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**UNITED STATES DISTRICT COURT**
**DISTRICT OF ARIZONA**

**HTERL7.36 TmD 23 >>BDC q 66.6 306.24 239.1**

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

**B. Defendants**

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

Defendant **Capitol Network Distance Learning Programs, LLC** is an inactive Arizona limited liability company, formed on May 21, 2008 by Defendant Nicholas Pollicino, and administratively dissolved on September 6, 2012.[1] (PX04 at 3 ¶8, Att. A at 39-41.) Capitol Network Distance Learning also does business under the name CNDLP. (*Id.* at 14-15 ¶32, Att. N at 260-61, 265, Att. T at 462.) Corporate papers list Capitol Network Distance Learning's principal place of business as 14425 N. Scottsdale Road, Suite 700, Scottsdale, Arizona. (*Id.* at 3 ¶8, Att. A at 39.) Capitol Network Distance Learning has also utilized a network of commercial mail-receiving agency addresses, including 3116 E. Shea Boulevard, Suite 158, Phoenix, Arizona; 3217 E. Shea Boulevard, Suite 237, Phoenix, Arizona; 10115 E. Bell Road, Suite 107-143, Scottsdale, Arizona; and 16211 N. Scottsdale Road, Suite A6A-434, Scottsdale, Arizona. (*Id.* at 3, 15, 17, 29, 30 ¶¶8, 36, 39, 60,

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

Defendant **Capital Network Digital Licensing Programs, LLC** is an Arizona limited liability company, formed on January 27, 2011 by Nicholas Pollicino. (*Id.* at 4 ¶9, Att. B at 43-47.) Capital Network Digital Licensing also does business under the name CNDLP. (*Id.* at 16 ¶38, Att. P at 334.) Corporate papers list Capital Network Digital Licensing's principal place of business at 8530 E. Raintree Road, Suite 300, Scottsdale, Arizona. (*Id.* at 4 ¶9, Att. Bat 45.)

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. Metatags[3] are codes embedded in the HTML text of a website that, at least in theory, describe the website's content and allow consumers to navigate easily to it from a search engine like Google. For example, Defendants use keyword metatags such as "GED," "GED online," and "diploma." (*Id.* at 12-13 ¶27, Att. K at 226, Att. L at 233.) When consumers use search engines to locate legitimate high school programs, they are drawn to Defendants' websites instead.[4] For example, consumer Cathryn Teshera's Google search for online high schools led her to Defendants' Capital High School website. (PX05 at 2 ¶6; *see also*

[3] 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 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).

[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.)

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

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

Several days after consumers complete their order, Defendants ship the diploma and 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 464-66; PX05 at 2 ¶7; PX06 at 1 ¶5.) A typical diploma states that the consumer "has satisfactorily displayed proficient knowledge of the standardized courses required for graduation and is entitled to this official diploma" and is signed by a purported principal and superintendent. (PX03 Att. A at 4; PX04 at 6 ¶13, Att. U at 464.) A typical transcript contains a list of classes supposedly taken by the consumer. (PX04 Att. U at 465-66.) For example, whe su Td8

Admin. Code § R7-2-302.02(1). Here, the purported transcript issued by Defendants lacks the economics, world history, and speech and debate credits required by Arizona regulations. Further, credits may only be earned through online "distance learning" if the online course

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

Consumers report that Defendants' diplomas are virtually worthless. In numerous instances, consumers who attempt to apply for jobs, seek admission to colleges, or enlist in the military using Defendants' diplomas are turned down because the diplomas are not valid high school equivalency credentials. For example, consumer Desiree Draper tried to use her Capitol High School diploma to enroll in technical college and community college but was denied because the diploma was not valid. (PX03 at 1-2 ¶¶4, 6.) Consumer Cathryn Teshera was denied enrollment in her local community college because they would not accept a Capital High School diploma. (PX05 at 2-3 ¶8.)

Diploma"); PX05 at 2 ¶6 (Defendants' representative assured consumer that Capital High School was accredited); PX06 at 1 ¶3 (same).).) Typically, their websites have included the statement "Proud Member of CNDLP" next to the image of an academic seal.

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

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

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

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

In considering whether a claim is deceptive, the Court must consider the "net impression" created by the representation. *Cyberspace.com*, 453 F.3d at 1200 (solicitation can be deceptive by virtue of its net impression even if it contains truthful disclosures); *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) ("[T]

equivalency credentials, and (2) misrepresenting the accreditation status of their so-called high schools.

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

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

**b. Misrepresentations Regarding CNDLP Accreditation**

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

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

To the extent that any of Defendants' websites have disclaimers that their programs are not accredited nor a replacement for or equivalent to a traditional high school diploma, they are

buried and do not cure the overall representations that Defendants' diplomas are legitimate or that their high schools are accredited.

