

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

Case No. 0:14-cv-62116-JIC

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

**DIVERSIFIED EDUCATIONAL RESOURCES,
LLC, *et al.*,**

Defendants,

and

STEINBOCK HOLDINGS LLC, *et al.*,

Relief Defendants.

**PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT AND PERMANENT
INJUNCTION AGAINST DEFENDANTS DIVERSIFIED EDUCATIONAL
RESOURCES, LLC AND MOTIVATIONAL MANAGEMENT & DEVELOPMENT
SERVICES, LTD., AND MEMORANDUM IN SUPPORT THEREOF;**

REQUEST TO WAIVE ORAL ARGUMENT

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1 Plaintiff Federal Trade Commission (“FTC” or the “Commission”) hereby moves for
2 entry of judgment by default against defendants Diversified Educational Resources, LLC
3 (“DER”) and Motivational Management & Development Services, Ltd. (“MMDS”) (collectively
4 “Defaulting Defendants”), pursuant to Federal Rule of Civil Procedure 55(b)(2). The Defaulting
5 Defendants were served with a summons and complaint but failed to file an answer or otherwise
6 defend, resulting in a default, which was entered by the Clerk of the Court on October 30, 2014.
7 The FTC has settled with all other Defendants in this matter; these settlements were entered by
8 this Court on January 15, 2015. The FTC now respectfully requests that this Court enter the
9 attached proposed Default Judgment and Order for Permanent Injunction and Other Equitable
10 Relief, including an equitable monetary judgment of \$11,007,392, against the remaining
11 Defendants, DER and MMDS.

12 **I. PROCEDURAL HISTORY**

13 On September 16, 2014, the FTC filed a complaint for permanent injunction and other
14 equitable relief against five Defendants, including DER and MMDS, in connection with their
15 operation of several online high school diploma mills. (Docket No. 1 (“Complaint”).) The FTC
16 also filed a motion for a Temporary Restraining Order (“TRO”), which was granted the same
17 day. The Complaint alleges, *inter alia*, that Defendants violated Section 5 of the FTC Act, 15
18 U.S.C. § 45, by (1) misrepresenting that consumers could use Defendants’ high school diplomas
19 as valid high school equivalency credentials, and (2) misrepresenting the accreditation status of
20 their online schools. (*Id.* ¶¶ 35-40.)

21 Defendants DER and MMDS were both served with the Complaint, the FTC’s motion for
22 a TRO and order to show cause why a preliminary injunction should not be entered, and all
23 associated papers on September 17, 2014, in compliance with Federal Rule of Civil Procedure 4.
24 A process server delivered the aforementioned materials to DER’s registered agent in
25 Tallahassee, FL. (Docket No. 17.) In addition, a postal inspector delivered the same materials to
26 defendant Alexander Wolfram (Docket No. 19), as agent authorized to accept service for
27 MMDS. (*See* Docket No. 8, PX14 at 619-21; Docket No. 9, PX14 at 687-89, 693-95, and 699-

1 701 (financial records and service contract listing Wolfram as the “owner”, “key executive,” and
2 “VP” of MMDS).)

3 On September 30, 2014, the Court held a hearing on the FTC’s motion for preliminary
4 injunction, at which the Defaulting Defendants were not represented by counsel. After the
5 hearing, the Court granted the FTC’s motion and issued a preliminary injunction against all
6 Defendants. (Docket Nos. 29 and 30.)

7 Although the Defaulting Defendants were properly served with a summons and
8 Complaint, they did not obtain counsel and failed to file a timely answer or other response as
9 directed by the summons and the Federal Rules of Civil Procedure. Accordingly, on October 29,
10 2014, the FTC requested (Docket No. 51), and on October 30, 2014, the Clerk of the Court
11 entered (Docket No. 52), default against both DER and MMDS, pursuant to Federal Rule of
12 Civil Procedure 55(a), for failing to answer, plead, or otherwise defend against the Complaint.

13 **II. SUMMARY OF DEFENDANTS’ DECEPTIVE BUSINESS PRACTICES¹**

14 As set forth in the Complaint and the FTC’s memorandum in support of a TRO, since at
15 least 2006 and until September 2014, Defendants operated several fraudulent online high school
16 diploma mills that sold fake high school diplomas to consumers nationwide. (Complaint ¶ 17.)
17 Defendants’ websites, which described purported legitimate secondary school programs bearing
18 names such as “Jefferson High School Online” and “Enterprise High School Online,” claimed
19 that consumers could “become [. . .] high school graduate[s]” and obtain “official” high school
20 diplomas by enrolling in Defendants’ programs. (*Id.*) Defendants claimed that consumers could
21 successfully use their diplomas as valid high school equivalency credentials to enroll in college,
22 apply for jobs, and “receive the recognition [they] aspire for in life.” (*Id.*) Over the years,
23 Defendants’ websites have also represented that Defendants’ programs were accredited. (*Id.*)

24 In reality, Defendants did not operate accredited online high schools and did not issue
25

26 ¹ A more detailed recitation of the legal and factual support for the FTC’s case is presented
27 in the memorandum in support of the TRO (Docket No. 6), and accompanying exhibits
(Docket Nos. 7-9).

