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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**AMY JINE** and **ANA BIOCINI**, on  
behalf of themselves and all others  
similarly situated,

*Plaintiffs,*

v.

**OTA FRANCHISE  
CORPORATION**, a Nevada  
Corporation,

**NEWPORT EXCHANGE  
HOLDINGS, INC.**, a California  
corporation,

**NEH SERVICES, INC.**, a California  
corporation,

**EYAL SHAHAR**, individually and as  
an officer of OTA Franchise  
Corporation, Newport Exchange  
Holdings, Inc., and NEH Services, Inc.,  
and

**SAMUEL R. SEIDEN**, individually  
and as an officer of OTA Franchise  
Corporation,

*Defendants.*

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

- 1. FRAUD,**
- 2. INTENTIONAL  
MISREPRESENTATION,**
- 3. CONCEALMENT,**
- 4. BREACH OF EXPRESS  
WARRANTY,**
- 5. UNJUST ENRICHMENT,**
- 6. VIOLATIONS OF THE  
CONSUMER LEGAL REMEDIES  
ACT, CAL. CIV. CODE §§ 1750,  
ET SEQ.,**
- 7. UNTRUE AND MISLEADING  
ADVERTISING IN VIOLATION  
OF CAL. BUS. & PROF. CODE §§  
17500, ET SEQ., AND**
- 8. VIOLATIONS OF CAL. BUS. &  
PROF. CODE §§ 17200, ET SEQ.**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

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1 Amy Jine and Ana Biocini (“Plaintiffs”), by and through their attorneys,  
 2 bring this action on behalf of themselves and all others similarly situated against  
 3 OTA Franchise Corporation, Newport Exchange Holdings, Inc., NEH Services,  
 4 Inc., Eyal Shahr, and Samuel R. Seiden (collectively, “Defendants”). Plaintiffs  
 5 hereby allege, on information and belief, except as to those allegations which  
 6 pertain to the named Plaintiffs, as follows:

## 7 **I. NATURE OF COMPLAINT**

8 *Online Trading Company is a “fraudulent business”*

9 *“I have overwhelming proof of that fraud”*

10 *“I have seen 2 other companies in our industry be shut down by regulators*  
 11 *within 24 hours for far less than what Eyal [Shahr] is allowing to happen*  
 12 *through OTA. OTA has employees who worked at those firms”*

13 *“I got more emails today (every day) [from students] that are losing money*  
 14 *because of OTA”*

15 **–SAMUEL R. SEIDEN**  
 16 **Chief Trading Strategist, Online Trading Company**

17 1. Defendants OTA Franchise Corporation and Newport Exchange  
 18 Holdings, Inc., and NEH Services, Inc. (collectively, “Corporate Defendants”) do  
 19 business as Online Trading Academy (“OTA”), a fraudulent investment education  
 20 scheme. Defendants Eyal Shahr and Samuel R. Seiden (collectively, “Individual  
 21 Defendants”) are individuals and OTA executives that—both independently and  
 22 jointly with the Corporate Defendants—created, implemented, and/or participated  
 23 in the acts and practices set forth in this Complaint and are personally liable for the  
 24 conduct, as alleged herein. Defendants have been engaged in a nationwide ruse  
 25 since at least 2012, claiming to offer consumers a low-investment, high-profit,  
 26 online trading strategy. Defendants target elderly individuals, making  
 27 representations to them that they are likely to grow their wealth substantially if they  
 28 purchase Defendants’ expensive investment training and use Defendants’ allegedly  
 patented strategy. Defendants have no reasonable basis to support their  
 representations regarding OTA’s strategy, as they do not track the trading

1 performance of their students, a fact which they also fail to disclose to their students.  
 2 The vast majority of students who receive OTA training do not make the advertised  
 3 income. Indeed, many students, including elderly individuals, lose their own money  
 4 and have reduced capacity to replace their lost savings. Countless students are  
 5 additionally saddled with high interest loans Defendants had induced them to take  
 6 out to pay for OTA training, though such loans are not the subject of this Complaint.  
 7 Numerous students paid Defendants tens of thousands of dollars, with some paying  
 8 \$50,000 or more. This fraudulent scheme affected tens of thousands of Americans.

9       2. Government regulators have taken notice of Defendants' fraudulent  
 10 scheme. On February 12, 2020, the Federal Trade Commission ("FTC") filed a  
 11 complaint against all of the same Defendants plus Darren Kimoto for violating  
 12 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Consumer Review Fairness  
 13 Act of 2016, 15 U.S.C. § 45b.<sup>1</sup> The FTC files a complaint when it has "reason to  
 14 believe" that the named defendants are violating, or are about to violate the law, and  
 15 it appears to the FTC that a proceeding is in the public interest.<sup>2</sup> The FTC also  
 16 moved for a temporary restraining order, an asset freeze, appointment of a receiver,  
 17 other equitable relief, and an order to show cause why a preliminary injunction  
 18 should not issue against defendants, which the federal court granted on February  
 19 25, 2020.<sup>3</sup> In granting the motion, the court found, *inter alia*:

20           (a) In numerous instances, defendants, in marketing and selling  
 21 trading and investing training programs, instructional materials,  
 22

23 <sup>1</sup> See Complaint for Permanent Injunction and Other Equitable Relief, *FTC v. OTA*  
*Franchise Corp., et al.*, No. 8:20-cv-00287 (Feb. 24, 2020), ECF No. 1.

24 <sup>2</sup> See "FTC Sues Online Trading Academy for Running an Investment Training  
 25 Scheme." FTC Press Release (Feb. 12, 2020), available at  
 26 [https://www.ftc.gov/news-events/press-releases/2020/02/ftc-sues-online-trading-](https://www.ftc.gov/news-events/press-releases/2020/02/ftc-sues-online-trading-academy-running-investment-training)  
*academy-running-investment-training*.

27 <sup>3</sup> See Temporary Restraining Order with Asset Freeze, and Other Equitable Relief,  
 28 and Order to Show Cause Why a Preliminary Injunction Should Not Issue, *FTC v.*  
*OTA Franchise Corp., et al.*, No. 8:20-cv-00287 (Feb. 24, 2020), ECF No. 46.

1 and related goods and services, have made false or  
2 unsubstantiated representations that consumers who purchase  
3 defendants' programs will likely earn substantial income, any  
4 consumer can learn and use defendants' strategy to earn income  
5 without significant investable capital or free time, and  
6 defendants' instructors have amassed substantial wealth by  
7 trading in the financial markets.

8 (b) In numerous instances, defendants have used standardized refund  
9 agreements to inhibit customers' ability to post negative reviews  
10 about defendants and their services or communicate with law  
11 enforcement agencies and others about defendants and their  
12 services.<sup>4</sup>

13 3. Under the **temporary restraining order**, the federal court barred  
14 defendants from making false, misleading, or unfounded representations to  
15 consumers about OTA training, including earnings claims.<sup>5</sup> The court also  
16 prohibited OTA from making or enforcing contracts that limit consumers' ability to  
17 speak to law enforcement agencies or post reviews online.<sup>6</sup> Moreover, the court  
18 barred OTA from collecting payments on the loans it made to customers to finance  
19 purchases from the company and prohibited OTA from selling the debt to others or  
20 report consumers to credit bureaus for non-payment of the loans.<sup>7</sup> Additionally, the  
21 order temporarily freezes defendants' assets and limits how much individually  
22 named defendants can spend to preserve funds for potential redress to consumers.<sup>8</sup>

23 4. On April 2, 2020, the federal court granted FTC's request for a

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24 <sup>4</sup> *Id.* at 2.

25 <sup>5</sup> *Id.* at 6-7.

26 <sup>6</sup> *Id.* at 7-8.

27 <sup>7</sup> *Id.* at 8.

28 <sup>8</sup> *Id.* at 10-11.

**preliminary injunction** to halt OTA's alleged illegal practices (**Ex. A**).<sup>9</sup> Under the preliminary injunction's terms, the defendants are prohibited from making false, misleading, or unfounded representations to consumers about OTA training, including earnings claims.<sup>10</sup> OTA also is prohibited from making or enforcing contracts that limit consumers' ability to speak to law enforcement agencies or post reviews online.<sup>11</sup> The preliminary injunction appoints a monitor to oversee OTA's marketing materials and practices and provide periodic reports to the court on this subject.<sup>12</sup> The preliminary injunction freezes OTA's assets and limits how much the individual defendants can spend to preserve funds for potential redress to consumers.<sup>13</sup>

## **II. PARTIES**

### **A. Plaintiffs**

5. Plaintiff **Amy Jine** resides in Pleasanton, California. On or around September 14, 2019, based on OTA's fraudulent representations and omissions, Ms. Jine enrolled in OTA's Market Timing Orientation and paid OTA \$299.

6. Plaintiff **Ana Biocini** resides in Oakland, California. On or around April 22, 2017, based on OTA's fraudulent representations and omissions, Ms. Biocini enrolled in OTA's Market Timing Orientation and paid OTA \$299. At the conclusion of the Market Timing Orientation, and based on OTA's further fraudulent representations and omissions, she enrolled in OTA's Core Strategy Program for \$14,500. On or around January 5, 2018, Ms. Biocini complained to Better Business Bureau about OTA's practices.

<sup>9</sup> See Preliminary Injunction, *FTC v. OTA Franchise Corp., et al.*, No. 8:20-cv-00287 (Apr. 2, 2020), ECF No. 130.

<sup>10</sup> *Id.* at 7-8.

<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *Id.* at 18-20.

<sup>13</sup> *Id.* at 11-13.

1           **B. Defendants**

2           7. Defendant **OTA Franchise Corporation** (“OTA Corp.”), doing  
3 business as OTA, is a Nevada corporation with its principal place of business at  
4 17780 Fitch Avenue, Irvine, California 92614. OTA Corp. is wholly owned by  
5 Defendant Newport Exchange Holdings, Inc. (*see infra*). OTA Corp. purports to  
6 operate 10 OTA centers, holding itself out to consumers as “Online Trading  
7 Academy.” OTA Corp. transacts or has transacted business in this District and  
8 throughout the United States. At all times material to this Complaint, acting alone  
9 or in concert with others, OTA Corp. has advertised, marketed, distributed, or sold  
10 training programs and related goods and services to consumers throughout the  
11 United States.

12           8. Defendant **Newport Exchange Holdings, Inc.** (“NE Holdings”), also  
13 doing business as OTA, is a California corporation with its principal place of  
14 business at 17780 Fitch Avenue, Irvine, California 92614. NE Holdings is wholly  
15 owned by Defendant Eyal Shahar and his spouse. NE Holdings purportedly operates  
16 the OTA center in Irvine, California, holding itself out to consumers as “Online  
17 Trading Academy,” and extending credit to consumers interested in a loan to fund  
18 their purchase. NE Holdings also purports to hold the “patent” OTA touts in its  
19 marketing and sales pitch. NE Holdings transacts or has transacted business in this  
20 District and throughout the United States. At all times material to this Complaint,  
21 acting alone or in concert with others, NE Holdings has advertised, marketed,  
22 distributed, or sold training programs and related goods and services to consumers  
23 throughout the United States.

24           9. Defendant **NEH Services, Inc.** (“NEH Services”), also doing business  
25 as OTA, is a California corporation with its principal place of business at 17780  
26 Fitch Avenue, Irvine, California 92614. NEH Services is wholly owned by  
27 Defendant NE Holdings. NEH Services purportedly does not operate any OTA  
28 centers. Instead, OTA Corp. created NEH Services to funds loans made by OTA

1 franchisees to consumers seeking to purchase OTA training. NEH Services has  
2 guaranteed a loan taken out by NE Holdings. NEH Services' bank accounts suggest  
3 it is nothing more than a conduit through which funds pass from a third party loan  
4 servicer to NE Holdings. NEH Services transacts or has transacted business in this  
5 District and throughout the United States. At all times material to this Complaint,  
6 acting alone or in concert with others, NEH Services has advertised, marketed,  
7 distributed, or sold training programs and related goods and services to consumers  
8 throughout the United States.

9 10. Defendant **Eyal Shahar** is sued herein as an officer of the Corporate  
10 Defendants. Shahar is the founder and owner—directly or indirectly—of OTA  
11 Corp., NE Holdings, and NEH Services. He is also the sole officer and director of  
12 each of these Corporate Defendants. At all times material to this Complaint, acting  
13 independently or jointly with others, Shahar has formulated, directed, controlled,  
14 had the authority to control, or participated in the acts and practices set forth in this  
15 Complaint. Shahar, in connection with the matters alleged herein, transacts or has  
16 transacted business in this District and throughout the United States.

17 11. As OTA's top executive, Shahar is also involved in its day-to-day  
18 operations in marketing, finance, and sales, and has ultimate control of all of its  
19 business. He is directly involved in OTA's sales and marketing, including the  
20 performance of OTA's Market Timing Orientation ("MTO") presenters and their  
21 efforts to address consumers who seek evidence that students actually make money  
22 with OTA training. Shahar reviewed OTA's first internal survey, which showed that  
23 most responding students were not making money. According to testimony by  
24 OTA's Vice President of Admissions, Keeley Hubbard, in an investigational  
25 hearing on June 21, 2019, the results were so negative that Shahar forbade anyone  
26 in the meeting on the survey from taking the results outside of the room. Shahar  
27 also sought to keep people outside of the meeting from learning of the survey  
28 results.

1           12. Defendant Shahar is also sued herein *independently*, in his personal  
2 capacity. Shahar is involved, independent of the Corporate Defendants, in hyping  
3 up and raising money to expand OTA's operations through franchising. On  
4 information and behalf, Shahar pitched to wealthy investors that he had a lucrative  
5 financial education business called OTA.

6           13. Defendant **Samuel R. Seiden** is sued herein as an officer of the  
7 Corporate Defendants. Seiden joined OTA in early 2006, is OTA's Chief Trading  
8 Strategist, and has previously served in numerous other executive roles at OTA,  
9 including in Product Innovation & Education/Product Strategy and in Sales  
10 Innovation & Sales Strategy. In at least some of these executive roles, he directly  
11 reported to Shahar. At all times material to this Complaint, acting independently or  
12 jointly with others, Seiden has formulated, directed, controlled, had the authority to  
13 control, or participated in the acts and practices set forth in this Complaint. Seiden,  
14 in connection with the matters alleged herein, transacts or has transacted business  
15 in this district and throughout the United States.

16           14. As one of OTA's top executives, Seiden is also the creator and most  
17 visible proponent of OTA's trading strategy, whose purported income generation  
18 potential is the main reason offered for consumers to purchase OTA training. OTA  
19 features Seiden prominently in its advertising and holds him out to consumers at  
20 OTA's sales events as the creator of OTA's patent and "an impeccable master" of  
21 its trading strategy. Seiden curated the OTA MTO presentation from 2014 to 2017.  
22 He also participated in managing the MTO sales process, including addressing  
23 issues with individual salespeople's compensation or performance, and  
24 disseminating an "MTO Master Document" outlining the content to be delivered at  
25 each phase of the MTO sales pitch.

26           15. Defendant Seiden is also sued herein *independently*, in his personal  
27 capacity. Seiden is involved, independent of the Corporate Defendants, in hyping  
28 up, raising money for OTA, and driving consumers to OTA through making

1 appearances on TV and radio and contributing to investment publications.

2 16. Seiden briefly left OTA in late 2018, citing a dispute about pay, a  
3 “decline in student success,” “Unethical & Deceptive Sales Messaging,” and  
4 hearing from students who were “struggling to pay monthly finance payment[s].”  
5 In a November 20, 2018 email to Hubbard, OTA’s Vice President of Admissions,  
6 Seiden called OTA a “fraudulent business,” claimed to have “overwhelming proof  
7 of that fraud,” and noted “I have seen 2 other companies in our industry be shut  
8 down by regulators within 24 hours for far less than what Eyal [Shahar] is allowing  
9 to happen through OTA. OTA has employees who worked at those firms.” Seiden  
10 also noted receiving emails “every day” from consumers “that are losing money  
11 because of OTA.” Seiden was in the meeting on OTA survey results and “for him .  
12 . . this was proof” of “student success declining” and he procured a copy despite  
13 Shahar’s order quarantining it, according to testimony by Hubbard. OTA transferred  
14 \$500,000 to Seiden in December 2018, and he returned to work at OTA shortly  
15 thereafter.

16 17. Various persons, partnerships, sole proprietors, firms, corporations, and  
17 individuals not named as defendants in this Complaint, and individuals, the  
18 identities of which are presently unknown, have also participated with Defendants  
19 in the offenses alleged in this Complaint.

### 20 **III. INDEPENDENT AND JOINT ACTION**

21 18. Each Individual Defendant acted independently at times and jointly  
22 with the other Defendants at other times with respect to the acts, violations, and  
23 common course of conduct alleged herein involving OTA’s fraudulent investment  
24 scheme. Shahar and Seiden formulated, directed, controlled, had the authority to  
25 control, or participated in the acts and practices of the Corporate Defendants that  
26 constitute the common enterprise.

27 19. The Corporate Defendants have operated as a common enterprise while  
28 engaging in OTA’s fraudulent scheme. OTA Corp., NE Holdings, and NEH

Services have conducted OTA's business through an interrelated network of companies that have unified advertising, common ownership, officers, managers, business functions, employees, and office locations. They are jointly and severally liable for the acts.

20. Each Defendant has ratified and approved the acts of each of the other Defendants. Each Defendant aided and abetted, encouraged, and rendered substantial assistance to the other Defendants in making false representations to, and fraudulently concealing information from, Plaintiffs and the Class. In taking action to aid and abet and substantially assist the commission of these wrongful acts and other wrongdoings complained of, each Defendants acted with an awareness of his/its independent wrongdoing and realized that his/its conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

#### **IV. PERSONAL LIABILITY OF INDIVIDUAL DEFENDANTS**

21. Based on information and belief, the Individual Defendants are the alter egos of the Corporate Defendants. Shahar and Seiden have maintained such a unity of interest and ownership that the separate personalities of the corporate entities and the individuals no longer exist and that an inequitable result would follow if the entities and individuals are treated as separate.

22. Shahar and the Corporate Defendants are not separate entities. As reflected below, Shahar is the sole officer and director of each of the Corporate Defendants:

- (a) **OTA Corp.:** OTA Corp.'s (Profit) Initial/Annual List of Officers, Directors, and State Business License Application filed with Nevada's Office of the Secretary of State on February 25, 2019 identifies Shahar as the President, Secretary, Treasurer, and Director of OTA Corp. No other officers or directors are identified. Similarly, the same form filed with the same office on

1 April 27, 2004 identifies Shahar as the President, Secretary,  
2 Treasurer, and Director of OTA Corp. No other officers or  
3 directors are identified. Likewise, the Articles of Incorporation  
4 filed with the same office on March 8, 2004 only lists Shahar next  
5 to Board of Directors/Trustees.

6 (b) **NE Holdings:** NE Holdings' Statement of Information filed with  
7 California's Office of the Secretary of State on December 4, 2017  
8 identifies Shahar as the Chief Executive Officer, Secretary, and  
9 Chief Financial Officer. It also only lists Shahar under Directors.  
10 The same form filed with the same office on November 27, 2019  
11 indicates there has been no change in any of the information  
12 contained in the last Statement of Information filed.

