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12 Attorneys for Plaintiff EHAB KHALIL and the Putative
13 Class

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 EHAB KHALIL, on behalf of himself
18 and all others similarly situated,

19 Plaintiff,

20 vs.

21 OTA FRANCHISE
22 CORPORATION, a Nevada
23 Corporation; NEWPORT
24 EXCHANGE HOLDINGS, INC., a
25 California corporation; NEH
26 SERVICES, INC., a California
27 Corporation; EYAL SHAHAR, also
28 known as Eyal Shachar, 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. 8:20-cv-1152

**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.;
- 8. VIOLATIONS OF CAL. BUS. & PROF. CODE §§ 17200, ET SEQ. AND
- 9. VIOLATIONS OF CALIFORNIA'S "YELP LAW," CAL. CIV. CODE § 1670.8

DEMAND FOR JURY TRIAL

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1 Ehab Khalil (“Plaintiff”), by and through his attorneys, brings this action on
2 behalf of himself and all others similarly situated against OTA Franchise
3 Corporation, Newport Exchange Holdings, Inc., NEH Services, Inc., Eyal Shahar,
4 also known as Eyal Shachar, and Samuel R. Seiden (collectively “Defendants”).
5 Plaintiff hereby alleges, on information and belief, except as to those allegations
6 which pertain to the named Plaintiff, as follows:

7 **I. NATURE OF COMPLAINT**

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

9 — SAMUEL R. SEIDEN

10 Chief Trading Strategist, Online Trading Company

11 1. Defendants OTA Franchise Corporation, Newport Exchange
12 Holdings, Inc., and NEH Services, Inc. (collectively, “Corporate Defendants”) do
13 business as Online Trading Academy (“OTA”), a fraudulent investment education
14 scheme. Defendants Eyal Shahar, also known as Eyal Shachar, and Samuel R.
15 Seiden (collectively, “Individual Defendants”) are individuals and OTA executives
16 who — both independently and jointly with the Corporate Defendants — created,
17 implemented, and/or participated in the acts and practices set forth in this
18 Complaint and are personally liable for the conduct, as alleged herein. Defendants
19 have been engaged in a nationwide ruse since at least 2012, claiming to offer
20 consumers a low investment, high profit online trading strategy. Defendants target
21 elderly individuals, making representations to them that they are likely to grow
22 their wealth substantially if they purchase Defendants’ expensive investment
23 training and use Defendants’ allegedly patented strategy. Defendants have no
24 reasonable basis to support their representations regarding OTA’s strategy, as they
25 do not track the trading performance of their students — a fact that they also fail to
26 disclose to their students. The vast majority of students who receive OTA training
27 do not make the advertised income. Indeed, many students, including elderly
28 individuals, lose their own money and have reduced capacity to replace their lost

1 savings. Countless students are additionally saddled with high interest loans that
2 Defendants had induced them to take out to pay for OTA training. Numerous
3 students paid Defendants tens of thousands of dollars, with some paying \$50,000
4 or more. This fraudulent scheme affected tens of thousands of Americans.

5 2. Government regulators have taken notice of Defendants’ fraudulent
6 scheme. On February 12, 2020, the Federal Trade Commission (“FTC”) filed a
7 complaint against all of the same Defendants plus Darren Kimoto for violating
8 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Consumer Review Fairness
9 Act of 201, 15 U.S.C. § 45b.1 The FTC files a complaint when it has “reason to
10 believe” that the named defendants are violating, or are about to violate the law,
11 and it appears to the FTC that a proceeding is in the public interest.² The FTC also
12 moved for a temporary restraining order, an asset freeze, appointment of a receiver,
13 other equitable relief, and an order to show cause why a preliminary injunction
14 should not issue against defendants, which the federal court granted on February
15 25, 2020.³ In granting the motion, the court found, inter alia:

16 (a) In numerous instances, defendants, in marketing and selling
17 trading and investing training programs, instructional materials and related
18 goods and services, have made false or unsubstantiated representations that
19 consumers who purchase defendants’ program will likely earn substantial
20 income, any consumer can learn and use defendants’ strategy to earn income
21 without significant investable capital or free time, and defendants’
22 instructors have amassed substantial wealth by trading in the financial
23 markets.

24 _____
25 ¹ 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.

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

28 ³ See Temporary Restraining Order with Asset Freeze, and Other Equitable Relief,
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 (b) In numerous instances, defendants have used standardized
2 refund agreements to inhibit customers' ability to post negative reviews
3 about defendants and their services or communicate with law enforcement
4 agencies and others about defendants and their services.⁴

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

15 4. On April 2, 2020, the federal court granted FTC's request for a
16 preliminary injunction to halt OTA's alleged illegal practices. (**Exh. A**
17 [Preliminary Injunction, *FTC v. OTA Franchise Corp., et al.*, No. 8:20-cv-00287,
18 ECF No. 130]).⁶ Under the preliminary injunction's terms, the defendants are
19 prohibited from making, false, misleading, or unfounded representations to
20 consumers about OTA training, including earnings claims. OTA also is prohibited
21 from making or enforcing contracts that limit consumers' ability to speak to law
22 enforcement agencies or post reviews online. The preliminary injunction appoints
23 a monitor to observe OTA's marketing materials and practices and provide period
24

25 ⁴ *Id.* at 2.

26 ⁵ *Id.* at 6-7.

27 ⁶ Plaintiff bases many of the factual allegations herein on the supporting evidence
28 provided by the FTC, and that evidence is directly applicable to Plaintiff's
experience with OTA and that of the putative class members Plaintiff seeks to
represent in this action.

1 reports to the court on this subject. The preliminary injunction freezes OTA’s
2 assets and limits how much the individual defendants can spend to preserve funds
3 for potential redress to consumers.

4 **II. PARTIES**

5 **A. Plaintiff**

6 5. Plaintiff Ehab Khalil resides in Wildomar, California. In or about
7 April 2018, Mr. Khalil became aware of OTA through an online video offer.
8 Shortly thereafter, based on OTA’s fraudulent representations and omissions about
9 its investment training and education program, including those alleged herein, Mr.
10 Khalil signed up for the “Market Timing Orientation” that took place at a hotel in
11 Temecula, California. Mr. Khalil paid \$250 to attend the orientation. Following
12 the orientation, Mr. Khalil, based on OTA’s fraudulent representations and
13 omissions about its investment training and education program, including those
14 alleged herein, signed up for the “Core Strategy Program” and “Masterclass” for a
15 total cost of at least \$51,995. Mr. Khalil attempted to use the trading strategies
16 taught by OTA, but instead ended up losing money in the market. Mr. Khalil and
17 the Class had no knowledge of the fraud alleged herein, or of facts sufficient to
18 place them on inquiry notice of the claims set forth herein, until (at the earliest)
19 February 12, 2020, the date the FTC filed a complaint with extensive allegations
20 against Defendants detailing violations of the Federal Trade Commission Act and
21 the Consumer Review Fairness Act of 2016.

22 **B. Defendants**

23 6. Defendant OTA Franchise Corporation (“OTA Corp.”), doing
24 business as OTA, is a Nevada corporation with its principal place of business at
25 17780 Fitch Avenue, Irvine, California 92614. OTA Corp. is wholly owned by
26 Defendant Newport Exchange Holdings, Inc. OTA Corp. purports to operate 10
27 OTA centers, holding itself out to consumers as “Online Trading Academy.” OTA
28 Corp. transacts or has transacted business in this District and throughout the United

1 States. At all times material to this Complaint, acting alone or in concert with
2 others, OTA Corp. has advertised, marketed, distributed, or sold training programs
3 and related goods and services to consumers throughout the United States.