1 valid high school credentials. (*Id.* ¶ 18.) Consumers were only required to pay a fee and pass an
2 online test in order to obtain a so-called “diploma.” (*Id.*) Defendants required no coursework or
3 preparation before taking the online test, and even offered consumers hints to help them select
4 the correct answers. (*Id.*) Consumers have confirmed that Defendants’ “diplomas” are virtually
5 worthless. (*Id.*) In numerous instances, consumers who attempted to enroll in college, apply for
6 jobs, or join the military using Defendants’ diplomas were rejected because the diplomas do not
7 constitute valid or recognized high school equivalency credentials. (*See id.* ¶¶ 25-26.) In
8 numerous instances, when consumers sought refunds from Defendants, they were turned down.
9 (*Id.* ¶ 26.)

10 The FTC estimates that Defendants’ deceptive practices caused consumer injury in the
11 aggregate amount of \$11,007,392. The FTC arrived at this consumer injury amount by analyzing
12 Defendants’ bank records obtained through compulsory process, including pre-complaint civil
13 investigative demands, from financial institutions that maintained accounts held by the
14 Defendants. The FTC took the total proceeds obtained by Defendants in conjunction with their
15 fraudulent diploma mills and deducted all refunds, credits, and chargebacks. (Decl. of Victoria
16 M. L. Budich (“Budich Decl.”) at ¶ 7.) Defendants Wolfram, Garcia, and IDM Services, LLC²
17 have already stipulated to entry of a judgment against them in the amount of \$11,007,392, which
18 was entered by the Court on January 15, 2015. (Docket Nos. 61 and 62.)

19 **III. THE COURT SHOULD ENTER DEFAULT JUDGMENT AGAINST** 20 **DEFENDANTS DER AND MMDS**

21 **A. The Court Has The Authority To Issue A Default Judgment**

22 “Federal Rule of Civil Procedure 55(b)(2) authorizes a court to enter a default judgment
23 against a properly served defendant, who, like Defendants here, failed to file a timely responsive
24 pleading. By such a default, all of Plaintiff’s well-pled allegations in the Complaint are deemed

25 ² Defendant IDM Services LLC is owned by Defendant Wolfram and was represented in
26 this matter by Wolfram’s counsel. The Defaulting Defendants are owned by Defendant
27 Garcia, who appeared in this case *pro se*. Defendant Garcia did not retain counsel to
represent the Defaulting Defendants in this matter.

1 admitted.” *Ordonez v. Icon Sky Holdings LLC*, 10-60156-CIV, 2011 WL 3843890, at *5 (S.D.
2 Fla. Aug. 30, 2011) (citing *Buchanan v. Bowman*, 820 F.2d 359,361 (11th Cir.1987)). “If the
3 admitted facts in the Complaint establish liability, then the Court must determine appropriate
4 damages.” *Id.* “Where all the essential evidence is on record, an evidentiary hearing on
5 damages is not required.” *Id.* (citing *SEC v. Smyth*, 420 F.3d 1225, 1232 n. 13 (11th Cir. 2005)
6 (“Rule 55(b) (2) speaks of evidentiary hearings in a permissive tone ... We have held that no such
7 hearing is required where all essential evidence is already of record.” (citations omitted)).

8 As explained below, the FTC’s well-pled allegations establish the liability of the
9 Defaulting Defendants under the FTC Act. In addition, all essential evidence regarding
10 monetary relief is already part of the record, obviating the need for an evidentiary hearing.

