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

13 **FEDERAL TRADE COMMISSION,**

14 Plaintiff,

15 v.

16 **STEPPING STONEZ**
 17 **DEVELOPMENT, 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 **Stepping Stonez Development, LLC** (“Stepping Stonez”) is an Arizona
11 limited liability company, formed on September 22, 2009 by defendant Stephen J. Remley.
12 (PX03 at 3 ¶8, Att. A at 38-39.) The address listed as its principal place of business appears to
13 be a residential address. (*Id.* at 3 ¶8.) It also uses a mailing address at 3120 W. Carefree
14 Highway, Suite 1-429, Phoenix, Arizona, 16211 N. Scottsdale Road, Scottsdale, Arizona, and in
15 Honolulu, Hawaii (which location appears to be a residential address). (*Id.* at 19, 29-31 ¶¶44,
16 62, 67.) Stepping Stonez also does business under several fictitious business names. (*Id.* at 3-4
17 ¶10, Att. C at 44-58.)

18
19 Defendant **Intentional Growth, LLC** (“Intentional Growth”) is an Arizona limited
20 liability company, formed on February 5, 2009 by defendant Remley. (*Id.* at 3 ¶9, Att. B at 41-
21 42.) The address listed as its principal place of business appears to be a residential address. (*Id.*
22 at 3 ¶9.) It also uses mailing addresses at 3120 W. Carefree Highway, Suite 1-429, Phoenix,
23 Arizona, 16211 N. Scottsdale Road, Scottsdale, Arizona, and in Honolulu, Hawaii. (*Id.* at 19,
24 29-31 ¶¶44, 62, 67.)
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1 Defendant **Stephen J. Remley** is the sole principal, owner, and officer of Stepping
2 Stonez and Intentional Growth. (*Id.* at 3 ¶¶ 8, 9, Att. A at 38-39, Att. B at 41-42, Att. N at 459,
3 Att. O at 469-90, Att. P at 492-97.) He has sole signatory authority over all of their corporate
4 bank accounts. (*Id.* at 17-19 ¶¶39-43, Att. N at 459-62, Att. O at 469-90, Att. P at 492-97.)
5 Documents obtained from GoDaddy and Domains by Proxy list defendant Remley as the
6 registrant for all of Defendants’ websites, and he pays the registration fees with his personal
7 credit card. (*Id.* at 6-7 ¶18, Att. G at 273-87, Att. H at 289-317.) Remley is also listed as the
8 contact person for Defendants’ telephone accounts, and invoices are paid for by credit cards in
9 his name. (*Id.* at 17 ¶36.) Further, telephone records indicate that company telephone lines are
10 programmed to ring to a mobile phone registered to Remley. (*Id.* at 17 ¶37.) Corporate and
11 bank documents suggest that defendant Remley operates Defendants’ business from residential
12 addresses. (*Id.* at 3, 19 ¶¶8, 9, 44.)¹
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20 ¹ 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 Capitol Network Distance
22 Learning Programs, LLC, Capital Network Digital Licensing Programs, LLC, Veritas Sales,
23 Inc., Nicholas Pollicino, Anthony Clavien, and Adam Pollicino (collectively the “CNDLP
24 Defendants”). Evidence suggests that at one time Defendants and the CNDLP Defendants may
25 have shared operations. For example, bank records show payments between Remley and
26 Veritas through 2012. Also, Remley was the applicant for a 2009 commercial mail-receiving
27 address used by both Intentional Growth and the CNDLP Defendants. In addition, documents
28 provided by GoDaddy and Domains by Proxy show that several websites currently registered to
Remley previously were registered to either Nicholas or Adam Pollicino. Further, several of
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
30-31 ¶¶66-67.)

III. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

Since at least 2004, Defendants have marketed and sold fake high school diplomas to consumers nationwide. Defendants' websites purport to describe legitimate and accredited secondary school programs bearing names such as "Aberdeen Academy," "Mayflower High School Academy," "Columbia Northern High School," "Dalloway High School," "West Madison Falls High School," "Aspen Heights High School Academy," and "Heritage Western High School." (*Id.* at 9 ¶21, Att. I at 321-99.) They claim consumers can "[e]arn Your High School Diploma Online" by taking an online exam and paying a fee ranging between \$249 and \$349. (*Id.* at 9-10 ¶22.) They represent that consumers can use their diploma "when applying for a standard job" and "to seek acceptance in the military or to be considered for a promotion." (*Id.* at 9-10 ¶22.)

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

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

1. Defendants' Deceptive Use of Metatags and URLs

Defendants' scheme begins by luring Internet-browsing consumers to their websites through the use of deceptive metatags. Metatags² are codes embedded in the HTML text of a

² There are different types of metatags, including "keyword," "description," and "title" metatags. Search engines look for keywords in places such as domain names, actual text on webpages, and metatags. Description metatags are intended to describe a website. Typically, the text of a

1 website that, at least in theory, describe the website's content and allow consumers to navigate
2 easily to it from a search engine like Google. For example, Defendants use keyword metatags
3 such as "high school diploma," "high school equivalency test," "ged online equivalency," and
4 "accredited high school diploma." (PX03 at 12-13 ¶28, Att. J at 401.) When consumers use
5 search engines to locate legitimate high school programs, they are drawn to Defendants'
6 websites instead.³ For example, consumer Ashley Mulliken's Google search for online high
7 schools led her to Defendants' West Madison Falls High School website. (PX02 at 1 ¶3.)
8 Consumer Nancy Brodie's online search led her to Aberdeen Academy. (PX06 at 1 ¶3; *see also*
9 PX03 at 12-13 ¶28; PX04 at 2-3,5 ¶¶6, 13, 21; PX07 at 1 ¶2; PX08 at 2-6 ¶¶7, 13, 19, 22, 30,
10 37; PX09 at 1 ¶2; PX10 at 1 ¶2.) Like many other consumers, they believed Defendants'
11 website was that of a legitimate high school program. (PX02 at 1 ¶5; *see also* PX04 at 2 ¶6;
12 PX08 at 3 ¶13; PX10 at 1 ¶3.)

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Moreover, the website addresses (or URLs) themselves suggest that Defendants operate legitimate high schools. For example, Defendants have registered such website addresses as gethighschooldiploma.org, highschooldiplomaonline.net, freehighschooldiplomaonline.org, onlinehighschooldiplomas.org, earnhighschooldiploma.org, highschooldiplomatest.org, accreditedhighschooldiploma.org, highschooldiplomaprogram.org, freehighschooldiploma.org,

description metatag appears beside its Internet address in the list of websites generated by a search engine. The description helps consumers navigate to sites that include the content for which they are searching. Title metatags specify what text will appear at the top of a particular webpage. *See Brookfield Commc'ns, Inc. v. West Coast Entm't Corp.*, 174 F.3d 1036, 1045 (9th Cir. 1999).

³ Defendants similarly employ deceptive description and title metatags. For example, Defendants use description metatags such as "Earn a real high school diploma online fast and at home" and title metatags such as "High School Diploma Online." (*Id.* 12-13 ¶28, Att. J at 401.)

1 highschooldiplomaonline.org, paramonthighschool.com, freeonlinehighschooldiploma.org,
 2 highschooldiplomaprograms.net, gethighschooldiploma.net, freehighschooldiplomaonline.net,
 3 gethighschooldiplomaonline.net, freeonlinehighschooldiploma.net,
 4 highschooldiplomaprograms.org, highschooldiplomaonlinefree.org,
 5 highschooldiplomaonlinefree.net, highschooldiploma.net, christianhighschool.net,
 6 highschoolonlinedegree.org, highschoolonlinedegree.net, my-ged.com, dalloway-school.com,
 7 highschooldiplomaonline.co, onlinehighschooldiploma.net, alpha-school.com, willow-
 8 school.org, adulthighschooldiplomaonline.net, myhighschooldiplomaonline.net, and
 9 highschooldiploma.org. (PX03 at 6-7 ¶18, Att. G at 273-87, Att. H at 289-317.)

12 **2. Defendants' Deceptive Websites**

13
 14 Defendants reinforce these misrepresentations when consumers go to their websites.
 15 Through their various websites, Defendants misrepresent that their diplomas constitute valid
 16 high school equivalency credentials. For example, Defendants' websites claim:

- 18 • Earn your High School Diploma Online
- 19 • If you haven't received either a traditional high school diploma or GED certification,
 20 West Madison Falls High School offers a free and fast program to achieve a real high
 21 school diploma online
- 22 • GED Online has partnered with Heritage Western High School in order to provide
 23 students nationwide with the opportunity to get their high school diplomas
- 24 • Our online testing program was created after the actual GED test, covering the
 25 essentials of Math, Reading Comprehension and English
- 26 • Aspen Heights High School Academy has been recognized as one of the top online
 27 high schools and has received the coveted 2013 Education Achievement Award.

