborates Ms. West's contemporaneous calculations. Dr. Nicholson testified that, had the Community Hospitals participated in the Survey, their Safety Grades would have increased by one or two full letter Grades—all to "C" Grades—as reflected in the demonstrative below. Day 1 Trial Tr. 198:13–17 (Nicholson). Dr. Nicholson applied a conservative approach grounded in peer-reviewed principles and Leapfrog's own

methodology materials to test the effect of participation on the Community Hospitals' Grades. *See* Day 1 Trial Tr. 196:18–200:16 (Nicholson). Dr. Nicholson testified that his counterfactual analysis was conservative because participating hospitals commonly receive very high scores on the Four Measures and the Community Hospitals received higher than average Survey-based scores on those measures when they last participated in 2021. *See id.*



PDX-6.50 (citing PX-937.0; PX-412.0).

D. Lack Of Actual Safety Performance Data

55. Under the Fall 2024 approach, Leapfrog's witnesses and experts testified that Leapfrog has no performance data—whether from the hospitals or any other sources—measuring non-participating hospitals' actual performance on the Four Measures. *See* ECF 163-1 (Austin Tr.) 239:19–240:7 (handwashing score “is based on a lack of data”); Day 2 Trial Tr. 261:2–25 (Campos) (confirming that Leapfrog lacks data for non-participating hospitals); Day 3 Trial Tr. 228:7–229:1 (Danforth) (agreeing that Leapfrog “has no data for nonparticipating hospitals measuring the actual performance” on the Four Measures); Day 4 Trial Tr. 103:18–25 (Harris) (agreeing that Leapfrog “has no data” from non-participating hospitals “on hand hygiene performance”).

56. Witnesses for both parties also agreed that Leapfrog lacks data for the three Survey-dependent measures it removes from the Safety Grade calculation for non-participating hospitals (i.e., “Safe Practice 1: Culture of Leadership Structures and Systems,” “Safe Practice 2: Culture Measurement, Feedback & Intervention,” and “Total Nursing Care Hours per Patient Day”), such that Leapfrog lacks data for seven measures in total when it assigns Safety Grades to non-participating hospitals. *See* JX-034.0 at 11.

57. Dr. Romano testified that “[t]here are seven missing measures” and that Leapfrog lacks “underlying data to support those seven measures” while still assigning Safety Grades to non-participating hospitals. Day 2 Trial Tr. 172:21–174:4 (Romano). Dr. Nicholson similarly

testified that because “Leapfrog is missing seven [measures], which is more than six” yet still assigns non-participating hospitals a Safety Grade, Leapfrog is “not adhering to one of their own principles.” Day 1 Trial Tr. 195:22–196:17 (Nicholson).

58. Leapfrog’s witnesses testified that the Fall 2024 non-participation penalty was not designed to measure or approximate actual hospital performance on the Four Measures. Dr. Romano testified that the purpose “was *not* to improve accuracy” and that the automatically assigned lowest score his hospital received “is not an accurate reflection” of performance but a “natural consequence[.]” of non-participation. Day 2 Trial Tr. 154:16–19 (Romano) (emphasis added), 166:17–167:3. Dr. Matthew Austin, who provides strategic guidance on Leapfrog’s Survey and Safety Grades, testified the revised approach attempts to “guess” hospital performance on the Four Measures. ECF 163-1 (Austin Tr.) 238:7–9. Ms. Campione testified it rests on an “assumption” that non-participating hospitals perform poorly on the Four Measures. Day 2 Trial Tr. 263:3–9 (Campione). Leapfrog’s Senior Vice President of Health Care Ratings, Melissa “Missy” Danforth, confirmed that “the determination that the five hospitals should receive five, 15, 25, five is based on the belief that those hospitals must be hiding something.” Day 3 Trial Tr. 226:17–21 (Danforth). Ms. Binder testified that she is “assuming” non-participating hospitals “are in the lowest category.” Day 3 Trial Tr. 36:4–8 (Binder). Dr. Nicholson testified that the non-participation penalty does not—and cannot—reliably predict patient safety outcomes at non-participating hospitals. *See* Day 1 Trial Tr. 193:3–21 (Nicholson). He testified that the approach departs from foundational principles of hospital quality measurement because it does not grade participating and non-participating hospitals using the same data sources or measures (i.e., not apples to apples); constitutes a “scientifically [in]defensible” non-participation penalty that lacks “any scientific basis”; does not verify performance through sufficient in-person audits; introduces bias by assigning Safety Grades despite missing the minimum amount of data needed to grade reliably—including for nearly a quarter of the hospitals it grades; and produces unreliable Safety Grades disconnected from actual safety performance and patient outcomes. Day 1 Trial Tr. 189:9–193:21 (Nicholson), 192:7–11 (testifying that in 2019 Leapfrog conducted in-person audits of only “.2 percent of hospitals”).

59. Leapfrog witnesses conceded that Leapfrog has no way of knowing how non-participating hospitals—including the Community Hospitals—perform on the Four Measures. Dr. Austin testified that “we don’t have any empirical evidence on what a hospital’s performance would be when they don’t report because we don’t actually have those data.” ECF 163-1 (Austin

Tr.) 193:18–20. Ms. Danforth confirmed Leapfrog has no data measuring actual performance on the Four Measures for non-participating hospitals. *See* Day 3 Trial Tr. 228:7–229:1 (Danforth). Ms. Campione confirmed that where the “data is missing,” “you don’t know either way” and “if you don’t have the data, you don’t have the data” and there is “no evidence.” Day 2 Trial Tr. 261:2–25, 263:2–9 (Campione).

60. The Hand Hygiene measure is illustrative. Leapfrog tells consumers Hand Hygiene is among the “most important” measures to assess hospital safety, PX-023.0 at 3, yet Leapfrog witnesses testified that Leapfrog has no way of knowing hand hygiene practices at a non-participating hospital. *See* Day 2 Trial Tr. 261:2–25 (Campione); Day 3 Trial Tr. 33:19–24, 39:15–18 (Binder); Day 3 Trial Tr. 228:20–229:1 (Danforth); Day 4 Trial Tr. 103:18–25 (Harris).

61. By contrast, Dr. Harris testified that hospital leadership “know their data,” including how their hospitals perform on key safety practices and whether they are conducting hand hygiene observations. *See* Day 4 Trial Tr. 57:25–58:1, 94:6, 94:13–20, 99:16 (Harris).

62. Each Community Hospital CEO testified that they “know” their hospitals’ hand hygiene practices and that their hospitals implement the practices Leapfrog describes as those that “safer hospitals do.” *See* Day 1 Trial Tr. 66:6–9 (Havericak); Day 1 Trial Tr. 154:2–15 (Cazares); Day 1 Trial Tr. 241:14–242:9 (McCauley); Day 2 Trial Tr. 78:25–79:18 (Hanlon); Day 2 Trial Tr. 198:1–17 (Montgomery).

63. The evidence also showed that when the Community Hospitals last participated in the Survey they received high (often perfect) scores on the Four Measures—including on Hand Hygiene. *See* PX-412; *see also supra* ¶¶ 39–41. But under the Fall 2024 approach, Leapfrog assigns them the lowest possible values for the Four Measures, placing them below even the worst-performing *participating* hospitals on those measures. Under the Fall 2024 approach, non-participating hospitals receive the lowest possible scores (*400% lower* than the Four Measures totals received by even the *bottom 1%* of participating hospitals) across the Four Measures. *See* PX-412; JX-034.0 at 15; Day 1 Trial Tr. 188:14–25 (Nicholson); Day 2 Trial Tr. 148:24–149:5, 154:16–19 (Romano); Day 4 Trial Tr. 85:12–86:19 (Harris); *see also supra* ¶¶ 39–41.

64. Leapfrog’s expert Dr. Harris testified he would have “no bases” to doubt the Community Hospitals’ CEOs. Day 4 Trial Tr. 82:21–23 (Harris). Nevertheless, Leapfrog assigns non-participating hospitals the lowest possible scores on the Four Measures in the absence of any data measuring performance on those measures.

* * *

65. Taken together, the record demonstrates that under the Fall 2024 approach, Leapfrog assigns failing measure scores for key Survey-dependent measures about which it has no data measuring actual hospital performance, and re-weights those assigned scores in the Safety Grades for non-participating hospitals.

III. WHAT LEAPFROG LEADS THE PUBLIC TO BELIEVE ABOUT ITS SAFETY GRADES

66. Leapfrog makes extensive representations to the public about what its Hospital Safety Grades mean, how they are derived, and why consumers should trust and rely on them.

67. Leapfrog communicates these representations through its consumer-facing website, including its Frequently Asked Questions (“FAQ”) and “About the Grade” webpages, which are directed to consumers, including patients, healthcare workers, employers, hospitals, and others making healthcare decisions.

68. Through these materials, Leapfrog conveys three central messages designed to reassure consumers that the Safety Grades are reliable, data-driven indicators of hospital safety.

A. Leapfrog Leads The Public To Believe The Safety Grades Are Supported By Real Data

69. Leapfrog represents to consumers that its Safety Grades are based on actual hospital data, including data submitted through the Survey and other external data sources Leapfrog selects.

70. On its “About the Grade” webpage, Leapfrog explains that it uses measures of patient safety drawn from CMS data, hospital-reported data from the Survey, and “supplemental data source[s].” PX-066.0 at 3. Leapfrog reinforces this message in its 29-page Safety Grade methodology document, which states “Leapfrog uses a secondary data source” where a hospital’s information is unavailable. JX-041.1 at 5; *see also* JX-034.0 at 5 (same).

71. Leapfrog also represents that hospitals lacking sufficient data are not graded. On its “About the Grade” webpage, Leapfrog states that “[h]ospitals missing more than six process measures ... are not graded.” PX-066.0 at 5; *see also* JX-034.0 at 4 (methodology document) (same). Leapfrog’s “Expert Panel Guiding Principles,” which were linked on its consumer-facing website until recently, similarly state that “no grade should be issued” when data is missing for a large number of measures. PX-203.0 at 3.

72. These representations convey to consumers that if a hospital receives a Safety Grade, Leapfrog has sufficient data to support that Grade—otherwise, Leapfrog does not issue a Grade.

73. Leapfrog nevertheless issued Safety Grades to non-participating hospitals despite lacking data for seven measures. *See* Day 2 Trial Tr. 172:21–174:4 (Romano); Day 1 Trial Tr. 195:22–196:17 (Nicholson); Day 2 Trial Tr. 29:2–14 (Berger); *see also* ECF 43 (Leapfrog’s Answer) ¶¶ 49–50 (admitting that for non-participating hospitals, Leapfrog “abandons *three* measures entirely” and uses “its ‘imputation model’” for “*four* measures”—and the “imputation model is how it assigns a value for a measure when it *lacks any data pertaining to it*” (emphases added)).

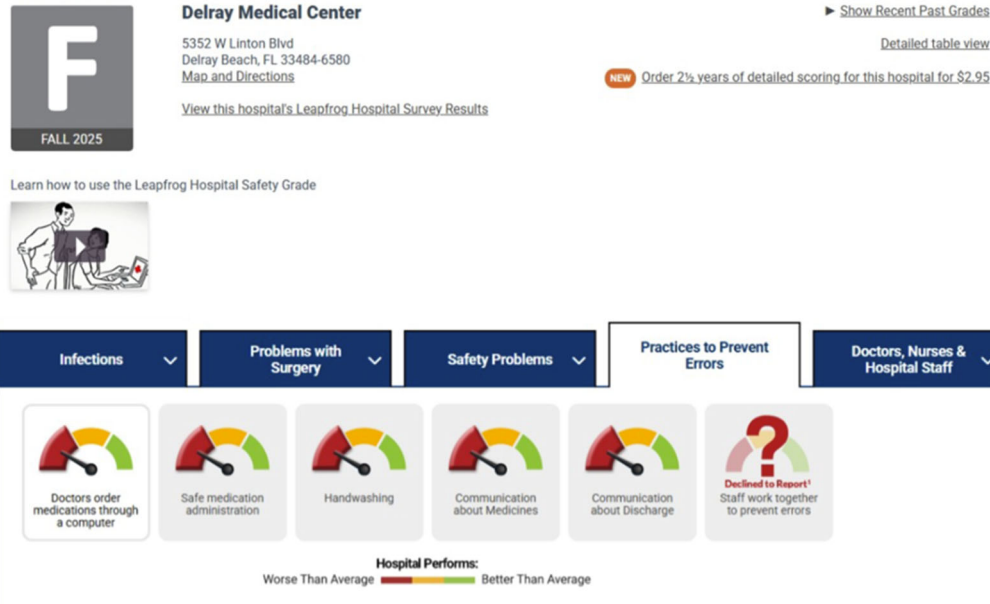
B. Leapfrog Leads The Public To Believe The Safety Grades Reflect Actual Safety Performance—Not Survey Participation

74. Leapfrog expressly tells consumers that its Safety Grades reflect hospital safety performance, rather than participation in its Survey.

75. On its “Frequently Asked Questions” webpage, Leapfrog states unambiguously: “The Hospital Safety Grade reflects how well a hospital does on safety, not whether they complete the Leapfrog Hospital Survey.” PX-021.0 at 2.⁵ Leapfrog further represents on its “About the Grade” webpage that the Safety Grade summarizes a hospital’s “overall performance in keeping patients safe from preventable harm and medical errors.” PX-066.0 at 1.

76. Leapfrog reinforces its performance-based message through visual design elements on each hospital’s Safety Grade webpage. *See, e.g.*, PX-034.5. Directly below the letter Grade, Leapfrog displays “gas gauge” graphics for each individual safety measure, ranging from “Worse Than Average”—displayed in red—to “Better than Average”—displayed in green. *See id.*

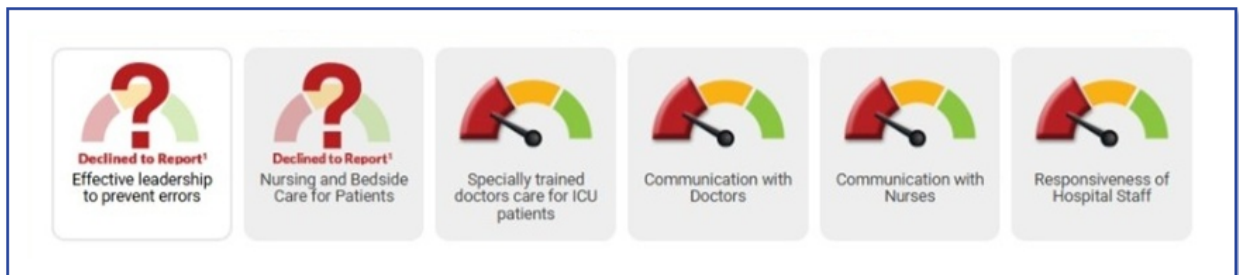
⁵ Leapfrog’s webpage was changed during the course of this litigation and now states, “Reporting to the Leapfrog Hospital Survey doesn’t automatically improve a hospital’s Safety Grade.” PX-506.0 at 6. This statement omits the key point that non-participation dramatically affects a hospital’s scores. As Dr. Romano explained, “it is very clear that there is a benefit to participation” and that “[r]eward and penalty are two sides of the same coin[.]” Day 2 Trial Tr. 156:10–12.



Id. at 1.

77. Experts for both parties testified that the gas gauges convey information about hospital safety performance. Leapfrog’s user experience and low literacy expert, Michael Vredenburg, testified that the “gas gauge convey[s] something about performance” and “shows a low score” when displayed in red. ECF 180-1 (Vredenburg Tr.) 167:24–168:3. Dr. Berger testified that a reasonable consumer would likely understand the gas gauge graphics to reflect actual hospital performance data. Day 2 Trial Tr. 13:17–15:2, 18:4–19:8 (Berger).

78. This performance-based message is reinforced by how Leapfrog presents certain measures when data is missing. When Leapfrog lacks data for certain measures, it does not display a gas gauge graphic and instead uses a “Declined to Report” designation accompanied by a prominent question mark. *See, e.g.*, PX-034.6.

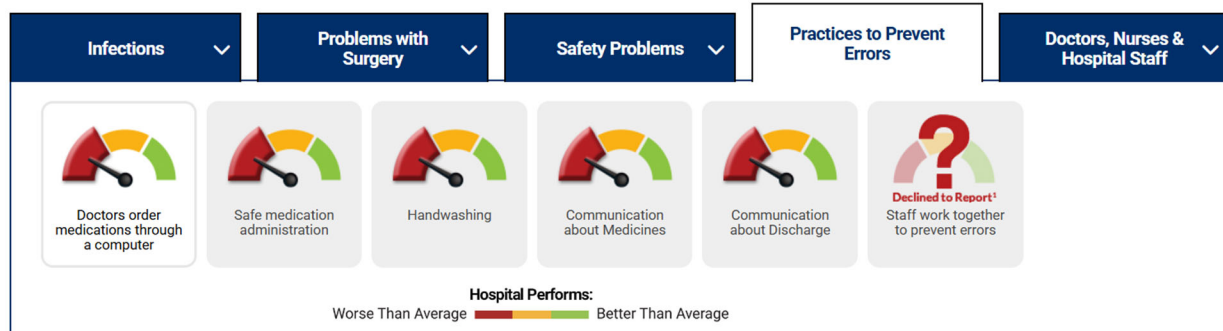


PDX-3.16 (citing PX-034.6).

79. Mr. Vredenburg testified that this question mark presentation is a “good practice” because it clearly communicates to consumers that data is missing and avoids conveying

information about a hospital's performance on a measure where none has been measured. ECF 180-1 (Vredenburgh Tr.) 166:4–10.

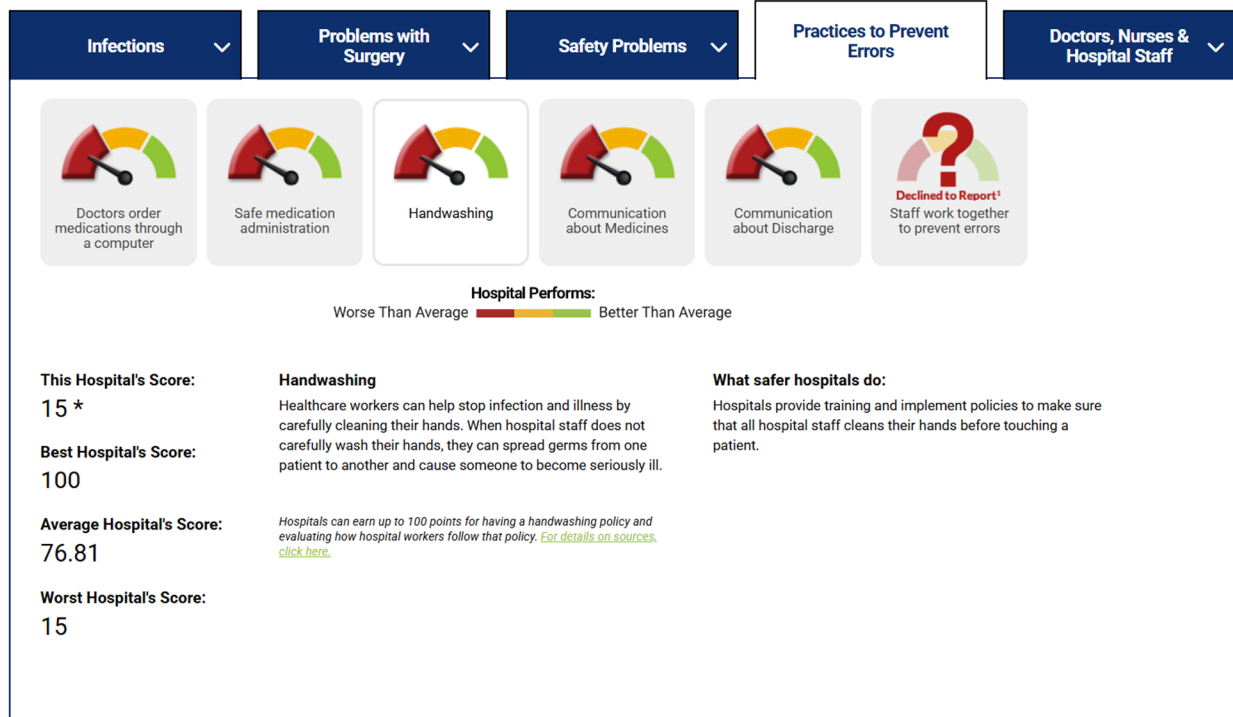
80. Leapfrog does not apply this same “Declined to Report” question mark presentation to the Four Measures for non-participating hospitals. Instead, Leapfrog displays them with full gas gauge graphics:



PX-34.5 at 1 (showing gas gauges for three of the Four Measures).

