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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 **FEDERAL TRADE COMMISSION,**

14 Plaintiff,

15 v.

16 **CAPITOL NETWORK DISTANCE**
17 **LEARNING PROGRAMS, LLC, et al.,**

18 Defendants.

Case No.

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

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1 **I. INTRODUCTION**

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

11 To put an immediate stop to Defendants’ illegal activities, the FTC seeks a temporary
12 restraining order (“TRO”) and an order to show cause why a preliminary injunction should not
13 issue. The proposed TRO would enjoin Defendants’ illegal practices and freeze their assets.
14 These measures are necessary to prevent continued consumer injury, dissipation of assets, and
15 destruction of evidence, and thereby to preserve the Court’s ability to provide effective final
16 relief.

17 **II. THE PARTIES**

18 **A. The Federal Trade Commission**

19 Plaintiff FTC is an independent agency of the United States government created by the
20 FTC Act, 15 U.S.C. §§ 48 – 51. The FTC enforces Section 5 of the FTC Act, 15 U.S.C. § 45,
21 which prohibits unfair and deceptive acts and practices in or affecting commerce. Section 13(b)
22 of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC, through its own attorneys, to initiate

1 federal court proceedings to enjoin violations of the FTC Act and to secure such equitable relief
2 as may be appropriate in each case, including consumer redress and disgorgement of ill-gotten
3 gains. *See, e.g., FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994).

4 **B. Defendants**

5
6 Defendants constitute a common enterprise of entities that operate and facilitate the
7 online diploma mill operation, as well as individuals who have authority to control and directly
8 participate in the unlawful activities.
9

10 Defendant **Capitol Network Distance Learning Programs, LLC** is an inactive Arizona
11 limited liability company, formed on May 21, 2008 by Defendant Nicholas Pollicino, and
12 administratively dissolved on September 6, 2012.¹ (PX04 at 3 ¶8, Att. A at 39-41.) Capitol
13 Network Distance Learning also does business under the name CNDLP. (*Id.* at 14-15 ¶32, Att.
14 N at 260-61, 265, Att. T at 462.) Corporate papers list Capitol Network Distance Learning's
15 principal place of business as 14425 N. Scottsdale Road, Suite 700, Scottsdale, Arizona. (*Id.* at
16 3 ¶8, Att. A at 39.) Capitol Network Distance Learning has also utilized a network of
17 commercial mail-receiving agency addresses, including 3116 E. Shea Boulevard, Suite 158,
18 Phoenix, Arizona; 3217 E. Shea Boulevard, Suite 237, Phoenix, Arizona; 10115 E. Bell Road,
19 Suite 107-143, Scottsdale, Arizona; and 16211 N. Scottsdale Road, Suite A6A-434, Scottsdale,
20 Arizona. (*Id.* at 3, 15, 17, 29, 30 ¶¶8, 36, 39, 60, 61, Att. A at 40, Att. G at 103, Att. H at 161,
21 Att. N at 242-43, 261, Att. O at 270, Att. T at 462.) Documents obtained from GoDaddy and
22 Domains by Proxy list Capitol Network Distance Learning, along with Nicholas Pollicino, as

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27 ¹ Under Arizona law, an administratively dissolved limited liability company continues in
28 existence but cannot carry on business. Ariz. Rev. Stat. § 29-786(D). The members have six
years within which to seek reinstatement.

1 registrant for many of Defendants' websites. (*Id.* at 7 ¶18, Att. G at 103-04, 106, 108, 114, 116-
2 18, 120-22, Att. H at 145, 148-54, 156, 158, 160-61, 163-65.)

3
4 Defendant **Capital Network Digital Licensing Programs, LLC** is an Arizona limited
5 liability company, formed on January 27, 2011 by Nicholas Pollicino. (*Id.* at 4 ¶9, Att. B at 43-
6 47.) Capital Network Digital Licensing also does business under the name CNDLP. (*Id.* at 16
7 ¶38, Att. P at 334.) Corporate papers list Capital Network Digital Licensing's principal place of
8 business as 8930 E. Raintree Road, Suite 300, Scottsdale, Arizona. (*Id.* at 4 ¶9, Att. Bat 45.)
9
10 Capital Network Digital Licensing has also utilized a network of commercial mail-receiving
11 agency addresses, including 3116 E. Shea Boulevard, Suite 158, Phoenix, Arizona and 3217 E.
12 Shea Boulevard, Suite 237, Phoenix, Arizona. (*Id.* at 4 ¶¶9, 39, 61, Att. B at 43-45, Att. P at
13 334.)
14

15 Defendant **Veritas Sales, Inc.** is an Arizona company incorporated on March 30, 2004.
16 (*Id.* at 4 ¶10, Att. C at 49-64.) Veritas Sales also does business under the name CNDLP. (*Id.* at
17 16 ¶ 36, Att. O at 271.) Corporate papers list its principal place of business at 10115 E. Bell
18 Road, Suite 107-143, Scottsdale, Arizona. (*Id.* at 4 ¶10, Att. C at 59, 61.) Veritas Sales also has
19 utilized a network of mail drop addresses, including 15550 N. 84th Street, Suite 105, Scottsdale,
20 Arizona; 1930 E. Third Street, Suite 6, Tempe, Arizona; 3116 E. Shea Boulevard, Suite 158,
21 Phoenix, Arizona, and 4757 E. Greenway Road, Suite 103-154, Phoenix, Arizona. (*Id.* at 4
22 ¶¶10, 36, 37, 39, Att. C at 52, 53, 56, Att. I at 167, Att. O at 282, Att. P at 304.) Documents
23 obtained from DNC Holdings list Veritas Sales and Defendant Anthony Clavien as registrant of
24 some of Defendants' websites. (*Id.* at 7 ¶18, Att. I at 167.)
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1 Defendant **Nicholas A. Pollicino**, a/k/a Nick Pollicino, is the manager and sole member
2 and statutory agent of Capitol Network Distance Learning and Capital Network Digital
3 Licensing, and a manager and incorporator of Veritas Sales. (*Id.* at 3-4 ¶¶8, 9, 10, Att. A at 39-
4 41, Att. B at 43-47, Att. C at 50, 51, 55, Att. N at 261-62, Att. P at 317, 334, 337.) He has
5 signatory authority over all their corporate bank accounts and control over their merchant
6 accounts. (*Id.* at 14, 16-17 ¶¶32, 38, Att. N at 261-62, 267, Att. P at 317, 334-35, 337-38.)
7 Documents obtained from GoDaddy and Domains by Proxy list Nicholas Pollicino as the
8 registrant for many of Defendants' websites, with Nicholas Pollicino often paying the
9 registration fees with his personal credit card. (*Id.* at 7 ¶18, Att. G at 103, 106-08, 113-25 Att. H
10 at 145-65.) He is also the registrant for some of Defendants' commercial mail drop addresses.
11 (*Id.* at 13-14 ¶30.)

15 Defendant **Anthony J. Clavien** is the owner, president, director, and statutory agent of
16 Veritas Sales. (*Id.* at 4 ¶10, Att. C at 50, 51, 53, 55-59, 61, Att. O at 282, Att. P at 317, 327,
17 345.) Clavien has signatory authority over Veritas Sales' bank accounts and is listed as a
18 contact for Capitol Network Distance Learning's merchant accounts. (*Id.* at 14,-16 ¶¶32, 37, 38,
19 Att. N at 243, Att. O at 282, Att. P at 293, 297-302, 308, 317, 327, 345.) Documents obtained
20 from DNC Holdings list Clavien as the registrant for some of Defendants' websites. (*Id.* at 7
21 ¶18, Att. I at 167.)

