

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 25-CV-80526-MIDDLEBROOKS

**GOOD SAMARITAN MEDICAL CENTER,
INC., DELRAY MEDICAL CENTER, INC.,
PALM BEACH GARDENS COMMUNITY
HOSPITAL, INC. D/B/A PALM BEACH
GARDENS MEDICAL CENTER, ST.
MARY'S MEDICAL CENTER, INC. AND
WEST BOCA MEDICAL CENTER, INC.,**

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendant.

_____ /

**DEFENDANT THE LEAPFROG GROUP'S MOTION FOR
RECONSIDERATION AND TO ALTER OR AMEND THE JUDGMENT,
OR FOR NEW TRIAL**

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INTRODUCTION

As this Court has recognized, Defendant The Leapfrog Group is “a watchdog” nonprofit organization with a “laudable” mission that carries immense public importance—promoting the “safety, quality and affordability of U.S. health care by using transparency to support informed health care decisions” for patients nationwide. (Dkt. 212 at 3, 39.) While performing its work amidst controversy and criticism, Leapfrog relies upon the “First Amendment’s jealous protections” of the “right to think and speak freely,” just as others reporting on matters of public concern do. *Chiles v. Salazar*, 607 U.S. ----, 146 S. Ct. 1010, 1021 (2026).

Leapfrog now respectfully returns to this Court seeking reconsideration or clarification of the judgment based on considerations that supply compelling grounds for what is, concededly, an exceptional request. Herein, Leapfrog respectfully draws renewed attention to Leapfrog’s laudable mission together with the First Amendment’s hallowed protections. In addition, Leapfrog respectfully urges the Court to take account of Plaintiffs’ post-judgment efforts to anoint themselves as censors who could use the Court’s order as a template to warp and silence unfavorable reporting by any healthcare or press organization, even beyond Safety Grades.

In its order denying Leapfrog’s motion to dismiss, this Court held that “Defendant’s First Amendment defenses” are “inapplicable” to the claims Plaintiffs brought. (Dkt. 41 at 6.) In doing so, however, the Court noted that “[t]he First Amendment protects ‘statements that are not readily capable of being proven false’ and ‘statements of pure opinion.’” *Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018).” (*Id.* at 5.) It also explained that courts “have recognized that these principles extend to online grading services, which often rely on a subjective weighing of objective data.” (*Id.*) Accordingly, the Court ruled that “a claim brought pursuant to the FDUTPA is not *barred* by the First Amendment when it involves a challenge to *false or misleading statements made about the rating process itself*,” and it permitted Plaintiffs’ action to proceed to the extent “aris[ing] from a challenge to Defendant’s *representations about its methodology*.” *Id.* at 6 (emphases added). Far from affording Plaintiffs carte blanche and shedding First Amendment constraints, this Court allowed Plaintiffs to proceed down a constitutionally circumscribed path: Plaintiffs’ case was necessarily confined to identifying and remedying any *factual misrepresentations* Leapfrog made *about* its methodology. So long as that line remains operative, the judgment cannot stand. Simply comparing the Court’s judgment with its ruling denying dismissal establishes that Plaintiffs ventured astray at the trial stage and wound up trespassing on

constitutionally protected terrain. Only by granting reconsideration can this Court restore alignment with the Constitution, and, indeed, with its own prior ruling.

By the time of the Court’s injunction order (Dkt. 212), no mention was made of the First Amendment. What is more, the constitutional constraints that the Court had earlier recognized ostensibly fell by the wayside. The Court held Leapfrog liable not just for misrepresentations *about* the grades, but for the grades themselves; it enjoined not only speech pertaining to how Leapfrog’s grades are calculated, but also publication of Leapfrog’s ultimate, bottom-line safety views themselves. Absent correction, the Court’s final judgment would set a worrisome precedent and cast a lasting chill over freedom of speech and of the press for countless speakers nationwide whose missions involve reporting on matters of public concern. Moreover, supervision of the injunction threatens to embroil this Court in the unconstitutional enterprise of censoring wide-ranging, hazily-defined assessments and reports on hospital safety. In these extraordinary circumstances, relief under Rule 59 is more than well warranted—it is constitutionally imperative.

First, the Court’s judgment holds Leapfrog liable for protected expression. As the Court previously recognized, the First Amendment’s protection of pure opinion “extend[s] to online grading services,” like Leapfrog’s, that depend on the “subjective weighing” of information. (Dkt. 41 at 5.) Courts have agreed that such ratings are pure opinions, which the First Amendment protects. The same holds for subjective inputs into the grades—like Leapfrog’s imputed-value methodology for evaluating certain metrics of hospital safety—none of which is “readily capable of being proven false” (*id.* (quoting *Turner*, 879 F.3d at 1262)), and all of which were indisputably “set forth” on Leapfrog’s website and “known or available to the reader or listener as a member of the public,” *Turner*, 879 F.3d at 1262. Yet the Court never referenced that constitutional limitation in finding Leapfrog liable for its Safety Grades and for the subjective, fully disclosed imputed-value methodology underlying it. What is more, even assuming that Leapfrog’s imputed-value methodology could be deemed provably false, the Court would have had to make a finding of actual malice before imposing liability on this basis.

Second, the contours of the injunction in any event exceed anything the First Amendment could permit. Indeed, the injunction imposes an unconstitutional prior restraint on fully protected expression to the extent the speech could be dubbed “similar”—by opportunistic, self-serving Plaintiffs—to the specific statements that have been adjudicated. Such overbreadth and vagueness violate the First Amendment’s historic prohibition on prior restraints, while defying the principle

that such relief cannot extend any further than necessary to remedy the precise speech found to be unlawful. Further still, the injunction compels Leapfrog to profess beliefs antithetical to its own, again in contravention of the First Amendment. Even if liability stands, therefore, the Court should narrow the injunction for the sake of conforming to the First Amendment.

To be clear, the constitutional faults noted herein are not faults of the Court. Plaintiffs veered off the constitutional path they purported to follow, without Leapfrog calling out constitutional excesses with optimal specificity and alacrity. But no one should want to see the Constitution violated, let alone violated at the expense of free expression and the free press. There is still opportunity to set things right. It is especially important and timely to correct course, after Plaintiffs wrote to Leapfrog's counsel threatening to initiate contempt proceedings if Leapfrog does not self-censor or discontinue its protected expression on matters of core public concern that the injunction by its terms does not purport to regulate. (*See* Dkt. 219.) According to Plaintiffs, Leapfrog cannot so much as report the basic, irrefutable fact that Plaintiffs declined to respond to Leapfrog's Hospital Safety Survey—or express the view that hospitals should respond to the survey. Absent the requested relief, this may become a case study in how Florida's law of “unfair trade practices” can be deployed to shut down and penalize candid, incisive public reporting—and how judicial power may be coopted by deep-pocketed, litigious, for-profit corporations so as to bring under heel a nonprofit reviewer whose ratings displease them. For the reasons elaborated below, there is ample warrant for granting reconsideration or, at a minimum, clarification of key aspects of this Court's judgment.