11 **B. Defendants’ Marketing And Sale Of Fake High School Diplomas And Their**
12 **Misrepresentations Regarding Their Accreditation Status Are Deceptive Practices**
13 **In Violation Of Section 5 Of The FTC Act**

14 Section 5 of the FTC Act prohibits “unfair or deceptive practices in or affecting
15 commerce[.]” 15 U.S.C. § 45. “To establish liability under section 5 of the FTCA, the FTC
16 must establish that (1) there was a representation; (2) the representation was likely to mislead
17 customers acting reasonably under the circumstances, and (3) the representation was material.”
18 *FTC v. USA Fin., LLC*, 415 F. App’x 970, 973 (11th Cir. 2011) (quoting *FTC v. Tashman*, 318
19 F.3d 1273, 1277 (11th Cir. 2003)). “In determining whether a representation is likely to mislead
20 consumers acting reasonably, courts consider the net impression created” by defendants. *FTC v.*
21 *RCA Credit Servs., LLC*, 727 F. Supp. 2d 1320, 1329 (M.D. Fla. 2010). “A solicitation may be
22 likely to mislead by virtue of the net impression it creates even though the solicitation also
23 contains truthful disclosures.” *Id.* (quoting *FTC v. Cyberspace.Com LLC*, 453 F.3d 1196, 1200
24 (9th Cir. 2006)). “Only a tendency to deceive is required; actual consumer deception is
25 unnecessary.” *FTC v. Washington Data Res., Inc.*, 856 F. Supp. 2d 1247, 1273 (M.D. Fla. 2012)
26 *aff’d sub nom.*, *FTC v. Washington Data Res., Inc.*, 704 F.3d 1323 (11th Cir. 2013). In addition,
27 “deception is evaluated from the perspective of the reasonable prospective purchaser, that is, a

1 reasonable consumer in the audience targeted” by the defendants. *Id.* at 1272. Finally, “[a]
2 representation is material if it is of a kind usually relied upon by a reasonably prudent person.”
3 *RCA Credit Servs.*, 727 F. Supp. 2d at 1329 (quoting *FTC v. Transnet Wireless Corp.*, 506 F.
4 Supp. 2d 1247, 1266 (S.D. Fla. 2007)). The FTC need not prove subjective reliance by each
5 consumer misled by Defendants, “as it would be virtually impossible for the FTC to offer such
6 proof, and to require it would thwart and frustrate the public purposes of FTC action.” *See*
7 *McGregor v. Chierico*, 206 F.3d 1378, 1388 (11th Cir. 2000) (quoting *FTC v. Sec. Rare Coin &*
8 *Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991)). Rather, a “presumption of actual reliance
9 arises once the FTC has prove[n] that the defendant made material misrepresentations, that they
10 were widely disseminated, and that consumers purchased the defendant’s product.” *Id.*
11 “Express claims, or deliberately made implied claims, used to induce the purchase of a particular
12 product or service are presumed to be material.” *RCA Credit Servs.*, 727 F. Supp. 2d at 1329
13 (quoting *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1267)).

14 **1. Defendants’ Misrepresentations That Consumers Could Use Their Jefferson Or**
15 **Enterprise Diplomas As Valid High School Equivalency Credentials Violated**
16 **The FTC Act (Count I)**

17 In connection with the online marketing and sale of diplomas to consumers, Defendants
18 represented that consumers would be able to use their Jefferson or Enterprise diplomas as valid,
19 legitimate high school equivalency credentials when applying for jobs, enrolling in institutions of
20 higher learning, or for other similar purposes. (*See* Complaint ¶¶ 19-24; Docket No. 6 at 5-8.)
21 Defendants targeted vulnerable consumers with low levels of education, promising that they
22 could “become [. . .] high school graduate[s],” obtain “official” high school diplomas, and
23 “receive the recognition [they] aspire for in life” by enrolling in Defendants’ programs.
24 (Complaint ¶ 17, 20-21.) The FTC’s evidence demonstrates, however, that Defendants did not
25 operate legitimate educational programs, and that their diploma requirements fell far below
26 established standards for traditional high school completion. (Complaint ¶¶ 25-26; Docket No. 6
27 at 8-12.) As a result, Defendants’ so-called “diplomas” were essentially worthless, and their
representations to the contrary were likely to mislead consumers acting reasonably under the

1 circumstances. (*Id.*) In fact, numerous consumers complained that they were unable to use
2 Defendants' diplomas to obtain jobs, enroll in college, or for other similar purposes, because the
3 diplomas were not recognized as valid high school equivalency credentials. (*See* Complaint ¶¶
4 25-26; Docket No. 6 at 10-11; 15-16.) Finally, Defendants' misrepresentations were material,
5 both because they were "[e]xpress claims [...] used to induce the purchase" of Defendants'
6 services, *RCA Credit Servs.*, 727 F. Supp. 2d at 1329, and because a reasonably prudent person
7 would have relied on Defendants' misrepresentations regarding the value of the Jefferson or
8 Enterprise diploma when deciding whether to enroll in Defendants' online programs. *See id.*

9 As a result, Defendants, including DER and MMDS, violated Section 5 of the FTC Act
10 when they misrepresented that consumers would be able to use their diplomas as valid high
11 school equivalency credentials when applying for jobs, seeking enrollment in higher education
12 institutions, or for other purposes.