81. Leapfrog's expert Mr. Vredenburgh testified that using the “Declined to Report” question mark presentation for those measures would likewise be a “good practice.” ECF 180-1 (Vredenburgh Tr.) 167:4–168:21. Both experts agreed that the use of gas gauge graphics signals to consumers that the measure reflects actual assessed safety performance rather than missing or unavailable data. *See* Day 2 Trial Tr. 18:17–20 (Berger) (“[C]onsumers would be likely to infer there is no decline to report for hand washing, [so] that is based on real data that indicates performance.”); ECF 180-1 (Vredenburgh Tr.) 167:24–168:3 (testifying that the “gas gauge convey[s] something about performance”).

82. In addition to the gas gauge graphics, Leapfrog displays a numerical score for each specific measure and directly compares the hospital's score to the scores of the “Best Hospital” and the “Worst Hospital” for that same measure. *See, e.g.,* PX-034.5 at 7–8. As an example, for the handwashing measure—one of the Four Measures—Leapfrog displays a score of 15 for each of the Community Hospitals, which is the same score Leapfrog identifies on the webpage as the “Worst Hospital's Score” for that measure. *See id.* at 8. Leapfrog then juxtaposes that score with a section titled “What safer hospitals do,” describing hand hygiene practices associated with higher-scoring hospitals. *See id.*



PX-034.5 at 7–8.

83. Leapfrog’s user-experience expert, Mr. Vredenburg, testified that this presentation would lead consumers to understand that the Community Hospitals perform at the lowest end of the safety spectrum for that measure and to infer that they do the “opposite” of what the best hospitals do. ECF 180-1 (Vredenburg Tr.) 171:5–172:3.

84. Leapfrog further entrenches this performance-based message by stating on the Safety Grade webpage that “[h]ospitals can *earn* up to 100 points for having a handwashing policy and evaluating how hospital workers follow that policy.” PX-034.5 at 8 (emphasis added). Ms. Binder confirmed at trial that Leapfrog conveys to the consumer that the Hand Hygiene score is, in fact, “earned” through performance. Day 3 Trial Tr. 38:15–21 (Binder).

85. Taken together, Leapfrog’s statements and its presentation of the Safety Grades—through gas gauge graphics, numerical scores, and “best” and “worst” hospital comparisons—communicate to consumers that the Safety Grades reflect measured safety performance, and not Survey participation. For non-participating hospitals, however, Leapfrog assigns failing component scores on key Survey-dependent measures despite having no data measuring actual performance on those measures. *See* ECF 163-1 (Austin Tr.) 193:18–20 (“We don’t have any empirical evidence on what a hospital’s performance would be ... because we don’t actually have those data.”), 239:19–240:7 (handwashing score “is based on a lack of data”), 415:16–19 (“We are

currently not using secondary data as part of the imputation models.”); Day 2 Trial Tr. 261:2–25 (Campione) (confirming that Leapfrog lacks data for non-participating hospitals); Day 3 Trial Tr. 228:7–229:1 (Danforth) (agreeing that Leapfrog “has no data for nonparticipating hospitals measuring the actual performance” on the Four Measures); Day 4 Trial Tr. 103:18–25 (Harris) (agreeing that Leapfrog “has no data” from non-participating hospitals “on hand hygiene performance”).

C. Leapfrog Leads The Public To Believe The Safety Grades Are Peer-Reviewed And Expert-Approved

86. Leapfrog represents to the public that the methodology underlying its Safety Grades has been peer reviewed and approved by experts.

87. On its consumer-facing FAQ webpage, Leapfrog states that the Safety Grade “uses a public, peer-reviewed methodology, calculated by top patient safety experts under the guidance of a National Expert Panel.” PX-021.0 at 1.

88. On its “About the Grade” webpage, Leapfrog likewise states that the methodology “has been peer reviewed” and that Leapfrog works “under the guidance of an Expert Panel to select appropriate measures and develop a scoring methodology.” PX-066.0 at 1-2.

89. Leapfrog presents these statements without qualification. However, Leapfrog’s Fall 2024 non-participation approach was not peer reviewed and was not approved by its Expert Panel. *See supra* ¶ 20; *see also* ECF 163-1 (Austin Tr.) 90:15–17 (testifying the Fall 2024 methodology “has not” been peer reviewed), 285:7–15 (testifying that “[w]e did not query the [E]xpert [P]anel about whether they approved [the Fall 2024 methodology] or not”); Day 3 Trial Tr. 193:22-194:1 (Danforth) (testifying that the Fall 2024 methodology “is not the imputation model” that was “brought to the [P]anel in 2024”), 199:16–20 (“It is not [the Expert Panel’s] job to then work out all of the detail, that is our job.”).

* * *

90. Collectively, these three representations lead consumers to believe that the Community Hospitals’ “D” and “F” Safety Grades are supported by data, reflect actual safety performance, and are derived from expert-approved, peer-reviewed methodology.

IV. LEAPFROG’S PURPORTED DISCLOSURES: HIDDEN FOOTNOTES AND BURIED DOCUMENTS

91. These affirmative representations shape how consumers understand the Safety Grades. Whether consumers learn that Grades for non-participating hospitals are calculated differently depends on what Leapfrog discloses on its website. The trial evidence showed that

Leapfrog's website does not provide consumers with a clear explanation that, as a consequence of Survey non-participation, Leapfrog assigns fixed failing component scores on key Survey-dependent measures despite having no data measuring actual performance on those measures.

92. After Leapfrog adopted the non-participation penalty, Leapfrog employees discussed how to explain it on Leapfrog's website. *See, e.g.*, JX-031.0. While they agreed to include a new footnote, they debated how substantive the language should be. *See id.* For example, Ms. Campione rejected one suggestion because Ms. Binder "wanted us to make it sound like the expert panel approved it and the assigning of these points was legitimate." *Id.* at 1.

93. In the end, Leapfrog added Footnote 4, which states: "*The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available." *See, e.g.*, PX-034.5 at 8.

94. Dr. Berger testified that Footnote 4 is accessible only after a consumer navigates to one of the Four Measures (by clicking through more than 20 other measures) and then scrolls down to where the footnote is displayed—steps a consumer would not take when viewing the letter Grade. Day 2 Trial Tr. 16:3–17:15 (Berger).

95. Even if a consumer accesses Footnote 4, it does not explain the basis for the score that was assigned. Dr. Berger explained that it "says nothing about the score that was assigned," including "why that score was assigned." Day 2 Trial Tr. 21:1–19 (Berger). Mr. Vredenburgh likewise testified that Footnote 4 does not show a consumer "under the hood" of how a score was assigned and does not allow a consumer to determine whether Leapfrog used actual performance data or a default assumption to "assign" the score. ECF 180-1 (Vredenburgh Tr.) 169:5–10, 183:18–184:1.⁶ Indeed, Leapfrog's Director of Communications, Lauren Bailey, testified that informing consumers about *how* the score was assigned was "not the purpose" of the footnote. ECF 163-4 (Bailey Tr.) 180:10–17.

96. Leapfrog's Safety Grade webpage contains another footnote—Footnote 1—which states: "Declined to Report: The Hospital was asked to provide this information to the public, but did not." *See, e.g.*, PX-034.2 at 2.

⁶ When shown Safety Grade webpages for two different non-participating hospitals, one scored using historical performance data and another that assigned the lowest possible score, Mr. Vredenburgh testified that Footnote 4 did not explain how the lowest score was assigned. ECF 180-1 (Vredenburgh Tr.) 180:14–184:1. He agreed the two webpages were "totally indistinguishable" from each other, and a "typical user will have no idea which is which." *Id.* 183:5–14.

97. Dr. Berger testified that Footnote 1 appears across all Safety Grade webpages, including webpages for participating hospitals, and is not tied to any specific measure or score. *See* Day 2 Trial Tr. 12:19–13:16 (Berger). Footnote 1 also appears across all measures, including those for which Leapfrog does have data; it does not identify what data was missing, what assumption was made, or how any particular score was calculated. *See, e.g.*, PX-034.2 at 2, 5, 8, 11, 14, 17.

98. In addition to the footnotes, Leapfrog includes on its website a document that explains the Safety Grade methodology. *See* JX-034.0 (Fall 2024); JX-041.1 (Spring 2025). After adopting the non-participation penalty, Ms. Campione suggested placing a direct link to the methodology document. *See* JX-031.0 at 1. Ms. Campione explained, however, that neither Ms. Binder nor Ms. Danforth “cared to do so.” *Id.*

99. Instead of linking the methodology document directly from the Safety Grade webpage, Leapfrog made the document accessible only through multiple navigation steps requiring a user to click through numerous webpages and scroll through extensive content. *See* Day 2 Trial Tr. 22:2–23:21 (Berger).

100. Leapfrog’s website analytics data confirms that very few consumers access the methodology document as a result. Dr. Berger testified that Leapfrog’s analytics show that only approximately three percent of visitors to the Community Hospitals’ Safety Grade webpages viewed the methodology document. *See* Day 2 Trial Tr. 24:18–25 (Berger). Dr. Berger further testified that the methodology document spans 28 pages and does not explain how Leapfrog scores nonparticipating hospitals on the Four Measures until page 15. *See* Day 2 Trial Tr. 27:4–8 (Berger). Dr. Berger concluded that it is thus likely that fewer than three percent of the visitors that accessed the methodology document actually viewed Leapfrog’s description of the non-participation penalty. *See* Day 2 Trial Tr. 24:18–25, 38:11–14 (Berger); *see also* JX-026.0 at 1 (warning Leapfrog that the public “will not understand nor dig into the methodology” after seeing Safety Grades).

101. Even if users did access the methodology document, multiple Leapfrog witnesses testified that it is not designed for a typical consumer audience. Ms. Binder and Leapfrog’s user-experience expert, Mr. Vredenburgh, both testified that the methodology document is dense, technical, and not intended to be understood by ordinary consumers. Day 3 Trial Tr. 70:11–18 (Binder) (testifying that the document “is not meant to be used by the average lay person,” but is instead for “researchers, hospitals, [and] anyone who has a deep interest in the topic”); ECF 180-1

(Vredenburg Tr.) 173:15–25 (testifying that the document is “dense” and would not be read by a “typical user”).

102. At trial, Ms. Binder testified extensively about the “low literacy” and “user experience” testing that Leapfrog conducted on its consumer-facing website. *See* Day 3 Trial Tr. 110:3–117:14 (Binder). Ms. Binder further testified that this testing focused on whether information on the website was written at approximately an “eighth grade reading level for the consuming public.” Day 3 Trial Tr. 117:9–14 (Binder). Ms. Binder explained, however, that this testing occurred between 2013 and 2014 and thus predated the Fall 2024 methodology change by about a decade. *See* Day 3 Trial Tr. 112:25–113:4 (Binder). As a result, it did not—and could not—analyze Footnote 4, the updated gas gauge graphics for the measures for which Leapfrog lacks data, or the current Safety Grade methodology document. Indeed, Ms. Binder testified that she does not know and “can’t answer” whether there was any low literacy review conducted “in connection with the fall [] 2024 methodology change,” and she confirmed that the 29-page methodology document has not been subjected to any low literacy review. Day 3 Trial Tr. 124:22–125:16 (Binder).

103. In sum, the trial evidence showed that consumers encountering a Safety Grade are not provided a clear disclosure that failing component scores for key Survey-dependent measures are assigned to non-participating hospitals without performance data for those measures.

104. Mr. Vredenburg, Leapfrog’s paid expert, testified that he spent approximately “two hours” browsing Leapfrog’s Safety Grade website in what he described as a “fairly deep dive,” yet he *still* did not understand how the imputation methodology functioned. ECF 180-1 (Vredenburg Tr.) 50:18–51:1, 179:3–19. Thus, as presented, the Safety Grade appears as a standalone letter Grade reflecting hospital safety, without explanation of the methodology applied to non-participating hospitals.

V. LEAPFROG’S WIDESPREAD DISSEMINATION AND AMPLIFICATION OF THE COMMUNITY HOSPITALS’ SAFETY GRADES

105. Leapfrog’s dissemination practices amplify the consumer impact of its Safety Grades. Millions of consumers visit Leapfrog’s website (www.hospitalsafetygrade.org) each year, but the website is only the starting point. *See* ECF 163-4 (Bailey Tr.) 104:8–14; PX-420.1 at 11. Once posted on the website, the letter Safety Grade travels widely through media coverage, social media, search results, advertisements, and other third-party channels, reaching consumers without any accompanying explanation of Leapfrog’s methodology.

106. Leapfrog pays a press relations firm, CURA Strategies, as well as radio and broadcast television vendors, to “get the safety grade out” to a wide audience. ECF 163-4 (Bailey Tr.) 187:8–22. According to Ms. Bailey, a “really important” part of Leapfrog’s dissemination strategy is “to get the safety grades out to ... local publications” in particular. ECF 163-4 (Bailey Tr.) 198:19–199:4.

107. These outreach efforts generate extensive media coverage. The Fall 2024 Safety Grades alone generated “772 online articles from 435 different publications with a reach of 11.2 billion.” PX-350.0 at 2; *see also* Day 3 Trial Tr. 11:7–10 (Jupiter) (confirming “reach of 11.2 billion people”).

108. Ms. Jupiter testified that Florida is “always” one of the markets that generates the most media coverage of the Safety Grades, including specifically for the Fall 2024 grading cycle. Day 3 Trial Tr. 12:23–13:3 (Jupiter).

109. Following the release of the Fall 2024 Safety Grades, the Community Hospitals’ “D” and “F” Grades were widely disseminated across news, radio, and online media. *See, e.g.*, PX-466.1; PX-467.0; PX-468.0; PX-469.0; PX-390.0; PX-503.0; PX-357.0; PX-346.0; PX-352.0; PX-388.0.

110. For example, the Community Hospitals’ Grades were featured in numerous news articles with headlines such as “dangers lurking near you” and “bottom” and “worst South Florida hospitals for patient safety.” PX-388.0; PX-390.0; PX-357.0. The Grades were also highlighted in a viral TikTok video that received more than one million views and listed the Community Hospitals alongside their Leapfrog Safety Grades, describing them as among the “worst” hospitals in Florida. *See, e.g.*, PX-466.0; PX-469.0.

111. When Safety Grades are disseminated through channels beyond Leapfrog’s website, consumers typically see the letter Grade without accompanying explanation of how it was calculated or what hospital data was available. Dr. Berger testified that the failing Safety Grades are “traveling” alone—without methodology or context. Day 2 Trial Tr. 35:2–11 (Berger). Consumers are exposed only to the single letter signifying whether a hospital is dangerous and unsafe. *See* Day 2 Trial Tr. 8:24–11:2 (Berger).

112. Leapfrog took additional steps to target the Community Hospitals and amplify their Safety Grades after this lawsuit was filed. Leapfrog witnesses admitted that Leapfrog purchased Google advertisements using funds from a non-profit grant from Google to specifically target the

Community Hospitals so that consumers in designated Florida zip codes searching for the Community Hospitals would be shown the failing Safety Grades. *See* Day 3 Trial Tr. 18:25–19:10 (Jupiter); ECF 163-4 (Bailey Tr.) 291:21–292:2, 292:4–292:18; *see also* PX-454.0 at 3 (“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.”).

113. Internal Leapfrog communications confirm that this advertising strategy was intended to apply pressure to the Community Hospitals. As Ms. Jupiter wrote at the time, Ms. Binder wanted to “harass” the Community Hospitals with this media strategy, with another employee saying, “the strategy is to become a disney villain.” PX-439.0 at 3; *see also* PX-454.0 at 1, 3; Day 3 Trial Tr. 17:16–24 (Jupiter).

114. Leapfrog also sought to draw direct comparisons between the Community Hospitals and Jupiter Medical Center—one of their main competitors—“in the media and with employers.” ECF 163-2 (van Caulil Tr.) 149:9–12.

115. Leapfrog was founded by employer groups. *See* Day 3 Trial Tr. 86:22–87:7, 90:9–11 (Binder). And Leapfrog Board member Ms. van Caulil testified that, through the Florida Alliance for Healthcare Value (“Florida Alliance”), Leapfrog’s Regional Leader in Florida, of which she is CEO, Leapfrog circulated the Safety Grades directly to employers—entities that purchase healthcare and influence patient choice. ECF 163-2 (van Caulil Tr.) 61:3–8, 149:9–12; *see also* Day 3 Trial Tr. 121:7–16 (Binder) (testifying that employers consider Safety Grades and may rely on them when making purchasing decisions); *see also* PX-824.0 at 2 (Leapfrog federal tax forms noting that it “works with *employers* and purchasers of health care to encourage transparency from the health care community” and “to educate” those employers’ “employees on the safest and highest quality providers” (emphasis added)). The Florida Alliance also sent letters to hospitals—including West Boca Medical Center—to pressure them into participating in the Survey. *See* PX-415.0.

116. Taken together, Leapfrog disseminates and amplifies the Community Hospitals’ Safety Grades through its website, paid advertising, media outreach, and employer communications, increasing the likelihood that consumers will encounter its letter Grades without accompanying methodological context.

VI. LEAPFROG’S MOTIVE: USE THE SAFETY GRADE TO COERCE PARTICIPATION AND INCREASE REVENUE

117. Leapfrog assigns Safety Grades to hospitals regardless of whether they participate in the Survey. Despite Leapfrog claiming that the Survey is “voluntary,” hospitals cannot opt out of being graded, cannot prevent being compared to other hospitals, and cannot avoid dissemination of a Safety Grade even when they choose not to participate in the Survey. *See* ECF 163-1 (Austin Tr.) 243:16–245:16; Day 3 Trial Tr. 215:20–216:2 (Danforth). As Dr. Austin testified, Leapfrog’s grading system is “nonvoluntary” by design. ECF 163-1 (Austin Tr.) 247:3–8.

118. Under the Fall 2024 approach, Survey participation is the means by which a hospital avoids the non-participation penalty. *See* Day 2 Trial Tr. 151:4–9, 180:2–17 (Romano) (the “penalty goes away” once a hospital resumes participation).

119. The trial evidence showed that Leapfrog adopted the Fall 2024 non-participation “penalty” to increase Survey participation and thereby protect and expand revenue from Survey-based data licensure and related products, rather than to measure and report hospitals’ actual safety performance. *See* PX-205.0 at 2; PX-501.1 at 1; Day 3 Trial Tr. 53:18–20 (Binder); PX-323.2 at 1; Day 2 Trial Tr. 154:16–19, 180:2–17 (Romano). Increased revenue would, in turn, increase compensation of Leapfrog’s CEO, Ms. Binder. *See* Day 3 Trial Tr. 61:1–3 (Binder) (agreeing that “the more revenues, the higher percentage bonus” she would receive); *see also* PX-248.0 at 3–4; PX-322.2 at 1.

A. Leapfrog Adopted the Non-Participation Penalty to Increase Revenue

120. Leapfrog’s marketing materials urge “your hospital or surgery center” to license “designated logos” from Leapfrog to “promote” their Leapfrog Safety Grades to their “employees” and “community.” PX-007.0 at 6–7; *see also* PX-508.0. Leapfrog calls these Safety Grade logos “accolades” and markets them as a “remarkable” opportunity for hospitals to show that their “staff upholds the most rigorous standards,” which promotes “recognition” in your “community” and helps hospitals “attract healthcare professionals.” PX-508.0 at 4, 6. Indeed, Leapfrog suggests that hospitals specifically should share their “designated logo[s]” on “[j]ob listing websites” and in “[s]ocial media recruitment campaigns” to attract and impress “job candidates.” *Id.* at 6; *see also* PX-222.0 at 32 (Safety Grade license would assist with “[r]ecruitment of better doctors and medical professionals,” enhance “[j]ob satisfaction,” and facilitate “[e]mployee retention”). Under Leapfrog’s terms, “hospitals and surgery centers are *not permitted* to create their own version of

Leapfrog’s designated logos” and are instead “required” to obtain a “license” from Leapfrog to display the Safety Grades. PX-508.0 at 5. As one example, Leapfrog’s marketing materials feature a large mockup of the lobby of a direct competitor of the Community Hospitals (Jupiter Medical Center) with a licensed banner from Leapfrog prominently displaying Jupiter’s “A” Safety Grade. *Id.* at 2. Hospitals pay Leapfrog thousands of dollars to license their Safety Grades. PX-407.0 at 1, 3; *see also* Day 3 Trial Tr. 211:15–212:15 (Danforth).