28 (*Id.* at 9-10 ¶ 22, Att. I at 321-23, 324, 326, 328-30, 334-36, 340-42, 344-46, 348-53, 356-57,
 358-60, 362-63, 372-73, 374-76, 386-88; *see also* PX02 at 1 ¶4 (Defendants' representative

1 assured consumer that West Madison Falls High School was legitimate and provided “real high
2 school credits.”); PX03 at 4-6, 23-24 ¶¶12, 14, 51; PX08 at 5-7 ¶¶31, 39.)

3 Defendants also misrepresent that consumers can use their diplomas to obtain
4 employment, career advancement, or higher education. For example, Defendants’ websites
5 claim:

- 7 • Due to the strict course guidelines and this verification services [sic], most employers
8 will accept this online high school diplomas [sic] as an alternative to the GED
- 9 • If you are interested in earning your high school diploma for a job, college or trade
10 school, the Alpha program is the ideal choice for you
- 11 • Most of our students end up using their diploma to fit the education requirement for a
12 an employer or to continue their schooling. [sic]
- 13 • Our online high school diploma program has been designed for individuals who need
14 to earn a real high school diploma online for a potential job, promotion, certification
15 proof, Military recruitment, etc.
- 16 • Our high school diplomas are accepted by most institutions, employers and
17 organizations. Some students have continued their higher education after our program
18 by attending college, trade schools or the military.
- 19 • Many of our graduates have gone on to be accepted to trade schools, get a job
20 promotion or even get a new job.

21 (PX03 at 9-10 ¶¶22, Att. I at 331, 335, 339, 349, 356-57, 372, 391, 396; *see also* PX02 at 1 ¶4

22 (Defendants’ representative assured consumer that a West Madison Falls High School diploma

23 would “get [her] into any college [she] wanted to get into.”); PX03 at 4-5 ¶¶12, Att. D at 64

24 (Defendants assured consumer that any college would accept their diploma), 79 (consumer told
25 he could use diploma to enroll in community college), 87; PX04 at 3-4 ¶¶14; PX08 at 5-6 ¶¶31.)

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

- 1 • Thanks to your online high school course, I was able to receive a new job that pays
2 more as I now have a diploma!
- 3 • I just got the job I needed with my new high school diploma! Your school helped me
4 because I couldn't take the time needed to go get my GED.
- 5 • My job came out of know where and said I needed to have my diploma or I was going
6 to get fired and you guys saved me. If it weren't for your fast high school program
7 who knows what would have happened. [sic]
- 8 • After going through your exam and getting the diploma package, I got a job right
9 away. Now I am thinking about college.

10 (PX03 at 10-11, 24 ¶¶23, 52 Att. I at 321-22, 324, 326-27, 332-33, 341-42, 350-52, 359-60, 387-
11 88; PX08 at 6-7 ¶38 (one reason consumer selected Heritage Western was testimonials she read
12 on its website).)⁴

13 Indeed, numerous consumers viewing Defendants' websites enrolled in Defendants'
14 program believing them to be legitimate online alternatives to a traditional high school diploma.
15 (PX02 at 1 ¶5; *see generally* PX01 at 4-6 ¶¶11-14; PX03 at 4-6 ¶¶12-14.)

16 3. Defendants' Purported Diploma Programs

17 Defendants' so-called "diplomas" are not, in fact, equivalent to earning a traditional high
18 school diploma, because they require no instruction, no classes, no study materials, and no
19 periodic evaluations. In order to earn one of Defendants' "diplomas," consumers must only pass
20 an unmonitored, untimed, multiple-choice online test. (PX03 at 5 ¶13; PX04 at 4 ¶15.) No
21 preparation or coursework is required before taking the online test, and students are free to
22 consult outside sources for answers. (PX03 at 25-26 ¶55.)

23 The test administered by Defendants consists of four sections – language arts and writing
24

25
26
27 ⁴ As evidence that these testimonials are fabricated, in several instances, Defendants' websites
28 contain the same testimonial language but attributed to differently named individuals and
associated with different school names. (*See, e.g., id.* at 10-11 ¶23.)

1 (25 questions), social studies (30 questions), mathematics (25 questions), and science (20
2 questions) – and consumers must pass each section with a 70% or better. (*Id.* at 24-26 ¶¶54, 55,
3 Att. I at 389.) Defendants provide consumers with a “study guide” and next to each question on
4 the exam is a button labelled “Study Guide.” (*Id.* at 25-26 ¶55.) When clicking on the “Study
5 Guide” button, the correct answer is highlighted in red. (*Id.*) Thus consumers need not actually
6 know anything to pass the exam; they need only press “Study Guide” and then select the
7 highlighted answer.
8
9

10 After passing the “test,” Defendants prompt consumers to demonstrate their acquired
11 skills through “life experiences.” (*Id.* at 26-28 ¶56, Att. I at 389.) For example, consumers can
12 demonstrate “Accounting Knowledge” by selecting the drop-down choice, “Balance
13 Checkbook,” and demonstrate “Foreign Language” by selecting “A Few Words.” (*Id.*)
14 Consumers can indicate they possess “Music Appreciation” skills by selecting the option,
15 “Listen to Music Occasionally,” and by selecting their favorite music genre. (*Id.*) Finally,
16 consumers write an “essay” about their educational background and life and work experiences.
17 (*Id.* 28 ¶57, Att. I at 389; PX04 at 4 ¶15.) The essay, however, need only be 250 words. (PX03
18 at 28 ¶57.)
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21

22 After passing the “test,” entering their life experiences, and writing their “essay,”
23 Defendants prompt consumers to “enroll” by entering their name and contact information. (*Id.*
24 at 28 ¶58.) Then, they move to the order page where they enter their payment information in
25 order to obtain their diploma. (*Id.* at 29 ¶59.) The required fee has varied over time and has
26 ranged from \$149 to \$349. (PX02 at 1 ¶5; PX03 at 29-30 ¶¶59, 64, Att. D at 64, Att. I at 321,
27 328, 334, 340, 344, 348, 356, 358, 374, 386; PX04 at 2-5 ¶¶7, 14, 21; PX06 at 1 ¶3; PX07 at 1
28

1 ¶3; PX08 at 2, 3, 5, 6 ¶¶7, 13, 30, 37; PX09 at 1 ¶3; PX10 at 1 ¶3.) At various times,
 2 Defendants have accepted payment by credit or debit card, PayPal, and money order. (PX03 at
 3 30 ¶64, Att. I at 339.)

4
 5 Several days after consumers complete their order, Defendants ship the diploma and
 6 transcript. (PX02 at 1-2 ¶5, Att. A at 5; PX03 at 5, 29-30 ¶¶13, 62, 63, Att. I at 395, Att. T at
 7 610-12; PX04 at 4-6 ¶¶15, 22, Att. A at 7; PX06 at 2 ¶¶6, 7, Att. C at 13, Att. D at 15; PX07 at 1-
 8 2 ¶¶4, 6, Att. A at 5, Att. C at 9-10; PX08 at 3, 6 ¶¶14, 32 Att. A at 9-10; PX09 at 1 ¶3, Att. A at
 9 4; PX10 at 1 ¶4.) A typical diploma states that the consumer “has successfully demonstrated
 10 proficient comprehension of the standardized programs required for graduation and is therefore
 11 awarded this honorary diploma” and is signed by a purported principal and superintendent.
 12 (PX02 Att. A at 5; PX03 at 5 ¶13, Att. T at 610; PX04 at 6 ¶23, Att. A at 7; PX06 Att. C at 13;
 13 PX07 Att. A at 5; PX08 Att. A at 9; PX09 at 1 ¶3, Att. A at 4.)⁵ A typical transcript contains a
 14 list of classes supposedly taken by the consumer. For example, when an FTC investigator made
 15 an undercover purchase of Defendants’ West Madison Falls High School diploma, she listed that
 16 she knew “A Few Words” of French. (PX03 at 26-28 ¶56.) From that, her transcript noted that
 17 she passed “Foreign Language: French” (albeit with a C). (*Id.* Att. T at 611.) Meanwhile
 18 “Listen to Music Frequently” and selecting “Basic” for the “Graphic Arts/Drawing/Art Skills”
 19
 20
 21
 22

23
 24 ⁵ As evidence that Defendants’ program is not legitimate, the same “Principal” and
 25 “Superintendent” sign diplomas purportedly issued by different high schools. (*Compare* PX03
 26 Att. T at 610 (James Richardson, Principal, and Gail Anderson, Superintendent, sign a West
 27 Madison Falls High School diploma on April 29, 2015) *with* PX06 Att. C at 13 (same people
 28 sign an Aberdeen Academy High School diploma on September 6, 2015); PX09 Att. A at 4
 (same) *and* PX08 Att. A at 9 (same people sign a Heritage Western High School diploma on
 March 24, 2015) *and* PX04 Att. A at 7 (same people sign a Dalloway High School Academy
 diploma on July 27, 2015).)

