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.

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND MOTION FOR EXPEDITED DISCOVERY, OR, IN THE ALTERNATIVE FOR AN EXPEDITED TRIAL AND INCORPORATED MEMORANDUM OF LAW

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Under Federal Rule of Civil Procedure 65, Plaintiffs move for a preliminary injunction barring Defendant from including Plaintiffs in its Hospital Safety Grades and requiring that Defendant remove the Safety Grades previously issued to Plaintiffs. Plaintiffs also move for expedited discovery in advance of an evidentiary hearing on Plaintiffs' motion for a preliminary injunction in accordance with the schedule outlined below:

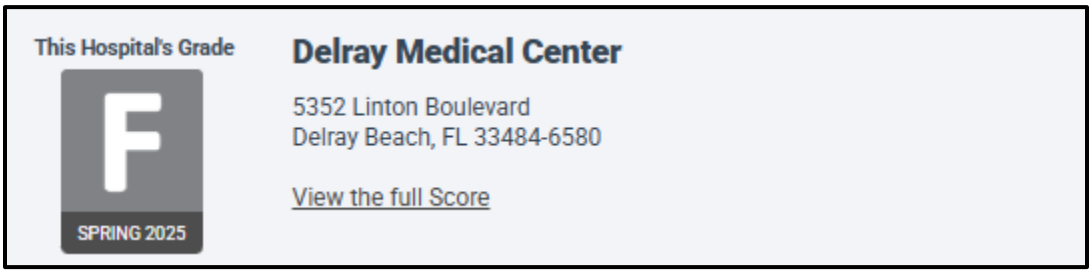
Item	Deadline
Substantial Completion for tailored, expedited document production (**10 requests for production per side, no interrogatories, no requests for admission**) Deadline to Disclose Preliminary Injunction Hearing fact and expert witnesses for evidentiary hearing	July 2, 2025
Conclusion of Expedited Discovery (**3 depositions per side**)	July 24, 2025
TLG's Opposition to Motion for Preliminary Injunction	August 1, 2025
Plaintiffs' Reply ISO Motion for Preliminary Injunction	August 28, 2025
Proposed Hearing on Plaintiffs' Motion for Preliminary Injunction	September 15-16, 2025

In the alternative, Plaintiffs request that the Court expedite proceedings to try Plaintiffs' claims and render a decision by November 1, 2025, including pursuant to Federal Rule of Civil Procedure 57.

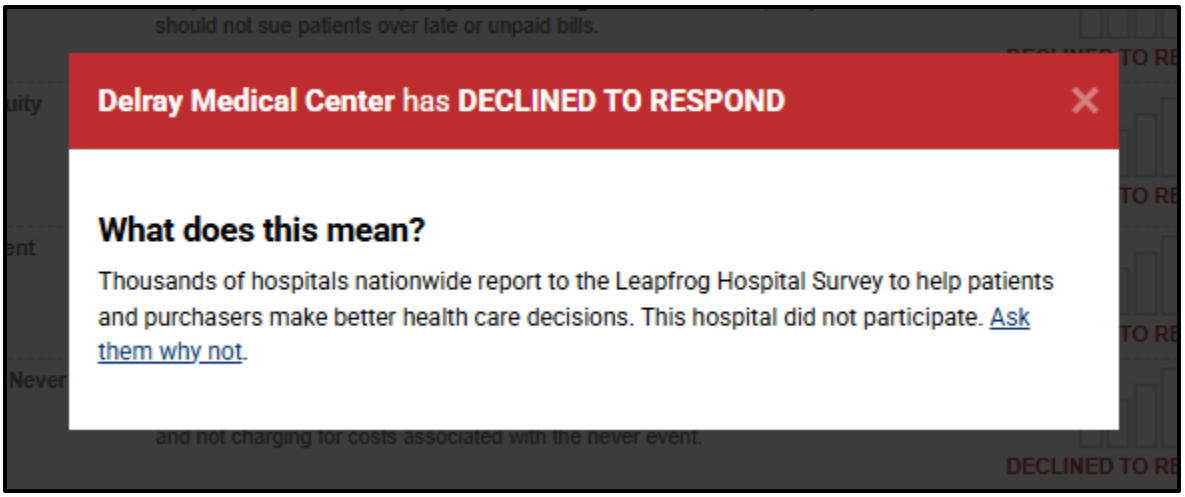
INTRODUCTION

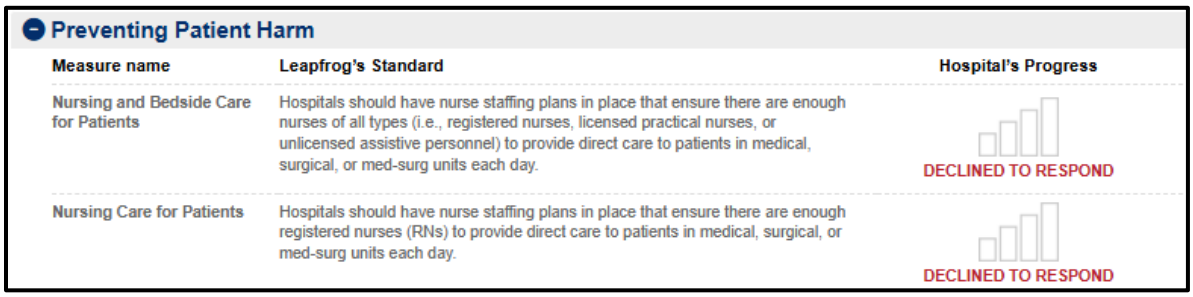
Hospitals are trusted pillars of their communities, responsible for safeguarding the lives of patients at their most vulnerable. The integrity of information guiding healthcare decisions must be unimpeachable. Defendant The Leapfrog Group ("TLG") has shattered that trust through its deceptive and misleading business practices. Under the false banner of public service, TLG has weaponized fear, distorted facts, and deliberately misled the public in pursuit of its own financial gain. Plaintiffs respectfully move this Court for a preliminary injunction to halt the ongoing, irreparable harm caused by TLG's reckless deception. Without this Court's intervention before the Fall of 2025, patients will continue to be misled, healthcare providers will remain under siege, and public health will be put at risk. TLG's conduct endangers lives. It cannot go unchallenged.

