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

23 **Federal Trade Commission,**

24 Plaintiff,

25 vs.

26 **OTA Franchise Corporation, a**
27 Nevada Corporation,

28 **Newport Exchange Holdings, Inc., a**
California corporation,

NEH Services, Inc., a California
corporation,

No. 8:20-cv-287

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

1 **Eyal Shachar**, also known as Eyal
2 Shachar, individually and as an officer of
3 OTA Franchise Corporation, Newport
4 Exchange Holdings, Inc., and NEH
5 Services, Inc.

6 **Samuel R. Seiden**, individually and as
7 an officer of OTA Franchise
8 Corporation, and

9 **Darren Kimoto**, individually,

10 Defendants.

11
12 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

13 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
14 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the
15 Consumer Review Fairness Act of 2016 (“CRFA”), 15 U.S.C. § 45b, to obtain
16 temporary, preliminary, and permanent injunctive relief, rescission or reformation
17 of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten
18 monies, and other equitable relief for Defendants’ acts or practices in violation of
19 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the CRFA, 15 U.S.C. § 45b, in
20 connection with the sale and marketing of training programs, including seminars,
21 courses, and instructional materials on trading and investing.

22 **SUMMARY OF THE CASE**

23 2. Operating under the name “Online Trading Academy” (“OTA”
24 (alternatively meaning the “Corporate Defendants” collectively)) and led by Eyal
25 Shachar, Defendants purport to teach consumers how to “invest like the pros on
26 Wall Street.” Defendants claim to show their “students” how to find “low-risk,
27 high-potential investing opportunities” by applying a “patented strategy to any
28 asset class including stocks, options, futures and currencies.”

1 3. Defendants target older consumers “with visibility to retirement age,
2 near retirement or retired.” To convince consumers to pay thousands and often
3 tens of thousands of dollars for OTA’s training and related services, Defendants
4 routinely represent, directly or by implication, that purchasers are likely to generate
5 substantial income with OTA’s trading strategy. Typical examples include:

- 6 • A letter from OTA’s CEO and owner, Eyal Shachar, promising that
7 OTA “students” will “be introduced to Online Trading Academy’s
8 patented supply and demand trading and investing strategy which
9 allows us to anticipate market moves with a high degree of accuracy.”
- 10 • A promotional video featuring a retiree who purportedly used OTA’s
11 trading strategy to create “a retirement income that was bigger than
12 his income while he was working,” including “\$40,000 in a single
13 trade.”
- 14 • A testimonial from a purported OTA customer stating, “It took me 18
15 years to develop a decent salary. After three months here at OTA, I’m
16 making almost as much money as my business.”
- 17 • The story of Jasmine Wang, an OTA employee, who purportedly grew
18 a \$12,000 trading account to \$128,000 in nine months.

19 4. Defendants have routinely claimed that consumers who purchase OTA
20 training programs can quickly attain proficiency in OTA’s strategy and deploy it to
21 earn substantial income, regardless of their background and prior experience.

22 5. Defendants’ earnings claims are false or unsubstantiated. OTA’s
23 strategy does not work as advertised, Defendants do not track the trading
24 performance of their customers, and Defendants have no data that would allow
25 them to predict the trading performance of their customers.

26 6. Many dissatisfied customers have requested refunds of the monies
27 they paid for OTA’s training. In numerous instances, when Defendants agree to
28 honor a refund request, they condition the refund on the consumer signing an

1 agreement barring the consumer from posting negative reviews about OTA and its
2 services, and from providing negative information about OTA and its employees,
3 including potential law violations, to law enforcement agencies.

4 7. Defendants have collected hundreds of millions of dollars from
5 numerous consumers across the country. In perpetrating their scheme, they have
6 violated the FTC Act and the Consumer Review Fairness Act.

7 **JURISDICTION AND VENUE**

8 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
9 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), and 53(b).

10 9. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), (b)(3),
11 (c)(2), and (d), and 15 U.S.C. § 53(b).

12 **PLAINTIFF**

13 10. The FTC is an independent agency of the United States Government
14 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC
15 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
16 affecting commerce. The FTC also enforces the CRFA, 15 U.S.C. § 45b.

17 11. The FTC is authorized to initiate federal district court proceedings, by
18 its own attorneys, to enjoin violations of the FTC Act and the CRFA and to secure
19 such equitable relief as may be appropriate in each case, including rescission or
20 reformation of contracts, restitution, the refund of monies paid, and the
21 disgorgement of ill-gotten monies. 15 U.S.C. §§ 45b(d)(2)(A), 53(b), 57b, and
22 56(a)(2)(A).

