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

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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
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- 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
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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.
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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,
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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.)

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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.)
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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.)
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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

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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**

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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,
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15 acls-certification-class.com, acls-online-renewal.com, online-acls-recertification.com,
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17 pals-certification-course.com, pals-online-certification.com, pals-online-renewal.com, and
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19 piperhealth.com. (PX03 at 13 ¶29, Att. G at 273-87, Att. K at 409-16, 419-25.) Defendants’
20 websites market to consumers, promoting programs bearing names such as ACLS Class,
21 American Certification Specialists, American Urgent Care Training, Critical Care Training,
22 Critical Response Certification Services, Critical Training Specialists, Eagle Medical Training,
23

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>
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- 1 x 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 x 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 x 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 x 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)i, Inc.]TJ /TT1 1 Tf ,

649.509 (H.W. v. F. 75 SW 2d 4347 (quoting 00417521178 023521740 Wp. 604 TBT at 10. (de W. 9)

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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. Stefanich*, 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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14 **a. Misrepresentations That Consumers Can Successfully Use**
15 **Proposed Defendants’ Diplomas As A Valid High School**
16 **Equivalency Credential**
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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.
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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.
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6 **2. The Equities Weigh in Favor of Granting Injunctive Relief**
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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 lik(endt9.2(andMCID7I s of)-9.5(
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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.
10

11 This Court has the authority to direct third parties to effectuate the purpose of the TRO.
12
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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18 **D. Preservation of Records**

19 In addition, the proposed order contains a provision directing Defendants to preserve
20 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 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) Basha3 Tc 0 e -C

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