

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

Docket No. _____ Civ. _____

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

(FILED UNDER SEAL)

DIVERSIFIED EDUCATIONAL RESOURCES, LLC, a limited liability company, also d/b/a Jefferson High School Online and Enterprise High School Online, MOTIVATIONAL MANAGEMENT & DEVELOPMENT SERVICES, LTD., a limited liability company, also d/b/a MMDS, Ltd., Jefferson High School Online and Enterprise High School Online, IDM SERVICES LLC, a limited liability company, ALEXANDER WOLFRAM, a/k/a Alex Wolfram, individually and as an officer of IDM SERVICES, LLC, DIVERSIFIED EDUCATIONAL RESOURCES, LLC and MOTIVATIONAL MANAGEMENT & DEVELOPMENT SERVICES, LTD.; MARIA T. GARCIA, a/k/a Maria Calleja, a/k/a Maria Calleja Garcia, a/k/a Maria Trinidad Garcia Calleja, a/k/a Mary Garcia, a/k/a Mary Triny, individually and as an officer of DIVERSIFIED EDUCATIONAL RESOURCES, LLC and MOTIVATIONAL MANAGEMENT & DEVELOPMENT SERVICES, LTD.;

Defendants,

and

STEINBOCK HOLDINGS LLC, a/k/a Steinboch Investments LLC, a limited liability company, ZWILLINGE, LLC, a limited liability company, TIFFANY CHAMBERS, an individual, and SYLVIA GADS, an individual;

Relief Defendants.

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER WITH AN ASSET
FREEZE AND OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION SHOULD NOT BE ENTERED**

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I. INTRODUCTION

The Federal Trade Commission (“Commission” or “FTC”) brings this action to halt a network of interconnected online high school diploma mills that sell fake high school diplomas to vulnerable consumers nationwide. Defendants claim to operate legitimate online high schools and issue purported high school diplomas to consumers who take an online test and pay a fee. Consumers attempting to use Defendants’ diplomas to enroll in college, apply for jobs, or join the military, however, quickly discover that Defendants’ so-called “high schools” are not legitimate, and their diplomas are virtually worthless. Consumers seeking refunds are ignored and dismissed. Defendants’ practices violate Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45.

To put an immediate stop to Defendants’ illegal activities, the FTC seeks an *ex parte* temporary restraining order (“TRO”) and an order to show cause why a preliminary injunction should not issue. The proposed TRO would enjoin Defendants’ illegal practices and freeze their assets. Because Defendants operate a business that is permeated with fraud, the FTC seeks the TRO on an *ex parte* basis. These measures are necessary to prevent continued consumer injury, dissipation of assets, and destruction of evidence, and thereby to preserve the Court’s ability to provide effective final relief.

II. PARTIES

A. The Federal Trade Commission

The FTC is an independent agency of the United States government created by statute. 15 U.S.C. § 41 *et seq.* The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC is authorized to initiate United States District Court proceedings by its own attorneys to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including consumer redress. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), and 57b(b); *see FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996) (holding that “the unqualified grant of statutory authority to issue an injunction under section 13(b) carries with it the full range of equitable remedies, including the power to grant consumer redress and compel disgorgement of profits.”); *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1252-53 (S.D. Fla. 2007) (same).

B. The Defendants

Defendants constitute a common enterprise of entities that operate and facilitate the online diploma mill operation, as well as individuals who have authority to control and directly participate in the unlawful activities. In addition, four relief defendants unjustly reap significant financial benefits from Defendants' unlawful practices.

1. The Corporate Defendants

Defendant **Diversified Educational Resources, LLC** ("DER") is a Florida limited liability company, formed on August 24, 2012. (PX14 Attach. A at 110.)¹ Using the trade names "Jefferson High School Online" and "Enterprise High School Online," DER markets and sells fake high school diplomas to consumers nationwide via its Internet websites, including jeffersonhighschoolonline.com, jeffersonhighschool.us, enterprisehighschool.us, and ehsonlinehighschool.org. (See PX14 ¶ 16 and Attachs. N at 216, R at 307, S at 371, U at 437.) DER is owned and operated by Alexander Wolfram and Maria Garcia. (PX14 ¶¶ 16 and 33 and Attachs. A at 110, I at 178, W at 493, 500, 514-24, and AG at 641-42.) Corporate papers and Defendants' websites list DER's principal place of business at 1451 West Cypress Creek Road, Suite 212, Fort Lauderdale, FL 33309. (*Id.* Attachs. A at 110, N at 216, R at 313.) This address corresponds to a virtual office location serviced by Davinci Virtual Office Space & Solutions. (*Id.* Attach. L at 188.) Davinci forwards all DER correspondence to 6030 E. Monterra Way, Scottsdale, AZ 85266. (*Id.*) This address is the personal residence of Wolfram. (*Id.* ¶ 10 and Attach. G1 at 171.)

Defendant **Motivational Management & Development Services, Ltd.** ("MMDS") is a St. Kitts & Nevis company. (*Id.* Attachs. M at 190, S at 344, AK at 686.) Between 2006 and 2012, MMDS, doing business as "Jefferson High School Online" and "Enterprise High School Online," marketed and sold fake high school diplomas to consumers via its Internet websites, including jeffersonhighschoolonline.com, enterprisehighschool.us, and ehsonlinehighschool.org. (*Id.* Attachs. M at 190, S at 344, W at 482, 502, and 508; PX02 Attach. A at 12; PX04 Attach. A at 32; PX10 Attach. A at 71.) MMDS is owned and operated by Alexander Wolfram and Maria Garcia. (PX14 ¶¶ 16, 26 and 33 and Attachs. W at 509-13, AD at 620-21 and 623, AK at 687-

¹ There are 14 declarations submitted as exhibits in support of this motion, numbered PX01 to PX14. The declarations and any attachments to these declarations are consecutively numbered.

88, AK1 at 693-94, AK2 at 699-700, AQ at 751.) MMDS uses its business accounts to pay costs and fees associated with Defendants' online diploma mills and to distribute funds to Individual Defendants and Relief Defendants. (*Id.* ¶ 40.) Bank signature cards, service contracts, and MMDS's website list MMDS's principal place of business in the U.S. at 441 N Grand Ave. Suite 432, Nogales, AZ 85621. (*Id.* Attachs. M at 190, AD at 622, AK at 686.)

Defendant **IDM Services LLC** ("IDM") is a Wyoming limited liability company formed on December 6, 2005. (*Id.* Attach. B at 119-21.) IDM is owned by Alexander Wolfram. (*Id.* ¶ 33 and Attachs. B at 123 and 125, AI at 652-53, AI1 at 657-58.) Corporate papers list IDM's principal place of business at 1712 Pioneer Ave., Cheyenne, WY 82001, which is a mail drop address. (*Id.* ¶¶ 9, 11 and Attachs. B at 123, G at 169.) IDM has used its business accounts to receive funds generated by Defendants' online diploma mills and has transferred funds into DER and MMDS's business accounts, as well as into other accounts owned by Wolfram or by Relief Defendants Tiffany Chambers and Sylvia Gads. (*Id.* ¶¶ 35-36.) IDM has also used its bank account to pay for various costs and fees associated with Defendants' online diploma scam, including domain registration and hosting fees for Defendants' Internet websites, virtual office fees associated with DER's Ft. Lauderdale virtual address, phone service fees for Defendants' toll-free telephone number, and mailing and shipping fees incurred by MMDS and DER. (*Id.* ¶ 30, 36.)

2. The Individual Defendants

Defendant **Alexander Wolfram** is the principal and owner of DER, MMDS, and IDM (the "Corporate Defendants"). (*Id.* ¶ 16, 26 and 33 and Attachs. B at 123, AG at 641-42, AI2 at 663, AK1 at 693-94.) Wolfram has signatory authority over the Corporate Defendants' bank accounts. (*Id.* ¶ 33 and Attachs. AG at 641-42, AI at 652-53, AK at 687-88.) Wolfram's name does not appear on DER's corporate filings or service contracts. (*Id.* Attachs. A at 110-17 (Wolfram not on DER's corporate filing), I at 178 (Wolfram initially registered for DER's virtual office but transferred registration to Maria Garcia), W at 480-507 (Wolfram is not the registrant or contact for Defendants' websites), AF at 636 (Wolfram not on telephone service contract).) Nevertheless, Wolfram pays nearly all domain registration and hosting fees for Defendants' Internet websites, as well as all fees associated with DER's virtual office rental and telephone number, using the IDM and MMDS business accounts. (*Id.* ¶¶ 16, 30, 36 and 40 and Attachs. K at 185-86, AF at 636.) In addition, DER's virtual office forwarding address - 6030 E.

Monterra Way, Scottsdale, AZ 85266 – is Wolfram’s personal residence. (*Id.* ¶ 10 and Attachs. G1 at 171, L at 188.)

Defendant **Maria T. Garcia** is a Mexican national (*id.* Attach. J at 181-82), who is a principal, owner, and manager of DER and MMDS (*id.* Attachs. A at 110, AG at 641-42, AK at 687-89). Garcia is a signatory on DER and MMDS corporate accounts. (*Id.* Attach. AG at 643, AK at 689.) The Florida School Choice Database, where Jefferson High School Online is registered, lists Garcia as the school’s sole contact. (*Id.* Attach. AU at 982.) Garcia maintains the domain names and is the registrant and technical, billing, and administrative contact for Defendants’ Internet websites. (*Id.* Attach. W at 480-507.) Garcia is also the primary contact on DER’s account with Davinci Virtual Office Space & Solutions, as well as on MMDS’s account with UPS. (*Id.* Attach. L at 188; AD at 626.) In addition, Garcia has paid domain registration and hosting fees for Defendants’ websites. (*Id.* Attach. W at 510-11.)