121. Leapfrog also generates significant revenue by selling access to data derived from hospital data collected through the Survey to third parties, including insurers, researchers, and others interested in proprietary hospital data. *See* PX-205.0 at 5; PX-275.0; PX-324.0 at 15–22; *see also* Day 3 Trial Tr. 53:18–22 (Binder) (testifying that data licensing “is “one of the largest sources” of Leapfrog’s revenue). Leapfrog states insurers should “[p]artner with Leapfrog” because the “Hospital Safety Grade” provides “proven value.” PX-232.0 at 21. Leapfrog’s internal records show Leapfrog *licenses* the Safety Grades for use by numerous insurers, sometimes for \$30,000 to \$125,000. PX-324.0 at 15. Leapfrog also creates price incentives to induce insurers to license and rely on the Safety Grades; for example, when an insurer licenses the Survey *and* the Safety Grades, that insurer can receive a 5% discount on the purchase. *Id.* at 17. And insurers can secure a further “10–20%” discount when they sign a “multi-year contract” to license Leapfrog’s data. *Id.* Leapfrog has also explored avenues to induce insurers to purchase the Safety Grades more quickly—for example, by imposing a “30-day quote expiration to speed up contracting time” and offering “[i]ntroductory discounts” that expire if the insurer does not license the Safety Grades within Leapfrog’s preferred timeframe. PX-324.0 at 24. As a result of these marketing efforts, Leapfrog’s internal records reflect that numerous insurers have elected to license its Safety Grades. *See* PX-225.0 at 8 (listing numerous insurers that licensed the Safety Grades).

122. Internal Leapfrog documents reflect concern that declining Survey participation threatens Leapfrog’s ability to market a complete dataset and sustain its revenue model. *See* PX-205.0 at 2 (“To maximize the value of The Leapfrog’s Group Data for licensing purposes the level of participation should continue to be increased so it can be perceived as the most complete data set and thus allowing defense of our pricing model and its price points.”); PX-501.1 at 1 (“[Leapfrog’s] business model ... depends on producing data that add value for health plans and employers ... and the data are not valuable if participation is low.”).

123. As Survey participation declined between 2022 and 2024, Leapfrog employees discussed the need to focus on increasing participation to drive revenues. Ms. Binder wrote during the decline in participation that Leapfrog should focus on revenue “24/7” and made clear that she “want[ed] managers focused on [] areas where they can generate bookable revenues.” PX-275.4 at 1. The top priority in Leapfrog’s long-term strategic plan for this period was to “expand revenues,” including from “data licensure.” PX-354.0 at 2; *see also* Day 3 Trial Tr. 4:12–6:21 (Jupiter). Leapfrog also sought to increase hospital participation in the Survey. PX-354.0 at 4.

124. Against that backdrop, Leapfrog employees decided to adopt what they acknowledged at the time was a “drastic” approach by imposing the non-participation penalty. JX-011.0 at 3; Day 2 Trial Tr. (Campione) 270:23–25. Ms. Danforth testified that the decision was a product of “group think,” referring to a collective decision-making process in which alternative approaches were not fully explored. Day 3 Trial Tr. 203:6–10 (Danforth).

125. Ms. Binder wrote during this period that the revised grading approach was intended to serve as a “major incentive” for hospitals to participate in the Survey. PX-323.2 at 1.

126. Dr. Romano characterized Leapfrog’s adoption of the Fall 2024 changes as a “simple business decision,” aptly summarizing that the non-participation penalty was “just business, folks!” PX-501.1 at 1.

127. Following implementation of the Fall 2024 non-participation penalty, Survey participation increased substantially. Leapfrog’s internal data reflected a rise of 10 percent in participation in the cycle after the grading changes took effect. PX-397.0 at 2–3; PX-426.0 at 2–3.

128. Hundreds of hospitals resumed Survey participation following implementation of the non-participation penalty. Dr. Romano testified that UC Davis Medical Center restarted participation to avoid the “natural consequences” of non-participation and that he expects the hospital’s Safety Grades “will go up in 2025 and 2026” as a result. Day 2 Trial Tr. 166:24–167:3 (Romano).

129. Under the revised Fall 2024 approach, hospitals are graded regardless of participation, but non-participation triggers the scoring and re-weighting penalty across numerous measures. Dr. Romano wrote that the resulting pressure to participate could be described as “black-mail.” PX-293.1 at 1.

B. Leapfrog’s Explanation For The Non-Participation Penalty Was Not Supported

130. Leapfrog’s witnesses and experts repeatedly suggested at trial that the non-participation penalty is warranted because hospitals decline to participate in the Survey to avoid disclosure of poor safety performance—what Leapfrog describes as the “non-response bias.” Day 2 Trial Tr. 263:3–9 (Campione) (testifying that “the assumption” is that non-participating hospitals “have something to hide”); Day 2 Trial Tr. 173:8–11 (Romano) (testifying that non-participating hospitals “chose not to participate and therefore they are hiding something”); Day 3 Trial Tr. 35:19–25 (Binder) (“We are assuming that the hospital has a reason for not reporting”); Day 3 Trial Tr. 226:17–21 (Danforth) (confirming that the methodology was “based on the belief that [non-participating] hospitals must be hiding something”); Day 4 Trial Tr. 99:17–25 (Harris) (testifying that non-participating hospitals “are not filling out the survey because they know they are going to be scored poorly”).

131. The trial evidence did not support that speculative explanation.

132. Leapfrog’s own witnesses acknowledged that the non-participation penalty was not intended to “improve accuracy” of the Safety Grades and that Leapfrog lacks actual performance data for non-participating hospitals. Day 3 Trial Tr. 154:16–19 (Romano); *see also supra* ¶¶ 55–60. Dr. Harris claimed that the 60 out of 400 score on the Four Measures—400% worse than the worst one percent of participating hospitals—was “closest to the truth” simply due to his non-response bias theory but then agreed with the Court that the score “seems illogical statistically that it would be that low.” Day 4 Trial Tr. 98:5–99:25 (Harris).

133. As set forth above, unrebutted expert and documentary evidence further established that, had the Community Hospitals participated in the Survey, they would have received higher Safety Grades. *See supra* ¶¶ 62–64. In fact, the evidence showed that the Community Hospitals performed well (370 out of 400 on average) when they last participated in the Survey and they continue to follow the practices addressed by the measures—undermining Dr. Harris’s testimony that Survey non-participation indicates poor performance on the Four Measures. Day 4 Trial Tr. 103:18–25, 96:1–5 (Harris); *see supra* ¶¶ 62–64.

134. Further, Dr. Nicholson testified that Leapfrog provided zero “scientific basis for the penalty associated with nonparticipation.” Day 1 Tr. 189: 9–13 (Nicholson). Dr. Harris agreed that neither he nor Leapfrog performed any analysis to support the notion that Survey non-participation

or performance on CMS metrics indicates that nonparticipating hospitals perform worse on the Four Measures. Day 4 Trial Tr. 102:4–8, 102:21–24 (Harris).

135. Moreover, the evidence established that hospitals have legitimate reasons for declining to participate in the Survey that are unrelated to safety performance.

136. Hospital executives and quality leaders testified that completing the Survey is extremely burdensome, requiring hundreds of hours of staff time, coordination across departments, and significant involvement from clinical leadership. *See* Day 1 Trial Tr. 59:10–14 (Havericak) (“It would take us about a thousand hours, and there are six or seven people that have to work on that to make sure everything is accurate and complete.”); Day 1 Trial Tr. 142:7–11 (Cazares) (the Survey is not “free” because “it takes time [and] resources”); Day 1 Trial Tr. 240:10–13 (McCauley) (“In the post COVID period we diverted our resources.”); ECF 163-3 (West Tr.) 88:7–21 (“For myself, just me, between 40 and 60 hours” and for others “it could have taken up to two days”).

137. Leapfrog’s witnesses acknowledged similar resource burdens. Despite testifying at trial that non-participating hospitals do not complete the Survey because “they are hiding something,” Day 2 Trial Tr. 173:8–11 (Romano), Dr. Romano expressly rejected that theory in written communications in May 2024, *see* JX-022.3 at 1. Instead, as he explained, “most hospitals stop reporting because it is too burdensome.” *Id.* Ms. Campione testified that completing the Survey demands “a tremendous amount of resources.” Day 2 Trial Tr. 254:12–18 (Campione). Ms. Binder testified that the Survey requires “two weeks of staff time.” Day 3 Trial Tr. 96:24–97:5 (Binder). Dr. Harris likewise testified that hospitals operate under substantial resource constraints and must make tradeoffs when deciding whether to participate in voluntary reporting programs. Day 4 Trial Tr. 61:11–22, 100:1–8 (Harris).

138. The Community Hospitals’ CEOs further testified that participation in the Survey requires hospitals to disclose extensive internal safety and operational data and to agree that Leapfrog may use that data “in a commercial manner for profit,” including licensing it to third parties. JX-042.0 at 46; *see also* Day 1 Trial Tr. 142:9–11 (Cazares) (“[W]e [are] providing valuable data to Leapfrog, all that comes at a price.”); Day 2 Trial Tr. 73:21–24 (Hanlon) (testifying that Leapfrog attempts to “bully us into submitting data so they could monetize off that data.”).

139. The Community Hospitals’ CEOs testified that they did not participate in the Survey because it did not provide meaningful value relative to the resources required to complete it.

See Day 1 Trial Tr. 156:9–14 (Cazares) (“We don’t find value in the Leapfrog survey and we are not going to shift our resources to participate in a survey we just don’t find valuable.”); See Day 1 Trial Tr. 92:3–9 (Havericak) (“There wasn’t a large amount of value in the survey and we wanted to take those resources that were limited.”); Day 1 Trial Tr. 251:18–24 (McCauley) (agreeing that the Survey “provides no benefit whatsoever”); Day 2 Trial Tr. 196:23–197:6 (Montgomery) (testifying that she “determined there wasn’t any value in the Leapfrog survey”); Day 2 Trial Tr. 104:17–19 (Hanlon) (“I don’t believe there is value to the Leapfrog survey.”).

140. Taken together, the testimony established that these burdens, data-use concerns, and lack of value—not poor safety performance—were the primary reasons the Community Hospitals declined to participate in the Survey during the relevant period.

VII. LEAPFROG’S SAFETY GRADES HAVE CAUSED REAL AND ONGOING HARM

141. The Court heard extensive testimony and admitted contemporaneous documents showing the harm suffered by the Community Hospitals and the patients they serve following the dissemination of Leapfrog’s Fall 2024 Safety Grades. The evidence showed the decline in the Community Hospitals’ Safety Grades resulting from the non-participation penalty caused reputational and operational harm, including patients declining and delaying care, physician concerns, inquiries from insurers, and declines in patient volume. ECF 163-3 (West Tr.) 199:9–12 (testifying that the Community Hospitals lost patients “because of” Leapfrog’s Fall 2024 methodology change). The evidence also showed that consumers often encountered the letter grades, “D” and “F,” through dissemination beyond Leapfrog’s website, without accompanying explanation of Leapfrog’s methodology, and that the resulting reputational harm persisted despite efforts by the Community Hospitals to address consumer concerns. The Court credits the testimony of the Community Hospitals’ CEOs regarding these reputational and operational impacts, which were corroborated by contemporaneous business records and third-party communications admitted at trial (including volume data and insurer letters).

A. Delray Medical Center

142. Leapfrog’s Safety Grades caused reputational and operational harm to Delray Medical Center (“Delray”).

1. Dissemination and Consumer Response

143. Delray CEO Ms. Havericak testified that Delray’s drop to an “F” Safety Grade in Fall 2024 (and the ensuing cycles) prompted concerns from patients, physicians, and community

members. She testified that a TikTok video discussing four of the Community Hospitals' Fall 2024 Safety Grades, including Delray's, was shown to her on "numerous" occasions by physicians, patients, and members of the community, many of whom voiced "concern[]" about "what [was] happening at [her] hospital." Day 1 Trial Tr. 72:17–73:19 (Havericak).⁷ Ms. Havericak testified that the Fall 2024 "F" was the only "F" Delray ever received. Day 1 Trial Tr. 73:10–19 (Havericak).

144. Ms. Havericak testified that the Safety Grade caused "confusion" among patients and community members and undermined confidence in Delray. She testified that she performs rounds in the hospital daily and speaks with patients in that process. Those conversations confirmed the negative impact of the Safety Grade on Delray's reputation. *See* Day 1 Trial Tr. 84:10–12 (Havericak).

145. She described an encounter with an elderly patient who was "nervous" after seeing the TikTok video and Delray's Safety Grade and later expressed surprise at the quality of care she received, including staff professionalism and hand hygiene practices. Day 1 Trial Tr. 87:2–25 (Havericak).

146. Ms. Havericak also testified regarding a patient who initially declined surgery at Delray because she was concerned about the Safety Grade and feared that she would "die" at the

⁷ Leapfrog objected to the Community Hospitals' testimony on patient concern and confusion at trial on hearsay grounds. The Court overruled those objections. Out-of-court statements constitute "hearsay" only when offered "to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c)(2). It thus follows that "an out of court statement that is offered for a purpose other than proving the truth of the matter ... is not hearsay and not subject to exclusion on that basis." *United States v. Kent*, 93 F.4th 1213, 1218 (11th Cir. 2024). For example, a statement may be "offered to show its effect on the listener," in which case it is "not offered 'to prove the truth of the matter asserted.'" *United States v. Starr*, 159 F.4th 901, 909 (11th Cir. 2025). Similarly, "questions ... are not 'assertive'" statements, and thus "are not hearsay" because they "are simply incapable of being true or false." *United States v. Rivera*, 780 F.3d 1084, 1092 (11th Cir. 2015). And statements that are hearsay may be admissible if they are subject to an exception, such as where they reflect a declarant's "then-existing state of mind." Fed. R. Evid. 803(3). Courts thus routinely admit statements made and questions asked by consumers that "exhibi[t] confusion" and are offered to "sho[w] the speaker's confusion" on the grounds that they either are "not hearsay" (because they are not offered for their truth) or because they are "subject to the state of mind exception to hearsay." *Lincare Holdings Inc. v. Doxo, Inc.*, 2024 WL 865881, at *2 (M.D. Fla. Feb. 29, 2024) (collecting cases). At trial the Court ruled that the testimony at issue is admissible under at least Federal Rule of Evidence 803(3) as "statements by members of the public indicating their confusion." Day 1 Trial Tr. 86:4–15, 88:14–15. The Community Hospitals later cited the Court to *Lincare Holdings*, discussed above, in support of its ruling. Leapfrog relied on *Florida Virtual School v. K12, Inc.*, 2026 WL 127063 (11th Cir. Jan. 15, 2026). But *Florida Virtual School* does not feature a hearsay determination. *Id.* at *10 (noting the district court had "expressed hearsay concerns" with "twenty-one emails" but "did not exclude them on that basis" (emphases added)). Rather, the district court determined that the objected to evidence was not "reliable evidence" under the particular circumstances in that case. *Id.* at *4, *10. The Eleventh Circuit affirmed. *Id.* at *10. The case thus supports the proposition that consumer confusion evidence is not hearsay and may be considered in proper context by the trial court. Subsequent research confirms the point. *See Lyons P'ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 804 (4th Cir. 2001) (cited by the Eleventh Circuit in *Florida Virtual School* and determining that "actual confusion evidence" was "not hearsay").

hospital. Day 1 Trial Tr. 88:22–89:17 (Havericak). After Ms. Havericak explained that the Safety Grade resulted from Delray’s non-participation in the Survey and provided updated information regarding Delray’s surgical outcomes, the patient “was grateful for the call and clarification of the information,” and she ultimately chose to proceed with the surgery and had a “fantastic outcome.” Day 1 Trial Tr. 88:22–89:17 (Havericak).

2. *Operational and Ongoing Impacts*

147. Ms. Havericak testified that she monitors Delray’s patient/admissions volumes “daily,” including emergency department walk-in volumes and patients transported by emergency medical services (“EMS”). Day 1 Trial Tr. 73:20–74:9 (Havericak). She testified that, “from 2024 through last year,” Delray’s EMS volume increased by about six percent, while walk-in emergency department volume *decreased* by approximately seven to eight percent. Day 1 Trial Tr. 74:25–75:6 (Havericak); PX-550.0.

148. Ms. Havericak testified that it is part of her responsibilities as CEO to understand the reasons for—and impacts of—declines in admissions. She testified that the population continued to grow and that she was not aware of any new urgent care centers or freestanding emergency facilities during that period, and that she “didn’t find anything except the disparaging grade,” to explain the decline. Day 1 Trial Tr. 75:17–23 (Havericak). Based on that review, she concluded that the decline was attributable to the Safety Grade Leapfrog “assigned,” explaining that walk-in patients “are people that have choices.” Day 1 Trial Tr. 75:7–23 (Havericak). Leapfrog did not present empirical or quantified evidence attributing Delray’s walk in decline to a specific alternative cause. Ms. Havericak testified that she had not received comparable patient/community feedback about Delray’s CMS rating and was not aware of the ‘health locator’ grade except through this litigation. Day 1 Trial Tr. 132:16–23 (Havericak).

149. Ms. Havericak testified that the reduction in walk-in volume adversely affected Delray’s revenues and inpatient admissions. She explained that Delray operates high-acuity service lines and that decreased revenue limits the hospital’s ability to invest in complex tertiary services, which, in turn, affects the availability of those services to the surrounding community. *See* Day 1 Trial Tr. 78:24–79:6 (Havericak).

150. Ms. Havericak testified that patients with serious or emergent conditions face increased health risks when they delay treatment or travel farther to seek care because “they are afraid to come to [Delray] because they feel it is unsafe” due to the Safety Grade. Day 1 Trial Tr.

80:2–8 (Havericak). She testified that “minutes matter” and “a delay in care could be life or death” for Delray’s aging patient population. Day 1 Trial Tr. 70:19–22; 79:7–80:8 (Havericak).

151. Delray received letters from Humana Military in July and December 2025 referencing Leapfrog’s Safety Grade. The letters stated, among other things, “we are providing you this information to encourage your facility to review your Leapfrog hospital safety grade to identify any factors that may have contributed to your performance on safety measures,” requested a response “within 30 days,” and directed the hospitals to Leapfrog’s website and scoring methodology. Day 1 Trial Tr. 80:15–84:5 (Havericak); PX-465.0; PX-549.0. Ms. Havericak testified that approximately 30 percent of Delray’s patient population is covered by Humana. Day 1 Trial Tr. 80:10-12 (Havericak). Ms. Havericak testified that the Safety Grade is “impacting [Delray’s] reputation that [it] built in the community,” and that there is “no way to correct” the public perception created by the Grade “on our own.” Day 1 Trial Tr. 89:20–90:2 (Havericak).

B. Palm Beach Gardens Medical Center

152. Leapfrog’s Safety Grades caused reputational and operational harm to Palm Beach Gardens Medical Center (“Palm Beach Gardens”).

1. Dissemination and Consumer Response

153. Palm Beach Gardens’ CEO Erik Cazares testified that it is his “responsibility” as CEO to address the impacts of the Safety Grade to the hospital. Day 1 Trial Tr. 144:11 (Cazares). He was “surprised” and “shocked” by the Fall 2024 “F” grade and was concerned about the implications for perceptions among physicians, patients, the community, and governing board members. Day 1 Trial Tr. 142:23–25, 143:1–3 (Cazares). He testified that, after the Fall 2024 Safety Grade was released, he began receiving complaints and concerns from physicians, staff, and governing board members. Day 1 Trial Tr. 143:9–11, 143:22–144:10 (Cazares). He testified that concerns “came from everybody.” Day 1 Trial Tr. 143:22–144:1 (Cazares). And he testified that there was no explanation “other than the Leapfrog negative publicity.” Day 1 Trial Tr. 169:1–12 (Cazares).

154. He also testified that multiple doctors—at least five across various specialties—reported that their patients voiced concerns about receiving treatment at Palm Beach Gardens. *See* Day 1 Trial Tr. 173:24–175:5 (Cazares).