Through a ruthless and blatant pay-to-play scheme, TLG demands that hospitals divert hundreds of hours of staff time to compile reams data points with no compensation. The penalty for refusing? TLG drops the hammer. It falsely labels the non-participating hospital as a failure on its so-called "Hospital Safety Grade" report at www.hospitalsafetygrade.org. This deception has real-world consequences. When a patient Googles "safest hospital," one of the first results is TLG's www.hospitalsafetygrade.org, where the Plaintiff Hospitals are falsely labeled as failing:



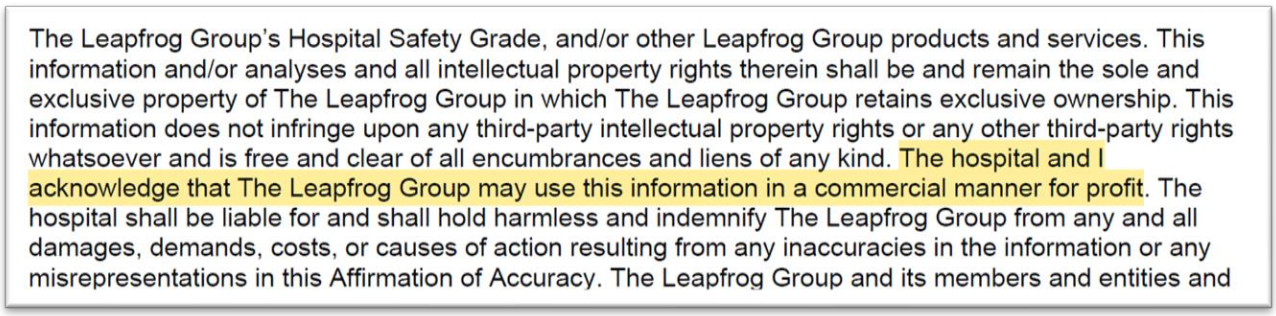
Crain Decl., Exs. 31–35. TLG knows those grades are fraudulent. On its second website, www.leapfroggroup.org, it admits Plaintiffs "declined to respond" and that it lacks sufficient data to assign a valid grade:





Crain Decl., Exs. 20–23, 58–63. Yet TLG buries these facts and doubles down on its scare tactics—warning patients that seeking care at these hospitals means they are more "likely to die." Crain Decl., Exs. 1, 4.

TLG claims nonprofit status, but its practices show otherwise. It gambles with patient lives, running a scheme as simple as it is predatory: collect hospital data, monetize it for millions, and force hospitals to do this work for free. TLG even forces hospitals to sign a release explicitly authorizing it to "use this information in a commercial manner *for profit*." Crain Decl., Ex., 19 at 68 (emphasis added).


The Leapfrog Group's Hospital Safety Grade, and/or other Leapfrog Group products and services. This information and/or analyses and all intellectual property rights therein shall be and remain the sole and exclusive property of The Leapfrog Group in which The Leapfrog Group retains exclusive ownership. This information does not infringe upon any third-party intellectual property rights or any other third-party rights whatsoever and is free and clear of all encumbrances and liens of any kind. The hospital and I acknowledge that The Leapfrog Group may use this information in a commercial manner for profit. The hospital shall be liable for and shall hold harmless and indemnify The Leapfrog Group from any and all damages, demands, costs, or causes of action resulting from any inaccuracies in the information or any misrepresentations in this Affirmation of Accuracy. The Leapfrog Group and its members and entities and

The individuals running TLG enrich themselves with million-dollar pay packages while posturing as public servants. Their motive is as old as time. TLG's business model is to coerce hospitals into paying for participation and consulting or face devastating, false, and dangerous "F" safety grades designed to terrify patients and harm hospital reputations. This is not public advocacy. It is a protection racket masquerading as healthcare transparency.

Plaintiffs—a network of highly respected, award-winning hospitals—do not fear scrutiny. Their healthcare leaders and frontline providers have devoted their lives to advancing patient safety and clinical excellence and, like all hospitals, they are continuously working to improve the patient experience and achieve the highest possible quality of care. What they will not accept—and what no patient should accept—are reckless, misleading, and commercially motivated "safety grades" that endanger public trust and patient lives. Plaintiffs therefore refuse to submit to TLG's coercion. They do not exist to produce data to a for-profit masquerading as a charity.

Four years ago, Plaintiffs redirected administrative resources toward achieving independently audited, specialty-specific accreditations and certifications tied directly to patient outcomes. Until 2024, TLG continued assigning them grades based on peer hospitals' data, never once assigning a failing grade. That all changed in 2024. As participation declined, costs soared, and revenue pressure mounted, TLG abruptly rewrote its methodology. Crain Decl., Ex. 43, *see also* Crain Decl., Ex. 3 Now any hospital that declines to submit data automatically fails multiple TLG-generated metrics, triggering a cascade of inevitable Ds and Fs—including for Plaintiffs. TLG openly admitted this change was designed to punish non-participants and to prevent them from "inadvertently benefit[ing]" from positive scores—truth be damned. Crain Decl, Ex. 65 at 2.

The latest grades TLG released this month escalate this reckless campaign. TLG could simply omit grades for Plaintiffs. Instead, it deliberately brands these trusted hospitals as dangerous—knowingly misrepresenting facts and undermining the medical professionals on whom their communities rely.

This is not public service. It is commercial intimidation dressed up as advocacy. The "data" underlying TLG's Safety Grades is cherry-picked, manipulated, and ultimately invented to serve its financial model. This is a shakedown—pure and simple. Under the Florida Deceptive and Unfair Trade Practices Act, this Court has the power and the duty to stop it.

Plaintiffs now move this Court to preliminarily enjoin TLG from issuing any safety grades for Plaintiffs and to remove the grades from "www.hospitalsafetygrade.org" TLG previously

issued. This case requires urgency. Plaintiffs request expedited preliminary injunction proceedings and discovery in advance of an evidentiary hearing. In the alternative, Plaintiffs request expedited proceedings on their FDUTPA and declaratory judgment claims to ensure a decision is rendered before TLG's next cycle of "grades" in Fall 2025. *See* Fed. R. Civ. P. 57. The public cannot afford to wait. Every day that passes under this fraudulent system puts patients at risk, damages community confidence, and undermines the foundational trust necessary for public health.

BACKGROUND

Plaintiffs' five hospitals form the backbone of urgent and critical healthcare services in the Palm Beach community. They serve vulnerable populations—especially children and the elderly—with award-winning care. St. Mary's, for example, is the only children's hospital between Fort Lauderdale and Orlando, providing critical care to high-risk pregnancies and fragile newborns in a low-income community. McCauley Decl. ¶¶ 7–8; *see also* Hanlon Decl. ¶¶ 7–8. Together, the Plaintiff Hospitals collectively treat approximately 500,000 patients per year, Compl. ¶ 4, and they hold numerous audited accreditations and awards recognizing their excellent service, *see* McCauley Decl. ¶¶ 8–17; Hanlon Decl. ¶¶ 8–11; Montgomery Decl. ¶¶ 8–12; Havericak Decl. ¶¶ 8–11; Cazares Decl. ¶¶ 10–12; Crain Decl., Exs. 36–42.

TLG, in contrast, is a shakedown artist masquerading as a non-profit. Each year, TLG encourages hospitals to provide it free data in an annual "Hospital Survey." Crain Decl., Exs. 1–3, 7 . The survey is more than 350 pages long and takes multiple weeks to complete. Crain Decl., Ex. 19. TLG has admitted it monetizes the survey responses by licensing the data to "[h]ospitals, researchers and businesses . . . for a fee," Crain Decl., Ex. 49; *see* Crain Decl., Exs. 7–8, 11–14, 17–18—a material percentage of which goes directly to compensating TLG's leadership, *see* Crain Decl., Exs. 26–30 (Schedule J of Form 990s). According to public IRS filings, between 2019 and 2023, TLG paid over $3 million in salary and benefits to Leah Binder—its CEO—alone. *Id*.