BACKGROUND

A. The Court's Motion To Dismiss Order Recognizes First Amendment Limitations On Plaintiffs' FDUTPA Claims

Early in the litigation, Leapfrog moved to dismiss on the ground that its Safety Grades constitute protected opinion under the First Amendment and therefore cannot form the basis of a FDUTPA claim. (Dkt. 39 at 11-16). The Court denied that motion, acknowledging that courts have recognized First Amendment protection for online grading services that rely on subjective weighing of objective data, but holding that a FDUTPA claim is not altogether barred “when it involves a challenge to false or misleading statements made about the rating process itself.” (Dkt. 41 at 5-6.) In support, the Court cited *Home Performance Alliance v. Better Business Bureau of West Florida*, 354 So. 3d 1165, 1166 (Fla. 2d DCA 2023) and *Caribbean Cruise Line, Inc. v.*

Better Business Bureau of Palm Beach County, Inc., 169 So. 3d 164, 167 (Fla. 4th DCA 2015), both of which drew the same distinction between a challenge to a rating itself, which is protected, and a challenge to false or misleading statements about how a rating is calculated, which potentially may not be. (Dkt. 41 at 5-6.) In concluding this portion of its ruling, the Court stated that “Defendant’s First Amendment defenses” were “inapplicable” to Plaintiffs’ claims as a matter of law, presumably subject to the Court’s stated understanding of how Plaintiffs’ claims were and would remain limited. (Dkt. 41 at 6.)

B. The Court Enjoins Leapfrog From Publishing Safety Grades For Plaintiffs Using The Assignment Methodology And Compels Leapfrog To Publish “Corrective Disclosures”

Following the ruling on the motion to dismiss, the parties continued to advance competing arguments based on the First Amendment, without further treatment by the Court. Leapfrog moved for summary judgment on the ground that Florida’s anti-SLAPP statute prohibits lawsuits targeting a defendant’s “exercise[]” of “the constitutional right of free speech in connection with a public issue ... as protected by the First Amendment” and the Florida Constitution. (Dkt. 99 at 18 (quoting Fla. Stat. § 758.295(3)).) In opposing summary judgment on that ground, Plaintiffs maintained that this case does not implicate the First Amendment, while recognizing that, to the extent the challenged statements involved matters of public concern, the First Amendment “would require clear evidence that Leapfrog knew its representations were ‘false’ or ‘reckless[ly] disregarded’ the risk of falsity”—that is, actual malice. (Dkt. 115 at 19 (citation omitted).) When the Court denied the parties’ motions for summary judgment on January 7, 2026, it did not specifically address the parties’ First Amendment or anti-SLAPP arguments. (*See* Dkt. 139.)

The parties made similar arguments in their pretrial submissions. Leapfrog again argued that Plaintiffs had sued in violation of the anti-SLAPP statute’s prohibition on lawsuits that violate the First Amendment. (Dkt. 135 ¶¶ 383-92.) Plaintiffs, for their part, reiterated their position that the Safety Grades do not “implicat[e] the First Amendment,” but also repeated their acknowledgement that, if the First Amendment applied, it would require proof by clear and convincing evidence that Leapfrog published the at-issue grades with actual malice. (Dkt. 136 ¶ 133.) Plaintiffs likewise denied they were seeking a “prior restraint,” contending that “[t]here is no constitutional prohibition on restricting future speech already adjudicated to be unlawful.” (*Id.* ¶ 134.) Through five days of trial, Leapfrog never wavered from its assertion that its Safety Grades and imputed-value methodology reflected its experts’ opinions on hospital safety.

Following a five-day bench trial, the Court on March 6, 2026 issued its findings of fact and conclusions of law, ultimately finding for Plaintiffs and granting injunctive relief in their favor. (Dkt. 212.) The Court determined that Leapfrog had violated FDUTPA by imputing numerical values for certain measures underlying Leapfrog’s Safety Grades for hospitals that declined to participate in Leapfrog’s annual hospital survey, and it enjoined Leapfrog from “assigning a Safety Grade to [Plaintiffs] under the current methodology or any similar methodology.” (*Id.* at 40.) The Court acknowledged that this scoring methodology was available to the public, finding that “[t]he scoring methodology” at issue “can be accessed in two ways,” both through Leapfrog’s public-facing website. (*Id.* at 13-15.) But the Court nonetheless held Leapfrog liable, reasoning that the methodology was not sufficiently easy to access and that viewers would “likely ... assume that the data presented means something more than non-participation before they arrive at the complex assignment methodology.” (*Id.* at 26 n.7.) In explaining why and how it was finding Leapfrog liable, the Court did not address the parties’ First Amendment or anti-SLAPP arguments.

Upon finding Leapfrog liable, the Court’s March 6 order issued an injunction with both prohibitory and mandatory components. First, the Court ordered Leapfrog to “cease assigning a Safety Grade to [Plaintiffs] under the current methodology or any similar methodology that ... assigns assumed or imputed values to calculate Safety Grades due to the lack of hospital-provided performance data ... or ... that otherwise reduces a hospital’s Safety Grade due to the failure to provide performance data.” (*Id.* at 40-41.) Second, the Court required Leapfrog to “withdraw from its websites and cease promoting the unfair Safety Grades assigned to” Plaintiffs. (*Id.* at 41.) Third, the Court ordered Leapfrog to “send corrective disclosures to all entities that paid to license” the Safety Grades, disclosing “that those Safety Grades were found to be deceptive and unfair in this action.” (*Id.*) Fourth, the Court mandated that Leapfrog “place the same corrective disclosures in future contracts, print and electronic advertising materials, and other print and electronic documents that promote paid licensure of the next cycle of Safety Grades” accessible in certain zip codes. (*Id.*) And fifth, the Court ordered Leapfrog to “refrain from taking any action to circumvent” the injunction and retained jurisdiction to enforce the injunction. (*Id.*)

The injunction also required Leapfrog to file a declaration attesting to its compliance with the injunction. (*Id.*) As ordered, Leapfrog on April 24, 2026 filed a declaration by its CEO, Leah Binder. (Dkt. 215.) Ms. Binder attested that Leapfrog took several steps to comply with the injunction, as well as further steps even beyond those required by the Court “out of an abundance

of caution,” “to forestall any allegations of noncompliance,” and to prevent the unfairness that would result from “simultaneously rating other non-participating hospitals in ways that diverge” from how Leapfrog has been ordered to evaluate the Plaintiff hospitals. (*Id.* ¶¶ 8, 20, 32, 43, 45.)