1 section resulted in course credits for “Art: Graphic Arts/Drawing” and “Music Appreciation.”
2 (*Compare id.* at 26-28 ¶56 *with id.* Att. T at 612.) Entering “Basic” for “Accounting
3 Knowledge” and “Rarely Participate” for “Physical Activity” resulted in course credit (with C’s)
4 for “Accounting” and “Physical Education.” (*Compare id.* at 26-28 ¶56 *with id.* Att. T at 611-
5 12; *see also* PX06 Att. D at 15; PX07 Att. C at 9-10; PX08 Att. A at 10.)
6

7 In addition to the diploma and transcript, Defendants offer consumers verification
8 services. (*Id.* Att. I at 322, 326-27, 335, 341, 345, 350-51, 356-57, 359-60, 373, 378, 388, 396,
9 Att. S at 608.) Defendants describe the service as “an effective way for employers, schools,
10 organizations and more to confirm a graduate has passed our program.” (*Id.* Att. I at 322, 326-
11 27; *see also id.* Att. I at 335 (describing verification service as the means that “allows most
12 employers and organizations to accept our high school diploma online as an equivalent to a
13 diploma awarded from a traditional high school”), 341 (“This service affords colleges, trade
14 schools, education organizations and places of employment, the ability to verify that an
15 individual has passed our examination”).) They provide consumers with toll-free numbers for
16 potential employers to call to verify that the consumer graduated. (*Id.*)
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20 **4. Defendants’ High School Diplomas Are Not Legitimate Credentials**

21 In reality, Defendants’ diploma requirements fall far below established standards for
22 traditional high school completion. Consumers can obtain a diploma merely by passing
23 Defendants’ multiple-choice online exam, reporting their “life experiences,” and paying a fee.
24 Defendants’ online exam is untimed and unmonitored, it requires no preparation or coursework,
25 and students are free to consult outside sources for answers. (*See generally id.* at 24-29 ¶¶ 53-
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27
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1 59.) Indeed, Defendants provide consumers a study guide that, when used, highlights the correct
2 answers, making the exam virtually impossible to fail. (*Id.* at 25-26 ¶55.)

3
4 By contrast, traditional high schools require students to receive instruction and pass
5 periodic evaluations in order to earn their high school diplomas. For example, in the state of
6 Arizona, where Defendants are incorporated and operate, high school graduates obtaining a
7 traditional diploma are required to complete a minimum of twenty-two credits consisting of four
8 credits of English, four credits of mathematics, three science credits, three social science credits,
9 one credit of fine arts or vocational education, and seven credits of additional courses. Ariz.
10 Admin. Code § R7-2-302.02(1). Here, the purported transcript issued by Defendants does not
11 even meet Arizona’s minimum standards – the transcript only contains 16 (not 22) total credits
12 and does not meet the minimum credit requirements for English, Mathematics, or Science and
13 has insufficient credits in U.S. and world history. Further, credits may only be earned through
14 online “distance learning” if the online course “provides for two-way interactive
15 communications between the instructor and the student during the time of instruction” and if the
16 online education provider is both registered with the Arizona Department of Education and
17 independently accredited. *Id.* § R7-2-302.02(3). Defendants’ program satisfies none of the
18 conditions that would allow their online “distance learning” to qualify under Arizona law.
19 Numerous states have established similar standards for traditional high school completion –
20 standards that cannot be met simply by passing an unmonitored online test and listing one’s life
21 experiences and that Defendants’ program do not meet.⁶

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28 ⁶ See, e.g., Cal. Educ. Code § 51225.3 (Defendants’ program fails to include sufficient economics, civics, and physical education credits, and does not include passing the California

1 Neither do Defendants' diplomas satisfy the requirements for a high school equivalency
2 diploma offered by many states. For example, in Arizona, a consumer can obtain a high school
3 equivalency diploma only after passing the GED test.⁷ Ariz. Admin Code § R7-2-307. But
4 passing Defendants' online multiple-choice test is not equivalent to obtaining a GED certificate.
5 The GED certificate is a nationally recognized high school equivalency credential. (PX01 at 3
6 ¶6.) Students can obtain their certificate only by passing the GED test – a comprehensive series
7 of examinations, which take approximately eight hours to complete and may only be taken in
8 person at official GED testing centers. (*Id.* at 1 ¶3.) Defendants' untimed and unmonitored
9

10 High School Exit Examination); Md. Code Regs. 13A.03.02.03 (Defendants' program fails to
11 include sufficient total credits in general or credits in English, algebra, geometry, science, and
12 U.S. and world history, has too many credits granted for outside-school experiences, and does
13 not include passing several required exit examinations); N.Y. Comp. Codes R. & Regs. Tit. 8, §
14 100.5 (Defendants' program fails to include sufficient total credits in general or credits in
15 English, science, social studies, and physical education, and does not include passing several
16 required Regents exams); Ohio Rev. Code. Ann. § 3313.603 (Defendants' program fails to
17 include sufficient total credits in general or credits in English, math, science, and physical
18 education, and does not include passing several required exit examinations); 8 Va. Admin. Code
19 § 20-131-50.B (Defendants' program fails to include sufficient total credits in general or credits
20 in English, science, algebra, U.S. and world history, government, economics, and physical
21 education, and does not include passing several required exit examinations).

22 ⁷ Many other states also require a passing score on the GED test (or an equivalently rigorous
23 timed, proctored, in-person test such as the Test Assessing Secondary Completion (TASC) or
24 HiSET) in order to obtain a high school equivalency degree. *See, e.g.*, Ark. Admin. Code
25 005.11.6-3; Cal. Educ. Code § 51420; 1 Colo. Code Regs. § 301-2:2202-R-135.00; Iowa Code
26 § 259A.1 (must take HiSET); 13 Ky. Admin. Regs. 3:010; Minn. R. 3500.3100; Neb. Rev. Stat.
27 § 79-730; 92 Neb. Admin. Code § 81-004; N.M. Stat. Ann. § 22-2-8.8; N.M. Code R. § 6.30.3;
28 Ohio Rev. Code. Ann. §§ 5107.40(c), 3313.617; Or. Admin. R. 589-007-0400; 22 Pa. Code
§ 4.72; R.I. Admin. Code 21-2-63:5, 8; S.C. Code Ann. Regs. 43-259; Tenn. Comp. R. & Regs.
0520-01-03-.06 (take GED or HiSET); 19 Tex. Admin. Code § 89.1409; Tex. Educ. Code Ann.
§ 7.111; Utah Admin. Code r. 277-702; 16 Vt. Stat. Ann. tit. 16, §§ 167, 945; 8 Va. Admin.
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 online exam, which gives students the correct answers and allows them to re-attempt missed
2 questions, is not recognized by colleges, universities, or the military as a valid high school
3 equivalency test, and thus is not equivalent to the GED certificate. (*Id.* at 9-10 ¶20.)
4

5 Indeed, Defendants do not offer any educational services to consumers. Their students
6 attend no classes and receive no instruction, study materials, homework assignments, or periodic
7 evaluations. They also do not provide graduating students with counseling or support services.
8 (*See generally* PX03 at 24-29 ¶¶53-59.) In numerous instances, consumers who attempt to
9 contact Defendants at the number listed on the websites report that the number never connects to
10 a live person. For example, consumer Unique Ratliff states that whenever she tried to call
11 Defendants, the phone message always said she reached the school after hours. (PX03 Att. D at
12 87.) Other consumers report similar experiences. (*Id.* at 6 ¶16, Att. D at 60, 98, 104; PX04 at 2,
13 6 ¶¶8, 25; PX06 at 3, 4 ¶¶10, 17; PX08 at 2, 5 ¶¶10, 25; PX10 at 2 ¶9.)
14
15

