

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' NOTICE IN RESPONSE TO
LEAPFROG'S DECLARATION REGARDING INJUNCTION COMPLIANCE**

Jeffrey Marcus, Bar # 310890
Michael Pineiro, Bar # 41897
Daniel Rashbaum, Bar # 75084
MARCUS RASHBAUM PINEIRO & MEYERS LLP
2 South Biscayne Boulevard
Suite 2530
Miami, FL 33131
(305) 400-4268
jmarcus@mrpfirm.com
mpineiro@mrpfirm.com
drashbaum@mrpfirm.com

Jeffrey Neiman, Bar # 544469
Brandon S. Floch, Bar # 125218
NEIMAN MAYS FLOCH & ALMEIDA PLLC
100 SE 3rd Avenue
Suite 805
Fort Lauderdale, FL 33394
(954) 462-1200
jneiman@nmfalawfirm.com
bfloch@nmfalawfirm.com

Mary Beth Maloney (*pro hac vice*)
Lee R. Crain (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
(212) 351-4000
mmaloney@gibsondunn.com
lcrain@gibsondunn.com

Daniel P. Chung (*pro hac vice*)
Helgi C. Walker (*pro hac vice*)
Christine M. Buzzard (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
dchung@gibsondunn.com
hwalker@gibsondunn.com
cbuzzard@gibsondunn.com

Sydney Scott (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
811 Main Street #3000
Houston, TX 77002
(346) 718-6600
sascott@gibsondunn.com

Scott K. Hvidt (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201
(214) 698-3100
shvidt@gibsondunn.com

Attorneys for the Community Hospitals

The Community Hospitals respectfully submit this short response to the Declaration of The Leapfrog Group, ECF 215, filed on April 20, 2026. Toward the end of that declaration, *see id.* ¶¶ 46, 48, Leapfrog references a letter the Community Hospitals sent Leapfrog on April 14 pointing out that Leapfrog’s (1) characterization of hospital survey results on leapfroggroup.org and (2) contemplated new grading program for Ambulatory Surgery Centers (“ASCs”) violate the letter and intent of this Court’s injunction. *See* Ex. A (Community Hospitals’ April 14 letter). Leapfrog’s declaration dramatically claims that the Community Hospitals’ letter deemed Leapfrog noncompliant with “the Court’s injunction merely because the website advises consumers—truthfully—which hospitals did not participate in the Leapfrog Hospital Survey.” Dkt. 215, ¶ 46. Leapfrog doubled down on that claim with a yet more dramatic letter on April 24, claiming that the Community Hospitals seek “to suppress ... accurate reporting of incontestable facts” and “the basic, irrefutable fact that Plaintiffs declined to respond to Leapfrog’s Hospital Safety Survey”—a purported attempt “to fault, censor, and muzzle any aspect of Leapfrog’s reporting.” *See* Ex. B at 1–3 (Leapfrog’s April 24 letter).

The Community Hospitals’ letter speaks for itself. It objects to Leapfrog’s “two-track depiction of participating and non-participating hospitals,” which “is clearly designed to leave consumers with the net impression that non-participating hospitals (with red warnings and fear mongering pop-ups) are less safe than participating hospitals,” and observes that this differential treatment “has the apparent purpose and obvious effect of tending to ‘coerce participation through reputational penalty,’ pressuring hospitals to surrender data to which Leapfrog ‘does not have a right.’” Ex. A at 3 (quoting Op. at 23, 39) (internal citations omitted).

The Community Hospitals leave it to fair-minded readers to determine whether the letter thus seeks to “censor” the bare reporting of facts or, instead, is concerned with the specific type of misleading conduct this Court deemed deceptive and unfair. If Leapfrog believes it has a “legally unassailable” right, Ex. B at 4, to punish non-responding hospitals or ASCs by claiming that they have a defective record on “safety and quality” or have intentionally “suppressed” their data due to the mere fact of their non-participation, *see* Ex. A at 4–5, then basic aspects of this Court’s injunction and the reasoning backing it appear to have escaped the organization.

The Community Hospitals will continue to exhaust all informal means of resolving this dispute before seeking Court intervention, *see* Ex. C (Community Hospitals’ April 30 letter)—which the Community Hospitals remain optimistic will be unnecessary.

Dated: April 30, 2026

Respectfully submitted,

By: /s/ Jeffrey Marcus

By: /s/ Mary Beth Maloney

Jeffrey Marcus, Bar # 310890
Michael Pineiro, Bar # 41897
Daniel Rashbaum, Bar # 75084
MARCUS RASHBAUM PINEIRO & MEYERS LLP
2 South Biscayne Boulevard
Suite 2530
Miami, FL 33131
(305) 400-4268
jmarcus@mrpfirm.com
mpineiro@mrpfirm.com
drashbaum@mrpfirm.com

Jeffrey Neiman, Bar # 544469
Brandon S. Floch, Bar # 125218
NEIMAN MAYS FLOCH & ALMEIDA PLLC
100 SE 3rd Ave.
Suite 805
Fort Lauderdale, FL 33394
(954) 462-1200
jneiman@nmfalawfirm.com
bfloch@nmfalawfirm.com

Mary Beth Maloney (*pro hac vice*)
Lee R. Crain (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
(212) 351-4000
mmaloney@gibsondunn.com
lcrain@gibsondunn.com

Daniel P. Chung (*pro hac vice*)
Helgi C. Walker (*pro hac vice*)
Christine M. Buzzard (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
dchung@gibsondunn.com
hwalker@gibsondunn.com
cbuzzard@gibsondunn.com

Sydney Scott (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
811 Main Street #3000
Houston, TX 77002
(346) 718-6600
sascott@gibsondunn.com

Scott K. Hvidt (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201
(214) 698-3100
shvidt@gibsondunn.com

Attorneys for the Community Hospitals

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2026, a true and correct copy of the foregoing was served on all counsel or parties of record via the ECF filing system.