C. Plaintiffs Invoke The Court’s Injunction As A Sweeping, Chilling Prior Restraint On Core Protected Speech

Following entry of the injunction, Plaintiffs and their parent company, Tenet Healthcare Corporation, on March 20 wrote inquiring as to Leapfrog’s intent to comply. After Leapfrog responded on March 31 by providing assurance of its intent to comply with the injunction in all particulars, Plaintiffs wrote again on April 14, this time alleging “noncompliance with the Court’s recent injunction” based on aspects of Leapfrog’s reporting that are nowhere mentioned by the injunction. (Dkt. 219-1 at 1.) After Leapfrog responded on April 24 by calling out Plaintiffs’ overreach (Dkt. 219-2), Plaintiffs responded on April 30 to reiterate their stated views and warn that they will “carefully monitor” developments in purportedly policing compliance with an eye towards operations and practices quite distinct from what has been adjudicated. (Dkt. 219-3.)

In their April 14 letter, Plaintiffs demand that Leapfrog remove certain content from its website leapfroggroup.org, specifically faulting a webpage that flags hospitals that “Declined to Respond” with those words and an accompanying symbol. (Dkt. 219-1 at 2-4.) Plaintiffs also object to a pop-up linked to the words “Declined to Respond” that states, “Thousands of hospitals nationwide report to the Leapfrog Hospital Survey to help patients and purchasers make better health care decisions. This hospital did not participate. Ask them why not.” (*Id.* at 3.) The letter claims that Leapfrog violates the injunction by truthfully describing hospitals that declined to respond as having “Declined to Respond” and by inviting the public to join the conversation by asking those hospitals “why not.” (*Id.* at 3.) The letter also claims that Leapfrog is violating the injunction by opining that facilities that declined to respond “have deprived patients of ‘critical, life-saving information’” because that statement (according to Plaintiffs) constitutes “fear mongering,” “impl[ies] a nefarious and unjustified lack of transparency on the hospitals’ part,” and “pressur[es] hospitals” to provide safety data to Leapfrog by criticizing them for failing to do so. (*Id.* at 2-3.) Although nothing in this Court’s injunction order even purports to restrict Leapfrog’s expression via leapfroggroup.org, which does not assign or display Safety Grades at all, and although the injunction covers only named Plaintiffs themselves, the letter demands relief as to leapfroggroup.org and as to “all Tenet-owned hospitals.” (*Id.* at 4.) The only specific

provision of the injunction that Plaintiffs cite to support their demand is the prohibition against Leapfrog “circumvent[ing] the relief” elsewhere specified. (*Id.* at 4.)

The letter further demands that “Leapfrog agree that it will not rate or otherwise score any Tenet-owned [Ambulatory Surgical Center (ASC)] facility” as part of Leapfrog’s anticipated ASC public reporting program. (*Id.* at 5.) Of course, the Court’s injunction order did not discuss ASCs because the only plaintiffs before the Court were the five hospitals. Nor could the Court have been adjudicating the new program considering that it was not unveiled until April 1, 2026—*after* the Court had adjudicated the issues before it and entered its injunction order.

LEGAL STANDARD

Federal Rule of Civil Procedure 59(e) authorizes motions to alter or amend a judgment within 28 days of the judgment when a party seeks “reconsideration of matters properly encompassed in a decision on the merits.” *Osterneck v. Ernst & Whitney*, 489 U.S. 169, 174 (1989). “The Rule gives a district court the chance ‘to rectify its own mistakes in the period immediately following’ its decision.” *Banister v. Davis*, 590 U.S. 504, 508 (2020) (citation omitted). The grounds for Rule 59(e) relief include newly discovered evidence or clear errors of law or fact. *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007). Rule 59(a)(1)(B) allows for a motion for a new nonjury trial if “the verdict ... will result in a miscarriage of justice” or “is against the clear weight of the evidence.” *Jenkins v. Anton*, 922 F.3d 1257, 1264 & n.7 (11th Cir. 2019) (alteration in original and citation omitted). Independently, a court retains inherent authority to clarify an injunction where its scope is ambiguous or where compliance questions arise. *See, e.g., Hodge v. Dep’t of Housing & Urban Dev., Housing Div., Dade Cnty., Fla.*, 862 F.2d 859, 861-62 (11th Cir. 1989).

ARGUMENT

I. THE COURT SHOULD WITHDRAW THE INJUNCTION BECAUSE THE FIRST AMENDMENT PROTECTS LEAPFROG’S SAFETY GRADES AND THEIR UNDERLYING METHODOLOGY

The Court should reconsider or clarify the judgment because it breaks from at least two cornerstones of First Amendment law. First, it imposes liability on Leapfrog for statements of pure opinion that are not actionable. Second, even if certain statements were susceptible to proof of truth or falsity, the judgment imposes liability for purportedly misleading speech even though the Court did not make—and the record does not support—a finding of actual malice. For either

reason or both, the Court should withdraw the injunction and enter judgment for Leapfrog, order a new trial, or conduct further proceedings to revisit these constitutional premises.

A. Leapfrog’s Safety Grades And Their Fully Disclosed Underlying Methodology Are Protected Pure Opinion

As an initial matter, Leapfrog’s Safety Grades and the underlying imputed-value methodology on which they are partly based are both pure opinion that is unassailable under the First Amendment. Leapfrog cannot properly be held liable for either.

The First Amendment bars the government from “abridging the freedom of speech, or of the press.” U.S. Const., amend. I. To ensure the uninhibited marketplace of ideas envisioned by its Framers, the First Amendment affords absolute protection to “statements of pure opinion.” *Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018). Viewed through the lens of the United States Constitution, there is no such thing as a false idea,” no matter “how pernicious it may seem.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974). Accordingly, the First Amendment protects expression on matters “not readily capable of being proven true or false,” *Turner*, 879 F.3d at 1264, and “comment or opinion based on facts which are set forth in the publication or which are otherwise known or available to the reader or listener as a member of the public,” *id.* at 1262.