13 (c) **NEH Services:** NEH Services' Statement of Information filed  
14 with California's Office of the Secretary of State on March 6,  
15 2015 identifies Shahar as the Chief Executive Officer, Secretary,  
16 and Chief Financial Officer. It also only lists Shahar under  
17 Directors. The same form filed with the same office on  
18 November 27, 2019 indicates there has been no change in any of  
19 the information contained in the last Statement of Information  
20 filed.

21 23. As Shahar is the sole officer and director of each of the Corporate  
22 Defendants, the separate personalities of Shahar and the Corporate Defendants do  
23 not exist.

24 24. Upon information and belief, Shahar has disregarded corporate  
25 formalities, such as holding corporate meetings, keeping meeting minutes, and  
26 maintaining adequate corporate records.

27 25. Shahar is personally liable because he is involved, independent of the  
28 Corporate Defendants, in hyping up and raising money to expand OTA's operations

1 through franchising. On information and behalf, Shahar pitched to wealthy investors  
2 that he had a lucrative financial education business called OTA.

3 26. Seiden is personally liable because he is involved, independent of the  
4 Corporate Defendants, in hyping up, raising money for OTA, and driving  
5 consumers to OTA through making appearances on TV and radio and contributing  
6 to investment publications.

7 27. The Corporate Defendants are therefore owned by the same person  
8 (Shahar), operated by the same people (Shahar and Seiden), and are shells and  
9 conduits for the Individual Defendants' affairs. The corporate form was merely an  
10 illusion that permitted Sharhar and Seiden to benefit.

11 28. An inequitable result would follow if the facts alleged in this Complaint  
12 are treated as those of the Corporate Defendants alone given that the Individual  
13 Defendants created and maintained the fraudulent scheme that is OTA for many  
14 years:

- 15 (a) Shahar ultimately authorizes and controls OTA's operations and  
16 is directly involved in the marketing and sales of OTA training,  
17 which means he has knowledge of OTA's fraudulent claims.
- 18 (b) Seiden has direct knowledge of the fraudulent earnings and  
19 related claims through his own participation in making those  
20 claims at MTO events and directing other MTO presenters to  
21 make such claims.
- 22 (c) Seiden's trading results put him on notice that the claims were  
23 false (*see infra*).
- 24 (d) Seiden flat out stated that OTA was a "fraudulent business."
- 25 (e) Shahar and Seiden directly participate in, and have authority and  
26 control over, OTA's deceptive marketing, and knew of, or at  
27 minimum recklessly disregarded, the false, misleading, and  
28 unsubstantiated nature of OTA's claims.

1 (f) Shahar and Seiden were aware that OTA's own surveys showed  
2 its claims were untrue.

3 29. Disregarding Shahar and Seiden's involvement in the scheme would  
4 essentially sanction the fraud and promote injustice. Tens of thousands of  
5 consumers, many of whom are elderly individuals with limited resources and  
6 reduced capacity to replace their lost savings, have been injured as a result of the  
7 Individual Defendants' scheme that has resulted in consumer losses of over \$370  
8 million from January 2014 to May 4, 2019.

9 **V. JURISDICTION AND VENUE**

10 30. This Court has original jurisdiction over this action under the Class  
11 Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), as to the named Plaintiffs and  
12 the proposed class ("Class"), because the Class contains more than 100 members,  
13 the aggregate amount in controversy exceeds \$5 million, and members of the Class  
14 ("Class Members") reside across the United States and are therefore diverse from  
15 Defendants. The Court also has supplemental jurisdiction over Plaintiffs and the  
16 Class' state law claims pursuant to 28 U.S.C. § 1367(a).

17 31. This Court has personal jurisdiction over Defendants because they have  
18 significant minimum contacts with California, and/or they otherwise intentionally  
19 availed themselves of the laws and markets of California through the promotion,  
20 marketing, and advertising of OTA in California and on the Internet to consumers  
21 in California.

22 32. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)  
23 because a substantial part of the events or omissions giving rise to Plaintiffs' claims  
24 occurred in this District. Indeed, until recently, OTA has offered numerous  
25 programs and courses of instruction in Irvine, California. Plaintiffs have filed an  
26 affidavit showing that this action has been commenced in a proper county pursuant  
27 to California Civil Code § 1780(d) (*see* **Ex. B**).  
28

1 **VI. FACTUAL ALLEGATIONS**

2 **A. OTA Background**

3 33. Shahar founded OTA in Irvine, California in 1997. OTA operates  
4 through 10 separate locations across the United States and abroad as well as over  
5 30 franchise locations. OTA employs around 500 to 1,000 people and has had over  
6 250,000 students over the years.

7 34. OTA offers three learning tracks: Core Strategy, Extended Learning  
8 Track (XLT), and Mastermind Community. Core Strategy and XLT tracks each  
9 contain various programs, such as Stocks, Forex, Futures, Options, etc. The  
10 Mastermind track is a bundle of OTA's most elite training and support, including a  
11 subscription that allegedly permits subscribers to reduce the time they spend  
12 identifying profitable trades because it contains the "Daily Grid," which provides  
13 subscribers with a list of price ranges, or "zones" in which an asset's price will  
14 change direction, for several dozen specific financial assets.

15 35. Currently, the Core Strategy course, which is a prerequisite for all other  
16 programs and is on the lowest learning track, costs \$7,700. The XLT courses begin  
17 at \$9,350 for the first three months and \$700 per month thereafter, or \$13,750 for  
18 life, and requires the completion of the Core Strategy course. The Mastermind  
19 Community, which is the most expensive offering, costs \$15,000 for the first year  
20 and \$5,000 per year thereafter, or \$25,000 for life, and requires the completion of  
21 at least three XLT courses in addition to the Core Strategy course.

22 36. OTA began offering franchises for trading education and training  
23 centers operated by independent owners on April 20, 2004. The initial franchise fee  
24 ranges from \$100,000 to \$250,000. OTA exercises significant control over its  
25 franchises, providing training to the franchisees' salesforce and materials to guide  
26 their sales pitches. OTA also requires franchisees to pay multiple and significant  
27 advertising and marketing fees over which OTA has sole discretion (*e.g.*, a  
28 Marketing and Advertising Fee of the greater of \$1,000 or 3% of monthly gross

1 volume, a Special Marketing Projects fee of up to \$50,000 per year, and a Global  
 2 Marketing Services fee of up to \$15,000 per month). Franchises are an extension of  
 3 OTA and have no independent power or authority regarding the training offered.<sup>14</sup>  
 4 Franchises must therefore provide the same, uniform learning experience as OTA-  
 5 owned locations.

6 37. OTA's estimated yearly revenue is \$150 million.

7 **B. OTA Advertising Campaign**

8 38. Defendants centrally control OTA's advertising campaign. They have  
 9 marketed, advertised, and sold OTA training, including seminars, courses, and  
 10 instructional materials on trading and investing, to consumers throughout the United  
 11 States and internationally since at least 2004.

12 39. Defendants mass advertise its training to consumers nationwide through  
 13 the Internet, direct mail, telemarketing, television, and radio. OTA runs 30-minute  
 14 infomercials on nationwide television, radio ads from New York City (where they  
 15 aired over 10,000 times in the last two years) to Fargo, North Dakota, and videos  
 16 on its website and YouTube.

17 40. Regardless of advertising medium, the theme of OTA's advertising  
 18 campaign is that consumers will generate substantial income through online trading  
 19 in the financial markets with OTA training. For example:

- 20 (a) In a 2019 TV infomercial, OTA advertises a "rules-based  
 21 strategy" to "generate daily or monthly income," labeling it "a  
 22 proven step-by-step approach," and providing testimonials,  
 23 including a consumer who "made \$12,000" in three hours and  
 24 another who "made \$32,000 in less than seven trading days."

25 <sup>14</sup> For example, franchises must "purchase, use and offer each of, and only, the  
 26 types, brands and/or quality of Course Materials, Educational Products, broker-  
 27 dealer services and other products and services as [OTA] designate[s] and, where  
 28 [OTA] require[s], use only those suppliers that [OTA] designate[s]. [Franchises]  
 will be required to follow the 'Curriculum' or course outline established by [OTA]  
 for use within the Center classrooms."

- 1 (b) In a 2018 radio ad that ran at least 880 times, OTA advertised  
 2 “more income” through a “proven step by step approach to  
 3 investing” that “can work in any market condition” and “generate  
 4 active income . . . and create passive income to build your  
 5 retirement.”
- 6 (c) In a 2018 radio ad that ran at least 581 times, an alleged OTA  
 7 “student” claims “it’s almost like having a second paycheck  
 8 without having a second job,” and that any ordinary person can  
 9 do it.
- 10 (d) In a 2018 TV infomercial, OTA contends that all consumers can  
 11 benefit from its training, “[w]hether you only have a few hours a  
 12 week or a few hours a month . . .”
- 13 (e) In a 2019 Fargo radio ad, OTA makes the same contention,  
 14 stating, “80 percent of the individuals that come through our  
 15 doors don’t know a stock from a rock.”

16 41. The objective of OTA’s advertising campaign is to drive consumer to  
 17 attend a free, three-hour preview event called “Market Timing Preview” or “Power  
 18 Trading Workshop” (*see infra*) where consumers believe they will learn how to  
 19 make money in the financial markets. In addition to these live events, typically held  
 20 in hotel conference rooms and over 40 brick-and-mortar training centers throughout  
 21 the United States and internationally, OTA training programs are for sale online.

## 22 **C. OTA Sales Events**

### 23 **1. Market Timing Preview Event**

24 42. The Market Timing Preview Event is typically a free three-hour  
 25 seminar held at an OTA center or franchise. The goal of the Market Timing Preview  
 26 is to entice students to enroll in a three-day MTO event (*see infra*). While the three-  
 27 hour Preview Event is free, consumers do not learn about market timing or power  
 28 trading at this event. Instead, consumers endure a marketing ploy reminiscent of a

1 timeshare presentation during which OTA representatives regurgitate the claims  
 2 made in the advertising campaign. The Preview Event is essentially a sales  
 3 presentation pitching the MTO event, where consumers allegedly learn how to  
 4 reliably time the financial markets. OTA informs consumers that, after attending the  
 5 MTO event, they will have all the necessary tools to trade like a professional and  
 6 that they can re-take the MTO event as many times as they wish. Many consumers  
 7 believed they would be able to trade in the financial markets with confidence after  
 8 participating in the MTO event.

9 43. Illustrative examples of Defendants' deceptive business activities at the  
 10 Preview Event are set forth *infra*.

## 11 **2. Market Timing Orientation**

12 44. The MTO event is a three-day sales presentation and Defendants' main  
 13 sales platform for OTA's programs, courses, and membership. OTA advertises the  
 14 MTO event's cost as \$600 but typically sells it for \$299. OTA "instructors" present  
 15 and "education counselors" staff the MTO event. The instructors and education  
 16 counselors are salespeople paid on commission despite their titles. During the first  
 17 two days, instructors provide general information about the financial market and  
 18 asset classes to consumers. Throughout the MTO event, each consumer meets  
 19 individually with an education counselor multiple times to discuss, select, and  
 20 purchase OTA tracks (*e.g.*, the XLT track), courses (*e.g.*, the Core Strategy course,  
 21 which is a prerequisite for all other programs), and membership to the Mastermind  
 22 Community.

23 45. At the MTO event, OTA's instructors expand on the earnings claims  
 24 made in the advertising campaign and Preview Event. Instructors present  
 25 testimonials and simulated trades intended to deceive consumers into thinking that  
 26 they can earn large profits with small investments with OTA training and replace or  
 27 supplement their existing jobs with online trading. Instructors give consumers the  
 28 impression that they can make the same hypothetical trades and become the

1 testimonials presented.

2 46. OTA assigns an education counselor to every student who enrolls in the  
3 three-day MTO event. The education counselor is supposed to make contact with  
4 each student a number of times before the MTO event concludes (“Touch Points”).  
5 During the Touch Points, the education counselor introduces, and asks the student  
6 to complete, an Income and Wealth Education Planner, a questionnaire that requests  
7 consumers to disclose all of their assets, including real estate and retirement  
8 accounts, which the educational counselors then leverage in their sales pitch. OTA  
9 gives potential students the impression that admission into the OTA is selective but,  
10 in fact, OTA will enroll anyone who has the money to pay for the course or who is  
11 eligible for financing.

12 47. OTA’s objective is to drive sales to multiple programs, higher priced  
13 programs, and Mastermind Community membership from the MTO event.  
14 Education counselors pitch the Mastermind Community to consumers with  
15 extensive assets, which costs \$25,000 for a lifetime membership but also requires  
16 consumers to purchase a number of prerequisite courses. Education counselors pitch  
17 packages that range from thousands of dollars to hundreds of thousands of dollars  
18 for those with more limited assets. Like other scams, education counselors inform  
19 consumers that the prices already reflect discounts, and the discounts expire if  
20 consumers decide to purchase after the MTO event concludes.

21 48. Illustrative examples of Defendants’ deceptive business activities at the  
22 MTO event are set forth *infra*.

23 **D. Defendants’ Deceptive Conduct**

24 49. Defendants have deceived consumers since at least 2012, claiming that  
25 OTA training will allow them to generate significant earnings through online  
26 trading in the financial markets and causing each of its students to spend up to tens  
27 of thousands of dollars on OTA programs, courses, and membership. Defendants  
28 have done so by luring consumers, including elderly individuals, to register and

1 attend the initial free Preview Event, next the \$299 MTO event, and finally  
 2 additional programs ranging from \$7,700 to \$25,000 with false and unsubstantiated  
 3 promises of generating significant earnings through trading in the financial markets.  
 4 OTA has already taken more than \$370 million from consumers in the United States  
 5 since 2014. Illustrative examples of Defendants’ deceptive conduct are set forth  
 6 below, though not limited thereto.

7 **1. Misrepresentations Regarding Earning Income with OTA**  
 8 **Training**

9 *“[S]tudents ... averag[e] about 300 dollars a day” and*  
 10 *could make “75 grand a year as a secondary form of income[.]”*

11 **—OTA Presenter, Dale Sargood, at a MTO Event**

12 50. OTA misrepresents to consumers through its nationwide advertising  
 13 campaign and sales events in dozens of cities that they can earn income through  
 14 OTA training. OTA also misrepresents the income can be substantial in terms of  
 15 dollar amounts:

- 16 (a) At a MTO event on March 22, 2019, OTA presenter, Darren  
 17 Kimoto, indicated consumers who follow OTA strategies would  
 18 make \$800 per day, which is \$200,000 per year, spending an hour  
 19 a day on trading.
- 20 (b) At the MTO event on March 21, 2019, Kimoto stated you can  
 21 “[f]ind, analyze, execute,” a trade “in less than 10 minutes,” and  
 22 that you can do “that every day, find a trade every other day,  
 23 make an extra 600 bucks.”
- 24 (c) At a MTO event, OTA presented a “plan” for a consumer  
 25 yielding “Avg. \$300/Day” using only “\$5,000” of capital and “2  
 26 Hours/Day.”
- 27 (d) At a MTO event on June 28, 2019, OTA presenter, Darek Zalek,  
 28 posed, as if it is realistic, “[I]f you make 9,000 dollars in a day,

1                   you know, or five grand in a day, how many of these do you need  
2                   to pay off the [OTA] tuition? I'm just saying, you know. Not too  
3                   many, yes or no?"

4                   (e)    At a MTO event in November 2019, OTA presenter, Dale  
5                   Sargood, indicated he only spends "30 minutes to an hour a day"  
6                   trading and "students ... averag[e] about 300 dollars a day[.]" He  
7                   suggests consumers would make "75 grand a year as a secondary  
8                   form of income" and with a \$5,000 futures account and with  
9                   "3,300 invested" you could earn "100 grand a year[.]"

10                  (f)    At a MTO event on March 22, 2019, Kimoto claimed that  
11                  consumers "would have made about \$94,000 last year just taking  
12                  those trades in those [XLT] sessions with us" in 2018.

13                  (g)    At a MTO event, OTA offered a January 16, 2013 testimonial  
14                  stating, "I'm profitable 85% of the time," and claiming monthly  
15                  profits in the thousands or tens of thousands of dollars.

16                  (h)    At a MTO event, OTA provided a testimonial from a "student"  
17                  who achieved a 31.7% profit in "Short Term Income" with "No  
18                  Prior Trading Knowledge."

19                  51.   OTA also represents the income will be substantial in general terms:

20                  (a)    In various radio ads between 2018 and 2019, OTA claimed  
21                  consumers will learn to "generate income," or "daily income," or  
22                  "monthly cash flow."

23                  (b)    At a Preview Event on June 12, 2019, OTA presenter, Tarantino  
24                  Smith, claimed OTA would help consumers make "trading  
25                  [your] primary source of ... income," calling it "fire [your] boss  
26                  level" income.

27                  (c)    At the same event, Smith stated consumers come to OTA to make  
28                  income that allows them to work less, "so you can spend more

time with the family.”

(d) At a MTO event on March 22, 2019, OTA presenter, Darren Kimoto, presented a testimonial stating, “It took me 18 years to develop a decent salary. After three months here at OTA, I’m making almost as much money as my business.”

52. OTA represented to consumers, through various examples and testimonials, that they will be able to earn substantial income by purchasing OTA training. OTA knew that its representations were false when it made them because OTA did not monitor its students’ trading performance. OTA’s limited surveys indicated that most of its students did not trade or lost money when they traded, and TradeStation (the online trading platform used by OTA students) confirmed such indications. *See, infra*, at Fraudulent Concealment. OTA intended consumers to rely on its representations of earnings because it intentionally failed to disclose that it did not track students’ trading performance or the results from its limited surveys or TradeStation reports. Consumers reasonably relied on OTA’s representations of earnings when they purchased OTA training given the specific nature of the examples and seemingly honest testimonials. Consumers were harmed because each paid substantial money for OTA training that failed to materialize into the substantial income that OTA advertised and expanded on at the sales events. Consumers’ reliance on OTA’s representations of substantial earnings were a substantial factor in causing them to lose money.