3. The Relief Defendants

Relief Defendant **Steinbock Holdings LLC** (“Steinbock”)² is a Wyoming limited liability company with its principal place of business at 1712 Pioneer Ave., Cheyenne, WY 82001, which is a mail drop address. (*Id.* ¶ 11 and Attach. C at 151.) Defendant Wolfram is the principal, owner, and sole manager of Steinbock, as well as the sole signatory on Steinbock’s bank accounts. (*Id.* ¶ 33 and Attachs. C at 138 and 145, AN at 719-20, AN1 at 722, AN2 at 727-28.) Steinbock has received funds that can be traced directly to Defendants’ unlawful acts or practices alleged below, and it has no legitimate claim to those funds. (*Id.* ¶ 36, 39.)

Relief Defendant **Zwillinge, LLC** (“Zwillinge”) is an Arizona limited liability company with its principal place of business at 17212 N Scottsdale Rd. #2313, Scottsdale, AZ 85255. (*Id.* Attach. E at 160-65.) Defendant Wolfram is a co-owner of Zwillinge as well as an authorized signer on its business account. (*Id.* ¶ 33 and Attach. AP at 744-45.) Zwillinge has received funds that can be traced directly to Defendants’ unlawful acts or practices alleged, below, and it has no legitimate claim to those funds. (*Id.* ¶ 36, 39-40.)

Relief Defendant **Sylvia Gads** is an individual who has received funds that can be traced directly to Defendants’ unlawful acts or practices alleged below, and she has no legitimate claim to those funds. (*Id.* ¶ 36, 39-40.) Gads is co-owner and manager of Relief Defendant Zwillinge,

² Steinbock Holdings LLC was previously known as Steinboch Investments LLC. (*Id.* Attach. C at 150.)

along with Defendant Wolfram. (*Id.* Attachs. E at 160-65, AP at 744-45.) Gads is also an authorized signer on Defendant IDM’s business account, where her title is listed as “owner.” (*Id.* ¶ 33 and Attach. AI2 at 664-65.)

Relief Defendant **Tiffany Chambers** is an individual who has received funds that can be traced directly to Defendants’ unlawful acts or practices alleged below, and she has no legitimate claim to those funds. (*Id.* ¶ 39.) Chambers was an authorized signer on Defendant IDM’s business account until March 2014. (*Id.* ¶ 33 and Attach. AI2 at 664.) In addition, Chambers’ residential address – 6030 E. Monterra Way, Scottsdale, AZ 85266 – is the same address associated with Defendants Wolfram and DER. (*Id.* ¶ 9 and Attach. F at 167.)

III. DEFENDANTS’ DECEPTIVE BUSINESS PRACTICES

Defendants operate several online high school diploma mills that sell fake high school diplomas to consumers nationwide. Since at least January 2006, Defendants have registered numerous websites, including jeffersonhighschoolonline.com, jeffersonhighschool.us, enterprisehighschool.us, and ehshighschool.org, which purport to describe legitimate and accredited secondary school programs such as “Jefferson High School Online” and “Enterprise High School Online.” (*Id.* ¶ 16 and Attach. W at 480-524.) The websites claim that consumers can become “high school graduate[s]” and obtain “official” high school diplomas by taking an online exam and paying between \$200 and \$300. (*Id.* Attachs. N at 192, R at 265.) Despite these representations, however, Defendants do not operate legitimate online high schools and do not issue valid high school diplomas. In numerous instances, consumers who attempt to use their Jefferson or Enterprise diplomas to enroll in college, enlist in the military, or apply for jobs are rejected because of their invalid high school credentials. (*See generally* PX01 to PX11.)

A. Defendants Misrepresent That Their Diplomas Are Legitimate High School Equivalency Credentials

Defendants go to great lengths to convince consumers that their diploma mills are legitimate high schools, issuing valid high school equivalency credentials. The artifice begins with Defendants’ use of keyword metatags to lure consumers to their Jefferson and Enterprise websites.³ Keyword metatags contain keywords that related to the content of a website and

³ “Metatags are words and phrases that describe a website’s content. The metatags do not show up on the website itself, only in the source code. . . . Many search engines use metatags as one way to determine the content of a website.” *St. Luke’s Cataract & Laser Inst., P.A. v. Zurich Am. Ins. Co.*, 506 F. App’x 970, 976 (11th Cir. 2013). There are different types of metatags,

allow Internet search engines to determine whether a particular website falls within a particular search. *Brookfield Comm'ns, Inc.*, 174 F.3d at 1045. Defendants' Jefferson and Enterprise websites metatags include the keywords, "high school diploma," "high school online," "ged test alternatives," and "ged." (PX14 ¶ 22 and Attachs. Z at 542, AB at 562.) Accordingly, if a consumer types "high school diploma" or "ged test alternatives" into an Internet search engine, the search engine would list Defendants' websites as a "hit." As a result, consumers using Internet search engines to locate legitimate online high school programs or information about GED test alternatives are drawn to Defendants' websites instead. (*See, e.g.*, PX01 ¶ 2 (consumer searched for high school diplomas and Defendants' website was among the first results); PX02 ¶ 2 (consumer searched for online high schools and found Defendants' site in the search results); PX04 ¶ 2 (same); PX06 ¶ 2 (same); PX07 ¶ 3 (same); PX08 ¶ 3 (same); PX05 ¶ 2 (consumer searched for online high school classes or online GED tests and found Defendants' site); PX09 ¶ 3 (consumer searched for "online GED" and Defendants' website was the first result listed).)

Defendants also lure consumers into believing that their online school are legitimate through the use of description metatags. Description metatags are intended to describe a website's content. *See Bihari v. Gross*, 119 F. Supp. 2d 309, 312 n.3 (S.D.N.Y. 2000). Typically, the text of a description metatag appears beside its Internet address in the list of websites generated by a search engine. *See id.* The description helps consumers navigate to sites that include the content for which they are searching. *See id.* at 312. Defendants' description metatags, which include the phrases "High School-GED Equivalency program," "Online GED test", and "Online GED Test alternative," deceive consumers into believing that Defendants' diploma mills are legitimate equivalency programs. (PX14 ¶ 22 and Attachs. Z at 542, AA at 554, and AB at 562.) In addition, bank records indicate that between January 2009 and May 2014, Defendants paid almost four million dollars to Microsoft Ad Center, Yahoo Search Marketing, and Google Ads, companies that provide Internet advertising services. (*Id.* ¶ 36.)

The artifice continues once consumers access Defendants' websites. At first glance, the Jefferson and Enterprise webpages appear to describe legitimate, accredited online high school programs. The banner across the top of the Jefferson site reads, "Enroll online and earn your

including "description" and "keyword" metatags. Description metatags are intended to describe the website; keyword metatags, at least in theory, contain keywords relating to the contents of the website. *See Brookfield Commc'ns, Inc. v. West Coast Entm't Corp.*, 174 F.3d 1036, 1045 (9th Cir. 1999).

diploma today.” (*Id.* Attachs. N at 192, U at 423.) The Enterprise website header similarly states, “Graduate High School Online. Through new standardized testing you can now earn a high school diploma online with Enterprise High School.” (*Id.* Attach. S at 333.) Defendants claim that their online schools are run by “administrative and academic professionals” who “are very confident that completing our program can benefit your needs.” (*Id.* Attachs. N at 209, R at 267.) At various times, one or more versions of Defendants’ websites have stated that graduates of the Jefferson or Enterprise programs receive counseling and registrar services, as well as “24/7/365 School Support.” (*Id.* Attachs. N at 203 and 210, R at 265 and 329, S at 333 and 346, U at 451.)

Defendants represent that consumers who complete the diploma program are high school graduates, and that Jefferson and Enterprise diplomas are legitimate high school credentials, equivalent to traditional high school diplomas or a GED certificate. For example, at various times, one or more versions of Defendants’ websites have stated:

- “Are you motivated to finally graduate? Graduate from our online high school diploma program and receive the personal recognition you aspire for in life, all at your own pace and from the comfort of your home.” (*Id.* Attach. U at 423.)
- “At JHS we offer on an online high school diploma program which is ideally suited for those needing an accelerated, motivational and 100% online solution for their high school diploma goals. You can simply register for our high school program for free, and after successfully passing all material and test subject scores, earn a diploma directly from Jefferson High School.” (*Id.* Attach. N at 192.)
- “To receive a Traditional high school diploma requires satisfactory classroom completion of five subject areas, and a total of 24 credits... Our program models this approach via your online test completion scores and your personal electives assessment. As with the GED ®, you will earn the equivalent of 24 credits with our diploma program.” (*Id.* Attach. R at 295.)
- “Your diploma will be the same quality as those issued by most traditional high schools and printed on 60-lb parchment paper that is a full 8-1/2x11 inches.” (*Id.* Attach. N at 210.)
- “Our online testing program has been used by those needing an online option for the GED ® Test. EHS designed our exam with the GED ® Test program in mind yet utilizes our own unique motivational approach to enhance student success rates.” (*Id.* Attach. R at 316.)
- “Taking the GED ® Test at a local testing center may be very time intensive and pricy [sic] requiring many hours of study. Why study away when you can study, practice, test and retest directly from our website with our Diploma program?” (*Id.* Attach. R at 316.)

Defendants claim that consumers will be able to successfully use their Jefferson or Enterprise diplomas as valid high school equivalency credentials when applying for jobs, enrolling in higher education institutions, or entering the military. For example, at various times, one or more versions of Defendants' websites have provided lists of approximately 56 suggested universities and colleges for consumers to consider, once they "graduate" from the Jefferson or Enterprise's programs. (*Id.* Attachs. N at 197-98, R at 297-98.) Defendants' websites also stated, "If you need a job that requires a GED or higher education, Jefferson High School Online has all the solutions you need." (*Id.* Attachs. N at 239, V at 476.) Furthermore, in the "Student Testimonials" section, Defendants include the following testimonials: "I am soooo happy to receive my diploma. Now, I can enroll into college, get a better paying job and have a better future." and "Thanks to Jefferson High school im [sic] now in the U.S. Navy!" (*Id.* Attach. U at 427, 431.)