In its motion to dismiss order, the Court correctly recognized both these principles and their application “to online grading services,” like Leapfrog’s, “which often rely on a subjective weighing of objective data.” (Dkt. 41 at 5.) By contrast, the Court isolated claims that “challenge [the] false or misleading statements made about the rating process itself” as not necessarily facing the same First Amendment bar. (*Id.*) On that basis, the Court denied Leapfrog’s motion to dismiss and allowed the case to proceed; the Court’s essential, express premise was that this “action arises from a challenge to Defendant’s *representations about* its methodology.” (*Id.* at 6 (emphasis added).) Elucidating the constitutional line it was drawing, the Court cited several cases that applied the same line so as to protect publication of opinions—such as business ratings provided by third parties like the Better Business Bureau, *e.g.*, *Home Performance Alliance, Inc. v. Better Business Bureau of W. Fla., Inc.*, 354 So. 3d 1165, 1166 (Fla. 2d DCA 2023), and comments based on information that is fully disclosed or available to the public, *e.g.*, *From v. Tallahassee Democrat, Inc.*, 400 So. 2d 52, 57 (Fla. 1st DCA 1981). (Dkt. 41 at 6.)

Yet the Court’s injunction order proceeded to transgress the constitutional line by faulting Leapfrog’s protected opinions. The Court’s analysis focused almost entirely on Leapfrog’s

imputed-value methodology, not on Leapfrog’s representations *about* the methodology and Grades. The injunction similarly ventures beyond merely preventing or remedying any ostensible “representations about [Leapfrog’s] methodology.” (*Id.*) After all, *misrepresentations* about the *methodology* could not possibly justify enjoining publication of the *grades themselves*—any more than an alleged misrepresentation by *The New York Times* about its policy for handling anonymous sources could ever justify an injunction barring *The New York Times* from publishing articles using anonymous sources. The injunction order nonetheless entirely bars Leapfrog from using the methodology itself, as well as any similar methodologies, and restrains Leapfrog from publishing Safety Grades using the methodology, now or ever, irrespective of how precisely and fulsomely Leapfrog may disclose all relevant particulars to consumers.¹ (Dkt. 212 at 40-41.) Thus, without saying so, the injunction order ostensibly transgresses the acknowledged guardrails.

The upshot is error. Leapfrog should not face liability under FDUTPA for how it chooses to evaluate hospital safety or for the gloss it puts on its evaluation. As Judge Altman has colorfully explained, when it comes to “assessments of a company’s ‘safety rating’” by third-party websites that review “publicly available data,” “there is no *reality*—there’s just everyone’s opinion.” *U.S. Structural Plywood Integrity Coalition v. PFS Corp.*, 524 F. Supp. 3d 1320, 1334-35 (S.D. Fla. 2021). That observation is equally apt and dispositive here. When Leapfrog formulates and conveys its Safety Grades, it is offering pure opinions that are constitutionally protected.

It should be beyond dispute that the Safety Grades themselves are protected opinion. As the Court’s injunction order makes clear, evaluating hospital safety is no exact science. To determine its Safety Grades, Leapfrog uses a combination of “22 quality safety metrics,” which Leapfrog identifies and must determine how to weigh in determining a hospital’s Safety Grade. (Dkt. 212 at 4.) Leapfrog splits these metrics into two categories—ten “Outcome” measures and twelve “Structural/Process” measures—with each category accounting for 50% of a hospital’s

¹ Factual representations about Leapfrog’s methodology might have included, for example, Leapfrog’s suggestion that its Safety Grades reflect “how well a hospital does on safety, not whether they complete the Leapfrog Survey” or that its methodology is peer-reviewed. (Dkt. 212 at 24-25.) But the injunction does not address those representations. Instead, it squarely outlaws the imputed-value methodology and similar methodologies for Safety Grades. That noted, Leapfrog has removed the reference to peer review and made clear that its Safety Grades reflect Leapfrog’s perspective on a hospital’s safety performance. Although Leapfrog respectfully contends that those statements both deserve First Amendment protection and were truthful, it suffices for purposes of this motion to note that they cannot possibly justify this injunction.

Safety Grade. (*Id.* at 5.) In addition to determining how to evaluate each of these metrics, Leapfrog draws its data from multiple sources, including its own safety survey, and must determine “ways of dealing with missing data.” (*Id.*) The end result of Leapfrog’s intricate and evaluative process is a letter grade ranging from A to F. As the Court’s motion to dismiss order and other decisions recognize, such letter grades can only be said to amount to a “subjective assessment” not susceptible—and certainly “not *readily* capable”—“of being proven true or false.” *Turner*, 879 F.3d at 1264 (emphasis added); *see Home Performance*, 354 So. 3d at 1166 (dismissing claims based on the Better Business Bureau’s “D+” rating, “which is a nonactionable opinion”).

The same is true of Leapfrog’s imputed-value methodology. That methodology is a response to “an understandable issue”—namely, the fact that “survey information is not available” for nonparticipating hospitals, such that those hospitals cannot be evaluated for several criteria that Leapfrog deems essential to assessing their safety. (Dkt. 212 at 2, 6.) And Leapfrog’s previous method of “imputing the cohort means” of participating hospitals conferred on nonparticipating hospitals “what Leapfrog perceived to be an underserved benefit.” (*Id.* at 6.) Leapfrog is a nonprofit dedicated to promoting transparent patient decision-making and, accordingly, has long resolved to “provid[e] a Safety Grade to all eligible hospitals, regardless of whether the hospital voluntarily reports information” in response to Leapfrog’s survey. (*Id.* at 4.) So rather than stop grading nonparticipating hospitals, Leapfrog altered its grading methodology to assign or impute numerical values for four metrics—computerized physician order entry, bar code medication administration, ICU physician staffing, and hand hygiene—that Leapfrog could not measure for those hospitals. (*Id.* at 6.) If no historical data on these metrics exists for a nonparticipating hospital, Leapfrog assigned it a score “based on the lowest score of a participating hospital for that measure”—15, 25, 5, and 15 for each of the four metrics, respectively. (*Id.* at 6-7.)

Nonparticipating hospitals might well think they are being “penalized” in the rankings if the imputed metrics do not fairly represent how well they would be scored if they disclosed all their data—dissenters from ranking systems often level just such accusations. *See, e.g., David Lat, Yale and Harvard Law to U.S. News: Drop Dead*, Original Jurisdiction (Nov. 17, 2022), <https://davidlat.substack.com/p/yale-and-harvard-law-to-us-news-drop> (“[W]hen schools don’t play ball with U.S. News, forcing the magazine to use ‘placeholder values,’ they tend to drop.”). But any rater’s imputation of numerical values for nonparticipants is ultimately a judgment call—a “subjective assessment” that is not objectively verifiable. *Turner*, 879 F.3d at 1264. Here, there

is no way to prove or disprove whether a hospital deserves a particular numerical score when implementing a subjective framework for metrics designed to measure something as qualitative as hospital safety. And that is all that matters under the First Amendment. “[T]he First Amendment protects subjective evaluations because they are not susceptible of being verified as true or false.” *Partington v. Bugliosi*, 56 F.3d 1147, 1158 (9th Cir. 1995). That protection extends to unverifiable assessments of all types—from statements that a production was “fake” and “phony,” *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 728 (1st Cir. 1992), to the statement that a professional football coach engaged in “homophobic taunting,” *Turner*, 879 F.3d at 1264, to the claim that an employer was “unfair to black employees,” *Beverly Hills Foodland, Inc. v. United Food & Commercial Workers Union, Local 655*, 39 F.3d 191, 195-96 (8th Cir. 1994). The assessment of nonparticipating hospitals’ safety across four disputed metrics is no more verifiable than any other prototypical opinion. Nor is it any more actionable under the First Amendment.