By: /s/ Mary Beth Maloney
Mary Beth Maloney

EXHIBIT A

GIBSON DUNN

Mary Beth Maloney
Partner
T: +1 212.351.2315
M: +1 310.806.3737
mmaloney@gibsondunn.com

April 14, 2026

VIA E-MAIL

Kimberly E. Blair
Wilson Elser Moskowitz Edelman & Dicker LLP
161 N Clark
Suite 4500
Chicago, IL 60601

Re: Hospital And Ambulatory Surgery Centers Ratings On Leapfroggroup.org

Counsel:

I write on behalf of the Plaintiff Hospitals in *Good Samaritan Medical Center, Inc., et al. v. The Leapfrog Group*, 25-cv-80526 (S.D. Fla.), and their parent company, Tenet Healthcare Corporation, to bring to your attention The Leapfrog Group's noncompliance with the Court's recent injunction and to serve notice that Leapfrog's contemplated "ASC Public Reporting Program"—which would mimic the same deceptive effect of Leapfrog's so-called "Safety Grades"—may result in additional liability under federal and state consumer-protection laws.

I. The Federal District Court Enjoins Leapfrog's Deceptive And Unfair Practices

As you are aware, Judge Middlebrooks recently found that Leapfrog's Hospital Safety Grade methodology "has no scientific basis, unfairly penalizes non-participating hospitals, and misrepresents hospital safety." Op. 2. The Court emphasized that Leapfrog's ratings scheme was "intended to create the false impression that Leapfrog's grades reflect actual performance," when, in fact, Leapfrog itself "acknowledged" that its real "goal [was] punishing nonparticipants as a means of forcing hospitals to cooperate in submitting their Surveys" to Leapfrog. Op. 26. The Court was particularly troubled by Leapfrog's attempts to "pressure and penalize hospitals" into handing over their "private data," even though Leapfrog "does not have a right" to such data, and likewise has no "right to punish [hospitals]" through reputational damage when hospitals refuse to surrender their data to Leapfrog for commercial purposes. Op. 39. The Court thus determined that Leapfrog's practices violate the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Op. 3, and entered a comprehensive injunction that, among other things, prohibits Leapfrog from "scor[ing] nonparticipating hospitals differently than participating hospitals by using different values or using differently weighted values," and specifically prohibits Leapfrog "from taking any action to circumvent" the injunction. Op. 40–41. The Court subsequently entered a declaratory judgment making clear that the assignment of "failing safety scores in the absence of actual data [is] deceptive and unfair under FDUTPA." Judgment 1.

GIBSON DUNN

Kimberly E. Blair
 Wilson Elser Moskowitz Edelman & Dicker LLP

April 14, 2026
 Page 2

These orders became operative upon entry, *see* Fed. R. Civ. P. 62(c)(1), and Leapfrog has not sought a stay. To the contrary, Leapfrog CEO Leah Binder has publicly represented that “of course” Leapfrog “will comply” with the injunction during the pendency of Leapfrog’s contemplated appeal.¹

II. Leapfrog Violates The Court’s Injunction On Leapfroggroup.org

On one of Leapfrog’s websites, leapfroggroup.org, Leapfrog currently lists the “2025 Survey Results” for facilities within a 50-mile radius of Palm Beach, Florida. Several of the Plaintiff Hospitals and their affiliated institutions—Good Samaritan Medical Center, St. Mary’s Medical Center, Palm Beach Children’s Hospital at St. Mary’s Medical Center, Palm Beach Gardens Medical Center, and Delray Medical Center—are so listed.² Despite the operative effect of the Court’s orders and Leapfrog’s public representations of compliance, Leapfrog continues to deliberately manipulate how it presents those institutions’ lack of a Survey response.

At the top of the page, Leapfrog prominently places a red “hazard” symbol with an exclamation point and a warning that facilities that “declined to respond” to the Survey have deprived patients of “critical, life-saving information.” The entries for nonparticipating hospitals carry a red “Declined to Respond” label—in stark contrast to the parallel green “View Hospital Ratings” label affixed to entries for participating hospitals. A Leapfrog pop-up linked to the “Declined to Respond” label recommends users “[a]sk [nonparticipating hospitals] why” they did not report to Leapfrog, implying a nefarious and unjustified lack of transparency on the hospital’s part. If consumers click that link, they are taken to a boilerplate letter prepared by Leapfrog for submission to hospitals suggesting that patients have reason to doubt a hospital’s “record on quality and safety” when hospitals “decline[] to participate” in Leapfrog’s Survey.

¹ See The Leapfrog Group, *Statement from Leapfrog President and CEO Leah Binder on the Tenet Healthcare Lawsuit Decision*, YouTube at 2:09 (Mar. 9, 2026), <https://www.youtube.com/watch?v=8SnSKozVlc4>; The Leapfrog Group, *Statement from Leapfrog President and CEO Leah Binder on the Tenet Healthcare Lawsuit Decision* (Mar. 8, 2026), <https://www.leapfroggroup.org/news-events/statement-leapfrog-president-and-ceo-leah-binder-tenet-healthcare-lawsuit-decision>; *see also* Letter for Mary Beth Maloney, Counsel for Tenet, from Kimberly Blair, Counsel for Leapfrog at 1 (Mar. 31, 2026) (“Leapfrog has also taken steps to comply with the other elements of the court’s order. Leapfrog has no intention of failing to comply with the Court’s order now or in the future.”).

² See The Leapfrog Group, *Leapfrog Ratings*, <https://ratings.leapfroggroup.org/search/results?distance=50&address=Palm+Beach%2C+FL%2C+USA&coords=26.7056206%2C-80.0364297&by=distance&sort=distance&showdeclined=1> (search results for Palm Beach, FL).