155. Mr. Cazares further testified that, prior to the release of the Fall 2024 Safety Grade, physicians did not raise any concerns to him about Leapfrog Safety Grades. *See* Day 1 Trial Tr. 152:21–152:23 (Cazares).

156. Mr. Cazares testified that patients voiced concerns about Palm Beach Gardens' Safety Grade. He described a cardiac-surgery patient who "didn't want to have [] surgery at Palm Beach Gardens because of the failing Safety Grade he had seen from Leapfrog." Day 1 Trial Tr. 145:19–22 (Cazares). He was "scared to go there" and "wanted an explanation as to why the hospital was being highlighted as an unsafe hospital." Day 1 Trial Tr. 145:19–146:7 (Cazares). Mr. Cazares explained Palm Beach Gardens' safety practices and experience and offered to arrange a hospital tour, but Mr. Cazares "never heard back" from the patient, who did not proceed with surgery at Palm Beach Gardens. Day 1 Trial Tr. 145:19–146:7 (Cazares).

157. Mr. Cazares testified that he is frequently approached by individuals asking about Palm Beach Gardens' Safety Grade and that the reputational impact has persisted. He explained that "[t]he damage came on pretty strong when the 'F' came out" and that "it is still there and continues." Day 1 Trial Tr. 153:8–15 (Cazares). He testified that Leapfrog has continued to grade Palm Beach Gardens after Fall 2024 and that the hospital's current grade is a "D." Day 1 Trial Tr. 153:3–7 (Cazares). He testified that he is still approached by individuals (including new individuals) asking about the hospital's Grades, that "it has not eased up." Day 1 Trial Tr. 153:8–15 (Cazares).

2. Operational and Ongoing Impacts

158. Mr. Cazares testified that Palm Beach Gardens is widely known in the community for high-quality cardiac care and serves as a comprehensive hospital providing open-heart surgery; advanced emergency services; one of two specialized life support programs in the county; and additional advanced service lines, including orthopedics, neurology, general surgery, and robotic technology. *See* Day 1 Trial Tr. 137:6–17 (Cazares). Palm Beach Gardens' cardiac surgery program has received national recognition, including being named one of the top 50 hospitals in the nation for cardiac surgery and ranking in the top ten percent nationally for performance outcomes. *See* Day 1 Trial Tr. 137:21–138:3 (Cazares). Palm Beach Gardens has also been recognized as a Comprehensive Resuscitation Center of Excellence in Florida, which recognizes hospitals that have the proper infrastructure to care for patients whose hearts stop functioning during a cardiac arrest. *See* Day 1 Trial Tr. 138:4–22 (Cazares). While the national average for survival is 15 percent and the state of Florida's average is below that, Palm Beach Gardens' is at 24 percent. *See* Day 1 Trial Tr. 137:15–22 (Cazares). According to Mr. Cazares, patients experiencing cardiac

arrest are more likely to survive that arrest at Palm Beach Gardens than at any other hospital in Florida. *See* Day 1 Trial Tr. 137:15–22 (Cazares).

159. Mr. Cazares testified that Palm Beach Gardens experienced a decline in walk-in emergency department volume following the release of the Fall 2024 Safety Grades. He testified that Palm Beach Gardens experienced a decline in walk-in emergency patients “despite a lot of efforts” and “extra efforts” to promote the hospital’s quality back to the community. Day 1 Trial Tr. 144:21–145:1 (Cazares). He testified that, despite efforts to highlight the hospital’s quality to the community, Palm Beach Gardens could not identify any explanation for the decline in walk-in volume other than the negative publicity associated with the Safety Grade. *See* Day 1 Trial Tr. 144:21–145:1, 169:8–10 (Cazares). He further testified that overall hospital revenue increased, but emergency revenue did not. *See* Day 1 Trial Tr. 167:3–9 (Cazares).

160. Mr. Cazares testified that Palm Beach Gardens tracks cancellations of medical procedures and that, when patients decline or delay care, it can adversely affect patient outcomes. He explained that delays in urgent treatment “could have detrimental consequences” for patient recovery. Day 1 Trial Tr. 146:12–13, 152:7–19 (Cazares); *see also* PX-560.0–560.2.⁸

161. Mr. Cazares testified that the Safety Grade also negatively affected staff morale at Palm Beach Gardens because, for people who “spend a majority of [their] time working with patients,” “[being] rated a fail on safety ... is a huge hit to their morale.” Day 1 Trial Tr. 144:2–7 (Cazares). He testified that because the hospital was “rated a fail on safety,” leadership had to respond to employees, physicians, and governing board members, and to “give faith” to the community. Day 1 Trial Tr. 144:2–10 (Cazares).

C. St. Mary’s Medical Center

162. Leapfrog’s Safety Grades caused reputational and operational harm to St. Mary’s Medical Center (“St. Mary’s”).

1. Dissemination and Consumer Response

163. St. Mary’s CEO, Cynthia McCauley, testified that, following the release of the Fall 2024 Safety Grade, which was a “D,” physicians at St. Mary’s reacted with “disbelief” and even

⁸ PX-560.0–560.2 consists of a cover email and an internal Palm Beach Gardens spreadsheet titled “PBG Cancels Weeks Oct 26,” created in the ordinary course of business to track scheduled procedure cancellations during the week of October 26–31, 2025. The spreadsheet reflects that, on October 22, 2025 (after discovery closed in this matter on September 25, 2025), a patient canceled an upcoming scheduled procedure at Palm Beach Gardens Medical Center, with the stated reason recorded as the hospital’s “F GRADE.” *See* PX-560.1–560.2. The Court admits the document into evidence for the reasons set forth in the Community Hospitals’ submission at ECF 168.

“indignation,” stating that the Grade did not align with their clinical experience or with the outcomes St. Mary’s achieves for patients. Day 1 Trial Tr. 243:8–16 (McCauley). She testified that since the grading changed down to a “D,” she discussed the Safety Grade every month with St. Mary’s medical executive committee and governing board. *See* Day 1 Trial Tr. 243:4–7 (McCauley).

164. Ms. McCauley further testified that, as a result of the Safety Grade, she has been required to spend substantial time educating physicians, patients, and community members about St. Mary’s quality of care and explaining that the Grade resulted from non-participation rather than measured safety performance. Day 1 Trial Tr. 244:2–13 (McCauley).

165. Ms. McCauley testified that public confidence in St. Mary’s has been “shaken.” Day 1 Trial Tr. 244:19–22 (McCauley). That decline in confidence was measurable. According to a brand analysis that measured the public’s perception of St. Mary’s from the fourth quarter of 2024 to the second quarter of 2025, the percentage of patients that would choose St. Mary’s fell from 78 percent to 55 percent; “the only thing that changed in a year was the Leapfrog rating.” Day 1 Trial Tr. 246:25–247:14, 261:2–263:25 (McCauley).

2. Operational and Ongoing Impacts

166. Ms. McCauley also testified that the hospital experienced declines in emergency-department walk-in volume and certain elective procedures following the Fall 2024 Safety Grade. *See* Day 1 Trial Tr. 244:19–247:21 (McCauley); PX-550.0. She testified that her elective walk-in volume and elective physical-therapy volume were down and that outpatient volumes were down, particularly on the pediatric side. *See* Day 1 Trial Tr. 246:25–247:7 (McCauley). She testified that pediatric emergency walk-ins declined by approximately ten patients per day and general emergency walk-ins declined by approximately three to four patients per day. *See* Day 1 Trial Tr. 247:16–21 (McCauley); PX-550.0.

167. Ms. McCauley further testified that, during the same period, emergency department walk-in volume decreased by approximately five percent even as EMS admissions increased by approximately two percent. *See* Day 1 Trial Tr. 251:4–12 (McCauley). She testified that she performed a similar investigation as her peers, including whether any new emergency rooms or free-standing facilities could have redirected patients, and that she was not aware of any such provider. *See* Day 1 Trial Tr. 247:8–14 (McCauley). She stated that “[t]he only thing that changed in a year was the Leapfrog rating.” Day 1 Trial Tr. 247:8–14 (McCauley). She further testified that these

declines occurred despite rapid population growth in the West Palm Beach area and that, absent the Safety Grade, she would have expected walk-in emergency-department volume—particularly pediatric walk-ins—to increase. *See* Day 1 Trial Tr. 251:4–12 (McCauley).

168. Ms. McCauley testified that, during the same period in which walk-in emergency department volume declined, the number of patients transferred to St. Mary’s increased significantly, particularly from Jupiter Medical Center, a competing hospital. She testified that in her career at St. Mary’s she has never seen transfers so high: In 2025, Jupiter Medical Center made 568 requests to transfer patients to St. Mary’s, meaning patients are “choosing somewhere else first.” Day 1 Trial Tr. 248:17–249:9, 268:18–25 (McCauley).

169. Ms. McCauley further testified that many of these patients initially presented to Jupiter Medical Center, which lacked the capability to treat them, so they had to be subsequently transferred to St. Mary’s for care. She explained that approximately half of the transfer requests involved pediatric patients, for whom St. Mary’s serves as the region’s only children’s hospital and maintains 30 to 40 pediatric specialists. *See* Day 1 Trial Tr. 248:17–249:9; 268:18–25 (McCauley).

170. Ms. McCauley explained that such transfers can harm patients by creating the “risk of ... delay” in care and by requiring them to incur costs at more than one facility. Day 1 Trial Tr. 238:11–12, 249:10–19 (McCauley). She further testified that delays in care—particularly for emergency or pediatric patients—can increase medical risks, adversely affect patient outcomes, and, in some cases, “result in death.” Day 1 Trial Tr. 238:12, 248:13–249:19 (McCauley).

D. West Boca Medical Center

171. Leapfrog’s Safety Grades caused reputational and operational harm to West Boca Medical Center (“West Boca”).

1. Dissemination and Consumer Response

172. West Boca’s CEO, Mr. Hanlon, testified that, following the release of West Boca’s “D” Safety Grade in Fall 2024, patients began leaving West Boca against medical advice “based on what they [had] read and seen about the Leapfrog grades.” Day 2 Trial Tr. 84:2–4, 123:1–2, 130:2–4 (Hanlon).

173. Mr. Hanlon described a patient identified as J.D. who presented to West Boca with a compound fracture of the finger—an open fracture carrying risks of infection and serious complications, including “loss of limb or life.” Day 2 Trial Tr. 86:12–88:6 (Hanlon). Mr. Hanlon

testified that West Boca was well-equipped to treat the injury—it is “one of the few hospitals in the county that [has] a dedicated hand surgery” unit, has “specialized physicians,” and “perform[s] better than average” on surgical site infection metrics. Day 2 Trial Tr. 88:8–15 (Hanlon). This patient was initially admitted to West Boca Medical Center for urgent surgery but, as reflected in the contemporaneous record, he then “verbalized” that he “wanted to go to” a different hospital “against medical advice” “due to the leap frog reviews.” PX-552.0 at 1. Despite being advised by physicians and nursing staff of the risks of leaving against medical advice, the patient left West Boca after his daughter viewed the Leapfrog Safety Grade. *See* Day 2 Trial Tr. 86:11–88:15 (Hanlon); PX-552.0 at 1. The Court overruled Leapfrog’s hearsay objection and admitted PX-552.0 as a business record, and Mr. Hanlon testified that, when a patient leaves “AMA” (against medical advice), the hospital is required to advise the patient of the risks of leaving, but the patient may still choose to leave. Day 2 Trial Tr. 84:5–7, 85:1–24, 86:6–11 (Hanlon).⁹

174. Mr. Hanlon testified that J.D. incurred financial harm as a result of leaving West Boca against medical advice, including receiving a bill for the intake and treatment provided prior to his departure—cost that he would likely incur again at his subsequent treatment facility. *See* Day 2 Trial Tr. 88:16–17 (Hanlon); PX-552.0.

175. Mr. Hanlon testified regarding another patient, identified as F.W., who was admitted and scheduled for surgery at West Boca for an underarm infection but left against medical advice in the early morning hours after seeing media coverage related to West Boca’s Safety Grade. *See* Day 2 Trial Tr. 89:15–21 (Hanlon). Mr. Hanlon testified that F.W. also received a bill for care at West Boca, and, like J.D., would likely have been double-billed at a subsequent treatment facility. *See* Day 2 Trial Tr. 89:25–90:1 (Hanlon).

176. Mr. Hanlon testified that, following the Fall 2024 Safety Grade, members of the medical staff and governing board expressed immediate concern. He testified that members of the Medical Executive Committee, including physicians and medical leadership, were “very frustrated,” and that members of West Boca’s governing board—comprised of physician providers and community representatives—were also concerned. Day 2 Trial Tr. 82:1–83:5 (Hanlon). Mr.

⁹ Records of a regularly conducted activity are subject to a hearsay exception under Federal Rule of Evidence 803(6). *See* Fed. R. Evid. 803(6). Thus, the record itself is admissible. Statements within the record are likewise admissible as evidence of consumer confusion. *See supra* note 8.

Hanlon further testified that staff were likewise “frustrated” because the Safety Grade did not “accurately reflect” the quality of care provided at West Boca. Day 2 Trial Tr. 83:6–12 (Hanlon).

177. Mr. Hanlon testified about patient concerns arising from the Safety Grade as well. In particular, he described patients who questioned whether they should seek care at West Boca because of the Leapfrog Safety Grades. *See* Day 2 Trial Tr. 83:24–84:4 (Hanlon).

178. Mr. Hanlon also testified that West Boca monitors Google reviews and that one star-reviews are routed to leadership, and he testified that he has seen negative reviews that mention Leapfrog. *See* Day 2 Trial Tr. 130:16–25 (Hanlon). He testified that he reviewed a July 2025 Google review that “goes on to talk about the Leapfrog D safety grade” and urged readers to “drive out of your way and go[] to Boca Regional or any other hospital.” Day 2 Trial Tr. 131:16–24, 132:10–13 (Hanlon).

2. Operational and Ongoing Impacts

179. Mr. Hanlon testified that West Boca’s emergency-department walk-in volume declined by approximately 15 percent from 2024 to 2025. *See* Day 2 Trial Tr. 90:14–16 (Hanlon). By contrast, EMS volume was down by just three percent. *See* PX-550.0. Mr. Hanlon testified that patients explicitly stated that they were leaving or avoiding West Boca’s emergency department because of the Leapfrog Safety Grade. *See* Day 2 Trial Tr. 90:8–91:12, 115:18–21, 121:10–12 (Hanlon). Mr. Hanlon also testified that West Boca had invested \$3 million to expand the emergency room to accommodate a forecasted increase in emergency volumes, an increase that was not realized in part because of the Leapfrog Safety Grades. *See* Day 2 Trial Tr. 143:14–17 (Hanlon).¹⁰

180. The evidence further established that payors expressed concern about West Boca’s Safety Grade. Mr. Hanlon testified that West Boca received letters in July 2025 and December 2025 from Humana Military referencing the hospital’s Grade. The letters stated, among other things, “we are providing you this information to encourage your facility to review your Leapfrog hospital safety grade to identify any factors that may have contributed to your performance on safety measures,” requested a response, “within 30 days” and directed the hospital to Leapfrog’s website and scoring methodology. PX-464.0; PX-553.0. As Mr. Hanlon explained, approximately 12 to 14 percent of West Boca’s patients use Humana insurance. *See* Day 2 Trial Tr. 92:7–94:11 (Hanlon). Mr. Hanlon also testified that West Boca received a letter from the Florida Alliance

¹⁰ Mr. Hanlon testified that, although there were “variations” in other volumes, he saw a “decrease” in emergency room volume “due to the Leapfrog grade.” Day 2 Trial Tr. 120:17–121:12 (Hanlon).

community organization, which “strongly encourage[d]” West Boca to participate in the Leapfrog Survey. Day 2 Trial Tr. 95:1–96:17 (Hanlon). The letter stated that both “[e]mployers and purchasers” consider participation “vital” and that performance metrics would be shared with employees and used as part of purchasers’ “value strategies.” PX-415.0 at 1.

181. Mr. Hanlon testified that, prior to Fall 2024, he did not recall patients or community members raising concerns about West Boca’s Leapfrog Safety Grade. *See* Day 2 Trial Tr. 96:18–97:1 (Hanlon).

182. Mr. Hanlon testified that the harm to West Boca caused by the Safety Grade is ongoing. He testified that West Boca has devoted substantial time and resources to addressing staff concerns, responding to community members, and investing in advertising, like television commercials, to counteract negative public perceptions created by the Safety Grade. *See* Day 2 Trial Tr. 97:5–17 (Hanlon).

183. Mr. Hanlon testified that, if Leapfrog continues to assign Safety Grades to West Boca, the hospital will continue to suffer reputational harm, reduced patient volumes, and increased risk to patients who leave against medical advice. *See* Day 2 Trial Tr. 97:18–23 (Hanlon). He further testified that, Leapfrog is “grading based on information they don’t have,” and that West Boca is “being penalized until we submit it.” Day 2 Trial Tr. 98:1–4 (Hanlon).

184. Mr. Hanlon testified that the Safety Grades “absolutely” harmed West Boca: “We’ve suffered reputational harm [and] loss of goodwill in the community.” Day 2 Trial Tr. 83:22–84:4 (Hanlon).

E. Good Samaritan Medical Center

185. Leapfrog’s Safety Grades caused reputational and operational harm to Good Samaritan Medical Center (“Good Samaritan”).

1. Dissemination and Consumer Response

186. Good Samaritan’s CEO, Ms. Montgomery, testified that the Fall 2024 Safety Grade generated immediate and widespread negative attention—a “fire storm.” Day 2 Trial Tr. 199:25–200:4 (Montgomery). She testified that media outlets repeatedly reported on the Grade, including during evening news broadcasts, and that coverage extended across newspapers and social media platforms, including Instagram and TikTok. *See* Day 2 Trial Tr. 199:25–200:4 (Montgomery). Ms. Montgomery testified that when Good Samaritan was participating it typically received a “C,”

and that in Fall 2024 the Safety Grade changed and the hospital “should not have received an F.” Day 2 Trial Tr. 199:1–3, 201:16–202:2 (Montgomery).

187. Ms. Montgomery testified that the media coverage and dissemination of the Safety Grade immediately affected Good Samaritan’s reputation. She testified that physicians began receiving complaints from patients, including one cancer patient who declined to undergo surgery at Good Samaritan—complaining that she believed Good Samaritan was “inept”—a week or two after the Grade came out. Day 2 Trial Tr. 231:23–25 (Montgomery). Ms. Montgomery testified that she explained the Survey process to the patient, but the patient instead sought care at Jupiter Medical Center, a competitor of the Community Hospitals and an “A” rated hospital as determined by Leapfrog. Day 2 Trial Tr. 200:8–17, 231:16–232:5 (Montgomery). She testified that the physician wanted to know “what we are doing about this” and when they were “putting a statement out,” and she explained the Survey process to him as well. Day 2 Trial Tr. 200:8–14 (Montgomery).

188. Ms. Montgomery testified regarding a menacing anonymous letter she received that enclosed a newspaper article highlighting Jupiter Medical Center’s “A” Safety Grade. The letter contained handwritten comments disparaging Good Samaritan and stating that “Your despicable staff needs to take notes from [Leapfrog “A” graded Jupiter Medical Center].” Day 2 Trial Tr. 209:20–211:19 (Montgomery); PX-548.0. The Court overruled Leapfrog’s objection and admitted PX-548. *See* Day 2 Trial Tr. 210:6–14. Ms. Montgomery testified that the envelope holding the letter was made out to her as CEO and appeared to have been sent on December 2 from West Palm Beach, Florida. *See* Day 2 Trial Tr. 210:16–24 (Montgomery).

189. Ms. Montgomery testified that the letter was “clearly very upsetting” because it reflected a belief that Good Samaritan was unsafe and that Jupiter Medical Center was safer, and that the sender did not understand that Good Samaritan’s Leapfrog Safety Grade resulted from non-participation in the Leapfrog Survey. Day 2 Trial Tr. 211:20–212:6 (Montgomery). She also testified about the continued dissemination of the Safety Grade—the “fire storm ... continues” to foster and exacerbate fear among consumers. Day 2 Trial Tr. 211:20–212:6 (Montgomery); PX-548.0. She testified that the “fire storm keeps going” and that Leapfrog “keeps putting this punitive grading out,” which “continues” to “put[] fear into consumers.” Day 2 Trial Tr. 211:20–212:6 (Montgomery).