## 2. Misrepresentations Regarding OTA’s Strategies

*“Over 35,000 of our graduates have the opportunity to live more comfortable and satisfied lives as a result of the skills they’ve learned here at the Academy.”*

—Eyal Shahar’s Welcome Letter to All Students That Enroll in the MTO Event

### a. Patented Market Timing Strategy

53. OTA misrepresents its strategies to consumers. First, it advertises to consumers that it has a patented strategy to time the market that anyone can apply

1 to generate substantial profits through trading in stocks, foreign currencies,  
2 commodities, or other assets. Specifically, OTA's patent on timing the market and  
3 strategy purportedly permits its students to realize when to buy and sell investments.  
4 This is a false and misleading representation of the patent. While OTA does, in fact,  
5 have a patent for a Computer Based Trading System Utilizing Supply and Demand  
6 Analysis (U.S. Pat. No. US8650115B1), OTA has not substantiated and cannot  
7 substantiate its claim that consumers are likely to profit using OTA's patented  
8 strategy and that OTA's patented strategy achieves the results described in its  
9 advertisements. Nevertheless, OTA references its patent as proof that its strategy  
10 works. OTA has made the following misrepresentations regarding its patented  
11 strategy:

- 12 (a) At a Preview Event on December 13, 2018, OTA presenter,  
13 Dawn Landry, asserted OTA "has a patent on the fact that you  
14 can time the markets," and the "strategy" it teaches is "a set of  
15 rules" that "gives us the ability to know when to get in and when  
16 to get out."
- 17 (b) Similarly, at a Preview Event on June 12, 2019, OTA presenter,  
18 Tarantino Smith, assured consumers they can safely ignore  
19 people who "say, 'Oh, they can't time the market,'" because "to  
20 get a patent, we had to ... prove it to the Government." Such a  
21 claim is false, and misunderstands the nature of obtaining a  
22 patent.
- 23 (c) At a Preview Event on December 13, 2018, OTA presenter,  
24 Landry explained OTA's "core strategy is a set of rules" that  
25 identifies where "there's a high probability" price will move to a  
26 certain point.
- 27 (d) At the conclusion of Preview Events, consumers who enroll in  
28 the MTO event received a welcome letter right from Eyal Shahar

1 claiming that the MTO event will introduce OTA's "patented  
 2 supply and demand trading and investing strategy which allows  
 3 us to anticipate market moves with a high degree of accuracy."  
 4 Shahar's letter also contends "[o]ver 35,000 of our graduates  
 5 have the opportunity to live more comfortable and satisfied lives  
 6 as a result of the skills they've learned here at the Academy."

7 (e) At a MTO event on March 23, 2019, OTA presenter, Kimoto,  
 8 claimed OTA gives purchasers "rules, verified rules, tested rules  
 9 that we know work[.]"

10 (f) At a MTO event on March 21, 2019, OTA presenters stressed to  
 11 consumers the strategy "stack[s] odds in your favor" and that  
 12 profits are a "mathematical certainty."

13 **b. 3-to-1 Reward-to-Risk Ratio Strategy**

14 54. Second, OTA advertises to consumers that it has a "3-to-1 reward-to-  
 15 risk ratio" strategy, whereby each winning trade will yield profits of three times  
 16 what is risked, more than making up for losses on losing trades. Despite that this  
 17 strategy is only based on hypotheticals, OTA nevertheless emphasized it,  
 18 misrepresenting consumers' actual reward-to-risk ratio:

19 (a) At a MTO event on March 22, 2019, OTA presenter, Darren  
 20 Kimoto, claimed, "So every day you expect one to be a loser, one  
 21 to be a winner, on average. Three-to-one. So you lose one on one  
 22 and you make three on the other, so everyday you're coming out  
 23 with a -- basically two times your risk. So whatever you're  
 24 risking, every day you're making twice that on average."

25 (b) At a MTO event on May 9, 2019, OTA presenter, Rick Wright,  
 26 remarked, "Reward-to-risk ratio. . . . [Y]ou should start with a 3  
 27 to 1. I'm going to risk 10 bucks to make 30 . . . [I]f you're  
 28 disciplined and can follow the rules, . . . you only have to be right

1 . . . 25 percent of the time . . . to break even.”

2 (c) At a MTO event on March 21, 2019, Kimoto depicted the effect  
3 of the “3-1 reward-to- risk ratio” with a hypothetical week of  
4 trading in which each trade either loses \$100 or gains \$300,  
5 yielding a profit of \$2,000 for the week.

6 (d) At a MTO event on November 21, 2019, OTA presenter, Dale  
7 Sargood, illustrated a hypothetical week of ten trades in which  
8 each trade either loses \$4,000 or gains \$12,000, with only three  
9 winning, overall yielding a profit of \$8,000 for the week.

### 10 **c. Daily Grid Strategy**

11 55. OTA also misrepresents the benefits of the Daily Grid, a feature of the  
12 Mastermind Community:

13 (a) As discussed, *supra*, Mastermind’s “Daily Grid” allegedly  
14 identifies “zones,” in which an asset’s price will change  
15 direction, thereby purportedly enabling traders who use the grid  
16 to enter a position just before the turn, buying before the price  
17 rises and selling before it falls. The Daily Grid forms the basis  
18 for claimed profits. OTA calls the Daily Grid its crown jewel and  
19 a major selling point for Mastermind. OTA’s analysis of the  
20 Daily Grid’s selections reflects, however, that most “zones”  
21 identified in the Daily Grid never yielded an actual trade because  
22 the asset’s price did not move into the “zone.” OTA’s own  
23 calculation of the “zone hit rate” is under 50%.

24 (b) At a MTO event on March 22, 2019, OTA presenter, Kimoto,  
25 suggested Mastermind is a safety net for profits: “we don’t want  
26 you going out and finding your own trades at first. So we give  
27 you another bank of trades that are pre-vetted called pro picks.”

28 (c) At a MTO event on November 20, 2019, OTA presenter, Dale

1 Sargood, promised consumers will learn by copying instructor's  
2 successful trades using their own money.

3 56. OTA represented to consumers that its various strategies would enable  
4 them to earn substantial income. OTA knew that its representations were false when  
5 it made them in light of OTA's lack of monitoring student performance and the  
6 results from OTA's limited surveys and TradeStation reports. *See, infra*, at  
7 Fraudulent Concealment. OTA intended consumers to rely on representations about  
8 its financial strategies due to OTA's intentional failure to disclose key information  
9 relating to students' trading performance. Consumers reasonably relied on OTA's  
10 representations of patented, powerful, and profitable strategies when they purchased  
11 OTA training given the frequent references to the patent, the rewards outweighing  
12 the risks, the false representations concerning their students' trading outcomes, and  
13 the Daily Grid identifying all buy and sell opportunities for consumers. Consumers  
14 were harmed because each paid up to tens of thousands of dollars for OTA strategies  
15 that failed to work. Consumers' reliance on OTA's representations of seemingly  
16 infallible strategies were a substantial factor in causing them to lose money.

17 **3. Misrepresentations Regarding OTA "Instructors" and**  
18 **"Education Counselors"**

19 57. OTA "instructors" and "education counselors" advertise its purported  
20 financial training and strategy to consumers at live sales events like the Preview  
21 Event and MTO event. OTA also represents, and creates the impression, that its  
22 instructors and counselors are themselves successful traders. OTA holds them out  
23 to consumers as teachers and counselors but, in fact, they are salespeople paid on  
24 commission:

- 25 (a) OTA's Vice President of Admissions, Keeley Hubbard, testified  
26 that experience in financial markets or educational counseling is  
27 not required to be hired as an education counselor. Additionally,  
28 Preview Event presenters are paid 2% of sales, and MTO

1 instructors are paid 3% of sales.

2 (b) A January 25, 2018 offer letter to a former education counselor,  
3 Diane Luu, outlined a compensation plan stating, “You will earn  
4 commissions from leads and registrations assigned to you by  
5 management based on cash collected from your individual ‘gross  
6 sales.’”

7 (c) A February 27, 2018 sales training guide advised, “Don’t look  
8 like, act like or sound like, a traditional salesperson”; indicated  
9 that consumers who come to OTA are “Upset,” “Frustrated,”  
10 “Worried,” “Tired of...,” “Nervous,” “Anxious,” and “Sick  
11 of...”; and stated, “We ask questions to discover the *IMPACT* of  
12 the *PAIN* so they will make a decision to buy a *SOLUTION*[.]”

13 (d) Luu, a former OTA education counselor, stated in her November  
14 7, 2019 declaration: “It was clear to me from the beginning of the  
15 recruiting process that the ‘Education Counselor’ position was a  
16 sales position.” Additionally, “[a]s an Education Counselor, my  
17 role was to sell Online Trading Academy courses and seminars  
18 to potential students.”

19 58. OTA represented to consumers that its instructors and education  
20 counselors were, in fact, traders who could truthfully and accurately provide  
21 information regarding trading and counselors who could customize an education  
22 plan for them. OTA’s representations were false because its instructors and  
23 education counselors were merely salespeople whose objective was to enroll  
24 students in tracks and courses that cost thousands of dollars depending on their  
25 financial circumstances. OTA knew its representations were false when it made  
26 them because OTA intentionally gave its salespeople deceptive titles and intended  
27 that consumers rely on the deceptive titles. Consumers reasonably relied on OTA’s  
28 instructors and education counselors due to their titles and statements in deciding

whether to purchase OTA training. Additionally, instructors and education counselors give potential students the impression that OTA admission is selective but, in truth, OTA enrolled anyone who had the money to pay for it. Consumers were harmed because each paid up to tens of thousands of dollars for OTA training. Their reliance on OTA's representations relating to its instructors and education counselors was a substantial factor in causing their harm.

#### **4. Misrepresentations Regarding the Successes of OTA Instructors**

##### **a. Unsubstantiated Historical Success**

59. Furthermore, OTA instructors, who sell OTA's training to consumers in live seminars, hold themselves out to potential students as converts and successful traders themselves. The instructors indicate that they themselves are living proof that OTA's financial training works, representing that they became successful traders and amassed substantial wealth using OTA's strategy:

(a) At a MTO event on March 21, 2019, OTA presenter, Darren Kimoto, claimed that he once "was sitting in your seat right there," and "had been struggling as a trader," with "close to \$60,000 in losses."; that after learning to apply OTA's strategy he quit his job "because I was making as much in the trading"; and proceeded to describe the "very affluent neighborhood" he lives in, where "kids in the neighborhood" have "live-in nannies, cooks, gardeners," and the latest Apple iPhones and iWatches.

(b) At a MTO event on June 28, 2019, OTA presenter, Darek Zelek, claimed he was a full-time trader but previously was a contractor who knew nothing about trading until becoming an OTA "student."; described the wealth and exclusivity of the town where he now lives, including that his neighbor is swimming champion Michael Phelps, who taught his daughter to swim; and

1 informed potential students they would not be able to achieve  
2 such wealth “from a regular job,” but only “through  
3 investments,” stating that he purchased his home there with  
4 profits from trading; and shared that he drives a “750” (the BMW  
5 750 is a luxury car) and built a “casita” on his property so that his  
6 parents can have their own residence when they come to visit his  
7 family.

8 (c) At a MTO event on November 22, 2019, OTA presenter, Dale  
9 Sargood, indicated that he takes his family on seven or eight  
10 multi-week vacations every year, for which he budgets \$15,000  
11 per week; that he and his children enjoy expensive hobbies; and  
12 that OTA “cannot pay me enough” to teach their asset class  
13 courses because of their longer duration, which “takes me away  
14 from . . . making money.”

15 60. OTA represented to consumers that its instructors were (and are)  
16 successful traders. OTA’s representations were false because its instructors were  
17 not successful traders. And, in fact, OTA made no effort to determine the trading  
18 history or success of its instructors. For example, Samuel Seiden, who OTA holds  
19 out as the inventor and most skilled practitioner of OTA’s strategy, has done very  
20 little trading from January 2016 to October 2019, and the trades he did make yielded  
21 a net loss of approximately \$20,000. Sean Kim, a MTO presenter who appears in  
22 OTA infomercials and is held out by OTA as an expert trader, for years has only  
23 managed to break even despite heavy trading on a six-figure account. Darren  
24 Kimoto, another MTO presenter, had trading net losses of \$17,349 from January  
25 2016 to October 2019 despite a historically strong economic cycle. Darek Zelek,  
26 yet another MTO presenter, lost money in 2018, and as of August 2019, had made  
27 only a few thousand dollars in 2019.

28 61. OTA knew its representations were false when it made them. OTA

1 intended consumers rely on instructors' representations of their extravagant  
 2 lifestyles because instructors and education counselors would point to this when  
 3 potential students asked about how much they would make with OTA training. OTA  
 4 was therefore aware that its instructors' success was material to consumers' decision  
 5 to purchase OTA training. Consumers reasonably relied on OTA's representations  
 6 regarding its instructors' success because they reasonably believed the instructors  
 7 were traders. Consumers were harmed because each paid up to tens of thousands of  
 8 dollars for OTA training. Consumers' reliance on OTA's representations relating to  
 9 its instructors' success was a substantial factor in causing their harm.

10 **b. Unsupported Live Success**

11 62. Like the instructors, the trades performed by them at the MTO are fake,  
 12 simulated transactions intended to hoodwink potential students into thinking online  
 13 trading is fast, easy, and lucrative:

14 (a) At a MTO event on March 21, 2019, OTA presenter, Kimoto,  
 15 described, "[This morning . . . I went ahead and placed a trade . .  
 16 . So that was in . . . 30-minute period of time, ended up locking  
 17 in \$1,200 in profit."

18 (b) At a MTO event on June 28, 2019, OTA presenter, Zelek, stated,  
 19 "I actually have a position right now that I should probably  
 20 manage. Is it okay if I make some adjustments on my stocks,  
 21 guys? . . . There, done, I closed for [\$]6,050, done.");

22 (c) At a MTO event on November 20, 2019, OTA presenter,  
 23 Sargood, lied, "So this is a, a live trade we have on right now  
 24 with the S&P 500. . . . this is this morning that we got into that  
 25 trade here . . . so worst case scenario on this trade we'll make 300  
 26 bucks. All right. Are we going to put that in the bank? . . . So we  
 27 just hit the stop loss there. We are now out of that transaction."

28 63. OTA represented to consumers that the fake trades were, in fact, live

1 and actual trades even though they were not. OTA knew that its representations  
 2 were false when it made them because its instructors hand-picked easy and  
 3 profitable trades to simulate before performing them. Further, anticipating the  
 4 conflict presented by instructors' trading success and their employment as OTA  
 5 instructors, OTA even provided talking points to its education counselors for use in  
 6 handling consumers' questions about why the instructors would spend time teaching  
 7 if they made so much money trading, according to the testimony of OTA's Vice  
 8 President of Admissions Keeley Hubbard. OTA intended that students rely on their  
 9 instructors' performed trades and, more importantly, believe that they could emulate  
 10 their instructors' trades on their own. Students reasonably relied on OTA's  
 11 simulated trades because they witnessed what they thought were live, successful  
 12 trades. Consumers were harmed because each paid up to tens of thousands of dollars  
 13 for OTA training that did not adequately prepare them to trade profitably. Indeed,  
 14 most of OTA's students ultimately did not trade or make money trading. *See, infra*,  
 15 at Fraudulent Concealment. Students' reliance on OTA's representations regarding  
 16 their instructors' performed trades was a substantial factor in them harm.

## 17 **5. Misrepresentations Regarding OTA Students**

18 *"[A]s long as I follow the system, the outcome will be provided.]"*

19 *"[T]his is a skill set that anyone can attain[.]"*

20 *The "market doesn't care whether somebody's old, young, has experience, has*  
 21 *no experience, we just simply plug yourselves into the equation and the*  
*outcome will be spitted out."*

22 **—OTA Presenter, Darek Zelek, at a MTO Event**

### 23 **a. No Experience Required**

24 64. In addition to the misrepresentations relating to its employees, OTA  
 25 misrepresents the minimum skills that consumers need to have to learn and apply  
 26 OTA training. OTA would have consumers believe that anyone can learn to use its  
 27 purportedly objective rules and easy steps to earn money regardless of background,  
 28 education, or skill and that following OTA's steps will automatically result in

1 profits:

- 2 (a) In a 30-minute TV infomercial released around March 27, 2019,  
3 OTA claimed, “[A]nybody could do this from any level. You  
4 don’t need to have a special type of background.”
- 5 (b) In a radio ad released on February 25, 2019, OTA advertised, “80  
6 percent of the individuals that come through our doors don’t  
7 know a stock from a rock.”
- 8 (c) In a 30-minute TV infomercial released around March 27, 2019,  
9 OTA maintained, “No matter who you are, where you come  
10 from, or how much experience you have, at your free class, you’ll  
11 discover powerful strategies designed to create daily, weekly and  
12 monthly income . . .”
- 13 (d) In a 2018 Market Timing Coursebook, OTA emphasized that it  
14 offers “[a]n objective rules-based strategy” composed of “a  
15 simple, sequential set of steps[,]” suggesting anyone could  
16 follow the strategy and reap profits.
- 17 (e) At a MTO event on June 28, 2019, OTA presenter, Darek Zelek,  
18 attributed his success to a “system,” saying, “as long as I follow  
19 the system, the outcome will be provided,” claiming “this is a  
20 skill set that anyone can attain,” and the “market doesn’t care  
21 whether somebody’s old, young, has experience, has no  
22 experience, we just simply plug yourselves into the equation and  
23 the outcome will be spitted out.”
- 24 (f) At a MTO event on November 20, 2019, OTA presenter, Dale  
25 Sargood, told consumers that “income production is pretty  
26 simple, straightforward, follow the rules, apply the rules, get the  
27 result[,]” suggesting earning income is as basic as following  
28 rules.

(g) At a MTO event on March 21, 2019, OTA presenter, Darren Kimoto, promised, “There’s not one of you that we cannot help,” and “it’s not an if, it’s *when* you get it.”

(h) The 2018 MTO coursebook claims OTA training “is designed for students of all experience levels”; OTA strategy “has proven to successfully work regardless of the type of investor you are or the financial markets you trade in”; and that OTA provides “a simple step-by-step, rule- based strategy,” that will “consistently identify ... quality trading and investing opportunities with a high degree of accuracy.”

**b. Minimal Amount of Investment**

65. OTA would also have consumers believe that they do not need to invest a significant amount of money to earn income with OTA training:

(a) At a Preview Event on December 13, 2018, an OTA presenter, Dawn Landry, asserted consumers “could potentially make \$50,000 of annual income with an account size as low as \$5,000.”

(b) At a MTO event on June 29, 2019, OTA presenter, Darek Zalek, told the story of a purported OTA student who had been laid off from a job as an engineer and had only \$3,000 to invest after paying for OTA training but a year later was supporting his wife and two children with income from trading.

(c) At a MTO event on March 22, 2019, OTA presenter, Darren Kimoto, illustrated a trade where “[y]ou would have made . . . \$1,000 in a day off this trade only using \$2,000 in capital to do it”

(d) In a September 16, 2019 MTO presentation, a slide presented a hypothetical trade where “Risk of \$100” yields “Profit of \$3000.”

(e) At a MTO event on November 20, 2019, OTA presenter, Dale

1 Sargood, presented a hypothetical trade where “a 825 dollar  
2 investment” yields “a 900 dollar profit.”

3 (f) At a MTO event on June 29, 2019, Zelek informed consumers  
4 they can start trading futures with as little as \$1,700.

5 (g) At a MTO event on November 21, 2019, Sargood claimed  
6 consumers with only \$4,000 can make \$200/day trading forex, or  
7 could earn the same using only \$1,650 if trading in futures.

8 (h) At a MTO event on November 22, 2019, Sargood contended  
9 consumers with \$10,000 to trade can make \$60,000 per year.

10 (i) The MTO slide deck, which instructors use across both OTA-  
11 owned locations and franchise locations, states the minimum  
12 required to trade Forex or Stocks is \$500.

13 **c. Minimal Amount of Time Spent Trading**

14 66. Similarly, OTA would have consumers believe that they do not need to  
15 invest a significant time to earn income with OTA training:

16 (a) In a 30-minute TV infomercial released around March 27, 2019,  
17 OTA advertised all consumers can benefit from OTA, “[w]hether  
18 you only have a few hours a week or a few hours a month . . .”

19 (b) At a MTO event on March 21, 2019, OTA presenter, Darren  
20 Kimoto, claimed consumers can make profitable trades, such as  
21 “a few thousand dollars” on their commutes to work.