GIBSON DUNN

Kimberly E. Blair
Wilson Elser Moskowitz Edelman & Dicker LLP

April 14, 2026
Page 3

LEAPFROG RATINGS About FAQs THE LEAPFROG GROUP

You searched by location: **Palm Beach, FL, USA** within **50 miles** and have **96 results**. Share these results: [f](#) [t](#) [in](#) [e](#) [p](#)

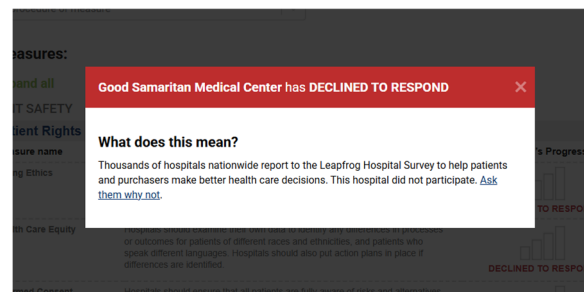
[Start a new search](#) Key: = Hospital = Surgery Center

YES **There are 61 facilities in your search that declined to respond to Leapfrog's request for patient safety and quality data. Patients like you have no other source to get this critical, life-saving information. Do you want to show these facilities?**

The Leapfrog Group | 2025 Survey Results

[Compare selected facilities](#) Facility 1 Facility 2 Facility 3

Facility Type	Name/Location	Distance
	Baptist Health Endoscopy Center at Flagler 1117 N Olive Ave, Suite 201 West Palm Beach, Florida 33401 View Surgery Center Ratings	1.5 miles
	HSS Palm Beach Ambulatory Surgery Center 300 Palm Beach Lakes Blvd West Palm Beach, Florida 33401 Declined to Respond	1.6 miles
	Good Samaritan Medical Center 1309 N Flagler Dr West Palm Beach, Florida 33401-3499 Declined to Respond	1.6 miles



This two-track depiction of participating and non-participating hospitals is clearly designed to leave consumers with the net impression that non-participating hospitals (with red warnings and fear mongering pop-ups) are less safe than participating hospitals. This practice “scores nonparticipating hospitals differently than participating hospitals by using different values or using differently weighted values.” Op. 40 (injunction text). This differential treatment has the apparent purpose and obvious effect of tending to “coerce participation through reputational penalty,” Op. 23, pressuring hospitals to surrender data to which Leapfrog “does not have a right,” *id.* at 39. And

GIBSON DUNN

Kimberly E. Blair
Wilson Elser Moskowitz Edelman & Dicker LLP

April 14, 2026
Page 4

it is the very sort of conduct that Judge Middlebrooks recently held to constitute a core FDUTPA violation and which the injunction was meant to stop.

Leapfrog therefore is non-compliant with the plain terms of the Court's injunction, including its express directive that Leapfrog shall not engage in "*any* action to circumvent the relief" provided therein. Op. 41 (emphasis added).

Accordingly, the Plaintiff Hospitals demand that Leapfrog remove them from the relevant "Survey Results" webpages on leapfroggroup.org and identify the date on which their entries were removed. If Leapfrog refuses to do so, the Plaintiff Hospitals are prepared to pursue appropriate enforcement measures under Federal Rule of Civil Procedure 65 and other applicable law.

Tenet further demands that Leapfrog take similar action with respect to all Tenet-owned hospitals described in Appendix A and identify the date on which it did so. The Court's ruling leaves Leapfrog with no justifiable basis to continue drawing adverse inferences and inflicting reputational penalties due to the lack of a Survey response for any non-participating Tenet-owned hospital, given that the logic of the Court's order, as Leapfrog has recognized, applies nationally.³

III. Leapfrog Threatens Further Violations With The ASC Public Reporting Program

In addition to perpetuating the unfair and deceptive conduct on leapfroggroup.org that already resulted in liability, Leapfrog now threatens to *expand* the scope of its deception and unfairness through its contemplated "ASC Public Reporting Program" scheduled to launch in late July. Through this initiative, Leapfrog for the first time will rate the "safety and quality" of thousands of ambulatory surgery centers ("ASC"s).⁴ Precisely as with its deceptive Safety Grades, Leapfrog intends to draw on a mix of data from the U.S. Centers for Medicare & Medicaid Services and from self-reported (and presumably unaudited) accreditation and survey submissions provided by each ASC facility. Leapfrog will assign a "Not Available" score to any ASC facility that does not submit accreditation information. And it will assign a "Declined to Report" score to any ASC facility that does not provide an ASC survey response—the same score Leapfrog uses for facilities that assertedly "*suppres[s]* their data."⁵ These scores differ from the "achievement" scores Leapfrog will assign participating ASC facilities.

³ See Letter for Mary Beth Maloney, Counsel for Tenet, from Kimberly Blair, Counsel for Leapfrog at 1 (Mar. 31, 2026) ("Although the court ruling only applied to five hospitals, Leapfrog does not apply programmatic changes to individual hospitals because the Hospital Safety Grade is a national program.").

⁴ See The Leapfrog Group, *New ASC Public Reporting Program*, <https://www.leapfroggroup.org/asc-program/new-asc-public-reporting-program>.

⁵ See The Leapfrog Group, *The Leapfrog ASC Public Reporting Program Scoring Algorithms: Scoring Details for the 2026 Leapfrog ASC Public Reporting Program* at 5, https://www.leapfroggroup.org/sites/default/files/Files/2026ASCPublicReportingProgramScoringAlgorithm_202604012026_v2.0.pdf (emphasis added).

GIBSON DUNN

Kimberly E. Blair
Wilson Elser Moskowitz Edelman & Dicker LLP

April 14, 2026
Page 5

Leapfrog's suggestion that non-participating ASCs must be actively working to "suppress" negative information is a rerun of Leapfrog's discredited theory of "non-response bias." Op. 28. Judge Middlebrooks rejected this theory, deeming the same negative inference when applied in the context of Leapfrog's Hospital Safety Grades to lack any "persuasive evidence." *Id.* Accordingly, Leapfrog's contemplated "reputational penalty" for ASCs—which appears similarly designed to "coerce participation"—would be unlawful under FDUTPA and any other state or federal consumer-protection laws that employ the same standards for deception and unfairness. Op. 23.