24 Defendant **Adam F. Pollicino** is the vice-president, secretary, and director of Veritas
25 Sales and principal of Capitol Network Distance Learning. (*Id.* at 4 ¶10, Att. C at 53, 61, 63-64,
26 Att. O at 270, Att. P at 317, 345 (listed as "KEY EXECUTIVE").) Adam Pollicino has
27 signatory authority over Capital Network Distance Learning's and Veritas Sales' bank accounts
28

1 and control over their merchant accounts. (*Id.* at 15-16 ¶¶36, 38, Att. O at 270, Att. P at 292-93,
2 295-302, 307-10, 317, 322, 324, 326, 345.) Documents obtained from GoDaddy and Domains
3 by Proxy list Adam Pollicino as the registrant of some of Defendants’ websites. (*Id.* at 7 ¶18,
4 Att. G at 98-100, Att. H at 134-35.)²

6 **III. DEFENDANTS’ DECEPTIVE BUSINESS PRACTICES**

7 Since at least 2004, Defendants have marketed and sold fake high school diplomas to
8 consumers nationwide. Defendants’ websites purport to describe legitimate and accredited
9 secondary school programs bearing names such as “Capitol High School,” “Stafford High
10 School,” “Franklin High School,” “Lincoln High School,” “County High School,” “Metro High
11 School,” “Liberty High School,” and “Heritage High School.” (*Id.* at 9 ¶20, Att. J at 171-224.)
12 They claim that consumers can “[e]arn your High School Diploma Online” by taking an online
13 exam and paying a fee ranging between \$135 and \$249. (*Id.* at 5, 9 ¶¶13, 21, Att. J at 171-224.)
14 They claim that their diplomas have been “accepted by a wide range of organizations.” (*Id.* at
15 10 ¶21, Att. J at 172.)
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20 ² Contemporaneous with the filing of this action, the FTC has also filed in this District a
21 complaint and application for preliminary injunctive relief against Stepping Stonez
22 Development, LLC, Intentional Growth, LLC, and Stephen Remley (collectively the “Stepping
23 Stonez Defendants”). Evidence suggests that at one time Defendants and the Stepping Stonez
24 Defendants may have shared operations. For example, bank records show payments between
25 Stephen Remley and Veritas Sales through 2012. Also, Stephen Remley was the applicant for a
26 2009 commercial mail-receiving address used by both Intentional Growth and Defendants. In
27 addition, documents provided by GoDaddy and Domains by Proxy show that several websites
28 currently registered to Stephen Remley previously were registered to either Nicholas or Adam
Pollicino. Further, several of the Stepping Stonez Defendants’ websites continue to reference
CNDLP. Whatever relationship may have existed between the two groups, however, appears to
have ended by mid-2012 – the last checks were exchanged in June 2012, and the last transfer of
domain names occurred in early 2011. (*Id.* at 31 ¶¶66-67.)

1 Despite the website representations, Defendants do not operate legitimate or accredited
2 educational programs and do not issue valid high school diplomas. In numerous instances,
3 consumers who attempt to use their diplomas to enroll in college, enlist in the military, or apply
4 for jobs are denied because of their invalid high school credentials.
5

6 **A. Defendants Misrepresent That Their Diplomas Constitute Valid High School**
7 **Equivalency Credentials Accepted by Employers and Colleges**

8 **1. Defendants' Deceptive Use of Metatags and URLs**

9 Defendants' scheme begins by luring Internet-browsing consumers to their websites
10 through the use of deceptive metatags. Metatags³ are codes embedded in the HTML text of a
11 website that, at least in theory, describe the website's content and allow consumers to navigate
12 easily to it from a search engine like Google. For example, Defendants use keyword metatags
13 such as "GED," "GED online," and "diploma." (*Id.* at 12-13 ¶27, Att. K at 226, Att. L at 233.)
14 When consumers use search engines to locate legitimate high school programs, they are drawn
15 to Defendants' websites instead.⁴ For example, consumer Cathryn Teshera's Google search for
16 online high schools led her to Defendants' Capital High School website. (PX05 at 2 ¶6; *see also*
17
18
19

20 ³ There are different types of metatags, including "keyword," "description," and "title" metatags.
21 Search engines look for keywords in places such as domain names, actual text on webpages, and
22 metatags. Description metatags are intended to describe a website. Typically, the text of a
23 description metatag appears beside its Internet address in the list of websites generated by a
24 search engine. The description helps consumers navigate to sites that include the content for
25 which they are searching. Title metatags specify what text will appear at the top of a particular
26 webpage. *See Brookfield Commc'ns, Inc. v. West Coast Entm't Corp.*, 174 F.3d 1036, 1045 (9th
27 Cir. 1999).

28 ⁴ Defendants similarly employ deceptive description and title metatags. For example,
Defendants use description metatags such as "get a real high school diploma in 2 days!" and title
metatags such as "High School Diploma Online – Online diplomas with Capitol Online High
School" and "High School Diploma Online – get a diploma fast at Stafford High School
Online." (*Id.* at 12-13 ¶27, Att. K at 226, Att. L at 233.)

1 PX04 at 12-13 ¶27, Att. M at 240; PX06 at 1 ¶2.) Like many other consumers, she believed
2 Defendants' website was that of a legitimate high school program. (PX05 at 2 ¶6.)

3
4 Moreover, the website addresses (or URLs) themselves suggest that Defendants operate
5 legitimate high schools. For example, Defendants have registered the following website
6 addresses: chsonlinehighschool.com, copellahighschool.org, countyhighschoolonline.com,
7 metrohighschoolonline.com, eastridgehighschool.org, getahighschooldiploma.com,
8 earnahighschooldiploma.com, capitolhighschool.org, johnsoncenteronlinehighschool.org,
9 heritageonlinehighschool.com, centennialonlinehighschool.com lincolnonlinehighschool.com,
10 libertyonlinehighschool.com, franklinonlinehighschool.org, getahighschooldiploma.net, my-
11 ged.com, staffordhighschoolonline.com, and capitolhighschool.yolasite.com. (PX04 at 7 ¶18,
12 Att. G at 99-100, 103-04, 111-12, Att. H at 135, 146-47, Att. I at 167, Att. J at 169-224). They
13 also have registered Spanish-language websites, *escuelacapital.com* and *escuelacapitol.com*.
14 (*Id.* at 7 ¶18, Att. G at 112, 120-21, Att. H at 146, Att. J at 202-11.)

15 16 17 18 **2. Defendants' Deceptive Websites**

19 Defendants reinforce these misrepresentations when consumers go to their websites.
20 Through their various websites, Defendants misrepresent that their diplomas constitute valid
21 high school equivalency credentials. For example, Defendants' websites claim:

- 22 • Earn Your High School Diploma Online
- 23 • Our goal is to create an equal opportunity for men and women of all ages and
24 backgrounds to receive a high school equivalency diploma
- 25 • Capitol High School is proud to offer students a flexible high school program that is
26 tailored to meet the demands of a busy schedule. With this innovative high school
27 diploma online free program, more students can now earn a diploma in their free
28 time!

- 1 • Capitol High School provides you with the opportunity to become a High School
- 2 graduate with an official High School diploma
- 3 • The Best Online Alternative to a GED
- 4 • Your transcripts will include all courses required for the degree that you are receiving
- 5 based on your life experience submission. The documents will be printed on no copy
- 6 security paper and include our official seal.
- 7 • [O]ur registrar will . . . verify that you graduated from our program to any third party
- 8 that you authorize to receive the information.

9 (*Id.* at 9 ¶21, Att. J at 178, 180, 182, 184, 190, 201; *see also id.* at 5-6, 22 ¶¶12, 14, 48, Att. D at
10 66, Att. E at 69.)

11 Defendants also misrepresent that consumers can use their diplomas to obtain
12 employment, career advancement, or higher education. For example, Defendants' websites
13 claim:

- 14 • NEED A DIPLOMA FOR COLLEGE? Worried about acceptance? Get into college
- 15 or your money back!
- 16 • Our program has been successfully utilized in a variety of settings and is accepted by
- 17 a wide range of organizations.
- 18 • Do you need your high school diploma to . . .
 - 19 ○ Help you get a job?
 - 20 ○ Help you change careers?
 - 21 ○ Make you eligible for promotion?
 - 22 ○ Enter a training program?
- 23 • We have thousands of students who have gone on to college after completing our
- 24 program.

25 (*Id.* at 9-10 ¶21, Att. J at 172, 178, 212, 216, 218; *see also id.* at 5 ¶12, Att. E at 79 (consumer
26 was told Capital High School diploma would be accepted by New York City Board of
27 Education); PX06 at 1 ¶3 (Defendants' representative assured consumer that her son would be
28 able to get into college with a Capital High School diploma).)

1 Further, Defendants’ websites contain numerous purported customer testimonials touting
 2 their online high school diploma program and its uses. For example, testimonials on
 3 Defendants’ websites include:

- 4 • Wow! Thanks to CNDLP I am currently working in one of the best Hospitals in N.Y.
 5 and taking nursing at a local private college.
- 6 • I got a job with construction as an inspector.
- 7 • Hi, I’m so glad that online diplomas exists. I thank you giving others the chance they
 8 deserve. I got married my junior year and moved to different state, and the school
 9 their told me I was too old to be a junior their, so I haven’t been in school since. I
 10 thank you again for another chance to improve myself and my life. [sic]
- 11 • This program has help begin a step into my future career. Thank-You. [sic]
- 12 • Thank you so much CNDLP! I just got my job thanks to have passed your program.
 I sent my mom and whole family a picture with me holding up my new diploma in
 front of my new job!