Some of Defendants' websites include a disclaimer at the bottom of each webpage. (*See, 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, 201, 202-211 (no disclaimer).) The disclosure, however, is at the bottom of the webpage below the copyright and related language typically seen at the bottom of websites, such that consumers would need to scroll past the copyright language to reach it. Further, the disclaimer is well below the "Learn More" or "Get Started" hyperlinks that consumers would click to begin the diploma process. Nothing on the webpages above the copyright language indicates to consumers that they should scroll down to the very bottom of the page for any disclaimers. Finally, the disclaimer itself is often in a font size smaller than the text on the rest of the page or in a color that is difficult to read against the page's background.

In addition, some of Defendants' websites include a disclaimer on a separate "Terms and Conditions" webpage. (*Id.* Att. J at 189a, 224a.) Defendants bury the disclaimer in small print paragraphs. For example, Defendants place their disclaimer in the seventh of eight small print paragraphs. The preceding paragraphs concern the accuracy of the information provided by consumers, that they are over 18 or have parental permission, etc., leading consumers reasonably to believe the terms and conditions relate to the credibility of information provided by consumers, not the credibility of the program itself. Further, nothing on the websites' homepages indicates that consumers should click on the "Terms and Conditions" hyperlink to view that webpage before proceeding. (*Id.* Att. J at 178-79, 188-89, 190-91, 212-13, 214-15, 216-17.) And although consumers are required to check a box stating that they agree to the

terms and conditions before completing purchase, consumers can check the box without reviewing those terms and there is no method by which Defendants ensure that consumers have actually read them. (*Id.* at 28 ¶55.)

Defendants' inconspicuous disclaimers do not correct their representations on the websites. Non-obvious disclosures that contradict false claims cannot cure them. Disclaimers must be prominent and unambiguous to change the apparent meaning and leave an accurate impression. *Kraft, Inc. v. FTC,* 970 F.2d 311, 325 (7th Cir. 1992); *Removatron Int'l* , 884 F.2d at

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

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

By contrast, the private equities in this case are not compelling. Compliance with the law is h5 (sst5-U73(prnreason of)-("[])ble bur0 T(.D)-9.5 violations); )96 0 Td (-)See W [(cond-9.9(F9.

control; the sharing of office space and officers; whether business is transacted through a maze of interrelated companies; the commingling of corporate funds and failure to maintain separation of companies; unified advertising; and evidence that reveals that no real distinction exists between the corporate defendants." *FTC v. Grant Connect, LLC*, 827 F. Supp. 2d, 1216 (D. Nev. 2011) (quoting *FTC v. Nat'l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1182 (N.D. Ga. 2008)), *aff'd in part and rev'd in part on other grounds*, 763 F.3d 1094 (11th Cir. 2014); *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000). Where the same individuals transact business through a "maze of interrelated companies," the whole enterprise may be held liable as a joint enterprise. *FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1082 (C.D. Cal. 2012) (quoting *Think Achievement*, 144 F. Supp. 2d at 1011).

Here, Defendants operate as a common enterprise to market their bogus high schoo -3FTdiplon

the various business entities share common

¶¶8-10, 32, 36-38), and have utilized the sar

Therefore, an asset freeze is required to preserve the funds derived from Defendants' unlawful activities so that the Court can retain its ability to fashion meaningful final relief.

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

**C. Temporary Disabling of Websites**

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

This Court has the authority to direct third parties to effectuate the purpose of the TRO. *Cf. Deckert*, 311 U.S. at 290 (holding that courts have authority to direct third parties to preserve assets); *First Nat'l City Bank*, 379 U.S. at 385; *Reebok Int'l*, 49 F.3d at 1391; *Waffenschmidt v.*

*MacKay*, 763 F.2d 711, 714 (5th Cir. 1985). Other courts have granted similar relief against defendants who have utilized Internet websites to promote fraud.[16]

**D. Preservation of Records**

In addition, the proposed order contains a provision directing Defendants to preserve records, including electronic records, and evidence. It is appropriate to enjoin Defendants charged with deception from destroying evidence and doing so would place no significant burden on them. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990) (characterizing such orders as "innocuous"). (*See also* PX04 at

authorized to depart from normal discovery procedures and fashion discovery to meet discovery needs in particular cases. Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) authorize the Court to alter the standard provisions, including applicable time frames, that govern depositions and production of documents. This type of discovery order reflects the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *FSLIC v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987); *Fed. Express Corp. v. Fed. Espresso, Inc.*,