16 Consumers report that Defendants' diplomas are virtually worthless. In numerous
17 instances, consumers who attempt to apply for jobs, seek admission to colleges, or enlist in the
18 military using Defendants' diplomas are turned down because the diplomas are not valid high
19 school equivalency credentials. For example, when consumer Ashley Mullikin tried to use her
20 West Madison Falls High School diploma to enroll in one college, they would not accept her
21 diploma and told her that the school was on their "red flag" list. (PX02 at 2 ¶7.) The same thing
22 happened when she tried to enroll in another college. (*Id.* at 2 ¶8.) Consumer Nancy Brodie
23 had a job offer rescinded because her potential employer required a high school diploma or GED
24 and determined that her Aberdeen Academy diploma was fraudulent. (PX06 at 2 ¶8, Att. E at
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28 17.) Several colleges informed consumer Margaret Fahndrich that her Aberdeen Academy

1 diploma was not legitimate and would not let her enroll. (PX09 at 1-2 ¶¶5-7.) Consumer Unique
2 Ratliff had her enlistment into the Ohio National Guard put on hold because her Aberdeen
3 Academy diploma was not legitimate and was left scrambling to take the GED. (PX03 Att. D at
4 87.) Other consumers report similar occurrences. (*See, e.g., id.* at 6 ¶15, Att. D at 64 (Georgia
5 Northwestern Tech rejected Columbia Northern diploma), 68, 76 (U.S. Army rejected Columbia
6 Northern diploma), 79 (community college rejected Columbia Northern High School diploma),
7 85 (consumer's employer rejected his Aspen High School diploma), 88, 89 (consumer fired
8 when employer realized her Columbia Northern diploma was not valid), 96 (potential employer
9 rejected consumer's Columbia Northern diploma); PX04 at 4 ¶16 (Strayer University rejected
10 West Madison Falls High School diploma), 6 ¶24 (Clary Sage College admissions office
11 rejected Dalloway High School diploma); PX07 at 2 ¶8 (local trade school rejected West
12 Madison Falls High School diploma); PX08 at 2 ¶9 (University of Phoenix rejected Aberdeen
13 Academy diploma), 4 ¶15, Att. B at 12 (Bryant & Stratton College rejected Heritage Western
14 High School diploma), 4 ¶23 (no one would accept Aspen Heights High School diploma), 6 ¶32
15 (several colleges rejected Aberdeen Academy High School diploma), 7 ¶40 (college career
16 advisor explained that Heritage Western High School diploma not legitimate); PX10 at 1 ¶5
17 (college enrollment advisor explained they would not accept West Madison Falls High School
18 diploma); *see generally* PX01 at 6 ¶¶15-16.)
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1 **B. Defendants Misrepresent That They Operate Accredited Secondary Education**
2 **Programs**

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

4 Defendants attempt to legitimize their fraudulent operation by representing that their so-
5 called “schools” are accredited educational programs. Defendants misrepresent that an
6 independent, third-party accrediting body named the American Accreditation Council for Higher
7 Education (or AACHE) accredits their high schools. For example, on the “About Us” pages for
8 their West Madison Falls and Heritage Western High Schools, Defendants state that each school
9 is “an acclaimed member of the American Accreditation Council for Higher Education
10 (AACHE.org). In order to be awarded membership into the AACHE consortium, our online
11 high school has had to pass numerous education guidelines and continues to be monitored on a
12 monthly basis to ensure the program, resources and directional focus are in line with AACHE’s
13 criteria.” (*Id.* 11 ¶24.) On Aspen High School’s website, Defendants warn consumers about
14 online high schools claiming to be accredited and then assure them that “Aspen High School is
15 located in the USA and the programs we offer are endorsed by the American Accreditation
16 Council of Higher Education.” (*Id.* Att. I at 372.) On the Aberdeen Academy’s “Accreditation”
17 page, Defendants state that Aberdeen is “recognized by the American Accreditation Council for
18 Higher Education.” (*Id.* 11 ¶24.) Defendants state that Glacier Online High School Academy
19 “is an active member of the American Accreditation Council for High Education (AACHE).”
20 (*Id.* Att. I at 337; *see also* PX02 at 1 ¶4 (Defendants’ representative assured consumer that West
21 Madison Falls High School was an accredited school); PX03 at 5-6 ¶14, Att. D at 87, 89, 101;
22 PX08 at 7 ¶39.)
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1 Defendants allow consumers to link directly to the AACHE website, americanache.org,
2 which claims it was created “with the purpose of setting a precedent for the review of online
3 educational courses and material review. Ensuring that online courses and testing programs are
4 based on best teaching practices is one of our highest requirements in order to receive and
5 maintain membership. American ACHE endorsement serves as a public affirmation of an
6 education program or curriculum that provides the level of integrity that meets our
7 requirements.” (PX03 at 11-12 ¶25, Att. I at 319.) On AmericanACHE.org’s “About Us” page,
8 Defendants state the consumers may need certification “that is accredited” and that AACHE was
9 founded “to search out practical methods of continuing education and curriculum that can be
10 completed online yet hold the integrity and best practices that you’d expect from traditional
11 offline programs and instructional teaching.” (*Id.* at 11-12 ¶25, Att. I at 320.)

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14
15 In addition, at various times (and perhaps reflecting when Defendants may have shared
16 operations with the CNDLP Defendants), Defendants have asserted that their programs are also
17 members of the Capitol Network for Distance Learning. For example, their Aberdeen Academy
18 website states “Aberdeen is recognized by the Capitol Network for Distance Learning. The
19 Capitol Network carefully reviews organizations that are accepted to ensure they continually
20 follow the original requirements and guidelines set forth upon initial acceptance.” (PX03 at 11
21 ¶24.) Meanwhile, their Aspen High School website notes that their programs are “endorsed” by
22 the “Capitol Network for Distance Learning Programs.” (*Id.* Att. I at 372.) Heritage Western
23 website states “Heritage Western High School is a proud member of the Capitol Network for
24 Distance Learning Programs (CNDLP). CNDLP incorporates strict guidelines and monitors
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1 partner programs on a monthly basis in order to ensure the interests of the students and
2 curriculum are being met.” (*Id.* at 11 ¶24.)

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

4
5 In reality, Defendants’ so-called high schools are not accredited programs. The
6 American Accreditation Council for Higher Education is not a legitimate accrediting body.
7 (PX01 at 10 ¶21.) Rather, AACHE is a fictitious entity created by Defendants Defendant
8 Remley registered the website, Americanache.org, in February 2010. (PX03 at 6-7 ¶18, Att. G
9 at 273, 279.) The Capitol Network for Distance Learning also is a fictitious entity created by the
10 CNDLP Defendants, and is not a legitimate accrediting body. CNDLP Defendant Nicholas
11 Pollicino registered the website, CNDLP.org, in February 2004. Further, it is unlikely that any
12 legitimate accrediting body would ever accredit Defendants’ programs, because Defendants do
13 not operate true educational institutions and their diploma standards fall far below the rigorous
14 standards for high school accreditation set by widely recognized accrediting bodies, such as
15 AdvancED and the Distance Education Accrediting Commission (formerly the Distance
16 Education and Training Council (DETC)). Both of these legitimate accrediting bodies require
17 any high schools seeking accreditation to, for example, develop a curriculum, provide students
18 with instruction and personalized feedback, employ qualified and credentialed teachers, and
19 carry out periodic assessments of student learning.⁸ Defendants’ programs do not come close to
20 meeting these standards. In addition, the Department of Education has cautioned consumers to
21 be skeptical of schools that offer diplomas or degrees based on life experience alone, with little
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27 ⁸ See generally *AdvancedED Standards for Quality Digital Learning Institutions* (2013) (PX03
28 Att. Q at 499-508); *DETC Accreditation Handbook: Policies, Procedures, Standards and
Guides for the Accrediting Commission* (Jan. 2014) (PX03 Att. R at 510-606).