13 (PX04 at 10 ¶22, Att. J at 178, 190, 194-97, 212, 221-24; *see also id.* at 22 ¶48.)⁵
 14

15 Indeed, numerous consumers viewing Defendants’ websites enrolled in Defendants’
 16 program believing them to be legitimate online alternatives to a traditional high school diploma.
 17 (PX03 at 1 ¶2; PX06 at 1 ¶3; *see generally* PX01 at 4-6 ¶¶11-14; PX04 at 5 ¶12.)
 18

19 **3. Defendants’ Purported Diploma Programs**

20 Defendants’ so-called “diplomas” are not, in fact, equivalent to earning a traditional high
 21 school diploma, because they require no instruction, no classes, no study materials, and no
 22 periodic evaluations. In order to earn one of Defendants’ “diplomas,” consumers must only pass
 23 an unmonitored, untimed, multiple-choice online test. (PX04 at 5, 22-24 ¶¶13, 48, 49, 51, Att. J
 24
 25

26 ⁵ As evidence that these testimonials are fabricated, in several instances, Defendants’ websites
 27 contain the same testimonial language but attributed to different school names. (*See, e.g., id.* at
 28 10 ¶22; *compare id.* Att. J. at 194-197 (Capitol High School) *with id.* at 221-224 (same
 testimonials for Stafford High School).)

1 at 178, 180, 182, 184, 212; PX06 at 1 ¶5.) No preparation or coursework is required before
2 taking the online test, and students are free to consult outside sources for answers. (PX04 at 24
3 ¶51.)

4
5 The test administered by Defendants consists of four sections – language arts (15
6 questions), social studies (20 questions), mathematics (26 questions), and science (44 questions)
7 – and consumers must pass each section with a 70% or better. (*Id.*) If a consumer does not get
8 70% correct on a particular section, the website prompts the consumer to retake that section, but
9 on the subsequent try, the correct answers are highlighted in red and the consumer need only
10 select the now-highlighted answers. (*Id.* at 24-26 ¶52.)

11
12 After passing the “test,” the website prompts consumers to demonstrate their acquired
13 skills through “life experiences.” (*Id.* at 26-28 ¶53, Att. J at 178, 192 (“Do you know how to
14 cook? Do you have a driver’s license? Can you navigate the internet with your computer? Do
15 you know how to fill out a job application? Do you know how to play tennis or football? Almost
16 every subject you have life experience in is worth consideration for credit in our program”).)
17 For example, consumers can demonstrate “Accounting Knowledge” by selecting the drop-down
18 choice “Balance Checkbook,” and demonstrate “Foreign Language” by selecting “A Few
19 Words.” (*Id.*) Consumers can indicate they possess “Music Appreciation” skills by selecting
20 the option “Listen to Music Occasionally” and selecting their favorite music genre. (*Id.*)
21 Finally, consumers write an “essay” about their life and work experiences. The essay, however,
22 need only be 100 words. (*Id.* at 28 ¶54.)

23
24 After passing the “test,” entering their life experiences, and writing their “essay,”
25 consumers “enroll” by entering their name and contact information. (*Id.* at 28 ¶55.) Then, they
26
27
28

1 move to the order page where they enter their payment information in order to obtain their
2 diploma. (*Id.* at 28 ¶56.) The required fee has varied over time and has ranged from \$135 to
3 over \$300. (*Id.* at 28 ¶56, Att. E at 69 (\$250), Att. J at 176, 178, 180, 182, 184, 190, 208; PX05
4 at 2 ¶7 (\$310); PX06 at 1 ¶4 (over \$300).) At various times, Defendants have accepted payment
5 by credit or debit card, PayPal, and money order. (PX04 at 30 ¶63, Att. J at 176, 188, 190, 216.)
6

7 Several days after consumers complete their order, Defendants ship the diploma and
8 transcript. (PX03 at 1 ¶3, Att. A at 4; PX04 at 5-6, 29-30 ¶¶13, 61, 62, Att. T at 462, Att. U at
9 464-66; PX05 at 2 ¶7; PX06 at 1 ¶5.) A typical diploma states that the consumer “has
10 satisfactorily displayed proficient knowledge of the standardized courses required for graduation
11 and is entitled to this official diploma” and is signed by a purported principal and
12 superintendent. (PX03 Att. A at 4; PX04 at 6 ¶13, Att. U at 464.) A typical transcript contains a
13 list of classes supposedly taken by the consumer. (PX04 Att. U at 465-66.) For example, when
14 an FTC investigator made an undercover purchase of Defendants’ Capitol High School diploma,
15 she listed that she knew “A Few Words” of Spanish. (*Id.* at 28 ¶53.) From that, her transcript
16 noted that she passed “Foreign Language I: Spanish” and “Foreign Language II: Spanish” with
17 B’s. (*Id.* Att. U at 466.) Meanwhile “Listen to Music Occasionally” and selecting “Basic” for
18 the “Graphic Arts/Drawing/Art Skills” section resulted in A’s and course credits for “Music
19 Appreciation,” “Art: Graphic Arts/Drawing,” and “Art: Appreciation.” (*Compare id.* at 28 ¶53
20 with *id.* Att. U at 466.)
21
22
23
24
25

26 In addition to the diploma and transcript, Defendants offer consumers verification
27 services. (*Id.* at 9, 30 ¶21, 64, Att. J at 176, 178, 181, 182, 184, 202, Att. V at 468.) Defendants
28 state: “[w]e understand that program completion is important to you and its legitimacy and

1 quality are both critical components. We provide full phone and fax verification for all inquiries
2 that follow our procedures.” (*Id.* Att. V at 468.) Consumers are provided “with a toll phone
3 number that they can provide to relevant parties with which their program completion can be
4 verified.” (*Id.*) After obtaining her diploma, an FTC investigator posed as a potential employer
5 and requested verification. (*Id.* at 30 ¶64.) Within a week, she received an email from
6 Defendants confirming that the FTC investigator “graduated from Capitol High School and
7 received a High School Diploma” and attaching a copy of her transcript. (*Id.* at 30-31 ¶65, Att.
8 W at 470.)

11 **4. Defendants’ High School Diplomas Are Not Legitimate Credentials**

12 In reality, Defendants’ diploma requirements fall far below established standards for
13 traditional high school completion. Consumers can obtain a diploma merely by passing
14 Defendants’ multiple-choice online exam, reporting their “life experiences,” and paying a fee.
15 Defendants’ online exam is untimed and unmonitored, it requires no preparation or coursework,
16 and students are free to consult outside sources for answers. (*See generally id.* at 22-28 ¶¶49-56,
17 Att. J at 174.) If consumers initially fail a section of the exam, the correct answers are then
18 highlighted, making it virtually impossible to fail. (*See, e.g., id.* at 24-26 ¶52.)

19 By contrast, traditional high schools require students to receive instruction and pass
20 periodic evaluations in order to earn their high school diplomas. For example, in the state of
21 Arizona, where Defendants are incorporated and operate, high school graduates obtaining a
22 traditional diploma are required to complete a minimum of twenty-two credits consisting of four
23 credits of English, four credits of mathematics, three science credits, three social science credits,
24 one credit of fine arts or vocational education, and seven credits of additional courses. Ariz.

1 Admin. Code § R7-2-302.02(1). Here, the purported transcript issued by Defendants lacks the
2 economics, world history, and speech and debate credits required by Arizona regulations.
3 Further, credits may only be earned through online “distance learning” if the online course
4 “provides for two-way interactive communications between the instructor and the student during
5 the time of instruction” and if the online education provider is both registered with the Arizona
6 Department of Education and independently accredited. *Id.* § R7-2-302.02(3). Defendants’
7 program satisfies none of the conditions that would allow their online “distance learning” to
8 qualify under Arizona law. Numerous states have established similar standards for traditional
9 high school completion – standards that cannot be met simply by passing an unmonitored online
10 test and listing one’s life experiences and that Defendants’ program do not meet.⁶

14 Neither do Defendants’ diplomas satisfy the requirements for a high school equivalency
15 diploma offered by many states. For example, in Arizona, a consumer can obtain a high school
16 equivalency diploma only after passing the GED test.⁷ Ariz. Admin Code § R7-2-307. But

18 ⁶ *See, e.g.*, Cal. Educ. Code § 51225.3 (Defendants’ program fails to include economics, has
19 insufficient civics and physical education credits, and does not include passing the California
20 High School Exit Examination); Md. Code Regs. 13A.03.02.03 (Defendants’ program fails to
21 include lab sciences and world history credits, has too many credits granted for outside-school
22 experiences, and does not include passing several required exit examinations); N.Y. Comp.
23 Codes R. & Regs. Tit. 8, § 100.5 (Defendants’ program fails to include economics, has
24 insufficient physical education, and does not include passing several required Regents exams);
25 Ohio Rev. Code. Ann. § 3313.603 (Defendants’ program fails to include lab courses or advanced
26 science credits and does not include passing several required exit examinations); 8 Va. Admin.
27 Code § 20-131-50.B (Defendants’ program fails to include world history, economics, and lab
28 science credits, has insufficient physical education and sequential electives, and does not include
passing several required exit examinations).