Accordingly, Tenet demands that Leapfrog agree that it will not rate or otherwise score any Tenet-owned ASC facility under a methodology that penalizes non-participation, reweights missing information in a punitive manner, or otherwise replicates the conduct that Judge Middlebrooks found deceptive and unfair as applied to hospitals. Please confirm in writing that Leapfrog will not rate or otherwise score any Tenet-owned ASC facility in this manner.

* * *

We respectfully request that you respond to this letter within five business days. The Plaintiff Hospitals and Tenet reserve all rights, including the right to pursue additional relief based on Leapfrog's response or failure to respond. Please preserve all documents, communications, website records, data feeds, internal approvals, and third-party instructions relating to Leapfrog's ratings on leapfroggroup.org and its ASC Public Reporting Program initiative.

Sincerely,

GIBSON, DUNN & CRUTCHER LLP



Mary Beth Maloney
Partner

Encl.

Appendix A

Hospital Name	Hospital Address
Abrazo Arizona Heart Hospital	1930 E Thomas Road Phoenix, AZ 85016
Abrazo Arrowhead Campus	18701 N 67th Avenue Glendale, AZ 85308
Abrazo Central Campus	2000 W Bethany Home Road Phoenix, AZ 85015
Abrazo Scottsdale Campus	3929 E Bell Road Phoenix, AZ 85032
Abrazo West Campus	13677 W McDowell Road Goodyear, AZ 85395
Arizona Specialty Hospital	750 N 40th Street Phoenix, AZ 85008
Arizona Spine & Joint Hospital	4620 E Baseline Road Mesa, AZ 85206
Baptist Medical Center	111 Dallas Street San Antonio, TX 78205
Baylor Scott & White Medical Center - Frisco	5601 Warren Parkway Frisco, TX 75034
Baylor Scott & White Medical Center - Sunnyvale	231 S Collins Road Sunnyvale, TX 75182
Baylor Scott & White Medical Center - Trophy Club	2850 E Highway 114 Trophy Club, TX 76262
Baylor Scott & White Medical Center - Uptown	2727 E Lemmon Avenue Dallas, TX 75204
Baylor Scott & White Orthopedic and Spine Hospital - Arlington	707 Highlander Boulevard Arlington, TX 76015
Baylor Scott & White Surgical Hospital - Fort Worth	1800 Park Place Avenue Fort Worth, TX 76110
Baylor Scott & White Surgical Hospital - Sherman	3601 N Calais Street Sherman, Texas 75090
Baylor Scott & White Texas Spine and Joint Hospital	1814 Roseland Boulevard #100 Tyler, TX 75701
Baylor Surgical Hospital at Las Colinas	400 W I-635 Suite 101b Irving, TX 75063
Children's Hospital of Michigan - Main Campus	3901 Beaubien Boulevard Detroit, MI 48201
Desert Regional Medical Center	1150 N Indian Canyon Drive Palm Springs, CA 92262
DMC Detroit Receiving Hospital	4201 Saint Antoine Street Detroit, MI 48201

Hospital Name	Hospital Address
DMC Harper University Hospital	3990 John R Street Detroit, MI 48201
DMC Huron Valley-Sinai Hospital	1 William Carls Drive Commerce Charter Township, MI 48382
DMC Hutzel Women's Hospital	3990 John R Street Detroit, MI 48201
DMC Rehabilitation Institute of Michigan	261 Mack Boulevard Detroit, MI 48201
DMC Sinai-Grace Hospital	6071 W Outer Drive Detroit, MI 48235
Doctors Hospital of Manteca	1205 E North Street Manteca, CA 95336
Doctors Medical Center of Modesto	1441 Florida Avenue Modesto, CA 95350
Dunes Surgical Hospital	600 N Sioux Point Road Dakota Dunes, SD 57049
Emanuel Medical Center	825 Delbon Avenue Turlock, CA 95382
Florida Coastal Medical Center	310 SE Veranda Falls Way Port Street Lucie, FL 34984
Foundation Surgical Hospital of San Antonio	9522 Huebner Road San Antonio, TX 78240
Framingham Union Hospital	115 Lincoln Street Framingham, MA 01702
Fresno Surgical Hospital	6125 N Fresno Street Fresno, CA 93710
Hi-Desert Medical Center	6601 White Feather Road Joshua Tree, CA 92252
Holy Cross Hospital	1171 W Target Range Road Nogales, AZ 85621
HPI - Community Hospital North	9800 Broadway Extension Oklahoma City, OK 73114
HPI - Community Hospital South	3100 SW 89th Street Oklahoma City, OK 73159
HPI - Northwest Surgical Hospital	9204 N May Avenue Oklahoma City, OK 73120
JFK Memorial Hospital	47111 Monroe Street Indio, CA 92201
Leonard Morse Hospital	67 Union Street Natick, MA 01760
Memorial Hermann Surgical Hospital First Colony	16906 SW Freeway Sugar Land, TX 77479
Memorial Hermann Surgical Hospital Kingwood	300 Kingwood Medical Drive Kingwood, TX 77339