In reality, Defendants do not operate legitimate educational programs. Jefferson and Enterprise offer no educational services to consumers: students attend no classes and receive no instruction, study materials, homework assignments, or periodic evaluations. (*See* PX01 ¶ 4 (consumer states she only completed an online multiple-choice test and paid a fee to get her diploma); PX02 ¶ 4 (same); PX03 ¶ 4 (same); PX04 ¶ 3 (same); PX05 ¶ 3 (same); PX06 ¶ 3 (same); PX07 ¶ 4 (same); PX08 ¶ 4 (same); PX09 ¶ 4 (same); PX10 ¶ 4 (same); PX11 ¶ 4 (same); *see also* PX14 ¶ 24 and Attach. AC at 614-15 (FTC investigator prompted to order her diploma after completing multiple-choice online test).) Jefferson and Enterprise also do not provide counseling or support services to students. In numerous instances, consumers who attempt to contact Defendants' "schools" at the number listed on the websites are unable to speak with a live person. (*See* PX01 ¶ 6; PX04 ¶ 5; PX08 ¶ 8; PX09 ¶ 7; PX11 ¶ 7.)

The Jefferson and Enterprise diploma requirements fall far below established standards for traditional high school completion. Consumers can obtain a Jefferson or Enterprise diploma merely by passing Defendants' multiple-choice online exam, reporting their "life experiences," and paying a fee ranging between \$200 and \$300. (PX14 Attachs. AC at 573, N at 196, R at 295.) Defendants' online exam is untimed and unmonitored, it requires no preparation or coursework, and students are free to consult outside sources for answers. (*Id.* Attachs. N at 199, AC at 616.) If consumers get certain questions wrong, they receive hints to help them select "the optimal response." (*Id.* ¶ 24 and Attach. AC at 581.) For example, in order to prompt

consumers to select the answer, “rocks,” Defendants provide the following hint: “Most of us have been accused of having these in our heads!!” (*Id.* Attach. AC at 582.) Similarly, to prompt consumers to select the answer, “set,” Defendants provide the hint: “Ready, S..., Go!” (*Id.* at 596.) Consumers are permitted four tries to achieve the “optimal” response (although each multiple choice question typically only offers four answer options). (*Id.* at 616.) Consumers pass the test by scoring 61 and above, and can retake sections of the test that they failed up to three times per year. (*Id.* Attach. N at 199.)

Consumers are not required to attend any classes in order to earn high school credits from Jefferson or Enterprise. Instead, Defendants award credits based on consumers’ self-reported “life experience.” (*Id.* Attachs. S at 340, N at 196 and 200, R at 295.) At various times, one or more of Defendants’ websites have stated, “Do you know how to cook? Do you have a driver’s license?... Do you know how to play tennis or football? Almost every subject you have life or work experience in is worth consideration for credit in our program.” (*Id.* Attach. S at 340.) For example, consumers can demonstrate “Accounting Knowledge” by selecting the drop-down choice, “Balance Check Book.” (*Id.* Attach. AC at 610.) Consumers can also indicate they possess “Music Appreciation” skills by selection the option, “Listen Often,” and by selecting their favorite music genre. (*Id.*) Consumers receive credit for the subject “Communications/Sociology” by selecting the option, “Interact with people often.” (*Id.*) Consumers are also prompted to write an “essay” about their accomplishments. Defendants tell consumers their essays should be “typically only a couple of sentences – taking only a few minutes of your time” and that if their essay takes “longer than 15 minutes to complete, your information will be lost and you will have to start over.” (*Id.* at 612.) Consumers who pass the online test, list their life skills, and pay the required fee receive Defendants’ purported high school diploma and transcripts reflecting the students’ self-reported “life experiences.” (*Id.* at 615.)

By contrast, traditional high schools require students to receive instruction and pass periodic evaluations in order to earn their high school diplomas. For example, in the state of Florida, where Defendants’ schools are registered, high school graduates obtaining a traditional high school diploma are required to complete four credits of English and mathematics, three science credits, three social science credits, and obtain passing scores on Algebra, Geometry, and Biology End of Course Assessments, among other requirements. Fla. Stat. 1003.428 (2013).

Numerous states have established similar standards for traditional high school graduation.⁴ Defendants' so-called schools come nowhere near to emulating these standards.

Defendants' online multiple-choice test is also not equivalent or superior to the GED test. The GED certificate is a nationally recognized high school equivalency credential. (*See* PX13 ¶ 1.) Students can obtain a GED certificate only by passing the GED test – a comprehensive series of examinations, which take approximately eight hours to complete and may only be taken in person at official GED testing centers. (*Id.* ¶ 2.) Defendants' untimed and unmonitored online exam, which gives students answer hints and allows them to re-attempt missed questions, is not a recognized high school equivalency test, and thus is not equivalent or superior to the GED certificate. (*Id.* ¶ 13.)

In reality, Defendants' operation falls squarely within the Florida Department of Education's definition of a "high school diploma mill," used to describe "a business or other organization that may be presented as a school, and offers a diploma or other document of high school completion with little or no required academic study, which may end up being essentially a worthless diploma." (PX14 ¶ 50 and Attach. AU at 983.)

Consumers confirm that Defendants' diplomas are essentially worthless. In numerous instances, consumers who attempt to enroll in colleges, enlist in the military, or apply for jobs using Defendants' diplomas are rejected because the diplomas do not constitute valid or recognized high school equivalency credentials.⁵ For example, consumer Dallas Deese

⁴ *See, e.g.*, N.Y. Comp. Codes R. & Regs. tit. 8, § 100.5 (2014) (NY high school diploma requirements include 4 English credits, 4 Social Studies credits, 3 Science credits, 3 Mathematics credits, among others, as well as 5 required Regents exams with a score of 65 or better); Cal. Educ. Code § 51225.3 (West 2013) (CA diploma requirements include 3 courses in English, 2 courses in Mathematics, 2 courses in science, 3 courses in Social Studies, among others, as well as a passing grade on the California High School Exit Examination); Ga. Comp. R. & Regs. 160-4-2-.48 (2011) (GA high school diploma requirements include 4 English/Language Arts credits, 4 Mathematics credits, 4 Science credits, 3 Social Studies credits, among others).

⁵ *See* PX01 ¶ 5 (nursing school application rejected due to invalid high school credentials); PX02 ¶ 5 (enrollment rejected by multiple colleges, including colleges recommended by Defendants' websites); PX03 ¶¶ 5, 7 (denied enrollment in National Guard and culinary school); PX04 ¶ 4 (college application rejected); PX05 ¶ 5 (denied enrollment by three colleges); PX06 ¶¶ 4-5 (denied enrollment by two colleges); PX07 ¶ 5 (nursing school application denied); PX08 ¶ 6 (lost government grant to complete college degree and had to pass GED test before he could graduate); PX09 ¶ 5 (college application denied); PX11 ¶¶ 5-6 (employment application rejected by three employers).

attempted to use her Enterprise diploma to enroll in several universities and colleges, but none of them would accept her diploma as valid. (PX02 ¶ 5.) Another consumer, Chase Fleming, attempted to use his Jefferson diploma to enlist in the National Guard and, later, to enroll in a culinary school. Both entities refused to accept his diploma. (PX03 ¶¶ 5, 7.) Consumer Dustin Mullis was fired from one job and rejected from two others because he did not possess a valid high school credential. (PX11 ¶¶ 5-6.) Consumer Tabitha Kelly had to discontinue her studies when her college discovered that her high school diploma was a fake. Because Ms. Kelly had already taken several classes before the college realized her diploma was invalid, she currently owes over \$10,000 in tuition fees, even though she cannot complete her degree. (PX06 ¶¶ 4, 7.)

In addition, one of the colleges included on Defendants' list of "college suggestions" – Tallahassee Community College (PX14 Attach. N at 197) – has affirmatively indicated it would not accept students applying for enrollment using Jefferson or Enterprise diplomas because neither school meets the criteria established by the Florida College Registrars and Admission Officers (FCRAO) for use in validating the integrity of a student's high school completion. (*See* PX12 at 81-82.)

Defendants' buried disclaimers do not dispel the deceptive net impression that Jefferson and Enterprise are legitimate educational programs offering valid high school diplomas. At various times, one or more versions of Defendants' websites have included limited and ambiguous disclaimers regarding Jefferson and Enterprise's accreditation status and the possibility that some employers or higher education institutions may not accept Jefferson or Enterprise diplomas as valid. (*See, e.g.*, PX14 Attach. N at 217-18, R at 267, 311.) These disclaimers appear buried within Defendants' websites, however, surrounded by numerous paragraphs of unrelated legalese, and directly contradict Defendants' numerous prominent representations that consumers can become high school graduates and obtain their "high school diplomas" through Defendants' programs. (*See id.*)

In the last few weeks, Defendants have also made several superficial modifications to their websites that provide some additional information regarding the value of Defendants' diplomas. Specifically, around July 2014, several disclaimers appeared on the Jefferson and Enterprise sites regarding the diplomas' "low academic value" and the fact that they "will likely not be accepted by community colleges, colleges, universities, military, government, employers, or other stakeholders." (*Id.* Attachs. U at 424-25, 434, 436, T at 381.) Defendants also included

disclaimers stating that “[a]ccreditation is a voluntary option, but will most likely be needed should you decide to continue to college or employment using your diploma,” and “JHSO is a Non Accredited Program.” (*Id.* Attach. U at 424-25.) These new disclaimers are also buried within Defendants’ websites, however, and directly contradict numerous existing (and much more prominent) statements about the fact that consumers can “graduate from our online high school diploma program and receive the personal recognition [they] aspire for in life.” (*Id.* Attach. U at 423.) Defendants’ hidden disclaimers do not dispel the deceptive net impression that Jefferson and Enterprise are legitimate online schools offering legitimate high school equivalency credentials.