⁷ Many other states also require a passing score on the GED test (or an equivalently rigorous
timed, proctored, in-person test such as the Test Assessing Secondary Completion (TASC) or
HiSET) in order to obtain a high school equivalency degree. *See, e.g.*, Ark. Admin. Code
005.11.6-3; Cal. Educ. Code § 51420; 1 Colo. Code Regs. § 301-2:2202-R-135.00; Iowa Code

1 passing Defendants' online multiple-choice test is not equivalent to obtaining a GED certificate.
2 The GED certificate is a nationally recognized high school equivalency credential. (PX01 at 3
3 ¶6.) Students can obtain their certificate only by passing the GED test – a comprehensive series
4 of examinations, which take approximately eight hours to complete and may only be taken in
5 person at official GED testing centers. (*Id.* at 1 ¶3.) Defendants' untimed and unmonitored
6 online exam, which gives students the correct answers and allows them to re-attempt missed
7 questions, is not recognized by colleges, universities, or the military as a valid high school
8 equivalency test, and thus is not equivalent to the GED certificate. (*Id.* at 8 ¶20.)
9

11 Indeed, Defendants do not offer any educational services to consumers. Their students
12 attend no classes and receive no instruction, study materials, homework assignments, or periodic
13 evaluations. They also do not provide graduating students with counseling or support services.
14 (*See generally* PX04 at 22-28 ¶¶49-56.) In numerous instances, consumers who attempt to
15 contact Defendants at the number listed on the websites report that the number never connects to
16 a live person. (*See, e.g., id.* at 6 ¶16, Att. E at 71 (consumer reports that voicemail box says full
17 every time she tries to call), 79 (Defendants never returned consumer's phone calls), 81; PX05
18 at 3 ¶9; PX06 at 2 ¶¶8, 10.)
19
20
21

22 § 259A.1 (must take HiSET); 13 Ky. Admin. Regs. 3:010; Minn. R. 3500.3100; Neb. Rev. Stat.
23 § 79-730; 92 Neb. Admin. Code § 81-004; N.M. Stat. Ann. § 22-2-8.8; N.M. Code R. § 6.30.3;
24 Ohio Rev. Code. Ann. §§ 5107.40(c), 3313.617; Or. Admin. R. 589-007-0400; 22 Pa. Code
25 § 4.72; R.I. Admin. Code 21-2-63:5, 8; S.C. Code Ann. Regs. 43-259; Tenn. Comp. R. & Regs.
26 0520-01-03-.06 (take GED or HiSET); 19 Tex. Admin. Code § 89.1409; Tex. Educ. Code Ann.
27 § 7.111; Utah Admin. Code r. 277-702; 16 Vt. Stat. Ann. tit. 16, §§ 167, 945; 8 Va. Admin.
28 Code §§ 20-680-10, 20-680-20; W. Va. Code R. 126-32-2, -4, -12; W. Va. Code § 18-2-6b (take
GED or TASC).

1 Consumers report that Defendants' diplomas are virtually worthless. In numerous
2 instances, consumers who attempt to apply for jobs, seek admission to colleges, or enlist in the
3 military using Defendants' diplomas are turned down because the diplomas are not valid high
4 school equivalency credentials. For example, consumer Desiree Draper tried to use her Capitol
5 High School diploma to enroll in technical college and community college but was denied
6 because the diploma was not valid. (PX03 at 1-2 ¶¶4, 6.) Consumer Cathryn Teshera was
7 denied enrollment in her local community college because they would not accept a Capital High
8 School diploma. (PX05 at 2-3 ¶8.) Consumer Jeffrey Garcia attempted to use his Capitol
9 diploma to enroll in college in New York City, but discovered that the New York City Board of
10 Education would not recognize the diploma nor would the college accept it for admission.
11 (PX04 Att. E at 79.) Other consumers experienced similar situations. (*See, e.g., id.* at 6 ¶15,
12 Att. E at 69, 73, 81, 85, 90, Att. F at 96; *see generally* PX01 at 6 ¶¶15-16.)

16 **B. Defendants Misrepresent That They Operate Accredited Secondary Education** 17 **Programs**

18 **1. Defendants Misrepresent That They Operate Accredited Online Schools**

19 Defendants attempt to legitimize their fraudulent operation by representing that their so-
20 called "schools" are accredited educational programs. On their Spanish-language websites and,
21 at least until mid-2010, on their English-language websites, Defendants misrepresent that an
22 independent, third-party accrediting body named the Capitol Network for Distance Learning
23 Programs (or CNDLP) accredits their high schools. (PX04 at 10 ¶23, Att. J at 180, 182, 184,
24 201, 202, 212, 214; *see also id.* at 6 ¶14, Att. E at 77 (Defendants assured consumer Capital
25 High School was accredited), Att. J at 186 (website states that package includes "Accredited
26
27
28

1 Diploma”); PX05 at 2 ¶6 (Defendants’ representative assured consumer that Capital High
2 School was accredited); PX06 at 1 ¶3 (same).) Typically, their websites have included the
3 statement “Proud Member of CNDLP” next to the image of an academic seal.⁸ (PX04 at 10
4 ¶23, Att. J at 180, 182, 184, 201, 202, 212, 214.)

5
6 Defendants allow consumers to link directly to the CNDLP website, CNDLP.org, which
7 states that “[b]y upholding only the highest academic and educational standards we can ensure
8 that our students and course graduates are provided the best online education available.” (PX04
9 Att. J at 169.) CNDLP.org’s “Accreditation” page states that the “Capitol Network for Distance
10 Learning offers over 2000 online courses and online life experience programs that grant over 65
11 certifications and equivalency diplomas.” (*Id.* at 11 ¶24, Att. J at 199.) The CNDLP.org
12 website refers to its “Mission Statement of the Accrediting Committee” and explains that
13 “CNDLP Self Accreditation ensures that all of our courses meet a strict set of requirements
14 before they are offered to students” and that to “ensure compliance with accreditation standards
15 The Capitol Network has conducted an intensive self-analysis on all of its offered courses” and
16 that it “has developed a rigorous academic standards evaluation process for all member
17 organizations.” (*Id.* at 11 ¶24, Att. J at 199.)
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22 Defendants also make reference to being “SCORM” compliant, claiming specifically that
23 their programs follow “the latest online standards and SCORM compliance.” (*Id.* at 10-11 ¶¶23,
24 24, Att. J at 199.) SCORM (or Sharable Content Object Reference Model) is in fact a collection
25 of standards and specifications for web-based electronic educational technology that is part of an
26

27 ⁸ The seal is circular with the picture of an open book surrounded by oak laurels with the words
28 “Capitol Network Distance Learning Programs – CNDLP” repeated around the perimeter.
(PX04 at 10 ¶23, Att. J at 169, 180, 182, 184, 198-99, 202, 212, 214.)

1 initiative designed to standardize and modernize training and education management for military
2 and civilian Department of Defense personnel. (PX02 at 1-3 ¶¶3-9.) SCORM is administered
3 through, and certification is obtained by, the DOD's Advanced Distributed Learning Initiative.
4 (*Id.* at 1 ¶3.) Neither the Capitol Network for Distance Learning nor its programs, however, are
5 SCORM-certified, SCORM compliant or conformant, or a SCORM adopter. (*Id.* at 4 ¶13.)
6 Instead, Defendants merely use the reference to SCORM as window dressing to lend additional
7 credibility to their claims of high standards and accreditation.
8
9

10 **2. Defendants Do Not Operate Accredited Online Schools**

11 In reality, Defendants' so-called high schools are not accredited programs. The Capitol
12 Network for Distance Learning is not a legitimate accrediting body. (PX01 at 9 ¶21). Rather, it
13 is a fictitious entity created by Defendants Defendant Nicholas Pollicino registered the website,
14 CNDLP.org, in February 2004. (PX04 at 7 ¶18, Att. G at 103-04, 112, Att. H at 146, 148.)
15 Further, it is unlikely that any legitimate accrediting body would ever accredit Defendants'
16 programs because Defendants do not operate true educational institutions and their diploma
17 standards fall far below the rigorous standards for high school accreditation set by widely
18 recognized accrediting bodies, such as AdvancED and the Distance Education Accrediting
19 Commission (formerly the Distance Education and Training Council (DETC)). Both of these
20 legitimate accrediting bodies require any high schools seeking accreditation to, for example,
21 develop a curriculum, provide students with instruction and personalized feedback, employ
22 qualified and credentialed teachers, and carry out periodic assessments of student learning.⁹
23
24
25
26

27
28 ⁹ See generally *AdvancedED Standards for Quality Digital Learning Institutions* (2013) (PX04
Att. Q at 351-60); *DETC Accreditation Handbook: Policies, Procedures, Standards and Guides*

1 Defendants' programs do not come close to meeting these standards. In addition, the
 2 Department of Education has cautioned consumers to be skeptical of schools that offer diplomas
 3 or degrees based on life experience alone, with little or no documentation of prior learning,
 4 because these schools do not use valid methods to determine the amount of credit to be
 5 awarded.¹⁰ (PX04 at 21-22 ¶46.) In short, Defendants' references to CNDLP – a fictitious
 6 entity that they themselves operate – and to SCORM are merely ruses to lend credibility to their
 7 bogus online diplomas.
 8

10 C. Consumer Injury

11 A preliminary review of bank records suggests that Defendants have taken in gross
 12 revenues of at least approximately \$3,873,193 between January 2012 and April 2015. (*Id.* at
 13 ¶41.)
 14

15 IV. THE COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER

16 A. This Court Has the Authority to Grant the Requested Relief

17 The second proviso of Section 13(b) of the FTC Act authorizes the FTC to seek, and
 18 gives the Court the authority to grant, permanent injunctive relief to enjoin practices that violate
 19 any law enforced by the FTC.¹¹ 15 U.S.C. § 53(b); *H.N. Singer*, 668 F.2d at 1111-13. Incident
 20

21
 22

 23 *for the Accrediting Commission* (Jan. 2014) (*Id.* Att. R at 361-458).