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

16 8. Defendant NEH Services, Inc. (“NEH Services”), also doing business
17 as OTA, is a California corporation with its principal place of business at 17780
18 Fitch Avenue, Irvine, California 92614. NEH Services is wholly owned by
19 Defendant NE Holdings. NEH Services purportedly does not operate any OTA
20 centers. Instead, OTA Corp. created NEH Services to funds loans made by OTA
21 franchisees to consumers seeking to purchase OTA training. NEH Services has
22 guaranteed a loan taken out by NE Holdings. NEH Services’ bank accounts
23 suggest it is nothing more than a conduit through which funds pass from a third-
24 party loan servicer to NE Holdings. NEH Services transacts or has transacted
25 business in this District and throughout the United States. At all times material to
26 this Complaint, acting alone or in concert with others, NEH Services has
27 advertised, marketed, distributed, or sold training programs and related goods and
28 services to consumers throughout the United States.

1 9. Defendant Eyal Shahar, also known as Eyal Shachar, is sued herein as
2 an officer of the Corporate Defendants. Shahar is the founder and owner—directly
3 or indirectly—of OTA Corp., NE Holdings, and NEH Services. He is also the sole
4 officer and director of each of these Corporate Defendants. At all times material to
5 this Complaint, acting independently or jointly with others, Shahar has formulated,
6 directed, controlled, had the authority to control, or participated in the acts and
7 practices set forth in this Complaint. Shahar, in connection with the matters alleged
8 herein, transacts or has transacted business in this District and throughout the
9 United States.

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

22 11. Defendant Shahar is also sued herein independently, in his personal
23 capacity. Shahar is involved, independent of the Corporate Defendants, in hyping
24 up and raising money to expand OTA’s operations through franchising. On
25 information and behalf, Shahar pitched to wealthy investors that he had a lucrative
26 financial education business called OTA.

27 12. Defendant Samuel R. Seiden is sued herein as an officer of the
28 Corporate Defendants. Seiden joined OTA in early 2006, is OTA’s Chief Trading

1 Strategist, and has previously served in numerous other executive roles at OTA,
2 including in Product Innovation & Education/Product Strategy and in Sales
3 Innovation & Sales Strategy. In at least some of these executive roles, he directly
4 reported to Shahar. At all times material to this Complaint, acting independently or
5 jointly with others, Seiden has formulated, directed, controlled, had the authority to
6 control, or participated in the acts and practices set forth in this Complaint. Seiden,
7 in connection with the matters alleged herein, transacts or has transacted business
8 in this District and throughout the United States.

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

19 14. Defendant Seiden is also sued herein independently, in his personal
20 capacity. Seiden is involved, independent of the Corporate Defendants in hyping
21 up, raising money for OTA, and driving consumers to OTA through making
22 appearances on TV and radio and contributing to investment publications.

23 15. Seiden briefly left OTA in late 2018, citing a dispute about pay, a
24 “decline in student success,” “Unethical & Deceptive Sales Messaging,” and
25 hearing from students who were “struggling to pay monthly finance payment[s].”
26 In a November 20, 2018 email to Hubbard, OTA’s Vice President of Admissions,
27 Seiden called OTA a “fraudulent business,” claimed to have “overwhelming proof
28 of that fraud,” and noted “I have seen 2 other companies in our industry be shut

1 down by regulators within 24 hours for far less than what Eyal [Shahar] is allowing
2 to happen through OTA. OTA has employees who worked at those firms.” Seiden
3 also noted receiving emails “every day” from consumers “that are losing money
4 because of OTA.” Seiden was in the meeting on OTA survey results and “for him .
5 . . this was proof” of “student success declining” and he procured a copy despite
6 Shahar’s order quarantining it, according to testimony by Hubbard. OTA
7 transferred \$500,000 to Seiden in December 2018, and he returned to work at OTA
8 shortly thereafter.

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

13 **III. INDEPENDENT AND JOINT ACTION**

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

20 18. The Corporate Defendants have operated as a common enterprise
21 while engaging in OTA’s fraudulent scheme. OTA Corp., NE Holdings, and NEH
22 Services have conducted OTA’s business through an interrelated network of
23 companies that have unified advertising, common ownership, officers, managers,
24 business functions, employees, and office locations. They are jointly and severally
25 liable for the acts.

26 19. Each Defendant has ratified and approved the acts of each of the other
27 Defendants. Each Defendant aided and abetted, encouraged, and rendered
28 substantial assistance to the other Defendants in making false representations to,

1 and fraudulently concealing information from, Plaintiff and the Class. In taking
2 action to aid and abet and substantially assist the commission of these wrongful
3 acts and other wrongdoings complained of, each Defendants acted with an
4 awareness of his/its independent wrongdoing and realized that his/its conduct
5 would substantially assist the accomplishment of the wrongful conduct, wrongful
6 goals, and wrongdoing.

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

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

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

16 (a) **OTA Corp.:** OTA Corp.'s (Profit) Initial/Annual List of
17 Officers, Directors, and State Business License Application filed with
18 Nevada's Office of the Secretary of State on February 25, 2019 identifies
19 Shahar as the President, Secretary, Treasurer, and Director of OTA Corp.
20 No other officers or directors are identified. Similarly, the same form filed
21 with the same office on April 27, 2004 identifies Shahar as the President,
22 Secretary, Treasurer, and Director of OTA Corp. No other officers or
23 directors are identified. Likewise, the Articles of Incorporation filed with
24 the same office on March 8, 2004 only lists Shahar next to Board of
25 Directors/Trustees.

26 (b) **NE Holdings:** NE Holdings' Statement of Information filed
27 with California's Office of the Secretary of State on December 4, 2017
28 identifies Shahar as the Chief Executive Officer, Secretary and Chief

1 Financial Officer. Shahar is listed as the only Director. The same form filed
2 with the same office on November 27, 2019 indicates there has been no
3 change in any of the information contained in the last Statement of
4 Information filed.

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

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

14 23. Upon information and belief, Shahar has disregarded corporate
15 formalities, such as holding corporate meetings, keeping meeting minutes, and
16 maintaining adequate corporate records.

17 24. Shahar is personally liable because he is involved, independent of the
18 Corporate Defendants, in hyping up and raising money to expand OTA's
19 operations through franchising. On information and behalf, Shahar pitched to
20 wealthy investors that he had a lucrative financial education business called OTA.

21 25. Seiden is personally liable because he is involved, independent of the
22 Corporate Defendants, in hyping up, raising money for OTA, and driving
23 consumers to OTA through making appearances on TV and radio and contributing
24 to investment publications.

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

1 27. An inequitable result would follow if the facts alleged in this
2 Complaint are treated as those of the Corporate Defendants alone given that the
3 Individual Defendants created and maintained the fraudulent scheme that is OTA
4 for many years:

5 (a) Shahar ultimately authorizes and controls OTA’s operations
6 and is directly involved in the marketing and sales of OTA training, which
7 means he has knowledge of OTA’s fraudulent claims.

8 (b) Seiden has direct knowledge of the fraudulent earnings and
9 related claims through his own participation in making those claims at MTO
10 events and directing other MTO presenters to make such claims.

11 (c) Seiden’s trading results put him on notice that the claims were
12 false.

13 (d) Seiden expressly stated that OTA was a “fraudulent business.”

14 (e) Shahar and Seiden directly participate in, and have authority
15 and control over, OTA’s deceptive marketing, and knew of, or at minimum
16 recklessly disregarded, the false, misleading, and unsubstantiated nature of
17 OTA’s claims.

18 (f) Shahar and Seiden were aware that OTA’s own surveys showed
19 that its claims were untrue.

20 28. Disregarding Shahar and Seiden’s involvement in the scheme would
21 essentially sanction the fraud and promote injustice. Plaintiff is informed and
22 believes that tens of thousands of consumers, many of whom are elderly
23 individuals with limited resources and reduced capacity to replace their lost
24 savings, have been injured as a result of the Individual Defendants’ scheme that
25 has resulted in consumer losses of over \$370 million from January 2014 to May 4,
26 2019.

27 **V. JURISDICTION AND VENUE**

28 29. This Court has original jurisdiction over this action under the Class

1 Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), as to the named Plaintiff and
2 the proposed class (“Class”), because the Class contains more than 100 members,
3 the aggregate amount in controversy exceeds \$5 million, and members of the Class
4 (“Class Members”) reside across the United States and are therefore diverse from
5 Defendants. The Court also has supplemental jurisdiction over Plaintiff and the
6 Class’s state law claims pursuant to 28 U.S.C. § 1367(a).