B. Defendants Misrepresent That Jefferson And Enterprise Are Accredited And State-Approved Online High Schools

Defendants attempt to legitimize their fraudulent operation by representing that their so-called “schools” are accredited by several third-party accrediting bodies. At various times, one or more versions of Defendants’ websites claimed that Jefferson was accredited by an independent, third-party accrediting body named International Accrediting Body of Online Schools (IABOS). (*Id.* ¶ 20 and Attach. Y at 538-39.) The IABOS website, www.iabos.org, appeared legitimate and explained that member schools must comply with a set of external and internal standards in order to receive IABOS accreditation. (*Id.* Attach. X at 527-35.) The site also included a list of “Accredited Institutions,” with Jefferson and Enterprise listed among them. (*Id.* at 534-35.) In reality, however, IABOS is a fictitious entity created by Defendants, and is not a legitimate accrediting body. (*Id.* ¶¶ 16, 1 at 107 and Attach. W at 489-92.) Defendants themselves registered the website www.iabos.org in 2007 and deactivated it in 2013. (*Id.* ¶ 16 and Attach. W at 489-92.)

Defendants have also represented that their online schools are accredited by the Universal Council for Online Education Accreditation (UCOEA) and the World Online Accreditation Commission (WOEAC). (*See* PX02 Attach. A at 12.) Neither of these purported accrediting bodies is recognized by the Council for Higher Education Accreditation (“CHEA”) or by the U.S. Department of Education. (*Id.* ¶ 1 at 107.) In addition, both have been associated with other high school and college online diploma mills and have been identified as fake accreditation agencies by GetEducated.com, a non-profit consumer education organization. (*Id.* ¶ 2 at 107 and Attach. AV at 986.)

More recent iterations of Defendants' websites have continued to misrepresent Jefferson and Enterprise's accreditation status. For example, the websites claim that "Life Experience based programs" like the ones offered by the Defendants "have been accepted since their origination and many have received accreditation status from accrediting bodies/organizations." (*Id.* Attach. S at 342.) At various times, one or more versions of Defendants' websites have also provided consumers with an "Accreditation Comprehensive Guide." (*See, e.g., id.* Attach. R at 292-94.) This guide contained multiple paragraphs of small-print, convoluted writing purporting to answer consumers' questions about high school accreditation. (*Id.*) Only at the very bottom of this page, hidden in the middle of a lengthy, dense, small-print paragraph, did Defendants reveal that their program was not accredited. (*Id.*) Defendants obfuscated this disclosure by stating that Enterprise and Jefferson had not yet *applied* for accreditation, but that they are "actively pursuing accreditation options:"

In an effort to keep program cost down and the current platform HSE based format, EHS has not yet sought nor been approved by the US DOE, CHEA or DETC organizations and does not represent itself to be an accredited program of any of these organizations. EHS is actively pursuing accreditation options including options with AdvancED, in the meantime EHS incorporates an internal review and self-auditing approach to assure consistent standards . . . (*Id.* at 293.)

In the past few weeks, Defendants have modified their websites to provide additional disclaimers regarding Jefferson and Enterprise's lack of accreditation. (*See, e.g.,* Attach. U at 423-24.) These disclaimers, however, are not prominently displayed and do not dispel Defendants' more prominent claims that consumers can "finally graduate" and "receive the personal recognition [they] aspire for in life" through Jefferson and Enterprise's diploma programs. (*Id.* at 423.) The disclaimers are further undermined by other representations that Defendants' schools have been "recently accredited" by an international accreditor named "IADL." (*Id.* at 455.) Defendants themselves admit that IADL has not been recognized by CHEA or by the U.S. Department of Education, and that the FTC guidelines require that "all schools only disclose accreditation status if said accreditor was recognized by the USDOE or CHEA or both." (*Id.*) Nevertheless, Defendants claim they are following IADL's guidelines and that they are in the process of pursuing other accrediting options: "our initial conversations with a regional accreditor called AdvancED, have been favorable." (*Id.*)

Several consumers confirm that they understood Defendants' online schools to be accredited institutions. For example, consumer Dustin Mullis recalls that when he first accessed

the Jefferson website, the site claimed that Jefferson was accredited by several accrediting institutions. (PX11 ¶ 3.) Consumers Tabitha Kelly, Thomas Rowden, and Judean Mapp also recall various claims on the Jefferson website about Jefferson’s purported accreditation. (PX06 ¶ 2; PX08 ¶ 3; PX07 ¶ 3.) BBB consumer complaints also reference Defendants’ deceptive accreditation representations. (PX14 Attach. AR at 938 (consumer complaint references IABOS accreditation claims), 935 (consumer complaint references Defendants’ false accreditation claims), 905 (consumer understood Jefferson was an accredited school).)

In reality, Defendants’ programs are not accredited by any widely-recognized accrediting bodies because they are not true educational institutions and because their diploma standards fall far below the rigorous standards for high school accreditation set by widely recognized regional accrediting bodies, such as AdvancED and The Distance Education and Training Council (DETC). Both of these legitimate accrediting bodies require any high schools seeking accreditation to, for example, develop a curriculum, employ qualified teachers, provide students with instruction and personalized feedback, optimize collaborative learning and interaction between students and teachers, and carry out periodic assessments of student learning.⁶ Jefferson and Enterprise do not come close to meeting these standards. In addition, the U.S. Department of Education has cautioned consumers to be skeptical of schools that offer diplomas or degrees based on life experience alone, with little or no documentation of prior learning, because these schools do not use valid methods to determine the amount of credit to be awarded.⁷

Defendants further lure consumers into believing their schools are legitimate by representing that their programs have been approved by Florida’s Department of Education. Both Jefferson and Enterprise websites prominently display a “school code” that is associated with the Florida Department of Education School Choice program, and Enterprise’s website even

⁶ See generally AdvancED® Standards for Quality Digital Learning Institutions (2013); Distance Education Training Council Accreditation Handbook; Policies, Procedures, Standards and Guides of the Accrediting Commission (Jan. 2014).

⁷ See *Diploma Mills and Accreditation – Diploma Mills*, U.S. Dept. of Educ., <http://www2.ed.gov/students/prep/college/diplomamills/diploma-mills.html> (last visited Aug. 21, 2014). Although there are legitimate institutions offering credit for life or work experiences, these institutions use a combination of standardized tests, prior learning portfolio, oral exams, past learning, and professional certifications to determine how much credit to award. *Id.* At legitimate institutions credit is awarded only if the work experience is equivalent to what would have been taught in a traditional course. *Id.* Defendants’ “life experience” questions, which only require students to select an option from a drop-down box, do not meet these standards.

includes the School Choice logo. (*Id.* Attachs. N at 192, R at 265-66.) Defendants’ websites repeatedly tout their Department of Education “registration” in order to convince consumers they are legitimate schools. For example, at various times, one or more versions of Defendants’ websites included the following “student testimonial”: “I thought you were a fake school until I looked you up online in the education database. I’m so glad I did, I’m now a graduate and an employment agency is helping me find a job! Thank you JHS!” (*Id.* Attach. N at 208.) Similarly, the Frequently Asked Questions section includes the question, “Real?” In response, Defendants state that they are registered “with the Dept. of Education” and list their school code. (*Id.* Attachs. N at 200, R at 300, T at 404.)

In reality, Jefferson and Enterprise’s “registrations” in Florida’s School Choice program are merely ministerial acts, based on self-reported data provided in response to Florida’s annual private school survey. (*See id.* Attach. AU at 981.) The Florida Department of Education does not verify the accuracy of the data submitted pursuant to the annual survey. (*Id.*) Furthermore, the Florida statute specifically prohibits the submission of data for schools providing “no instruction or training.” Fla. Stat. 1002.42(g) (2013).

C. Defendants’ Diploma Mills Have Generated Numerous Consumer Complaints

Defendants’ online schools have generated numerous consumer complaints in Consumer Sentinel and with the Better Business Bureau. (*See generally* PX14 Attach. AR.) DER has earned a “D” rating from the BBB, which issued a special alert regarding DER’s practices in 2013. (*Id.* ¶ 48 and Attach. AS at 974.) The BBB alert states in part, “Our file contains a pattern of complaints from consumers alleging they completed Diversified Education Resources, LLC’s online courses and paid over \$200 to receive a high school diploma. When the students tried to enroll in college using the diploma they were told that the diploma was not valid.” (*Id.*) In response, DER stated that all relevant information is included on its websites, and that consumers “would rather click and press buttons than read the full and complete disclosure provided.” (*Id.*)

Defendants routinely answer consumer complaints by blaming consumers for not reading and understanding the buried and misleading disclosures on their websites. For example, when Dallas Deese emailed Defendants to complain about the diploma program, Defendants told her that all the information about their diploma program is displayed on their website and that Ms. Deese should “[l]earn to read.” (PX02 ¶ 6 and Attach. B at 17-18.) Consumers complaining to

the Better Business Bureau about Defendants' schools were also told that, by purchasing the diplomas, they had purportedly agreed to Defendants' conditions. (*See, e.g.*, PX08 ¶ 7 and Attach. A at 58-60; PX11 Attach. A at 78-80.) In numerous instances, Defendants have refused to refund consumers any fees paid. (*See* PX01 ¶ 6; PX02 ¶ 8; PX03 ¶ 8; PX04 ¶ 6; PX05 ¶ 8; PX06 ¶ 7; PX07 ¶ 7; PX08 ¶ 8; PX09 ¶ 7; PX10 ¶ 6; PX11 ¶ 9.)