Hospital Name	Hospital Address
Mission Trail Baptist Hospital	3333 Research Plaza San Antonio, TX 78235
Nacogdoches Medical Center	4920 NE Stallings Drive Nacogdoches, TX 75965
North Central Baptist Hospital	520 Madison Oak Drive San Antonio, TX 78258
North Central Surgical Center	9301 N Central Expressway Suite 100 Dallas, TX 75231
Northeast Baptist Hospital	8811 Village Drive San Antonio, TX 78217
Oklahoma Center for Orthopedic & Multi-Specialty Surgery	8100 S Walker Avenue Bldg. C Oklahoma City, OK 73139
Palm Beach Children's Hospital	901 45th Street West Palm Beach, FL 33407
Piedmont Medical Center	222 S Herlong Avenue Rock Hill, SC 29732
Piedmont Medical Center – Fort Mill	1000 Wellness Way Fort Mill, SC 29715
Resolute Baptist Hospital	555 Creekside Crossing New Braunfels, TX 78130
Saint Francis Hospital - Bartlett	2986 Kate Bond Road Bartlett, TN 38133
Saint Francis Hospital - Memphis	5959 Park Avenue Memphis, TN 38119
Saint Joseph's Hospital	350 N Wilmot Road Tucson, AZ 85711
Saint Luke's Baptist Hospital	7930 Floyd Curl Drive San Antonio, TX 78229
Saint Mary's Hospital	1601 W Saint Mary's Road Tucson, AZ 85745
Saint Thomas Hospital for Specialty Surgery	2011 Murphy Avenue Suite 400 Nashville, TN 37203
Saint Vincent Hospital	123 Summer Street Worcester, MA 01608
San Ramon Regional Medical Center	6001 Norris Canyon Road San Ramon, CA 94583
South Texas Specialty Hospital	5330 N Loop 1604 W San Antonio, TX 78249
Surgical Institute of Reading	2752 Century Boulevard Wyomissing, PA 19610
The Hospitals of Providence - East Campus	3280 Joe Battle Boulevard El Paso, TX 79938

Hospital Name	Hospital Address
The Hospitals of Providence - Memorial Campus	2001 N Oregon Street El Paso, TX 79902
The Hospitals of Providence - Sierra Campus	1625 Medical Center Drive El Paso, TX 79902
The Hospitals of Providence - Transmountain Campus	2000 Transmountain Road El Paso, TX 79911
TOPS Surgical Specialty Hospital	17080 Red Oak Drive Houston, TX 77090
Valley Baptist Medical Center - Brownsville	1040 W Jefferson Street Brownsville, TX 78520
Valley Baptist Medical Center - Harlingen	2101 Pease Street Harlingen, TX 78550
Westover Hills Baptist Hospital	3011 W Loop 1604 N San Antonio, TX 78251

EXHIBIT B

quinn emanuel trial lawyers | washington, dc

555 13th Street NW, Suite 600, Washington, District of Columbia 20004 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.
(202) 538-8123

WRITER'S EMAIL ADDRESS
derekshaffer@quinnemanuel.com

April 24, 2026

VIA E-MAIL

Mary Beth Maloney
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
mmaloney@gibsondunn.com

Re: Hospital And Ambulatory Surgery Centers Ratings On Leapfroggroup.org

Counsel:

I write on behalf of my client, Defendant The Leapfrog Group, in response to Plaintiffs' and Tenet Healthcare Corporation's April 14, 2026 letter concerning the Court's injunction in *Good Samaritan Medical Center, Inc. et al. v. The Leapfrog Group*, No. 25-cv-80526 (S.D. Fla.). The claims in the letter are worse than meritless—they reveal a litigation strategy that is designed to censor and muzzle reporting on matters of public concern. To the extent the injunction could be (mis)read as the letter suggests, it would follow inexorably that the injunction is unconstitutional.

I. Plaintiffs May Not Wield The Court's Injunction And The Threat Of Contempt To Chill Leapfrog's Constitutionally Protected Expression Beyond What The Court Enjoined

For anyone familiar with the First Amendment, Plaintiffs' April 14 letter bids to impose a prior restraint against free expression. Although Plaintiffs style that letter as a demand that Leapfrog comply with the Court's injunction, Leapfrog's full compliance with the injunction has been documented and should be beyond doubt. *See* Decl. of L. Binder (Dkt. 215). Nevertheless, Plaintiffs' letter somehow demands, wielding the threat of contempt, that Leapfrog self-censor or discontinue its protected expression on matters of core public concern that the injunction does not cover. In particular, the letter contends that Leapfrog cannot so much as report the basic, irrefutable fact that Plaintiffs declined to respond to Leapfrog's Hospital Safety Survey. Nor, according to the letter, can Leapfrog initiate an entirely new safety reporting program for

quinn emanuel urquhart & sullivan, llp

ABU DHABI | ATLANTA | AUSTIN | BEIJING | BERLIN | BOSTON | BRUSSELS | CHICAGO | DALLAS | DOHA | HAMBURG | HONG KONG | HOUSTON | LONDON | LOS ANGELES | MANNHEIM | MIAMI | MUNICH | NEUILLY-LA DEFENSE | NEW YORK | PARIS | PERTH | RIYADH | SALT LAKE CITY | SAN FRANCISCO | SEATTLE | SHANGHAI | SILICON VALLEY | SINGAPORE | STUTTGART | SYDNEY | TOKYO | WASHINGTON, DC | WILMINGTON | ZURICH

ambulatory surgical centers (ASCs) that the Court has yet to consider, much less adjudicate. Many of the specific messages that Plaintiffs seek to suppress amount to accurate reporting of incontestable facts. Others constitute expert opinions, including ones that encourage patients to pursue their own protected expression by seeking information critical to their safety. By any fair account, every one of the messages identified in Plaintiffs' April 14 letter falls within the heartland of the First Amendment's generous protection.

The federal courts are not properly enlisted as instruments for chilling and punishing protected expression. The injunction says what it says about specific aspects of Leapfrog's reporting that have been challenged and adjudicated, and the injunction is being followed by Leapfrog, as the docket and Leapfrog's attestation reflect. But Plaintiffs' letter ventures far beyond the injunction in seeking to suppress *different* practices, to restrain speech *before* it occurs, and to paint as *contemptuous* straightforward reporting of *facts*. By Plaintiffs' latest account, Leapfrog cannot communicate about these hospitals or their decision not to participate in Leapfrog's safety survey. Such intimidation tactics are out of place and downright dangerous—both to patients and also to “the inalienable right of every individual to decide for himself ‘how best to speak.’” *Chiles v. Salazar*, 607 U.S. ----, 146 S. Ct. 1010, 1021 (2026) (quoting *Riley v. Nat'l Fed'n of Blind of N.C., Inc.*, 487 U.S. 781, 791 (1988)). No such suppression campaign will deter Leapfrog from maintaining its commitment to transparency and patient safety, even as it complies with the specific dictates of the injunction. Please know that Leapfrog will vigorously oppose any such attempt by Plaintiffs to embroil the Court in the unconstitutional enterprise of superintending speech of urgent public concern that has not been enjoined and could never lawfully be enjoined. Although the speech that Plaintiffs attempt to silence in their April 14 letter is not even arguably within the scope of the injunction, the very fact that Plaintiffs are leveraging the injunction to threaten contempt proceedings is telling—and disturbing. Indeed, if Plaintiffs sincerely read the injunction so sweepingly, then they would surely recognize that it is anathema to the First Amendment—particularly to freedom of speech and of the press as long celebrated in the United States.