1 or no documentation of prior learning, because these schools do not use valid methods to
2 determine the amount of credit to be awarded.⁹ (PX03 at 22-23 ¶49.) In short, Defendants’
3 references to AACHE – a fictitious entity that they themselves operate – and to CNDLP – a
4 fictitious entity operated by a competing phony diploma mill operation – are merely ruses to
5 lend credibility to their bogus online diplomas.
6

7 **C. Defendants Also Market Questionable Medical Certification Programs**

8
9 In addition to their bogus high school diplomas, since at least 2009, Defendants also have
10 operated several phony online medical training programs that sell questionable medical
11 certifications, including Advanced Cardiac Life Support (“ACLS”) and Pediatric Advanced Life
12 Support (“PALS”) certifications, to consumers nationwide. Defendants market these medical
13 certifications through a series of websites, including, but not limited to,
14
15 acls-certification-class.com, acls-online-renewal.com, online-acls-recertification.com,
16
17 pals-certification-course.com, pals-online-certification.com, pals-online-renewal.com, and
18
19 piperhealth.com. (PX03 at 13 ¶29, Att. G at 273-87, Att. K at 409-16, 419-25.) Defendants’
20
21 websites market to consumers, promoting programs bearing names such as ACLS Class,
22
23 American Certification Specialists, American Urgent Care Training, Critical Care Training,
24
25 Critical Response Certification Services, Critical Training Specialists, Eagle Medical Training,

24 ⁹ 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.

1 Emergency Certification and Examination Specialists, National Critical Care Institute, National
2 Emergency Assistance, North American Urgent Care, Northwest Medical Training Institute,
3 PALS Provider, Piper Health, Sunset Plaza Medical Center, and Westlake Critical Center. (*Id.*
4 at 3-4, 14 ¶¶10, 31, Att. C at 44-58, Att. K at 409-16, 419-25.)

6 As with their high school diplomas, Defendants use metatags to attract consumers who
7 might be searching the Internet for medical certification programs. For example, their title
8 metatags include:
9

- 10 • PALS & ACLS Certification & Recertification Online
- 11 • ACLS Online Renewal: ACLS Certification & Recertification Courses

12 (*Id.* at 16 ¶34, Att. L at 427, Att. M at 443.) Their description metatags include:

- 14 • The original PALS & ACLS certification provider offering accelerated 100%
15 online courses. Complete your ACLS or PALS certification or recertification!
- 16 • ACLS Online Renewal offers same-day ACLS certification (\$199) and ACLS
17 recertification (\$149) courses that can be completed 100% online. Get started now!

18 (*Id.* at 16 ¶34, Att. L at 427, Att. M at 443.)

19 Through their websites, Defendants misrepresent that their so-called certifications are
20 valid medical certifications and are equivalent to those issued by the American Heart
21 Association (“AHA”). For example, Defendants’ websites claim:

- 23 • Each of the online ACLS exams and training courses were crafted in accordance
24 with the current ECC guidelines by AHA trained medical professionals. Our
25 organization strongly believes that only AHA-endorsed literature should be used
26 for studying and crafting examination courses after. [sic] Unlike other online
27 ACLS providers who offer dilluted [sic] courses they’ve created themselves, our
28 organization provides an ACLS online course and exams based on the official
ACLS provider manual.

- 1 • ACLS online recertification is a great choice for many nurses, doctors and other
2 medical professionals who prefer a convenient alternative to standard ACLS
3 renewal. Each year there are new techniques and steps that get revised or created
4 thus, NCCI has updated our ACLS courses to follow after the most current AHA
5 guidelines.
- 6 • If you are looking to quickly complete your PALS or ACLS certification online,
7 our programs are the ideal choice for you. Critical Care Training provides a
8 practical solution for you to earn your certification or recertification through our
9 convenient 100% online courses. . . . We are proud to offer PALS certification,
10 PALS recertification, ACLS certification and ACLS recertification online
11 programs that follow current ECC guidelines and are based on AHA and AAP
12 published clinical recommendations.
- 13 • Both our ACLS and PALS online certification courses have been crafted after
14 material which follows ECC and AHA guidelines; a requirement by most
15 organizations for PALS and ACLS practitioners. . . . Physicians, pediatricians,
16 paramedics, nurses, nursing practitioners, and many other health care providers
17 can renew their certification PALS and ACLS provider credentials with our
18 convenient and fast renewal course.
- 19 • If you are a Healthcare practitioner such as a nurse or doctor and you want ACLS
20 certification online that is crafted after the most recent AHA guidelines, our
21 programs are the right choice.

22 (*Id.* 14-15 ¶32, Att. K at 409-16, 419-25.)

23 In reality, Defendants do not issue valid medical certifications, including valid ACLS or
24 PALS certifications. (PX05 at 5 ¶14 (Defendants are not AHA-authorized training centers or
25 otherwise endorsed by the AHA).) Consumers are only required to pay a fee (ranging from
26 \$149 to \$199) and pass a nominal 50-question test in order to obtain their certification. (PX03
27 Att. K at 409, 419.) Unlike real ACLS and PALS certifications offered by the American Heart
28 Association (*see* PX05 at 2-3 ¶¶7-10), Defendants require no in-person skill testing before
awarding such certifications. (PX03 Att. K at 409-10, 420) As a result, Defendants’ so-called
“certifications” are virtually worthless. (PX05 at 5-6 ¶15 (Director of Training Center

1 Operations and Quality for the AHA opining that in-person skills test “is crucial in determining
2 whether consumers are qualified to perform the ALCS or PALS competencies” and that
3 Defendants’ certifications are “unlikely to be treated by any healthcare provider as a substitute
4 for, or equivalent to, the AHA course completion card”).)

6 Like their phony diplomas, Defendants cloak their fraudulent medical certification
7 programs in legitimacy by misrepresenting that their programs are accredited. For example,
8 Defendants’ websites claim: “Our courses are endorsed by the North American Medical
9 Certification Committee of Advisors (NAMCCA). NAMCCA was created with the purpose of
10 setting a precedent [sic] for online medical certification courses by ensuring they uphold current
11 medical guidelines that are required through traditional offline examination.” (PX03 at 14-15
12 ¶32, Att. K at 420.)

15 In reality, the North American Medical Certification Committee of Advisors is not a
16 legitimate, independent accrediting body. (PX05 at 6 ¶16.) It is a fictitious entity created by
17 Defendants Defendant Remley registered its website, NAMCCA.org, in June 2009.¹⁰ (PX03 at
18 13 ¶29, Att. G at 273, 277.) Defendants’ programs are not accredited by any legitimate or
19 recognized third-party accrediting bodies. As with AmericanACHE, Defendants’ reference to
20 NAMCCA is merely a ruse to lend credibility to their bogus medical certification programs.
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27 ¹⁰ The NAMCCA.org website contains language nearly identical to AmericanACHE.org.
28 (*Compare id.* at 15-16 ¶33, Att. K at 417-18 (NAMCCA.org) *with id.* at 11-12 ¶25, Att. I at 319-
20 (American ACHE.org).)

1 **D. Consumer Injury**

2 A preliminary review of bank records suggests that Defendants have taken in gross
3 revenues of at least approximately \$6,330,348 between January 2012 and April 2015. (PX03 at
4 19 ¶45.)

6 **IV. THE COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER**

7 **A. This Court Has the Authority to Grant the Requested Relief**

8 The second proviso of Section 13(b) of the FTC Act authorizes the FTC to seek, and
9 gives the Court the authority to grant, permanent injunctive relief to enjoin practices that violate
10 any law enforced by the FTC.¹¹ 15 U.S.C. § 53(b); *H.N. Singer*, 668 F.2d at 1111-13. Incident
11 to its authority to issue permanent injunctive relief, this Court has the inherent equitable power
12 to grant all temporary and preliminary relief necessary to effectuate final relief, including a
13 TRO, an asset freeze, expedited discovery, a preliminary injunction, and other necessary
14 remedies. *See, e.g., FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1232 & n.2 (9th Cir. 1999)
15 (*ex parte* TRO and preliminary injunction including asset freeze); *Pantron I*, 33 F.3d at 1102
16 (holding that section 13(b) “gives the federal courts broad authority to fashion appropriate
17 remedies for violations of the [FTC] Act”); *H.N. Singer*, 668 F.2d at 1113 (“We hold that
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22 ¹¹ This action is not brought pursuant to the first proviso of Section 13(b), which addresses the
23 circumstances under which the FTC can seek preliminary injunctive relief before or during the
24 pendency of an administrative proceeding. Because the FTC brings this case pursuant to the
25 second proviso of Section 13(b), its complaint is not subject to the procedural and notice
26 requirements in the first proviso. *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982)
27 (holding that routine fraud cases may be brought under second proviso, without being
28 conditioned on the first proviso requirement that the FTC institute an administrative
proceeding); *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 [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.”).