D. Consumer Injury

A preliminary review of bank records suggests that Defendants have taken in gross revenues of at least approximately \$11,117,831 since January 2009. (PX14 ¶ 36.)

IV. THE COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER

A. The Court Has Authority To Grant The Relief Sought

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to seek, and the Court to issue, temporary, preliminary, and permanent injunctions. The second proviso of Section 13(b), under which this action is brought, states that “the Commission may seek, and after proper proof, the court may issue, a permanent injunction” against violations of “any provision of law enforced by the Federal Trade Commission.” 15 U.S.C. § 53(b). *See also FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996). Section 13(b) also empowers the courts to exercise the full breadth of their equitable powers, including ordering rescission of contracts, restitution, and disgorgement of ill-gotten gains. *Id.* at 468-70. By enabling the courts to use their full range of equitable powers, Congress gave them authority to grant preliminary relief, including a temporary restraining order, preliminary injunction, and asset freeze. *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) (“Congress did not limit the court’s powers under the final proviso of §13(b), and as a result this Court’s inherent equitable powers may be employed to issue a preliminary injunction, including a freeze of assets, during the pendency of an action for permanent injunctive relief.”). The Court therefore can order the full range of equitable relief sought and can do so on an *ex parte* basis. *Id.* at 1432 (authorizing preliminary injunction and asset freeze); *see also FTC v. Prime Legal Plans LLC*, No. 12-61872-CIV, 2012 WL 4854762 (S.D. Fla. Oct. 12, 2012) (*ex parte* temporary restraining order freezing assets, appointing receiver, and authorizing expedited discovery and immediate access to business premises).⁸

⁸ Numerous courts in this district have issued *ex parte* temporary restraining orders in cases involving deceptive practices perpetrated against consumers. *See, e.g., FTC v. SouthEast*

B. The FTC Meets The Standard For Issuance Of A Temporary Restraining Order And Preliminary Injunction

The United States Court of Appeals for the Eleventh Circuit has set forth two factors that determine the appropriateness of preliminary injunctive relief under Section 13(b): (1) the likelihood of success on the merits; and (2) the balance of equities. *FTC v. Univ. Health*, 938 F.2d 1206, 1217 (11th Cir. 1991)⁹; *FTC v. U.S. Mortg. Funding, Inc.*, No. 11-CV-80155, 2011 WL 810790, at *2 (S.D. Fla. Mar. 1, 2011). Unlike private litigants, the FTC need not prove irreparable injury. *See Univ. Health*, 938 F.2d at 1218. Moreover, in balancing the equities, the public interest should receive greater weight than private interests. *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989). As set forth below, the FTC has amply demonstrated that it will succeed on the merits of its claims and that the balance of equities favors injunctive relief.¹⁰

Trust, LLC, No. 12-cv-62441-CIV-ZLOCH, slip op. (S.D. Fla. Dec. 11, 2012) (*ex parte* temporary restraining order with asset freeze, expedited discovery, and immediate access to business premises); *FTC v. Timeshare Mega Media & Mktg. Grp., Inc.*, No. 10-62000-CIV, 2011 WL 6102676, at *2 (S.D. Fla. Dec. 7, 2011) (*ex parte* temporary restraining order); *U.S. Mortg. Funding, Inc.*, 2011 WL 810790, at *6-9 (*ex parte* temporary restraining order freezing assets, appointing receiver, and authorizing expedited discovery and immediate access to business premises); *FTC v. First Universal Lending, LLC*, 773 F. Supp. 2d 1332, 1335 (S.D. Fla. 2011) (same); *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1252 (S.D. Fla. 2007) (same).

⁹ This action is not brought pursuant to the first proviso of Section 13(b), which addresses the circumstances under which the FTC can seek preliminary injunctive relief before or during the pendency of an administrative proceeding. Because the FTC brings this case pursuant to the second proviso of Section 13(b), its complaint is not subject to the procedural and notice requirements in the first proviso. *U.S. Oil & Gas Corp.*, 748 F.2d at 1434 (“Congress did not limit the court’s powers under the [second and] final proviso of § 13(b) and as a result this Court’s inherent equitable powers may be employed to issue a preliminary injunction, including a freeze of assets, during the pendency of an action for permanent injunctive relief”); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982) (holding that routine fraud cases may be brought under the second proviso, without being conditioned on the first proviso requirement that the FTC institute an administrative proceeding).

¹⁰ Although not required to do so, the FTC also meets the Eleventh Circuit’s four-part test for private litigants to obtain injunctive relief. “[I]rreparable injury should be presumed from the very fact that [a] statute has been violated.” *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984) (quoting *United States v. Hayes Int’l Corp.*, 415 F.2d 1038, 1045 (5th Cir. 1969)). Without the Court’s intervention, vulnerable consumers will continue to be deceived. Moreover, “[t]he public interest in ensuring the enforcement of federal consumer protection laws is strong.” *FTC v. Mallett*, 818 F. Supp. 2d 142, 149 (D.D.C. 2011). Without the

1. The FTC Has Demonstrated That It Will Likely Succeed On The Merits

To demonstrate a likelihood of success on the merits, the FTC must show that it will likely prevail; the FTC need not present evidence to justify a “final determination” that defendants violated the law. *Univ. Health*, 938 F.2d at 1218; *see also World Wide Factors Ltd.*, 882 F.2d at 346 (FTC need only demonstrate “some chance of probable success on the merits.”). In considering this motion, the Court “may rely on affidavits and hearsay materials.” *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995).

a. Defendants’ Misrepresentations Violate The FTC Act

Section 5 of the FTC Act prohibits “unfair or deceptive practices in or affecting commerce[.]” 15 U.S.C. § 45. An act or practice is deceptive under Section 5(a) if it involves a material representation or omission that is likely to mislead consumers, acting reasonably under the circumstances. *FTC v. Wilcox*, 926 F. Supp. 1091, 1098 (S.D. Fla. 1995). A misrepresentation is material if it is of a kind usually relied upon by a reasonably prudent person. *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1266 (S.D. Fla. 2007). The FTC, however, need not prove subjective reliance by each consumer misled by Defendants, “as it would be virtually impossible for the FTC to offer such proof, and to require it would thwart and frustrate the public purposes of FTC action.” *See McGregor v. Chierico*, 206 F.3d 1378, 1388 (11th Cir. 2000) (quoting *FTC v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991)). Rather, a “presumption of actual reliance arises once the FTC has prove[n] that the defendant made material misrepresentations, that they were widely disseminated, and that consumers purchased the defendant’s product.” *Id.* In addition, “[e]xpress claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material.” *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1267; *see also FTC v. RCA Credit Servs., LLC*, 727 F. Supp. 2d 1320, 1329 (M.D. Fla. 2010) (quoting *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1266).

“In determining whether a representation is likely to mislead consumers acting reasonably, courts consider the net impression created” by Defendants.¹¹ *RCA Credit Servs.*,

requested relief, the public will suffer irreparable harm from the continuation of Defendants’ scheme and the likely destruction of evidence and dissipation of assets.

¹¹ The FTC need not prove that Defendants’ misrepresentations were made with an intent to defraud or deceive or were made in bad faith. *See, e.g., FTC v. Capital Choice Consumer Credit, Inc.*, No. 02-21050 CIV, 2004 WL 5149998, at *34 (S.D. Fla. Feb. 20, 2004) *aff’d*, 157

LLC, 727 F. Supp. 2d at 1329. “A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.” *Id.* (quoting *FTC v. Cyberspace.Com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006)). “Only a tendency to deceive is required; actual consumer deception is unnecessary. [...] Nonetheless, consumer interpretation informs whether a communication was deceptive.” *FTC v. Washington Data Res.*, 856 F. Supp. 2d 1247, 1273 (M.D. Fla. 2012) *aff’d sub nom.*, *FTC v. Washington Data Res., Inc.*, 704 F.3d 1323 (11th Cir. 2013). In addition, “deception is evaluated from the perspective of the reasonable prospective purchaser, that is, a reasonable consumer in the audience targeted” by the Defendants. *Id.* at 1272.

“Disclaimers or qualifications in any particular ad are not adequate to avoid liability unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression.” *FTC v. Capital Choice Consumer Credit, Inc.*, No. 02-21050 CIV, 2003 WL 25429612, at *5 (S.D. Fla. June 2, 2003) *aff’d*, 157 F. App’x 248 (11th Cir. 2005) (quoting *Removatron Intern. Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989)). Courts in the Eleventh Circuit have found that buried, hidden, fine-print disclaimers do not dispel the deceptive net impression created by defendants’ more prominent claims. *See, e.g.*, *Washington Data Res.*, 856 F. Supp. 2d at 1274-75 (holding that “inconspicuously buried” disclaimers failed to change the deceptive “net impression”); *Capital Choice Consumer Credit, Inc.*, 2003 WL 25429612, at *5 (holding that a “fine print” disclosure on the reverse side of a certificate, buried in the middle of a long paragraph, did not modify the deceptive net impression).