7 30. This Court has personal jurisdiction over Defendants because they
8 have significant minimum contacts with California, and/or they otherwise
9 intentionally availed themselves of the laws and markets of California through the
10 promotion, marketing, and advertising of OTA in California and on the Internet to
11 consumers in California.

12 31. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2)
13 because a substantial part of the events or omissions giving rise to Plaintiff’s claims
14 occurred in this District. Indeed, until recently, OTA has offered numerous
15 programs and courses of instruction in Irvine, California. Plaintiff has filed an
16 affidavit showing that this action has been commenced in a proper county pursuant
17 to California Civil Code section 1780(d). (*See Exh. B.*)

18 **VI. FACTUAL ALLEGATIONS**

19 **A. OTA Background**

20 32. Shahar founded OTA in Irvine, California in 1997. OTA operates
21 through 10 separate locations across the United States and abroad as well as over
22 30 franchise locations. OTA employs around 500 to 1,000 people and has had over
23 250,000 students over the years.

24 33. OTA offers three learning tracks: Core Strategy, Extended Learning
25 Track (XLT), and Mastermind Community. The Core Strategy and XLT tracks
26 each contain various programs, such as Stocks, Forex, Futures, Options, etc. The
27 Mastermind track is a bundle of OTA’s most elite training and support, including a
28 subscription that allegedly permits subscribers to reduce the time they spend

1 identifying profitable trades because it contains the “Daily Grid,” which provides
2 subscribers with a list of price ranges, or “zones” in which an asset’s price will
3 change direction, for several dozen specific financial assets.

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

11 35. OTA began offering franchises for trading education and training
12 centers operated by independent owners on April 20, 2004. The initial franchise
13 fee ranges from \$100,000 to \$250,000. OTA exercises significant control over its
14 franchises, providing training to the franchisees’ salesforce and materials to guide
15 their sales pitches. OTA also requires franchisees to pay multiple and significant
16 advertising and marketing fees over which OTA has sole discretion (*e.g.*, a
17 Marketing and Advertising Fee of the greater of \$1,000 or 3% of monthly gross
18 volume, a Special Marketing Projects fee of up to \$50,000 per year, and a Global
19 Marketing Services Fee of up to \$15,000 per month). Franchises are an extension
20 of OTA and have no independent power or authority regarding the training
21 offered.⁷ Franchises must therefore provide the same, uniform learning experience
22 as OTA-owned locations.

23 36. OTA’s estimated yearly revenue is \$150 million.

24
25
26 ⁷ For example, franchises must “purchase, use and offer each of, and only, the
27 types, brands and/or quality of Course Materials, Educational Products, broker-
28 dealer services, and other products and services as [OTA] designate[s] and, where
[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. OTA Advertising Campaign**

2 37. Defendants centrally control OTA’s advertising campaign. They have
3 marketed, advertised, and sold OTA training, including seminars, courses, and
4 instructional materials on trading and investing, to consumers throughout the
5 United States and internationally since at least 2004.

6 38. Defendants mass advertise their training to consumers nationwide
7 through the Internet, direct mail, telemarketing, television, and radio. OTA runs
8 30-minute infomercials on nationwide television, radio ads from New York City
9 (where they aired over 10,000 times in the last two years) to Fargo, North Dakota,
10 and videos on its websites and YouTube.

11 39. Regardless of the advertising medium, the theme of OTA’s
12 advertising campaign is that consumers will generate substantial income through
13 online trading in the financial markets with OTA training. For example:

14 (a) In a 2019 TV infomercial, OTA advertises a “rules-based
15 strategy” to “generate daily or monthly income,” labeling it “a proven step-
16 by-step approach,” and providing testimonials, including a consumer who
17 “made \$12,000” in three hours and another who “made \$32,000 in less than
18 seven trading days.”

19 (b) In a 2018 radio ad that ran at least 880 times, OTA advertised
20 “more income” through a “proven step by step approach to investing” that
21 “can work in any market condition” and “generate active income . . . and
22 create passive income to build your retirement.”

23 (c) In a 2018 radio ad that ran at least 581 times, an alleged OTA
24 “student” claims “it’s almost like having a second paycheck without having
25 a second job,” and that any ordinary person can do it.

26 (d) In a 2018 TV infomercial, OTA contends that all consumers
27 can benefit from its training, “[w]hether you only have a few hours or a
28 week or a few hours a month . . .”

1 (e) In a 2019 Fargo radio ad, OTA makes the same contention,
2 stating, “80 percent of the individuals that come through our doors don’t
3 know a stock from a rock.”

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

11 **C. OTA Sales Events**

12 **1. Market Timing Preview Event**

13 41. The Market Timing Preview Event is typically a free three-hour
14 seminar held at an OTA center or franchise. The goal of the Market Timing
15 Preview is to entice consumers to enroll in a three-day MTO event (*see infra*).
16 While the three-hour Preview Event is free, consumers do not learn about market
17 timing or power trading at this event. Instead, consumers endure a marketing ploy
18 reminiscent of a timeshare presentation during which OTA representatives
19 regurgitate the claims made in the advertising campaign. The Preview Event is
20 essentially a sales presentation pitching the MTO event, where consumers
21 allegedly learn how to reliably time the financial markets. OTA informs
22 consumers that, after attending the MTO event, they will have all the necessary
23 tools to trade like a professional and that they can re-take the MTO event as many
24 times as they wish. Many consumers believed they would be able to trade in the
25 financial markets with confidence after participating in the MTO event.

26 42. Illustrative examples of Defendants’ deceptive business activities at
27 the Preview Events are set forth below.

28

1 **2. Market Timing Orientation**

2 43. The MTO event is a three-day sales presentation and Defendants’
3 main sale platform for OTA’s programs, courses, and membership. OTA
4 advertises the MTO event’s cost as \$600 but typically sells for \$299. OTA
5 “instructors” present and “education counselors” staff the MTO event. The
6 instructors and education counselors are salespeople paid on commission despite
7 their titles. During the first two days, instructors provide general information
8 about the financial market and asset classes to consumers. Throughout the MTO
9 event, each consumer meets individually with an education counselor multiple
10 times to discuss, select, and purchase OTA tracks (*e.g.*, the XLT track), courses
11 (*e.g.*, the Core Strategy course, which is a prerequisite for all other programs), and
12 membership to the Mastermind Community.

13 44. At the MTO event, OTA’s instructors expand on the earnings claims
14 made in the advertising campaign and Preview Event. Instructors present
15 testimonials and simulated trades intended to deceive consumers into thinking that
16 they can earn large profits with small investments with OTA training and replace
17 or supplement their existing jobs with online trading. Instructors give consumers
18 the impression that they can make the same hypothetical trades and become the
19 testimonials presented.

20 45. OTA assigns an education counselor to every consumer who enrolls in
21 the three-day MTO event. The education counselor is supposed to make contact
22 with each prospective student a number of times before the MTO event concludes
23 (“Touch Points”). During the Touch Points, the education counselor introduces,
24 and asks the individual to complete, an Income and Wealth Education Planner, a
25 questionnaire that requests consumers to disclose all of their assets, including real
26 estate and retirement accounts, which the educational counselors then leverage in
27 their sales pitch. OTA gives potential students the impression that admission into
28 the OTA is selective but, in fact, OTA will enroll anyone who has the money to

1 pay for the course or who is eligible for financing.

2 46. OTA’s objective is to drive sales to multiple programs, higher-priced
3 programs, and Mastermind Community membership, from the MTO event.
4 Education counselors pitch the Mastermind Community to consumers with
5 extensive assets, which costs \$25,000 for a lifetime membership but also requires
6 consumers to purchase a number of prerequisite courses. Education counselors
7 pitch packages that range from thousands of dollars to hundreds of thousands of
8 dollars for those with more limited assets. Like other scams, education counselors
9 inform consumers that the prices already reflect discounts, and the discounts expire
10 if consumers decide to purchase after the MTO event concludes.