If anything, the First Amendment’s protection of pure opinion applies with added force to Leapfrog’s imputed-value methodology, given the incomplete information on which Leapfrog must rely. The First Amendment affords members of the press, like Leapfrog, “the interpretive license that is necessary when relying upon ambiguous sources.” *Masson v. New Yorker Magazine*, 501 U.S. 496, 519 (1971); see *Moldea v. New York Times Co.*, 22 F.3d 310, 316 (D.C. Cir. 1994) (“[S]ome materials by their very nature require interpretation, and the First Amendment affords latitude to those engaged in that task.”). That protection includes license to weigh the import of missing data in the context of assessing overall safety. This Court in its injunction order acknowledged the inherently evaluative nature of that determination, reasoning that Leapfrog responded to the “understandable issue” of weighing absent data differently at different times, ultimately culminating in an “[a]ssum[ption] that ... hospitals choosing not to participate necessarily had something to hide with respect to patient safety.” (Dkt. 212 at 2, 6.) That is the definition of an inference drawn from “inherently ambiguous materials or subject matter,” and the First Amendment protects such inferences as opinions. *Moldea*, 22 F.3d at 315.

Even if the Court—or a majority of observers, for that matter—would draw a different inference from missing data, the First Amendment protects Leapfrog’s imputation of scores all the same. Any “argument that another reader might come to a different conclusion upon review of the facts ... does not make [Leapfrog’s] assessment ... anything other than opinion.” *Turner*, 879 F.3d at 1264. Disagreement about how to weigh nonparticipating hospitals’ performance using

missing data at most “reflects differing interpretations of the murky facts.” *Lane v. Random House, Inc.*, 985 F. Supp. 141, 152 (D.D.C. 1995). It suffices that Leapfrog’s “account of inherently ambiguous materials” falls within the “wide range of possibilities.” *Partington*, 56 F.3d at 1154 (alterations adopted; quotations omitted). Indeed, that is “precisely when [courts] need and must permit a free press to ask the question.” *Id.* (citation omitted). Nor could FDUTPA, consistent with the First Amendment, require Leapfrog to afford veto or opt-out power to nonparticipating hospitals. The Constitution does not abide a legal framework that leaves “no room for expressions of opinion by commentators” or “experts in a field,” or where publishers “of every sort would be forced to provide only dry, colorless descriptions of facts, bereft of analysis or insight.” *Id.*

But even if the Court disagrees about the verifiability of the imputed-value scores, it should still enter judgment in Leapfrog’s favor because there is no dispute that Leapfrog *disclosed* its basis for imputing those scores. It is axiomatic—particularly within the Eleventh Circuit—that “a defendant publishes a ‘pure opinion’ when the defendant makes a comment or opinion based on facts which are set forth in the publication or which are otherwise known or available to the reader or listener as a member of the public.” *Turner*, 879 F.3d at 1262; *accord Partington*, 56 F.3d at 1156-57 (“[W]e join with the other courts of appeals in concluding that when an author outlines the facts available to him, thus making it clear that the challenged statements represent his own interpretations of those facts ... , those statements are generally protected by the First Amendment.”); *Hay v. Independent Newspapers, Inc.*, 450 So. 2d 293, 295 (Fla. 2d DCA 1984) (holding that statements were protected as opinion because they “were based in part upon facts disclosed in [an] article” and on facts “known or available to the reader”). And Leapfrog unquestionably made its imputed-value methodology available to viewers. (Dkt. 212 at 13-15.) That fully disclosed evaluative method is beyond reproach under the First Amendment.

The Court’s injunction order seems to depart from this principle. Multiple times, the order acknowledged that Leapfrog’s imputed-value methodology was available on its website. (*Id.* at 13, 14, 15, 26 n.7, 30.) Yet the Court still held Leapfrog liable for the methodology on the theory that Leapfrog’s explanation of the methodology was not prominent enough and visited by website users with enough frequency. (*E.g., id.*)

That approach was misconceived. The imputed values reflect an inference based on a fully disclosed and indisputably *truthful* fact—that Plaintiffs and other nonparticipating hospitals had not made their data for those metrics available. For an opinion to qualify as constitutionally

protected, the facts on which it is based may be “set forth in the publication” itself or “otherwise known or available to the reader.” *Turner*, 879 F.3d at 1262. Here, Leapfrog’s methodology was *both*. And because Leapfrog’s “rationale for [its] view ... was exposed,” the imputed values “reasonably could be understood only as [Leapfrog’s] personal conclusion about the information presented, not as a statement of fact.” *Phantom Touring*, 953 F.2d at 730; *see also, e.g., ONY, Inc. v. Cornerstone Therapeutics, Inc.*, 720 F.3d 490, 497-98 (2d Cir. 2013) (holding that scientists’ “conclusions reached by experiments” are protected by the First Amendment when presented with “an accurate description of the data taken into account and the methods used”).

To require more from Leapfrog would expose reviewers and commentators of every stripe to civil lawsuits and injunctions of this sort. Truthful disclosure of methodologies could still be picked apart in court (through multi-day trials) as unduly subtle, obscure, or misunderstood. The inalienable right to free expression becomes alienable once made to depend on proving readers’ diligence or satisfying judges’ preferences for web design. An author who publishes a lengthy, scathing condemnation of a presidential administration could be sued for failing to disclose her factual sources before readers reach the endnotes hundreds of pages into the book. A controversial blogger could be held liable for her opinion because a jury determined that it took too long and too many clicks to reach a hyperlink bridging to pertinent facts. Such second-guessing of accurate factual disclosures denies the “breathing space” that “First Amendment freedoms need ... to survive.” *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 609 (2021) (citation omitted).