24 ¹⁰ See *Diploma Mills and Accreditation – Diploma Mills*, U.S. Dept. of Educ., available at
 25 <http://www2.ed.gov/students/prep/college/diplomamills/diploma-mills.html>. Although there are
 26 legitimate institutions offering credit for life or work experiences, these institutions use a
 27 combination of standardized tests, prior learning portfolio, oral exams, past learning, and
 28 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.

¹¹ This action is not brought pursuant to the first proviso of Section 13(b), which addresses the

1 to its authority to issue permanent injunctive relief, this Court has the inherent equitable power
 2 to grant all temporary and preliminary relief necessary to effectuate final relief, including a
 3 TRO, an asset freeze, expedited discovery, a preliminary injunction, and other necessary
 4 remedies. *See, e.g., FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1232 & n.2 (9th Cir. 1999)
 5 (*ex parte* TRO and preliminary injunction including asset freeze); *Pantron I*, 33 F.3d at 1102
 6 (holding that section 13(b) “gives the federal courts broad authority to fashion appropriate
 7 remedies for violations of the [FTC] Act”); *H.N. Singer*, 668 F.2d at 1113 (“We hold that
 8 Congress, when it gave the district court authority to grant a permanent injunction against
 9 violations of any provisions of law enforced by the Commission, also gave the district court
 10 authority to grant any ancillary relief necessary to accomplish complete justice . . .”).¹²

14 circumstances under which the FTC can seek preliminary injunctive relief before or during the
 15 pendency of an administrative proceeding. Because the FTC brings this case pursuant to the
 16 second proviso of Section 13(b), its complaint is not subject to the procedural and notice
 17 requirements in the first proviso. *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982)
 18 (holding that routine fraud cases may be brought under second proviso, without being
 19 conditioned on the first proviso requirement that the FTC institute an administrative
 20 proceeding); *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) (“Congress
 21 did not limit the court’s powers under the [second and] final proviso of § 13(b) and as a result
 22 this Court’s inherent equitable powers may be employed to issue a preliminary injunction,
 23 including a freeze of assets, during the pendency of an action for permanent injunctive relief.”).

24 ¹² Numerous courts in this district have granted or affirmed preliminary injunctive relief similar
 25 to that requested here. . *See, e.g., FTC v. Vemma Nutrition Co., et al.*, Case No. 2:15-cv-01578-
 26 JJT (D. Ariz. Aug. 21, 2015); *FTC v. Money Now Funding, LLC, et al.*, Case No. 2:13-cv-
 27 01583-ROS (D. Ariz. Aug. 5, 2013); *FTC v. Nat’l Card Monitor LLC, et al.*, Case No. 2:12-cv-
 28 02521-JAT (D. Ariz. Nov. 27, 2012); *FTC v. Am. Bus. Builders LLC, et al.*, Case No. 2:12-cv-
 2368-GMS (D. Ariz. Nov. 6, 2012); *FTC v. Ambrosia Web Design LLC, et al.*, Case No. 2:12-
 cv-2248-FJM (D. Ariz. Oct. 22, 2012); *FTC v. ELH Consulting LLC, et al.*, Case No. 2:12-cv-
 2246-FJM (D. Ariz. Oct. 22, 2012); *FTC v. N. Am. Mktg. & Assocs., LLC, et al.*, Case No. 2:12-
 cv-00914-DGC (D. Ariz. May 2, 2012); *FTC v. Premier Nationwide Corp.*, Case No. 2:12-cv-
 0009-GMS (D. Ariz. Jan. 3, 2012); *FTC v. Gov’t Careers, Inc., et al.*, Case No. 4:09-cv-721-
 DCB (D. Ariz. Jan. 5, 2010); *FTC v. Freedom Foreclosure Prevention Servs. LLC, et al.*, Case
 No. 2:09-cv-1167-FJM (D. Ariz. June 1, 2009); *FTC v. Handicapped & Disabled Workshops*,

1 **B. The FTC Meets the Standard for Granting a Government Agency’s Request for**
2 **Preliminary Injunctive Relief**

3 In determining whether to grant a preliminary injunction under Section 13(b), a court
4 “must 1) determine the likelihood that the Commission will ultimately succeed on the merits and
5 2) balance the equities.” *Affordable Media*, 179 F.3d at 1233 (quoting *FTC v. Warner*
6 *Comm’ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)); *see also* *FTC v. World Wide Factors,*
7 *Ltd.*, 882 F.2d 344, 346 (9th Cir. 1989) (holding same). Unlike private litigants, the FTC need
8 not prove irreparable injury, *Affordable Media*, 179 F.3d at 1233, which is presumed in a
9 statutory enforcement action, *World Wide Factors*, 882 F.2d at 347. Because irreparable injury
10 is presumed, the burden of establishing success on the merits is decreased, and the district court
11 “need only to find some chance of probable success on the merits” in order to award preliminary
12 relief. *World Wide Factors*, 882 F.2d at 347 (quoting *United States v. Odessa Union Warehouse*
13 *Co-op*, 833 F.2d 172, 176 (9th Cir. 1987)). Moreover, in balancing the equities, the public
14 interest should receive greater weight than private interests. *Id.* As set forth in this
15 memorandum, the FTC has amply demonstrated that it will ultimately succeed on the merits of
16 its claims and that the balance of equities favors injunctive relief.¹³

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25 *Inc., et al.*, Case No. 2:08-cv-00908-DGC (D. Ariz. May 14, 2008); *FTC v. Helping Hands of*
26 *Hope, Inc.*, Case No. 2:08-cv-0909-JAT (D. Ariz. May 13, 2008); *FTC v. The Results Grp.,*
27 *LLC*, Case No. 2:06-cv-02843-JAT (D. Ariz. Nov. 28, 2006).

28 ¹³ Although not required to do so, the FTC also meets the Ninth Circuit’s four-part test for
private litigants to obtain injunctive relief. Without the requested relief, the public and the FTC
will suffer irreparable harm from the continuation of Defendants’ scheme and the likely
destruction of evidence and dissipation of assets.

1 **1. The FTC Has Demonstrated Its Likelihood of Success on the Merits**

2 Generally, the FTC “meets its burden on the ‘likelihood of success’ issue if it shows
3 preliminarily, by affidavits or other proof, that it has a fair and tenable chance of ultimate
4 success on the merits.” *FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229 (D.C. Cir. 1978) (per
5 curiam). The FTC can prove its claims through a small number of injured consumers, from
6 which a court can infer a pattern or practice of deceptive behavior. *FTC v. Sec. Rare Coin &*
7 *Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d
8 564, 572 (7th Cir. 1989). Moreover, in considering an application for a TRO or preliminary
9 injunction, the Court has the discretion to consider hearsay evidence. *Flynt Distrib. Co., Inc. v.*
10 *Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) (stating that court may give inadmissible evidence
11 some weight when doing so “serves the purpose of preventing irreparable harm before trial”);
12 *see also Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003) (“The Federal
13 Rules of Evidence do not apply to preliminary injunction hearings.”).

14 Section 5 of the FTC Act prohibits “unfair or deceptive practices in or affecting
15 commerce.” 15 U.S.C. § 45. An act or practice is deceptive under Section 5 if it involves a
16 material representation or omission that is likely to mislead consumers acting reasonably under
17 the circumstances. *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009). A misrepresentation
18 is material if it involves facts that a reasonable person would consider important in choosing a
19 course of action. *See FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006).
20 Express claims are presumed material, so consumers are not required to question their veracity
21 to be deemed reasonable. *Pantron I*, 33 F.3d at 1095-96. The FTC need not prove reliance by
22 each consumer misled by Defendants. *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1275

1 (S.D. Fla. 1999). “Requiring proof of subjective reliance by each individual consumer would
2 thwart effective prosecutions of large consumer redress actions and frustrate the statutory goals
3 of [Section 13(b)].” *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 605 (9th Cir. 1993) (quoting *FTC v.*
4 *Kitco of Nev., Inc.*, 612 F. Supp. 1282, 1293 (D. Minn. 1985)).