23 **DEFENDANTS**

24 12. Defendant OTA Franchise Corporation (“OTA Corp.”), also doing
25 business as Online Trading Academy, is a Nevada corporation with its principal
26 place of business at 17780 Fitch Avenue, Irvine, California 92614. OTA Corp.
27 transacts or has transacted business in this district and throughout the United
28 States. At all times material to this Complaint, acting alone or in concert with

1 others, OTA Corp. has advertised, marketed, distributed, or sold training programs
2 and related goods and services to consumers throughout the United States.

3 13. Defendant Newport Exchange Holdings, Inc. (“NE Holdings”), also
4 doing business as Online Trading Academy, is a California corporation with its
5 principal place of business at 17780 Fitch Avenue, Irvine, California 92614. NE
6 Holdings transacts or has transacted business in this district and throughout the
7 United States. At all times material to this Complaint, acting alone or in concert
8 with others, NE Holdings has advertised, marketed, distributed, or sold training
9 programs and related goods and services to consumers throughout the United
10 States.

11 14. Defendant NEH Services, Inc. (“NE Services”), also doing business as
12 Online Trading Academy, is a California corporation with its principal place of
13 business at 17780 Fitch Avenue, Irvine, California 92614. NE Services transacts or
14 has transacted business in this district and throughout the United States. At all
15 times material to this Complaint, acting alone or in concert with others, NE
16 Services has advertised, marketed, distributed, or sold training programs and
17 related goods and services to consumers throughout the United States.

18 15. Defendant Eyal Shachar, also known as Eyal Shahar (“Shachar”), is
19 the chief executive officer, sole director, and former president of OTA Corp. He is
20 also the founder and president of NE Holdings, and the CEO of NE Services.
21 Shachar resides in California, and is the owner, directly or indirectly, of all of the
22 Corporate Defendants. At all times material to this Complaint, acting alone or in
23 concert with others, he has formulated, directed, controlled, had the authority to
24 control, or participated in the acts and practices set forth in this Complaint.
25 Shachar, in connection with the matters alleged herein, transacts or has transacted
26 business in this district and throughout the United States. Shachar is responsible
27 for the direction of Defendants’ global expansion and he is involved in Defendants’
28 day-to-day operations in marketing, finance, and sales.

1 16. Defendant Samuel R. Seiden (“Seiden”) is OTA’s Chief Trading
2 Strategist, and has previously served in a number of other executive roles at OTA.
3 He is the creator and most visible exponent of Defendants’ proprietary trading
4 strategy to consumers and the investing public, whose benefits and income
5 generation potential are the main reason offered for consumers to purchase OTA
6 training programs. Defendant Seiden has featured prominently in OTA’s
7 marketing, and has been held out to consumers at OTA’s live events as the creator
8 of OTA’s patent and “an impeccable master” of OTA’s trading strategy. Seiden
9 curated OTA’s Market Timing Orientation (“MTO”) slide presentation from 2014-
10 2017. He has also participated in managing the MTO sales process more generally,
11 including addressing issues with individual salespeoples’ compensation or
12 performance, and disseminating an “MTO Master Document” outlining the content
13 to be delivered at each phase of the MTO sales pitch. Seiden resides in Illinois. At
14 all times material to this Complaint, acting alone or in concert with others, he has
15 formulated, directed, controlled, had the authority to control, or participated in the
16 acts and practices set forth in this Complaint. Seiden, in connection with the
17 matters alleged herein, transacts or has transacted business in this district and
18 throughout the United States.

19 17. Defendant Darren Kimoto (“Kimoto”) is one of OTA’s chief
20 salespeople, and the head of the sales force that presents OTA’s three-day MTO
21 sales event, discussed in Paragraphs 81 to 116. Kimoto resides in Utah. At all
22 times material to this Complaint, acting alone or in concert with others, he has
23 formulated, directed, controlled, had the authority to control, or participated in the
24 acts and practices set forth in this Complaint. Kimoto, in connection with the
25 matters alleged herein, transacts or has transacted business in this district and
26 throughout the United States.

Common Enterprise

1
2 18. Defendants OTA Corp., NE Holdings, and NE Services (collectively,
3 “Corporate Defendants” or “OTA”) have operated as a common enterprise while
4 engaging in the deceptive acts and practices alleged below. Defendants have
5 conducted the business practices described below through an interrelated network
6 of companies that have unified advertising, common ownership, officers,
7 managers, business functions, employees, and office locations. Because these
8 Corporate Defendants have operated as a common enterprise, each of them is
9 jointly and severally liable for the acts and practices alleged below. Shachar and
10 Seiden formulated, directed, controlled, had the authority to control, or participated
11 in the acts and practices of the Corporate Defendants that constitute the common
12 enterprise.