22 (c) At a MTO event on May 9, 2019, OTA presenter, Rick Wright,  
23 maintained that once you learn the strategy, “it will probably take  
24 about two to three minutes” to review a chart to find a profitable  
25 trade.

26 (d) At a MTO event on November 20, 2019, an OTA presenter  
27 summarized “so 3,000 dollar investment, right, to make 300  
28 bucks, right, took a couple minutes of time[,]” suggesting that

1 students can repeat the same.

2 (e) At a MTO event on May 9, 2019, Wright claimed he spends “a  
3 total of about 30 minutes . . . looking at the screen to see if there’s  
4 a trade[,]” suggesting that is all the time a student would need to  
5 identify a profitable trade.

6 (f) At a MTO event, an OTA presenter, Darek Zelek, described a  
7 trade as taking 32 seconds to set up and students don’t have to  
8 watch the trade after that.

9 (g) Similarly, at a MTO event on March 22, 2019, Kimoto reassured  
10 consumers that they will not be “watching it this whole time,”  
11 not “sitting there babysitting it,” but “off living our life, doing  
12 our thing[.]”

13 (h) The September 16, 2019 MTO slide deck, which all instructors  
14 use, claims OTA training is a “solution” for family with both  
15 parents working full time that would yield “\$100 Average Per  
16 Day[.]”

17 67. OTA represented to consumers, through various examples and  
18 testimonials, that they will be able to earn substantial income by purchasing OTA  
19 training. OTA knew that its representations were false when it made them because  
20 it had no basis to make such representations as it did not monitor its students’ trading  
21 performance, OTA’s limited surveys indicated that most of its students did not trade  
22 or lost money when they traded, and TradeStation (the online trading platform used  
23 by OTA students) confirmed such indications. *See, infra*, at Fraudulent  
24 Concealment. OTA intended consumers to rely on its representations of earnings  
25 because it intentionally failed to disclose that it did not track students’ trading  
26 performance or the results from its limited surveys or TradeStation reports.  
27 Consumers reasonably relied on OTA’s representations of earnings when they  
28 purchased OTA training given the specific nature of the examples and seemingly

1 honest testimonials. Consumers were harmed because each paid up to tens of  
 2 thousands of dollars for OTA training that failed to materialize into the substantial  
 3 income that OTA advertised and expanded on at the sales events. Consumers'  
 4 reliance on OTA's representations of substantial earnings were a substantial factor  
 5 in causing them to lose money.

## 6 **6. Fraudulent Concealment**

7 68. In addition to OTA's deceptive advertising campaign and misleading  
 8 sales events, OTA fraudulently concealed certain information from consumers. This  
 9 information was material because it would have put consumers on notice of OTA's  
 10 false representations regarding its strategies and success stories.

### 11 **a. OTA Did Not Monitor Students' Trading** 12 **Performance**

13 69. First, OTA fraudulently concealed the fact that it did not monitor the  
 14 trading performance of its students. Additionally, OTA lacked data that would  
 15 permit it to predict the trading performance of its students. OTA's Vice President  
 16 of Admissions, Keeley Hubbard, testified to these facts:

17 (a) "[I]t's impossible for us to get to exactly how well is every one  
 18 of our students doing . . . [W]e don't have that data, and there's  
 19 no way for us to collect it."

20 (b) "There wasn't any formal way of tracking that whenever I was  
 21 with the company, other than initiatives or efforts to get  
 22 testimonials from students."

23 (c) "Q. . . . [W]ere there any efforts at tracking on the long-term how  
 24 students were performing in the markets? A: Not that I'm aware  
 25 of when I was there. From my understanding, there was a survey  
 26 conducted after I left. I believe it was in June of [2018]."

27 //

28 //

**b. OTA's Limited Surveys Suggest Most Students Did Not Earn Income Through Trading**

70. Second, OTA fraudulently concealed the fact that its limited surveys indicated its students were not earning the income that it mass advertised. The first OTA survey about students' trading performance was conducted in mid-2018 and asked, "As a result of your experience at Online Trading Academy, would you say you're 'making money' through trading and investing?" The results were 66% of respondents stated that they were making no money and 31% were making "a little money[.]" Among members of OTA's Mastermind Community, who obtain the most extensive training and support, 58% of respondents said they were making no money.

71. Illustrative examples of students' comments provided in response to the first survey are as follows:

- (a) "I have not been successful yet at all. I have lost a considerable amount of money, I cannot pay back all of my OTA loans that have come due[.]"
- (b) "There has been absolutely NO SUCCESS. This has been the WORST financial investment I have ever made. I have invested close to \$100,000.00 in OTA (Mastermind, Courses, 3 weeks of travel, 3 weeks away from my practice, and 3 weeks of hiring a substitute Dr. to see my patients). The customer service is POOR. The Student Care Reps in KC are too busy to take my questions, and they have even skipped out on planned meetings. When I try to call with questions, they complain about being too busy. I have tons of questions, but nobody to turn to. I have yet to take a live trade."
- (c) "Lack of support at all from center. Student support is bad and not knowledge [*sic*]."

72. The second OTA survey conducted shortly after the first survey had similar findings: A third of the respondents were not trading at all, and of those who did trade, less than 4% claimed they were “making lots of money.” Of respondents who traded, over 23% stated that they were losing money and another 22% were making no money.

**c. TradeStation Reports Confirm Most Students Did Not Earn Income Through Trading**

73. Third, OTA fraudulently concealed that TradeStation reports confirmed OTA’s training and strategy failed to work as advertised. TradeStation, an online brokerage platform that OTA recommends its students to use to deploy OTA’s strategy and execute trades, has records of all accounts of OTA students. These records show that roughly half of the students never make a trade, and of those who trade, 74.9% lose money. Indeed, less than 5% of those who trade made over \$10,000.

74. All students who traded likely used TradeStation instead of another online brokerage platform given the August 2013 contract between OTA and TradeStation, whereby TradeStation provided its platform, accounts, and data to OTA for use in classrooms, and OTA agreed not to use any other platform but TradeStation in classes on equities, options, or futures. TradeStation’s trading data therefore strongly indicates that most OTA students who trade do not make any money, and many lose money on top of the thousands of dollars they pay OTA.

**d. Samuel Seiden’s Admissions**

75. Defendant Samuel Seiden, the creator and most visible proponent of OTA’s proprietary trading strategy, whose benefits and income generation potential are the main reason offered for consumers to purchase OTA training, admitted that OTA was “fraudulent business” when he briefly left the company in 2018.

76. OTA’s advertisements, including infomercials and advertisements, have prominently featured Seiden. OTA holds him out to consumers at seminars as

1 the “creat[or of] the patent” and “an impeccable master” of the strategy. Seiden is  
2 OTA’s Chief Trading Strategist and has previously served in a number of other  
3 executive roles at OTA, in at least some of them reporting directly to Defendant  
4 Eyal Shahr.

5 77. When Seiden briefly left OTA, a November 20, 2018 email to Keeley  
6 Hubbard, OTA’s Vice President of Admissions, revealed that Seiden had a dispute  
7 about pay, a “decline in student success,” “Unethical & Deceptive Sales  
8 Messaging,” and hearing from students who were “struggling to pay monthly  
9 finance payment[s]”. At the time, Seiden claimed to have “overwhelming proof of  
10 [OTA’s] fraud” and noted, “I have seen 2 other companies in our industry be shut  
11 down by regulators within 24 hours for far less than what Eyal [Shahr] is allowing  
12 to happen through OTA. OTA has employees who worked at those firms.” Seiden  
13 indicated that he received emails “every day” from consumers “that are losing  
14 money because of OTA.” OTA transferred \$500,000 to Seiden in December 2018.  
15 Shortly after that, Seiden returned to work at OTA. Through this email, Seiden, an  
16 OTA officer, admitted that OTA operates a fraudulent investment scheme to scam  
17 students.

18 **e. Gag Provision in Refund Agreements**

19 78. To further conceal its fraudulent scheme, OTA endeavors to silence  
20 dissatisfied customers. Consumers who request refunds from OTA are met with  
21 with significant resistance. OTA will sometimes agree to issue a refund if a  
22 consumer threatens negative publicity or threatens to file a complaint with the Better  
23 Business Bureau or a law enforcement agency or lawsuit. OTA often conditions  
24 refunds on a standardized agreement that includes a broad non-disparagement  
25 provision, barring any negative statements or reviews about OTA or its employees,  
26 and even barring reports to law enforcement agencies. These form contracts are  
27 non-negotiable and have led consumers to believe they cannot report OTA’s  
28 misconduct or coordinate with law enforcement agencies investigating OTA.

1           79. In sum, OTA has fraudulently concealed from consumers that (1) it  
2 does not monitor students' trading performance, (2) its two surveys indicate that,  
3 after receiving OTA training, most of its students do not trade or do not earn money  
4 trading, (3) the online trading platform that its students use confirm the surveys'  
5 results, (4) one of its own senior executives has called the business fraudulent, and  
6 (5) it only agrees to provide refunds to dissatisfied consumers who agree to not  
7 disparage it.

8           80. OTA was aware of these facts through the normal course of its business.  
9 OTA intentionally failed to disclose these facts that were known only to it because  
10 these facts involved its own business practices, executives, and communications.  
11 Consumers could not have discovered these facts and did not know these facts  
12 because they are not privy to OTA's business practices and information provided to  
13 OTA's executives. Nothing reflects that students should have known OTA's  
14 earning claims were tenuous and unsupported. OTA intended to deceive consumers  
15 by withholding these facts that would have better informed them about the success  
16 (or, in reality, failures) of OTA training. Had OTA disclosed these omitted facts,  
17 consumers likely would not have purchased OTA training. Consumers were harmed  
18 because each paid up to tens of thousands of dollars for training that failed to  
19 generate income and, in many instances, resulted in loss income. OTA's  
20 concealment of the aforementioned facts was a substantial factor in causing  
21 consumers' harm.

22           **E. Estimated Consumer Losses**

23           81. Defendants have made in excess of \$370 million from January 2014 to  
24 May 4, 2019. Over 90,000 consumers have paid money to OTA, with over 11,000  
25 consumers paying more than \$10,000, and some paying over \$50,000. OTA's own  
26 customer surveys and customers' trading data confirm that most OTA customers do  
27 not generate the substantial earnings that OTA falsely advertises. Indeed, most  
28 make little or nothing at all, and a large number lose substantial amounts of money

1 in addition to the money they spent on OTA programs, courses, and/or membership.

## 2 **VII. ENROLLMENT AGREEMENT**

### 3 **A. Take It or Leave It Agreement with No Negotiations**

4 82. Like the standardized refund agreement that OTA used to inhibit  
5 customers' ability to post negative reviews about Defendants and their services  
6 according to a federal court's Preliminary Injunction (*see supra*), OTA used a  
7 *standardized enrollment agreement* to severely limit customers' rights vis-à-vis  
8 OTA. OTA purportedly asked consumers who decided to purchase its training to  
9 enter into this form Enrollment Agreement. OTA provided the Enrollment  
10 Agreement to consumers on a take-it-or-leave-it basis, and consumers could not  
11 engage in meaningful negotiations of the Agreement's terms because consumers are  
12 financially insecure individuals who were lured by OTA's false representations of  
13 getting rich quick. The Agreement is oppressive because there is no negotiation of  
14 contract terms between OTA and students.

15 83. The first page of the Enrollment Agreement contains the student's  
16 contact information, the track and programs chosen, the tuition and payment details,  
17 and the education counselor's name and comments. The second and third pages  
18 contain the "Statement of Terms" in densely worded, single-spaced text.

### 19 **B. Disclaimers in Agreement Contradict Representations in Real** 20 **Life**

21 84. In absolute contrast to the representations made by Defendants in their  
22 advertising campaign and at their sales events, the Statement of Terms contains  
23 various disclaimers, such as:

- 24 (a) "Online Trading Academy, its Education Counselors and  
25 Instructors are not Registered Broker/Dealers, Certified  
26 Financial Planners or Registered Investment Advisors and will  
27 not provide me with any advice as to the investment or trading  
28 choices or the management of my finances.";

(b) “Moreover, I recognize and acknowledge that my performance depends upon my individual skills, time availability and dedication in the training program and use of the Community as well as other factors.”; and

(c) “I acknowledge that the Online Trading Academy training program and use of its products and services should not be construed as a recommendation or an offer to buy or sell any security or the suitability of any investment strategy.”

85. Not only are the disclaimers buried in the Statement of Terms, they directly contradict Defendants’ extensive representations that OTA training would enable students to earn substantial income through online trading and to replicate the success of OTA’s instructors— regardless of students’ experience, skill, and amount of financial or time investment. These disclaimers fail to cure the impression of wealth created by Defendants’ false misrepresentations made in the mass advertisement campaign and expanded upon at in-person sales events like the Preview Event and MTO event. The disclaimers are a surprise as they are at odds with Defendants’ extensive and representations to students.

### C. Arbitration Provision

86. The third page of the Enrollment Agreement contains a purported arbitration and class action waiver provision. This provision is invalid and unenforceable for several reasons.

87. *First*, like the refund agreement discussed in the Preliminary Injunction (*see supra*), OTA used this ***standardized arbitration and class waiver provision*** to dissuade customers from seeking legal recourse against OTA and to inhibit customers’ ability to do so.

88. *Second*, like the disclaimers described above, OTA buried the provision in the Statement of Terms. It does not appear on the same page as material information like the student’s contact information, the track and programs chosen,

1 and the tuition and payment details, all of which are listed on the first page of the  
2 Enrollment Agreement.

3 89. *Third*, Defendants Shahar and Seiden are not parties to the Enrollment  
4 Agreement. The arbitration and class waiver provision does not cover their  
5 respective independent comments made in their respective individual capacities to  
6 consumers and students.

7 90. *Fourth*, the provision purportedly “***outlines what is expected of both of***  
8 ***us***” (emphasis added). Despite this mutual obligation, in some Enrollment  
9 Agreements, there is no signature line for the student or OTA after the Statement of  
10 Terms (only a signature line for the student in the middle of the first page, which  
11 does not set forth the Statement of Terms at all). In other Enrollment Agreements,  
12 there is only a signature line for the student at the end of the Terms of Statement on  
13 the third page—there is no signature line for OTA despite that the provision  
14 “outlines what is expected of both of us[.]” The provision is therefore a surprise  
15 because, in some instances, it does not require students and OTA to read and agree  
16 to it and, in other instances, when it appears at the end of a prolix printed form  
17 drafted by OTA, it purports to bind both parties but only has a signature line for the  
18 student.

19 91. *Fifth*, the arbitration and class waiver provision covers “***all dispute,***  
20 ***claim question or differences***” between students and OTA (emphasis added). The  
21 overbroad arbitration provision states, “I am giving up my right to litigation (or  
22 participate in as a party or class member) all disputes in court before a judge or  
23 jury.” This language is incredibly broad so as to be substantively unconscionable.

24 92. *Sixth*, the OTA enrollment process is highly questionable. Specifically,  
25 education counselors exert significant pressure on students to enroll in the MTO  
26 event at the end of the Preview Event and then to enroll in OTA packages before  
27 the end of the MTO event:

28 93. Education counselors first contacted students before the MTO event and

1 then have multiple one-on-one meetings with students during the three-day MTO  
2 event. Education counselors have the unfair advantage of access to students’  
3 questionnaire responses disclosing their assets, including real estate and retirement  
4 accounts, which they used to tailor their sales pitch. During the enrollment process  
5 at MTO events, education counselors have full knowledge of students’ economic  
6 vulnerabilities. Education counselors are also able to take advantage of students’  
7 vulnerable state of mind—they were aware students were upset, frustrated, worried,  
8 nervous, and anxious when they come to the MTO lured by the promise of  
9 substantial income (*see supra*).

10 94. In the one-on-one meetings, educational counselors attempt to close the  
11 sale of different packages of courses depending on students’ assets. For example,  
12 education counselors pitch wealthier students the most expensive offering,  
13 “Mastermind,” at \$50,000 and pitch other students different packages with prices  
14 ranging from thousands to tens of thousands of dollars. Education counselors were  
15 aware of students’ financial pressure points as a result of seeing their questionnaire  
16 responses beforehand.

17 95. Education counselors exert economic duress on students by informing  
18 them that the prices offered are heavily discounted and that the discounts will not  
19 be available to those who wait until after the MTO to enroll. Students who still  
20 hesitate or balk may be offered “special” discounts to induce the student sign an  
21 Enrollment Agreement before leaving the MTO event. Students feel pressure and a  
22 sense of urgency to enroll in OTA training at or before the end of the MTO given  
23 OTA’s extreme emphasis on the benefits of signing immediately and the  
24 consequences of delay.

25 96. Given the education counselors’ insistent demands that students quickly  
26 enter into the Enrollment Agreements, students had little or no opportunity to review  
27 the Statement of Terms, were not invited to ask questions about them, had little to  
28 no familiarity with what rights they were giving up with they signed (if they signed),

1 and were not informed that signing the arbitration and class waiver provision was  
2 optional or voluntary. OTA created a coercive environment for Plaintiffs and the  
3 Class to sign the Enrollment Agreements.

4 97. The Enrollment Agreement is therefore unenforceable between  
5 consumers and OTA and, in the alternative, between consumers and Defendants  
6 Shahar and Seiden.

## 7 **VIII. STATUTE OF LIMITATIONS**

### 8 **A. The Statute of Limitations Does Not Bar Plaintiffs' Claims**

9 98. The statute of limitations did not begin to run because Plaintiffs did not  
10 and could not discover their claims. Plaintiffs and the Class had no knowledge of  
11 the fraud alleged herein, or of facts sufficient to place them on inquiry notice of the  
12 claims set forth herein, until (at the earliest) February 12, 2020, the date the FTC  
13 filed a complaint with extensive allegations against Defendants for a permanent  
14 injunction and other equitable relief pursuant to Sections 13(b) and 19 of the Federal  
15 Trade Commission Act, 15 U.S.C. §§ 53(b) and 57b, and the Consumer Review  
16 Fairness Act of 2016, 15 U.S.C. § 45b.

17 99. Plaintiffs and the Class are consumers that purchased programs,  
18 courses, and/or membership from OTA. Although they had direct contact and/or  
19 interaction with OTA, they had no means from which they could have discovered  
20 Defendants' deceptive business activities described in this Complaint before  
21 February 12, 2020. Indeed, Defendants represented to them that purchasers of OTA  
22 programs, courses, and/or membership were likely to earn substantial income by  
23 applying Defendants' patented trading strategy.

24 100. No information in the public domain was available to Plaintiffs and  
25 members of the Class concerning the conduct alleged herein prior to February 12,  
26 2020, the date the FTC filed a complaint against Defendants. Plaintiffs and the  
27 members of the Class had no means of obtaining any facts or information  
28 concerning any aspect of Defendants' business activities given that Defendants are

1 private companies not required to disclose financial information to the public.

2 101. For these reasons, the statute of limitations as to Plaintiffs and the Class'  
3 claims did not begin to run until, at the earliest, February 12, 2020.