11 47. Illustrative examples of Defendants’ deceptive business activities at
12 the MTO event are set forth below.

13 **D. Defendants’ Deceptive Conduct**

14 48. Defendants have deceived consumers since at least 2012, claiming
15 that OTA training will allow them to generate significant earnings through online
16 trading in the financial markets and causing each of its students to spend up to tens
17 of thousands of dollars on OTA programs, courses, and membership. Defendants
18 have done so by luring consumers, including elderly individuals, to register and
19 attend the initial free Preview Event, then the \$299 MTO event, and finally
20 additional programs ranging from \$7,700 to \$25,000 with false and unsubstantiated
21 promises of generating significant earnings through trading in the financial
22 markets. OTA has already taken more than \$370 million from consumers in the
23 United States since 2014. Illustrative examples of Defendants’ deceptive conduct
24 are set forth below, though not limited thereto.

25 **1. Misrepresentations Regarding Earning Income with**
26 **OTATraining**

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

1 —OTA Presenter, Dale Sargood, at an MTO Event

2 49. Defendants misrepresent to consumers through OTA’s nationwide
3 advertising campaign and sales events in dozens of cities that they can earn income
4 through OTA training. OTA also misrepresents the income can be substantial in
5 terms of dollar amounts, as reflected in the following examples:

6 (a) At an MTO event on March 22, 2019, OTA presenter, Darren
7 Kimoto, indicated that consumers who follow OTA strategies would make
8 \$800 per day, which is \$200,000 per year, spending an hour a day on
9 trading.

10 (b) At the MTO event on March 21, 2019, Kimoto stated you can
11 “[f]ind, analyze, execute,” a trade “in less than 10 minutes,” and that you can
12 do “that every day, find a trade every other day, make an extra 600 bucks.”

13 (c) At an MTO event, OTA presented a “plan” for a consumer
14 yielding “Avg. \$300/Day” using only “\$5,000” of capital and “2
15 Hours/Day.”

16 (d) At an MTO event on June 28, 2019, OTA presenter, Darek
17 Zalek, posed, as if it is realistic, “[I]f you make 9,000 dollars in a day, you
18 know, or five grand in a day, how many of these do you need to pay off the
19 [OTA] tuition? I’m just saying, you know. Not too many, yes or not?”

20 (e) At an MTO event in November 2019, OTA presenter, Dale
21 Sargood, indicated he only spends “30 minutes to an hour a day” trading and
22 “students ... averag[e] about 300 dollars a day[.]” He suggests consumers
23 would make “75 grand a year as a secondary form of income” and with a
24 \$5,000 futures account and with “3,300 invested” you could earn “100 grand
25 a year[.]”

26 (f) At an MTO event on March 22, 2019, Kimoto claimed that
27 consumers “would have made about \$94,000 last year just taking those
28 trades in those [XLT] sessions with us” in 2018.

1 (g) At an MTO event, OTA offered a January 16, 2013 testimonial
2 stating, “I’m profitable 85% of the time,” and claiming monthly profits in
3 the thousands or tens of thousands of dollars.

4 (h) At an MTO event, OTA provided a testimonial from a
5 “student” who achieved a 31.7% profit in “Short Term Income” with “No
6 Prior Trading Knowledge.”

7 50. OTA also represents the income will be substantial in general terms:

8 (a) In various radio ads between 2018 and 2019, OTA claimed
9 consumers will learn to “generate income,” or “daily income,” or “monthly
10 cash flow.”

11 (b) At a Preview Event on June 12, 2019, OTA presenter,
12 Tarantino Smith, claimed OTA would help consumers make “trading [your]
13 primary source of ... income,” calling it “fire [your] boss level” income.

14 (c) At the same event, Smith stated consumers come to OTA to
15 make income that allows them to work less, “so you can spend more time
16 with the family.”

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

21 51. OTA represented to consumers, through various examples and
22 testimonials, that they will be able to earn substantial income by purchasing OTA
23 training. OTA knew that its representations were false when it made them because
24 OTA did not monitor its students’ trading performance. OTA’s limited surveys
25 indicated that most of its students did not trade or lost money when they traded,
26 and TradeStation (the online trading platform used by OTA students) confirmed
27 such indications. *See, infra*, at Fraudulent Concealment. OTA intended consumers
28 to rely on its representations of earnings because it intentionally failed to disclose

1 that it did not track students’ trading performance or the results from its limited
2 surveys or TradeStation reports. Consumers reasonably relied on OTA’s
3 representations of earnings when they purchased OTA training given the specific
4 nature of the examples and seemingly honest testimonials. Consumers were
5 harmed because each paid substantial money for OTA training that failed to
6 materialize into the substantial income that OTA advertised and expanded on at the
7 sales events. Consumers’ reliance on OTA’s representations of substantial
8 earnings were a substantial factor in causing them to lose money.

9 **2. Misrepresentations Regarding OTA’s Strategies**

10 *Profits are a “mathematical certainty.”*

11 — OTA presenters at a March 21, 2019 MTO event

12 **a. Patented Market Timing Strategy**

13 52. OTA misrepresents its strategies to consumers. First, it advertises to
14 consumers that it has a patented strategy to time the market that only can apply to
15 general substantial profits through trading in stocks, foreign currencies,
16 commodities, or other assets. Specifically, OTA represents that its patent on
17 timing the market and strategy purportedly permits its students to realize when to
18 buy and sell investments. This is a false and misleading representation of the
19 patent. While OTA does, in fact, have a patent for a Computer Based Trading
20 System Utilizing Supply and Demand Analysis (U.S. Pat. No. US8650115B1),
21 OTA has not substantiated and cannot substantiate its claim that consumers are
22 likely to profit using OTA’s patented strategy and that OTA’s patented strategy
23 achieves the results described in its advertisements. Nevertheless, OTA references
24 its patent as proof that its strategy works. For example, OTA has made the
25 following misrepresentations regarding its patented strategy:

26 (a) At a Preview Event on December 13, 2018, OTA presenter,
27 Dawn Landry, asserted OTA “has a patent on the fact that you can time the
28 markets,” and the “strategy” it teaches is “a set of rules” that “gives us the

1 ability to know when to get in and when to get out.”

2 (b) Similarly, at a Preview Event on June 12, 2019, OTA presenter,
3 Tarantino Smith, assured consumers they can safely ignore people who “say,
4 ‘Oh, they can’t time the market,’” because “to get a patent, we had to ...
5 prove it to the Government.” Such a claim is false and a constitutes a
6 misrepresentation of the nature of obtaining a patent.

7 (c) At a Preview Event on December 13, 2018, OTA presenter,
8 Landry explained OTA’s “core strategy is a set of rules” that identifies
9 where “there’s a high probability” price will move to a certain point.

10 (d) At the conclusion of Preview Events, consumers who enroll in
11 the MTO event receive a welcome letter from Eyal Shahar himself claiming
12 that the MTO event will introduce OTA’s “patented supply and demand
13 trading and investing strategy which allows us to anticipate market moves
14 with a high degree of accuracy.” Shahar’s letter also contends “[o]ver
15 35,000 of our graduates have the opportunity to live more comfortable and
16 satisfied lives as a result of the skills they’ve learned here at the Academy.”

17 (e) At an MTO event on March 23, 2019, OTA presenter, Kimoto,
18 claimed OTA gives purchasers “rules, verified rules, tested rules that we
19 know work[.]”

20 (f) At an MTO event on March 21, 2019, OTA presenters stressed
21 to consumers the strategy “stack[s] odds in your favor” and that profits are a
22 “mathematical certainty.”