II. Leapfrog's Depiction Of Non-Participating Hospitals On Its Website Is Both Fully Compliant With The Court's Injunction And Constitutionally Protected In Its Own Right

To begin, Plaintiffs' faulting of Leapfrog's survey website, leapfroggroup.org, misapprehends both the Court's order and the factual record. What the injunction addressed was Leapfrog's assignment of imputed Safety *Grades* to non-participating hospitals under a numerical valuation methodology that ostensibly disfavored non-participation. The injunction did not, and could not, prohibit Leapfrog from truthfully informing the public that certain hospitals, like Plaintiffs, declined to respond to its voluntary survey, or from opining that such nonparticipation endangers patient safety. Nor did the Court enter an injunction applying to dozens of non-party hospitals.

Simply reading the Court's injunction order refutes Plaintiffs' account of it. The order's five enumerated commands each concern the assignment, publication, and licensing of Safety Grades derived from Leapfrog's challenged imputation methodology. Nothing in the order purports to restrict Leapfrog's separate survey website, leapfroggroup.org, which does not assign or display Safety Grades at all. As Leapfrog's representative stated under oath in a compliance declaration filed with the Court, leapfroggroup.org "does not house or display Safety Grades," and the injunction does not prohibit Leapfrog "from providing consumers with important, truthful information to the effect that non-participating hospitals in fact have not participated in its Survey." Decl. of L. Binder (Dkt. 215) ¶¶ 46–47. The inapplicability of the injunction is doubly apparent as to Leapfrog's speech about dozens of *non-party* "Tenet-owned hospitals," none of which is covered by the injunction. Pls.' Apr. 14, 2026 Ltr. at 4. Only by stretching the Court's order well beyond its express terms can Plaintiffs contend that leapfroggroup.org violates the injunction when it identifies hospitals that declined to respond and invites patients to ask those hospitals why. By no plausible reading does the Court's order impose such a sweeping, prior restraint on Leapfrog's speech about survey participation.

Nor would the First Amendment abide such an injunction, amounting to a classic prior restraint against accurate reporting of facts and expression of protected opinions on matters of intense public concern. There is no serious dispute that a nonprofit organization's truthful statements about whether a hospital responded to a voluntary public-transparency survey are constitutionally protected. Equally protected are opinions to the effect that hospitals *should* respond to that survey—and that failing to do so "deprive[s] patients of 'critical, life-saving information.'" Pls.' Apr. 14, 2026 Ltr. at 2. The Court itself recognized as much, acknowledging Leapfrog's role as a "watchdog organization" that legitimately serves as "a voice for transparency." Op. (Dkt. 212) at 39. If Plaintiffs truly believe that they have won an injunction against whatever they cast as "fear mongering" or "implying a nefarious and unjustified lack of transparency on the hospitals' part" or "pressuring hospitals" to provide safety data to Leapfrog by criticizing them for failing to do so, Pls.' Apr. 14, 2026 Ltr. at 2-3, then Plaintiffs should be confessing error, conceding that the injunction violates the First Amendment, and stipulating to vacatur as constitutionally imperative.

It is conspicuous, however, that Plaintiffs fail to point to any actual provision of the injunction that Defendants allegedly violated. Instead, they offer only a vague reference to the Court's order not to take "action to circumvent" the injunction. Pls.' Apr. 14, 2026 Ltr. at 4. But that suggests Plaintiffs now take the anti-circumvention provision as a charter to fault, censor, and muzzle any aspect of Leapfrog's reporting that may displease them, just by analogizing it to a distinct methodological practice actually adjudicated. That would transform the injunction from a targeted judicial scalpel into a roving, menacing hatchet—with freedom of speech the obvious casualty. Indeed, by demanding that Leapfrog scrub all references to non-participation from its survey website, Plaintiffs would command that Leapfrog misrepresent the factual landscape of hospital survey participation to the public; the upshot is the opposite of the transparency that Leapfrog is sworn to promote, as the Court recognized. When the Court enjoined Leapfrog from

using an imputed-value methodology, it did not require Leapfrog to equate non-participation with participation, contrary to the facts, nor did it suppress truthful information such that interested patients and purchasers must now be left in the dark.