2. *Operational and Ongoing Impacts*

190. Ms. Montgomery testified that as CEO it was part of her role to understand the change in Good Samaritan's Leapfrog Safety Grade, and she investigated the reasons for the change by undertaking a process to "uncover[] what occurred," including speaking with quality leadership and reviewing calculators. Day 2 Trial Tr. 199:13–17 (Montgomery).

191. Ms. Montgomery testified that Good Samaritan experienced a significant decline in emergency-department walk-in volume following the Fall 2024 Safety Grade. She testified that walk-in volume declined by approximately four percent, representing approximately 1,300 patients. *See* Day 2 Trial Tr. 205:9–13 (Montgomery). Ms. Montgomery investigated potential explanations for the decline, including community outreach, meetings with business development personnel, and consideration of new competing facilities, and testified that based on that review, she concluded the decline was attributable to the Safety Grade. She explained that walk-in patients make an elective choice regarding where to seek emergency care, so it was "telling" that "they are not making that choice any longer." Day 2 Trial Tr. 205:9–206:8 (Montgomery); PX-550.0. She testified that EMS is a separate category reflecting ambulance rides into the hospital and is "mandatory," and that for the same period EMS increased by three percent. Day 2 Trial Tr. 205:14–22. She testified that she reviews admissions data "daily." Day 2 Trial Tr. 205:23–24 (Montgomery). She testified that in trying to understand the drop she went out into the community and looked for free-standing emergency rooms in the area, and "there is not really any underlying thing other than walk-ins are elective." Day 2 Trial Tr. 206:1–8 (Montgomery).

192. Ms. Montgomery further testified that Good Samaritan experienced declines in elective procedures in 2025, following the Fall 2024 Safety Grade. She testified that breast imaging volume declined by approximately eight percent and that admissions plus observations declined by approximately 4.2 percent, representing nearly 600 patients. *See* Day 2 Trial Tr. 206:9–207:11 (Montgomery). She testified that Good Samaritan performs approximately 5,000 breast imaging procedures per year. *See* Day 2 Trial Tr. 206:11–12 (Montgomery).

193. Ms. Montgomery testified that these declines occurred despite rapid population growth in downtown West Palm Beach, where Good Samaritan is located. Day 2 Trial Tr. 207:9–11 (Montgomery).

194. Ms. Montgomery testified that Good Samaritan, like Delray and West Boca, received a letter from Humana referencing the hospital's Leapfrog Safety Grade. *See* PX-554.0. The

Court overruled Leapfrog's objection and admitted PX-554.0. *See* Day 2 Trial Tr. 208:1–4. The letter stated, among other things, “we are providing you this information to encourage your facility to review your Leapfrog Hospital Safety Grade to identify any factors that may have contributed to your performance on safety measures,” requested a response “within 30 days,” and directed the hospital to Leapfrog's website and scoring methodology. PX-554.0. Ms. Montgomery testified that approximately eighteen percent of Good Samaritan's patients are insured by Humana and that the letter caused concern because loss of a Humana contract would be “devastating to the patients,” as it would narrow their access to care. Day 2 Trial Tr. 207:12–208:23 (Montgomery). She testified that Humana “does not understand that we are not a D or an F hospital” and that Humana was “just going by what Leapfrog published.” Day 2 Trial Tr. 208:16–23 (Montgomery).

195. Ms. Montgomery testified that the Humana letter did not reflect any understanding that Good Samaritan did not participate in the Survey or that the Safety Grade resulted from non-participation, and did not reference Leapfrog's methodology. *See* Day 2 Trial Tr. 209:5–15 (Montgomery). She testified that the letter contained no language reflecting that Humana believed Good Samaritan did not submit data and was penalized for non-participation. *See* Day 2 Trial Tr. 209:5–11 (Montgomery). She testified there was no discussion of the Fall 2024 change in methodology in the letter. *See* Day 2 Trial Tr. 209:13–15 (Montgomery).

196. Ms. Montgomery testified that Good Samaritan's relationship with Hospital for Special Surgery (“HSS”) was adversely affected following the Fall 2024 Safety Grade. She testified that HSS physicians obtained privileges at Jupiter Medical Center after release of the Grade and that eight HSS surgeons had performed approximately 1,300 surgeries per year at Good Samaritan and generated approximately \$8 million in annual revenue. She testified that HSS and Good Samaritan had maintained a “collaborative agreement” since 2020, and that HSS ultimately canceled that agreement. Day 2 Trial Tr. 200:20–201:18.

197. Ms. Montgomery investigated why HSS physicians were obtaining privileges at Jupiter, and she testified that she understood the contract developments to be related to the Fall 2024 Safety Grade. She testified that she spoke with Good Samaritan's orthopedic medical director, Dr. Sama, who is also an HSS physician, and that he reported HSS patients were “upset” and asked “what is going on” with the Leapfrog Safety Grade. Day 2 Trial Tr. 201:15–202:2, 203:3–5 (Montgomery). Ms. Montgomery testified that she had to undertake “the whole process” of explaining to the HSS physicians that Good Samaritan did not participate in the Survey and that the

grade did not reflect measured safety performance. Day 2 Trial Tr. 201:15–202:2 (Montgomery).¹¹ In March 2025, several months after issuance of the Fall 2024 Safety Grade, HSS provided notice of contract cancellation, effective October 31, 2025. PX-561.0. Ms. Montgomery testified that she had not received complaints from HSS physicians regarding Leapfrog Safety Grades prior to Fall 2024, but the physicians were “directed by their employer to get privileges at Jupiter Medical,” even though “they didn’t want to.” Day 2 Trial Tr. 202:16–203:23 (Montgomery).

198. Ms. Montgomery further testified that the impact of the Safety Grade extended to individual physicians. She testified that Dr. Sama resigned from Good Samaritan’s governing board and from his role as orthopedic medical director and subsequently began providing services in the community associated with Good Samaritan’s competitor Jupiter Medical Center. *See* Day 2 Trial Tr. 203:3–10 (Montgomery). Ms. Montgomery testified that Dr. Sama informed her that he was directed by HSS to take those actions. *See* Day 2 Trial Tr. 203:11–13 (Montgomery). Ms. Montgomery also testified that another physician, Dr. Wang, was directed to obtain privileges at Jupiter Medical Center despite not wanting to leave Good Samaritan. *See* Day 2 Trial Tr. 204:5–24 (Montgomery).

199. Ms. Montgomery testified that if Leapfrog continues to assign Safety Grades to Good Samaritan, “[t]hings will just continue to get worse”: the hospital’s reputational harm will continue unabated, and the notion that Good Samaritan is a “failing hospital” will become more and more entrenched. Day 2 Trial Tr. 212:12–16 (Montgomery). She testified that the Grades come out “every six months” and that consumers will “believe the story” year after year if the hospital is repeatedly characterized as failing. Day 2 Trial Tr. 212:12–16 (Montgomery).

F. Leapfrog Witnesses

200. Leapfrog’s own witnesses agree that its Safety Grades can damage hospitals. Dr. Romano testified that poor Leapfrog Safety Grades could “of course” harm a hospital’s reputation. Day 2 Trial Tr. 169:18–20 (Romano). He also agreed that if a hospital is assigned an “F,” that could harm the hospital’s reputation. *See* Day 2 Trial Tr. 169:21–23 (Romano). Dr. Zambrana,

¹¹ Leapfrog objected to these statements as hearsay at trial. The statements are not hearsay, however, because they contextualize the effect on the listener (the efforts Ms. Montgomery took in response to HSS’s concerns), and because they are evidence of confusion. *See supra* note 8. The Court also finds that it is reasonable to attribute HSS’s contract cancellation to Leapfrog’s Safety Grades based on several indicia of reliability, including: the statements by HSS physicians expressing concern about the failing Safety Grade, the fact that HSS’s orthopedic medical director had served on Good Samaritan’s governing board, and the timing of the cancellation (after the Fall 2024 Safety Grades were released).

Vice President and Chief Quality Officer for Jackson Health System, similarly testified that patients “want to go to hospitals with good reputations of quality” and that doctors “want to work with hospitals with good reputations for quality.” Day 4 Trial Tr. 132:10–15 (Zambrana).

G. Expert Testimony

201. Expert testimony from Dr. Nicholson and Dr. Berger supports the conclusion that the Community Hospitals and their patients were harmed by the Leapfrog Safety Grades—and that the harm will continue if Leapfrog is allowed to continue grading the Community Hospitals.

202. Relying on health care economics and peer-reviewed literature, Dr. Nicholson testified that Leapfrog’s Safety Grades likely distort patient choices and are widely used and relied upon in the industry by insurers, employers, hospitals, and patients alike. *See* Day 1 Trial Tr. 186:4–21, 200:17–204:20 (Nicholson) (“substantial literature” “show[s] that patients are relying on hospital ratings when making decisions”). He testified that the harms reflected in the record—including reduced walk-in volume and damages to reputation and physician relationships—are consistent with what the literature predicts when consumers rely on negative quality signals. *See* Day 1 Trial Tr. 202:16–19, 203:21–204:2 (Nicholson).

203. Dr. Nicholson also testified that quality and safety ratings like the Leapfrog Safety Grades affect where patients seek treatment and that unreliable ratings can distort patient choice and cause patient harm. Day 1 Trial Tr. 180:1–5 (Nicholson).

204. Dr. Berger testified that “D” and “F” grades “likely negatively impact consumer perceptions of the [C]ommunity [H]ospitals as well as deter consumers from choosing to receive care from the [Community H]ospitals.” Day 2 Trial Tr. 6:22–25 (Berger). He testified that “D” and “F” Safety Grades “suggest[] negative things about [a] hospital’s safety” and “likely negatively impact consumer perception” of such hospitals. Day 2 Trial Tr. 10:2–6 (Berger). Dr. Berger further testified that, in a grading system, an “F” signifies “bad performance” and that he was “not aware of anything lower than an F.” Day 2 Trial Tr. 71:10–16 (Berger).

205. Dr. Berger also testified that “consumers often use heuristics” like the Leapfrog Safety Grades “to simplify decision making,” especially “[w]hen decisions are difficult” or the consumer lacks knowledge. Day 2 Trial Tr. 9:14–18 (Berger). He testified that “negative information” about a hospital’s safety—such as a “D” or “F” Safety Grade—causes consumers to “feel betrayed” and would likely “deter them from choosing the graded hospitals.” Day 2 Trial Tr. 10:10–20, 30:19–31:1 (Berger).

206. Dr. Nicholson testified that Leapfrog positions itself as an authoritative source for patients and self-insured employers and frames hospital choice as a “life or death” decision, which increases the likelihood that consumers will rely on the Safety Grades. *See* Day 1 Trial Tr. 202:5–15 (Nicholson).

207. Dr. Nicholson testified, “there is ample evidence” that “consumers are using the Leapfrog Group ratings” in that manner and that the Community Hospitals’ harms are consistent with what he would expect, including decreases in elective walk-in volume and damage to reputation and physician relationships. Day 1 Trial Tr. 202:16–19, 203:21–204:2 (Nicholson).

208. He also testified that the record reflects patient confusion about the ratings and patients denying recommended care based on what they learned from the Leapfrog rating. *See* Day 1 Trial Tr. 204:3–7 (Nicholson).

209. Dr. Nicholson further testified that other types of consumers in the healthcare ecosystem are affected by the Leapfrog Safety Grades, including “self-insured employers who are using Leapfrog information to determine which ... hospitals should be available to the employees” and “private insurers [who] are using the Leapfrog grades in part to run their pay for performance programs,” that can affect hospital payments. Day 1 Trial Tr. 202:20–203:6 (Nicholson).

210. Dr. Berger testified that future publication of the Safety Grades will have a “long-term negative impact on these hospitals’ perceptions and consumer choice.” Day 2 Trial Tr. 35:24–36:5 (Berger); *see also* Day 2 Trial Tr. 7:1–3 (Berger) (“future repeated publication of such grades are likely to have ongoing and further detrimental impacts on the Community Hospitals”).

PROPOSED CONCLUSIONS OF LAW

211. Having made these Findings of Fact, the Court turns to its Conclusions of Law. The trial record establishes that Leapfrog’s Safety Grades, grading methodology, and related representations satisfy FDUTPA’s standards for deceptive and unfair conduct.

I. THIS COURT HAS JURISDICTION OVER THIS ACTION

212. This Court must assure itself of its subject-matter jurisdiction. *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409–10 (11th Cir. 1999). The Court concludes that the Community Hospitals have standing to seek injunctive and declaratory relief, that diversity jurisdiction is satisfied, and that the Court has personal jurisdiction over Leapfrog. The Court therefore rejects Leapfrog’s jurisdictional arguments.

213. *Standing.* Plaintiffs seeking prospective relief must demonstrate “a real and

immediate threat of future injury” that is concrete and particularized, fairly traceable to the defendant’s conduct, and redressable by the requested relief. *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1328–29 (11th Cir. 2013). The Findings establish ongoing reputational and operational injuries caused by Leapfrog’s conduct that will continue absent relief. *See, e.g.*, Findings ¶ 165 (McCauley) (noting that brand satisfaction for St. Mary’s fell from 78 to 55 percent during the relevant period and attributing the decline to “the Leapfrog rating”). Injunctive and declaratory relief would redress these injuries by stopping Leapfrog from issuing and promoting the challenged Safety Grades for the Community Hospitals, requiring the removal of the Fall 2024 through Fall 2025 Grades, and requiring corrective disclosures to counteract ongoing marketplace confusion. *See infra* ¶¶ 281–95. Indeed, judicial relief would be necessary to redress those injuries, given that Leapfrog’s grading system is “nonvoluntary” by design, hospitals cannot opt out, and the non-participation “penalty goes away” only upon participation in Leapfrog’s Survey. Findings ¶¶ 117–18.

214. *Diversity Jurisdiction.* This Court has jurisdiction pursuant to 28 U.S.C. § 1332. The Community Hospitals are citizens of Florida, and Leapfrog is a citizen of Washington, D.C. The parties are completely diverse. And the amount-in-controversy requirement is satisfied, as Leapfrog has stipulated. *See* ECF 129 ¶ 168; *see also PTA-FLA, Inc. v. ZTE USA, Inc.*, 844 F.3d 1299, 1306 (11th Cir. 2016).

215. *Personal Jurisdiction.* This Court previously held that it has personal jurisdiction over Leapfrog. *See* ECF 41 at 6–7. Florida’s long-arm statute is satisfied, Fla. Stat. § 48.193(1)(a)(1)–(2), because Leapfrog engaged in Florida trade or commerce, *see, e.g.*, Findings ¶ 120 (accolade sales materials featuring a Florida hospital), and committed tortious acts in this State by violating FDUTPA, *see infra* ¶¶ 218–75; *Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co. Ltd.*, 752 So. 2d 582, 585 (Fla. 2000). The “minimum contacts” requirement is also met: Leapfrog purposely directed its conduct toward Florida by soliciting data from Florida hospitals and marketing and disseminating Safety Grades to Florida consumers. *See, e.g.*, Findings ¶¶ 21–26, 105–16.

II. THE COMMUNITY HOSPITALS HAVE ESTABLISHED THAT LEAPFROG VIOLATED FDUTPA

216. FDUTPA prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.204(1). A plaintiff may establish a violation by proving either

deception or unfairness. In an action for injunctive or declaratory relief, a plaintiff also must show that it is “aggrieved by” the practice. Fla. Stat. § 501.211(1); *see also SMS Audio, LLC v. Belson*, 2017 WL 1533941, at *4 n.6 (S.D. Fla. Mar. 9, 2017) (Middlebrooks, J.) (citing *Caribbean Cruise Line, Inc. v. Better Bus. Bureau*, 169 So. 3d 164, 166–67 (Fla. 4th DCA 2015)). No proof of damages is required. *Ahearn v. Mayo Clinic*, 180 So. 3d 165, 172 (Fla. 1st DCA 2015). The Community Hospitals must establish their FDUTPA claim by a preponderance of the evidence. *Marco Island Cable v. Comcast Cablevision of S., Inc.*, 312 F. App’x 211, 213 (11th Cir. 2009). For deceptive practices, FDUTPA considers whether the practice is likely to mislead reasonable consumers; proof of actual injury to consumers is not required for injunctive or declaratory relief. For unfair practices, as the Court discusses further below, the record similarly must show at least likely consumer injury from the challenged conduct. *See infra* ¶¶ 235–41.

217. As set forth below and in the Findings, the Court concludes that: (1) Leapfrog’s challenged practices are deceptive; (2) those practices are also unfair; (3) the record establishes both likely and actual consumer harm; and (4) the Community Hospitals are aggrieved by Leapfrog’s conduct.

A. Leapfrog’s “Safety Grades,” Safety Grade Methodology, And Surrounding Misrepresentations Are Deceptive Under FDUTPA

218. The Community Hospitals have proven by a preponderance of the evidence that Leapfrog’s Safety Grades, Safety Grade methodology, and related misrepresentations are “deceptive ... practices” under FDUTPA. Fla. Stat. § 501.204(1).

219. A practice is deceptive when it is “likely to mislead the consumer acting reasonably in the circumstances.” *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003) (quoting *Millennium Commc’ns & Fulfillment, Inc. v. Off. of Att’y Gen.*, 761 So. 2d 1256, 1263 (Fla. 3d DCA 2000)); *see also Waste Pro USA v. Vision Constr. ENT, Inc.*, 282 So. 3d 911, 917 (Fla. 1st DCA 2019); *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 983–84 (11th Cir. 2016). Deception is “construed liberally,” Fla. Stat. § 501.202, and encompasses not only “outright false statements” but also “omissions,” *State Farm Mut. Auto. Ins. Co. v. Performance Orthopaedics & Neurosurgery, LLC*, 278 F. Supp. 3d 1307, 1327 (S.D. Fla. 2017), and representations that convey a misleading “net impression,” *Zamber v. Am. Airlines, Inc.*, 282 F. Supp. 3d 1289, 1299 (S.D. Fla. 2017). Deception claims for injunctive relief do “not require actual harm” to consumers; rather, deceptions simply must be “likely to cause injury to a reasonable relying consumer.” ECF139 at 9 (quoting *Millennium Commc’ns & Fulfillment, Inc.*, 761 So. 2d at 1263).

1. *The Fall 2024 Methodology Produced Safety Grades Likely to Mislead Reasonable Consumers*

220. The Community Hospitals have demonstrated that Leapfrog’s use of the Fall 2024 methodology to generate “Safety Grades” for non-participating hospitals is deceptive. The Community Hospitals also demonstrated that Leapfrog made related misrepresentations that obscured the nature of the Fall 2024 approach. The Court addresses each in turn.

221. Leapfrog’s Fall 2024 methodology is deceptive because the “Safety Grades” it generates do not—and were not meant to—reflect actual safety performance for non-participating hospitals on key Survey-dependent measures for which Leapfrog has no data measuring performance. *See Findings ¶ 58* (the purpose of the Fall 2024 approach was “not to improve accuracy,” and it was “not an accurate reflection” of safety).

222. The Fall 2024 approach was intended to “penalize” non-participation. *Findings ¶ 36*. Leapfrog adopted a “drastic” change that “arbitrarily assign[s]” fixed failing component scores for non-participating hospitals on the Four Measures and then re-weights those measures to account for approximately one-third of the Safety Grade, despite the absence of data measuring performance on those measures. *See Findings ¶¶ 124, 31–38, 42–46, 58, 62*. Leapfrog attributed the invention of this arbitrary penalty to “group think,” rather than any rigorous vetting process. *Findings ¶ 124*. And documents reveal that Leapfrog ignored Dr. Romano’s contemporaneous warning that it could not simply “pretend” to be “imputing missing values in a statistically optimal way” under the Fall 2024 approach. *Findings ¶ 36*.

223. The record establishes that the Fall 2024 approach was “a simple business decision” designed to increase Survey participation, including through a non-participation penalty that “goes away” when a hospital resumes participation and was tied to Leapfrog’s participation-driven business model. *See Findings ¶¶ 38, 118, 126, 129*.