In the present case, Defendants violate Section 5 of the FTC Act by making two misrepresentations that are likely to deceive consumers acting reasonably. As demonstrated above, Defendants misrepresent that consumers can successfully use their Jefferson or Enterprise diplomas as valid, legitimate high school equivalency credentials when applying for jobs, enrolling in institutions of higher learning, or for other similar purposes. (*See* Section III.A at 5-8, *supra*.) The FTC’s evidence demonstrates, however, that numerous consumers have not been able to use Defendants’ diplomas as valid high school equivalency credentials for such purposes. (*See id.* at 8-11) Defendants also have misrepresented that they are accredited by an

F. App’x 248 (11th Cir. 2005); *FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1029 (7th Cir. 1988); *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 526 (S.D.N.Y. 2000).

independent, third-party accrediting body named IABOS. (*See* Section III.B at 12, *supra.*) The FTC’s evidence demonstrates, however, that Defendants themselves registered and controlled the IABOS website (www.iabos.org). (*See id.*) These claims are material to consumers’ decisions to purchase Defendants’ services. Defendants’ disclaimers regarding the value of their diplomas and their lack of accreditation are insufficient to dispel the net impression created by Defendants’ more prominent representations. The disclaimers, appearing only in some versions of Defendants’ websites over the years, are hidden within Defendants’ websites, buried in the middle of long paragraphs of small-print legalese, and directly contradict Defendants’ more prominent claims that consumers who complete their online programs will obtain their high school diploma and become high school graduates. (*See* Sections III.A at 11-12 and III.B at 13, *supra.*)

Moreover, the Commission has already determined that the type of conduct Defendants have engaged in is deceptive under Section 5 of the FTC Act. In its Guides For Private Vocational And Distance Education Schools (“Vocational School Guides”), 16 C.F.R. § 254, the FTC has determined that it is “deceptive” for a private school to offer consumers a high school diploma unless its program of instruction is substantially equivalent to that offered by a resident secondary school and unless the consumer is informed “by a clear and conspicuous disclosure in writing” that the schools cannot control the recognition that will be accorded the diploma by universities or prospective employers.¹² 16 C.F.R. § 254.6(c). Here, Defendants’ curriculum is not “substantially equivalent to that offered by a resident secondary school” because, as demonstrated above, Defendants offer consumers no curriculum or instruction whatsoever. (*See* Section III.A at 8-9, *supra.*) In addition, Defendants’ disclaimers regarding the recognition accorded to Defendants’ diplomas are buried within long paragraphs of fine-print legalese and contradict Defendants’ more prominent claims that consumers can use their Jefferson and Enterprise diplomas to enroll in college and apply for jobs. (*Id.* at 11-12.) Similarly, the Commission has determined that it is “deceptive” for a private school to represent, without

¹² The FTC’s Vocational School Guides represent administrative interpretations of laws administered by the FTC. The Guides provide the basis for voluntary compliance with the law by members of the industry. Practices inconsistent with the Guides may result in corrective action by the Commission under section 5 of the FTC Act if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute. 16 C.F.R. § 254.0(b).

qualification, that it is accredited unless it has been accredited by an agency recognized by the U.S. Department of Education. 16 C.F.R. § 254.3(a)(1). IABOS is not recognized by the U.S. Department of Education but was instead created by Defendants to cloak their fraudulent operation in a mantle of legitimacy. (See Section III.B. at 12, *supra*.) As a result, Defendants' IABOS accreditation claims are deceptive.

b. The Corporate Defendants Operate As A Common Enterprise

When two or more corporations act as a common enterprise, equity demands that they be held jointly and severally liable for their misconduct. *Capital Choice Consumer Credit, Inc.*, 2004 WL 5149998, at *42. When determining whether a common enterprise exists, courts look to a variety of factors, including: common control, the sharing of office space and officers, whether business is transacted through a maze of interrelated companies, the commingling of corporate funds and failure to maintain separation of companies, unified advertising, and evidence which reveals that no real distinction existed between the Corporate Defendants. *Id.* (internal citations and quotations omitted).

Here, the Corporate Defendants exhibit the hallmark characteristics of a common enterprise. Defendant Garcia controls two of the Corporate Defendants – DER and MMDS – while Defendant Wolfram controls all three. (See Section II.B.2 at 3-4, *supra*.) Garcia is a signatory on the DER and MMDS bank accounts (*id.* at 4), and Wolfram is the signatory on all of the Corporate Defendants' bank accounts (*id.* at 3). Although the Corporate Defendants are registered at separate addresses, one of the addresses is a virtual office (DER) and one is a mail drop (IDM Services). (See Section II.B.1 at 2-3, *supra*.) In reality, all three Corporate Defendants operate from the personal residence of Defendant Wolfram in Scottsdale, Arizona. The three Corporate Defendants also share a telephone number. (See PX14 ¶ 30-31.) Reflective of a “maze of interrelated companies,” the entities make routine payments to one another and frequently commingle funds. (See *id.* ¶ 35-36, 40-41.) In addition, IDM Services pays nearly all costs and fees associated with the operation of Defendants' diploma mills. (See Section II.B.1 at 3, *supra*.)

c. The Individual Defendants Are Liable For The Corporate Defendants' Practices

In addition to the Corporate Defendants, Individual Defendants Wolfram and Garcia are liable for injunctive and equitable monetary relief for legal violations committed by DER, MMDS, and IDM Services. An individual defendant may be held liable for injunctive relief for

corporate practices if the individual: (1) participated directly in the challenged conduct or (2) had the authority to control it. *Gem Merch. Corp.*, 87 F.3d at 470; *see also FTC v. 1st Guar. Mortg. Corp.*, No. 09-cv-61840, 2011 WL 1233207, at *15 (S.D. Fla. Mar. 30, 2011). “An individual’s authority to control a company’s practices can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer.” *FTC v. Am. Precious Metals, LLC*, No. 11-61072-CV, 2012 WL 3683467, at *2 (S.D. Fla. Aug. 24, 2012) (quoting *FTC v. Wilcox*, 926 F. Supp. at 1104). “Moreover, in the case of small, closely-held corporations, an individual’s status as a corporate officer gives rise to a presumption of ability to control.” *Id.* (internal quotations omitted). Even where an individual is not officially designated as a corporate officer, courts consider “the control that a person actually exercises over given activities.” *FTC v. Windward Mktg., Ltd.*, No. 1-96-CV-615, 1997 WL 33642380, at *5 (N.D. Ga. Sept. 30, 1997) (holding that defendant did not have to be an officer or even an employee to control corporate activities); *see also FTC v. Medicor, LLC*, 217 F. Supp. 2d 1048, 1055-56 (C.D. Cal. 2002) (holding that defendants’ official title was not determinative of whether individual had requisite control). Bank signatory authority or acquiring services on behalf of a corporation also evidences authority to control. *See FTC v. USA Fin., LLC*, 415 F. App’x. 970, 974-75 (11th Cir. 2011).

An individual may be held liable for monetary relief for corporate practices if the individual defendant had or should have had knowledge of the illicit conduct, showed reckless indifference to the truth or falsity of a representation, or had an awareness of a high probability of fraud with an intentional avoidance of the truth. *See 1st Guar. Mortg. Corp.*, 2011 WL 1233207, at *14-15. Participation in corporate affairs is probative of knowledge. *Id.* at 15.

Here, Defendants Wolfram and Garcia satisfy the standards for individual liability for both injunctive and monetary relief. Wolfram and Garcia have complete control over DER and MMDS, and they are the principals and owners of the companies. (*See* Section II.B.2 at 3-4, *supra.*) In addition, Wolfram is the principal and owner of IDM Services, the Corporate Defendant that controls and distributes a large portion of the funds obtained from the diploma mills. (*See* Sections II.B.1 at 3 and II.B.2 at 3, *supra.*) Wolfram and Garcia have joint signatory authority over DER and MMDS’s bank accounts, and Wolfram has signatory authority over the bank accounts of IDM Services. (*See* Section II.B.2 at 3-4, *supra.*) Garcia is the administrative contact for Jefferson and Enterprise in the Florida School Choice Private School Directory. (*Id.*

at 4.) Garcia also maintains the domain names for Jefferson and Enterprise, and is the registrant and technical, billing, and administrative contact for Defendants' Internet websites. (*Id.*) In addition, Garcia is the registrant on DER's service contract with Davinci Virtual for DER's virtual office space in Ft. Lauderdale, Florida, and the primary contact on MMDS's UPS shipping account. (*Id.*) Wolfram pays nearly all of Defendants' domain registration and hosting fees for the Jefferson and Enterprise websites, as well as all fees associated with DER's virtual office space, using the IDM Services account. (*See* Section II.B.2 at 3, *supra.*) Wolfram is also the secondary contact on MMDS's UPS shipping account, where his title is listed as "VP." (*See* PX14 ¶ 26 and Attach. AD at 621.) This evidence demonstrates "requisite control" and is probative of the Individual Defendants' participation and knowledge. *See Gem Merch. Corp.*, 87 F.3d at 470; *1st Guar. Mortg. Corp.*, 2011 WL 1233207, at *15. Accordingly, Garcia and Wolfram should be enjoined from violating the FTC Act and be held liable for consumer redress or other monetary relief in connection with Defendants' activities. The proposed preliminary relief is appropriate against them.

d. The Relief Defendants Have Received Ill-Gotten Gains And Do Not Have Legitimate Claims to Those Assets

The Relief Defendants, Steinbock Holdings, Zwillinge, Sylvia Gads, and Tiffany Chambers, should not be permitted to keep the numerous and extremely valuable unearned transfers they received from the unlawful corporate enterprise.

"Federal courts can be employed to recover ill gotten gains for the benefit of the victims of wrongdoing, whether held by the original wrongdoer or by one who has received the proceeds of the wrong." *Transnet Wireless Corp.*, 506 F. Supp. at 1273 (quoting *CFTC v. Kimberllynn Creek Ranch*, 276 F.3d 187, 192 n.4 (4th Cir. 2002)). "[I]t is just as important to discourage illegal conduct by taking the proceeds of that illegality from those who have given no current value for the ill-gotten gains that have been turned over to them (even though they themselves have not directly engaged in the illegal activity)." *Id.* (quoting *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1020 (N.D. Ind. 2000)).