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

24 53. In addition, OTA advertises to consumers that it has a “3-to-1 reward-
25 to-risk ratio” strategy, whereby each winning trade will yield profits of three times
26 what is risked, more than making up for losses on losing trades. Despite that this
27 strategy is only based on hypotheticals, OTA nevertheless emphasized it,
28 misrepresenting consumers’ actual reward-to-risk ratio:

1 (a) At an MTO event on March 22, 2019, OTA presenter, Darren
2 Kimoto, claimed, “So every day you expect one to be a loser, one to be a
3 winner, on average. Three-to-one. So you lose one on one and you make
4 three on the other, so everyday you’re coming out with a — basically two
5 times your risk. So whatever you’re risking, every day you’re making twice
6 that on average.”

7 (b) At an MTO event on May 9, 2019, OTA presenter, Rick
8 Wright, remarked, “Reward-to-risk ratio. . . . [Y]ou should start with a 3 to
9 1. I’m going to risk 10 bucks to make 30 . . . [I]f you’re disciplined and can
10 follow the rules, . . . you only have to be right . . . 25 percent of the time . . .
11 to break even.”

12 (c) At an MTO event on March 21, 2019, Kimoto depicted the
13 effect of the “3-1 reward-to- risk ratio” with a hypothetical week of trading
14 in which each trade either loses \$100 or gains \$300, yielding a profit of
15 \$2,000 for the week.

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

20 **c. Daily Grid Strategy**

21 54. OTA also misrepresents the benefits of the Daily Grid, a feature of the
22 Mastermind Community:

23 (a) As discussed above, Mastermind’s “Daily Grid” allegedly
24 identifies “zones,” in which an asset’s price will change direction, thereby
25 purportedly enabling traders who use the grid to enter a position just before
26 the turn, buying before the price rises and selling before it falls. The Daily
27 Grid forms the basis for claimed profits. OTA calls the Daily Grid its crown
28 jewel and a major selling point for Mastermind. OTA’s analysis of the Daily

1 Grid's selections reflects, however, that most "zones" identified in the Daily
2 Grid never yielded an actual trade because the asset's price did not move
3 into the "zone." OTA's own calculation of the "zone hit rate" is under 50%.

4 (b) At an MTO event on March 22, 2019, OTA presenter, Kimoto,
5 suggested Mastermind is a safety net for profits: "we don't want you going
6 out and finding your own trades at first. So we give you another bank of
7 trades that are pre-vetted called pro picks."

8 (c) At an MTO event on November 20, 2019, OTA presenter, Dale
9 Sargood, promised consumers will learn by copying instructor's successful
10 trades using their own money.

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

26 **3. Misrepresentations Regarding OTA "Instructors" and**
27 **"Education Counselors"**

28 56. OTA "instructors" and "education counselors" advertise its purported

1 financial training and strategy to consumers at live sales events like the Preview
2 Event and MTO event. OTA also represents, and creates the impression, that its
3 instructors and counselors are themselves successful traders. OTA holds them out
4 to consumers as teachers and counselors but, in fact, they are salespeople paid on
5 commission:

6 (a) OTA's Vice President of Admissions, Keeley Hubbard,
7 testified that experience in financial markets or educational counseling is not
8 required to be hired as an education counselor. Additionally, Preview Event
9 presenters are paid 2% of sales, and MTO instructors are paid 3% of sales.

10 (b) A January 25, 2018 offer letter to a former education counselor,
11 Diane Luu, outlined a compensation plan stating, "You will earn
12 commissions from leads and registrations assigned to you by management
13 based on cash collected from your individual 'gross sales.'"

14 (c) A February 27, 2018 sales training guide advised, "Don't look
15 like, act like or sound like, a traditional salesperson"; indicated that
16 consumers who come to OTA are "Upset," "Frustrated," "Worried," "Tired
17 of...," "Nervous," "Anxious," and "Sick of..."; and stated, "We ask
18 questions to discover the *IMPACT* of the *PAIN* so they will make a decision
19 to buy a *SOLUTION*[".]"

20 (d) Luu, a former OTA education counselor, stated in her
21 November 7, 2019 declaration: "It was clear to me from the beginning of the
22 recruiting process that the 'Education Counselor' position was a sales
23 position." Additionally, "[a]s an Education Counselor, my role was to sell
24 Online Trading Academy courses and seminars to potential students."

25 57. OTA represented to consumers that its instructors and education
26 counselors were, in fact, traders who could truthfully and accurately provide
27 information regarding trading and counselors who could customize an education
28 plan for them. OTA's representations were false because its instructors and

1 education counselors were merely salespeople whose objective was to enroll
2 students in tracks and courses that cost thousands of dollars depending on their
3 financial circumstances. OTA knew its representations were false when it made
4 them because OTA intentionally gave its salespeople deceptive titles and intended
5 that consumers rely on the deceptive titles. Consumers reasonably relied on OTA's
6 instructors and education counselors due to their titles and statements in deciding
7 whether to purchase OTA training. Additionally, instructors and education
8 counselors give potential students the impression that OTA admission is selective
9 but, in truth, OTA enrolled anyone who had the money to pay for it. Consumers
10 were harmed because each paid up to tens of thousands of dollars for OTA
11 training. Their reliance on OTA's representations relating to its instructors and
12 education counselors was a substantial factor in causing their harm.

13 **4. Misrepresentations Regarding the Successes of OTA**
14 **Instructors**

15 **a. Unsubstantiated Historical Success**

16 58. Furthermore, OTA instructors, who sell OTA's training to consumers
17 in live seminars, hold themselves out to potential students, such as Plaintiff, as
18 converts and successful traders themselves. The instructors indicate that they
19 themselves are living proof that OTA's financial training works, representing that
20 they became successful traders and amassed substantial wealth using OTA's
21 strategy. For example:

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

1 (b) At an MTO event on June 28, 2019, OTA presenter, Darek
2 Zelek, claimed he was a full-time trader but previously was a contractor who
3 knew nothing about trading until becoming an OTA “student.”; described
4 the wealth and exclusivity of the town where he now lives, including that his
5 neighbor is swimming champion Michael Phelps, who taught his daughter to
6 swim; and informed potential students they would not be able to achieve
7 such wealth “from a regular job,” but only “through investments,” stating
8 that he purchased his home there with profits from trading; and shared that
9 he drives a “750” (the BMW 750, a luxury car) and built a “casita” on his
10 property so that his parents can have their own residence when they come to
11 visit his family.

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

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

1 made only a few thousand dollars in 2019.

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

13 **b. Unsupported Live Success**

14 61. Like the instructors themselves, the trades performed by them at the
15 MTO are fake, simulated, transactions intended to hoodwink potential students into
16 thinking online trading is fast, easy, and lucrative:

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

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

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

1 that transaction.”

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

20 **5. Misrepresentations Regarding OTA Students**

21 *The “market doesn’t care whether somebody’s old, young, has experience,*
22 *has no experience, we just simply plug yourselves into the equation and the*
23 *outcome will be spitted out.”*

24 — OTA Presenter, Darek Zelek, at an MTO Event

25 **a. No Experience Required**

26 63. In addition to the misrepresentations relating to its employees, OTA
27 misrepresents the minimum skills that consumers need to have to learn and apply
28 OTA training. OTA would have consumers believe that anyone can learn to use its

1 purportedly objective rules and easy steps to earn money regardless of background,
2 education, or skill and that following OTA’s steps will automatically result in
3 profits.

4 (a) In a 30-minute TV infomercial released around March 27,
5 2019, OTA claimed, “[A]nybody could do this from any level. You don’t
6 need to have a special type of background.”

7 (b) In a radio ad released on February 25, 2019, OTA advertised,
8 “80 percent of the individuals that come through our doors don’t know a
9 stock from a rock.”

10 (c) In a 30-minute TV infomercial released around March 27,
11 2019, OTA maintained, “No matter who you are, where you come from, or
12 how much experience you have, at your free class, you’ll discover powerful
13 strategies designed to create daily, weekly and monthly income . . .”

14 (d) In a 2018 Market Timing Coursebook, OTA emphasized that it
15 offers “[a]n objective rules-based strategy” composed of “a simple,
16 sequential set of steps[,]” suggesting anyone could follow the strategy and
17 reap profits.