224. Dr. Nicholson’s testimony confirms that the Fall 2024 approach constitutes a “scientifically indefensible” non-participation penalty that is unsupported by empirical documentation, deviates from foundational principles of quality measurements, and produces unreliable Safety Grades disconnected from actual safety performance and patient outcomes. *See Findings ¶ 58* (Nicholson testimony). In fact, Leapfrog’s own Guiding Principles indicate that no Safety Grade should issue when data are missing for a large number of measures, and Leapfrog’s About the Grade webpage states that “[h]ospitals missing more than six process measures ... are not graded. *See Findings ¶ 71*. A reasonable relying consumer would be unlikely to understand the true

meaning of the Leapfrog Safety Grades as applied to non-participating hospitals, as one hospital system warned when commenting on the proposed Fall 2024 methodology. *See* Findings ¶ 100; JX-026.0 at -030 (warning Leapfrog that the public “will not understand nor dig into the methodology”).

225. The Findings thus amply support the conclusion that Leapfrog’s Safety Grades and associated methodology are likely to mislead reasonable consumers. Indeed, the Findings establish that the Safety Grades and methodology *did* produce evidence of consumer confusion and harm, thus establishing not only likely but actual consumer injury, as discussed more fully below with respect to the unfairness inquiry. *See infra* ¶¶ 246–61.

2. *Leapfrog’s Related Representations Were Likely to Mislead Reasonable Consumers*

226. Leapfrog also made a series of representations that obscured the arbitrary and punitive nature of the Fall 2024 non-participation approach—underscoring that consumers were likely to be (and were) misled.

227. *First*, Leapfrog represented that Safety Grades are calculated using Survey responses, CMS data, and “supplemental” or “secondary” data sources. *See* Findings ¶ 70 (“About the Grade” webpage). But the Findings establish that Leapfrog has no data measuring actual performance on key Survey-dependent measures for non-participating hospitals, and that Leapfrog did not use supplemental or secondary data to measure those hospitals’ performance on those measures. *See, e.g.*, Findings ¶¶ 59, 85.

228. *Second*, Leapfrog represented that “[h]ospitals missing more than six process measures ... are not graded.” Findings ¶ 71. This representation clearly implies to consumers that, if a hospital does receive a Safety Grade, then Leapfrog had sufficient data to award that Safety Grade. Findings ¶¶ 71–72. But the Findings establish that Leapfrog in fact issues Safety Grades to non-participating hospitals despite lacking data for *seven* measures. *See, e.g.*, Findings ¶¶ 73, 85. Indeed, for non-participating hospitals, Leapfrog simply discards three measures (“Safe Practice 1: Culture of Leadership Structures and Systems,” “Safe Practice 2: Culture Measurement, Feedback & Intervention,” and “Total Nursing Care Hours per Patient Day”), and then assigns the lowest-available score on the other Four Measures for which it similarly lacks data. Findings ¶¶ 44 n.4, 73.

229. *Third*, Leapfrog represented that a Safety Grade reflects “overall performance” and “how well a hospital does on safety, not whether they complete the Leapfrog Hospital Survey.”

See Findings ¶ 75 (“About the Grade” webpage). The Findings establish that non-participating hospitals were assigned fixed failing component scores on the Four Measures and that those measures were re-weighted to account for approximately one-third of the Safety Grade, producing materially worse Safety Grades as a result of non-participation. See Findings ¶¶ 42–48.

230. *Fourth*, the Findings establish that Leapfrog’s website presentation—including “gas gauge” graphics showing a needle in the red-zone, best/worst hospital comparisons, and “earned” scores—conveyed to consumers that non-participating hospitals performed worse than average on the Four Measures, even though Leapfrog has no data measuring actual performance on those measures for nonparticipating hospitals. See Findings ¶¶ 59, 74–84.

231. *Fifth*, Leapfrog represented that its methodology was peer-reviewed and expert approved, but the Findings establish that the Fall 2024 non-participation penalty was not peer reviewed and was not approved by the Expert Panel (it was developed through “group think”), and that Leapfrog personnel discussed how to present the change to make it “sound” legitimate. See Findings ¶¶ 86, 89, 92, 124.

232. Each of these representations is independently sufficient to establish deception under FDUTPA; considered together, their misleading net impression is clear, well beyond a preponderance of the evidence.

233. Leapfrog’s buried methodology materials do not cure the deception. The Findings establish that the methodology document was not presented with the Safety Grade webpages, was difficult for consumers to locate, was accessed only by 3 percent or less of visitors, and was dense and not consumer-readable. See, e.g., Findings ¶¶ 98–101. Additionally, Leapfrog’s footnotes and webpage presentation did not disclose how assigned scores were generated or allow consumers to distinguish assigned scores from measured performance. See, e.g., Findings ¶¶ 91–96. Two footnotes that appear at the bottom of the Safety Grade webpages do not dispel (and in fact aggravate) the deception. The first footnote reads, “Declined to Report: The hospital was asked to provide this information to the public, but did not,” and misleadingly appears on the webpages for non-participating *and* participating hospitals. Findings ¶ 96. The same footnote also applies to all measures—incongruously, even those for which Leapfrog has data—and otherwise fails to explain the missing data, assumptions made, or how scores were calculated. Findings ¶ 97. The second reads, “The hospital declined to report their performance on this measure, so a score was assigned to reflect the lack of information available.” Findings ¶ 93. This statement clarifies nothing, as

Leapfrog’s Director of Communications and its own expert witness acknowledged. *See Findings* ¶ 95. Indeed, when presented with the Leapfrog webpages for two nonparticipating hospitals—one whose scores were based on available historical data and one whose scores were automatically assigned—Leapfrog’s retained expert conceded that the webpages were “totally indistinguishable,” and that the footnotes do not show a consumer “under the hood” of *how* the scores were assigned. Findings ¶¶ 95 & n.6, 104.

234. Accordingly, the Community Hospitals have proven that Leapfrog’s Safety Grades, methodology, and related representations are deceptive under FDUTPA. *See Fla. Stat. § 501.204(1)*.

B. Leapfrog’s Safety Grades, Safety Grade Methodology, And Associated Coercive Practices Are Unfair Under FDUTPA

235. While the Community Hospitals need not also prove that Leapfrog’s conduct is “unfair,” given FDUTPA’s disjunctive test, the Court nonetheless also finds that the Community Hospitals have proven by a preponderance of the evidence that Leapfrog’s Safety Grades, grading methodology, and grading practices are “unfair” under FDUTPA. Fla. Stat. § 501.204(1). The Court begins its analysis by discussing a threshold dispute between the parties—the standard for substantial injury to consumers for unfairness claims—and then proceeds to analyze the Community Hospitals’ unfairness argument under the two unfairness tests courts construing FDUTPA have traditionally applied. For the reasons explained below, the Court finds that the Community Hospitals have established that Leapfrog’s challenged practices are unfair under either of those tests.

1. *Unfairness Claims Do Not Require Actual, Only Likely, Consumer Harm*

236. As the Court explained above, deception claims under FDUTPA do not require proof of actual consumer harm. Rather, it is sufficient that “‘deceptions ... are likely to cause injury to a reasonable relying consumer.’” ECF 139 at 9 (quoting *Millennium Commc’ns & Fulfillment, Inc.*, 761 So. 2d at 1263). The parties disputed whether unfairness claims require actual consumer harm or whether a likelihood of harm suffices. Leapfrog contended that actual consumer harm is required for unfairness claims. *See, e.g.*, ECF 99 at 9–10. The Community Hospitals supplied authority that likely consumer injury suffices for unfairness claims. ECF 152. After further consideration, including in light of further guidance from the Eleventh Circuit, *see FTC v. Corpay, Inc.*, 164 F.4th 807 (11th Cir. 2026), the Court agrees that a likelihood of substantial injury to

consumers suffices for unfairness claims. *See* 15 U.S.C. § 45(n); *Davis v. Powertel, Inc.*, 776 So. 2d 971, 975 (Fla. 1st DCA 2000).

237. The necessary starting point is FDUTPA’s text and structure. FDUTPA’s purpose is “[t]o make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.” Fla. Stat. § 501.202(3). FDUTPA defines a “[v]iolation of this part” to mean a violation of any of the following, as they existed as of July 1, 2017: “[a]ny rules promulgated pursuant to the Federal Trade Commission [FTC] Act,” “the standards of unfairness and deception set forth and interpreted by the [FTC] or the federal courts,” and “[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.” Fla. Stat. § 501.203(3)(a)–(c). And FDUTPA reminds courts that “due consideration and great weight shall be given to the interpretations of the [FTC] and the federal courts” relating to the FTC Act “as of July 1, 2017.” Fla. Stat. § 501.204(2). These provisions reflect that the analysis of deception and unfairness claims is designed to track the pre-2017 FTC Act and pre-2017 interpretations of that statute promulgated by the FTC and federal courts. FDUTPA is thus a “little FTC Act,” *Fonte v. AT&T Wireless Servs., Inc.*, 903 So. 2d 1019, 1024 (Fla. 4th DCA 2005), “patterned after” the FTC Act, *Millennium Commc’ns & Fulfillment, Inc.*, 761 So. 2d at 1260. The Florida Supreme Court’s decision in *PNR, Inc. v. Beacon Property Management, Inc.*, 842 So. 2d 773 (Fla. 2003), likewise reflects this incorporation: its description of FDUTPA’s deception and unfairness standards tracks the FTC Act’s framework, even copying language from cases explaining the standard under the FTC Act. *Id.* at 777.

238. The FTC Act, in turn, does not require proof of actual consumer harm for unfairness claims. Indeed, the Act’s “[s]tandard of proof” section for unfairness claims expressly provides that no “act or practice is unfair unless the act or practice causes *or is likely to cause* substantial injury to consumers[.]” 15 U.S.C. § 45(n) (emphasis added). As *FTC v. Corpay* explains, “the proper standard for evaluating ‘unfair’ practices” is the FTC Act’s “statutory text.” 164 F.4th 807, 839–40 (11th Cir. 2026).¹² Because the FTC Act has contained the “cause or likely to cause”

¹² Leapfrog suggested that the Court should not consider the Eleventh Circuit’s decision in *Corpay* because it was rendered after July 1, 2017, and thus is not incorporated into FDUTPA. *See* ECF 165 at 2–3. The Court finds this argument misplaced. The Community Hospitals’ argument was not that *Corpay* changed how the FTC Act directs courts to assess consumer injury. *See* ECF 166 at 1. The decision instead clarifies and reinforces that the standard for unfairness claims derives from the FTC Act’s statutory text, which Leapfrog itself concedes is “[l]ongstanding” and was in place well before July 1, 2017. *See* ECF 165 at 4. Accordingly, that federal statutory standard was incorporated into FDUTPA under the latter statute’s plain terms. *See infra* ¶ 239.

language since 1994—well before FDUTPA’s 2017 cut-off date—*see* Pub. L. 103-312, 108 Stat. 1691, 1695 (Aug. 26, 1994), it falls within FDUTPA’s July 1, 2017 incorporation framework, *see Porsche Cars N. Am., Inc. v. Diamond*, 140 So. 3d 1090, 1097 (Fla. 3d DCA 2014).

239. FTC interpretations of the unfairness standard point in the same direction. The FTC Act’s “likely to cause injury” language was designed to codify then-existing FTC opinions and policy statements, *see LabMD Inc. v. FTC*, 894 F.3d 1221, 1229 (11th Cir. 2018), which had long made clear that likely injury suffices. In *Matter of International Harvester Co.*, 104 F.T.C. 949 (1984), for example, the FTC explained that “unfairness cases may also be brought *on the basis of likely rather than actual injury*,” including unwarranted health and safety risks. *Id.* at 1061 n.45 (emphasis added) (examining the 1980 Policy Statement).¹³ As pre-2017 explanations of the standard for unfairness claims, the 1980 Policy Statement and *International Harvester* likewise were “incorporated into Florida law” under FDUTPA. *Porsche Cars N. Am., Inc.*, 140 So. 3d at 1097. Consistent with that approach, courts applying FDUTPA have recognized that “an aggrieved party may pursue a claim for declaratory or injunctive relief under the Act, even if the effect of those remedies would be limited to the protection of *consumers who have not yet been harmed* by the unlawful trade practice.” *Davis*, 776 So. 2d at 975 (emphasis added).

240. Leapfrog’s contrary arguments are unpersuasive. Leapfrog does not dispute that the FTC Act has included a “likely to injure” standard since 1994 or that FDUTPA directs courts to give great weight to FTC Act standards and federal interrelations as of July 1, 2017. *See* ECF 165 at 3–4. Leapfrog instead relies on cases that do not decide whether *actual* harm is required (as distinct from *likely* harm), and that do not engage with FDUTPA’s incorporation of the FTC Act’s statutory unfairness standard. *See, e.g., Stewart Agency, Inc. v. Arrigo Enters., Inc.*, 266 So. 3d 207, 214–15 (Fla. 4th DCA 2019) (expressing no view on whether actual versus likely injury is required); *CMR Construction & Roofing, LLC v. UCMS, LLC*, 2022 WL 3012298, at *3 (11th Cir. July 29, 2022) (same).

241. For those reasons, the Court concludes that likely consumer injury suffices for FDUTPA unfairness claims. The Court also concludes that this legal issue is not outcome-determinative here: the Community Hospitals established likely injury to consumers from Leapfrog’s

¹³ The FTC’s opinion noted that it is “not the usual practice” to bring an unfairness claim based on likely rather than actual injury, *Matter of Int’l Harvester Co.*, 104 F.T.C. at 1061 n.45, but this observation is beside the point. While most unfairness cases may happen to involve actual consumer harm, this showing is not legally required for an unfairness claim, as the FTC made clear.

challenged grading practices and dissemination (e.g., by depriving them of information necessary to make informed choices about medical care), but they also established *actual* consumer harm at trial, as discussed below.

2. *Leapfrog’s Challenged Practices Are Unfair Under the Modern, Three-Factor Test*

242. Courts analyzing unfairness claims under FDUTPA apply either of two tests. Courts sometimes apply the modern, three-factor unfairness test deriving from the FTC’s 1980 Policy Statement, which is codified into Section 45(n) of the FTC Act as discussed above. *See* 15 U.S.C. § 45(n). Alternatively, courts sometimes use the older test from the FTC’s 1964 Policy Statement on unfairness, which asks whether the challenged practice “offends established public policy” and is “immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.” *PNR, Inc.*, 842 So. 2d at 777. Because the Court finds that the choice of tests is not outcome-determinative here, it will apply both tests.

243. Conduct under the modern three-factor test is “unfair” when it inflicts “consumer injury that is: (1) substantial; (2) not outweighed by any countervailing benefits to consumers or competition that the practice produces; and (3) ... that consumers could not reasonably have avoided.” *SMS Audio*, 2017 WL 11631378, at *3 (citing *Porsche Cars N. Am., Inc.*, 140 So. 3d at 1096–97). Here, the Community Hospitals have proved that Leapfrog’s practices are “unfair” under this standard.

244. *First*, the Community Hospitals proved substantial consumer injury—both likely and actual. *See SMS Audio*, 2017 WL 11631378, at *3. The Court rejects Leapfrog’s attempt to narrow “substantial consumer injury” to “adverse health outcomes” or “inflated fee[s],” ECF 99 at 9, and its attempt to limit “consumers” to patients alone, ECF 102 at 14. As explained below, both positions are inconsistent with FDUTPA’s incorporation of the FCT Act’s unfairness standard, and the record developed at trial.

245. *Substantial Injury*. Leapfrog’s claim that only “adverse health outcomes” or the payment of an inflated fee suffice for substantial injury finds no support in the FTC’s 1980 Policy Statement, which is incorporated into FDUTPA, and on which the modern three-factor unfairness test is based. The central premise of the 1980 Policy Statement is that “a well-functioning market” requires “a free and informed consumer transaction.” *Matter of Int’l Harvester Co.*, 104 F.T.C. at 1074. The FTC explained that it is “properly banned as an unfair practice” for a defendant to “withhold or fail to generate critical price or performance data,” “leaving buyers with insufficient

information for informed comparisons.” *Id.* The FTC contrasted that distortion of consumer choice—which is squarely actionable as an unfair practice—with non-actionable “trivial” harms, such as allegations that an advertisement merely “offends ... tastes or social beliefs.” *Id.* at 1073. Thus, the substantial-injury requirement weeds out trifling claims but captures conduct that deprives consumers of critical performance information and distorts consumer choice.¹⁴ For that reason, the FTC and federal courts applying the FTC Act have routinely recognized that “deceptive practices are always unfair.” *Matter of Figgie Int’l, Inc.*, 107 F.T.C. 313, 1986 WL 722111, at *50 n.5 (1986); *accord Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1172 (11th Cir. 1985). Withholding or obscuring material information is itself a form of substantial consumer injury; it is not necessary to prove second-order injuries of the type Leapfrog posits, such as adverse health outcomes or an inflated fee. Here, the Findings establish that Leapfrog presented “D” and “F” Safety Grades as measures of safety performance while assigning failing component scores on no-data measures for non-participating hospitals, and that consumers encountered and acted on Leapfrog’s Safety Grades in the marketplace. *See Findings* ¶¶ 55–59, 105–10, 201–10.

246. *Scope of Consumer Harm.* “Consumers” under FDUTPA include any “individual,” “business,” or “corporation” at whom the “unfair practice or deception is aimed.” ECF 139 at 10 (quoting Fla. Stat. § 501.203(7)). The Findings establish that Leapfrog aims its Safety Grades at patients, employers, insurers, hospitals, and healthcare staff through consumer-facing messaging, paid dissemination, and licensing and marketing practices. *See Findings* ¶¶ 21–28, 115, 120–121.

247. *Patients.* The parties agree that patients are consumers of the Safety Grades, *see, e.g.*, ECF 102 at 14, and the Findings establish both likely and actual patient harm. As the Community Hospitals’ experts explained, Leapfrog’s failing “D” and “F” Safety Grades are likely to impact consumers’ perceptions of hospital quality and to distort healthcare choices. *Findings* ¶ 205 (Dr. Berger); *see also Findings* ¶ 203 (Dr. Nicholson). The Findings further establish that consumers encountered “D” and “F” Safety Grades as safety judgments and altered medical

¹⁴ Leapfrog contended the Court should apply consumer-injury principles from Sherman Act precedents. *See* ECF 99 at 6, 8; ECF 102 at 6; ECF 124 at 6. The Court is not persuaded those precedents are informative here. Leapfrog’s key case, *Tymar Distribution LLC v. Mitchell Group USA, LLC*, 558 F. Supp. 3d 1275, 1279–80, 1289 (S.D. Fla. 2021), applied antitrust-like principles “in a competition case” involving intrabrand competition. This is not a competition case: Leapfrog does not compete with the Community Hospitals in providing healthcare. In any event, even under antitrust principles, consumer injury is not limited to higher prices. *See FTC v. Ind. Fed’n of Dentists*, 476 U.S. 447, 461–62 (1986) (withholding “information desired by consumers” to make informed comparisons “may be condemned even absent proof that it resulted in higher prices” (emphasis added)).

decisions as a result, including declining or delaying medical care; leaving against medical advice; and bypassing the Community Hospitals. Findings ¶¶ 144–46, 150, 156, 166–70, 172–75, 187.

248. After seeing the post-Fall 2024 approach Safety Grades for the Community Hospitals, patients were “afraid” to receive care at the Community Hospitals, postponing needed procedures and even leaving against medical advice. For example, one patient left despite an open fracture and the attendant infection risks after he “verbalized” that he “wanted to go to” a different hospital “against medical advice” “due to the leap frog reviews.” Findings ¶ 173. Hospital CEO Mr. Cazares gave another particularly illustrative example at trial when explaining the actions he was forced to take in response to negative publicity from Leapfrog’s Safety Grades. After a patient demanded an explanation of Palm Beach Gardens’ failing Safety Grade, Mr. Cazares called him to reassure him about the hospital’s safety—yet he never heard back from that patient. Findings ¶ 156.

249. Additionally, walk-ins declined at every hospital and the CEOs attributed those declines to the Safety Grades, after investigating other potential causes. Findings ¶¶ 147, 159, 166, 179, 191; *see also* Findings ¶¶ 141, 154. The Findings also establish that patients presented to other hospitals “first” and were later transferred when those hospitals could not provide needed care, creating risks of delay in treatment. Findings ¶¶ 168–70. Meanwhile, patients frequently were transferred to St. Mary’s from Jupiter Medical Center, as Jupiter proved unable to care for patients in medical emergencies. Findings ¶ 168 (transfers increased “significantly”). That transfer process resulted in inflated fees due to duplicative bills as well as delays in treatment. Findings ¶ 170 (delays and fees). These patient statements and diversion evidence, together with the timing of the Fall 2024 Safety Grades and the objective admissions indicators, support a causal link between the challenged Safety Grades and consumer deception. *In re Stand ‘N Seal*, 623 F. Supp. 2d, 1355, 1374 (N.D. Ga. 2009).