13 **COMMERCE**

14 19. At all times material to this Complaint, Defendants have maintained a
15 substantial course of trade in or affecting commerce, as “commerce” is defined in
16 Section 4 of the FTC Act, 15 U.S.C. § 44.

17 **DEFENDANTS’ BUSINESS ACTIVITIES**

18 20. Defendants market investment-training programs under the name
19 “Online Trading Academy.”

20 21. Defendants represent to consumers that purchasers of OTA training
21 programs and related services (collectively, “OTA Training”) are likely to earn
22 substantial income by applying Defendants’ patented trading “strategy.”

23 22. Since at least 2004, Defendants have advertised, marketed,
24 distributed, promoted, and sold training programs, including seminars, courses, and
25 instructional materials on trading and investing, to consumers throughout the
26 United States and internationally.

27 23. Defendants offer OTA Training for sale at live events held in hotel
28 conference rooms and over 40 brick-and-mortar training centers throughout the

1 United States and internationally, as well as online. Defendants own and operate
2 some of these centers, while others are owned and operated by franchisees of
3 Defendants.

4 24. NE Holdings owns and operates an Online Trading Academy center
5 located in Irvine, California.

6 25. As of December 31, 2017, OTA owned and operated ten Online
7 Trading Academy training centers in Westwood Los Angeles, California; Woodland
8 Hills Los Angeles, California; Sacramento, California; Long Island, New York;
9 New York City, New York; Boston, Massachusetts; Cincinnati, Ohio; Austin,
10 Texas; Vancouver, Canada; and London, England.

11 26. In 2017, Defendants generated \$44.1 million in revenue from the
12 Online Trading Academy training centers they own and operate.

13 27. Within the last five years, consumers have paid hundreds of millions
14 of dollars for OTA Training.

15 **Online Trading Academy Franchisees**

16 28. Defendants began offering Online Trading Academy franchises on
17 April 20, 2004.

18 29. As of December 31, 2017, thirty-one Online Trading Academy outlets
19 were owned and operated by franchisees, including franchised locations in
20 Arizona, California, Canada, Colorado, Connecticut, Florida, Georgia, Illinois,
21 India, Indonesia, Kansas, Maryland, Michigan, Minnesota, New Jersey, North
22 Carolina, Pennsylvania, Singapore, Texas, United Arab Emirates, United Kingdom,
23 Washington DC, and Wisconsin.

24 30. To acquire an Online Trading Academy outlet, franchisees must sign a
25 franchise agreement with OTA Corp., pay an initial franchise fee, and a monthly
26 royalty fee in the amount of 10% of gross revenue.

27
28

1 31. Franchisees are also required to pay additional fees, including various
2 marketing and advertising fees. OTA Corp. established a marketing fund to pool
3 the marketing and advertising fees it receives from franchises.

4 32. OTA Corp. has sole discretion over all matters, including operational
5 and marketing matters, relating to the marketing fund. OTA Corp. uses the
6 marketing fund to promote the Online Trading Academy brand and the Online
7 Trading Academy training centers.

8 **Online Trading Academy's Sales Process**

9 33. Defendants advertise OTA Training to consumers through a variety of
10 marketing mediums including television, radio, direct mail, search engine
11 advertising, Internet banner advertisements, email, websites, online videos,
12 telemarketing, webinars, social media, and live events.

13 34. Defendants widely disseminate their advertising for Online Trading
14 Academy throughout the United States.

15 35. Defendants' advertising targets older consumers "with visibility to
16 retirement age, near retirement or retired."

17 36. Defendants also target consumers "who are dissatisfied with the state
18 of their financial affairs, worry about the sufficiency of their portfolios and seek
19 more control over their financial future."

20 37. Defendants rely on a multi-step sales process to attract consumers.

21 38. First, Defendants engage in mass marketing to drive consumers to
22 register and attend a free three-hour seminar Defendants call "Market Timing
23 Preview" or "Power Trading Workshop" ("Preview Event").

24 39. Second, Defendants use the Preview Event to entice consumers to
25 enroll in a three-day seminar called "Market Timing Orientation."

26 40. Defendants typically offer the Market Timing Orientation for \$299.
27 Some consumers are offered attendance at a Market Timing Orientation for free.
28

1 41. Third, Defendants use the Market Timing Orientation seminar to
2 convince consumers to enroll in courses and seminars that cost thousands to tens of
3 thousands of dollars.