13 **2. Defendants' Misrepresentations Regarding Their Accreditation Status Violated** 14 **The FTC Act (Count II)**

15 In connection with the online marketing and sale of diplomas to consumers, Defendants
16 also claimed to be accredited by an independent, third-party accrediting body named IABOS.
17 (*See* Complaint ¶ 30; Docket No. 6 at 12-14.) Defendants' accreditation claims created the net
18 impression that Defendants' online programs were legitimate and widely recognized educational
19 programs, and that their diplomas could be used as high school equivalency credentials. (Docket
20 No. 13-14.) Several FTC consumer declarants and numerous other consumers complaining to
21 the Better Business Bureau stated they believed Jefferson and Enterprise to be legitimate online
22 schools due to Defendants' false accreditation claims. (*Id.*) The FTC's evidence demonstrates,
23 however, that IABOS is not a recognized third-party accrediting body but rather an artifice
24 created by Defendants. Defendants themselves registered and controlled the IABOS website,
25 which they used to lure consumers and convince them of the schools' purported legitimacy. (*Id.*)
26 Defendants' misrepresentations were material, both because they were "[e]xpress claims [...]
27 used to induce the purchase" of Defendants' services, *RCA Credit Servs.*, 727 F. Supp. 2d at

1 1329, and because a reasonably prudent person would have relied on Defendants'
2 misrepresentations regarding their accreditation status when deciding whether to enroll
3 Defendants' online programs. *See id.*

4 As a result, Defendants, including DER and MMDS, violated Section 5 of the FTC Act
5 when they misrepresented that their online programs were accredited by an independent, third-
6 party accrediting body.

7 **3. Defendants' Inconspicuous Disclaimers Did Not Dispel The Deceptive Net
8 Impression Created By Defendants' Misrepresentations**

9 "Disclaimers or qualifications in any particular ad are not adequate to avoid liability
10 unless they are sufficiently prominent and unambiguous to change the apparent meaning of the
11 claims and to leave an accurate impression." *FTC v. Capital Choice Consumer Credit, Inc.*, No.
12 02-21050 CIV, 2003 WL 25429612, at *5 (S.D. Fla. June 2, 2003) *aff'd*, 157 F. App'x 248 (11th
13 Cir. 2005) (*quoting Removatron Intern. Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989)).

14 Courts in the Eleventh Circuit have found that buried, hidden, fine-print disclaimers do not dispel
15 the deceptive net impression created by defendants' more prominent claims. *See, e.g.*,

16 *Washington Data Res.*, 856 F. Supp. 2d at 1274-75 (holding that "inconspicuously buried"
17 disclaimers failed to change the deceptive "net impression"); *Capital Choice Consumer Credit,*
18 *Inc.*, 2003 WL 25429612, at *5 (holding that a "fine print" disclosure on the "reverse side of a
19 certificate," "buried in the middle of a long paragraph," did not modify the deceptive net

20 impression). In this case, Defendants' disclaimers, which stated that Defendants' diplomas are
21 unaccredited and not equivalent to traditional high school diplomas, (*see, e.g.*, Docket No. 7,

22 PX14 at 197 and 217), were hidden within Defendants' websites, buried in the middle of long
23 paragraphs of small-print legalese, and were directly contradicted by Defendants' more

24 prominent claims that consumers who completed their online programs would obtain their high
25 school diplomas and become high school graduates. (*See* Docket No. 6 at 11-13.) As a result,

26 Defendants' disclaimers did not dispel the net impression created by Defendants'
27 misrepresentations that were likely to mislead consumers acting reasonably.

4. The Commission’s Vocational School Guides Support The Finding That Defendants’ Business Practices Were Deceptive³

The Commission has already determined that the type of conduct Defendants engaged in is deceptive under Section 5 of the FTC Act. In its Guides For Private Vocational And Distance Education Schools (“Vocational School Guides”), 16 C.F.R. 254, the FTC determined that it is “deceptive” for a private school to offer consumers a high school diploma unless its program of instruction is substantially equivalent to that offered by a resident secondary school and unless the consumer is informed “by a clear and conspicuous disclosure in writing” that the schools cannot control the recognition that will be accorded the diploma by universities or prospective employers. 16 C.F.R. 254.6(c). Here, Defendants’ curriculum is not “substantially equivalent to that offered by a resident secondary school” because, as demonstrated in the FTC’s Complaint and memorandum in support thereof, Defendants offer consumers no curriculum or instruction whatsoever. (*See* Complaint ¶¶ 25-26; Docket No. 6 at 8-12.) In addition, as discussed above, Defendants’ disclaimers regarding whether universities and employers would accept Defendants’ diplomas are buried within long paragraphs of fine-print legalese and contradict Defendants’ more prominent claims that consumers can use their Jefferson and Enterprise diplomas in the same way they would use a traditional high school diploma. (*See* Docket No. 6 at 11-12.)