Here, the Relief Defendants were unjustly enriched by repeated transfers of funds from the Corporate Defendants' bank accounts – funds derived from the unlawful practices described above. For example, a review of bank records obtained pursuant to CID indicates that there were transfers of over four million dollars from Defendants' corporate accounts into Steinbock Holdings accounts from January 2009 until March 2014. (PX14 ¶ 36.) Wolfram has also used

the Steinbock Holdings corporate account to make payments to other Relief Defendants, such as Sylvia Gads and Zwillinge. (*Id.* ¶¶ 38-39.) There is no evidence from Defendants' corporate records to suggest Steinbock Holdings plays any legitimate role in Defendants' online diploma mill operation, and as a result, it has no legitimate claim to these funds.

In addition, individual Relief Defendant Sylvia Gads and corporate Relief Defendant Zwillinge (which Gads co-owns with Defendant Wolfram), have received over \$180,000 in payments from Defendants' accounts. (*Id.* ¶¶ 36, 39-40.) Defendants' corporate records contain no evidence to suggest that Gads or Zwillinge provide legitimate services to Defendants' online diploma mills, which do not appear to have any employees and which are operated exclusively from Wolfram's personal residence. Gads became a signatory on the IDM Services business account in March 2014. (*Id.* ¶ 33 and Attach. AI2 at 664.) Nevertheless, there is no evidence to suggest Gads or Zwillinge participated directly in the online diploma mill operation, as neither Gads nor Zwillinge appear on any of the service contracts or corporate registrations associated with the diploma mills. As a result, Gads and Zwillinge do not have legitimate claim to the funds they have received.

Finally, individual Relief Defendant Tiffany Chambers has received at least \$13,000 in payments from Defendants. (*Id.* ¶ 39.) Chambers was also a signatory on the IDM Services business account until March 2014. (*Id.* ¶ 33 and Attach. AI2 at 664.) Nevertheless, there is no evidence in Defendants' corporate papers to suggest Chambers participated directly in the online diploma mill operation, or that she provided any legitimate services to the operation. Records indicate that Chambers likely resides at the same address as Wolfram. (*Id.* Attach. F at 167.) Chambers has no legitimate claim to the funds she has received from Defendants.

The FTC has thus demonstrated that the Corporate Defendants have misrepresented material facts in violation of Section 5 of the FTC Act; that the Corporate Defendants operated as a common enterprise; that the individual Defendants had knowledge of the Corporate Defendants' operations and either participated directly or had authority to control them; and that the Relief Defendants received funds from the common enterprise but have no legitimate claim to those funds. Accordingly, the FTC has demonstrated a strong likelihood of success on the merits of its claims.

2. The Balance Of Equities Favors Injunctive Relief

The public interest in halting Defendants' unlawful conduct and in preserving assets to provide redress to consumers far outweighs any interest Defendants may have in continuing to operate their business. In balancing public and private interests, “public equities receive far greater weight.” *FTC v. USA Beverages, Inc.*, No. 05-61682 CIV, 2005 WL 5654219, at *5 (S.D. Fla. Dec. 6, 2005) *report and recommendation adopted*, No. 05-61682, 2005 WL 5643834 (S.D. Fla. Dec. 9, 2005) (citing *World Travel Vacation Brokers, Inc.*, 861 F.2d at 1030); *see also FTC v. Warner Comms., Inc.*, 742 F.2d 1156, 1165 (9th Cir. 1984) (same). This principle is especially important in the context of enforcement of consumer protection laws. *FTC v. Mallett*, 818 F. Supp. 2d at 149 (“The public interest in ensuring the enforcement of federal consumer protection is strong.”).

Here, the balance of equities justifies the relief sought. The evidence demonstrates that the public equities – protection of consumers from Defendants' deceptive practices; effective enforcement of the law; and the preservation of Defendants' assets for consumer redress and disgorgement – weigh heavily in favor of granting the proposed injunctive relief. Granting such relief is also necessary because Defendants' conduct indicates that they will likely continue to deceive the public. *See USA Beverages, Inc.*, 2005 WL 5654219, at *8 (holding that “past misconduct gives rise to the inference that there is a reasonable likelihood of future violations”); *SEC v. R.J. Allen & Assoc., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (same).

By contrast, the private equities in this case are not compelling. Compliance with the law is hardly an unreasonable burden. *See World Wide Factors, Ltd.*, 882 F.2d at 347 (holding that “there is no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment.”). Because the injunction will preclude only harmful, illegal behavior, the public equities supporting the proposed injunctive relief far outweigh any burden imposed by such relief on Defendants. *See id.*

C. The Scope Of The Proposed TRO Is Necessary And Appropriate

1. Conduct Relief

To prevent ongoing consumer injury, the proposed temporary restraining order would prohibit Defendants from making future misrepresentations that consumers can successfully use Defendants' diplomas as valid high school equivalency credentials when applying for jobs,

enrolling in institutions of higher learning, or for other similar purposes. The order also would prohibit Defendants from misrepresenting that their online programs are accredited by an independent, third-party accrediting body.

As discussed above, this Court has broad equitable authority under Section 13(b) of the FTC Act to grant ancillary relief necessary to accomplish complete justice. *U.S. Oil & Gas*, 748 F.2d at 1434-35; *Gem Merch. Corp.*, 87 F.3d at 468-70. These proposed prohibitions do no more than order that Defendants comply with the FTC Act.

2. Temporary Disabling Of Websites

An order provision temporarily disabling Defendants' websites and suspending their domain name registrations is necessary to prevent further consumer injury. As discussed above, Defendants operate at least four currently-active Internet websites containing deceptive representations. Suspending their domain name registrations will ensure that Defendants cannot evade compliance with any preliminary relief entered by this Court pending final determination of this matter.

This Court has the authority to direct third parties to effectuate the purpose of the TRO. *Cf. Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940) (holding that courts have authority to direct third parties to preserve assets); *United States v. First Nat'l City Bank*, 379 U.S. 378, 385 (1965) (same). Courts have commonly granted similar relief against other defendants who have utilized Internet websites to promote fraud. *FTC v. Mallett*, 818 F. Supp. 2d at 150 (holding that removal of public access to Defendants' websites is "appropriate"); *FTC v. SouthEast Trust, LLC*, No. 12-cv-62441-CIV-ZLOCH, slip op. at 16 (ordering the disabling of defendants' websites); *FTC v. Ryan*, No. 1:09-cv00535-HHK, slip op. (D.D.C. Mar. 30, 2009) (same).

3. Asset Freeze

When a district court determines that the FTC is likely to prevail in a final determination on the merits, it has "a duty to ensure that . . . assets . . . [are] available to make restitution to the injured customers." *World Travel Vacation Brokers, Inc.*, 861 F.2d at 1031. The Eleventh Circuit has repeatedly upheld the authority of district courts to order an asset freeze to preserve the possibility of consumer redress. *See, e.g., FTC v. USA Fin., LLC*, 415 F. App'x 970, 976 (11th Cir. 2011) ("Maintaining the asset freeze until the monetary judgment was satisfied was necessary to accomplish complete justice.") (internal quotations omitted); *Gem Merch. Corp.*, 87

F.3d at 469; *U.S. Oil & Gas*, 748 F.2d at 1433-34.¹³ To help ensure the availability of assets, preserve the status quo, and guard against the dissipation and diversion of assets, this Court may freeze the assets of corporate and individual defendants where, as here, the individual Defendants controlled the deceptive activity and had actual or constructive knowledge of the deceptive nature of the practices. *See World Travel Vacation Brokers, Inc.*, 861 F.2d at 1031; *In re Nat'l Credit Mgmt. Grp., LLC*, 21 F. Supp. 2d 424, 462 (D.N.J. 1998). Further, the Court can order Defendants' assets to be frozen whether the assets are inside or outside the United States.¹⁴ *First Nat'l City Bank*, 379 U.S. at 384 ("Once personal jurisdiction of a party is obtained, the District Court has authority to order it to 'freeze' property under its control, whether the property be within or without the United States").

Courts have held, and experience has shown, that Defendants who engage in deceptive or other serious law violations are likely to waste assets prior to resolution of the action. *See SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972). Here, Defendants' ongoing fraud demonstrates their willingness to engage in wrongdoing. The possibility of a large monetary judgment provides Defendants with ample incentive to conceal or dissipate otherwise recoverable assets. Moreover, as discussed above, Defendant Wolfram routinely transfers large sums of corporate money to his personal PayPal account, to several shell corporations established in his name, and to shell corporations set up in the names of Relief Defendants Tiffany Chambers and Sylvia Gads. (PX14 ¶¶ 36, 39-40.) Without an immediate freeze of

¹³ This Court has frozen defendants' assets in many FTC enforcement actions. *See, e.g., FTC v. IAB Mktg. Assocs., LP*, 972 F. Supp. 2d 1307, 1309 (S.D. Fla. 2013); *FTC v. SouthEast Trust, LLC*, No. 12-cv-62441-CIV-ZLOCH, slip op. at 16; *FTC v. Am. Precious Metals, LLC*, No. 11-61072-CV-ZLOCH, slip op. at 8 (S.D. Fla. May 13, 2011); *FTC v. VGC Corp.*, No. 1:11-cv-21757/Martinez, slip op. at 5 (S.D. Fla. May 16, 2011); *FTC v. Home Assure, LLC*, No. 8:09-CV-547-T-23TBM, 2009 WL 1043956, at *1 (M.D. Fla. Apr. 16, 2009); *FTC v. Kirkland Young, LLC*, No. 09-23507-CIV-GOLD/MCALILEY, slip op. at 9 (S.D. Fla. Nov. 18, 2009); *FTC v. Global Mktg.*, 594 F. Supp. 2d 1281, 1286 (M.D. Fla. 2009); *FTC v. RCA Credit Servs., LLC*, 8:08-CV-2062-T27MAP, 2008 WL 5428039, at *1 (M.D. Fla. Dec. 31, 2008); *FTC v. USA Fin., LLC*, No. 8:08-CV-899-T-17MAP, 2008 WL 3165930, at *1 (M.D. Fla. Aug. 6, 2008); *U.S. Mortg. Funding, Inc.*, 2011 WL 810790, at *6-9; *First Universal Lending, LLC*, 773 F. Supp. 2d at 1335.