250. **Hospitals.** The evidence at trial established that Leapfrog “aim[s]” its Safety Grades at hospitals, rendering them consumers of the Safety Grades under FDUTPA as well. ECF 139 at 10. Leapfrog urges hospitals to pay to license “Designated Logos” prominently featuring the Safety Grades. Findings ¶ 120. Leapfrog markets the Safety Grades to hospitals as a way to “showcase” their commitment to safety, touting that hospital licensure of the Safety Grades, and corresponding placement of the Safety Grades in hospital banners, brochures, and other materials can produce “recognition” of a hospital by its “team and community.” Findings ¶ 120. A

competing hospital, Jupiter Medical Center, for example, is prominently featured as a licensee in Leapfrog's marketing materials, which feature a mockup of Jupiter's lobby with a large banner displaying Jupiter's "A" Safety Grade. Findings ¶ 120. This evidence shows Leapfrog expects hospitals to license, rely upon, and consume its Safety Grades.

251. FDUTPA is designed to protect not only members of the public (like patients) from unfair acts, but also "legitimate business enterprises" like hospitals from "unfair methods of competition." Fla. Stat. § 501.202(2). The Findings establish that Leapfrog's Safety Grades create an unfair method of competition for participating hospitals and non-participating hospitals. Leapfrog pressures hospitals into participating in its Survey with its non-participation penalty (thereby generating data that Leapfrog can market and monetize), resulting in higher Safety Grades that those hospitals in turn can use to bolster their reputations in the community. Conversely, non-participating hospitals (like the Community Hospitals) that resist Leapfrog's Survey are tagged with lower Safety Grades that misleadingly imply those hospitals are unsafe, resulting in patient distrust. Hospitals are the direct object of this coercive practice, which is tied to Leapfrog's participation-driven revenue model. *See* Findings ¶¶ 16, 109–12.

252. The trial evidence also establishes that hospitals' reliance on the Safety Grades caused actual deception, and thus harm, to the New York-based Hospital for Special Surgery ("HSS"). HSS relied on the Safety Grades when asking Good Samaritan's CEO to explain why Good Samaritan was awarded an "F" and, notwithstanding the explanation, in canceling its surgical contract with Good Samaritan shortly thereafter. Findings ¶¶ 196–97. Thus, hospitals likewise consume—and are deceived and unfairly injured by—Leapfrog's Safety Grades.

253. ***Insurers and Health Plans.*** The Community Hospitals further showed that Leapfrog's Safety Grades are "aim[ed]" at insurers and other healthcare payors as a supposedly valuable and reliable way for those entities to determine where beneficiaries should obtain medical care. Leapfrog's marketing materials target insurers and urge them to "[p]artner with Leapfrog," touting the Safety Grades as providing "proven value" to insurers. Findings ¶ 121. Leapfrog also designs pricing and discount structures to incentivize insurers to license the Safety Grades, including discounts tied to bundling and multi-year commitments and time-limited pricing; as a result, numerous insurers license Leapfrog's Safety Grades. Findings ¶ 121.

254. Leapfrog's targeting of insurers produced actual deception and resulted in consumer harm. For example, Humana sent concerned letters to Good Samaritan, Delray, and West

Boca referencing Leapfrog’s Safety Grades and urging the hospitals to address “their performance on safety measures”—reflecting the misimpression that Leapfrog’s Safety Grades measured the Community Hospitals’ actual safety performance. *See* Findings ¶¶ 151, 180, 194–95. Thus, insurers likewise consume, and were deceived by, Leapfrog’s Safety Grades.

255. ***Employers.*** The evidence at trial establishes that Leapfrog “aim[s]” its Safety Grades at employers, including specifically in Florida. ECF 139 at 10. Leapfrog was founded by employer and purchaser groups and continues to market and disseminate the Safety Grades to Florida employers to influence healthcare purchasing decisions, including through its partnership with the Florida Alliance for Healthcare Value. Findings ¶¶ 12, 115. Leapfrog’s CEO Ms. Binder confirmed that employers reference Leapfrog’s Safety Grades when making decisions about where employees should seek medical care. Findings ¶ 115. This employer targeting reinforces the participation pressure created by the non-participation penalty: the more employers rely on Safety Grades, the stronger the incentive for hospitals to participate and avoid the penalty, thereby increasing the Survey data Leapfrog is authorized to use “in a commercial manner for profit.” Findings ¶ 16, 117–19, 122. Leapfrog therefore distorted Florida employers’ choices through the dissemination of false information as well.

256. ***Doctors, Nurses, and Other Healthcare Staff.*** The evidence at trial establishes that Leapfrog “aim[s]” its Safety Grades at doctors, nurses, and other healthcare staff in connection with its licensing and marketing efforts. ECF 139 at 10. Leapfrog’s marketing materials tout the Safety Grades’ impact on staff recruitment and retention, and even suggest that hospitals should share their Leapfrog accolades on job listing websites and in social media recruitment campaigns. Findings ¶ 120. This evidence shows Leapfrog expects medical staff to encounter and rely on the Safety Grades in making employment decisions, confirming the healthcare staff are consumers of the Safety Grades for FDUTPA purposes.

257. Leapfrog’s targeting of medical professionals also produced concrete effects. For example, following the Fall 2024 “F” Safety Grade and ensuing reputational fallout, eight of Good Samaritan’s top orthopedic surgeons elected to obtain privileges at Jupiter Medical Center and Good Samaritan lost the HSS relationship. Findings ¶¶ 196–98.

258. Accordingly, these facts satisfy the “substantial consumer injury” prong of the modern three-factor test.

259. *Second*, these injuries are “not outweighed by any countervailing benefits to

consumers.” Leapfrog argued that the non-participation penalty increases participation and thereby improves safety, but the Findings establish that Leapfrog conducts virtually no meaningful auditing and offered no record support that the penalty improves safety outcomes. *See Findings ¶¶ 55–59*. Consumer deception and coercion are not “countervailing benefits” under the three-factor test, *FTC v. World Patent Mktg., Inc.*, 2017 WL 3508639, at *16 (S.D. Fla. Aug. 16, 2017), and “[c]onsumer deception, by its very nature, is against the public interest,” *Osmose, Inc. v. Viance, LLC*, 2009 WL 10665750, at *10 (N.D. Ga. Mar. 20, 2009) (citation omitted).

260. *Third*, consumers could not “reasonably have avoided” these injuries. *SMS Audio*, 2017 WL 11631378, at *3. Hospitals cannot opt out of being graded; non-participation does not prevent publication, dissemination, or comparison, and the penalty “goes away” only if the hospital participates. *See Findings ¶¶ 105–13, 118* (Leapfrog widely disseminates Safety Grades through media, purchases targeted ads to “harass” hospitals with low Safety Grades). The record also showed that some viewed the consequences of non-participation as “blackmail” and that Leapfrog amplified its Safety Grades through widespread dissemination, including targeted advertising. *See Findings ¶ 129* (“penalty” for nonparticipation equivalent to “blackmail”), *¶¶ 105–13*. Nor could patients, medical staff, employers, and insurers reasonably avoid the Safety Grades, which reach them through media coverage, employer dissemination, and search-driven targeted advertising, without an accompanying explanation of the methodology. *Findings ¶¶ 105–16*. Leapfrog points to website disclosures, but the Findings establish those disclosures do not explain how scores were assigned for no-data measures and are not reasonably accessible or consumer-readable for typical consumers. *Findings ¶¶ 91–104*. Leapfrog also conducted no testing after its methodology change to determine whether average consumers can even understand those disclosures, much less its dense methodology document purportedly explaining the non-participation penalty. *See Findings ¶ 101*. And even if such disclosures were relevant, the record does not show that reasonable consumers broadly read or understood them. *See Findings ¶¶ 93–97, 100–01*.

261. For these reasons, the Court finds that Leapfrog’s challenged practices are “unfair” under the modern three-factor test. *See SMS Audio*, 2017 WL 11631378, at *3 (citing *Porsche Cars N. Am., Inc.*, 140 So. 3d at 1096–97).

3. Leapfrog’s Challenged Practices Are Also Unfair Under The 1964 Test

262. The Community Hospitals have likewise demonstrated that Leapfrog’s Safety Grades, Safety Grade methodology, and associated conduct are “unfair” under the alternative 1964

test, which looks to whether conduct “‘offends established public policy’” and “‘is ‘immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.’” *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1098 (11th Cir. 2021) (quoting *PNR, Inc.*, 842 So. 2d at 777). This definition, which was adopted from the FTC’s 1964 Policy Statement and has been embraced by the Florida Supreme Court, is the “latest statement of state law by the state supreme court,” *World Harvest Church, Inc. v. Guideone Mut. Ins. Co.*, 586 F.3d 950, 957 (11th Cir. 2009).

263. *First*, these practices evince the kind of “deceptive and bullying conduct” that offends Florida public policy, *Marco Island Cable*, 312 F. App’x at 214, for all the reasons stated above in connection with the “deceptive” prong of FDUTPA. *See supra* ¶¶ 218–34.

264. *Second*, these practices qualify, at minimum, as “oppressive” or “unscrupulous.” *Marrache*, 17 F.4th at 1098. They are oppressive because the record shows that Leapfrog uses the threat of arbitrarily assigned Safety Grades to coerce participation in the Survey among hospitals that are unwilling or unable to endure what one member of Leapfrog’s Expert Panel described as “blackmail” designed to increase participation. Findings ¶ 129. The Survey is thus effectively involuntary. And these same practices are unscrupulous because the record shows that Leapfrog is not forthcoming to the public about how it calculates its Safety Grades or what they represent. *See supra* ¶¶ 226–34.

265. *Third*, these practices are “substantially injurious to consumers,” *Marrache*, 17 F.4th at 1098, for the same reasons as discussed above with respect to the modern three-factor test, *see SMS Audio*, 2017 WL 11631378, at *3; *supra* ¶¶ 242–61.

266. In sum, the Court finds that the Community Hospitals have established that Leapfrog has engaged in “unfair” practices relating to its “Safety Grades” and associated coercive conduct, regardless of whether one applies the modern three-factor test or the older test deriving from the FTC’s 1964 Policy Statement.

C. The Community Hospitals Are Aggrieved By Leapfrog’s Unlawful Practices

267. The Court concludes that the Community Hospitals have proven by a preponderance of the evidence they satisfy FDUTPA’s “aggrievement” requirement.

268. “[A]ggrieve[ment]” under FDUTPA is “expansive,” requires merely some “specific ... grievance,” and, for injunctions and corresponding declaratory judgments, does not require showing economic harm. *Ahearn*, 180 So. 3d at 172–73. A plaintiff seeking injunctive and declaratory relief need only show an identifiable injury that is not “merely speculative.” *Stewart*

Agency, Inc., 266 So. 3d at 214. Such injury may include reputational harm and damage to goodwill, ECF 41 at 8; operational disruption, *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009); and “consumer confusion,” *Colonial Van Lines, Inc. v. Colonial Moving & Storage, LLC*, 2020 WL 6700449, at *4 (S.D. Fla. Oct. 20, 2020). Aggrievement is a low bar and concerns merely whether Leapfrog’s deception has caused, and continues to cause, actual or threatened injury to the Community Hospitals. The Findings establish Leapfrog’s challenged practices cause and continue to threaten reputational and operational injury to the Community Hospitals. *See Findings ¶¶ 141–210.*

269. Leapfrog intends its Safety Grades to influence consumer choice and hospital reputation, and the Findings establish wide dissemination of the “D” and “F” Safety Grades through media, advertising, employer channels and search-driven advertising. *See Findings ¶ 110* (“Tenet Hospitals at Bottom of Local Safety Grades” article), ¶ 25 (website directing consumers to “always” use the Safety Grade when deciding which hospital to visit); ¶¶ 105–07 (Safety Grades covered in hundreds of articles with a reach of over 11 billion); ¶¶ 112–13 (Google ads targeting the Community Hospitals). The reach of the Safety Grades was magnified by a TikTok video that received more than one million views and listed four of the Community Hospitals alongside their Leapfrog Safety Grades, describing them as among the “worst” hospitals in Florida. *Findings ¶ 110.* Expert testimony and Leapfrog’s own witnesses confirmed that poor Safety Grades can harm hospital reputation and drive consumer choice. *See Findings ¶¶ 202–04* (“substantial literature” supports “that patients are relying on hospital ratings,” that “unreliable grades” cause reputational harm, and that Leapfrog’s Safety Grades “likely negatively impact consumer perceptions of the Community Hospitals” and “deter consumers” from seeking care there); ¶ 200 (Romano agreeing that “of course” poor Safety Grades can harm reputation).

270. The Findings also establish concrete harms and ongoing effects from Leapfrog’s Safety Grades.

271. The Court credits the Community Hospital CEOs’ testimony—corroborated by contemporaneous records and objective indicators—of identifiable, non-speculative reputational harm, patient diversion and delay of care, reduced walk-in volumes relative to EMS admissions, insurer inquires, and sustained operational disruption. *See Findings ¶¶ 141–99.*

- a. *Delray.* Ms. Havericak, CEO of Delray, testified to numerous harms, including patient confusion and erosion of community confidence caused by the Safety

Grades. *See* Findings ¶¶ 143, 144.

- b. *Palm Beach Gardens*. Mr. Cazares, CEO of Palm Beach Gardens, testified to similar harms, including numerous complaints and concerns from physicians, staff, governing board members, and community members in response to Safety Grade. Findings ¶¶ 153–54, 157 (“The damage came on pretty strong when the ‘F’ came out” and is “still there and continues”). He also testified about a cardiac patient who declined to have a procedure performed at Palm Beach Gardens—despite the hospital’s specialty in cardiac care—because of the failing Leapfrog Grade. Findings ¶ 156.
- c. *St. Mary’s*. Ms. McCauley, CEO of St. Mary’s, likewise explained several resulting harms, including patients diverting to other hospitals only to be transferred to St. Mary’s when the other hospital could not provide the needed care. Findings ¶¶ 168, 169. She further testified to erosion of St. Mary’s brand in the community. Findings ¶ 165 (brand analysis showing that after the Safety Grade came out, the percentage of patients that would choose St. Mary’s fell from 78 to 55 percent).
- d. *West Boca*. Mr. Hanlon, CEO of West Boca, also testified to reputational injury and patient diversion. *See* Findings ¶ 176. He noted that a patient with a compound fracture left against medical advice in response to West Boca’s “F” Safety Grade, and a patient with scheduled underarm surgery left against medical advice after seeing media coverage of the “F” Safety Grade. Findings ¶¶ 173–75.
- e. *Good Samaritan*. Finally, Ms. Montgomery, CEO of Good Samaritan, testified to the same reputational and operational harms, explaining that the Safety Grade had caused a “fire storm” and numerous patient and community member complaints. Findings ¶¶ 186, 188, 189. In particular, the HSS orthopedic group “was upset about” the Safety Grade and canceled an \$8 million surgery contract, eliminating eight surgeons performing 1,300 surgeries a year. Findings ¶ 196–97.

272. Insurer communications referencing Leapfrog’s Safety Grades and urging “performance” responses further corroborate reputational harm and ongoing injury due to the

Grades. *See* Findings ¶¶ 151 (letter directed to Delray), 180 (letter directed to West Boca), 194–95 (letter directed to Good Samaritan).

273. Objective volume evidence—including walk-in declines relative to EMS admissions—corroborates the operational impact of the challenged Safety Grades. *See* Findings ¶¶ 147, 159, 166, 179, 191.

274. Leapfrog’s counterarguments do not defeat aggrievement. Leapfrog’s contention that the Community Hospitals were not harmed because certain overall metrics remained positive is logically and legally irrelevant. A plaintiff’s having “generated a net profit ... does not demonstrate that [it] suffered no harm.” *Wyndham Vacation Ownership, Inc. v. Slattery, Sobel & Decamp, LLP*, 2024 WL 5703196, at *11 (M.D. Fla. Aug. 14, 2024). Nor does it matter if other factors (such as CMS star ratings) “also contributed” to these injuries, because “proximate cause” does not require Leapfrog to be the “sole cause” of the Community Hospitals’ injuries. *Cox v. Adm’r U.S. Steel & Carnegie*, 17 F.3d 1386, 1399 (11th Cir. 1994).

275. Accordingly, the Court concludes that the Community Hospitals are aggrieved by Leapfrog’s actions.

III. LEAPFROG’S CONDUCT OCCURS IN TRADE OR COMMERCE IN FLORIDA

276. The Community Hospitals have proven by a preponderance of the evidence that Leapfrog’s conduct to solicit Survey responses, distribute its Safety Grades, and advertise those Grades occurs in “trade or commerce” in Florida. Fla. Stat. § 501.204(1). Leapfrog does not dispute that it operates in Florida “trade or commerce,” *id.*, and it has stipulated to this effect, ECF 129 ¶ 174.

IV. LEAPFROG’S AFFIRMATIVE DEFENSES FAIL

277. The Court finds that Leapfrog failed to meet its burden on its asserted affirmative defenses: its alleged “good faith conduct,” the avoidance-of-consequences doctrine, and anti-SLAPP. *See* ECF 75 at 47–49. Leapfrog did not pursue, or even reference, any of these affirmative defenses at trial.

278. *Good faith.* Leapfrog abandoned its good-faith defense by failing to respond to the Community Hospitals’ motion for summary judgment on it. *Rd. Sprinkler Fitters Local Union No. 669 v. Indep. Sprinkler Corp.*, 10 F.3d 1563, 1568 (11th Cir. 1994). Even if the defense is not forfeited, good faith is no defense under FDUTPA. *See In re Schurtenberger*, 2014 WL 92828, at *5 (Bankr. S.D. Fla. Jan. 9, 2014). And even if it were, the Court finds it unsatisfied on the facts

here, which undermine the notion that Leapfrog undertook its deceptive and unfair practices in good faith. *See, e.g.*, Findings ¶¶ 109 (disseminating the Safety Grades in social and traditional media), 112 (targeting the Community Hospitals with ads).

279. *Avoidable consequences.* The doctrine of avoidable consequences is “inapplicable” where the plaintiff is “not seeking damages,” *Armstrong v. U.S. Bank Nat’l Ass’n*, 729 F. Supp. 3d 1291, 1307 (M.D. Fla. 2024), like here, ECF 74 (Amended Complaint) at ¶¶ 102, 104, 109, 110. And the undisputed record shows the Community Hospitals acted reasonably to mitigate reputational harm, including by counseling patients concerned about the Leapfrog Safety Grade. *See, e.g.*, Findings ¶¶ 143–45 (Delray), 156–57 (Palm Beach Gardens), 164 (St. Mary’s), 172 (West Boca), 187 (Good Samaritan).

280. *Anti-SLAPP.* None of the evidence at trial changes this Court’s prior determination that the Community Hospitals’ claim does not offend Leapfrog’s asserted First Amendment rights. ECF 41 at 6 (motion to dismiss order). Moreover, Leapfrog’s anti-SLAPP argument is procedurally foreclosed because it is “not an affirmative defense,” but rather a procedural mechanism to seek early resolution of a claim. *Wyndham Vacation Ownership, Inc. v. Square One Dev. Grp., Inc.*, 2022 WL 21374382, at *4 (M.D. Fla. Feb. 2, 2022). And, regardless, Leapfrog failed to establish *any* of the elements of an anti-SLAPP defense at trial. Fla. Stat. § 768.295(3).

V. INJUNCTIVE AND DECLARATORY RELIEF ARE APPROPRIATE

281. The Court now turns to the appropriate remedies for Leapfrog’s FDUTPA violation. For the reasons discussed below, permanent injunctive relief and declaratory relief are warranted.

A. A Permanent Injunction Is Warranted

282. The Community Hospitals are entitled to a permanent injunction in response to Leapfrog’s past, ongoing, and likely future violations of FDUTPA. A permanent injunction requires (1) actual success on the merits, (2) irreparable injury, (3) a balance of the equities that favors the plaintiff, and (4) consistency with the public interest. *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004). Each element of this test is satisfied here.