6 In considering whether a claim is deceptive, the Court must consider the “net impression”
7 created by the representation. *Cyberspace.com*, 453 F.3d at 1200 (solicitation can be deceptive
8 by virtue of its net impression even if it contains truthful disclosures); *FTC v. Five-Star Auto*
9 *Club*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) (“[T]he Court must consider the
10 misrepresentations at issue, by viewing them as a whole without emphasizing isolated words or
11 phrases apart from their context.” (brackets and internal quotation marks omitted)). “The
12 determination is not restricted to a consideration of what impression an expert or careful reader
13 would draw from the advertisements, but rather involves viewing the advertisement as it would
14 be seen by the public generally which includes the ignorant, the unthinking and incredulous,
15 who, in making purchases, do not stop to analyze but too often are governed by appearances and
16 general impressions.” *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1010 (N.D. Ind.
17 2000), *aff’d* 312 F.3d 259 (7th Cir. 2002). Further, the FTC need not prove that Defendants’
18 misrepresentations were made with an intent to defraud or deceive, or were made in bad faith.
19 *See, e.g., Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1495 (1st Cir. 1989); *FTC v. World*
20 *Travel Vacation Brokers*, 861 F.2d 1020, 1029 (7th Cir. 1988).

25 Here, Defendants engage in deceptive practices in violation of Section 5 by: (1)
26 misrepresenting that consumers can use their high school diplomas as valid high school
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1 equivalency credentials, and (2) misrepresenting the accreditation status of their so-called high
2 schools.

3
4 **a. Misrepresentations That Consumers Can Successfully Use**
5 **Proposed Defendants' Diplomas As A Valid High School**
6 **Equivalency Credential**

7 Count I of the FTC's Complaint alleges that Defendants misrepresent that consumers can
8 successfully use Defendants' diplomas as a valid high school equivalency credential when
9 applying for jobs or seeking enrollment in higher education institutions. As discussed above,
10 numerous consumers report that when they tried to use Defendants' diplomas to enroll in
11 college, enlist in the military, or apply for jobs, they were told that Defendants' diplomas are
12 invalid and worthless. Thus, Defendants' diploma claims are false.

13
14 **b. Misrepresentations Regarding CNDLP Accreditation**

15 Count II of the FTC's Complaint alleges that Defendants misrepresented that the Capitol
16 Network for Distance Learning Programs is an independent, third-party accrediting body that
17 objectively evaluates and accredits Defendants' online schools. As discussed above, the Capitol
18 Network for Distance Learning Programs is not an independent, third-party accrediting body.
19 Instead, Defendants created, own, and control this fictitious entity in order to legitimize their
20 fraudulent online schools. Thus, their representation is false.

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23 **c. Defendants' Inconspicuous Disclaimers Do Not Cure**
24 **Misrepresentations**

25 To the extent that any of Defendants' websites have disclaimers that their programs are
26 not accredited nor a replacement for or equivalent to a traditional high school diploma, they are
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1 buried and do not cure the overall representations that Defendants' diplomas are legitimate or
2 that their high schools are accredited.

3 Some of Defendants' websites include a disclaimer at the bottom of each webpage. (*See*,
4 *e.g.*, PX04 Att. J at 178-79, 188-89, 190-97, 212-13, 214-15, 216-24 *but see id.* Att. J at 180-87,
5 201, 202-211 (no disclaimer).) The disclosure, however, is at the bottom of the webpage below
6 the copyright and related language typically seen at the bottom of websites, such that consumers
7 would need to scroll past the copyright language to reach it. Further, the disclaimer is well
8 below the "Learn More" or "Get Started" hyperlinks that consumers would click to begin the
9 diploma process. Nothing on the webpages above the copyright language indicates to
10 consumers that they should scroll down to the very bottom of the page for any disclaimers.
11 Finally, the disclaimer itself is often in a font size smaller than the text on the rest of the page or
12 in a color that is difficult to read against the page's background.

13 In addition, some of Defendants' websites include a disclaimer on a separate "Terms and
14 Conditions" webpage. (*Id.* Att. J at 189a, 224a.) Defendants bury the disclaimer in small print
15 paragraphs. For example, Defendants place their disclaimer in the seventh of eight small print
16 paragraphs. The preceding paragraphs concern the accuracy of the information provided by
17 consumers, that they are over 18 or have parental permission, etc., leading consumers
18 reasonably to believe the terms and conditions relate to the credibility of information provided
19 by consumers, not the credibility of the program itself. Further, nothing on the websites'
20 homepages indicates that consumers should click on the "Terms and Conditions" hyperlink to
21 view that webpage before proceeding. (*Id.* Att. J at 178-79, 188-89, 190-91, 212-13, 214-15,
22 216-17.) And although consumers are required to check a box stating that they agree to the
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1 terms and conditions before completing purchase, consumers can check the box without
2 reviewing those terms and there is no method by which Defendants ensure that consumers have
3 actually read them. (*Id.* at 28 ¶55.)
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5 Defendants' inconspicuous disclaimers do not correct their representations on the
6 websites. Non-obvious disclosures that contradict false claims cannot cure them. Disclaimers
7 must be prominent and unambiguous to change the apparent meaning and leave an accurate
8 impression. *Kraft, Inc. v. FTC*, 970 F.2d 311, 325 (7th Cir. 1992); *Removatron Int'l*, 884 F.2d
9 at 1497. A qualification must be likely to come to the attention of the person who sees the basic
10 claim, and a qualification in small print or its equivalent is unlikely to be effective. *Am. Life &*
11 *Accident Ins. Co. v. FTC*, 255 F.2d 289 (8th Cir. 1958). Moreover, a disclosure that contradicts
12 the original assertion only creates further uncertainty. *Giant Food, Inc. v. FTC*, 322 F.2d 977,
13 986 (D.C. Cir. 1963) (representation that products were customarily sold at "regular price"
14 contradicted by fine print disclosure that they were not necessarily ever available at such prices).
15 Furthermore, it is well settled that "a solicitation may be likely to mislead by virtue of the net
16 impression it creates even though the solicitation also contains truthful disclosures."
17 *Cyberspace.com*, 453 F.3d at 1200. Statements used to qualify otherwise deceptive statements
18 must be sufficiently clear and conspicuous. *See, e.g., In re Thompson Med. Co.*, 104 F.T.C. 648,
19 789 n.9 (1984); *Removatron Int'l*, 884 F.2d at 1497 ("Disclaimers or qualifications in any
20 particular ad are not adequate to avoid liability unless they are sufficiently prominent and
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1 unambiguous to change the apparent meaning of the claims and to leave an accurate
2 impression.”).¹⁴

3 Here, because of the small font size, color, and placement of Defendants’ disclaimers,
4 many consumers may not notice or review them. Thus, the disclaimers are not clear and
5 conspicuous and do not offset the overall net impression of the websites that consumers can
6 successfully use Defendants’ diplomas as valid high school credentials.
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8 **2. The Equities Weigh in Favor of Granting Injunctive Relief**

9
10 Once the FTC establishes the likelihood of its ultimate success on the merits, preliminary
11 injunctive relief is warranted if the Court, weighing the equities, finds that relief is in the public
12 interest. In balancing the equities between the parties, the public equities must be given far
13 greater weight. *Affordable Media*, 179 F.3d at 1236. Because Defendants “can have no vested
14 interest in a business activity found to be illegal,” *United States v. Diapulse Corp. of Am.*, 457
15 F.2d 25, 29 (2d Cir. 1972) (quoting *United States v. Ellis Research Labs., Inc.*, 300 F.2d 550,
16 554 (7th Cir. 1962)), the balance of equities tips decidedly toward granting the requested relief.
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18 *See also CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977) (“A
19 court of equity is under no duty ‘to protect illegitimate profits or advance business which is
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23 ¹⁴ Nor does it defeat a finding of deception if, in some cases, consumers later become fully
24 informed that Defendants are not accredited nor are their diplomas legitimate. It is well
25 established that “[t]he Federal Trade Act is violated if [a seller] induces the first contact through
26 deception, even if the buyer later becomes fully informed before entering the contract.” *Resort
27 Car Rental Sys., Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975) (per curiam) (citing *Exposition
28 Press, Inc. v. FTC*, 295 F.2d 869, 873 (2d Cir. 1961) (upholding injunction of initial print
advertisement for vanity publisher even though prospective customers who answered the ad
immediately received brochures qualifying the royalty claims before they purchased the
service)).

1 conducted illegally.’” (internal parentheses omitted) (quoting *FTC v. Thomsen-King & Co.*, 109
2 F.2d 516, 519 (7th Cir. 1940)).

3 The evidence demonstrates that the public equities – protection of consumers from
4 Defendants’ deceptive practices, effective enforcement of the law, and the preservation of
5 Defendants’ assets for final relief – weigh heavily in favor of granting the requested injunctive
6 relief. Granting such relief is also necessary because Defendants’ conduct indicates that they
7 will likely continue to deceive the public. *Five-Star Auto Club*, 97 F. Supp. 2d at 536 (“[P]ast
8 illegal conduct is highly suggestive of the likelihood of future violations.”); *SEC v. R.J. Allen &*
9 *Assocs., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (past misconduct suggests likelihood of
10 future violations); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979).