18 (e) At an MTO event on June 28, 2019, OTA presenter, Darek
19 Zelek, attributed his success to a “system,” saying, “as long as I follow the
20 system, the outcome will be provided,” claiming “this is a skill set that
21 anyone can attain,” and the “market doesn’t care whether somebody’s old,
22 young, has experience, has no experience, we just simply plug yourselves
23 into the equation and the outcome will be spitted out.”

24 (f) At an MTO event on November 20, 2019, OTA presenter, Dale
25 Sargood, told consumers that “income production is pretty simple,
26 straightforward, follow the rules, apply the rules, get the result[,]”
27 suggesting earning income is as basic as following rules.

28 (g) At an MTO event on March 21, 2019, OTA presenter, Darren

1 Kimoto, promised, “There’s not one of you that we cannot help,” and “it’s
2 not an if, it’s *when* you get it.”

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

9 **b. Minimal Amount of Investment**

10 64. OTA would also have consumers believe that they do not need to
11 invest a significant amount of money to earn income with OTA training. For
12 example:

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

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

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

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

26 (e) At an MTO event on November 20, 2019, OTA presenter, Dale
27 Sargood, presented a hypothetical trade where “a 825 dollar investment”
28 yields “a 900 dollar profit.”

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

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

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

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

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

12 65. Similarly, OTA would have consumers believe that they do not need
13 to invest a significant time to earn income with OTA training:

14 (a) In a 30-minute TV infomercial released around March 27,
15 2019, OTA advertised all consumers can benefit from OTA, “[w]hether you
16 only have a few hours a week or a few hours a month . . .”

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

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

23 (d) At an MTO event on November 20, 2019, an OTA presenter
24 summarized “so 3,000 dollar investment, right, to make 300 bucks, right,
25 took a couple minutes of time[,]” suggesting that students can repeat the
26 same.

27 (e) At an MTO event on May 9, 2019, Wright claimed he spends
28 “a total of about 30 minutes . . . looking at the screen to see if there’s a

1 trade[.]” suggesting that is all the time a student would need to identify a
2 profitable trade.

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

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

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

12 66. OTA represented to consumers, through various examples and
13 testimonials, that they will be able to earn substantial income by purchasing OTA
14 training. OTA knew that its representations were false when it made them because
15 it had no basis to make such representations as it did not monitor its students’
16 trading performance, OTA’s limited surveys indicated that most of its students did
17 not trade or lost money when they traded, and TradeStation (the online trading
18 platform used by OTA students) confirmed such indications. *See, infra*, at
19 Fraudulent Concealment. OTA intended consumers to rely on its representations of
20 earnings because it intentionally failed to disclose that it did not track students’
21 trading performance or the results from its limited surveys or TradeStation reports.
22 Consumers reasonably relied on OTA’s representations of earnings when they
23 purchased OTA training given the specific nature of the examples and seemingly
24 honest testimonials. Consumers were harmed because each paid up to tens of
25 thousands of dollars for OTA training that failed to materialize into the substantial
26 income that OTA advertised and expanded on at the sales events. Consumers’
27 reliance on OTA’s representations of substantial earnings were a substantial factor
28 in causing them to lose money.

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6. Fraudulent Concealment

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

a. OTA Did Not Monitor Students’ Trading Performance

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

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

(b) “There wasn’t any formal way of tracking that whenever I was with the company, other than initiatives or efforts to get testimonials from students.”

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

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

69. 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

1 respondents stated that they were making no money and 31% were making “a little
2 money[.]” Among members of OTA’s Mastermind Community, who obtain the
3 most extensive training and support, 58% of respondents said they were making no
4 money.

5 70. Illustrative examples of students’ comments provided in response to
6 the first survey are as follows:

7 (a) “I have not been successful yet at all. I have lost a considerable
8 amount of money, I cannot pay back all of my OTA loans that have come
9 due[.]”

10 (b) “There has been absolutely NO SUCCESS. This has been the
11 WORST financial investment I have ever made. I have invested close to
12 \$100,000.00 in OTA (Mastermind, Courses, 3 weeks of travel, 3 weeks
13 away from my practice, and 3 weeks of hiring a substitute Dr. to see my
14 patients). The customer service is POOR. The Student Care Reps in KC are
15 too busy to take my questions, and they have even skipped out on planned
16 meetings. When I try to call with questions, they complain about being too
17 busy. I have tons of questions, but nobody to turn to. I have yet to take a live
18 trade.”

19 (c) “Lack of support at all from center. Student support is bad and
20 not knowledge [*sic*].”

21 71. The second OTA survey conducted shortly after the first survey had
22 similar findings: A third of the respondents were not trading at all, and of those
23 who did trade, less than 4% claimed they were “making lots of money.” Of
24 respondents who traded, over 23% stated that they were losing money and another
25 22% were making no money.

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

28 72. Third, OTA fraudulently concealed that TradeStation reports

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

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

14 **d. Samuel Seiden's Admissions**

15 74. Defendant Samuel Seiden, the creator and most visible proponent of
16 OTA's proprietary trading strategy, whose benefits and income generation
17 potential are the main reason offered for consumers to purchase OTA training,
18 admitted that OTA was "fraudulent business" when he briefly left the company in
19 2018.

20 75. OTA's advertisements, including infomercials and advertisements,
21 have prominently featured Seiden. OTA holds him out to consumers at seminars as
22 the "creat[or of] the patent" and "an impeccable master" of the strategy. Seiden is
23 OTA's Chief Trading Strategist and has previously served in a number of other
24 executive roles at OTA, in at least some of them reporting directly to Defendant
25 Eyal Shahar.

26 76. When Seiden briefly left OTA, a November 20, 2018 email to Keeley
27 Hubbard, OTA's Vice President of Admissions, revealed that Seiden had a dispute
28 about pay, a "decline in student success," "Unethical & Deceptive Sales

1 Messaging,” and hearing from students who were “struggling to pay monthly
2 finance payment[s].” At the time, Seiden claimed to have “overwhelming proof of
3 [OTA’s] fraud” and noted, “I have seen 2 other companies in our industry be shut
4 down by regulators within 24 hours for far less than what Eyal [Shahar] is allowing
5 to happen through OTA. OTA has employees who worked at those firms.” Seiden
6 indicated that he received emails “every day” from consumers “that are losing
7 money because of OTA.” OTA transferred \$500,000 to Seiden in December 2018.
8 Shortly after that, Seiden returned to work at OTA. Through this email, Seiden, an
9 OTA officer, admitted that OTA operates a fraudulent investment scheme to scam
10 students.

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

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

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

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

15 **E. Estimated Consumer Losses**

16 80. Plaintiff is further informed and believes that Defendants have made
17 in excess of \$370 million from January 2014 to May 4, 2019. Over 90,000
18 consumers have paid money to OTA, with over 11,000 consumers paying more
19 than \$10,000, and some paying over \$50,000. OTA's own customer surveys and
20 customers' trading data confirm that most OTA customers do not generate the
21 substantial earnings that OTA falsely advertises. Indeed, most make little or
22 nothing at all, and a large number lose substantial amounts of money in addition to
23 the money they spent on OTA programs, courses, and/or membership.

24 **VII. ENROLLMENT AGREEMENT**

25 **A. Take It or Leave It Agreement with No Negotiations**

26 81. Like the standardized refund agreement that OTA used to inhibit
27 customers' ability to post negative reviews about Defendants and their services
28 according to a federal court's Preliminary Injunction (*see supra*), OTA used a

1 standardized enrollment agreement to severely limit customers’ rights vis-à-vis
2 OTA. OTA purportedly asked consumers who decided to purchase its training to
3 enter into this form Enrollment Agreement. OTA provided the Enrollment
4 Agreement to consumers on a take-it-or-leave-it basis, and consumers could not
5 engage in meaningful negotiations of the Agreement’s terms because consumers
6 are financially insecure individuals who were lured by OTA’s false representations
7 of getting rich quick. The Agreement is oppressive because there is no negotiation
8 of contract terms between OTA and students.