In recent years, TLG struggled financially. *Id*. Many hundreds of hospitals, including Plaintiffs, were no longer willing to provide free data to support TLG's commercial enterprise. *See* Cazares Decl. ¶ 14; Hanlon Decl. ¶ 13; Havericak Decl. ¶ 13; McCauley Decl. ¶ 19; Montgomery Decl. ¶ 14; Nicholson Decl. ¶ 53. So, TLG looked for a stick to force hospitals to acquiesce in its demands—and it found it, on www.hostpitalsafetygrade.org.

On that site, TLG assigns a "Hospital Safety Grade" to nearly 3,000 general acute-care hospitals across the nation. Crain Decl., Ex. 2. Those "Hospital Safety Grades" are easily accessible online and have a wide public reach. *See* Crain Decl., Ex. 48. Often, www.hostpitalsafetygrade.org is the first hit in Google search results about hospital safety. *Id*.; Hanlon Decl. ¶ 19. And TLG pulls no punches in its advertising, stating that "Patients should *always* decide on where to receive care based on a hospital's current Safety Grade." Crain Decl., Ex. 15 (emphasis added). According to www.hostpitalsafetygrade.org, patients are "*twice as likely to die* of a preventable problem at a 'C', 'D', or 'F' hospital than at an 'A' hospital." Crain Decl., Exs. 1**,** 4 (emphasis added).

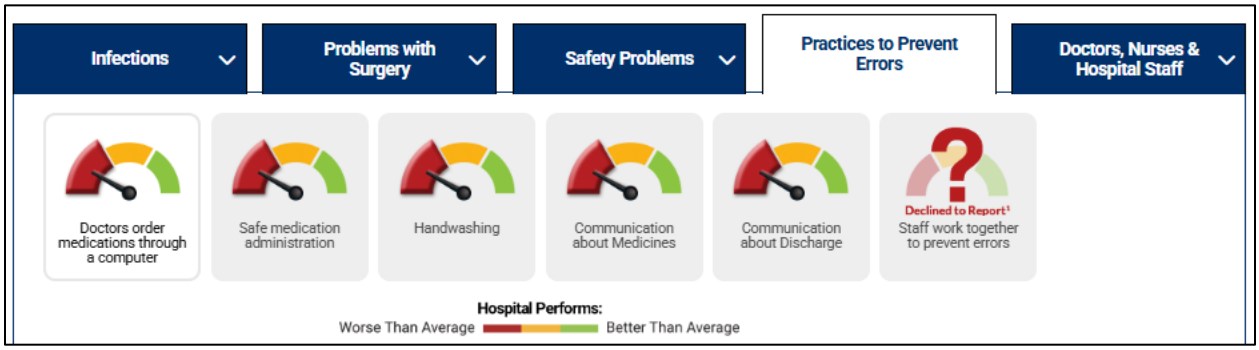
TLG uses these "Safety Grades" to coerce hospitals to participate in its "Hospital Survey." Although TLG tells consumers that the "Hospital Safety Grade reflects how well a hospital does on safety, *not whether they complete [TLG's] Hospital Survey*," Crain Decl., Ex. 1 (emphasis added), TLG, in truth, cooks the books to gin up sham scores for hospitals that refuse to participate.

Here's how it works: The "Safety Grade" aggregates a number of national patient-safety measures—including cherry-picked government data and TLG-generated metrics. For hospitals that *participate* in TLG's Hospital Survey, TLG uses the hospitals' self-reported "data" to calculate many of the measures. Nicholson Decl. ¶ 37. The answers are self-reported, never audited, and easily inflated. Nicholson Decl. ¶¶ 49, 53–55. But for hospitals that *don't* participate, TLG uses "imputed"—that is, made up—values. Nicholson Decl. ¶¶ 43–44. By TLG's design, non-participating hospitals automatically receive ***the lowest possible score*** for numerous measures. Nicholson Decl. ¶ 44. As a result, non-participating hospitals are punished, whereas participants are rewarded. Nicholson Decl. ¶¶ 58–68.

TLG lies to the public about its methodology. It falsely assures consumers that a hospital safety grade does "*not*" reflect "whether [a hospital] complete[d] [TLG's] Hospital Survey," Crain Decl., Ex. 1 (emphasis added), and deceitfully declares that "[h]ospitals missing more than *six* process measures" are "*not* graded," Crain Decl., Ex. 2 (emphasis added). That's false. If TLG didn't "impute" values for four of its "process measures," non-participating hospitals would be missing *seven metrics*, meaning based on TLG's own purported standards, TLG should "not" grade those hospitals at all because TLG lacks sufficient information to do so. Crain Decl., Ex. 2; Nicholson Decl. ¶ 46. And contrary to TLG's public representations, the resulting poor "imputed" scores exist only because of "whether [a hospital] complete[d] [TLG's] Hospital Survey." Crain

Decl., Ex. 1; *See* Nicholson Decl. ¶ 54

On its website, TLG even shows consumers the imputed—again, entirely made up—data for non-participating hospitals to deceive consumers into thinking it has enough information to grade these hospitals. Take, for example, Plaintiff Delray Medical Center. According to www.hostpitalsafetygrade.org, Delray Medical Center receives an "F." And that—TLG says—is because the hospital performs "Worse than Average" on a number of "Practices to Prevent Errors." Crain Decl., Ex. 32.