1 Congress, when it gave the district court authority to grant a permanent injunction against
 2 violations of any provisions of law enforced by the Commission, also gave the district court
 3 authority to grant any ancillary relief necessary to accomplish complete justice”¹²
 4

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

7 In determining whether to grant a preliminary injunction under Section 13(b), a court
 8 “must 1) determine the likelihood that the Commission will ultimately succeed on the merits and
 9 2) balance the equities.” *Affordable Media*, 179 F.3d at 1233 (quoting *FTC v. Warner*
 10 *Comm’ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)); *see also* *FTC v. World Wide Factors,*
 11 *Ltd.*, 882 F.2d 344, 346 (9th Cir. 1989) (holding same). Unlike private litigants, the FTC need
 12 not prove irreparable injury, *Affordable Media*, 179 F.3d at 1233, which is presumed in a
 13 statutory enforcement action, *World Wide Factors*, 882 F.2d at 347. Because irreparable injury
 14 is presumed, the burden of establishing success on the merits is decreased, and the district court
 15 “need only to find some chance of probable success on the merits” in order to award preliminary
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19 ¹² Numerous courts in this district have granted or affirmed preliminary injunctive relief similar
 20 to that requested here. . *See, e.g.,* *FTC v. Vemma Nutrition Co., et al.*, Case No. 2:15-cv-01578-
 21 JJT (D. Ariz. Aug. 21, 2015); *FTC v. Money Now Funding, LLC, et al.*, Case No. 2:13-cv-
 22 01583-ROS (D. Ariz. Aug. 5, 2013); *FTC v. Nat’l Card Monitor LLC, et al.*, Case No. 2:12-cv-
 23 02521-JAT (D. Ariz. Nov. 27, 2012); *FTC v. Am. Bus. Builders LLC, et al.*, Case No. 2:12-cv-
 24 2368-GMS (D. Ariz. Nov. 6, 2012); *FTC v. Ambrosia Web Design LLC, et al.*, Case No. 2:12-
 25 cv-2248-FJM (D. Ariz. Oct. 22, 2012); *FTC v. ELH Consulting LLC, et al.*, Case No. 2:12-cv-
 26 2246-FJM (D. Ariz. Oct. 22, 2012); *FTC v. N. Am. Mktg. & Assocs., LLC, et al.*, Case No. 2:12-
 27 cv-00914-DGC (D. Ariz. May 2, 2012); *FTC v. Premier Nationwide Corp.*, Case No. 2:12-cv-
 28 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,*
Inc., et al., Case No. 2:08-cv-00908-DGC (D. Ariz. May 14, 2008); *FTC v. Helping Hands of*
Hope, Inc., Case No. 2:08-cv-0909-JAT (D. Ariz. May 13, 2008); *FTC v. The Results Grp.,*
LLC, Case No. 2:06-cv-02843-JAT (D. Ariz. Nov. 28, 2006).

1 relief. *World Wide Factors*, 882 F.2d at 347 (quoting *United States v. Odessa Union Warehouse*
2 *Co-op*, 833 F.2d 172, 176 (9th Cir. 1987)). Moreover, in balancing the equities, the public
3 interest should receive greater weight than private interests. *Id.* As set forth in this
4 memorandum, the FTC has amply demonstrated that it will ultimately succeed on the merits of
5 its claims and that the balance of equities favors injunctive relief.¹³

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

8
9 Generally, the FTC “meets its burden on the ‘likelihood of success’ issue if it shows
10 preliminarily, by affidavits or other proof, that it has a fair and tenable chance of ultimate
11 success on the merits.” *FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229 (D.C. Cir. 1978) (per
12 curiam). The FTC can prove its claims through a small number of injured consumers, from
13 which a court can infer a pattern or practice of deceptive behavior. *FTC v. Sec. Rare Coin &*
14 *Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d
15 564, 572 (7th Cir. 1989). Moreover, in considering an application for a TRO or preliminary
16 injunction, the Court has the discretion to consider hearsay evidence. *Flynt Distrib. Co., Inc. v.*
17 *Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) (stating that court may give inadmissible evidence
18 some weight when doing so “serves the purpose of preventing irreparable harm before trial”);
19 *see also Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003) (“The Federal
20 Rules of Evidence do not apply to preliminary injunction hearings.”).

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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 Section 5 of the FTC Act prohibits “unfair or deceptive practices in or affecting
2 commerce.” 15 U.S.C. § 45. An act or practice is deceptive under Section 5 if it involves a
3 material representation or omission that is likely to mislead consumers acting reasonably under
4 the circumstances. *FTC v. Stefanichik*, 559 F.3d 924, 928 (9th Cir. 2009). A misrepresentation
5 is material if it involves facts that a reasonable person would consider important in choosing a
6 course of action. *See FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006).
7 Express claims are presumed material, so consumers are not required to question their veracity
8 to be deemed reasonable. *Pantron I*, 33 F.3d at 1095-96. The FTC need not prove reliance by
9 each consumer misled by Defendants. *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1275
10 (S.D. Fla. 1999). “Requiring proof of subjective reliance by each individual consumer would
11 thwart effective prosecutions of large consumer redress actions and frustrate the statutory goals
12 of [Section 13(b)].” *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 605 (9th Cir. 1993) (quoting *FTC v.*
13 *Kitco of Nev., Inc.*, 612 F. Supp. 1282, 1293 (D. Minn. 1985)).

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

7
8 Here, Defendants engage in deceptive practices in violation of Section 5 by: (1)
9 misrepresenting that consumers can use their high school diplomas as valid high school
10 equivalency credentials, and (2) misrepresenting the accreditation status of their so-called high
11 schools.
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13
14 **a. Misrepresentations That Consumers Can Successfully Use**
15 **Proposed Defendants’ Diplomas As A Valid High School**
16 **Equivalency Credential**

17 Count I of the FTC’s Complaint alleges that Defendants misrepresent that consumers can
18 successfully use Defendants’ diplomas as a valid high school equivalency credential when
19 applying for jobs or seeking enrollment in higher education institutions. As discussed above,
20 numerous consumers report that when they tried to use Defendants’ diplomas to enroll in
21 college, enlist in the military, or apply for jobs, they were told that Defendants’ diplomas are
22 invalid and worthless. Thus, Defendants’ diploma claims are false.
23

24 **b. Misrepresentations Regarding AACHE Accreditation**

25 Count II of the FTC’s Complaint alleges that Defendants misrepresented that the
26 American Accreditation Council for Higher Education is an independent, third-party accrediting
27 body that objectively evaluates and accredits Defendants’ online schools. As discussed above,
28

1 the American Accreditation Council for Higher Education is not an independent, third-party
2 accrediting body. Instead, Defendants created, own, and control this fictitious entity in order to
3 legitimize their fraudulent online schools. Thus, their representation is false.
4

5 **c. Defendants' Inconspicuous Disclaimers Do Not Cure**
6 **Misrepresentations**

7 To the extent that any of Defendants' websites have disclaimers that their programs are
8 not accredited nor a replacement for or equivalent to a traditional high school diploma, they are
9 buried and do not cure the overall representations that Defendants' diplomas are legitimate or
10 that their high schools are accredited.
11

12 Some of Defendants' websites include a disclaimer on a separate "Terms and Conditions"
13 webpage. (PX03 Att. I at 365-71, 380-85.) But Defendants bury said disclaimer in small print
14 paragraphs. For example, on one website, Defendants place their disclaimer in the ninth of
15 eleven small print paragraphs. The preceding paragraphs concern the accuracy of the
16 information provided by consumers, that they are over 18 or have parental permission, etc.,
17 leading consumers reasonably to believe the terms and conditions relate to the credibility of
18 information provided by consumers, not the credibility of the program itself. Further, nothing
19 on the websites' homepages indicates that consumers should go to the "Terms and Conditions"
20 page. (*See, e.g., id.* Att K. at 358-60, 374-76.) And although consumers are required to check a
21 box stating that they agree to the terms and conditions before completing purchase and there is a
22 hyperlink to the "Terms and Conditions" page, consumers can check the box without clicking on
23 the hyperlink and there is no method by which Defendants ensure that consumers have actually
24 read that page. (*Id.* at 29 ¶59.)
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1 Defendants' inconspicuous disclaimers do not correct their representations on the
2 websites. Non-obvious disclosures that contradict false claims cannot cure them. Disclaimers
3 must be prominent and unambiguous to change the apparent meaning and leave an accurate
4 impression. *Kraft, Inc. v. FTC*, 970 F.2d 311, 325 (7th Cir. 1992); *Removatron Int'l*, 884 F.2d
5 at 1497. A qualification must be likely to come to the attention of the person who sees the basic
6 claim, and a qualification in small print or its equivalent is unlikely to be effective. *Am. Life &*
7 *Accident Ins. Co. v. FTC*, 255 F.2d 289 (8th Cir. 1958). Moreover, a disclosure that contradicts
8 the original assertion only creates further uncertainty. *Giant Food, Inc. v. FTC*, 322 F.2d 977,
9 986 (D.C. Cir. 1963) (representation that products were customarily sold at "regular price"
10 contradicted by fine print disclosure that they were not necessarily ever available at such prices).
11 Furthermore, it is well settled that "a solicitation may be likely to mislead by virtue of the net
12 impression it creates even though the solicitation also contains truthful disclosures."
13 *Cyberspace.com*, 453 F.3d at 1200. Statements used to qualify otherwise deceptive statements
14 must be sufficiently clear and conspicuous. *See, e.g., In re Thompson Med. Co.*, 104 F.T.C. 648,
15 789 n.9 (1984); *Removatron Int'l*, 884 F.2d at 1497 ("Disclaimers or qualifications in any
16 particular ad are not adequate to avoid liability unless they are sufficiently prominent and
17 unambiguous to change the apparent meaning of the claims and to leave an accurate
18 impression.").¹⁴