¹⁴ The TRO also includes a provision that restrains Defendants from taking any action that may result in the encumbrance or dissipation of foreign assets, including taking any action that would invoke a duress clause. This provision is important since Defendants may have created offshore asset protection trusts that could frustrate the Court's ability to provide consumer redress. *See FTC v. Affordable Media*, 179 F.3d 1228, 1239-44 (9th Cir. 1999).

Defendants' assets, it is unlikely that funds will remain to satisfy any final order granting redress to deceived consumers.¹⁵

In addition to a provision directing Defendants not to dissipate or conceal assets, the FTC seeks a provision in the TRO directing banks and other financial institutions to freeze Defendants' assets in their custody or control. This court has the authority to direct its order to such third parties in order to preserve assets that are easily dissipated and may be difficult or impossible to trace. *See Deckert*, 311 U.S. at 290; *Reebok Int'l, Ltd.*, 49 F.3d at 1391; *Waffenschmidt*, 763 F.2d at 714

Finally, the FTC seeks an immediate accounting of Defendants' assets and any transfers by Defendants since January 1, 2006 of assets worth \$1,000 or more. The FTC also requests that the Court order Defendants to complete and return to the FTC financial statements on the forms attached to the proposed TRO. An accounting and financial statements, combined with an asset freeze, will increase the likelihood of preserving existing assets pending final determination of this matter. *See, e.g., FTC v. D Squared Solutions, LLC*, No. AMD03CV3108, 2003 WL 22881377, at *4 (D. Md. Oct. 30, 2003) (ordering immediate accounting of assets); *FTC v. Stout*, No. 2:99-CV-5705 (WHW), 1999 WL 34833240, at *3 (D.N.J. Dec. 8, 1999) (same).

4. Preservation Of Records

In addition, the proposed order contains a provision directing Defendants to preserve records, including electronic records, and evidence. It is appropriate to enjoin Defendants charged with deception from destroying evidence and doing so would place no significant burden on them. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990) (characterizing such orders as "innocuous").

5. Limited Expedited Discovery, Including Immediate Production Of Documents, Is Necessary

The FTC seeks leave of the Court for immediate access to Defendants' business premises, if any, and limited expedited discovery, so that the FTC may discover the nature and

¹⁵ At this time, the FTC does not seek to freeze the assets of the individual Relief Defendants, Sylvia Gads and Tiffany Chambers, because it is not yet clear how much of the fraudulent proceeds are extant in their personal accounts. Instead, the FTC requests that the Court order the two individual Relief Defendants to provide an immediate accounting of their assets.

location of assets and documents.¹⁶ Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) authorize the Court to alter the standard provisions, including applicable time frames, that govern depositions and production of documents. This type of discovery order reflects the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (holding that when "the public interest is involved in a proceeding," the court's "equitable powers assume an even broader and more flexible character than when only a private controversy is at stake"); *see also Univ. Health, Inc.*, 938 F.2d at 1210 (district court granted expedited discovery to determine if a preliminary injunction should issue); *Fed. Exp. Corp. v. Fed. Espresso, Inc.*, No. CIV.A.97CV1219RSPGJD, 1997 WL 736530, at *2 (N.D.N.Y. Nov. 24, 1997) (early discovery "will be appropriate in some cases, such as those involving requests for a preliminary injunction") (quoting Commentary to 1993 Amendments to Fed. R. Civ. P. 26(d)).

6. The Requested Relief Should Be Granted *Ex Parte*

Relief should be issued without notice so that final relief can be effectuated. Federal Rule of Civil Procedure 65(b) provides for the issuance of an *ex parte* TRO, pursuant to the general equitable powers of the district court, where it appears that "immediate and irreparable injury, loss or damage will result to the movant before the adverse party or his attorney can be heard in the opposition." *Cardile Bros. Mushroom Packaging v. Wonder-Land Invs., Inc.*, No. 09-20894, 2009 WL 936671, at *1 (S.D. Fla. April 6, 2009). In such cases, *ex parte* relief is "indispensable" because "it is the sole method of preserving a state of affairs in which the court can provide effective final relief." *In re Vuitton et Fils S.A.*, 606 F.2d 1, 4 (2d Cir. 1979); *see also U.S. Mortg. Funding, Inc.*, 2011 WL 810790, at *2 (*ex parte* TRO "necessary to stop continued harm to the public as well as to prevent dissipation of assets and destruction of records, thereby preserving the Court's ability to provide effective final relief"). Courts have

¹⁶ The FTC's evidence indicates that the online diploma mills operate from the private residence of Defendant Wolfram in Scottsdale, Arizona. Accordingly, the proposed TRO also includes a provision directing Defendants to produce to the FTC within 24 hours of service of the TRO all documents relating to the marketing and sale of high school diplomas at the curb of their home and allow the FTC to copy those documents. Defendants would be precluded from introducing in any proceeding in this case any document not so produced. Such a provision allows the FTC immediate access to Defendants' documents while preserving any Fourth Amendment right Defendants may have.

regularly granted the FTC's request for *ex parte* temporary restraining orders in Section 13(b) cases.¹⁷

As set forth in the accompanying Declaration of Counsel, notice to Defendants would cause irreparable injury in this case. Defendants operate a business that is permeated by fraud and illegal practices, including charging consumers hundreds of dollars for worthless pieces of paper purported to be valid high school credentials. Defendants' fake online high schools offer consumers no legitimate services whatsoever; on the contrary, they actively target and deceive consumers who are seeking legitimate online high school programs or equivalency tests. The severity and ongoing nature of Defendants' fraudulent operation suggest that Defendants have every incentive to destroy inculpatory documents if given notice of the FTC's action.

Further, there is a risk of asset dissipation absent *ex parte* relief. First, two of the Defendants have international connections. Defendant Maria Garcia, whose name appears on many of Defendants' corporate filings, service contracts, and bank accounts, is a Mexican national. (*See* Section II.B.2 at 3, *supra*.) Upon information and belief, Garcia currently resides in Mexico. Corporate Defendant MMDS is a St. Kitts & Nevis entity. (*See* Section II.B.1 at 2, *supra*.) Second, bank records show that Defendant Wolfram transfers money freely from Defendants' corporate accounts to shell corporations established for his own benefit, or for the benefit of friends or family members. (*See* PX14 ¶¶ 36, 39-40.)

Ex parte relief is also justified because Defendants go to great lengths to hide their base of operations, as well as their involvement in the diploma mill scheme. For example, IDM Services and Steinbock Holdings – both owned by Wolfram – are registered in Cheyenne, WY, at an address that is a mail drop and is also associated with many other corporations. (*See* Section II.B.1 at 3, *supra*.) In addition, Jefferson High School was initially operated by MMDS and based in Arizona. (*See id.* at 2.) In 2012, however, Wolfram and Garcia created a new entity, DER, registered in Florida, to operate the Jefferson and Enterprise websites – even though

¹⁷ See *supra* note 8 and the cases cited therein. Indeed, Congress has looked favorably on the availability of *ex parte* relief under the FTC Act: “Section 13 of the FTC Act authorizes the FTC to file suit to enjoin any violation of the FTC [Act]. The FTC can go into court *ex parte* to obtain an order freezing assets, and is also able to obtain consumer redress.” S. Rep. No. 130, 103rd Cong., 2d Sess. 15-16, *reprinted in* 1994 U.S. Code Cong. & Admin. News 1776, 1790-91.

all correspondence for both entities continues to be forwarded to Wolfram's residence in Arizona. (*See id.*)

Defendants also registered their Jefferson, IDM, and IABOS websites through Domains By Proxy, (PX14 ¶ 15), "a private registration service that prevents access to the personal identifying information of the registrant." *Orlan v. Spongetech Delivery Sys., Inc., Sec. Litig.*, No. 10-CV-4093 DLI JMA, 2012 WL 1067975, at *6 (E.D.N.Y. Mar. 29, 2012). "Domains by Proxy acts as an agent for website owners, by listing its own name and contact information (rather than the actual website owner's) in the WHOIS database entry for a given domain name. *See generally* [http:// www.domainsbyproxy.com/](http://www.domainsbyproxy.com/) (last visited Aug. 16, 2013). Then, Domains by Proxy forwards to the website owner communications that are intended for the owner, and promises its customers that it will not reveal their identity and contact information, except as required by law (*e.g.*, in response to a valid subpoena) or in other defined circumstances." *United States v. Bode*, No. CRIM. ELH-12-158, 2013 WL 4501303, at *3 n.6 (D. Md. Aug. 21, 2013). Defendants' registration of the Jefferson, IDM, and IABOS websites with Domains By Proxy is further proof that Defendants attempt to hide their involvement in the diploma mills.

Finally, as previously discussed, Wolfram's name does not appear on any of the corporate filings or service contracts of DER, even though he pays all or nearly all costs associated with Jefferson and Enterprise. (*See* Section II.B.2 at 3, *supra.*) These efforts to put distance between himself and the companies he runs suggest that Defendant Wolfram is anticipating eventual law enforcement action and does not want his name to be associated with the diploma mills when it happens.

The FTC's past experience shows that, upon discovery of impending legal action, defendants engaged in similar deceptive schemes withdraw funds from bank accounts and move or shred documents. Thus, the FTC believes that there is a real risk of irreparable injury if Defendants are given notice of the FTC action.

V. CONCLUSION

For the reasons set forth above, the FTC respectfully requests that the Court enter the proposed TRO to halt Defendants' violations of the FTC Act, and to help ensure the possibility of effective final relief for consumers.

Dated: September 16, 2014

Respectfully submitted,

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