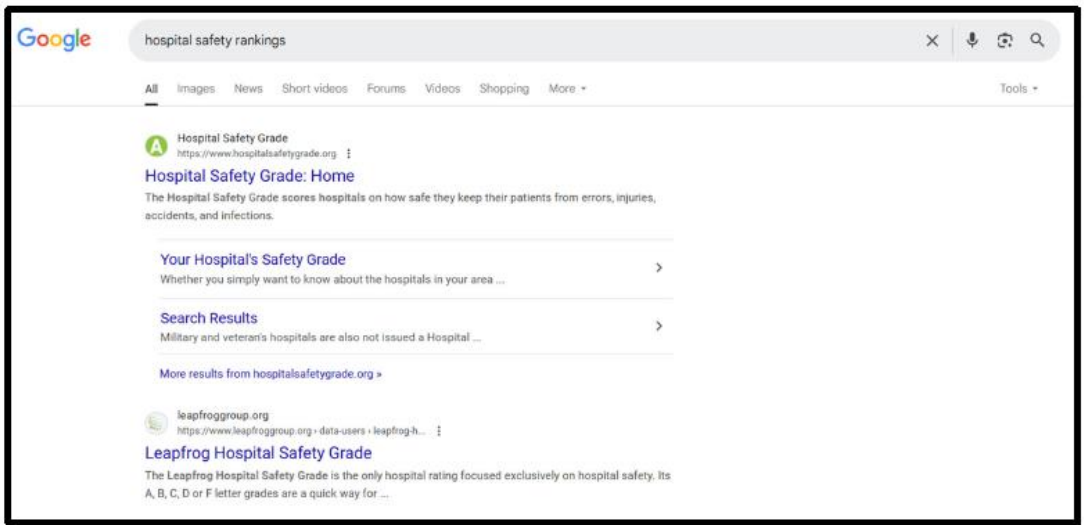


That "grade" is a sham. TLG acknowledges that Delray "Declined to Report" information in response to questions about "Staff work[ing] together," but then tells consumers—as if it were a fact—that Delray is "Worse Than Average" on "Handwashing," "Communication," "medication administration," and the like—even though TLG has no basis whatsoever to adopt those conclusions. TLG even tells consumers that these "imputed" scores reflect one of the "most important" metrics to consider about hospital safety, Crain Decl., Ex. 15—even though TLG has no data about them for non-participating hospitals. TLG simply imputed the worst possible value to Delray on these metrics, and held out those values to consumers as true, established facts. Crain Decl., Ex. 32 at 2; *see also* Crain Decl., Ex. 31 at 2; Crain Decl., Ex. 33 at 2; Crain Decl., Ex. 34 at 2; Crain Decl., Ex. 35 at 2. As a result, a simple Google search suggests that each Plaintiff is failing and that patients are more likely to die there. McCauley Decl. ¶ 26; Hanlon Decl. ¶ 19; Montgomery Decl. ¶ 21; Havericak Decl. ¶ 19; Cazares Decl. ¶ 20; Crain Decl., Ex. 6.

Academic research similarly confirms TLG's methodologies are deceptive and misleading to consumers. Numerous studies have documented the "unfair biases towards responding to [TLG's] survey," Crain Decl., Ex. 44–47. For example, more than 80% of TLG's "outcome measures" have been shown "to be unreliable," and studies identified "errors" in TLG data. Crain Decl., Ex. 50. The American Hospital Association even concluded publicly that "no one should

use [TLG's Hospital Safety Grades] to guide their choice of hospitals, unless and until, a more accurate assessment method is used." *Id*. Plaintiffs are also prepared to call economist and tenured University of Cornell Professor Sean Nicholson to testify at an evidentiary hearing. Professor Nicholson is an expert in healthcare economics and hospital quality and, in addition to his decades of academic research and teaching, even serves on the boards of several hospitals. Professor Nicholson attests that TLG's methodology for measuring hospital quality is fundamentally flawed. Nicholson Decl. ¶¶ 51–71. He concludes, based on his research and expertise, that "TLG's methodology results in unreliable and systematically biased grades that are inappropriately inflated for the hospitals that choose to participate in TLG's hospital survey and inappropriately deflated for the hundreds of hospitals that choose to not participate." Nicholson Decl. ¶¶ 3, 19.

TLG's fraudulent safety grades have caused severe, ongoing, and irreparable harm to the Plaintiff Hospitals, their patients, and the public. *See* McCauley Decl. ¶¶ 33–38; Hanlon Decl. ¶¶ 23–26; Montgomery Decl. ¶¶ 25–29; Havericak Decl. ¶¶ 24–29; Cazares Decl. ¶¶ 24–27. TLG ensures its grades are easily and broadly available twice yearly. It all starts with TLG's orchestration of press campaigns leading up to the release of its grades. For the latest cycle, this Spring, TLG actually "embargo[ed]" Plaintiffs' safety grades with the press days before those scores went public, Crain Decl., Ex. 25 at 3, specifically to generate broad public attention to those false and misleading scores. TLG has even given licenses to insurers to link these grades on their coverage pages. Crain Decl., Exs. 7–8, 49. And given the prominent placement of TLG's safety grades in search engines like Google, TLG likely engages in search-engine optimization to ensure that its deceptive safety grades are the first hits consumers see:



Crain Decl., Ex. 48; *see also id.* Exs. 9–10. Plaintiffs are prepared to call at an evidentiary hearing a consumer choice expert to attest that TLG's safety grades, regardless of accuracy, are likely to induce fear that encourages consumers to make decisions based on emotion, rather than on deliberate, informed choices. That expert will confirm that consumers' emotions towards a hospital are "sticky" and not easily overcome with new information or disclosures.

Consistent with that anticipated testimony, TLG's grades have caused tangible, ongoing, and irreparable harm to Plaintiffs. Nicholson Decl. ¶¶ 18, 31–38. Due to TLG's grades, Plaintiffs' patients have moved their procedures from Plaintiffs to Plaintiffs' competitors, and TLG's grades have damaged the goodwill that Plaintiffs worked hard to build with their patients over the years, caused Plaintiffs to lose business opportunities, and risked serious consumer harm. *See* McCauley Decl. ¶¶ 33–38; Hanlon Decl. ¶¶ 23–26; Montgomery Decl. ¶¶ 25–29; Havericak Decl. ¶¶ 24–29; Cazares Decl. ¶¶ 24–27; Nicholson Decl. ¶ 38. Patients are now asking their doctors to schedule surgeries at higher-graded hospitals. Cazares Decl. ¶ 26; Montgomery Decl. ¶ 28. They are moving procedures from the Plaintiff Hospitals to competitors, resulting in a decrease in Plaintiffs'—particularly West Boca Medical Center's— elective admissions. *See* Cazares Decl. ¶¶ 25–26; Hanlon Decl. ¶ 24 (reflecting decrease of 30% in elective encounters, 15% in outpatient surgeries, and 12.2% in emergent encounters year-to-date). And they are driving to other more distant hospitals because of the sham "Safety Grades" assigned to Plaintiffs. Havericak Decl. ¶ 28; Nicholson Decl. ¶ 32. Those drive-bys are dangerous because, in a true health emergency, every second that care is delayed can increase the risk of death. Carin Decl., Ex. 64; Nicholson ¶¶ 34–37 ("[I]naccurate and misleading hospital ratings, like those put forth by TLG, . . . can be harmful to patients by inappropriately steering them to hospitals that are in fact worse than others, or even if no worse, to hospitals that take longer to reach with the increased travel itself being potentially harmful to patients.").

Objective data confirms that TLG's Safety Grades have no correlation with the best facility for a patient to receive care. As just one example, TLG graded one *participating* Palm Beach County area hospital with an "A." In 2024—the same year TLG assigned Plaintiff St. Mary's Hospital a "D" safety grade—the participating hospital that TLG graded an "A" transferred more than 500 patients to St. Mary's for critical, specialized care services. McCauley Decl. ¶ 34. Those transfers were necessary because only St. Mary's had the right specialists, technology, accreditations, and certifications to provide the required care. McCauley Decl. ¶¶ 12, 34. Whether a

hospital can or should treat a given patient is unconnected to whether that hospital gives its data to TLG for free, but TLG intentionally deceives consumers into thinking otherwise. Nicholson Decl. ¶¶ 3, 31–38, 55–71, 55 ("These inconsistent methodological practices of TLG in generating ratings preclude the ability to perform an apples-to-apples comparison of participating and non-participating hospitals.").