Similarly, the Commission has determined that it is “deceptive” for a private school to represent, without qualification, that it is accredited unless it has been accredited by an agency recognized by the U.S. Department of Education. 16 C.F.R. 254.3(a)(1). IABOS is not, and has never been, recognized by the U.S. Department of Education. (*See* Docket No. 6 at 12.) Instead, Defendants created IABOS in order to confer a sheen of legitimacy to their fraudulent operation.

³ The FTC’s Vocational School Guides represent administrative interpretations of laws administered by the FTC. The Guides provide the basis for voluntary compliance with the law by members of the industry. Practices inconsistent with the Guides may result in corrective action by the Commission under section 5 of the FTC Act if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute. 16 C.F.R. 254.0(b).

1 (See Complaint ¶¶ 30, 32; Docket No. 6 at 12.) As a result, Defendants' IABOS accreditation
2 claims are deceptive.

3 **C. Defendants Are Liable For Injunctive And Monetary Relief**

4 "Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) provides for issuance of a permanent
5 injunction in proper cases. Consumer fraud in violation of section 5 of the FTC Act is a proper
6 case warranting permanent injunctive relief." *FTC v. JPM Accelerated Servs., Inc.*, No. 6:09-
7 CV-2021-ORL, 2011 WL 679938, at *3 (M.D. Fla. Jan. 25, 2011) *report and recommendation*
8 *adopted*, No. 6:09-CV-2021-ORL-28, 2011 WL 675400 (M.D. Fla. Feb. 16, 2011). In addition,
9 "the unqualified grant of statutory authority to issue an injunction under section 13(b) carries
10 with it the full range of equitable remedies, including the power to grant consumer redress and
11 compel disgorgement of profits." *FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 468 (11th Cir.
12 1996). Accordingly, the Defaulting Defendants are liable for permanent injunctive and monetary
13 relief.

14 **D. The Scope Of The Proposed Order Is Appropriate In Light Of Defendants' Conduct**

15 The scope of the proposed injunctive provisions and monetary relief provided in the
16 proposed final order is appropriate in light of the Defaulting Defendants' past conduct and the
17 likelihood of recurrence absent such relief.

18 **1. The Proposed Injunctive Provisions**

19 Section 13(b) of the FTC Act expressly authorizes the issuance of a permanent injunction
20 to prevent further violations of the FTC Act. 15 U.S.C. § 53(b); *Gem Merch.*, 87 F.3d at 468.
21 Such "permanent injunctive relief is appropriate if the defendant's past conduct indicates that
22 there is a reasonable likelihood of further violations in the future." *USA Fin., LLC*, 415 F. App'x
23 at 975 (*quoting SEC v. Caterinichia*, 613 F.2d 102, 105 (5th Cir. 1980)) (internal quotations
24 omitted). Courts have considered factors such as "the egregiousness of the defendant's actions,
25 the isolated or recurrent nature of the infraction," or "the degree of scienter involved" in
26 determining whether permanent injunctive relief is appropriate. *RCA Credit Servs., LLC*, 727 F.
27 Supp. 2d at 1335 (*quoting SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir. 1982)).

1 In this case, over the course of nearly nine years, Defendants charged consumers
2 hundreds of dollars for worthless pieces of paper styled as high school diplomas. Defendants
3 attempted to cloak their diploma mills in legitimacy by creating a fake accrediting body and
4 claiming to be independently accredited. When consumers complained that colleges, employers,
5 and the U.S. military were refusing to accept Defendants' diplomas as valid, Defendants accused
6 them of not reading the fine print and refused to refund their fees. Even though Defendants'
7 Jefferson and Enterprise websites are currently offline following the entry of a preliminary
8 injunction in this case, Defendants could easily resuscitate these sites absent a permanent
9 injunction. Defendants could also easily create and operate new online "high schools" that could
10 continue to deceive consumers. In fact, FTC evidence indicates that over the years, Defendants
11 have registered and subsequently shut down multiple other online "high school" websites, such
12 as Vencer High School Online, Wilson High School Online, and Roosevelt High School Online.
13 (See Docket 8, PX14 at 000494 (Defendants' GoDaddy.com website domain registration
14 records).) The egregiousness of Defendants' fraudulent conduct, the recurring nature of the
15 fraud, as well as Defendants' efforts to cloak their operation in legitimacy through false
16 accreditation claims shows there is a "reasonable likelihood of further violations in the future."
17 *USA Fin., LLC*, 415 F. App'x at. 975; see also *FTC v. 1st Guar. Mortgage Corp.*, No. 09-CV-
18 61840, 2011 WL 1233207, at *19 (S.D. Fla. Mar. 30, 2011) *aff'd sub nom. FTC v. Lalonde*, 545
19 F. App'x 825 (11th Cir. 2013) (holding that injunctive relief is warranted due to the "repetitive,
20 long standing nature of [defendants'] fraudulent conduct").