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25 ¹⁴ Nor does it defeat a finding of deception if, in some cases, consumers later become fully
26 informed that Defendants are not accredited nor are their diplomas legitimate. It is well
27 established that "[t]he Federal Trade Act is violated if [a seller] induces the first contact through
28 deception, even if the buyer later becomes fully informed before entering the contract." *Resort
Car Rental Sys., Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975) (per curiam) (citing *Exposition
Press, Inc. v. FTC*, 295 F.2d 869, 873 (2d Cir. 1961) (upholding injunction of initial print

1 Here, because of the small font size and placement of Defendants’ disclaimers, many
2 consumers may not notice or review them. Thus, the disclaimers are not clear and conspicuous
3 and do not offset the overall net impression of the websites that consumers can successfully use
4 Defendants’ diplomas as valid high school credentials.
5

6 **2. The Equities Weigh in Favor of Granting Injunctive Relief**

7 Once the FTC establishes the likelihood of its ultimate success on the merits, preliminary
8 injunctive relief is warranted if the Court, weighing the equities, finds that relief is in the public
9 interest. In balancing the equities between the parties, the public equities must be given far
10 greater weight. *Affordable Media*, 179 F.3d at 1236. Because Defendants “can have no vested
11 interest in a business activity found to be illegal,” *United States v. Diapulse Corp. of Am.*, 457
12 F.2d 25, 29 (2d Cir. 1972) (quoting *United States v. Ellis Research Labs., Inc.*, 300 F.2d 550,
13 554 (7th Cir. 1962)), the balance of equities tips decidedly toward granting the requested relief.
14 *See also CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977) (“A
15 court of equity is under no duty ‘to protect illegitimate profits or advance business which is
16 conducted illegally.’” (internal parentheses omitted) (quoting *FTC v. Thomsen-King & Co.*, 109
17 F.2d 516, 519 (7th Cir. 1940)).
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22 The evidence demonstrates that the public equities – protection of consumers from
23 Defendants’ deceptive practices, effective enforcement of the law, and the preservation of
24 Defendants’ assets for final relief – weigh heavily in favor of granting the requested injunctive
25 relief. Granting such relief is also necessary because Defendants’ conduct indicates that they
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27 advertisement for vanity publisher even though prospective customers who answered the ad
28 immediately received brochures qualifying the royalty claims before they purchased the
service)).

1 will likely continue to deceive the public. *Five-Star Auto Club*, 97 F. Supp. 2d at 536 (“[P]ast
2 illegal conduct is highly suggestive of the likelihood of future violations.”); *SEC v. R.J. Allen &*
3 *Assocs., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (past misconduct suggests likelihood of
4 future violations); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979).

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

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

17 “Where one or more corporate entities operate in common enterprise, each may be held
18 liable for the deceptive acts and practices of the others.” *Think Achievement*, 144 F. Supp. 2d at
19 1011. When determining whether a common enterprise exists, courts consider “common
20 control; the sharing of office space and officers; whether business is transacted through a maze
21 of interrelated companies; the commingling of corporate funds and failure to maintain separation
22 of companies; unified advertising; and evidence that reveals that no real distinction exists
23 between the corporate defendants.” *FTC v. Grant Connect, LLC*, 827 F. Supp. 2d, 1216 (D.
24 Nev. 2011) (quoting *FTC v. Nat’l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1182 (N.D. Ga.
25 2008)), *aff’d in part and rev’d in part on other grounds*, 763 F.3d 1094 (11th Cir. 2014); *FTC v.*
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1 *J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000). Where the same individuals
2 transact business through a “maze of interrelated companies,” the whole enterprise may be held
3 liable as a joint enterprise. *FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052,
4 1082 (C.D. Cal. 2012) (quoting *Think Achievement*, 144 F. Supp. 2d at 1011).

6 Here, Defendants operate as a common enterprise to market their bogus high school
7 diplomas. There is substantial evidence of the entities’ intertwinement. Among other things,
8 the various business entities share common ownership and management (PX03 at 3 ¶¶8, 9), and
9 have utilized the same mailing addresses. (*Id.* at 19, 29-31 ¶¶44, 62, 67.) For example,
10 Defendant Remley is the sole named officer or manager of both corporate Defendants and has
11 sole signatory authority on all of their bank accounts. (*Id.* at 3, 17-19 ¶¶8, 9, 39-43.) Reflective
12 of a “maze of interrelated companies,” the entities make routine payments to one another and
13 frequently commingle funds. (*Id.* at 20-21 ¶¶46, 47.) The common enterprise is used to
14 perpetuate deceit, and unjust loss or injury would result from treating the corporate Defendants
15 separately, because each company is a beneficiary of and participant in the shared business
16 scheme.
17

20 **D. The Individual Defendant Is Liable for Injunctive and Monetary Relief**

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

4
5 An individual may be held liable for monetary redress for corporate practices if the
6 individual had, or should have had, knowledge or awareness of the corporate defendants'
7 misrepresentations. *Affordable Media*, 179 F.3d at 1231. This knowledge element, however,
8 need not rise to the level of subjective intent to defraud consumers. *Id.* at 1234. Instead, the
9 FTC need only demonstrate that the individual had actual knowledge of material
10 misrepresentations, reckless indifference to the truth or falsity of such representations, or an
11 awareness of a high probability of fraud, coupled with the intentional avoidance of the truth. *Id.*
12 Participation in corporate affairs is probative of knowledge. *Id.* at 1235.

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14
15 As discussed above, defendant Remley is the principal and sole officer of the corporate
16 defendants. (PX03 at 3 ¶¶8, 9.) He has sole signatory authority over the corporate Defendants'
17 bank accounts (*id.* at 3, 17-19 ¶¶8, 9, 39-43.), and is the billing contact for Defendants' websites,
18 email, and telephone service. (*Id.* at 6-7, 17 ¶¶18, 36, 37.) There can be little doubt that the
19 individual Defendant has authority to control, and direct knowledge of, Defendants' wrongful
20 acts. Accordingly, he should be enjoined from violating the FTC Act and held liable for
21 consumer redress or other monetary relief in connection with Defendants' activities. Thus,
22 preliminary relief is appropriate against him.
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1 **V. THE SCOPE OF THE PROPOSED TRO IS APPROPRIATE IN LIGHT OF**
2 **DEFENDANTS' CONDUCT**

3 As the evidence has forcefully shown, the FTC is likely to succeed in proving that
4 Defendants are engaging in deceptive and unfair practices in violation of the FTC Act, and that
5 the balance of equities strongly favors the public. Preliminary injunctive relief is thus justified.
6

7 **A. Conduct Relief**

8 To prevent ongoing consumer injury, the proposed TRO prohibits Defendants from
9 making future misrepresentations that consumers can successfully use Defendants' diplomas as
10 valid high school equivalency credentials when applying for jobs or enrolling in institutions of
11 higher learning. The order would also prohibit Defendants from misrepresenting that their
12 online programs are accredited by an independent, third-party accrediting body.
13

14 As discussed above, this Court has broad equitable authority under Section 13(b) of the
15 FTC Act to grant ancillary relief necessary to accomplish complete justice. *H.N. Singer*, 668
16 F.2d at 1113. These requested prohibitions do no more than order that Defendants comply with
17 the FTC Act.
18

19 **B. An Asset Preservation Order Is Necessary to Preserve the Possibility of Final**
20 **Effective Relief**

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

4
5 "A party seeking an asset freeze must show a likelihood of dissipation of the claimed
6 assets, or other inability to recover monetary damages, if relief is not granted." *Johnson v.*
7 *Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). In *Johnson*, the Ninth Circuit upheld an asset
8 freeze because plaintiffs had established they were "likely to succeed in proving that
9 [Defendant] impermissibly awarded himself tens of millions of dollars." *Id.* at 1085. A
10 defendant's prior attempt to hide assets establishes the likelihood that, without an asset freeze,
11 the plaintiff will be unable to recover any funds. *Affordable Media*, 179 F.3d at 1236
12 (likelihood of dissipation existed "[g]iven the [defendants'] history of spiriting their
13 commissions away to a Cook Islands trust"). Courts have also concluded that an asset freeze is
14 justified where a Defendant's business is permeated with fraud. *See, e.g., SEC v. Manor*
15 *Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2nd Cir. 1972); *R.J. Allen & Assoc.*, 386 F. Supp. at
16 881.