The same error is evident in the Court’s injunction order. Notwithstanding Leapfrog’s disclosure of its methodology for its imputed-value scores, the Court still holds Leapfrog liable because it took up to “23 clicks” to navigate to the methodology and viewers were “likely” to have already decided that nonparticipating hospitals’ Safety Grades relied entirely on available data by the time they reached the disclosure. (*Id.* at 26 n.7, 30.) Courts widely recognize that “providing a link [to source material] can supply the factual disclosure necessary to confer constitutional protection.” *Lewis v. Abramson*, 673 F. Supp. 3d 72, 93 (D.N.H. 2023) (citations omitted; collecting cases). And navigating two dozen clicks away is, if anything, easier than reviewing the entirety of a lengthy book or report—such as the 144-page report that the Eleventh Circuit in *Turner v. Wells* held contained protected pure opinion based on various disclosures of underlying facts at various turns. 879 F.3d at 1261, 1264-65. When it comes to matters of public concern like patient safety, the only question is whether the pertinent facts have been disclosed, not whether

the disclosure was prominent or approved by a court. Indeed, courts consistently excuse speakers even from disclosing the facts underlying public commentary, provided the facts are “otherwise ... *available* to the reader or listener as a member of the public.” *From*, 400 So. 2d at 57 (emphasis added). Needless to say, the facts that Leapfrog was going out of its way to disclose on its public-facing website were thereby “available” to any member of the public who wished to look. Because Leapfrog’s imputed-value framework was a disclosed method of evaluating hospital safety under settled law, it cannot give rise to liability under the First Amendment.

B. Even If Leapfrog’s Safety Grades And Their Underlying Methodology Were Not Pure Opinion, They Are Protected Absent A Missing, Unsupported Finding Of Actual Malice

There is another, independent reason why the injunction is constitutionally infirm: The Court never made the finding of actual malice that the First Amendment requires before false speech on matters of public concern, like patient safety, may be suppressed or penalized.

Even assuming that Leapfrog’s Safety Grades or its imputed-value methodology are provably or were proven false, the First Amendment protects them. The Supreme Court’s decision in *United States v. Alvarez*, 567 U.S. 709 (2012), forecloses the assumption that falsity alone justifies suppression of protected speech. As a plurality of the Court explained, “falsity alone may not suffice to bring speech outside the First Amendment.” *Id.* at 719.² Instead, citing its decision in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), the plurality explained that “[t]he statement must be a knowing or reckless falsehood”—that is, made with actual malice. 567 U.S. at 719. While the plurality acknowledged that the First Amendment does not protect certain distinct categories of false speech—such as defamation, fraud, and perjury—it explained that the falsity of such speech alone was not “determinative” in assessing its constitutional status and “reject[ed] the notion that false speech should be in a general category that is presumptively unprotected.” *Id.* at 719, 722. More recently, a majority of the Court emphasized that “these exceptional categories” of unprotected speech “are few and narrowly drawn, and all share a long and well-recognized historical pedigree.” *Chiles*, 146 S. Ct. at 1021. The Eleventh Circuit has taken the cue, adopting as binding precedent the *Alvarez* plurality’s conclusion that courts lack “freewheeling authority to declare new categories of speech outside the scope of the First

² Although *Alvarez* was decided by a plurality, six Justices agreed that falsity alone does not justify prohibiting speech. See 567 U.S. at 731-32 (Breyer, J., concurring in the judgment).

Amendment.” *Otto v. City of Boca Raton*, 981 F.3d 854, 866 (11th Cir. 2020) (citation omitted). That includes speech covered by FDUTPA, an exceedingly broad 1973 state statute that has never been taken as confined to the few delimited, enumerated categories of unprotected speech.

The need to prove actual malice is so well established that Plaintiffs themselves have acknowledged it. In their proposed findings, Plaintiffs recognized that the standard for liability if the First Amendment applies (as it does) “would simply require clear evidence that Leapfrog knew its representations are ‘false’ or that Leapfrog ‘reckless[ly] disregarded’ the risk of falsity.” (Dkt. 136 at 64 (citing *Hunt v. Liberty Lobby*, 720 F.2d 631, 642 (11th Cir. 1983)).) As Plaintiffs’ acknowledgment confirms, actual malice must be found by clear and convincing evidence before liability can be imposed for Leapfrog’s Safety Grades or methodology, even assuming their falsity.

No such finding has been made, nor would the record support one. The Court found that Leapfrog acted with “punitive” intent (Dkt. 212 at 20), apparently meaning that Leapfrog adopted the imputed-value methodology in an effort to pressure nonparticipating hospitals into agreeing to participate in Leapfrog’s Hospital Safety Survey. So long as speech is not defamatory or fraudulent, however, a consumer-advocacy organization like Leapfrog is entitled under the First Amendment to “pressure” Plaintiffs into participating in its survey. “The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment,” so Leapfrog is protected even if it “plainly intended to influence [Plaintiffs’] conduct by their activities; this is not fundamentally different from the function of a newspaper.” *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). Holding that speech was intended to be “punitive” does not equate to actual knowledge that Leapfrog’s assessment of those hospitals’ safety was false. Nor does it bear on whether Leapfrog recklessly disregarded the truth. The actual malice test “is subjective,”; the plaintiff must show that the defendant “*in fact* entertained serious doubts as to the truth of his publication.” *Berisha v. Lawson*, 973 F.3d 1304, 1312 (11th Cir. 2020) (citation omitted). The defendant must have published the statement “with a ‘high degree of awareness’ of its ‘probable falsity’”—such a high degree that “[e]ven an extreme departure from professional publishing standards does not necessarily rise to the level of actual malice.” *Id.* (alteration adopted; citation and internal quotation marks omitted).

This record contains no evidence that Leapfrog in fact or subjectively doubted the truth of its assessment. To the contrary, the Court’s findings reflect that Leapfrog’s methodology was developed with the involvement of an expert panel, that the panel debated various approaches to

handling missing data, and that Leapfrog, in response to the “understandable issue” of having to grapple with missing data, adopted a non-response-bias rationale for the Fall 2024 change. (DE 212 at 6-8.) While the Court may disagree with that decision and its rationale, a speaker’s development of a methodology through expert consultation in pursuit of the legitimate goal of improving data completeness is incompatible with the notion that the speaker acted with “knowledge that [its conclusions were] false or with reckless disregard of whether [they were] false or not.” *Sullivan*, 376 U.S. at 279-80. For the avoidance of doubt, Leapfrog respectfully stands behind that methodology, even today, and believes that it represents the best available way to assess safety in the absence of nonparticipating hospitals’ survey data.

FDUTPA liability should not be imposed against Leapfrog before actual malice has been found, much less found by clear and convincing evidence. For this reason, too, the Court should reconsider the judgment and withdraw its injunction, or alternatively, order a new trial.