11 By contrast, the private equities in this case are not compelling. Compliance with the law
12 is hardly an unreasonable burden. *See World Wide Factors*, 882 F.2d at 347 (“[T]here is no
13 oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from
14 fraudulent representation or preserve their assets from dissipation or concealment.”). Because
15 the injunction will preclude only harmful, illegal behavior, the public equities supporting the
16 proposed injunctive relief outweigh any burden imposed by such relief on Defendants. *See, e.g.,*
17 *Nat’l Soc’y of Prof’l Eng’rs. v. United States*, 435 U.S. 679, 697 (1978).

23 **C. Defendants Are a Common Enterprise and Jointly and Severally Liable for the** 24 **Law Violations**

25 “Where one or more corporate entities operate in common enterprise, each may be held
26 liable for the deceptive acts and practices of the others.” *Think Achievement*, 144 F. Supp. 2d at
27 1011. When determining whether a common enterprise exists, courts consider “common
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1 control; the sharing of office space and officers; whether business is transacted through a maze
2 of interrelated companies; the commingling of corporate funds and failure to maintain separation
3 of companies; unified advertising; and evidence that reveals that no real distinction exists
4 between the corporate defendants.” *FTC v. Grant Connect, LLC*, 827 F. Supp. 2d, 1216 (D.
5 Nev. 2011) (quoting *FTC v. Nat’l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1182 (N.D. Ga.
6 2008)), *aff’d in part and rev’d in part on other grounds*, 763 F.3d 1094 (11th Cir. 2014); *FTC v.*
7 *J.K. Publ’ns, Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000). Where the same individuals
8 transact business through a “maze of interrelated companies,” the whole enterprise may be held
9 liable as a joint enterprise. *FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052,
10 1082 (C.D. Cal. 2012) (quoting *Think Achievement*, 144 F. Supp. 2d at 1011).

14 Here, Defendants operate as a common enterprise to market their bogus high school
15 diplomas. There is substantial evidence of the entities’ intertwinement. Among other things,
16 the various business entities share common ownership and management, (PX04 at 3-4, 14-17
17 ¶¶8-10, 32, 36-38), and have utilized the same mailing addresses. (*Id.* at 17 ¶39.) Further, all
18 three corporate Defendants have done business using the name “CNDLP.” (*Id.* at 14-16 ¶¶32,
19 36, 38.) Reflective of a “maze of interrelated companies,” the entities make routine payments
20 to one another and frequently commingle funds. (*Id.* at 18-20 ¶42-44, Att. O at 270 (Capitol
21 Network Distance Learning’s merchant account deposits money into Veritas Sales’ bank
22 account).) The common enterprise is used to perpetuate deceit, and unjust loss or injury would
23 result from treating the corporate Defendants separately, because each company is a beneficiary
24 of and participant in the shared business scheme.
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D. The Individual Defendants Are Liable for Injunctive and Monetary Relief

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2 In addition to the corporate Defendants, individual Defendants Nicholas Pollicino,
3 Clavien, and Adam Pollicino are liable for injunctive and monetary relief for law violations
4 committed by the corporate Defendants. To obtain an injunction against an individual, the FTC
5 must show that the individual either had the authority to control the unlawful activities or
6 participated directly in them. *See Affordable Media*, 179 F.3d at 1234. In general, an
7 individual's status as a corporate officer gives rise to a presumption of liability to control a
8 small, closely held corporation. *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir.
9 1973). More particularly, assuming the duties of a corporate officer is probative of an
10 individual's participation or authority. *Amy Travel Serv.*, 875 F.2d at 573; *Five-Star Auto Club*,
11 97 F. Supp. 2d at 538.

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13 An individual may be held liable for monetary redress for corporate practices if the
14 individual had, or should have had, knowledge or awareness of the corporate defendants'
15 misrepresentations. *Affordable Media*, 179 F.3d at 1231. This knowledge element, however,
16 need not rise to the level of subjective intent to defraud consumers. *Id.* at 1234. Instead, the
17 FTC need only demonstrate that the individual had actual knowledge of material
18 misrepresentations, reckless indifference to the truth or falsity of such representations, or an
19 awareness of a high probability of fraud, coupled with the intentional avoidance of the truth. *Id.*
20 Participation in corporate affairs is probative of knowledge. *Id.* at 1235.

21
22 As discussed above, defendants Nicholas Pollicino, Clavien, and Adam Pollicino are the
23 principals and sole officers of the corporate defendants. (PX04 at 3-4 ¶¶8-10.) They have
24 signatory authority over the corporate Defendants' bank accounts (*id.* at 14-17 ¶¶32, 36-38), and
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1 are the billing contacts for Defendants' websites, email, and mail drops. (*Id.* at 7, 13-14 ¶¶18,
2 30.) There can be little doubt that the individual Defendants had authority to control, and direct
3 knowledge of, Defendants' wrongful acts. Accordingly, they should be enjoined from violating
4 the FTC Act and held liable for consumer redress or other monetary relief in connection with
5 Defendants' activities. Thus, preliminary relief is appropriate against them.

7 **V. THE SCOPE OF THE PROPOSED TRO IS APPROPRIATE IN LIGHT OF**
8 **DEFENDANTS' CONDUCT**

9 As the evidence has forcefully shown, the FTC is likely to succeed in proving that
10 Defendants are engaging in deceptive and unfair practices in violation of the FTC Act, and that
11 the balance of equities strongly favors the public. Preliminary injunctive relief is thus justified.

13 **A. Conduct Relief**

14 To prevent ongoing consumer injury, the proposed TRO prohibits Defendants from
15 making future misrepresentations that consumers can successfully use Defendants' diplomas as
16 valid high school equivalency credentials when applying for jobs or enrolling in institutions of
17 higher learning. The order would also prohibit Defendants from misrepresenting that their
18 online programs are accredited by an independent, third-party accrediting body.

19 As discussed above, this Court has broad equitable authority under Section 13(b) of the
20 FTC Act to grant ancillary relief necessary to accomplish complete justice. *H.N. Singer*, 668
21 F.2d at 1113. These requested prohibitions do no more than order that Defendants comply with
22 the FTC Act.
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1 **B. An Asset Preservation Order Is Necessary to Preserve the Possibility of Final**
2 **Effective Relief**

3 As part of the permanent relief in this case, the FTC will seek equitable monetary relief,
4 including consumer redress and/or disgorgement of ill-gotten gains. To preserve the availability
5 of funds for such equitable monetary relief, the FTC requests that the Court issue an order
6 requiring the preservation of assets and evidence. Such an order is well within the Court's
7 authority, *World Wide Factors*, 882 F.2d at 347 ("Since the FTC has shown a probability of
8 success on the merits, the district court did not abuse its discretion in granting the injunction to
9 freeze World Wide's assets."); *H.N. Singer*, 668 F.2d at 1113 ("13(b) provides a basis for an
10 order freezing assets."), and similar to the equitable relief granted in prior FTC cases in this
11 District and the Ninth Circuit. *See* note 12 *supra*.

12 "A party seeking an asset freeze must show a likelihood of dissipation of the claimed
13 assets, or other inability to recover monetary damages, if relief is not granted." *Johnson v.*
14 *Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). In *Johnson*, the Ninth Circuit upheld an asset
15 freeze because plaintiffs had established they were "likely to succeed in proving that
16 [Defendant] impermissibly awarded himself tens of millions of dollars." *Id.* at 1085. A
17 defendant's prior attempt to hide assets establishes the likelihood that, without an asset freeze,
18 the plaintiff will be unable to recover any funds. *Affordable Media*, 179 F.3d at 1236
19 (likelihood of dissipation existed "[g]iven the [defendants'] history of spiriting their
20 commissions away to a Cook Islands trust"). Courts have also concluded that an asset freeze is
21 justified where a Defendant's business is permeated with fraud. *See, e.g., SEC v. Manor*
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1 *Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2nd Cir. 1972); *R.J. Allen & Assoc.*, 386 F. Supp. at
2 881.

3 This Court has the authority to direct third parties to effectuate the purpose of the TRO.
4 See, e.g., *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940) (holding that courts
5 have authority to direct third parties to preserve assets); *United States v. First Nat'l City Bank*,
6 379 U.S. 378, 385 (1965); *Reebok Int'l, Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995).
7 Further, the Court can order Defendants' assets to be frozen whether the assets are inside or
8 outside the United States.¹⁵ *First Nat'l City Bank*, 379 U.S. at 384 ("Once personal jurisdiction
9 of a party is obtained, the District Court has authority to order it to 'freeze' property under its
10 control, whether the property be within or without the United States."). In addition to freezing
11 company assets, courts have frozen individual defendants' assets where the individual
12 defendants controlled the deceptive activity and had actual or constructive knowledge of the
13 deceptive nature of the practices in which the companies were engaged. *Amy Travel Serv.*, 875
14 F.2d at 574.