4 42. To entice consumers to purchase OTA Training, Defendants make
5 false or unsubstantiated earnings claims throughout their sales process.

6 43. Defendants routinely offer to finance part or all of the cost of the OTA
7 Training. OTA Corp. often offers loans with interest rates at or around 18%, with
8 forgiveness of all interest if the loan is paid in full within the first six months.

9 44. In some instances, Defendants' representations, express or implied,
10 have led consumers to the belief that they would be able to quickly pay off their
11 loans with earnings from trading using Defendants' strategy.

12 **Defendants' Mass Marketing Campaign**

13 45. Defendants promote the Preview Events through numerous venues,
14 including television, radio, websites, Internet banner ads, search engine
15 advertising, YouTube videos, and direct mail.

16 46. For example, Defendants aired an infomercial nationally in 2019 that
17 included the following representations about OTA Training, among others:

- 18 • It will show consumers how “to create daily, weekly, and monthly
19 income.”
- 20 • It “can help you learn to make the right buy and sell decisions.”
- 21 • The strategy is “designed to make money in any market, whether it’s
22 going up or down.”
- 23 • The strategy can “help you to generate daily or monthly income, while
24 also protecting and growing wealth.”
- 25 • The strategy is “proven.”
- 26 • “No matter your experience and goals, Online Trading Academy can
27 teach you how to apply strategies to create an additional source of
28 income.”

- 1 • A testimonial from a purchaser stating –“in three hours I made
- 2 \$12,000” in a single trade.
- 3 • A testimonial from a purchaser stating – “I made \$32,000 in less than
- 4 seven trading days.”
- 5 • A testimonial from a purchaser stating that, prior to purchasing and
- 6 using the OTA Training, she was a dentist, but now “I don’t have to
- 7 work for anybody.”

8 47. Defendants’ radio advertisements make similar claims. For example,
9 on February 25, 2019, Kevin Young of OTA Minneapolis joined “The Need To
10 Know Morning Show” with radio host Steve Hallstrom on AM 1100 The Flag to
11 promote a Preview Event in Fargo, North Dakota. Young claimed that OTA
12 “teach[es] people ... to generate income” and that consumers should not think
13 trading in the market is not for them, because “80% of the individuals that come
14 through our doors don’t know a stock from a rock.” Young opined that many
15 people need a new source of income to supplement their salary, or so that they can
16 quit their job entirely, and suggested that OTA Training can provide that income.

17 48. OTA radio spots aired frequently throughout 2018 and 2019 in the
18 New York City metro area and represented that consumers who purchased OTA
19 Training would likely earn substantial income, using phrases such as “generate
20 monthly cash flow,” “generate income,” and “make money in the market.”

21 49. One such New York City area radio ad dramatizes an alleged
22 encounter between two friends. The one who has recently purchased OTA Training
23 says, “It’s almost like having a second paycheck without having a second job,”
24 leading the other friend to later say, “Now I don’t have to ask my boss for a raise,
25 I’ll just give myself one!”

26 50. In another New York City area radio ad, a purported OTA instructor
27 who lost his job at age 60 before finding OTA, is held up as a “success story”; he
28 explains that he came to OTA with the goals to “never to work for anyone again, to

1 make money wherever I was in the world, ‘cause I got people I love all over the
2 place, and generate income and wealth for the rest of my life and then teach my
3 kids how to do this.”