Since the commencement of this action, TLG has not changed its ways. Instead, TLG has doubled down. Prior to filing its Compliant, Plaintiffs requested that TLG *stop* misleading consumers, explaining the problems with its newly adopted methodology. TLG refused. Crain Decl., Exs. 24–25. And after Plaintiffs commenced this case, TLG even issued a statement falsely claiming its safety grades relied on "data from CMS, the agency that runs Medicare and Medicaid"—not the ginned up failing scores TLG "imputes." Crain Decl., Ex. 49; Nicholson Decl. ¶¶ 43–44, 54. TLG then attacked Plaintiffs to inflame the public and smear them. TLG stated, "[t]hese hospitals owe it to their patients, their communities and their own workforce to demonstrate candor and accountability." Crain Decl., Ex. 49.

The Plaintiff Hospitals are not perfect and have never claimed to be. Every day they strive to improve the quality of their care and to meet the needs of their patients. But if anyone should demonstrate "candor" and should face "accountability," it's TLG. TLG lies to consumers, deceives them about its safety grades, and wantonly extorts hospitals not in the interests of patients but rather for TLG's own "non-profit" bottom line. It is time for TLG to be held accountable.

ARGUMENT

This Court should not allow TLG to continue to shake down hospitals—while deceiving patients seeking emergency medical care—during the pendency of this case. The Court should expedite discovery, set an evidentiary hearing, and preliminarily enjoin TLG's scheme. Alternatively, the Court should expedite the case to render a decision in time to minimize irreparable harm.

I. The Court Should Preliminarily Enjoin TLG's Shakedown Scheme.

The Court should preliminarily enjoin TLG's shakedown scheme because the Plaintiff Hospitals are "likely to succeed on the merits"; they face imminent "irreparable harm"; "the balance of equities" tips decisively in their favor; and an "injunction is in the public interest." *Rameriz v. Collier*, 595 U.S. 411, 421 (2022) (quoting *Winter v. Nat. Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008)).

A. Plaintiffs Are Likely to Succeed on the Merits of Their FDUTPA Claim.

The Florida legislature has granted any "person" who has been "aggrieved" by a violation of the State's Deceptive and Unfair Trade Practices Act to bring suit to remedy that violation. Fla. Stat. § 501.211(1)–(2). That includes business entities. *See Democratic Republic of the Congo v. Air Cap. Grp., LLC*, 614 F. App'x 460, 468 (11th Cir. 2015) (noting that "the legislature revised the statute to ensure that businesses received the same protections as individual consumers"); *Allstate Ins. Co. v. Auto Glass Am., LLC*, 418 F. Supp. 3d 1009, 1017–18 (M.D. Fla. 2019) (concluding automobile insurers had standing under FDUTPA as plaintiffs need not be "consumers involved in consumer transactions with" defendants). Deception is "a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." *Caribbean Cruise Line, Inc. v. Better Bus. Bureau of Palm Beach Cnty., Inc.*, 169 So. 3d 164, 169 (Fla. 4th DCA 2015) (cleaned up). An unfair practice is one that "offends established public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." *Id.* (cleaned up).

Here, TLG deceptively and unfairly issued safety grades based on data that it invented out of thin air and then lied about what those safety grades mean and how they are ginned up. Crain Decl., Ex. 2; Exs. 56-63. TLG assigned the Plaintiff Hospitals the lowest possible scores on critical metrics not because of actual data, but rather because Plaintiffs did not respond to TLG's survey. Nicholson Decl. ¶¶ 61, 66; Crain Decl., Exs. 31–35. TLG then presented this made-up data to consumers to make it appear that the Plaintiff Hospitals were in fact failing, for example, that they did not "order medications through a computer," even though they, in fact, do. *See* McCauley Decl. ¶ 24; Hanlon Decl. ¶ 18; Montgomery Decl. ¶ 19; Havericak Decl. ¶ 18; Cazares Decl. ¶ 19.

Crain Decl., Exs. 31–35. And it told consumers, based on all of these misrepresentations, that they are more likely to *die* if they seek treatment at the Plaintiff Hospitals, as opposed to others. Crain Decl., Exs. 1, 4. All the while, TLG tells patients that its grades are not based on hospital

participation, even though that's simply not true. Crain Decl., Ex. 1. These "are not disputes with opinions issued by [TLG], but instead, are disputes with the representations that [TLG] makes, and the methods it employs," *Caribbean Cruise Line*, 169 So. 3d at 167—representations and methods that unquestionably are causing the Plaintiff Hospitals enormous damage. This is paradigmatic deception.

TLG's scheme is all the more deceptive and unfair given TLG knows what it's doing is wrong. On one of its websites—www.hospitalsafetygrade.org—TLG labels Plaintiffs as failing hospitals at which patients are more likely to die. Crain Decl., Exs. 1, 4. On another of TLG's websites, TLG tells patients that the five Plaintiff Hospitals didn't participate in TLG's survey and that as a result TLG lacked sufficient data to grade them. Crain Decl., Exs. 58–62. TLG knows how to tell patients it doesn't have enough data, but it chooses not to on the alarmingly named www.hospitalsafetygrade.org.

TLG's grading of non-participating hospitals even violates TLG's own protocol for best practices. Nicholson Decl. ¶ 46. Although TLG says hospitals should not be graded if TLG lacks data on *six* of its measures, TLG lacks data for *seven* metrics from non-participating hospitals. But rather than simply decline to grade those hospitals, as its own best practices provide, TLG instead gins up "imputed" data to cook the books and facilitate its "grades." *Id*.

Plaintiffs are prepared to call at any evidentiary hearing two experts who will confirm the fundamental deception and unfairness in TLG's scheme. Professor Sean Nicholson of Cornell will, consistent with over three decades of experience in studying and evaluating hospital quality metrics, walk the Court through how TLG's grades utterly fail to accurately or fairly assess hospital quality or safety. Nicholson Decl. ¶¶ 1–3. As Professor Nicholson states in his Declaration, "TLG's methodology departs from guiding principles for how hospital quality or safety should be measured, resulting in hospital grades that are unreliable, incapable of predicting actual patient outcomes, and misleading—all of which poses risks to patients, hospitals, and the public." Nicholson Decl. ¶ 19. A consumer choice expert will similarly confirm that the consequence of TLG's misleading grades is that patients will avoid the Plaintiff Hospitals and be at a greater risk of making uninformed and potentially unsafe health decisions.