4 **B. Fraudulent Concealment Tolloed the Statute of Limitations**

5 102. In the alternative, application of the doctrine of fraudulent concealment  
6 tolled the statute of limitations on the claims asserted herein by Plaintiffs and the  
7 Class. Plaintiffs and the Class did not discover, and could not discover through the  
8 exercise of reasonable diligence, Defendants' deceptive business activities until  
9 February 12, 2020, the date the FTC filed a complaint against Defendants.

10 103. Before that time, Plaintiffs and the Class were unaware of Defendants'  
11 deceptive conduct and did not know before then that they were paying for useless  
12 programs, courses, and/or membership throughout the United States during the  
13 Class Period (defined *infra*). No information, actual or constructive, was ever made  
14 available to Plaintiffs and the Class that put Plaintiffs on notice that they were being  
15 injured by Defendants' deceptive conduct.

16 104. The affirmative acts of Defendants alleged herein were wrongfully  
17 concealed and carried out in a manner that precluded detection.

18 105. Specifically, OTA made various misrepresentations to consumers,  
19 concealing the deceptiveness of its business practices. It represented to consumers  
20 that it had a patented strategy to time the market that anyone can apply to generate  
21 substantial profits through trading in stocks, foreign currencies, commodities, and  
22 other assets. Its instructors marketed OTA programs, courses, and/or membership  
23 to consumers in live seminars and held themselves out as converts and successful  
24 traders. Additionally, OTA made these representations despite not tracking the  
25 trading results of its students, despite its limited surveys revealing students were not  
26 making the amount of income OTA advertised, and despite trading data showed that  
27 most students do not make any money and lose money on top of the money they  
28 pay OTA.

1           106. Furthermore, to conceal and preserve its scheme, OTA sought to silence  
2 dissatisfied consumers who sought a refund, requiring them to sign contracts barring  
3 them from posting negative reviews about OTA and from reporting OTA's  
4 wrongdoing—even to law enforcement.

5           107. Defendants concealed the deceptiveness of their business practices.  
6 OTA directed its presenters to use testimonials to create the impression that  
7 consumers can generate trading profits. OTA disseminated a "MTO Master  
8 Document" to MTO presenters that directed them to use testimonials, stating in  
9 bold, "Pinnacle on the testimonials for the wow factor," and noting "Key Loops"  
10 for this section of the presentation, including "Trading can replace or supplement  
11 my job" and "Trading can provide for retirement and wealth objectives."  
12 Furthermore, OTA stated that its programs, courses, and membership "is designed  
13 for students of all experience levels" and that it provided "a simple step-by-step,  
14 rule- based strategy" that will "consistently identify . . . quality trading and investing  
15 opportunities with a high degree of accuracy." Darren Kimoto informed students at  
16 a MTO event on March 21, 2019 that earning money with OTA's strategy is as easy  
17 as baking cookies: just follow the recipe.

18           108. Accordingly, a reasonable person under the circumstances would not  
19 have been alerted to begin to investigate the legitimacy of Defendants' business  
20 practices before February 12, 2020 at the earliest.

21           109. Plaintiffs and the Class could not have discovered the alleged deceptive  
22 business practices at an earlier date by the exercise of reasonable diligence because  
23 of the deceptive practices employed by Defendants to fraudulently conceal that  
24 OTA's strategy did not work. OTA created the impression that consumers could use  
25 its strategy to earn money even if they did not have much time to devote to it or  
26 only had a small amount of money to invest at the start. OTA represented that the  
27 strategy "stack[s] odds in your favor" and that profits are a "mathematical  
28 certainty." OTA's presenters also hold themselves out as living proof that OTA's

1 products and strategy work, stating that they became successful traders and amassed  
2 substantial wealth using OTA's strategy.

3 110. Because OTA affirmatively concealed the nature of its products and  
4 outcome of its strategy, Plaintiffs and the Class had no knowledge of its deceptive  
5 business practices, or of any facts or information that would have caused a  
6 reasonably diligent person to investigate whether OTA was engaged in deceptive  
7 business practices, until, at the earliest, February 12, 2020, the date the FTC filed a  
8 complaint against Defendants.

9 111. For these reasons, the statute of limitations applicable to Plaintiffs and  
10 the Class' claims was tolled and did not begin to run until February 12, 2020.

## 11 **IX. CLASS ALLEGATIONS**

12 112. Plaintiffs bring this class action on behalf of themselves individually  
13 and all others similarly situated, pursuant to Federal Rules of Civil Procedure  
14 23(b)(2) and (b)(3).

15 113. **Nationwide Class:** The proposed Class consists of all persons who  
16 purchased programs or courses of instruction from OTA in the United States from  
17 January 1, 2012 through such time as Defendants' unlawful conduct ceased.  
18 Excluded from the Class are Defendants, their affiliates, employees, officers, and  
19 directors, persons or entities that distribute or sell OTA products or programs, the  
20 judge(s) assigned to this case, and the attorneys of record in this case. Plaintiffs  
21 reserve the right to amend the Class definition if discovery and further investigation  
22 reveal that the Class should be expanded or otherwise modified.

23 114. This action is properly brought as a class action under Federal Rule of  
24 Civil Procedure 23(a) for the following reasons:

- 25 (a) **Numerosity (Fed. R. Civ. P. 23(a)(1)):** The proposed Class is  
26 so numerous and geographically dispersed throughout the United  
27 States that the joinder of all Class Members is impracticable.  
28 While Plaintiffs do not know the exact number and identity of all

1 Class Members, Plaintiffs are informed and believe that there are  
 2 thousands, if not tens or even hundreds of thousands of Class  
 3 Members. The precise number of Class Members can be  
 4 ascertained through discovery;

5 (b) **Commonality and Predominance (Fed. R. Civ. P. 23(a)(2)**  
 6 **and 23(b)(3)):** There are questions of law and fact common to  
 7 the proposed Class which predominate over any questions that  
 8 may affect particular Class Members. Such common questions of  
 9 law and fact include, but are not limited to:

- 10 i. Whether Defendants' conduct was unlawful, unfair or
- 11 fraudulent;
- 12 ii. Whether Defendants' advertising is likely to deceive the
- 13 public;
- 14 iii. Whether Defendants' conduct was false, misleading, or
- 15 likely to deceive;
- 16 iv. Whether Defendants breached their express warranty;
- 17 v. Whether Defendants unjustly received funds from
- 18 Plaintiffs and the Class;
- 19 vi. Whether Defendants violated California's Consumers
- 20 Legal Remedies Act, Cal. Civ. Code § 1750;
- 21 vii. Whether Defendants violated California's False
- 22 Advertising Law, Cal. Civ. Code § 17500;
- 23 viii. Whether Defendants violated California's Unfair
- 24 Competition Law, Cal. Bus. & Prof. Code § 17200;
- 25 ix. Whether Plaintiffs and the Class have been harmed and the
- 26 proper measure of relief;
- 27 x. Whether Plaintiffs and the Class are entitled to an award
- 28 of punitive damages, attorneys' fees and expenses against

Defendants; and

xi. Whether, as a result of Defendants' misconduct, Plaintiffs and Class Members are entitled to equitable relief, and if so, the nature of such relief.

(c) **Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiffs' claims are typical of the claims of the members of the proposed Class. Plaintiffs and the Class have been injured by the same wrongful practices of Defendants. Plaintiffs' claims arise from the same practices and conduct that give rise to the claims of the Class and are based on the same legal theories;

(d) **Adequacy of Representation (Fed. R. Civ. P. 23(a)(4)):** Plaintiffs will fairly and adequately protect the interests of the Class in that they have no interests antagonistic to those of the other members of the Class, and Plaintiffs have retained attorneys experienced in consumer class actions and complex litigation as counsel;

115. This action is properly brought as a class action under Federal Rule of Civil Procedure 23(b) for the following reasons:

(a) **Class Action Status (Fed. R. Civ. P. 23(b)(1)):** Class action status in this action is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is also warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially

1 impair or impede their ability to protect their interests.

2 (b) **Declaratory and Injunctive Relief (Fed. R. C. P. 23(b)(2)):**

3 Certification under Rule 23(b)(2) is warranted because  
4 Defendants acted or refused to act on grounds generally  
5 applicable to the Class, thereby making appropriate final  
6 injunctive, declaratory, or other appropriate equitable relief with  
7 respect to the Class as a whole.

8 (c) **Superiority (Fed. R. Civ. P. 23(b)(3)):** Certification under Rule

9 23(b)(3) is appropriate because questions of law or fact common  
10 to members of the Class predominate over any questions  
11 affecting only individual members, and class action treatment is  
12 superior to the other available methods for the fair and efficient  
13 adjudication of this controversy.

14 (d) The proposed Class is ascertainable and there is a well-defined  
15 community of interest in the questions of law or fact alleged  
16 herein since the rights of each proposed Class Member were  
17 infringed or violated in the same fashion;

18 116. A class action is superior to other available methods for the fair and  
19 efficient adjudication of this controversy for at least the following reasons:

20 (a) Given the size of individual Class Member's claims and the  
21 expense of litigating those claims, few, if any, Class Members  
22 could afford to or would seek legal redress individually for the  
23 wrongs Defendants committed against them and absent Class  
24 Members have no substantial interest in individually controlling  
25 the prosecution of individual actions;

26 (b) This action will promote an orderly and expeditious  
27 administration and adjudication of the proposed Class claims,  
28 economies of time, effort and resources will be fostered and

1 uniformity of decisions will be insured;

2 (c) Without a class action, Class Members will continue to suffer  
3 damages, and Defendant's violations of law will proceed without  
4 remedy while Defendants continue to reap and retain the  
5 substantial proceeds of their wrongful conduct; and

6 (d) Plaintiffs know of no difficulty that will be encountered in the  
7 management of this litigation which would preclude its  
8 maintenance as a class action.

9 117. Defendants have, or have access to, address information for the Class  
10 Members, which may be used for the purpose of providing notice of the pendency  
11 of this class action.

12 118. Plaintiffs seek damages and equitable relief on behalf of the Class on  
13 grounds generally applicable to the entire proposed Class.

14 119. **Application of California Law:** California law should be applied to  
15 the nationwide Class because Defendants are located in California and have violated  
16 various California consumer protection laws. Indeed, application of California law  
17 is appropriate because Defendants' fraud emanates from California.

18 120. Further, California law should apply to Plaintiffs and the Class' claims  
19 because all Defendants have their principal place of business in California;  
20 Defendants have conducted and maintained operations in California for several  
21 decades; Defendants developed their misrepresentations at OTA's corporate  
22 headquarters in Irvine, California; Defendants' misrepresentations were  
23 promulgated at various sales events throughout California, including at their  
24 headquarters; and the technical assistance for online courses and activities are  
25 available by calling a phone number with an Orange County area code. These facts  
26 present a sufficient nexus between California and the misrepresentations which  
27 form the basis of this Complaint. Furthermore, California has an interest in not only  
28 protecting its own consumers but in punishing businesses like Defendants that

1 operate within its borders and providing remedies to persons from other states for  
2 the torts of its businesses.

3 **X. CAUSES OF ACTION AND CLAIMS FOR RELIEF**

4 **FIRST CAUSE OF ACTION**  
5 **(Fraud Against All Defendants)**

6 121. Plaintiffs re-allege and incorporate by reference the allegations  
7 contained in the entirety of this Complaint as if fully set forth herein.

8 122. As alleged herein, Defendants intentionally and falsely represented to  
9 Plaintiffs and Class Members that they would earn substantial income by  
10 purchasing OTA training; that OTA's various strategies would enable them to earn  
11 substantial income; that OTA instructors and education counselors were traders who  
12 could truthfully and accurately provide information regarding trading and  
13 counselors who could customize an education plan for them; that OTA instructors  
14 were successful traders; and that OTA's simulated trades were live trades even  
15 though they were not.

16 123. Defendants knew that their representations were false when they made  
17 them because OTA did not monitor its students' trading performance, OTA's  
18 limited surveys indicated that most of its students did not trade or lost money when  
19 they traded, and TradeStation confirmed such indications; OTA instructors and  
20 education counselors were merely salespeople whose objective was to enroll  
21 students in tracks and courses that cost thousands of dollars depending on their  
22 financial circumstances; OTA instructors were not successful traders and many of  
23 them had loss money or only broke even during a long-running bull market; and  
24 OTA instructors hand-picked easy and profitable trades to simulate before  
25 performing them.

26 124. Defendants intended consumers to rely on their representations of  
27 earnings because they intentionally failed to disclose that OTA did not track  
28 students' trading performance or the results from its limited surveys or TradeStation

1 reports; OTA intentionally provided its salespeople deceptive titles; OTA  
2 instructors and education counselors would point to instructors' success when  
3 students asked about how much they would make with OTA training; and OTA  
4 performed simulated, easy, profitable trade but held them out to be live trades in the  
5 financial market.

6 125. Plaintiffs and the Class reasonably relied on Defendants'  
7 representations of earnings when they purchased OTA training given the specific  
8 nature of OTA's examples and seemingly honest testimonials; OTA's frequent  
9 references to its patent, that the rewards outweighing the risks, and that the Daily  
10 Grid identifying all buy and sell opportunities for students; OTA instructors and  
11 education counselors' representations due to their purported titles; and OTA's  
12 simulated trades because consumers witnessed what they thought were live,  
13 successful trades.

14 126. Plaintiffs and the Class were harmed because each paid up to tens of  
15 thousands of dollars for OTA training that failed to materialize into the substantial  
16 income that Defendants advertised and expanded on at the sales events; for OTA  
17 strategies that failed to work; and for OTA training that did not adequately prepare  
18 consumers to trade profitably.

19 127. Plaintiffs and the Class' reliance on OTA's myriad and sundry  
20 representations was a substantial factor in causing their harm. Each OTA student  
21 paid up to tens of thousands of dollars for OTA training.

22 128. Furthermore, Defendants fraudulently concealed from Plaintiffs and the  
23 Class that OTA did not monitor students' trading performance; that OTA's two  
24 surveys indicate that, after receiving OTA training, most of its students do not trade  
25 or do not earn money trading; that the online trading platform that OTA students  
26 use confirm the surveys' results; that one of OTA's own senior executives has called  
27 the business fraudulent; and that OTA has only agreed to provide refunds to  
28 dissatisfied consumers who agree to not disparage it.

129. Defendants were aware of these facts through the normal course of their business. Defendants intentionally failed to disclose these facts that were known only to them because these facts involved their own business practices, executives, and communications. Plaintiffs and the Class could not have discovered these facts and did not know these facts because they are not privy to OTA's business practices, information provided to OTA's executives, and communications between OTA and certain students. Nothing reflects that students should have known OTA's earning claims were tenuous and unsupported. OTA intended to deceive Plaintiffs and the Class by withholding these facts that would have better informed about the success of OTA training (or lack thereof). Had OTA disclosed these omitted facts, Plaintiffs and the Class likely would not have purchased OTA training. Plaintiffs and the Class were harmed because each paid up to tens of thousands of dollars for training that failed to generate income and, in many instances, resulted in loss income. OTA's concealment of the aforementioned facts was a substantial factor in causing Plaintiffs and the Class harm.

130. As a proximate result of Defendants' misrepresentations and fraudulent concealment, Plaintiffs and Class Members were damaged in an amount to be proven at trial.

## SECOND CAUSE OF ACTION (Intentional Misrepresentation Against All Defendants)

131. Plaintiffs re-allege and incorporate by reference the allegations contained in the entirety of this Complaint as if fully set forth herein.

132. As alleged herein, Defendants intentionally and falsely represented to Plaintiffs and Class Members that they would to earn substantial income by purchasing OTA training; that OTA's various strategies would enable them to earn substantial income; that OTA instructors and education counselors were traders who could truthfully and accurately provide information regarding trading and counselors who could customize an education plan for them; that OTA instructors

1 were successful traders; and that OTA's simulated trades were live trades even  
2 though they were not.

3 133. Defendants knew that their representations were false when they made  
4 them because OTA did not monitor its students' trading performance, OTA's  
5 limited surveys indicated that most of its students did not trade or lost money when  
6 they traded, and TradeStation confirmed such indications; OTA instructors and  
7 education counselors were merely salespeople whose objective was to enroll  
8 students in tracks and courses that cost thousands of dollars depending on their  
9 financial circumstances; OTA instructors were not successful traders and many of  
10 them had loss money or only broke even during a long-running bull market; and  
11 OTA instructors hand-picked easy and profitable trades to simulate before  
12 performing them.

13 134. Defendants intended consumers to rely on their representations of  
14 earnings because they intentionally failed to disclose that OTA did not track  
15 students' trading performance or the results from its limited surveys or TradeStation  
16 reports; OTA intentionally gave its salespeople deceptive titles; OTA's instructors  
17 and education counselors would point to instructors' success when students asked  
18 about how much they would make with OTA training; and OTA performed  
19 simulated, easy, profitable trade but held them out to be live trades in the financial  
20 market.

21 135. Plaintiffs and the Class reasonably relied on OTA's representations of  
22 earnings when they purchased OTA training given the specific nature of OTA's  
23 examples and seemingly honest testimonials; OTA's frequent references to its  
24 patent, that the rewards outweighing the risks, and that the Daily Grid identifying  
25 all buy and sell opportunities for Plaintiffs and the Class; OTA's instructors and  
26 education counselors' representations due to their purported titles; and on OTA's  
27 simulated trades because they witnessed what they thought were live, successful  
28 trades.

1           136. Plaintiffs and the Class were harmed because each paid up to tens of  
2 thousands of dollars for OTA training that failed to materialize into the substantial  
3 income that OTA advertised and expanded on at the sales events; for OTA strategies  
4 that failed to work; and for OTA training that did not adequately prepare them to  
5 trade profitably.

6           137. Plaintiffs and the Class' reliance on OTA's myriad and sundry  
7 representations was a substantial factor in causing their harm. Each OTA student  
8 paid up to tens of thousands of dollars for OTA training.

9           138. As a proximate result of Defendants' intentional misrepresentations,  
10 Plaintiffs and Class Members were damaged in an amount to be proven at trial.

11                           **THIRD CAUSE OF ACTION**  
12                           **(Concealment Against All Defendants)**

13           139. Plaintiffs re-allege and incorporate by reference the allegations  
14 contained in the entirety of this Complaint as if fully set forth herein.

15           140. Defendants fraudulently concealed from consumers that OTA does not  
16 monitor students' trading performance; that its two surveys indicate that, after  
17 receiving OTA training, most of its students do not trade or do not earn money  
18 trading; that the online trading platform that its students use confirm the surveys'  
19 results; that one of its own senior executives has called the business fraudulent; and  
20 that it has only agreed to provide refunds to dissatisfied consumers who agree to not  
21 disparage it.

22           141. Defendants were aware of these facts through the normal course of its  
23 business. Defendants intentionally failed to disclose these facts that were known  
24 only to them because these facts involved their own business practices, executives,  
25 and communications.

26           142. Plaintiffs and the Class could not have discovered these facts and did  
27 not know these facts because they are not privy to OTA's business practices,  
28 information provided to OTA's executives, and communications between OTA and

1 certain students. Nothing reflects that Plaintiffs and the Class should have known  
2 OTA's earning claims were tenuous and unsupported.