21 In addition, the injunctive provisions in the proposed final order are essentially identical
22 to the provisions already entered by the Court on January 15, 2015 in the FTC's settlement with
23 Defendants IDM Services LLC, Alexander Wolfram, and Maria T. Garcia. See *FTC v. Green*
24 *Savers, LLC*, No. 6:12-CV-1588-ORL-28, 2013 WL 5408445, at *3 (M.D. Fla. Sept. 25, 2013)
25 (entering the proposed injunctive relief proposed by the FTC and noting that the provisions are
26 "essentially identical" to those already entered by the court in a settlement with other defendants
27 in the matter). A nationwide injunction against Defendants DER and MMDS is similarly

1 appropriate and necessary to protect the public from Defendants' further violations of the FTC
2 Act.

3 **a. Ban On The Marketing And Sale Of Academic Degrees**

4 Section I of the proposed final order permanently bans the Defaulting Defendants from
5 advertising, marketing, promoting, offering for sale, or selling any academic degree, and from
6 assisting others in doing so. A permanent ban is necessary and appropriate here to protect
7 consumers in light of the Defaulting Defendants' proven propensity to deceive consumers
8 regarding the nature, value, characteristics, and accreditation status of their academic degrees.
9 The Defaulting Defendants' complete disdain for the law, and their disregard for the judicial
10 process, indicates they are likely to engage in future law violations and hence underscores the
11 need for a permanent ban.⁴ *See 1st Guar. Mortg. Corp.*, 2011 WL 1233207, at *19 (holding that
12 bans on certain activities are appropriate "where the defendants demonstrate blatant disregard of
13 the law" in order to ensure "the effectiveness of injunctive relief").

14 **b. Further Prohibited Business Activities**

15 Section II of the proposed order would prohibit the Defaulting Defendants from making,
16 or assisting others in making, a number of misrepresentations in connection with the promotion
17 or sale of any good or service. For example, the Defaulting Defendants would be permanently
18 prohibited from misrepresenting any material aspect of a good or service, any material restriction
19 to using a good or service, the total cost of a good or service, and the validity of any testimonial
20 provided in conjunction with a good or service, among others. In effect, the proposed injunctive

21 ⁴ Courts have endorsed such injunctive relief in numerous judgments involving the FTC.
22 *See, e.g., Green Savers, LLC*, 2013 WL 5408445, at *3 (recommending the entry of the
23 FTC's proposed injunctive relief and noting that permanent bans have been imposed in
24 numerous other FTC cases); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013,
25 1018 (N.D. Ind. 2000) *aff'd*, 312 F.3d 259 (7th Cir. 2002) (imposing a telemarketing ban
26 on defendants based on their "extensive and prolonged engagement in fraudulent,
27 deceptive trade practices"); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 536
(S.D.N.Y. 2000) (banning defendant from engaging in multi-level marketing).

1 provisions would simply prohibit the Defaulting Defendants from making certain
2 misrepresentations that already are unlawful under Section 5 of the FTC Act. The injunctive
3 provisions bear a reasonable relation to the Defaulting Defendants' unlawful practices, yet are
4 framed broadly enough to prevent them from engaging in similar illegal practices in the future.

5 "Courts...have discretion to include 'fencing-in' provisions that extend beyond the
6 specific violations at issue in the case to prevent Defendants from engaging in similar deceptive
7 practices in the future." *RCA Credit Servs.*, 727 F. Supp. 2d at 1335; *see also FTC v. Colgate-*
8 *Palmolive Co.*, 380 U.S. 374, 395 (1965) ("The Commission is not limited to prohibiting the
9 illegal practice in the precise form in which it is found to have existed in the past. Having been
10 caught violating the [FTC] Act, respondents must expect some reasonable fencing in."); *Litton*
11 *Industries, Inc. v. FTC*, 676 F.2d 364, 370 (9th Cir. 1982) (reasonable fencing-in provisions
12 serve to "close all roads to the prohibited goal, so that [the FTC's] order may not be by-passed
13 with impunity").