TLG's motives for its scheme confirms its deception. Although TLG claims to be a non-profit, it is anything but. TLG admits it monetizes the data it collects, conceding that "[h]ospitals, researchers and businesses can license Leapfrog data for a fee." Crain Decl., Ex. 49; *see also* Crain

Decl., Exs. 8, 7–8, 13–14, 17–18. Participating hospitals have to specifically "acknowledge" that TLG—a purported non-profit—"may use" data a hospital provides "in a commercial manner *for profit*." Crain Decl., Ex. 19 at 46 (emphasis added). TLG therefore needs hospitals to participate in its data mining to keep its revenue streams up so it can pay its "non-profit" executives many millions of dollars. For that reason, TLG has to punish non-participating hospitals and inflate the grades of those hospitals that fork over free data for TLG to use "in a commercial manner for profit." *Id*. As an example, the Spring 2025 TLG grades for Florida hospitals demonstrate the marked difference in grades between participating and non-participating hospitals: *every* Florida hospital that received a grade of A or B from TLG had completed TLG's survey, and *every* hospital in Florida that did not complete the survey received a grade of C or lower. *See* Nicholson Decl. ¶ 62. Since the methodology change, TLG has scored hospitals better than Plaintiff Hospitals despite those hospitals' documented issues with patient care, staffing and facilities. Crain Decl., Exs. 52–57.

In sum, TLG fakes data to "impute" failing scores into Plaintiffs' purported "safety grades," lies about its process and what its "safety grades" represent, has disregarded academic studies and research about the fundamental deception inherent in its program, and yet has pushed forward anyway—masquerading as a non-profit even as it seeks to compel hospitals to participate in its scheme to increase its "commercial" bottom line. Nicholson Decl. ¶¶ 52–71. As a result, the Plaintiff Hospitals have lost business opportunities and patients, and suffered irreparable damage to their reputation and goodwill. *See, e.g.*, Montgomery Decl. ¶¶ 25–29; Cazares Decl. ¶¶ 24–27; Hanlon Decl. ¶¶ 23–27. TLG has clearly and palpably violated FDUTPA.

B. Plaintiffs Face Imminent Irreparable Harm Absent Injunctive Relief.

Allowing TLG to continue publicizing its fictious ratings will continue to damage Plaintiffs' reputation and cause a loss of trade and goodwill. That is textbook irreparable harm for which this Court has granted preliminary injunctions in the past. *See, e.g.*, *Hatzoloh, Inc. v. Hatzalah of Palm Beach, Inc.*, 2022 WL 730959, at *7 (S.D. Fla. Feb. 8, 2022) (Middlebrooks, J.) (granting preliminary injunction); *Warrior Trading, Inc. v. Jaffee*, 2019 WL 3428509, at *5 (S.D. Fla. Jan. 23, 2019) (same).

Plaintiffs rely on their well-deserved goodwill in their communities to earn their patients' trust and the opportunity to treat them. Nicholson Decl. ¶¶ 18, 31–38. Fake grades from TLG have severely damaged—indeed, are *meant* to destroy—their reputation in a competitive industry.

McCauley Decl. ¶¶ 14–15; Hanlon Decl. ¶¶ 24–26; Montgomery Decl. ¶¶ 26–29; Havericak Decl. ¶¶ 25–29; Cazares Decl. ¶¶ 25–27. Plaintiffs have lost patients, surgeries, business partnerships, and standing in the community due to TLG's actions. McCauley Decl. ¶¶ 34–35; Hanlon Decl. ¶¶ 24–26; Montgomery Decl. ¶¶ 26–29; Havericak Decl. ¶¶ 26–28; Cazares Decl. ¶¶ 25–27. TLG's grades negatively impacted medical staff hiring. Montgomery Decl. ¶ 27. And TLG's public relations machine has only increased the damage—with TLG organizing sophisticated media campaigns upon the release of its scores and even going so far as to "embargo" the scores prior to their release to generate additional attention. Crain Decl., Ex. 25, at 3.

The reputational damage and loss of goodwill Plaintiffs have experienced "cannot be undone through monetary remedies" because "it will be difficult if not impossible to calculate the full amount of revenue that [Plaintiffs] ha[ve] lost and [are] losing from prospective [patients] who have declined to" obtain healthcare from Plaintiffs due to TLG's baseless and defamatory reporting. *Sapphire Consulting Services LLC v. Anderson*, 2021 WL 1053276, at *5 (M.D. Fla. Feb. 12, 2021) (cleaned up) (granting preliminary injunction against former employee contacting company's prospective clients with negative information about company). This is exactly the type of irreparable harm preliminary injunctions are designed to prevent. *See, e.g.*, *FirstLantic Healthcare Inc v. Weiss*, 2024 WL 3538358, at *4 (S.D. Fla. May 16, 2024) ("[T]he loss of customers and goodwill is an 'irreparable' injury.") (Middlebrooks, J.) (quoting *Ferrero v. Associated Material, Inc.*, 923 F.2d 1441, 1449 (11th Cir. 1991)); *Freedom Med. Inc. v. Sewpersaud*, 469 F. Supp. 3d 1269, 1278 (M.D. Fla. 2020) (finding irreparable injury where plaintiff "risk[ed] losing customers, goodwill, and market competitiveness to [its] direct competitor[s] . . . in the highly competitive healthcare field"); *Bluegreen Vacations Unlimited, Inc. v. Timeshare Laws. P.A.*, 2023 WL 4079381, at *2 (S.D. Fla. June 20, 2023) (granting preliminary injunction in FDUTPA case involving allegations that Defendants engaged in ongoing deceptive business practices that incentivize Plaintiff's timeshare customers to default on their loan obligations); *Walker v. Mem'l Health Sys. of E. Texas*, 231 F. Supp. 3d 210, 216 (E.D. Tex. 2017) (reporting that physician "lacks the adequate skill to practice medicine carries with it the potential to immediately and irrevocably harm that physician and his practice"); *see Warrior Trading*, 2019 WL 3428509, at *4 (collecting cases and explaining that "business reputational damages and loss of goodwill are sufficient to demonstrate an irreparable injury").

These harms are ongoing and can be prevented only by removing the false grades and preventing new ones. *See* McCauley Decl. ¶ 38; Hanlon Decl. ¶ 26; Montgomery Decl. ¶ 29; Havericak Decl. ¶ 29; Cazares Decl. ¶ 27. Enjoining TLG to remove the Fall 2024 and Spring 2025 grades is appropriate given the conduct "has and will continue to cause irreparable harm" moving forward. *See Wyndham Vacation Ownership, Inc. v. Am. Consumer Credit*, 2019 WL 11025869, at *1 (S.D. Fla. Oct. 20, 2019) (enjoining defendant from engaging in future misleading advertising "due to the ongoing nature of [] infringing activities, coupled with the threat of future infringement"); *see also Davis v. Powertel, Inc.*, 776 So. 2d 971, 975 (Fla. 1st DCA 2000) (interpreting FDUTPA to provide for injunctive relief "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").