3 143. OTA intended to deceive Plaintiffs and the Class by withholding these  
4 facts that would have better informed about the success of OTA training (or lack  
5 thereof). Had OTA disclosed these omitted facts, Plaintiffs and the Class likely  
6 would not have purchased OTA training. Plaintiffs and the Class were harmed  
7 because each paid up to tens of thousands of dollars for training that failed to  
8 generate income and, in many instances, resulted in loss income. OTA's  
9 concealment of the aforementioned facts was a substantial factor in causing  
10 Plaintiffs and the Class' harm.

11 144. As a proximate result of Defendants' fraudulent concealment, Plaintiffs  
12 and Class Members were damaged in an amount to be proven at trial.

13 **FOURTH CAUSE OF ACTION**  
14 **(Breach of Express Warranty Against Corporate Defendants)**

15 145. Plaintiffs re-allege and incorporate by reference the allegations  
16 contained in the entirety of this Complaint as if fully set forth herein.

17 146. Defendants made numerous representations and promises to Plaintiffs  
18 and Class Members that they would be able to earn substantial income through OTA  
19 training.

20 147. For example, Defendants' specific examples, student and instructor  
21 testimonials, and simulated trades gave students the impression that they could  
22 easily and quickly learn to make money online trading and replicate their  
23 instructors' purported successes.

24 148. OTA training did not enable Plaintiffs and Class Members to earn  
25 substantial income and, in some cases, caused them to lose substantial money in  
26 trading.

27 149. Defendants knew or should have known that their representations were  
28 false when they made them because OTA did not monitor its students' trading

1 performance, OTA's limited surveys indicated that most of its students did not trade  
 2 or lost money when they traded, and TradeStation confirmed such indications; OTA  
 3 instructors and education counselors were merely salespeople whose objective was  
 4 to enroll students in tracks and courses that cost thousands of dollars depending on  
 5 their financial circumstances; OTA instructors were not successful traders and many  
 6 of them had loss money or only broke even during a long-running bull market; and  
 7 OTA instructors hand-picked easy and profitable trades to simulate before  
 8 performing them.

9 150. Plaintiffs and the Class reasonably relied on OTA's representations of  
 10 earnings when they purchased OTA training given the specific nature of OTA's  
 11 examples and seemingly honest testimonials; OTA's frequent references to its  
 12 patent, that the rewards outweighing the risks, and that the Daily Grid identifying  
 13 all buy and sell opportunities for consumers; OTA's instructors and education  
 14 counselors' representations due to their purported titles; and on OTA's simulated  
 15 trades because they witnessed what they thought were live, successful trades.

16 151. Plaintiffs and Class Members were harmed as a result and by the failure  
 17 of OTA training to adequately prepare Plaintiffs and Class Members to trade  
 18 profitably.

19 152. As a direct and proximate cause of Defendants' representations,  
 20 promises, and warranties, Plaintiffs and the Class suffered significant damages and  
 21 seek the relief described below.

22 **FIFTH CAUSE OF ACTION**  
 23 **(Unjust Enrichment Against All Defendants)**

24 153. Plaintiffs re-allege and incorporate by reference the allegations  
 25 contained in the entirety of this Complaint as if fully set forth herein.

26 154. A party cannot induce, accept or encourage another to furnish or render  
 27 something of value to such party and avoid payment for the value received.

28 155. As a result of the conduct describe above, Defendants have been, and

1 will continue to be, unjustly enriched at the expense of Plaintiffs and the Class.

2 156. Defendants have received, and are holding, funds belonging to  
3 Plaintiffs and the Class which in equity Defendants should not be permitted to keep  
4 but should be required to refund to Plaintiffs and Class Members.

5 **SIXTH CAUSE OF ACTION**  
6 **(Violations of the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et***  
7 ***seq.*, Against All Defendants)**

8 157. Plaintiffs re-allege and incorporate by reference the allegations  
9 contained in the entirety of this Complaint as if fully set forth herein.

10 158. This cause of action arises under the Consumers Legal Remedies Act  
11 (“CLRA”), California Civil Code §§ 1750, *et seq.* Plaintiffs and the Class are  
12 consumers as defined by California § 1761(d). Defendants’ seminars constitute  
13 “services” and/or “products” as defined by § 1761(a) and (b). At all times relevant  
14 hereto, Defendants constituted “persons” as that term is defined in § 1761(c), and  
15 Plaintiffs’ and Class Members’ purchases of OTA seminars constitute  
16 “transactions,” as that term is defined in § 1761(e).

17 159. Defendants violated and continues to violate the CLRA by engaging in  
18 the following deceptive practices specifically proscribed by § 1770(a), in  
19 transactions with Plaintiffs and Class Members that were intended to result or which  
20 resulted in the sale or lease of goods or services to consumers:

21 160. In violation of § 1770(a)(5), Defendants’ acts and practices constitute  
22 misrepresentations that the seminars in question have characteristics, benefits, or  
23 uses which they do not have;

24 161. In violation of § 1770(a)(7), Defendants misrepresented that the  
25 seminars are of a particular standard, quality and/or grade, when they are of another;  
26 and

27 162. In violation of § 1770(a)(9), Defendants advertised the seminars with  
28 the intent not to sell them as advertised or represented.

163. Defendants’ uniform representations as set forth more fully elsewhere

1 in this Complaint were false, deceptive, and/or misleading and in violation of the  
2 CLRA.

3 164. Pursuant to § 1782, Plaintiffs notified OTA in writing by certified mail  
4 of the particular violations of § 1770 alleged herein and have demanded that OTA  
5 rectify the problems associated with the actions detailed above and give notice to  
6 all affected consumers of its intent to so act (*see Ex. C*). Plaintiffs sent this notice  
7 by certified mail, return receipt requested, to OTA's principal place of business.

8 165. If Defendants fail to rectify or agree to rectify the problems associated  
9 with the actions detailed above and give notice to all affected consumers within 30  
10 days after receipt of the § 1782 notice, Plaintiffs will amend this Complaint to seek  
11 actual, punitive, statutory, and all other relief available to Plaintiffs and the Class  
12 under Civil Code § 1780.

13 166. In addition, pursuant to § 1780(a)(2), Plaintiffs are entitled to, and  
14 therefore seek, a Court order enjoining the above-described wrongful acts and  
15 practices that violate § 1770.

16 167. Plaintiffs and the Class are also entitled to recover attorneys' fees, costs,  
17 expenses, and disbursements pursuant to §§ 1780 and 1781.

18  
19 **SEVENTH CAUSE OF ACTION**  
20 **(Untrue and Misleading Advertising in Violation of Cal. Bus. & Prof. Code**  
**§17500 *et seq.* Against All Defendants)**

21 168. Plaintiffs re-allege and incorporate by reference the allegations  
22 contained in the entirety of this Complaint as if fully set forth herein.

23 169. § 17500 prohibits various deceptive practices in connection with the  
24 dissemination in any manner of representations which are likely to deceive  
25 members of the public to purchase products and services, such as the OTA seminars

26 170. Defendants disseminated, through common advertising, untrue  
27 statements about OTA and its training, and Defendants knew or should have known  
28 that the training did not conform to the advertisements or representations regarding

1 the training. Defendants intended Plaintiffs and the Class to see the advertisements  
 2 and numerous material misrepresentations as set forth more fully elsewhere in the  
 3 Complaint. Plaintiffs and the Class relied upon the advertisements and  
 4 misrepresentations to their detriment.

5 171. As a result of the foregoing, Plaintiffs and Class Members are entitled  
 6 to injunctive and equitable relief and damages in an amount to be proven at trial.

7 **EIGHTH CAUSE OF ACTION**  
 8 **(Violations of Cal. Bus. and Prof. Code §§ 17200, *et seq.* Against All**  
 9 **Defendants)**

10 172. Plaintiffs re-allege and incorporate by reference the allegations  
 11 contained in the entirety of this Complaint as if fully set forth herein.

12 173. California Business & Professions Code §§ 17200, *et seq.*, prohibits  
 13 acts of unfair competition, which means and includes any “unlawful, unfair or  
 14 fraudulent business act or practice” and any act prohibited by § 17500.

15 174. Defendants violated § 17200’s prohibition against engaging in an  
 16 “unlawful” business act or practice by, *inter alia*, making extensive  
 17 misrepresentations about OTA training and its successes. Specifically, as set forth  
 18 more fully elsewhere in this Complaint, Defendants intentionally and falsely  
 19 represented to Plaintiffs and Class Members that they would earn substantial  
 20 income by purchasing OTA training; that its various strategies would enable them  
 21 to earn substantial income; that its instructors and education counselors were traders  
 22 who could truthfully and accurately provide information regarding trading and  
 23 counselors who could customize an education plan for them; that its instructors were  
 24 successful traders, and that the simulated trades were live trades, in violation of  
 25 California Civil Code §§ 1572 (actual fraud), 1573 (constructive fraud), 1709 and  
 26 1710 (deceit), 1750, *et seq.* (California Legal Remedies Act), California Business  
 27 & Professions Code §§ 17500, *et seq.* (false advertising), and the common law.

28 175. Plaintiffs reserve the right to allege other violations of law which  
 constitute other unlawful business acts and practices.

1           176. Defendants violated California Business and Professions Code §  
2           17200's prohibition against engaging in a "fraudulent" business act or practice by,  
3           *inter alia*, disseminating, through common advertising, untrue statements about  
4           OTA and the training it sells that have a tendency to mislead the public and making  
5           numerous common material misrepresentations with the intent to induce reliance by  
6           consumers to purchase OTA seminars. Specifically, through its nationwide  
7           advertising campaign and sales events in dozens of cities, Defendants advertised to  
8           consumers that they can earn substantial income through OTA training with its  
9           infallible strategies, successful instructors, and simple steps and tools—regardless  
10          of consumers' background, amount of financial investment, and amount of time  
11          investment. Furthermore, Defendants violated § 17200 by issuing  
12          misrepresentations and untrue statements at the OTA seminars.

13          177. The foregoing conduct also constitutes "unfair" business acts and  
14          practices within the meaning of § 17200. Defendants' practices offend public policy  
15          and are unethical, oppressive, unscrupulous, and violate the laws stated.  
16          Defendants' conduct caused and continues to cause substantial injury to Plaintiffs  
17          and Class Members. The gravity of Defendants' alleged wrongful conduct  
18          outweighs any purported benefits attributable to such conduct. There were also  
19          reasonably available alternatives to Defendants to further their business interests.

20          178. Plaintiffs and Class Members have suffered injury in fact and have lost  
21          money and/or property as a result of Defendants' unlawful, fraudulent, and unfair  
22          business practices and are therefore entitled to the relief available under §§ 17200,  
23          *et seq.*

## 24          **XI. PRAYER FOR RELIEF**

25          WHEREFORE, Plaintiffs, individually and on behalf of members of the  
26          Class, as applicable, respectfully request that the Court enter judgment in their  
27          favor and against OTA, as follows:

- 28          1. That the Court certify this action as a class action, proper and

1 maintainable pursuant to Federal Rule of Civil Procedure 23, declare Plaintiffs are  
2 the proper class representatives, and appoint Plaintiffs' Counsel as Class Counsel;

3 2. That the Court grant permanent injunctive relief barring OTA from  
4 engaging in the unlawful acts, omissions, and practices described herein;

5 3. That the Court award Plaintiffs and the Class all statutory damages,  
6 including, but not limited to, compensatory, consequential, and general damages in  
7 an amount to be determined at trial;

8 4. That the Court award statutory damages, trebled, and punitive or  
9 exemplary damages, to the extent permitted by law;

10 5. That the Court award Plaintiffs and the Class all costs and expenses of  
11 the action, including reasonable attorneys' fees;

12 6. That the Court award pre- and post-judgment interest at the maximum  
13 legal rate;

14 7. That the Court grant all such equitable relief as it deems proper and  
15 just, including, but not limited to, disgorgement and restitution; and

16 8. That the Court grant all such other relief as it deems just and proper.

17 **XII. DEMAND FOR JURY TRIAL**

18 Plaintiffs demand a jury trial on all claims so triable.

19  
20 Dated: April 20, 2020

/s/ Joseph W. Cotchett

Joseph W. Cotchett (SBN 36324)

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# EXHIBIT A

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**Federal Trade Commission,**

Plaintiff,

vs.

**OTA Franchise Corporation, et al.,**

Defendants.

No. 8:20-CV-00287 JVS (KESx)

**Preliminary Injunction**

Plaintiff, the Federal Trade Commission (“FTC”), has filed its Complaint for Permanent Injunction and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Consumer Review Fairness Act of 2016 (“CRFA”), 15 U.S.C. § 45b. Dkt. No. 1. On February 12, 2020, the FTC applied for a temporary restraining order (“TRO”), asset freeze, other equitable relief, and an order to show cause why a preliminary injunction should not issue against Defendants OTA Franchise Corporation, Newport Exchange Holdings, Inc., NEH Services, Inc., Eyal Shachar, Samuel R. Seiden, and Darren Kimoto. Dkt. No. 12. Defendants opposed the application. Dkt. No. 37.

The Court granted the TRO on February 25, 2020, requiring Defendants to cease their allegedly deceptive marketing and Consumer Review Fairness Act

1 violations, freezing the Corporate Defendants' assets, and preventing dissipation of  
2 the Individual Defendants' assets. Dkt. No. 46. The TRO directed Defendants to  
3 appear on March 12, 2020 to show cause why a preliminary injunction should not  
4 issue against them. Defendants subsequently filed, with leave of court, additional  
5 objections to issuance of a TRO, based on the First Amendment. Dkt. No. 52. The  
6 FTC responded to the Objections. Dkt. No. 55. Defendants replied. Dkt. No. 57.  
7 On March 6, 2020, the Court granted in part Defendants' *ex parte* application for  
8 clarification of the TRO and their request for permission to pay employees and  
9 collect money from consumers. Dkt. No. 64.

10 Defendants filed their brief in response to the order to show cause why a  
11 preliminary injunction should not issue. Dkt. No. 67. The FTC filed a brief in  
12 further support of its application for a preliminary injunction. Dkt. No. 74. The  
13 Court held a show cause hearing on March 12, 2020. On March 17, 2020, the  
14 Court granted in part the FTC's application for a preliminary injunction and  
15 ordered the FTC to file a modified proposed preliminary injunction that facilitates  
16 the appointment of an independent monitor to review Defendants' marketing  
17 claims and that reflects the modifications adopted by the Court at Docket Nos. 64  
18 and 87.

## 19 FINDINGS

20 The Court, having considered the Complaint, declarations, exhibits,  
21 memoranda, and argument presented, finds that:

22 A. This Court has jurisdiction over the subject matter of this case, and  
23 there is good cause to believe that it will have jurisdiction over all parties hereto  
24 and that venue in this district is proper.

25 B. The FTC has sufficiently demonstrated that Defendants, in marketing  
26 and selling trading and investing training programs, instructional materials, and  
27 related goods and services, have made false or unsubstantiated representations that  
28 consumers who purchase Defendants' programs will likely earn substantial income,

1 any consumer can learn and use Defendants' strategy to earn income without  
2 significant investable capital or free time, and Defendants' instructors have  
3 amassed substantial wealth by trading in the financial markets.

4 C. The FTC has sufficiently demonstrated that the Corporate Defendants  
5 and Defendant Eyal Shachar have used standardized refund agreements to inhibit  
6 customers' ability to post negative reviews about Defendants and their services or  
7 communicate with law enforcement agencies and others about Defendants and  
8 their services.

9 D. There is good cause to believe that Defendants have engaged in and  
10 are likely to engage in acts or practices that violate Section 5(a) of the FTC Act, 15  
11 U.S.C. § 45(a), that the Corporate Defendants and Defendant Shachar have  
12 engaged in and are likely to engage in acts or practices that violate the CRFA, 15  
13 U.S.C. § 45b, and that Plaintiff is therefore likely to prevail on the merits of this  
14 action.

15 E. As demonstrated by documentation of Defendants' advertisements and  
16 live sales events, documents and information provided by Defendants, testimony  
17 and declarations from Defendants' former employees, consumer declarations, data  
18 regarding the trading performance of Defendants' customers, data regarding the  
19 loan repayment of Defendants' customers, and the additional documentation filed  
20 by the FTC, the FTC has established a likelihood of success in showing that  
21 Defendants have: (1) made false or unsubstantiated claims regarding consumers'  
22 ability to earn substantial income, including consumers' ability to do so even if  
23 they lacked significant time or investable capital; and (2) used standardized  
24 contract provisions that unlawfully inhibit customers' ability to review and share  
25 information about Defendants and their services with law enforcement agencies  
26 and others.

27 F. This Order, which restricts Defendants from making misleading  
28 claims, is not an improper prior restraint on speech.

1           G.     The FTC has sufficiently demonstrated that Corporate Defendants are  
2 a common enterprise. The Corporate Defendants are commonly owned and  
3 controlled by Defendant Eyal Shachar and share office space. They also  
4 intermingle finances and operate for a common purpose. The FTC has established  
5 a likelihood of success in showing that the Corporate Defendants should be held  
6 liable for each others' deceptive acts and practices.

7           H.     The FTC has sufficiently demonstrated that that the Individual  
8 Defendants controlled the Corporate Defendants, directly participated in their  
9 deceptive conduct, and had knowledge of or at least were recklessly indifferent as  
10 to wrongdoing.

11          I.     There is good cause to believe that immediate and irreparable harm  
12 will result from Defendants' ongoing violations of the FTC Act and the CRFA  
13 unless Defendants are restrained and enjoined by order of this Court.

14          J.     There is good cause to believe that immediate and irreparable damage  
15 to the Court's ability to grant effective final relief for consumers – including  
16 monetary restitution, rescission, disgorgement, or refunds –will occur from the  
17 sale, transfer, destruction, or other disposition or concealment by Defendants of  
18 their assets or records, unless Defendants are immediately restrained and enjoined  
19 by order of this Court.

20          K.     Good cause exists for appointing an independent monitor over the  
21 Monitored Entities, freezing the Corporate Defendants' assets, requiring  
22 preservation of the Individual Defendants' assets, and permitting the Plaintiff and  
23 the Monitor to take expedited discovery.

24          L.     Weighing the equities and considering Plaintiff's likelihood of  
25 ultimate success on the merits, a preliminary injunction with an asset freeze, the  
26 appointment of a monitor, expedited discovery, and other equitable relief is in the  
27 public interest.  
28

1 M. This Court has authority to issue this Order pursuant to Section 13(b)  
2 of the FTC Act, 15 U.S.C. § 53(b); Federal Rule of Civil Procedure 65; and the All  
3 Writs Act, 28 U.S.C. § 1651.

4 N. No security is required of any agency of the United States for the  
5 issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

### 6 DEFINITIONS

7 For the purpose of this Order, the following definitions shall apply:

8 A. **“Corporate Defendant(s)”** means OTA Franchise Corporation (also  
9 doing business as Online Trading Academy), Newport Exchange Holdings, Inc.  
10 (also doing business as Online Trading Academy), NEH Services, Inc. (also doing  
11 business as Online Trading Academy), and each of their subsidiaries, affiliates,  
12 successors, and assigns.

13 B. **“Covered Communication”** means a written, oral, or pictorial  
14 review, performance assessment, or other similar analysis of goods, services, or  
15 conduct.

16 C. **“Defendant(s)”** means the Corporate Defendants and the Individual  
17 Defendants, individually, collectively, or in any combination.