283. *First*, the Community Hospitals have established actual success on the merits. The Findings establish that Leapfrog’s Safety Grades, methodology, and associated representations are deceptive (by misleading consumers about how Leapfrog calculates its Safety Grades) and unfair (by distorting consumer choice and attempting to coerce hospital participation in Leapfrog’s

Survey through threatened reputational injuries). *See, e.g.*, Findings ¶¶ 66–90, 117–40.

284. *Second*, the Community Hospitals have established both ongoing and future irreparable injuries. Irreparable injuries are those that “cannot be undone through monetary remedies.” *Ferrero v. Associated Materials, Inc.*, 923 F.2d 1441, 1449 (11th Cir. 1991). The “loss of customers and goodwill” has long been considered “irreparable.” *Id.* The Findings establish reputational and operational harm, including patient diversion and delay of care, physician concerns, insurer inquiries, and declines in patient volume. *See* Findings ¶¶ 141–210. Absent judicial relief, these injuries are likely to continue and compound. *See, e.g.*, Findings ¶¶ 155, 199, 210.

285. *Third*, the balance of the equities strongly favors the Community Hospitals. Leapfrog has “no legitimate interest in continuing to engage in unlawful acts and practices.” *FTC v. Hispanic Global Way, Corp.*, 2014 WL 12531538, at *4 (S.D. Fla. July 1, 2014). These practices have harmed the Community Hospitals by misinforming the public at large—including patients, physicians, employers, and insurers—about hospital safety, thereby distorting healthcare decision-making and undermining trust in publicly disseminated safety information. Conversely, the Community Hospitals have a pressing need for injunctive relief so that they can provide healthcare in their communities without suffering reputational and operational injuries from Leapfrog’s unlawful conduct.

286. *Finally*, relief for the Community Hospitals is clearly in the public interest. There is a “strong public interest in preventing the deception of consumers.” *Popular Bank of Fla. v. Banco Popular de P.R.*, 9 F. Supp. 2d 1347, 1364 (S.D. Fla. 1998). FDUTPA likewise recognizes the strong need “[t]o protect the consuming public and legitimate business enterprises” from “deceptive” and “unfair acts.” Fla. Stat. § 501.202(2). An injunction will ensure that patients and other consumers will receive non-misleading and truthful information about the safety of the Community Hospitals.

287. Having determined that an injunction is warranted, the Court now turns to the appropriate scope of relief. FDUTPA authorizes courts “to enjoin” a practice that “is violating, or is otherwise likely to violate,” the statute. Fla. Stat. § 501.211(1). Any such injunction should be broad enough to ensure that the Community Hospitals are afforded “complete relief.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). As a result, courts in the consumer-protection context have authorized broad, multifaceted injunctions where necessary “to ensure future compliance” and that

consumers are treated “fairly.” *Corpay, Inc.*, 164 F.4th at 849 (affirming injunction compelling multiple disclosures and business reforms). At the same time, the Court is mindful that the injunction should be “no more burdensome to [Leapfrog] than necessary” to achieve those goals. *Califano*, 442 U.S. at 702. With those principles in mind, the Court finds that the following injunctive provisions are necessary and appropriate in light of the violation established here.

288. *First*, Leapfrog must cease assigning a Safety Grade to the Community Hospitals under the current methodology or any similar methodology that: (i) assigns assumed or imputed values to calculate Safety Grades due to the lack of hospital-provided performance data; (ii) scores non-participating hospitals differently than participating hospitals by using different values or using differently weighted values to calculate Safety Grades; or (iii) that otherwise reduces a hospital’s Safety Grade due to the failure to provide performance data.

289. Removing the Community Hospitals from Leapfrog’s Safety Grades is expressly authorized by FDUTPA’s language permitting the injunction of violative practices. Fla. Stat. § 501.211(1). Including the Community Hospitals in Leapfrog’s unlawful Safety Grades is such a practice. Removing them is thus “properly tailored ... to the wrong” being remedied. *Corpay, Inc.*, 164 F.4th at 846. Moreover, removal is necessary because enhanced disclosures alone are insufficient to provide complete relief to the Community Hospitals for several reasons. Most fundamentally, Leapfrog’s practice of subjecting hospitals to artificially low Safety Grades in the absence of data—indeed, *because of* the absence of data—is itself deceptive and unfair. That differential treatment of participating and non-participating hospitals simply because of the fact of participation represents a core aspect of the violation here. Merely increasing disclosures would not remedy the harm the Community Hospitals suffer from being involuntarily subjected to a deceptive and unfair penalty that they otherwise could avoid only through participation in Leapfrog’s Survey. *See Findings ¶¶ 117–18*. Nor would disclosures alone prevent further targeting and “harass[ment]” by Leapfrog through ads designed to highlight the Community Hospitals’ failing Safety Grades. *Findings ¶¶ 112–13*. In addition, the evidence at trial established that few consumers actually read or understand Leapfrog’s disclosures, *see Findings ¶¶ 91–104*, and that Leapfrog apparently undertook no low-literacy testing after the Fall 2024 methodology change to discern whether average consumers can understand the company’s representations about its new methodology, *see Findings ¶ 102*. And even if Leapfrog instituted enhanced disclosures, it is unclear that consumers would fully appreciate their import. Leapfrog markets its scores as “Safety

Grades,” inherently communicating that they measure real-world safety rather than Survey responsiveness. It is thus unlikely that even with further disclosures, reasonable consumers would understand that the so-called “Safety Grades” do not measure safety. And those disclosures would not necessarily accompany redistribution of the Safety Grades by other outlets, such as newspapers and social-media posts. Indeed, as the evidence showed at trial, the Safety Grades are nonvoluntary, travel widely, and often travel alone—without any additional disclosures or context. *See Findings ¶¶ 105, 107, 111, 117.* For those reasons, reputational injuries to the Community Hospitals would likely continue absent removal from the Safety Grades *and* corrective disclosures.

290. The Court rejects Leapfrog’s suggestion that removal of the Community Hospitals from the Safety Grades constitutes a “prior restraint on free-speech.” ECF 99 at 19. An injunction is squarely “remedial”—not a prior restraint—when it is based on “a judicial determination that the defendant[’s] past conduct was ... unlawful” and restrains the defendant from continuing to subject the plaintiff to that same unlawful conduct. *Lucero v. Trosch*, 121 F.3d 591, 600–01 (11th Cir. 1997) (rejecting prior-restraint argument). That is precisely what the injunction here does. There is no constitutional issue with restraining the continuation of a practice that this Court has finally adjudicated as unfair and deceptive.

291. The Court also notes that it need not consider at this time whether or how Leapfrog could revise its Safety Grade methodology to cure the violations found here based on the record adduced at trial. Leapfrog has failed to show that it has implemented (or even conceptualized) any modifications to its current methodology, which largely depends on data provided by hospitals. Nothing prohibits Leapfrog from seeking future “modification of the terms of [the Court’s] injunctive decree” if Leapfrog can show that “the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen.” *Sys. Fed’n No. 91 v. Wright*, 364 U.S. 642, 647 (1961). Leapfrog would “bea[r] the burden of establishing that a significant change in circumstances warrants revision of the decree,” *Fla. Med. Ass’n v. Dep’t of Health, Educ., & Welfare*, 947 F. Supp. 2d 1325, 1338 (M.D. Fla. 2013), and the Court would have to be “convinced ... that existing conditions differ so substantially from those which precipitated the decree as to warrant judicial adjustment,” *Hodge v. Dep’t of Housing & Urban Dev.*, 862 F.2d 859, 862 (11th Cir. 1989). The Court declines to opine, on a hypothetical state of facts, whether Leapfrog could satisfy that showing.

292. *Second*, within 5 business days of judgment, Leapfrog must withdraw from its

websites and cease promoting the deceptive and unfair Safety Grades assigned to the Community Hospitals for Fall 2024, Spring 2025, and Fall 2025. Requiring Leapfrog to remove the Safety Grades adjudicated to be deceptive and unfair in this action is expressly authorized by FDUTPA, Fla. Stat. § 501.211, and is necessary to remedy the Community Hospitals’ ongoing injuries from Leapfrog’s deceptive and unfair Safety Grades. Indeed, deception of consumers and harms to the Community Hospitals will continue for as long as Leapfrog’s deceptive and unfair Safety Grades remain on its website and in related materials. Leapfrog “‘has no equitable interest in perpetuating the false and misleading claims’” it previously has made. *PBM Prods., LLC v. Mead Johnson & Co.*, 639 F.3d 111, 127 (4th Cir. 2011). Moreover, this form of targeted relief clearly presents no overbreadth concern. It simply requires Leapfrog to cease promoting precisely the same representations finally adjudicated to be unlawful in this action. *See Lucero*, 121 F.3d at 600–01.

293. *Third*, within 30 days of judgment, Leapfrog must send corrective disclosures to all entities that paid to license the Fall 2024, Spring 2025, and Fall 2025 Safety Grades, disclosing that those Safety Grades were found to be deceptive and unfair in this action. Leapfrog must file a declaration documenting the reasonable and diligent efforts it has undertaken to accomplish this directive within 45 days of judgment. These corrective disclosures are likewise critical to remedying Leapfrog’s deception of consumers (such as insurers) who paid to license the Safety Grades, as well as the reputational injuries that ensued to the Community Hospitals after those consumers were deceived into believing the Safety Grades are the product of a legitimate methodology. *See Findings ¶¶ 105–16; see also, e.g., Findings ¶¶ 151, 180, 194–95* (discussing letters from insurer Humana). Numerous courts have recognized the need for remedial disclosures in similar cases. *See, e.g., Corpay, Inc.*, 164 F.4th at 849–50 (affirming permanent injunction requiring defendant “to make disclosures ‘unavoidable,’” so that “customers” would be treated “fairly”); *MacuHealth, LP v. Vision Elements, Inc.*, 2024 WL 3738489, at *8 (M.D. Fla. Aug. 9, 2024) (finding, in a FDUTPA case, that “a corrective statement is appropriate to remedy lingering confusion caused by Defendants’ past and ongoing deception” (internal quotation marks omitted)).

294. *Fourth*, Leapfrog must be required to place the same corrective disclosures in future contracts, print and electronic advertising materials, and other print and electronic documents that promote paid licensure of the next six cycles of Safety Grades accessible to or in the following five zip codes: 33401, 33407, 33410, 33428, and 33484. These targeted, additional disclosures are likewise necessary “to remedy lingering confusion” from Leapfrog’s past conduct. *MacuHealth*,

LP, 2024 WL 3738489, at *8. Indeed, Leapfrog targeted consumers in these same zip codes, diverting grant money it received to ensure that consumers “search[ing] for any of the five specific” Community Hospitals would see a Google “ad displaying their Hospital Safety Grade.” Findings ¶¶ 112–13 (describing the targeted ads). Absent forward-looking disclosures, consumers in these areas may be further deceived into believing that Leapfrog’s deceptive and unfair practices were limited to the Fall 2024, Spring 2025, and Fall 2025 Safety Grades. And such disclosures are necessary to redress the Community Hospitals’ ongoing reputational injuries. Without these disclosures, future consumers such as insurers and employers may not understand that the reason the Community Hospitals no longer appear in the Safety Grades is not because of a safety issue or other negative information, but because they prevailed in this action. And, again, if Leapfrog can establish that the disclosures are no longer necessary, it can seek to modify the injunction. *See supra* ¶ 291.¹⁵

295. *Fifth*, Leapfrog must refrain from taking any action to circumvent the relief set out above. It is well-established that it is “impermissible for the defendant to circumvent an injunction,” whether through overt acts in defiance of the decree or through “overly narrow interpretations,” *Alley v. U.S. Dep’t of Health & Hum. Servs.*, 590 F.3d 1195, 1205 (11th Cir. 2009), and “literal and hypertechnical reading[s],” *AmBrit, Inc. v. Kraft, Inc.*, 812 F.2d 1531, 1548 n.89 (11th Cir. 1986). To ensure that the injunction affords effective and complete relief, the Court makes clear that its scope “is not limited to the precise method[ology]” and practices confronted here, but extends to any similar conduct Leapfrog may take to “achiev[e] the same end[s]” of deceptive or unfair treatment of the Community Hospitals. *Alley*, 590 F.3d at 1206–07.

296. Finally, the Court retains jurisdiction to enforce compliance with the injunction. *See Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 970 (11th Cir. 2012).

B. A Declaratory Judgment Is Also Warranted

297. For similar reasons, the Court also concludes in its discretion that the Community Hospitals are entitled to a declaratory judgment. *See* 28 U.S.C. § 2201(a) (court may declare “the

¹⁵ The Court notes that in light of FDUTPA’s disjunctive test, it would impose the same injunction even if Leapfrog’s conduct only were deceptive or only were unfair. The Court also would impose the same injunction even if it were to disregard the objected-to statements by patients reflecting confusion and distrust of the Community Hospitals, given that the Community Hospitals independently adduced evidence of patient harm through credible testimony by their CEOs about their own impressions of actual patient confusion, in addition to evidence of actual harm to other types of consumers, such as employers, insurers and health plans, and medical staff. *See supra* ¶¶ 246–59; *see also* Findings ¶¶ 141–210. That evidence of actual harm also renders irrelevant whether FDUTPA requires actual or only likely harm.

rights and other legal relations of any interested party” in any “case of actual controversy within [the court’s] jurisdiction”). There is plainly an actual controversy between the parties, this case falls within the Court’s jurisdiction, *see supra* ¶¶ 212–15, and a declaratory judgment would usefully clarify the parties’ rights by making clear that Leapfrog’s practices are deceptive and unfair.

298. Accordingly, the Court will also enter a declaratory judgment that Leapfrog’s Fall 2024, Spring 2025, and Fall 2025 Safety Grades as applied to the Community Hospitals, the public representations Leapfrog makes about how it calculates those Safety Grades, and Leapfrog’s punitive grading methodology assigning failing “safety” scores in the absence of actual data are deceptive and unfair under FDUTPA.

VI. THE COMMUNITY HOSPITALS ARE ENTITLED TO ATTORNEYS’ FEES

299. The Community Hospitals as prevailing parties under FDUTPA are entitled to recover their reasonable attorneys’ fees and taxable costs, in an amount to be determined after further proceedings. Fla. Stat. § 501.2105.

300. Once a party prevails under FDUTPA, the Court may award reasonable attorneys’ fees and costs after considering the applicable equitable factors. *Chow v. Chak Yam Chau*, 640 F. App’x 834, 838–39 (11th Cir. 2015) (citing *Humane Soc’y of Broward Cnty., Inc. v. Fla. Humane Soc’y*, 951 So. 2d 966, 971–72 (Fla. 4th DCA 2007)).

301. The Court finds those factors strongly counsel in favor of awarding fees and costs to the Community Hospitals. *First*, the litigation was extensive and expedited—commenced and completed in less than ten months. *Second*, based on its annual multi-million dollar revenue, and the multi-million dollar compensation awarded its CEO over the last few years, Leapfrog has the ability to pay a fee award, especially as there is no claim for monetary relief in this action. *See* Findings ¶ 12. *Third*, a fee award is necessary to deter similar FDUTPA violations where plaintiffs obtain only injunctive and declaratory relief. *Fourth*, Leapfrog’s conduct was culpable (including post-suit amplification of the Community Hospitals’ failing Grades through Google ads to “harass” the five plaintiffs). *See, e.g.*, Findings ¶ 112–13. *Fifth*, the Community Hospitals’ claim is meritorious and was brought in good faith. *See Bluegreen Vacations Unlimited Inc. v. Timeshare Lawyers P.A.*, 2024 WL 3738890, at *9 (S.D. Fla. July 18, 2024). *Sixth*, Leapfrog advanced baseless dilatory positions and advanced false accusations that increased litigation burden and cost. *See* ECF 136 ¶ 160 (listing baseless arguments). *Seventh*, this case presented a straightforward

application of FDUTPA such that the “significant legal question,” factor is neutral. *See Healthcare Res. Mgmt. Grp., LLC v. EcoNatura All Healthy World, LLC*, 2022 WL 1537757, at *10 (S.D. Fla. May 12, 2022).

302. The Court finds these factors support an award here. The amount of fees and costs will be determined upon a subsequent motion with supporting evidence and briefing.

Dated: February 6, 2026

Respectfully submitted,

By: /s/ Jeffrey Marcus

By: /s/ Mary Beth Maloney

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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.

[PROPOSED] FINAL JUDGMENT

Plaintiffs Good Samaritan Medical Center, Delray Medical Center, Palm Beach Gardens Medical Center, St. Mary's Medical Center, and West Boca Medical Center ("the Community Hospitals") commenced this action against Defendant The Leapfrog Group ("Leapfrog") under the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"). ECF 1. The operative complaint seeks a permanent injunction and declaratory judgment against Leapfrog. ECF 74 at 41. This matter proceeded to a bench trial. Having considered the parties' arguments and the evidence presented, and having determined in Findings of Fact and Conclusions of Law that Leapfrog's Safety Grades, grading methodology, and representations about that methodology violate FDUTPA, the Court now enters the following permanent injunction and declaratory judgment:

REASONS WHY INJUNCTIVE RELIEF IS WARRANTED

The Court concludes that injunctive relief is warranted for the following reasons:

A. The Community Hospitals have succeeded on the merits in showing that Leapfrog has engaged in deceptive and unfair practices in violation of FDUTPA, that the Community Hospitals are aggrieved by Leapfrog's actions, and that consumers were, are, and are likely to be harmed by Leapfrog's practices.

B. Immediate and irreparable harm has resulted and will continue to result to the Community Hospitals from Leapfrog's ongoing violation of FDUTPA unless Leapfrog is restrained and enjoined by Order of this Court;

C. The balance of the equities favors the Community Hospitals;

D. Injunctive relief is in the public interest, and no private interest of Leapfrog outweighs the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions apply:

A. “Safety Grade” or “Safety Grades” mean the “A” through “F” grades that Leapfrog assigns to hospitals.

B. “Websites” means the entire websites whose homepages are located at <https://www.hospitalsafetygrade.org/> and <https://ratings.leapfroggroup.org/>, including all webpages housed on those websites and all of their subpages, and any other websites that Leapfrog may maintain.

PERMANENT INJUNCTION

IT IS THEREFORE ORDERED that Leapfrog, and Leapfrog’s officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, comply with the following commands:

A. Leapfrog must cease assigning a Safety Grade to the Community Hospitals under the current methodology or any similar methodology that: (i) assigns assumed or imputed values to calculate Safety Grades due to the lack of hospital-provided performance data; (ii) scores non-participating hospitals differently than participating hospitals by using different values or using differently weighted values to calculate Safety Grades; or (iii) that otherwise reduces a hospital’s Safety Grade due to the failure to provide performance data;

B. Within 5 business days of judgment, Leapfrog must withdraw from its websites and cease promoting the deceptive and unfair Safety Grades assigned to the Community Hospitals for Fall 2024, Spring 2025, and Fall 2025.

C. Within 30 days of judgment, Leapfrog must send corrective disclosures to all entities that paid to license the Fall 2024, Spring 2025, and Fall 2025 Safety Grades, disclosing that those Safety Grades were found to be deceptive and unfair in this action. Leapfrog must file a declaration documenting the reasonable and diligent efforts it has undertaken to accomplish this directive within 45 days of judgment.

D. Leapfrog must place the same corrective disclosures in future contracts, print and electronic advertising materials, and other print and electronic documents that promote paid licensure of the next six cycles of Safety Grades accessible to or in the following five zip codes: 33401, 33407, 33410, 33428, and 33484.

E. Leapfrog must refrain from taking any action to circumvent the relief set out above.

The Court retains jurisdiction to enforce compliance with these commands. *See Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 970 (11th Cir. 2012).

DECLARATORY JUDGMENT

For the foregoing reasons, the Court hereby DECLARES that Leapfrog's Fall 2024, Spring 2025, and Fall 2025 Safety Grades as applied to the Community Hospitals, the public representations Leapfrog makes about how it calculates those Safety Grades, and Leapfrog's punitive grading methodology assigning failing "safety" scores in the absence of actual data are deceptive and unfair under FDUTPA.

DONE AND ORDERED in the Southern District of Florida this ___ day of _____, 2026.

DATED _____

Donald M. Middlebrooks
United States District Judge