9 82. The first page of the Enrollment Agreement contains the student’s
10 contact information, the track and programs chosen, the tuition and payment
11 details, and the education counselor’s name and comments. The second and third
12 pages contain the “Statement of Terms” in densely worded, single-spaced text.

13 83. The Statement of Terms contained certain disclaimers, buried in fine
14 print, that were so divorced from reality — and from Defendants’ repeated, explicit
15 statements made in their marketing materials, advertisements, and in person, as to
16 be rendered effectively meaningless. As but one example of a purported
17 disclaimer: “I acknowledge that the Online Trading Academy training program
18 and use of its products and services should not be construed as a recommendation .
19 . . to buy or sell any security or the suitability of any investment strategy.”

20 84. The absurd and confusing disclaimers in the Statement of Terms
21 would have no effect on a reasonable consumer faced with the multitude of false
22 and deceptive statements made by Defendants.

23 85. Any argument by Defendants that Plaintiff agreed to arbitration of this
24 dispute and waived the right to bring a class action as part of an Enrollment
25 Agreement that Defendants drafted and induced class members to sign would be
26 without merit. First, Plaintiff’s claims alleged in this action fall outside the scope
27 of the arbitration provision Defendants narrowly crafted. And even assuming that
28 some part of this dispute is not outside of the limited arbitration provision, it is

1 unenforceable under California law because, among other things, it is
2 unconscionable.

3 86. The Enrollment Agreement is therefore unenforceable between
4 consumers and OTA and, at a minimum, between consumers and Defendants
5 Shahar and Seiden.

6 **VIII. CLASS ALLEGATIONS**

7 87. Plaintiff brings this class action on behalf of himself individually and
8 all others similarly situated, pursuant to Rule 23(b)(2) and (b)(3) of the Federal
9 Rules of Civil Procedure.

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

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

20 (a) **Numerosity (Fed. R. Civ. P. 23(a)(1)):** The proposed Class is
21 so numerous and geographically dispersed throughout the United States that
22 the joinder of all Class Members is impracticable. While Plaintiff does not
23 know the exact number and identity of all Class Members, Plaintiff is
24 informed and believe that there are thousands, if not tens or even hundreds
25 of thousands of Class Members. The precise number of Class Members can
26 be ascertained through discovery;

27 (b) **Commonality and Predominance (Fed. R. Civ. P. 23(a)(2)**
28 **and 23(b)(3)):** There are questions of law and fact common to the proposed

1 Class which predominate over any questions that may affect particular Class
2 Members. Such common questions of law and fact include, but are not
3 limited to:

4 i. Whether Defendants' conduct was unlawful, unfair or
5 fraudulent;

6 ii. Whether Defendants' advertising is likely to deceive the
7 public;

8 iii. Whether Defendants' conduct was false, misleading, or
9 likely to deceive;

10 iv. Whether Defendants breached their express warranty;

11 v. Whether Defendants unjustly received funds from
12 Plaintiff and the Class;

13 vi. Whether Defendants violated California's Consumers
14 Legal Remedies Act, Cal. Civ. Code § 1750;

15 vii. Whether Defendants violated California's False Advertising
16 Law, Cal. Civ. Code § 17500;

17 viii. Whether Defendants violated California's Unfair
18 Competition Law, Cal. Bus. & Prof. Code § 17200;

19 ix. Whether Plaintiff and the Class have been harmed and
20 the proper measure of relief;

21 x. Whether Plaintiff and the Class are entitled to an award
22 of punitive damages, attorneys' fees and expenses against Defendants;
23 and

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

27 (c) **Typicality (Fed. R. Civ. P. 23(a)(3))**: Plaintiff's claims are
28 typical of the claims of the members of the proposed Class. Plaintiff and the

1 Class have been injured by the same wrongful practices of Defendants.
2 Plaintiff's claims arise from the same practices and conduct that give rise to
3 the claims of the Class and are based on the same legal theories; and

4 (d) **Adequacy of Representation (Fed. R. Civ. P. 23(a)(4)):**

5 Plaintiff will fairly and adequately protect the interests of the Class in that
6 they have no interests antagonistic to those of the other members of the
7 Class, and Plaintiff has retained attorneys experienced in consumer class
8 actions and complex litigation as counsel.

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

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

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

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

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

27 Rule 23(b)(3) is appropriate because questions of law or fact common to
28 members of the Class predominate over any questions affecting only

1 individual members, and class action treatment is superior to the other
2 available methods for the fair and efficient adjudication of this controversy.

3 (d) The proposed Class is ascertainable and there is a well-defined
4 community of interest in the questions of law or fact alleged herein since the
5 rights of each proposed Class Member were infringed or violated in the
6 same fashion.

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

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

14 (b) This action will promote an orderly and expeditious
15 administration and adjudication of the proposed Class claims, economies of
16 time, effort and resources will be fostered and uniformity of decisions will
17 be insured;

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

22 (d) Plaintiff knows of no difficulty that will be encountered in the
23 management of this litigation which would preclude its maintenance as a
24 class action.

25 92. Defendants have, or have access to, address information for the Class
26 Members, which may be used for the purpose of providing notice of the pendency
27 of this class action.

28 93. Plaintiff seeks damages and equitable relief on behalf of the Class on

1 grounds generally applicable to the entire proposed Class.

2 **IX. CLAIMS FOR RELIEF**

3 **FIRST CLAIM FOR RELIEF**

4 **(Fraud Against All Defendants)**

5 94. Plaintiff re-alleges and incorporates by reference the allegations
6 contained in the entirety of this Complaint as if fully set forth herein.

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

16 96. 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 97. 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

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

6 98. Plaintiff 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 99. Plaintiff 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.

19 100. Plaintiff and the Class's 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.

22 101. Furthermore, Defendants fraudulently concealed from Plaintiff and
23 the 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
25 trade or do not earn money trading; that the online trading platform that OTA
26 students use confirm the surveys' results; that one of OTA's own senior executives
27 has called the business fraudulent; and that OTA has only agreed to provide
28 refunds to dissatisfied consumers who agree to not disparage it.

1 counselors who could customize an education plan for them; that OTA instructors
2 were successful traders; and that OTA's simulated trades were live trades even
3 though they were not.

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

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

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

1 trades.

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

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

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

12 **THIRD CLAIM FOR RELIEF**

13 **(Concealment Against All Defendants)**

14 112. Plaintiff re-alleges and incorporates by reference the allegations
15 contained in the entirety of this Complaint as if fully set forth herein.

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

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

27 115. Plaintiff and the Class could not have discovered these facts and did
28 not know these facts because they are not privy to OTA's business practices,

1 information provided to OTA’s executives, and communications between OTA
2 and certain students. Nothing reflects that Plaintiff and the Class should have
3 known OTA’s earning claims were tenuous and unsupported.

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

12 117. As a proximate result of Defendants’ fraudulent concealment, Plaintiff
13 and Class Members were damaged in an amount to be proven at trial.

14 **FOURTH CLAIM FOR RELIEF**

15 **(Breach of Express Warranty Against Corporate Defendants)**

16 118. Plaintiff re-alleges and incorporates by reference the allegations
17 contained in the entirety of this Complaint as if fully set forth herein.

18 119. Defendants made numerous representations and promises to Plaintiff
19 and Class Members that they would be able to earn substantial income through
20 OTA training.

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

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

28 122. Defendants knew or should have known that their representations

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

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

17 124. Plaintiff and Class Members were harmed as a result and by the
18 failure of OTA training to adequately prepare Plaintiff and Class Members to trade
19 profitably.

20 125. As a direct and proximate cause of Defendants’ representations,
21 promises, and warranties, Plaintiff and the Class suffered significant damages and
22 seek the relief described below.

23 **FIFTH CLAIM FOR RELIEF**

24 **(Unjust Enrichment Against All Defendants)**

25 126. Plaintiff re-alleges and incorporates by reference the allegations
26 contained in the entirety of this Complaint as if fully set forth herein.

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

1 seminars with the intent not to sell them as advertised or represented.