14 **c. Prohibition On The Use Of Customer Information**

15 Section IV of the proposed final order prohibits the Defaulting Defendants from
16 disclosing, using, or benefiting from customer information obtained prior to the entry of the final
17 order in connection with the marketing and sale of diplomas to consumers. The Defaulting
18 Defendants are required to destroy consumer information within their possession, custody, or
19 control within 30 days of receiving written direction to do so from the FTC. Customer
20 information requested by a government agency or required by a law, regulation, or court order is
21 excepted from the destruction requirement. This provision is appropriate in order to protect the
22 personal information of consumer victims who have enquired about or purchased Defendants'
23 fake diplomas. Numerous courts have prohibited defendants from using or selling customer
24 information in past FTC actions. *See, e.g., FTC v. World Media Brokers*, 415 F.3d 758, 766 (7th
25 Cir. 2005) (affirming lower court's entry of permanent judgment that enjoined the defendants
26 from selling or disclosing customer lists); *Think Achievement Corp.*, 144 F. Supp. 2d at 1018
27 (prohibiting defendants from selling their customer lists).

1 **d. Monitoring Provisions**

2 The proposed order also contains various provisions obtained in other FTC actions to
3 ensure enforceability of the order: an order acknowledgment provision (Section V); a provision
4 requiring the Defaulting Defendants to notify the FTC of any changes in their residence status
5 (Section VI); a provision requiring maintenance of records (Section VII); and a provisions
6 permitting the FTC to monitor Defaulting Defendants' compliance with the order through access
7 to their business premises to inspect records and interview employees, by posing as consumers to
8 monitor representations, and through procedures prescribed by the Federal Rules of Civil
9 Procedure (Section VIII). These monitoring provisions are also included in the FTC's
10 settlements with the other Defendants in this case, entered by the Court on January 15, 2015.

11 It is well-settled that these types of monitoring provisions are proper to ensure
12 compliance with the ban requirement and other permanent injunctive provisions discussed above.
13 *See, e.g., FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1276 (S.D. Fla. 1999) (holding that
14 record-keeping and monitoring provisions were "appropriate to permit the Commission to police
15 the defendants' compliance with the order"); *FTC v. U.S. Sales Corp.*, 785 F. Supp. 737, 753
16 (N.D. Ill. 1992) (finding that the "order should also require Defendants to report their addresses
17 and places of employment or business, and any subsequent changes in this information to the
18 F.T.C."); *Think Achievement Corp.*, 144 F. Supp. 2d at 1018 (final order included monitoring
19 and record-keeping provisions).

20 **2. The Proposed Monetary Relief**

21 Section III of the proposed order contains a provision for monetary relief against DER
22 and MMDS, jointly and severally with the three other Defendants in this case. Specifically, the
23 FTC seeks a judgment against Defendants for \$11,007,392 – the estimated amount of consumer
24 injury caused by their unlawful diploma mills. To satisfy partially the monetary judgment,
25 Section III of the proposed order would require: (1) any third party holding assets of the
26 Defaulting Defendants to turn those assets over to the FTC; and (2) the Defaulting Defendants to
27 account for and turn over their assets to the FTC.

1 As discussed above, “the unqualified grant of statutory authority to issue an injunction
2 under section 13(b) carries with it the full range of equitable remedies, including the power to
3 grant consumer redress and compel disgorgement of profits.” *Gem Merch. Corp.*, 87 F.3d at
4 468. “Generally, the amount of restitution in FTC consumer redress cases is the purchase price
5 of the relevant product or business opportunity, less any refunds or money earned.” *FTC v. Nat'l*
6 *Bus. Consultants, Inc.*, 781 F. Supp. 1136, 1143 (E.D. La. 1991); *see also SlimAmerica, Inc.*, 77
7 F. Supp. 2d at 1276. “Costs incurred by the defendants in the creation and perpetration of the
8 fraudulent scheme will not be passed on to the victims.” *Id.*