Courts in this district have preliminarily enjoined similar misleading content that likely violates FDUTPA. *See Warrior Trading, Inc.*, 2019 WL 3428509, at *5 (ordering the defendant remove from its internet channels two YouTube videos and any reference or link to the videos where the videos were likely defamatory and in violation FDUTPA). Here, Plaintiffs have shown "a history of legal violations" by TLG in the form of its repeated and misleading false safety grades, so the "court has significant discretion to conclude that future violations of the same kind are likely." *Kapps v. Wing*, 404 F.3d 105, 123 (2d Cir. 2005) (affirming injunction against ongoing due process violation in state housing assistance program); *see also Thomas v. Bryant*, 614 F.3d 1288, 1318–19 (11th Cir. 2010) (granting injunction against future prison mistreatment even though same mistreatment had occurred for years because evidence demonstrated it would continue). That new harm is distinct because it falsely indicates a lack of improvement and incorrectly compounds the impression that Plaintiffs are failing. *See* McCauley Decl. ¶ 38; Hanlon Decl. ¶ 26; Montgomery Decl. ¶ 29; Havericak Decl. ¶ 29; Cazares Decl. ¶ 27. TLG has refused Plaintiffs' request not to release Safety Grades for Plaintiffs, and Plaintiffs have no other means to get TLG to cease its misrepresentations of their quality based on TLG's flawed methodologies. Crain Decl., Ex. 20–25. In sum, Plaintiffs have suffered irreparable harm and, in the absence of injunctive relief, will continue to experience it. Nicholson Decl. ¶¶ 18, 31–38. This Court should grant a preliminary injunction.

C. The Balance of Equities and Public Interest Strongly Favor Relief.

The final preliminary injunction factors, assessing the harm to the opposing party and weighing the public interest, strongly support a preliminary injunction. A preliminary injunction

would avoid irreparable harm to Plaintiffs, cause no harm to the public, or interfere with no legitimate interest TLG may have. By contrast, declining to grant a preliminary injunction would cause enormous public harm.

In contrast to Plaintiffs who are experiencing clear and palpable irreparable harm every day, TLG would suffer no cognizable harm from the narrowly tailored injunction Plaintiffs seek. Plaintiffs are asking this Court to, during the pendency of this case, direct TLG to remove the deceptive Hospital Safety Grades issued to Plaintiffs on May 1, 2025, and to refrain from purporting to grade the Plaintiff Hospitals on a go-forward basis. That approach is consistent with what TLG posts on www.theleapfroggroup.org, at which it specifically tells consumers the Plaintiff Hospitals did not participate in TLG's data mining and therefore TLG has insufficient data to "grade" them. Crain Decl., Ex. 58–61. The approach is also consistent with TLG's own purported expert panel, which has concluded—removing the ginned up data TLG makes up and "imputes" into Plaintiffs' scores—that TLG lacks sufficient information to reliably grade Plaintiffs. *See* Nicholson Decl. ¶¶ 43–44; *see supra* pp. 6–7. TLG cannot be harmed by an order to follow its own guidance, and TLG "does not have a legitimate interest in [its] false statements." *MacuHealth, LP v. Vision Elements, Inc.*, 2024 WL 3738489, at *6 (M.D. Fla. Aug. 9, 2024). TLG's interest in spreading falsehoods about Plaintiffs "is far outweighed by the continuing harm to Plaintiffs, their goodwill and reputation, and the consuming public," absent injunctive relief. *Gaffigan v. Individual*, 2023 WL 11878191, at *2 (S.D. Fla. Nov. 3, 2023).

The public's strong interest in protecting and promoting public health also favors injunctive relief. *See, e.g.*, *Thakker v. Doll*, 451 F. Supp. 3d 358, 372 (M.D. Pa. 2020) ("Efforts to stop the spread of COVID-19 and promote public health are clearly in the public's best interest. . . ."). Beyond the obvious, grave threat to public health posed by TLG's dissemination of false data about the quality of hospitals, the public also has an "interest in avoiding unnecessary confusion" when it comes to purchasing goods and services. *MacuHealth*, 2024 WL 3738489, at *7; *Bluegreen Vacations Unlimited*, 2023 WL 4079381, at *2. Further, "it is self evident that preventing false or misleading advertising is in the public interest in general." *MacuHealth*, 2024 WL 3738489, at *7; *Bulova Corp. v. Bulova Do Brasil Com. Rep. Imp. & Exp. Ltda.*, 144 F. Supp. 2d 1329, 1332 (S.D. Fla. 2001) (granting preliminary injunction and explaining that "there is a public benefit in ensuring that the public is not subject to continued dissemination of misinformation concerning public companies and their products").

In fact, the public interest will be harmed absent injunctive relief given the vital need for patients to receive care as fast as possible. Nicholson Decl. ¶¶ 35–38. When a patient is in critical condition, even a minimal delay can have drastic medical consequences. Nicholson Decl. ¶ 36; Crain Decl., Ex. 51. That is why Florida law requires that "all medically necessary transfers [between hospitals] shall be made to the geographically closest hospital with the service capability." Fla. Stat. § 395.1041(3)(e). Most hospital transfers don't occur by ambulance—an estimated 80% of Emergency Room patients travel to the hospital in their own vehicle. Crain Decl., Ex. 64. Yet TLG tells patients to delay life-saving care in favor of higher-graded hospitals. Crain Decl., Ex. 1, 4–6, 15. And patients will listen to TLG because it has branded the hospitals with misleading "Fs" and "Ds"—even though the hospitals have prestigious accolades and are beyond capable of providing routine and specialized care. Thus, TLG effectively deprives patients of the best available medical care in favor of its own favored survey participants and to line its executives' pockets—a clear and irreparable harm to the public. *See, e.g.*, *Mayer v. Wing*, 922 F. Supp. 902, 909 (S.D.N.Y. 1996) (finding "the deprivation of life-sustaining medical services . . . certainly constitutes irreparable harm"); Nicholson Decl. ¶¶ 37–38. The balance of equities and public interest clearly favor relief.

II. The Court Should Grant Expedited Discovery Prior to an Evidentiary Hearing.

A district court may expedite the discovery process if a party moves for expedition and establishes "good cause" for it. *TracFone Wireless, Inc. v. SCS Supply Chain LLC*, 330 F.R.D. 613, 615 (S.D. Fla. 2019). Good cause is supported where, as here, "the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party." *TracFone Wireless, Inc. v. Holden Prop. Servs., LLC*, 299 F.R.D. 692, 694 (S.D. Fla. 2014). To guide this analysis, courts in the Eleventh Circuit consider seven factors when deciding whether good cause exists. *See Mullane v. Almon*, 339 F.R.D. 659, 663 (N.D. Fla. 2021). The factors include "(1) whether a motion for preliminary injunction is pending; (2) the breadth of the requested expedited discovery; (3) the reasons the moving party is requesting expedited discovery; (4) the burden on the opponent to comply with the request for expedited discovery; (5) whether the information sought expeditiously could be obtained more efficiently from some other source; (6) the extent to which the discovery process would be expedited; and (7) whether a motion to dismiss for failure to state a claim is pending." *Mullane*, 339 F.R.D. at 663.