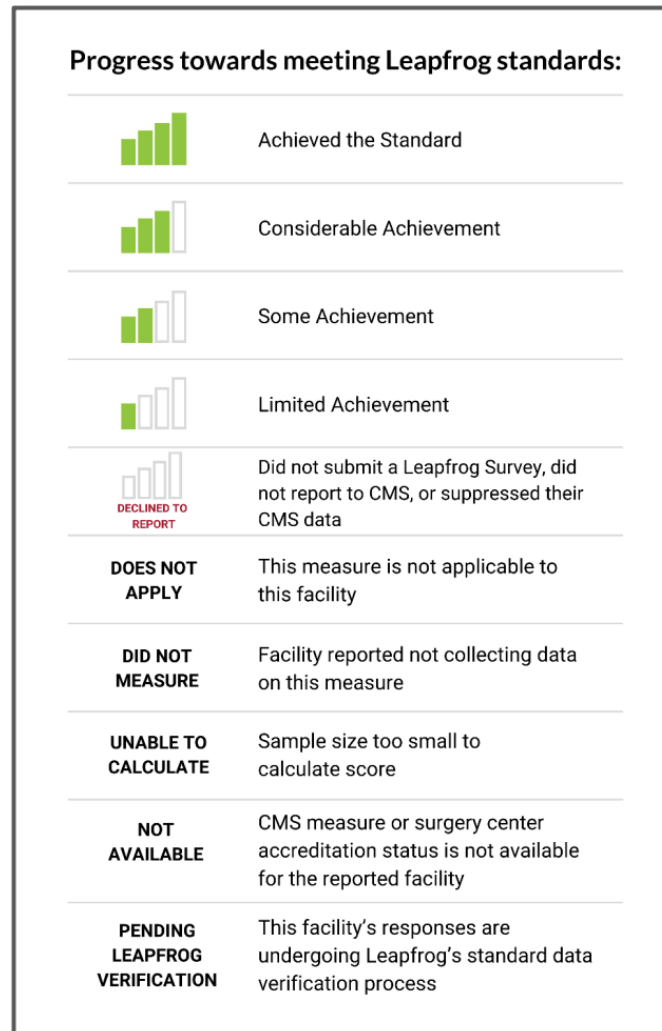
In short, Leapfrog is in full compliance with the Court's order and will not allow Plaintiffs to censor Leapfrog's public expression or to substitute opacity for transparency.

III. Leapfrog's Anticipated Reporting System For Ambulatory Surgical Centers Is Entirely Lawful, Constitutionally Protected, And Distinct From The Statements That Judge Middlebrooks Addressed

Plaintiffs' second demand concerning Leapfrog's anticipated Ambulatory Surgical Center (ASC) public reporting program is even farther afield. Plaintiffs contend that the new program is "[p]recisely [like]" Leapfrog's Safety Grades and demand that "Leapfrog agree that it will not rate or otherwise score any Tenet-owned ASC facility." Pls.' Apr. 14, 2026 Ltr. at 4–5. That contention is wrong at every step. The forthcoming ASC public reporting program has nothing to do with the injunction or with the trial that preceded it. Beyond that, the anticipated ASC public reporting program is constitutionally protected and legally unassailable.

Notably, Plaintiffs do not even attempt to argue that the Court's injunction applies to the ASC public reporting program. Nor could they. The injunction orders Leapfrog to "cease assigning a Safety Grade *to the Community Hospitals*;" without saying anything about ASCs. Op. (Dkt. 212) at 40–41 (emphasis added). The only plaintiffs before the Court were the five hospitals—not ASCs, "Tenet-owned" or otherwise. And the new program, which was not unveiled until April 1, 2026, was not the subject of any evidence at trial or any of the Court's analysis. Plaintiffs cannot secure additional, unwarranted relief by smuggling a demand about ASCs into a letter purportedly addressing compliance with the existing injunction. *See Trump v. CASA, Inc.*, 606 U.S. 831, 843–44 (2025) (explaining that courts have "consistently rebuffed requests for relief that extended beyond the parties").

What is more, Leapfrog's new ASC public reporting program differs in crucial respects from the aspects of Leapfrog's hospital scoring program addressed by the Court. The Court's order focused on Leapfrog's assignment of "assumed or imputed" numerical values to non-participating hospitals where the Court found Leapfrog "suggest[ed] to a reasonable consumer that the grades assigned reflect actual performance[.]" not "nonparticipation." *See* Op. (Dkt. 212) at 6–7, 24–26, 40–41. In contrast, the new ASC public reporting program will *not* impute numerical values to nonparticipation. Instead, the new program will identify ASCs that "Declined to Report" with the below symbol displaying those exact words:



The Leapfrog Group, The Leapfrog ASC Public Reporting Program Scoring Algorithms: Scoring Details for the 2026 Leapfrog ASC Public Reporting Program, https://www.leapfroggroup.org/sites/default/files/Files/2026ASCPublicReportingProgramScoringAlgorithm_202604012026_v2.0.pdf.

Those words, on their face, are undeniably true as applied to ASCs that decline to report. For the avoidance of doubt, Leapfrog's website transparently defines the term, explaining that the "Declined to Report" label encompasses ASCs that "[d]id not submit a Leapfrog Survey, did not report to [the Centers for Medicare and Medicaid Services (CMS)], *or* suppressed their CMS data." *Id.* There is no denying that non-reporting ASCs truthfully fall within the express ambit of this fully disclosed definition. Nevertheless, Plaintiffs claim that Leapfrog is "suggest[ing] that non-participating ASCs must be actively working to 'suppress' negative information." Pls.' Apr. 14, 2026 Ltr. at 5. But Leapfrog's disjunctive definition expressly refutes any such misconception.

Indeed, that definition reflects the same widely recognized framework for describing survey participation used by the Centers for Medicare and Medicaid Services (CMS).¹ Nothing about that straightforward (and truthful) definition “suggest[s]” the negative inference Plaintiffs are out to impute. Whatever gloss Plaintiffs may try to put on it, however, any such evaluative statement would be within Leapfrog’s editorial prerogatives—prerogatives that are squarely protected by the First Amendment and beyond the scope of the Court’s injunction.

In sum, Leapfrog respectfully declines to comply with the demands of Plaintiffs’ April 14 letter, which jarringly depart from the injunction, with which Leapfrog has complied. If any dispute persists on these points, Leapfrog will be taking its cues from the Court; it will not succumb to censorship or surrender its constitutional right to speak freely unless and until a clear and definite order of the Court may so require. In the wake of Plaintiffs’ threats, Leapfrog is reserving all of its rights, including to seek reconsideration or clarification of the injunction now that Plaintiffs have telegraphed their intention to wield it as a chilling, censorial device.