9 Here, the proposed monetary judgment against DER and MMDS was derived from the
10 records of financial institutions that maintained accounts held by Defendants. The FTC obtained
11 these records by compulsory process from the financial institutions where DER, MMDS, and the
12 other defendants in this case maintained their accounts. (Docket No. 7, PX14 ¶ 32.) The amount
13 of the monetary judgment represents the sum of all credits deposited into the bank account of the
14 defendant holding the proceeds of the operation, IDM Services LLC, between January 2009 and
15 April 2014, which is the period for which the FTC obtained financial records.⁵ During that
16 period, the FTC calculates that IDM Services LLC took in gross deposits of \$11,117,831.
17 (Docket No. 7, PX14 ¶ 36.) In addition, the FTC observed \$191,037 in chargebacks during that
18 same time period, and \$80,597 in chargeback reversals. (Budich Decl. at ¶ 7.) Deducting the net
19 chargebacks from the gross deposits results in a monetary judgment amount of \$11,007,392.
20 (*Id.*) Because IDM Services LLC operated as a common enterprise with DER and MMDS, and

21 ⁵ The FTC has determined that IDM Services LLC’s Wells Fargo account ending in
22 xxx2961 was the primary account used by Defendants to conduct the online diploma
23 scam. This determination is based on the fact that most fees and costs associated with the
24 diploma mills were paid from the IDM Services account. (Docket No. 7, PX14 ¶ 36
25 (account xxxx2961 used to pay virtual office fees, UPS fees, advertising fees, and
26 Internet service provider fees associated with the online diploma mills.) In addition,
27 during the 30(b)(6) asset deposition of Defendants IDM Services LLC and Diversified
Educational Resources, LLC, Defendant Alexander Wolfram stated that consumer
payments received through the Jefferson and Enterprise websites were processed by IDM
Services using the company’s own bank account. (*See* Decl. of Ioana Rusu, Attach. A,
Dep. of Alexander Wolfram at 100:18-22, 108:12-18.)

1 because individual defendants Alexander Wolfram and Maria T. Garcia had knowledge and
2 control over these corporate defendants, all five Defendants are jointly and severally liable for
3 the full amount of consumer injury. *See Transnet Wireless Corp.*, 506 F. Supp. 2d at 1271
4 (“Defendants who have violated Section 5 of the FTC act can be held jointly and severally liable
5 for the total amount of consumer injury.”). In addition, the Court has already entered a monetary
6 judgment in the amount of \$11,007,392 on January 15, 2015 against the other Defendants in this
7 case – Wolfram, Garcia, and IDM Services LLC. Accordingly, it is appropriate for the Court to
8 enter the same judgment amount, jointly and severally, against Defendants DER and MMDS.

9 VI. CONCLUSION

10 For the foregoing reasons, the Commission requests that the Court grant its motion and
11 enter default judgment against Defendants Diversified Educational Resources, LLC and
12 Motivational Management & Development Services, Ltd. A proposed order is attached hereto.
13 In addition, because “all essential evidence is on record” already, *Ordonez*, 2011 WL 3843890,
14 at *5 (*citing SEC v. Smyth*, 420 F.3d 1225, 1232 n. 13 (11th Cir. 2005)), the FTC respectfully
15 requests that the Court waive oral argument on the amount of monetary relief.

16
17 Dated: January 20, 2015

Respectfully submitted,

18
19 /s/ Ioana Rusu

IOANA RUSU (Special Bar No. A5501821)

MIYA RAHAMIM (Special Bar No. A5502005)

Federal Trade Commission

600 Pennsylvania Ave., N.W.

Mail Drop CC-10232

Washington, D.C. 20580

Telephone: 202-326-2077 (Rusu)

Telephone: 202-326-2351 (Rahamim)

Facsimile: 202-326-3768

Email: irusu@ftc.gov; mrahamim@ftc.gov

Attorneys for Plaintiff

FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

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I, Ioana Rusu, certify that on January 20, 2015, the foregoing **PLAINTIFF’S MOTION FOR ENTRY OF DEFAULT JUDGMENT AND PERMANENT INJUNCTION AGAINST DEFENDANTS DIVERSIFIED EDUCATIONAL RESOURCES, LLC AND MOTIVATIONAL MANAGEMENT & DEVELOPMENT SERVICES, LTD., AND MEMORANDUM IN SUPPORT THEREOF; REQUEST TO WAIVE ORAL ARGUMENT** were electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

Patricia Wallace
Attorney for IDM Services LLC, Alexander Wolfram, Steinbock Holdings LLC, Zwillinge, LLC, Sylvia Gads, and Tiffany Chambers
pwallace@wjmlawfirm.com

Miya Rahamim
Attorney for the Federal Trade Commission
mrahamim@ftc.gov

I, Ioana Rusu, further certify that the documents will be sent via email to the following non-CM/ECF participants:

Maria T. Garcia, Defendant *pro se*
Diversified Educational Resources LLC
Motivational Management and Development Services, Ltd.

Dated: January 20, 2015

 /s/ Ioana Rusu
Ioana Rusu