Each factor as applied here supports that there is good cause to expedite discovery here.

First, a motion for preliminary injunction—which reflects the irreparable harm and the balance of public interest—is now pending. *Second*, Plaintiffs propose a limited scope of discovery, including just 10 Requests for Production and three depositions prior to an evidentiary hearing on the motion for a preliminary injunction. *Third*, the public interest favors expedited discovery because absent expedited discovery an evidentiary hearing on a fulsome record will likely not take place prior to the release of Fall 2025 TLG "safety grades." *Fourth*, the burden on Leapfrog is minimal, as Plaintiffs' discovery proposal is narrow in scope and TLG would need to prepare only a few deponents. *Fifth*, the information about Leapfrog's methodologies, business model, rationale for relevant decisions, and practices Plaintiffs intend to seek is solely within Leapfrog's possession and meaningful for the resolution of the preliminary injunction. *Sixth*, the proposed schedule is fair and it allows more than a month for document production and more than two months until the start of depositions. The proposed schedule allows for an evidentiary hearing on the preliminary injunction motion in September—weeks before the release of TLG's Fall 2025 grades in November. *Seventh*, there is no motion to dismiss pending at this time.

Because all seven factors counsel in favor of expedited discovery in advance of—and to inform—an evidentiary hearing on Plaintiffs' preliminary injunction motion, this Court should grant limited, expedited discovery.

III. Alternatively, the Court Should Expedite These Proceedings.

In the alternative, this Court should enter an order expediting these proceedings to try Plaintiffs' claims in advance of November 1, 2015, including under Federal Rule of Civil Procedure 57. Plaintiffs seek a declaratory judgment that TLG's conduct violates FDUTPA, Dkt. No. 1 (Compl.) ¶¶ 131–138.[1]

Pursuant to the Federal Rules of Civil Procedure governing declaratory judgments, the Court has authority "to order a speedy hearing of a declaratory-judgment action." Fed. R. Civ. P. 57. A declaratory judgment is appropriate when it will "(1) serve a useful purpose in clarifying and settling the legal relations in issue, and (2) terminate and afford relief from the uncertainty,

[1] To the extent the court agrees that Plaintiffs have established the likelihood of future injury in connection with the preliminary injunction argument *supra*, the court will likely find that Plaintiffs sufficiently stated a sufficient, separate claim for declaratory judgment. *Gilbert v. BioPlus Specialty Pharm. Services, LLC*, 2023 WL 3555006, at *4 (M.D. Fla. Mar. 3, 2023). Notably, the claims can exist in parallel because "[t]he existence of another adequate remedy does not preclude a declaratory judgment." Fed. R. Civ. P. 57.

insecurity, and controversy giving rise to the proceeding." *Evanston Ins. Co. v. Republic Props., Inc*., 2017 WL 2215638, at *2 (M.D. Fla. May 19, 2017). An expedited hearing for declaratory judgment in particular would be prudent here. Given that the Fall 2024 and Spring 2025 TLG Safety Grades present an ongoing harm to Plaintiffs and to each future potential patient who is misled by those grades, *see supra* Arg. Pt. I.B, this Court should hear Plaintiffs' claims on an expedited basis well in advance to rule prior to TLG's issuance of its Fall 2025 Safety Grades. Here, parties would benefit from a speedy hearing to clarify that TLG's conduct can and does violate FDUTPA. The Court should grant expedited discovery and proceed to hear Plaintiffs' claims on an expedited basis.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (a) expedite discovery in advance of any evidentiary hearing on Plaintiffs' motion for a preliminary injunction; and (b) preliminarily enjoin TLG from issuing any safety grades for Plaintiffs and to remove the grades previously issued. In the alternative, Plaintiffs request that the Court grant expedited discovery and set a speedy hearing on Plaintiffs' claims, including under Rule 57.

REQUEST FOR HEARING

Pursuant to S.D. Fla. Local Rule 7.1(b)(2), Plaintiffs request the Court exercise its discretion to order an evidentiary hearing regarding the need for a preliminary injunction. Plaintiffs believe that the presentation of the evidence from their declarants and experts plainly detail to the Court (i) the misleading nature of TLG's methodology and Safety Grades, (ii) the confusion caused to consumers, and (iii) the harm these Safety Grades have caused Plaintiffs. Plaintiffs respectfully request that the Court schedule a one-day evidentiary hearing on this motion.

Dated: May 16, 2025

Respectfully submitted,

By: */s Michael Pineiro*

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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.

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiffs' Motion For A Preliminary Injunction And Motion For Expedited Discovery, Or, In The Alternative For An Expedited Trial And Incorporated Memorandum Of Law. The Court, having reviewed the Motion, any response thereto, and any evidence hereby GRANTS Plaintiffs' Motion for Preliminary Injunction. Specifically, it is hereby ORDERED that:

1. Defendant The Leapfrog Group is preliminarily enjoined, during the pendency of this case, from including Plaintiffs in its Hospital Safety Grades.
2. Defendant The Leapfrog Group shall, during the pendency of this case, remove the Safety Grades previously issued to Plaintiffs from all of Defendant's websites or similar materials.

IT IS SO ORDERED.

DATED _____

_____

Judge Middlebrooks

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.

[PROPOSED] ORDER GRANTING EXPEDITED DISCOVERY [OR IN THE ALTERNATIVE EXPEDITING PROCEEDINGS]

This matter comes before the Court on Plaintiffs' Motion For A Preliminary Injunction And Motion For Expedited Discovery, Or, In The Alternative For An Expedited Trial And Incorporated Memorandum Of Law. The Court, having reviewed the Motion and any response thereto, hereby GRANTS Plaintiffs' motion to expedite discovery and set an evidentiary hearing on Plaintiffs' motion for a preliminary injunction and provides for the following schedule of proceedings:

Item	Deadline
Substantial Completion for tailored, expedited document production (**10 requests for production per side, no interrogatories, no requests for admission**) Deadline to Disclose Preliminary Injunction Hearing fact and expert witnesses for evidentiary hearing	July 2, 2025
Conclusion of expedited Discovery (**3 depositions per side**)	July 24, 2025
TLG's Opposition to Motion for Preliminary Injunction	August 1, 2025
Plaintiffs' Reply ISO Motion for Preliminary Injunction	August 28, 2025
Hearing on Plaintiffs' Motion for Preliminary Injunction	September __, 2025

[IN THE ALTERNATIVE] The Court, having reviewed the Motion and any response thereto, hereby GRANTS Plaintiffs' Motion to expedite proceedings. The Court will schedule a trial to conclude no later than November 1, 2025. The parties are directed to meet and confer on a proposed expedited schedule and submit a proposed schedule to the Court on or before _____, 2025.

IT IS SO ORDERED.

DATED _____

_____

Judge Middlebrooks