18 D. **“Document”** is synonymous in meaning and equal in scope to the  
19 usage of “document” and “electronically stored information” in Federal Rule of  
20 Civil Procedure 34(a), and includes writings, drawings, graphs, charts,  
21 photographs, sound and video recordings, images, Internet sites, web pages,  
22 websites, electronic correspondence, including e-mail, chats, and instant messages,  
23 contracts, accounting data, advertisements, FTP Logs, Server Access Logs, books,  
24 written or printed records, handwritten notes, telephone or videoconference logs,  
25 telephone scripts, receipt books, ledgers, personal and business canceled checks  
26 and check registers, bank statements, appointment books, computer records,  
27 customer or sales databases and any other electronically stored information,  
28 including Documents located on remote servers or cloud computing systems, and

1 other data or data compilations from which information can be obtained directly or,  
2 if necessary, after translation into a reasonably usable form. A draft or non-  
3 identical copy is a separate document within the meaning of the term.

4 E. “**Earnings Claim**” means any representation to consumers, specific  
5 or general, about income, financial gains, percentage gains, profit, net profit, gross  
6 profit, or return on investment. Earnings Claims include, but are not limited to: (a)  
7 the details of specific profitable trades, whether actual or hypothetical; (b)  
8 references to quitting one’s job, not having to work, or living off of income from  
9 trading; (c) references to increased purchases or savings, including a home,  
10 vacations, or travel; (d) claims that consumers will not lose money if they use a  
11 particular trading strategy; (e) claims that profits are likely, probable, or the  
12 “mathematical” result of applying a particular trading strategy; and (f) any  
13 representation, even hypothetical, of how much money a consumer could or would  
14 earn.

15 F. “**Electronic Data Host**” means any person or entity in the business of  
16 storing, hosting, or otherwise maintaining electronically stored information. This  
17 includes, but is not limited to, any entity hosting a website or server, and any entity  
18 providing “cloud based” electronic storage.

19 G. “**Individual Defendant(s)**” means Eyal Shachar (also known as Eyal  
20 Shahar), Samuel R. Seiden, and Darren Kimoto, individually, collectively, or in  
21 any combination.

22 H. “**Monitor**” means the monitor appointed in Section XII of this Order  
23 and any deputy monitors that shall be named by the monitor.

24 I. “**Monitored Entities**” means the Corporate Defendants as well as any  
25 other entity that the Monitor determines is controlled or owned by any Corporate  
26 Defendant or Eyal Shachar and (1) conducted any business related to Defendants’  
27 advertising, marketing, distributing, promoting, or selling of trading or investing  
28 training programs, (2) commingled or pooled assets with any Corporate Defendant,

1 or (3) otherwise participated in the transfer of assets stemming from the  
2 advertising, marketing, distributing, promoting, or selling of trading or investing  
3 training programs.

4 J. **“Review-Limiting Contract Term”** means a standardized contract  
5 term that: prohibits or restricts the ability of a person who is a party to the contract  
6 to engage in a Covered Communication; imposes a penalty or fee against a person  
7 who is a party to the contract for engaging in a Covered Communication; or  
8 transfers, or requires a person who is a party to the contract to transfer, to any other  
9 person any intellectual property rights in a Covered Communication, with the  
10 exception of a non-exclusive license to lawfully use a Covered Communication  
11 about a Defendant’s goods or services.

## 12 **ORDER**

### 13 **I. PROHIBITED BUSINESS ACTIVITIES**

14 **IT IS THEREFORE ORDERED** that Defendants, Defendants’ officers,  
15 agents, employees, and attorneys, and all other persons in active concert or  
16 participation with any of them, who receive actual notice of this Order by personal  
17 service or otherwise, whether acting directly or indirectly, in connection with the  
18 advertising, marketing, promoting, or offering for sale of any goods or services, are  
19 preliminarily restrained and enjoined from:

20 A. Making any Earnings Claim, expressly or by implication, unless the  
21 Earnings Claim is non-misleading, and, at the time such claim is made,  
22 Defendants: (1) have a reasonable basis for the claim; (2) have in their possession  
23 written materials that substantiate that the claimed earnings are typical for  
24 consumers similarly situated to those to whom the claim is made; and (3) make the  
25 written substantiation available upon request to the consumer, potential purchaser,  
26 the Monitor, or the FTC;

27 B. Making any claim, expressly or by implication, about (1) the time or  
28 effort typically required for consumers to attain proficiency in deploying

1 Defendants' trading strategy; (2) the time or effort typically expended by  
2 consumers using Defendants' trading strategy to achieve substantial income; or (3)  
3 the amount of capital typically needed by consumers using Defendants' trading  
4 strategy, unless the claim is non-misleading, and, at the time such claim is made,  
5 Defendants: (a) have a reasonable basis for the claim; (b) have in their possession  
6 written materials that substantiate that the claim is typical for consumers similarly  
7 situated to those to whom the claim is made; and (c) make the written  
8 substantiation available upon request to the consumer, potential purchaser, the  
9 Monitor, or the FTC.

10 C. Misrepresenting or assisting others in misrepresenting, expressly or by  
11 implication, that instructors of Defendants' trading strategy are active traders who  
12 have amassed substantial wealth through trading in financial markets; and

13 D. Misrepresenting or assisting others in misrepresenting, expressly or by  
14 implication, any material fact to consumers concerning any good or service,  
15 including, but not limited to: the total cost; any refund policy; any material  
16 restriction, limitation, or condition; or any material aspect of its performance,  
17 efficacy, nature, or central characteristics.

## 18 **II. PROHIBITION ON RESTRICTION OF CONSUMERS' SPEECH**

19 **IT IS THEREFORE ORDERED** that Defendants, Defendants' officers,  
20 agents, employees, and attorneys, and all other persons in active concert or  
21 participation with any of them, who receive actual notice of this Order by personal  
22 service or otherwise, whether acting directly or indirectly, in connection with the  
23 advertising, marketing, promoting, or offering for sale of any goods or services, are  
24 preliminarily restrained and enjoined from:

25 A. Offering, attempting to enforce, or asserting the validity of, any  
26 Review-Limiting Contract Term; and

27 B. Including in a contract any provision that (a) prohibits or restricts the  
28 ability of any person who is a party to the contract to communicate, in any way,

1 with the Commission or any other law enforcement entity, or (b) imposes a penalty  
2 or fee against any person for communicating, in any way, with the Commission or  
3 any other law enforcement entity.

4 **III. PROHIBITION ON COLLECTION OF LOAN PAYMENTS**

5 **IT IS FURTHER ORDERED** that for any loan owned by any Corporate  
6 Defendant which was issued to a purchaser of Defendants' trading or investing  
7 training programs prior to the date of entry of this Order, Defendants, Defendants'  
8 officers, agents, employees, and attorneys, and all other persons in active concert  
9 or participation with any of them, who receive actual notice of this Order, whether  
10 acting directly or indirectly, are preliminarily restrained and enjoined from:

11 A. Attempting to collect or collecting past due loan payments through a  
12 collection agency;

13 B. Levying or assessing any penalties, such as late fees, for non-payment  
14 or late payment;

15 C. Levying or assessing any interest beyond the amount that would be  
16 due if all loan payments due after this Order were made as scheduled;

17 D. Referring, selling, assigning, or otherwise transferring such loans; and

18 E. Reporting negative information to a consumer reporting agency that  
19 assembles or evaluates consumer credit information for the purpose of furnishing  
20 reports to third parties.

21 Provided, however, that this Section does not bar receipt of payments  
22 voluntarily submitted by consumers (including consumers who purchased  
23 Defendants' trading or investing training programs prior to the date of entry of this  
24 Order), including payments submitted via pre-arranged electronic funds transfer or  
25 like method of payment. Such payments received from consumers are subject to  
26 the asset freeze provisions of Sections VII and VIII.

**IV. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby preliminarily restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing, the name, address, birth date, telephone number, email address, credit card number, bank account number, Social Security number, or other financial or identifying information of any person that any Defendant obtained in connection with any activity that pertains to the subject matter of this Order.

Provided, however, that Defendants may disclose such identifying information to

(1) a law enforcement agency, to their attorneys as required for their defense, as required by any law, regulation, or court order, or in any filings, pleadings or discovery in this action in the manner required by the Federal Rules of Civil Procedure and by any protective order in the case.

(2) companies that provide services to Corporate Defendants related to trading or investing training programs, to the extent that such persons have provided written consent for their identifying information to be provided to such companies. Such written consent will not be valid for purposes of this Order unless Corporate Defendants have identified to the person the name of the company that will receive the identifying information and the reason the information is being shared, prior to the person's execution of the written consent. Corporate Defendants must maintain such written consent for the duration of this Order.

**V. PRESERVATION OF RECORDS**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby preliminarily restrained and enjoined from:

A. Destroying, erasing, falsifying, writing over, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, Documents that relate to: (1) the business, business practices, assets, or business or personal finances of any Defendant; (2) the business practices or finances of entities directly or indirectly under the control of any Defendant; or (3) the business practices or finances of entities directly or indirectly under common control with any other Defendant; and

B. Failing to create and maintain Documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and use of Defendants' assets.

**VI. PRESERVATION OF INDIVIDUAL DEFENDANTS' ASSETS**

**IT IS FURTHER ORDERED** that for the pendency of this Order, each Individual Defendant shall not, directly or indirectly, disburse, gift, spend, transfer, liquidate, or assign any assets obtained prior to entry of the TRO in this matter (Docket No. 46, issued February 25, 2020) beyond a cumulative amount of \$25,000 (per Individual Defendant), as authorized by the TRO, until further Order of the Court. Each Individual Defendant shall not, directly or indirectly, disburse, gift, spend, transfer, liquidate, or assign any assets obtained after this Order is entered that are derived from any activity that is prohibited by this Order.

**VII. ASSET FREEZE OVER CORPORATE DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or

1 participation with any of them, who receive actual notice of this Order, whether  
2 acting directly or indirectly, are hereby preliminarily restrained and enjoined from:

3 A. Transferring, liquidating, converting, encumbering, pledging, loaning,  
4 selling, concealing, dissipating, disbursing, assigning, relinquishing, spending,  
5 withdrawing, granting a lien or security interest or other interest in, or otherwise  
6 disposing of any assets, wherever located, including outside the United States, that  
7 are:

- 8 1) Owned or controlled, directly or indirectly, by any Corporate  
9 Defendant;
- 10 2) Held, in part or in whole, for the benefit of any Corporate  
11 Defendant;
- 12 3) In the actual or constructive possession of any Corporate  
13 Defendant; or
- 14 4) Owned or controlled by, in the actual or constructive possession  
15 of, or otherwise held for the benefit of, any corporation,  
16 partnership, asset protection trust, or other entity that is directly  
17 or indirectly owned, managed, or controlled by any Corporate  
18 Defendant.

19 B. Opening or causing to be opened any safe deposit boxes titled in the  
20 name of any Corporate Defendant or subject to access by any Corporate  
21 Defendant; or

22 C. Incurring charges or cash advances on any credit, debit, or ATM card  
23 issued in the name, individually or jointly, of any Corporate Defendant or any  
24 corporation, partnership, or other entity directly or indirectly owned, managed, or  
25 controlled by any Corporate Defendant other than in the ordinary course of  
26 business. This includes any corporate bankcard or corporate credit card account  
27 for which any Corporate Defendant or Eyal Shachar is, or was on the date that this  
28 Order was signed, an authorized signor.

1 The assets affected by this Section shall include: (1) all assets of the  
2 Corporate Defendants as of the time this Order is entered; and (2) assets obtained  
3 by the Corporate Defendants after this Order is entered if those assets are derived  
4 from any activity that is the subject of the Complaint in this matter or that is  
5 prohibited by this Order.

6 **VIII. EXCEPTIONS TO THE ASSET FREEZE**

7 **IT IS FURTHER ORDERED** that:

8 A. Corporate Defendants may collect money from consumers subject to  
9 the limitations of Section III of this Order, and, once received, the provisions of  
10 Sections VII and VIII;

11 B. Notwithstanding the provisions of Section VII, above, Corporate  
12 Defendants may:

- 13 1) Pay employees, other than Defendants, their usual current  
14 salaries;
- 15 2) Pay for the employer's share of health insurance benefits  
16 already in effect;
- 17 3) Pay the current rent on any facility regularly used in the  
18 ordinary course of business, unless the facility is owned,  
19 directly or indirectly, by any Defendant;
- 20 4) Pay the current monthly or other periodic payment paid to  
21 independent contractors who serve as regular instructors;
- 22 5) Pay utility payments incurred in the ordinary course of  
23 business; and
- 24 6) Pay for internet services or other reasonable and necessary  
25 purchases in the ordinary course of business.
- 26 7) To the extent not already authorized, Defendants may submit to  
27 the Court a list of vendors or individuals to seek prior approval  
28 and the basis therefor.

1 Provided, however, that no single or aggregate payment in any month to any  
2 single payee in categories 1) and 4) shall exceed \$10,000 without the prior  
3 approval of the Court. Defendants may submit to the Court a list of vendors  
4 or individuals to seek prior approval and the basis therefor.

5 No later than the 15th day of each month, Corporate Defendants shall file  
6 with the Court a list of payees and the amount of each payment authorized  
7 herein for the prior month. An officer(s) of Corporate Defendants shall  
8 certify the accuracy of the report.

9 C. Notwithstanding the provisions of Section VII, above, Corporate  
10 Defendants may liquidate or sell assets subject to the following conditions:

- 11 1) The asset must be sold via an arms-length, commercially  
12 reasonable transaction;
- 13 2) Such sales may not include selling receivables to Universal  
14 Guardian Acceptance LLC that are derived from sales made by  
15 Corporate Defendants prior to the entry of the TRO entered on  
16 February 25, 2020, Docket No. 46;
- 17 3) Sales of assets in the amount of \$100,000 or greater, or sales of  
18 assets valued at \$100,000 or greater, require prior approval of the  
19 Court; and
- 20 4) Proceeds from the sales of any assets are subject to this Section and  
21 VII of this Order once received.

## 22 23 **IX. DUTIES OF ASSET HOLDERS AND OTHER THIRD PARTIES**

24 **IT IS FURTHER ORDERED** that any financial or brokerage institution,  
25 Electronic Data Host, credit card processor, payment processor, merchant bank,  
26 acquiring bank, independent sales organization, third party processor, payment  
27 gateway, insurance company, business entity, or person who receives actual notice  
28 of this Order (by service or otherwise) that (a) has held, controlled, or maintained

1 custody, through an account or otherwise, of any Document on behalf of any  
2 Defendant or any asset that has been: owned or controlled, directly or indirectly, by  
3 any Defendant; held, in part or in whole, for the benefit of any Defendant; in the  
4 actual or constructive possession of any Defendant; or owned or controlled by, in  
5 the actual or constructive possession of, or otherwise held for the benefit of, any  
6 corporation, partnership, asset protection trust, or other entity that is directly or  
7 indirectly owned, managed or controlled by any Defendant; (b) has held,  
8 controlled, or maintained custody, through an account or otherwise, of any  
9 Document or asset associated with credits, debits, or charges made on behalf of  
10 any Defendant, including reserve funds held by payment processors, credit card  
11 processors, merchant banks, acquiring banks, independent sales organizations,  
12 third party processors, payment gateways, insurance companies, or other entities;  
13 or (c) has extended credit to any Defendant, including through a credit card  
14 account, shall:

15 A. Hold, preserve, and retain within its control and prohibit the  
16 withdrawal, removal, alteration, assignment, transfer, pledge, encumbrance,  
17 disbursement, dissipation, relinquishment, conversion, sale, refund, chargeback, or  
18 other disposal of any such Document or asset of any Corporate Defendant, as well  
19 as all Documents or other property related to such assets, except by further order of  
20 this Court.

21 Provided, however, that this provision does not prohibit an Individual  
22 Defendant from incurring charges on a personal credit card established prior to  
23 entry of this Order, up to the pre-existing credit limit.

24 Provided further, however, that asset holders may release funds for payments  
25 authorized pursuant to Section VIII. Before the asset holder releases any funds, an  
26 officer of Corporate Defendants shall certify in writing to the entity releasing funds  
27 the amount to be released and that such assets will be used to make payments  
28 authorized by the Court. Defendants shall provide a copy of the certification to the

1 FTC at the same time it is provided to the asset holder. If any asset holder contests  
2 or otherwise fails so honor a Corporate Defendant's certificate, the Corporate  
3 Defendant may apply ex parte to the Court for relief

4 B. Deny any person access to any safe deposit box, commercial mail  
5 box, or storage facility that is titled in the name of any Corporate Defendant, either  
6 individually or jointly, or otherwise subject to access by any Corporate Defendant;

7 C. Provide FTC counsel, within three (3) days of receiving a copy of this  
8 Order, a sworn statement setting forth, for each asset or account covered by this  
9 Section:

- 10 1) The identification number of each such account or asset;
- 11 2) The balance of each such account, or a description of the nature  
12 and value of each such asset as of the close of business on the  
13 day on which this Order is served, and, if the account or other  
14 asset has been closed or removed, the date closed or removed,  
15 the total funds removed in order to close the account, and the  
16 name of the person or entity to whom such account or other  
17 asset was remitted;
- 18 3) The identification of any safe deposit box, commercial mail  
19 box, or storage facility that is either titled in the name,  
20 individually or jointly, of any Defendant, or is otherwise subject  
21 to access by any Defendant; and

22 D. Upon the request of FTC counsel, promptly provide FTC counsel with  
23 copies of all records or other Documents pertaining to each account or asset  
24 covered by this Section, including originals or copies of account applications,  
25 account statements, signature cards, checks, drafts, deposit tickets, transfers to and  
26 from the accounts, including wire transfers and wire transfer instructions, all other  
27 debit and credit instruments or slips, currency transaction reports, 1099 forms, and  
28

1 all logs and records pertaining to safe deposit boxes, commercial mail boxes, and  
2 storage facilities.

3 **X. FINANCIAL DISCLOSURES**

4 **IT IS FURTHER ORDERED** that each Defendant that has not provided  
5 complete financial disclosures pursuant to the TRO entered on February 25, 2020,  
6 Docket No. 46, within five (5) days of service of this Order upon them, shall  
7 prepare and deliver to Plaintiff's counsel:

8 A. Completed financial statements on the forms attached to this Order as  
9 **Attachment A** (Financial Statement of Individual Defendant) for each Individual  
10 Defendant, and **Attachment B** (Financial Statement of Corporate Defendant) for  
11 each Corporate Defendant; and

12 B. Completed **Attachment C** (IRS Form 4506, Request for Copy of a  
13 Tax Return) for each Corporate Defendant.

14 **XI. RECORDING OF LIVE SALES EVENTS BY DEFENDANTS**

15 **IT IS FURTHER ORDERED** that Corporate Defendants and their officers,  
16 agents, employees, and attorneys, all other persons in active concert or  
17 participation with any of them, in connection with the advertising, marketing,  
18 promoting, or offering for sale of trading or investing training programs, shall:

19 A. Record all of Corporate Defendants' live sales events, including, but  
20 not limited to, the Market Timing Preview, the Power Trading Workshop, and the  
21 Market Timing Orientation;

22 B. Ensure all multi-day live sales events, including, but not limited to,  
23 the Market Timing Orientation, that are held at or operated by franchisee-owned  
24 training centers located within the United States are recorded and that such  
25 recordings are provided to Corporate Defendants; and

26 C. Retain copies of all recordings of live sales events made pursuant to  
27 this Section for the duration of this Order.  
28

1            Provided that the creation of a single recording of the entirety of each live  
2 sales event, and the maintenance of all such recordings by Corporate Defendants or  
3 their agents, shall suffice for full compliance with this Section.