2 136. Defendants' uniform representations as set forth more fully elsewhere
3 in this Complaint were false, deceptive, and/or misleading and in violation of the
4 CLRA.

5 137. Pursuant to section 1782, Plaintiff notified Defendants in writing by
6 certified mail of the particular violations of section 1770 alleged herein and has
7 demanded that they rectify the problems associated with the actions detailed above
8 and give notice to all affected consumers of their intent to so act. (*See Exh. C.*)
9 Plaintiff sent this notice by certified mail, return receipt requested, to OTA's
10 principal place of business. Defendants also received notice by a letter pursuant to
11 section 1782 sent in this action by the Law Offices of Cotchett, Pitre & McCarthy,
12 LLP on April 20, 2020. (*See ECF No. 1-3 [Jine Class Complaint, Exh. C].*)

13 138. If Defendants fail to rectify or agree to rectify the problems associated
14 with the actions detailed above and give notice to all affected consumers within 30
15 days after receipt of the section 1782 notice, Plaintiff will amend this Complaint to
16 seek actual, punitive, statutory, and all other relief available to Plaintiff and the
17 Class under Civil Code section 1780.

18 139. Pursuant to section 1780(a)(2), Plaintiff is entitled to, and therefore
19 seeks, a Court order enjoining the above-described wrongful acts and practices that
20 violate section 1770.

21 140. Plaintiff and the Class are also entitled to recover attorneys' fees,
22 costs, expenses, and disbursements pursuant to sections 1780 and 1781.

23 **SEVENTH CLAIM FOR RELIEF**

24 **(Untrue and Misleading Advertising in Violation of Cal. Bus. & Prof. Code**
25 **§ 17500 et seq. Against All Defendants)**

26 141. Plaintiff re-alleges and incorporates by reference the allegations
27 contained in the entirety of this Complaint as if fully set forth herein.

28 142. California Business & Professions Code section 17500 prohibits

1 various deceptive practices in connection with the dissemination in any manner of
2 representations which are likely to deceive members of the public to purchase
3 products and services, such as the OTA seminars.

4 143. Defendants disseminated, through common advertising, untrue
5 statements about OTA and its training, and Defendants knew or should have
6 known that the training did not conform to the advertisements or representations
7 regarding the training. Defendants intended Plaintiff and the Class to see the
8 advertisements and numerous material misrepresentations as set forth more fully
9 elsewhere in the Complaint. Plaintiff and members of the public relied upon the
10 advertisements and misrepresentations to their detriment.

11 144. As a result of the foregoing, Plaintiff and Class Members are entitled
12 to injunctive and equitable relief and damages in an amount to be proven at trial.

13 **EIGHTH CLAIM FOR RELIEF**

14 **(Violations of Cal. Bus. and Prof. Code §§ 17200, et seq. Against All**
15 **Defendants)**

16 145. Plaintiff re-alleges and incorporates by reference the allegations
17 contained in the entirety of this Complaint as if fully set forth herein.

18 146. California’s Unfair Competition Law, Business & Professions Code
19 section 17200, *et seq.* (the “UCL”) prohibits acts of unfair competition, which
20 means and includes any “unlawful, unfair or fraudulent business act or practice”
21 and any act prohibited by section 17500.

22 147. Defendants violated the UCL’s prohibition against engaging in an
23 “unlawful” business act or practice by, *inter alia*, making extensive false
24 misrepresentations to consumers about OTA’s training and its successes and
25 making, proposing, and/or threatening to enforce contracts that purport to limit the
26 right of consumers to make statements about OTA’s goods or services.
27 Specifically, as further alleged in this Complaint, Defendants violated various
28 statutes, rules, and regulations, including, but not limited to, California Civil Code

1 section 1572 (actual fraud), section 1573 (constructive fraud), section 1709 and
2 section 1710 (deceit), section 1750, *et seq.* (California Legal Remedies Act),
3 California Business & Professions Code section 17500, *et seq.* (false advertising),
4 California Civil Code section 1670.8 (California’s “Yelp Law”), 15 U.S.C. § 45(a)
5 (FTC Act), 15 U.S.C. § 45b (Consumer Review Fairness Act of 2016), and the
6 common law.

7 148. Plaintiff reserves the right to allege other violations of law which
8 constitute other unlawful business acts and practices.

9 149. Defendants also violated the UCL’s prohibition against engaging in a
10 “fraudulent” business act or practice by, *inter alia*, disseminating, through common
11 advertising, untrue statements about OTA and the training it sells that have a
12 tendency to mislead the public and making numerous common material
13 misrepresentations with the intent to induce reliance by consumers to purchase
14 OTA seminars. Specifically, through its nationwide advertising campaign and sales
15 events in dozens of cities, Defendants advertised to consumers that they can earn
16 substantial income through OTA training with its infallible strategies, successful
17 instructors, and simple steps and tools—regardless of consumers’ background,
18 amount of financial investment, and amount of time investment. Furthermore,
19 Defendants violated the UCL by making misrepresentations and untrue statements
20 at the OTA seminars attended by Plaintiff and Class Members.

21 150. The foregoing conduct also constitutes “unfair” business acts and
22 practices within the meaning of the UCL. Defendants’ practices offend public
23 policy and are unethical, oppressive, unscrupulous, and violate the laws stated.
24 Defendants’ conduct caused and continues to cause substantial injury to Plaintiff
25 and Class Members. The gravity of Defendants’ alleged wrongful conduct
26 outweighs any purported benefits attributable to such conduct. There were also
27 reasonably available alternatives to Defendants to further their business interests.

28 151. Plaintiff suffered injury in fact and lost money and/or property as a

1 result of Defendants’ unlawful, fraudulent, and unfair business practices.

2 **NINTH CLAIM FOR RELIEF**

3 **(Violations of California’s “Yelp Law,” Cal. Civ. Code § 1670.8, Against the**
4 **Corporate Defendants and Defendant Shahar)**

5 152. Plaintiff re-alleges and incorporates by reference the allegations
6 contained in the entirety of this Complaint as if fully set forth herein.

7 153. California Civil Code section 1670.8 (California’s “Yelp Law”)
8 prohibits businesses from making, proposing, or threatening or seeking to enforce
9 any contract that limits the right of consumers to make statements about the
10 business, including the right to post online reviews about the business’s goods or
11 services. Section 1670.8’s protections are not waivable.

12 154. Corporate Defendants and Defendant Shahar have, in numerous
13 instances, violated California’s Yelp Law by requiring consumers to sign, or
14 proposing that they sign, purported contracts prohibiting them from making any
15 negative or disparaging comments regarding OTA in online reviews, social media,
16 or to any person or entity, including government entities.

17 155. After consumers complained about the quality of OTA’s training
18 courses and demanded refunds of the extensive fees they paid, Corporate
19 Defendants and Defendant Shahar would force the consumer to sign a non-
20 disparagement agreement as a pre-condition to obtaining a refund of all or part of
21 the fees.

22 156. Corporate Defendants and Defendant Shahar’s violations of
23 California’s Yelp Law were willful, intentional, and/or reckless, making them
24 liable for civil penalties in the amount of ten thousand dollars (\$10,000) for each
25 violation.

26 **X. PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, individually and on behalf of members of the
28 Class, as applicable, respectfully request that the Court enter judgment in his favor

1 and against OTA, as follows:

2 1. That the Court certify this action as a class action, proper and
3 maintainable pursuant to Federal Rule of Civil Procedure 23, declare Plaintiff is
4 the proper class representative, and appoint Plaintiff’s Counsel as Class Counsel;

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

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

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

12 5. That the Court award Plaintiff and the Class all costs and expenses of
13 the action, including reasonable attorneys’ fees;

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

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


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

19 **XI. DEMAND FOR JURY TRIAL**

20 Plaintiff demands a jury trial on all claims so triable.

21
22 Dated: June 29, 2020

UMBERG ZIPSER LLP

23
24 BY: 
25 Brent S. Colasurdo
26 Attorneys for Plaintiff EHAB KHALIL
27 and the Putative Class
28