Very truly yours,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Derek L. Shaffer

Derek L. Shaffer

DLS

cc: Jason D. Sternberg; Kimberly E. Blair

¹ Like Leapfrog, CMS “provide[s] information on the quality-of-care hospitals are providing to their patients” on “consumer-oriented website[s]” like Care Compare. Ctrs. for Medicare & Medicaid Services, System Requirements Specification, Hospital Downloadable Database Data Dictionary, Appendix E—Footnote Crosswalk at 97 (Dec. 16, 2025), <https://data.cms.gov/provider-data/dataset/4jcv-atw7-data-dictionary>. CMS maintains a “Data Dictionary” to define terms and footnotes it ascribes to certain hospitals on which it publicly reports. *Id.* The agency applies “footnote 5” when data for a hospital “are not available for [a] reporting period.” *Id.* Appendix E—Footnote Crosswalk, at 97. And the agency defines “footnote 5” to reflect “[w]hen a facility elect[s] not to submit data for the entire reporting period; or [w]hen a facility ha[s] no claims data for a particular measure; or [w]hen a facility elect[s] to suppress a measure from being publicly reported.” *Id.* (emphasis added).

EXHIBIT C

GIBSON DUNN

Mary Beth Maloney
Partner
T: +1 212.351.2315
M: +1 310.806.3737
mmaloney@gibsondunn.com

April 30, 2026

VIA E-MAIL

Derek L. Shaffer
Quinn Emanuel Urquhart & Sullivan, LLP
555 13th Street N.W.
Suite 600
Washington, D.C. 20004

Re: Hospital And Ambulatory Surgery Centers Ratings On Leapfroggroup.org

Counsel:

I write on behalf of the Plaintiff Hospitals in *Good Samaritan Medical Center, Inc., et al. v. The Leapfrog Group*, 25-cv-80526 (S.D. Fla.), and their parent company, Tenet Healthcare Corporation, in response to your letter of April 24, 2026. Your response fails to deal with the actual problems with Leapfrog's ongoing behavior that continues to harm the Community Hospitals and with the decision that Judge Middlebrooks actually rendered, as explained in my previous letter.

In stratospheric rhetoric, your letter asserts that the Community Hospitals seek to "fault, censor, and muzzle" Leapfrog's "straightforward reporting of *facts*." You suggest that the Community Hospitals believe Leapfrog "cannot so much as report the basic, irrefutable fact that Plaintiffs declined to respond to Leapfrog's Hospital Safety Survey," may not make "truthful statements about whether a hospital responded to a voluntary public-transparency survey," and may not "truthfully infor[m] the public that certain hospitals ... declined to respond to [Leapfrog's] voluntary survey." You similarly claim that the Community Hospitals seek to "suppress truthful information" and "accurate reporting of incontestable facts." And you suggest that the Community Hospitals thereby seek to make "freedom of speech" a "casualty."

That caricature of the Community Hospitals' April 14 letter bears no resemblance to its actual content. That letter never asserts that Leapfrog cannot truthfully state a hospital did not respond to Leapfrog's Survey. Instead, the letter identifies targeted conduct that renders Leapfrog's depiction of nonparticipating hospitals highly misleading in context—red hazard symbols, exclamation points, warnings, and suggestions that patients should question non-participating hospitals' "record on quality and safety" simply because of their nonparticipation; admonitions juxtaposed with inviting green labels and no similar disclaimers for participating hospitals. That is not accurate recitation of the fact of nonparticipation. It is a calculated strategy to sow doubt in the minds of patients about nonparticipating hospitals simply because they do not acquiesce to Leapfrog's commercially driven Survey. These attempts "to pressure and penalize hospitals into participating" were the "precis[e]" problem identified in Judge Middlebrooks's order. *See Op.* 39.

GIBSON DUNN

Derek L. Shaffer
Quinn Emanuel Urquhart & Sullivan, LLP

April 30, 2026
Page 2

And it is beyond doubt that, following “a judicial determination that the defendant[’s] past conduct was ... unlawful,” the Court may restrain the defendant from continuing that same unlawful conduct. *Lucero v. Trosch*, 121 F.3d 591, 600–01 (11th Cir. 1997) (rejecting prior-restraint argument). Tellingly, your letter does not address any of this. That omission speaks far more loudly than its pages of overwrought assault on a strawman of Leapfrog’s own creation.

Your treatment of Leapfrog’s forthcoming Ambulatory Surgical Center (“ASC”) program rests on similar diversion. You contend that when Leapfrog claims nonparticipating facilities have “suppressed their CMS data,” Leapfrog is merely acting as a faithful purveyor of CMS’s own grading methodology. But CMS itself specifically *permits* hospitals to withhold such data when, for example, “external factors” (like the COVID pandemic) degrade health outcomes “not due to the care provided.” *Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals*, 86 Fed. Reg. 44,774, 45,301 (Aug. 13, 2021). Indeed, CMS recognizes that “quality measurement” can be “distorted” if such measures are *not* withheld, and that hospitals should not be “penalize[d] ... for performance on measures” outside of their control. *Id.*

Leapfrog’s proposed ASC standards provide none of this context—presumably because of Leapfrog’s long-expressed ideological disagreement with how CMS administers its own reporting standards. *See, e.g.,* Ron Southwick, *Patient Groups Oppose CMS Plan To Suppress Reporting on Some Safety Measures*, Chief Healthcare Executive (June 8, 2022), <https://tinyurl.com/56zc9rcx> (statement of Leapfrog CEO Leah Binder objecting to CMS’s practice). Leapfrog instead apparently plans to baldly claim that ASCs “suppressed their CMS data”—falsely implying an intent to cover up poor practices—and then leave patients to wonder whether that aspect of “Leapfrog’s disjunctive definition” covers the ASC in question. That is far from a “straightforward (and truthful)” approach.

Your letter regrettably betrays Leapfrog’s apparent intent to continue disparaging nonparticipating hospitals in its forthcoming Safety Grade methodology. The Community Hospitals will continue to carefully monitor those developments (as well as with respect to leapfroggroup.org and the ASC program) and pursue enforcement as appropriate.

Sincerely,

GIBSON, DUNN & CRUTCHER LLP



Mary Beth Maloney
Partner

cc: Jason D. Sternberg
Kimberly E. Blair