For all of these reasons, the Court should reconsider its implicit conclusion that the First Amendment does not protect Leapfrog’s Safety Grades or imputed-value methodology. Importantly, reconsideration is warranted even if the Court does not revisit its factual findings that Leapfrog’s Safety Grades and methodology caused harm. Leapfrog, to be sure, respectfully disagrees with those findings. Nonetheless, they have no bearing on whether Leapfrog’s expression is constitutionally protected. “Speech,” of course, “is powerful” and “can ... inflict great pain.” *Snyder v. Phelps*, 562 U.S. 443, 460 (2011). But courts “cannot react to that pain by punishing the speaker.” *Id.* at 460-61. Nor is it plausible that speech in the healthcare context, which “can involve life or death situations” (Dkt. 212 at 29), is less protected. As the Supreme Court reaffirmed shortly after this Court’s injunction order, “the dangers associated with censorship ... are no less acute in the fields of medicine and public health than they are anywhere else,” *Chiles*, 146 S. Ct. at 1025 (quotation marks omitted), and the urgent public importance of patient safety in the healthcare industry counsels for—not against—fully protecting robust expression and expert commentary within this vitally important realm.

Nor would withdrawing the injunction render Plaintiffs speechless or powerless. Many institutions face third-party ranking systems that they criticize. The medicine for that in our country has always been the same as the perceived disease—protected expression. *See supra*, p. 10. Nothing stops Plaintiffs from criticizing Leapfrog or from lobbying to change its approach; as

the Court’s order observes, “Leapfrog has previously received criticism for its methodology” (Dkt. 212 at 2), and Plaintiffs are entirely within their rights to join and to cheer those critics. But Plaintiffs here chose a different route—marshalling their formidable resources to retain high-powered counsel, obtain a permanent injunction restraining the speech of their watchdog adversary, and wield the threat of contempt to censor and chill an even broader set of expression prospectively. That approach is anathema to the First Amendment. Plaintiffs’ remedy for any harm they claim resides not in “the conscience of judges and juries but [i]n the competition of other ideas.” *Gertz*, 418 US. At 339-40. Absent any injunction, Plaintiffs enjoy the same First Amendment rights as Leapfrog and can strive to prevail in the court of public opinion.

II. THE COURT SHOULD WITHDRAW THE INJUNCTION BECAUSE FDUTPA DOES NOT BAR LEAPFROG’S SAFETY GRADES AND THEIR UNDERLYING METHODOLOGY AS A MATTER OF LAW

To avoid these constitutional questions, the Court could alternatively reconsider the judgment on statutory grounds. To be unlawful under FDUTPA, an act or practice must be “unfair or deceptive.” Fla. Stat. § 501.204(1). Leapfrog’s Safety Grades and fully disclosed methodology do not so qualify under longstanding Florida principles of statutory interpretation.

First, neither Leapfrog’s Safety Grades nor its imputed-value methodology is unfair within the meaning of FDUTPA. As the Court’s injunction order recognizes, “[t]he Florida Supreme Court has defined ‘unfair practice’ as ‘one that offends public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.’” (Dkt. 212 at 18 (quoting *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003)).) Leapfrog’s Safety Grades and imputed-value methodology could not have violated this test. The Florida Legislature has declared “that the public policy of this state” is “to protect the right in Florida to exercise the rights of free speech in connection with public issues” and to hasten the dismissal of suits—like this one—that “are inconsistent” with those rights. Fla. Stat. § 768.295(1). That principle alone should preclude liability, but it is bolstered by the constitutional-avoidance doctrine. FDUTPA’s concept of unfairness, like the “[o]utrageousness” requirement in intentional infliction of emotional distress claims, “is a highly malleable standard with an inherent subjectiveness about it which would allow a [court] to impose liability on the basis of ... tastes or views.” *Snyder*, 562 U.S. at 458. That ambiguity is doubly dangerous as applied to watchdog organizations like Leapfrog, which exercise both the freedom of speech and of the press. And in Florida, “[i]t is a well-settled principle of statutory construction that when faced with two

reasonable interpretations of a statute,” courts should “adopt the one that avoids constitutional questions.” *Brito v. Salas*, 2025 WL 3765686, at *9 (Fla. Dec. 30, 2025). Applying that principle here, the Court should avoid interpreting FDUTPA’s prohibition on “unfair” practices to apply to a nonprofit’s non-commercial, protected speech on a matter of public concern.

The Court should take a like approach to interpreting “deceptive.” The Court reasoned that “deceptive” means “a representation, omission, or practice likely to mislead a consumer acting reasonably in the circumstances” and recognized that “Leapfrog’s intent matters.” (Dkt. 212 at 18, 20.) To avoid any serious constitutional question or unconstitutional application, the Court should interpret FDUTPA to require at least actual malice as applied to press institutions speaking on matters of public concern, and should credit Leapfrog’s disclosed methodology for Safety Grades as something a reasonable consumer would review before relying on them.

III. THE COURT SHOULD WITHDRAW, DISSOLVE, OR NARROW THE INJUNCTION BECAUSE THE INJUNCTION IS AN UNCONSTITUTIONAL PRIOR RESTRAINT AND UNCONSTITUTIONALLY COMPELS SPEECH

Even apart from the merits, the Court should reconsider the scope of the relief it ordered and withdraw or narrow the injunction. The injunction violates the First Amendment in at least two separate ways: It is an unconstitutional prior restraint and unconstitutionally compels speech.

A. The Injunction Imposes An Unconstitutional And Overbroad Prior Restraint

The First Amendment’s “chief purpose” is to “prevent previous restraints upon publication.” *Near v. State of Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931). “[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). Such restraints quintessentially include “judicial orders forbidding certain communications when issued in advance ... such communications.” *Alexander v. United States*, 509 U.S. 544, 550 (1993) (citation and emphasis omitted). “Temporary restraining orders and permanent injunctions—*i.e.*, court orders that actually forbid speech activities—are classic examples of prior restraints.” *Id.* To determine whether an injunction constitutes an impermissible prior restraint, courts look first to whether the injunction is content-based or content-neutral. Content-based injunctions that proscribe speech itself are *per se* unconstitutional. “Courts typically refuse to grant ... injunctions regarding speech in any circumstance, *even where liability ... has been found.*” *Basulto v. Netflix, Inc.*, 2023 WL 7129970, at *52 (S.D. Fla. Sept. 20, 2023) (emphasis in original); *see also Sindi v. El-Moslimany*, 896 F.3d 1, 30 (1st Cir. 2018) (dissolving permanent injunction against speech

adjudicated to be defamatory and published with actual malice). Although courts apply this limit on relief in defamation cases, it applies equally when the cause of action is a different tort implicating speech. *E.g., Patriot Lending Servs., Inc. v. Amerifirst Fin. Corp.*, 2020 WL 758155, at *2 (M.D. Fla. Feb. 14, 2020) (applying same rule in trade secrets case).