15 A freeze of the Defendants' assets is appropriate here to preserve the status quo, ensure
16 that funds do not disappear during the course of this action, and preserve Defendants' assets for
17 final relief. Defendants have taken in gross deposits of approximately \$4 million in revenue in a
18 little over three years. (PX04 at 18 ¶41.) Bank records show that Defendants make frequent
19 transfers between their various corporate and personal bank accounts. (*Id.* at 18-20 ¶¶ 42- 44.)

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¹⁵ The proposed 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 because Defendants may have created offshore asset protection trusts that could frustrate the Court's ability to provide consumer redress. See *Affordable Media*, 179 F.3d at 1239-44.

1 Defendants also use corporate funds to make car payments for private vehicles and other
2 personal payments. (*Id.* (for example, payment for “work on Anthony [Clavien]’s house
3 fountain,” “Vegas hotels and meals,” “maintenance for Casa Solana pool”)) In addition, bank
4 records show numerous payments out of Defendants’ corporate accounts to other businesses
5 (controlled by the individual Defendants) with no apparent connection to the business practices
6 discussed herein. (*Id.*) Bank records also show checks made out to various individuals with
7 instruction to cash the check and provide the cash to other individuals. (*Id.* (for example, “Steve
8 getting cash for Remley payment”)) A temporary asset freeze is required to preserve the Court’s
9 ability to order disgorgement of profits.
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12 Without an asset freeze, the dissipation and misuse of assets is likely. Defendants who
13 have engaged in illegal activities are likely to waste assets prior to resolution of the action. *See*
14 *Manor Nursing Ctrs.*, 458 F.2d at 1106. In the FTC’s experience, defendants engaged in
15 similarly serious unlawful practices secreted assets and destroyed documents upon learning of
16 an impending law enforcement action. (*See* PX04 at 32-25 ¶¶68, 69.) As discussed above, the
17 evidence here demonstrates that Defendants’ enterprise is permeated by deception and unlawful
18 activity. Moreover, Defendants go to great lengths to hide their base of operations. Defendants
19 utilize a network of commercial mail receiving entities as their business addresses and do not
20 provide consumers any physical addresses where they may be found. (*See id.* at 4 ¶9.) In
21 addition, Defendants register all of their numerous websites through Domains by Proxy, further
22 obscuring their identities from their consumer-victims. (*See id.* at 6-7 ¶17.) These efforts to
23 obscure their true operating locations suggest that Defendants are anticipating future law
24 enforcement action and do not want authorities to know where they might be located.
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1 Therefore, an asset freeze is required to preserve the funds derived from Defendants' unlawful
2 activities so that the Court can retain its ability to fashion meaningful final relief.

3 In addition to the freeze itself, the FTC also seeks an immediate accounting of
4 Defendants' assets and any transfers by Defendants since 2004 of assets worth \$1,000 or more.
5 The FTC also requests that the Court order Defendants to complete and return to the FTC
6 financial statements on the forms attached to the proposed TRO. An accounting and financial
7 statements, combined with an asset freeze, will increase the likelihood of preserving existing
8 assets pending final determination of this matter. *See, e.g., FTC v. D Squared Sols., LLC*, 2003
9 WL 22881377, at *4 (D. Md. Oct. 30, 2003) (ordering immediate accounting of assets); *FTC v.*
10 *Stout*, 1999 WL 34833240, at *3 (D.N.J. Dec. 8, 1999) (same); *see also SEC v. Bankers All.*
11 *Corp.*, 881 F. Supp. 673, 676 (D.D.C. 1995); *SEC v. Parkersburg Wireless LLC*, 156 F.R.D.
12 529, 532 n.3 (D.D.C. 1994).

13 **C. Temporary Disabling of Websites**

14 An order provision temporarily disabling Defendants' websites and suspending their
15 domain name registrations is necessary to prevent further consumer injury. As discussed above,
16 Defendants operate their unlawful diploma mill scheme through a network of deceptive Internet
17 websites. Disabling these websites and suspending their domain name registrations will ensure
18 that Defendants cannot evade compliance with any preliminary relief entered by this Court
19 pending final determination of this matter.

20 This Court has the authority to direct third parties to effectuate the purpose of the TRO.
21 *Cf. Deckert*, 311 U.S. at 290 (holding that courts have authority to direct third parties to preserve
22 assets); *First Nat'l City Bank*, 379 U.S. at 385; *Reebok Int'l*, 49 F.3d at 1391; *Waffenschmidt v.*
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1 *MacKay*, 763 F.2d 711, 714 (5th Cir. 1985). Other courts have granted similar relief against
2 defendants who have utilized Internet websites to promote fraud.¹⁶

3 **D. Preservation of Records**

4 In addition, the proposed order contains a provision directing Defendants to preserve
5 records, including electronic records, and evidence. It is appropriate to enjoin Defendants
6 charged with deception from destroying evidence and doing so would place no significant
7 burden on them. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990)
8 (characterizing such orders as “innocuous”). (*See also* PX04 at 36-37 ¶70 (describing examples,
9 in the FTC’s experience, of defendants engaged in similarly serious unlawful practices who
10 destroyed or attempted to destroy documents).)

11 **E. Limited Expedited Discovery, Including Immediate Production of Documents**

12 The FTC seeks leave of Court for immediate access to Defendants’ business premises, if
13 any, and limited discovery to locate and identify documents and assets.¹⁷ District courts are

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19 ¹⁶ *See, e.g., FTC v. Nelson Gamble & Assoc., LLC, et al.*, Case No. SACV-12-1504-JST (C.D.
20 Cal. Sep. 10, 2012); *FTC v. Hope for Car Owners, LLC, et al.*, Case No. 2:12-cv-00778-GEB-
21 EFB (E.D. Cal. Apr. 4, 2012); *FTC v. Mallett*, Case 1:11-cv-01664-CKK (D.D.C. Oct. 13,
22 2011); *FTC v. Residential Relief Found., LLC, et al.*, Case No. 1:10-cv-3214-JFM (D. Md. Nov.
23 15, 2010); *FTC v. Mountain View Sys., Ltd., et al.*, Case No. 1:03-cv-0021-RMC (D.D.C. Jan. 9,
24 2003); *FTC v. Stuffingforcash.com Corp.*, Case No. 1:02-cv-05022-CRN (N.D. Ill. July 16,
25 2002); *FTC v. TLD Network Ltd.*, Case No. 1:02-cv-01475-JFH (N.D. Ill. Feb. 28, 2002); *FTC*
26 *v. 1268957 Ontario Inc.*, Case No. 1:01-cv-00423-JEC (N.D. Ga. Feb. 13, 2001) ; *FTC v.*
27 *Pereira*, Case No. 1:99-cv-01367-AVB (E.D. Va. Sep. 14, 1999).

28 ¹⁷ The FTC’s evidence has not identified any business premises and it appears that Defendants
may be operating from private residences, including those of the individual Defendants. The
FTC will not enter private residences; instead, the proposed TRO includes a provision directing
Defendants to produce to the FTC within 24 hours of service of the TRO all documents,
including any electronic documents, relating to the marketing and sale of high school diplomas
and allow the FTC to copy those documents. Defendants would be precluded from introducing
into any proceeding in this case any document not so produced. Such a provision allows the

1 authorized to depart from normal discovery procedures and fashion discovery to meet discovery
2 needs in particular cases. Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) authorize the
3 Court to alter the standard provisions, including applicable time frames, that govern depositions
4 and production of documents. This type of discovery order reflects the Court's broad and
5 flexible authority in equity to grant preliminary emergency relief in cases involving the public
6 interest. See *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *FSLIC v. Dixon*, 835
7 F.2d 554, 562 (5th Cir. 1987); *Fed. Express Corp. v. Fed. Espresso, Inc.*, 1997 U.S. Dist. LEXIS
8 19144, at * 6 (N.D.N.Y. Nov. 24, 1997) (Early discovery "will be appropriate in some cases,
9 such as those involving requests for a preliminary injunction." (quoting commentary to Fed. R.
10 Civ. P. 26(d))); *Benham Jewelry Corp. v. Aron Basha Corp.*, 1997 U.S. Dist. LEXIS 15957, at
11 *58 (S.D.N.Y. July 18, 1997) (courts have broad powers to grant expedited discovery).
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28 FTC immediate access to Defendants' documents while preserving any Fourth Amendment rights Defendants may have.

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VI. CONCLUSION

For the above reasons, the FTC respectfully requests that this Court issue the attached proposed TRO with asset freeze, expedited discovery, and other equitable relief, and require Defendants to show cause why a preliminary injunction should not issue.

Dated: February 8, 2016

Respectfully submitted,

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