4 **XII. APPOINTMENT OF MONITOR**

5            **IT IS FURTHER ORDERED** that Thomas McNamara is appointed as  
6 monitor of the Monitored Entities. The Monitor shall be accountable directly to  
7 this Court.

8 **XIII. DUTIES AND AUTHORITY OF THE MONITOR**

9            **IT IS FURTHER ORDERED** that the Monitor shall have the following  
10 duties and authority:

11            A. Monitor the Monitored Entities' compliance with this Order, including  
12 by:

- 13                    1) Ensuring that the Monitored Entities record live sales events as  
14                    described in Section XI of this Order;
- 15                    2) Identifying and reviewing the Monitored Entities' marketing  
16                    materials and other Documents that reflect the Monitored  
17                    Entities' marketing, advertising, promotion, offer for sale, or  
18                    sale of their trading or investing training programs, including,  
19                    but not limited to, radio ads, television ads, direct mail, email,  
20                    search engine advertising, Internet banner advertisements,  
21                    websites, online videos, webinars, social media, live sales  
22                    events, recordings of live sales events, including recordings of  
23                    franchisee-owned training centers' events, handouts, slide  
24                    decks, workbooks, telephone calls (both live and recorded), call  
25                    logs, call detail records, and reports. The Monitor will  
26                    determine the number of live sales events, recordings of live  
27                    sales events, and calls to review;

28            B. The Monitor shall have immediate, unfettered access to:

- 1) All information or Documents the Monitor deems necessary or appropriate to carrying out the Monitor's duties pursuant to this Order;
- 2) Access to all property or premises in possession of, owned by, or under the control of the Monitored Entities related to the marketing, advertising, promotion, offer for sale, or sale of their trading or investing training programs, wherever located.
- 3) The right to copy or image any and all Documents as the Monitor deems necessary or appropriate to carrying out the Monitor's duties pursuant to this Order, including any Documents in the custody, or control of Individual Defendants;
- 4) The right to interview any current or former employee, independent contractor, principal, owner, manager, member, or other person affiliated with the Monitored Entities, including Individual Defendants, to obtain and copy pertinent information;
- 5) The right to interview any Monitored Entity's current or former officer, manager, independent contractor, subcontractor, financial institution, vendor, telecommunications provider, agent, service bureau, or other entity involved in the provision of any services from, to, or on behalf of the Monitored Entities, including Individual Defendants, to obtain and copy pertinent information; and
- 6) The right to request that the Plaintiff issue subpoenas to obtain Documents and records pertaining to the Monitored Entities, and the right to request the Plaintiff to conduct discovery necessary or appropriate for the Monitor to carry out the Monitor's duties pursuant to this Order.

1 C. The Monitor is authorized to choose, engage, and employ attorneys,  
2 investigators, and other independent contractors and technical specialists, as the  
3 Monitor deems advisable or necessary in the performance of duties and  
4 responsibilities under the authority granted by this Order.

5 D. Upon determining that a nonparty entity is a Monitored Entity, the  
6 Monitor shall promptly notify the entity as well as the parties, and shall inform the  
7 entity that it can challenge the Monitor's determination by filing a motion with the  
8 Court;

9 E. The Monitor shall report to the Court on the Monitored Entities'  
10 compliance with this Order. The Monitor shall make its first report within thirty  
11 (30) days of entry of this Order. The Monitor shall make each subsequent report  
12 every thirty (30) days for the duration of this Order;

13 F. The Monitor may apply to the Court for any relief necessary or  
14 appropriate to ensure the Monitor can carry out his duties; and

15 G. If, at any time, the Monitor determines that the Monitored Entities are  
16 not in substantial compliance with this Order, the Monitor shall notify the Court  
17 immediately.

#### 18 **XIV. PROVISION OF INFORMATION TO THE MONITOR**

19 **IT IS FURTHER ORDERED** that Defendants shall provide to the Monitor,  
20 immediately upon request, without need of any subpoena or further order, the  
21 following:

22 A. A list of all Documents pertaining to the Monitored Entities' Earnings  
23 Claims and other representations related to the marketing, advertising, promotion,  
24 offer for sale, or sale of their trading or investing training programs, including any  
25 such Documents belonging to other persons or entities whose interests are under  
26 the direction, custody, or control, or in the possession, of the Monitored Entities;  
27  
28

1 B. A list of all locations where Documents of the Monitored Entities are  
2 located, and the means to access such Documents within twenty-four (24) hours of  
3 the Monitor's request; and

4 C. A list of all agents, employees, independent contractors, officers,  
5 attorneys, and those persons in active concert and participation with the Monitored  
6 Entities, or who have been associated or done business with the Monitored Entities  
7 since January 1, 2016 in connection with the marketing, advertising, promotion,  
8 offer for sale, or sale of their trading or investing training programs.

9 **XV. COOPERATION WITH THE MONITOR**

10 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,  
11 agents, employees, and attorneys, all other persons in active concert or  
12 participation with any of them, and all other persons or entities served with a copy  
13 of this Order shall fully cooperate with and assist the Monitor. This cooperation  
14 and assistance shall include, but is not limited to, providing information to the  
15 Monitor that the Monitor deems necessary or appropriate to exercise the authority  
16 and discharge the responsibilities of the Monitor under this Order.

17 **XVI. NON-INTERFERENCE WITH THE MONITOR**

18 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,  
19 agents, employees, attorneys, and all other persons in active concert or  
20 participation with any of them, who receive actual notice of this Order, and any  
21 other person served with a copy of this Order, are hereby restrained and enjoined  
22 from directly or indirectly:

23 A. Interfering with the Monitor's efforts to carry out his duties under this  
24 Order, including but not limited to by interfering with the Monitor's efforts to  
25 review Documents or claims related to the Monitored Entities' marketing,  
26 advertising, promotion, offer for sale, or sale of their trading or investing training  
27 programs;  
28

1 B. Destroying, secreting, defacing, transferring, or otherwise altering or  
2 disposing of any Documents of the Monitored Entities;

3 C. Refusing to cooperate with the Monitor or the Monitor's duly  
4 authorized agents in the exercise of their duties or authority under any order of this  
5 Court.

## 6 **XVII. COMPENSATION OF THE MONITOR**

7 **IT IS FURTHER ORDERED** that the Monitor and all personnel hired by  
8 the Monitor as herein authorized, including counsel to the Monitor and  
9 accountants, are entitled to reasonable compensation for the performance of duties  
10 pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by  
11 them, from the assets now held by, in the possession or control of, or which may be  
12 received by, the Monitored Entities or otherwise frozen pursuant to this Order. The  
13 Monitor shall file with the Court and serve on the parties periodic requests for the  
14 payment of such reasonable compensation, with the first such request filed no more  
15 than thirty (30) days after the date of entry of this Order. The Monitor shall not  
16 increase the hourly rates used as the bases for such fee applications without prior  
17 approval of the Court.

## 18 **XVIII. DISTRIBUTION OF ORDER BY DEFENDANTS**

19 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a  
20 copy of this Order to each franchisee, affiliate, telemarketer, marketer, sales entity,  
21 successor, assign, member, officer, director, employee, agent, independent  
22 contractor, client, attorney, spouse, subsidiary, division, and representative of  
23 themselves, and shall, within ten (10) days from the date of entry of this Order,  
24 provide Plaintiff and the Monitor with a sworn statement that this provision of the  
25 Order has been satisfied, which statement shall include the names, physical  
26 addresses, phone number, and email addresses of each such person or entity who  
27 received a copy of the Order. Furthermore, Defendants shall not take any action  
28 that would encourage officers, agents, members, directors, employees,

1 salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors,  
2 assigns, franchisees, or other persons or entities in active concert or participation  
3 with any of them to disregard this Order or believe that they are not bound by its  
4 provisions.

5 **XIX. LIMITED EXPEDITED DISCOVERY**

6 **IT IS FURTHER ORDERED** that, notwithstanding the provisions of the  
7 Fed. R. Civ. P. 26(d) and (f) and 30(a)(2)(A)(iii), and pursuant to Fed. R. Civ. P.  
8 30(a), 33, 34, and 45, Plaintiff is granted leave, at any time after service of this  
9 Order, to conduct limited expedited discovery for the purpose of discovering: (1)  
10 the nature, location, status, and extent of Defendants' assets; (2) compliance with  
11 this Order. The limited expedited discovery set forth in this Section shall proceed  
12 as follows:

13 A. Plaintiff may take the deposition of parties and non-parties. Forty-  
14 eight (48) hours' notice shall be sufficient notice for such depositions. The  
15 limitations and conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the  
16 Federal Rules of Civil Procedure regarding subsequent depositions of an individual  
17 shall not apply to depositions taken pursuant to this Section. Any such deposition  
18 taken pursuant to this Section shall not be counted towards the deposition limit set  
19 forth in Rules 30(a)(2)(A) and 31(a)(2)(A) and depositions may be taken by  
20 telephone or other remote electronic means;

21 B. Plaintiff may serve upon parties requests for production of Documents  
22 or inspection that require production or inspection within five (5) days of service,  
23 provided, however, that three (3) days of notice shall be deemed sufficient for the  
24 production of any such Documents that are maintained or stored only in an  
25 electronic format.

26 C. Plaintiff may serve upon parties interrogatories that require response  
27 within five (5) days after Plaintiff serves such interrogatories;  
28

1 D. Plaintiff may serve subpoenas upon non-parties that direct production  
2 or inspection within five (5) days of service.

3 E. Plaintiff may use all lawful means, including posing, through its  
4 representatives as consumers or other individuals or entities, to Defendants or any  
5 entity affiliated with Defendants, without the necessity of identification or prior  
6 notice;

7 F. Service of discovery upon a party to this action, taken pursuant to this  
8 Section, shall be sufficient if made by facsimile, email, or by overnight delivery.

9 G. Any expedited discovery taken pursuant to this Section is in addition  
10 to, and is not subject to, the limits on discovery set forth in the Federal Rules of  
11 Civil Procedure and the Local Rules of this Court. The expedited discovery  
12 permitted by this Section does not require a meeting or conference of the parties,  
13 pursuant to Rules 26(d) & (f) of the Federal Rules of Civil Procedure.

14 **XX. SERVICE OF THIS ORDER**

15 **IT IS FURTHER ORDERED** that copies of this Order, as well as all other  
16 filings in this case (other than the complaint and summons), may be served by any  
17 means, including facsimile transmission, electronic mail or other electronic  
18 messaging, personal or overnight delivery, U.S. Mail or FedEx, by agents and  
19 employees of Plaintiff, by any law enforcement agency, or by private process  
20 server, upon any Defendant or any person (including any financial institution) that  
21 may have possession, custody or control of any asset or Document of any  
22 Defendant, or that may be subject to any provision of this Order pursuant to Rule  
23 65(d)(2) of the Federal Rules of Civil Procedure. For purposes of this Section,  
24 service upon any branch, subsidiary, affiliate or office of any entity shall effect  
25 service upon the entire entity.

26 **XXI. CORRESPONDENCE AND SERVICE ON PLAINTIFF**

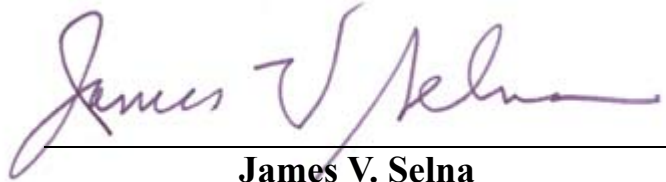
27 **IT IS FURTHER ORDERED** that, for the purpose of this Order, all  
28 correspondence and service of pleadings on Plaintiff shall be addressed to:

1 Thomas Biesty  
2 Rhonda Perkins  
3 Andrew Hudson  
4 Federal Trade Commission  
5 600 Pennsylvania Ave., NW  
6 Mailstop CC-8528  
7 Washington, DC 20580  
8 Fax: 202-326-3395  
9 Email: tbiesty@ftc.gov; rperkins@ftc.gov; ahudson@ftc.gov

10 **XXII. RETENTION OF JURISDICTION**

11 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this  
12 matter for all purposes.  
13

14 Dated: April 02, 2020, 12:53 p.m.



**James V. Selna**  
**United States District Judge**

# **EXHIBIT B**

1 Joseph W. Cotchett (SBN 36324)  
Elizabeth T. Castillo (SBN 280502)  
2 Adam J. Zapala (SBN 245748)  
**COTCHETT, PITRE & McCARTHY, LLP**  
3 840 Malcolm Road  
Burlingame, CA 94010  
4 Tel: (650) 697-6000  
Fax: (650) 697-0577  
5 jcotchett@cpmlegal.com  
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6 azapala@cpmlegal.com

7 Kelly W. Weil (SBN 291398)  
**COTCHETT, PITRE & McCARTHY, LLP**  
8 2716 Ocean Park Blvd., Suite 3088  
Santa Monica, CA 90405  
9 Tel: (310) 392-2008  
Fax: (310) 392-0111  
10 kweil@cpmlegal.com

11 *Counsel for Plaintiffs Amy Jine, Ana Biocini, and the Putative Class*

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **AMY JINE** and **ANA BIOCINI**, on  
behalf of themselves and all others  
15 similarly situated,

16 *Plaintiffs,*

17 v.

18 **OTA FRANCHISE**  
**CORPORATION**, a Nevada  
Corporation,

19 **NEWPORT EXCHANGE**  
**HOLDINGS, INC.**, a California  
20 corporation,

21 **NEH SERVICES, INC.**, a California  
corporation,

22 **EYAL SHAHAR**, individually and as  
23 an officer of OTA Franchise  
Corporation, Newport Exchange  
24 Holdings, Inc., and NEH Services, Inc.,  
and

25 **SAMUEL R. SEIDEN**, individually  
26 and as an officer of OTA Franchise  
Corporation,

27 *Defendants.*  
28

Case No. \_\_\_\_\_

**AFFIDAVIT OF ELIZABETH T.  
CASTILLO IN SUPPORT OF  
CLASS ACTION COMPLAINT**

**AFFIDAVIT OF ELIZABETH T. CASTILLI IN SUPPORT OF CLASS  
ACTION COMPLAINT**

I, ELIZABETH T. CASTILLO, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am one of the counsel of record for Plaintiffs Amy Jine and Ana Biocini and the putative class in the above entitled matter. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. This Court is the proper one for commencement and trial of this action because Defendants OTA Franchise Corporation, Newport Exchange Holdings, Inc., and NEH Services, Inc. have their principal place of business and are doing business in Orange County, California. A substantial portion of the acts, events, and omissions giving rise to this action also occurred in Orange County, and Defendants conduct substantial business here.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 16 day of April, 2020, in Burlingame, California.

Dated: April 16, 2020



Elizabeth T. Castillo

*Counsel for Plaintiffs Amy Jine and Ana Biocini and the Putative Class*

Subscribed to and sworn before me  
this 16 day of April, 2020.



NOTARY PUBLIC



My commission expires on: July 31, 2021

# **EXHIBIT C**

LOS ANGELES

LAW OFFICES  
COTCHETT, PITRE & McCARTHY, LLP  
SAN FRANCISCO AIRPORT OFFICE CENTER  
840 MALCOLM ROAD  
BURLINGAME, CA 94010  
TELEPHONE (650) 697-6000  
FAX (650) 697-0577

NEW YORK

April 20, 2020

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Online Trading Academy  
Corporate Headquarters  
17780 Fitch  
Suite 200  
Irvine, CA 92614

**RE: Notice of Violation of the California Consumers Legal Remedies Act,  
Cal. Civil Code §§ 1750, *et seq.*, on behalf of Amy Jine and Ana Biocini**

To Whom It May Concern:

Please be advised that this firm represents Plaintiffs Amy Jine and Ana Biocini as well as the class of consumers they seek to represent. This letter serves as notice, pursuant to California Civil Code § 1782(a), of claims by Mses. Jine and Biocini and the class against OTA Franchise Corporation, Newport Exchange Holdings, Inc., NEH Services, Inc., Eyal Shahr, and Samuel R. Seiden (collectively, “Defendants”) for engaging in unlawful business practices under the California Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.* (“CLRA”). This notice is being sent contemporaneous with the filing of a class action complaint in the United States District Court for the Central District of California, a copy of which will hereafter be provided to Defendants.

Defendants have engaged in unfair or deceptive acts or practices in violation of Civil Code § 1770 in connection with their operation of Online Trading Academy (“OTA”) in various locations across the United States from at least January 1, 2012 through such time as Defendants’ unlawful conduct ceased. OTA allegedly offers consumers a low-investment, high-profit, online trading strategy through various courses, programs, and memberships. Mses. Jine and Biocini and class members have purchased OTA courses, programs, and/or memberships from Defendants.

Specifically, OTA has intentionally and routinely made false representations to consumers, directly or by implication, that they are likely to generate substantial income with OTA’s trading strategy, convincing each of its students to pay up to tens of thousands

LAW OFFICES  
COTCHETT, PITRE & MCCARTHY, LLP

Online Trading Academy  
April 20, 2020  
Page 2

of dollars for OTA training and related services. OTA has routinely claimed that consumers who purchase OTA training can quickly attain proficiency in OTA's strategy and deploy it to earn substantial income regardless of their experience, skill, and amount of financial or time investment. OTA violated Civil Code § 1770 because its earnings claims are false and unsubstantiated. In particular, OTA's strategy does not work as advertised; OTA does not track the trading performance of its students; and OTA no data that would allow it to predict the trading performance of its students. OTA has collected hundreds of millions of dollars from tens of thousands of consumers across the country since 2012.

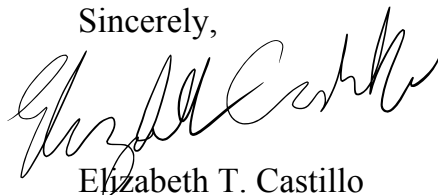
Mses. Jine and Biocini hereby demand that Defendants remedy this violation of the law. Specifically, they demand that Defendants take the following actions pursuant to Civil Code § 1782(c):

1. Identify, or make a reasonable effort to identify, all consumers who purchased OTA programs, courses, and/or memberships;
2. Notify all such consumers that they will be receiving a full refund of their payments for OTA programs, courses, and/or memberships;
3. Provide a full refund to all consumers in a reasonable amount of time; and
4. Cease to engage in the unfair or deceptive acts or practices of OTA.

In compliance with Civil Code § 1782, Mses. Jine and Biocini are providing Defendants with the opportunity to correct this violation within thirty (30) days after receipt of this notice. If Defendants do not correct this violation before this period has expired, Mses. Jine and Biocini will have the right to seek damages on behalf of themselves and the class against Defendants pursuant to Civil Code §§ 1780, 1782.

Please feel free to contact me at the above number or email address. Thank you in advance for your prompt attention to this matter.

Sincerely,



Elizabeth T. Castillo

cc: Joseph W. Cotchett  
Adam J. Zapala  
Kelly W. Weil