The injunction here is a content-based restraint against speech on particular topics and is thus unconstitutional. Its orders to “cease assigning” Safety Grades and “cease promoting” them directly command Leapfrog to abstain from future publications on the subject matter of Safety Grades as they pertain to Plaintiffs. (Dkt. 212 at 40-41.) Courts consistently deem similar injunctions enjoining defendants from publishing content—even content found to be defamatory—about plaintiffs to be “necessarily a regulation of the subject matter of that speech.” *Krapacs v. Bacchus*, 301 So. 3d 976, 980 (Fla. 4th DCA 2020).

And courts specifically recognize that injunctions cannot properly restrain even “untruthful” criticism of a business. As the Supreme Court has explained, there is no justification to “support the claim that the interest of an individual in being free from public criticism of his business practices ... warrants use of the injunctive power of a court.” *Org. for a Better Austin*, 402 U.S. at 419. Likewise, the court in *Chevaldina v. R.K./FL Mgmt., Inc.* explained that, although a speaker criticizing a business might permissibly be enjoined from “harangu[ing] individual customers, or threaten[ing] violence,” only “money damages” would be available for actionable defamation. 133 So. 3d 1086, 1092 (Fla. 3d DCA 2014). Indeed, courts consistently hold that even speech found to be entirely false cannot be subject to a prior restraint. *See Krapacs*, 301 So. 3d at 980 (injunctions “are not available to stop someone from uttering insults or falsehoods”); *Town of Lantana v. Pelczynski*, 290 So. 2d 566, 569 (Fla. 4th DCA 1974) (“Freedom from prior restraint upon speech and press extends to false, as well as true statements.”); *Vrasic v. Leibel*, 106 So. 3d 485, 487 (Fla. 4th DCA 2013) (same rule even when defendant derives a commercial gain). Whatever qualms a court may have about false or misleading speech, “[i]njunctive relief to prohibit [it] is another matter altogether.” *Chevaldina*, 133 So. 3d at 1090. Plaintiffs’ letter threatening contempt against Leapfrog highlights the danger: If Plaintiffs have their way, the Court will become enmeshed in adjudicating, on pain of contempt, what Leapfrog can and cannot say when reviewing hospital safety.

Even if the Court were to conclude that its injunction is content-neutral, the injunction would still be subject to a standard tantamount to “strict scrutiny” that it does not meet. *Madsen*

v. Women’s Health Ctr., Inc., 512 U.S. 753, 767 (1994). Even content-neutral injunctions “must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate.” *Carroll v. President & Comm’rs of Princess Anne*, 393 U.S. 175, 183 (1968). The injunction here does not answer to that description. Even if Leapfrog could be held liable for misleading about its methodology, the injunction should be narrowed to encompass at most any misleading statements about its methodology—not the methodology or Safety Grades themselves, and certainly not any distinct but “similar” methodology. (Dkt. 212 at 40); *see Bull Motors L.L.C. v. Brown*, 152 So. 3d 32, 36 (Fla. 3d DCA 2014) (narrowing injunction in FDUTPA case because “the trial court could have prohibited the conduct identified as violative of FDUTPA, without in effect dictating how this defendant should ... communicate in the future”).

B. The Injunction Unconstitutionally Compels Speech

In addition, the injunction unconstitutionally compels Leapfrog to speak contrary to its own views. Specifically, the injunction requires Leapfrog to send corrective disclosures to all entities that paid to license the Fall 2024, Spring 2025, and Fall 2025 Safety Grades, “disclosing that those Safety Grades were found to be deceptive and unfair in this action,” and to place those same corrective disclosures in future contracts, advertising materials, and other documents promoting paid licensure of the next cycle of Safety Grades in five designated zip codes. (Dkt. 212 at 41.)

Whether a court considers a defendant’s speech “sensible and well intentioned or deeply ‘misguided,’” it “may not compel a person to speak its own preferred messages.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023); *see also Wooley v. Maynard*, 430 U.S. 705, 714 (1977); *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 892 (2018). And while government may at times require the dissemination of “purely factual and uncontroversial information” in the context of commercial advertising, “outside that context it may not compel affirmance of a belief with which the speaker disagrees.” *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995) (citation omitted). Because Leapfrog’s Safety Grades reflect its “exercise of editorial control and judgment,” *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 258 (1974), the messaging around them should be Leapfrog’s alone.

CONCLUSION

For the foregoing reasons, the Court should alter its judgment by entering judgment for Leapfrog, or else, at a minimum, amend its injunction. Alternatively, the Court should hold a new trial or conduct further proceedings in order to account for constitutional limitations.

LOCAL RULE 7.1(a)(3) CERTIFICATION

Undersigned counsel certifies that on April 29, 2026, Leapfrog's counsel emailed Plaintiffs' counsel requesting Plaintiffs' position on the relief requested herein. Plaintiffs declined to provide their position over email, asked several questions about the bases for this motion over email—all of which Leapfrog's counsel answered—and requested a call to confer on April 30, 2026, which undersigned counsel agreed to. On April 30, undersigned counsel conferred via Zoom with Plaintiffs' counsel about the relief herein requested, and was unable to reach agreement.

DATED: April 30, 2026

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN LLP

By /s/ Jason D. Sternberg

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Counsel for Defendant The Leapfrog Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of April, 2026, a true and correct copy of the foregoing document was electronically transmitted to all counsel of record via the CM/ECF system.

By: /s/ Jason D. Sternberg
Jason D. Sternberg
Florida Bar No. 72887
jasonsternberg@quinnemanuel.com

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 25-CV-80526-MIDDLEBROOKS

GOOD SAMARITAN MEDICAL CENTER,
INC., DELRAY MEDICAL CENTER, INC.,
PALM BEACH GARDENS COMMUNITY
HOSPITAL, INC. D/B/A PALM BEACH
GARDENS MEDICAL CENTER, ST.
MARY'S MEDICAL CENTER, INC., AND
WEST BOCA MEDICAL CENTER, INC.,

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendants.

**[PROPOSED] ORDER GRANTING THE LEAPFROG GROUP'S
MOTION FOR RECONSIDERATION AND TO
ALTER OR AMEND THE JUDGMENT OR FOR NEW TRIAL**

THIS CAUSE having come before the Court on Defendant The Leapfrog Group's Motion For Reconsideration And To Alter Or Amend The Judgment and this Court having considered the motion and all other relevant factors, it is hereby

ORDERED AND ADJUDGED that the Motion [ECF No. __] is **GRANTED**. The Court's orders entering final judgment [ECF No. 214] and issuing an injunction [ECF No. 212] in favor of Plaintiffs are **WITHDRAWN**. Final judgment is hereby **ENTERED** in favor of Defendant The Leapfrog Group and against Plaintiffs in this action.

DONE AND ORDERED in Chambers at _____, Florida, this
day of _____.

Donald M. Middlebrooks
United States District Judge

Copies furnished to: All Counsel of Record