17
18 This Court has the authority to direct third parties to effectuate the purpose of the TRO.
19
20 *See, e.g., Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940) (holding that courts
21 have authority to direct third parties to preserve assets); *United States v. First Nat'l City Bank*,
22 379 U.S. 378, 385 (1965); *Reebok Int'l, Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995).
23
24 Further, the Court can order Defendants' assets to be frozen whether the assets are inside or
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1 outside the United States.¹⁵ *First Nat'l City Bank*, 379 U.S. at 384 (“Once personal jurisdiction
2 of a party is obtained, the District Court has authority to order it to ‘freeze’ property under its
3 control, whether the property be within or without the United States.”). In addition to freezing
4 company assets, courts have frozen individual defendants’ assets where the individual
5 defendants controlled the deceptive activity and had actual or constructive knowledge of the
6 deceptive nature of the practices in which the companies were engaged. *Amy Travel Serv.*, 875
7 F.2d at 574.
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10 A freeze of the Defendants’ assets is appropriate here to preserve the status quo, ensure
11 that funds do not disappear during the course of this action, and preserve Defendants’ assets for
12 final relief. Defendants have taken in gross deposits of approximately \$6 million in revenue in
13 little over three years. Bank records show that Defendants make frequent transfers between
14 their various corporate and personal bank accounts. (PX03 at 20-21 ¶¶46 - 47.) Defendants also
15 use corporate funds to make car payments for private vehicles and other personal payments. (*Id.*
16 (\$135,000 for a 2004 Ferrari, the Toy Barn (for payment on a vintage car), a Los Angeles guitar
17 shop (for payment of a Red Stratocaster high-end electric guitar), jewelry stores, payments to
18 liquor stores, private schools in Scottsdale and Honolulu, and Las Vegas hotels.) A temporary
19 asset freeze is required to preserve the Court’s ability to order disgorgement of profits.
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23 Without an asset freeze, the dissipation and misuse of assets is likely. Defendants who
24 have engaged in illegal activities are likely to waste assets prior to resolution of the action. *See*
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26 ¹⁵ The proposed TRO also includes a provision that restrains Defendants from taking any action
27 that may result in the encumbrance or dissipation of foreign assets, including taking any action
28 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 *Manor Nursing Ctrs.*, 458 F.2d at 1106. In the FTC's experience, defendants engaged in
2 similarly serious unlawful practices secreted assets and destroyed documents upon learning of
3 an impending law enforcement action. (PX03 at 31-35 ¶¶68, 69.) As discussed above, the
4 evidence here demonstrates that Defendants' enterprise is permeated by deception and unlawful
5 activity. Moreover, Defendants go to great lengths to hide their base of operations. Defendants
6 sometimes utilize commercial mail receiving entities as their business addresses and do not
7 provide consumers any physical addresses where they may be found. (*Id.* at 29-30 ¶¶62.) In
8 addition, Defendants register all of their numerous websites through Domains by Proxy, further
9 obscuring their identities from their consumer-victims. (*Id.* at 6 ¶17.) These efforts to obscure
10 their true operating locations suggest that Defendants are anticipating future law enforcement
11 action and do not want authorities to know where they might be located. Therefore, an asset
12 freeze is required to preserve the funds derived from Defendants' unlawful activities so that the
13 Court can retain its ability to fashion meaningful final relief.

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18 In addition to the freeze itself, the FTC also seeks an immediate accounting of
19 Defendants' assets and any transfers by Defendants since 2004 of assets worth \$1,000 or more.
20 The FTC also requests that the Court order Defendants to complete and return to the FTC
21 financial statements on the forms attached to the proposed TRO. An accounting and financial
22 statements, combined with an asset freeze, will increase the likelihood of preserving existing
23 assets pending final determination of this matter. *See, e.g., FTC v. D Squared Sols., LLC*, 2003
24 WL 22881377, at *4 (D. Md. Oct. 30, 2003) (ordering immediate accounting of assets); *FTC v.*
25 *Stout*, 1999 WL 34833240, at *3 (D.N.J. Dec. 8, 1999) (same); *see also SEC v. Bankers All.*
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1 *Corp.*, 881 F. Supp. 673, 676 (D.D.C. 1995); *SEC v. Parkersburg Wireless LLC*, 156 F.R.D.
2 529, 532 n.3 (D.D.C. 1994).

3 **C. Temporary Disabling of Websites**

4 An order provision temporarily disabling Defendants' websites and suspending their
5 domain name registrations is necessary to prevent further consumer injury. As discussed above,
6 Defendants operate their unlawful diploma mill (and medical certification) scheme through a
7 network of deceptive Internet websites. Disabling these websites and suspending their domain
8 name registrations will ensure that Defendants cannot evade compliance with any preliminary
9 relief entered by this Court pending final determination of this matter.
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12 This Court has the authority to direct third parties to effectuate the purpose of the TRO.
13 *Cf. Deckert*, 311 U.S. at 290 (holding that courts have authority to direct third parties to preserve
14 assets); *First Nat'l City Bank*, 379 U.S. at 385; *Reebok Int'l*, 49 F.3d at 1391; *Waffenschmidt v.*
15 *MacKay*, 763 F.2d 711, 714 (5th Cir. 1985). Other courts have granted similar relief against
16 defendants who have utilized Internet websites to promote fraud.¹⁶
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19 **D. Preservation of Records**

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

1 charged with deception from destroying evidence and doing so would place no significant
2 burden on them. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990)
3 (characterizing such orders as “innocuous”). (*See also* PX03 at 35-36 ¶70 (describing examples,
4 in the FTC’s experience, of defendants engaged in similarly serious unlawful practices who
5 destroyed or attempted to destroy documents).)

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

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9 The FTC seeks leave of Court for immediate access to Defendants’ business premises, if
10 any, and limited discovery to locate and identify documents and assets.¹⁷ District courts are
11 authorized to depart from normal discovery procedures and fashion discovery to meet discovery
12 needs in particular cases. Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) authorize the
13 Court to alter the standard provisions, including applicable time frames, that govern depositions
14 and production of documents. This type of discovery order reflects the Court’s broad and
15 flexible authority in equity to grant preliminary emergency relief in cases involving the public
16 interest. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *FSLIC v. Dixon*, 835
17 F.2d 554, 562 (5th Cir. 1987); *Fed. Express Corp. v. Fed. Espresso, Inc.*, 1997 U.S. Dist. LEXIS
18 19144, at * 6 (N.D.N.Y. Nov. 24, 1997) (Early discovery “will be appropriate in some cases,
19 such as those involving requests for a preliminary injunction.” (quoting commentary to Fed. R.
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23 ¹⁷ The FTC’s evidence has not identified any business premises and it appears that Defendants
24 may be operating from private residences, including those of the individual Defendant. (PX03
25 at 3, 19 ¶¶8, 9, 44.) The FTC will not enter private residences; instead the proposed TRO
26 includes a provision directing Defendants to produce to the FTC within 24 hours of service of
27 the TRO all documents, including any electronic documents, relating to the marketing and sale
28 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 FTC immediate access to Defendants’ documents while preserving
any Fourth Amendment rights Defendants may have.

1 Civ. P. 26(d)); *Benham Jewelry Corp. v. Aron Basha Corp.*, 1997 U.S. Dist. LEXIS 15957, at
2 *58 (S.D.N.Y. July 18, 1997) (courts have broad powers to grant expedited discovery).

3 **VI. CONCLUSION**

4 For the above reasons, the FTC respectfully requests that this Court issue the attached
5 proposed TRO with asset freeze, expedited discovery, and other equitable relief, and require
6 Defendants to show cause why a preliminary injunction should not issue.
7

8 Dated: February 8, 2016

Respectfully submitted,

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