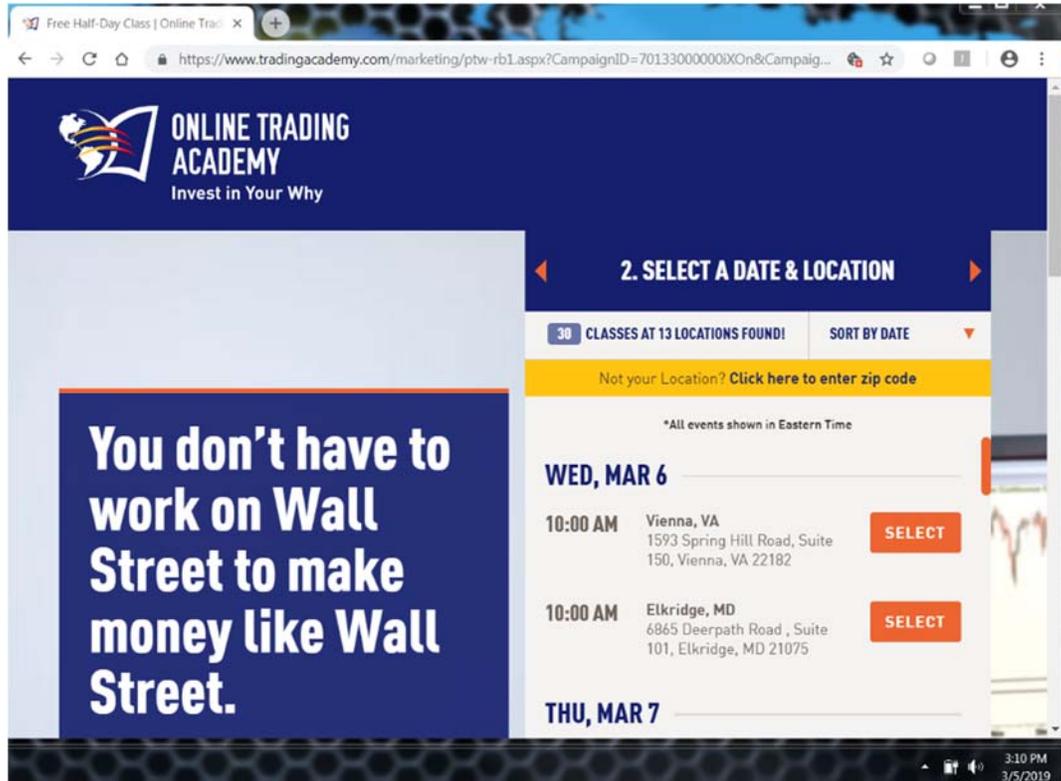
4 51. The New York City area radio ads claim that using OTA Training,
5 consumers will earn enough income to alter their lifestyle. One ad claims, “Do
6 you wish you could have more income to live the lifestyle you want? What about
7 retirement? Are you relying on your job as your sole source of income? We’d like
8 to show you a plan to generate active income from the market, and create passive
9 income to build your retirement.”

10 52. Another such ad boasts, “At Online Trading Academy, we help people
11 develop the skills necessary to generate monthly cash flow, so you can spend time
12 on the things that matter the most. Taking care of your family. Retiring
13 comfortably. Or just making it easier to pay off those bills.” Yet another, which
14 aired as recently as August 30, 2019, asks, “Wouldn’t it be nice to have enough
15 money to vacation whenever you want, for life? You COULD! Larry Mullins
16 here, with a program I signed up for that could unlock that potential.”

17 53. A number of radio advertisements represent that, by simply attending
18 OTA’s free Preview Event, consumers will learn how to use OTA’s strategy to earn
19 income. For example, an ad played in the New York City area in 2018 or 2019
20 stated: “attend one of [OTA’s] free classes where you can learn how to earn income
21 in the market and achieve a life of financial freedom. In this free class Online
22 Trading Academy will show you how to generate income by identifying low-risk,
23 high-reward opportunities.”

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1 54. OTA’s websites make similar claims. For example, on March 5, 2019,
2 the website tradingacademy.com, a screenshot of which is depicted below, stated,
3 “You don’t have to work on Wall Street to make money like Wall Street.”
4



1 55. Defendants also use earnings claims in promotional videos on the
2 Internet. For example, a video published on OTA’s YouTube channel, screenshots
3 of which are depicted below, features Bill Avery, a purported OTA Training
4 purchaser who purportedly created “a retirement income that was bigger than his
5 income while he was working.” During the video, Mr. Avery proclaims: “Online
6 Trading Academy teaches you how to make money and how to avoid losing it.”
7 He also claims he was able to make “\$40,000 in a single trade.”



Defendants' Free Preview Events

56. Defendants typically invite consumers to enroll in a Preview Event by registering online through OTA's website or calling a toll-free number.

57. During their telephone interactions with consumers, OTA's telemarketers reinforce the notion that consumers are likely to earn substantial income through deploying OTA's trading strategy.

58. Attempting to convince consumers to enroll in OTA's Market Timing Orientation workshop, OTA presenters make earnings claims throughout the Preview Event, including via testimonials of purported OTA "students."

59. For example, at a Preview Event held at OTA's Irvine headquarters on December 13, 2018, OTA presenter Dawn Landry claimed that:

- consumers "could potentially make \$50,000 of annual income with an account size as low as \$5,000."
- OTA "ha[s] a patent on the fact that you can time the markets," which "gives us the ability to know when to get in and when to get out, long-term and short-term."
- OTA has "strategies ... that you can actually use the trading to create a secondary income and then also the potential of making it a full-time career."

60. At a Preview Event held in OTA's offices in New York City on June 12, 2019, an OTA presenter who introduced himself as "Tarantino" claimed that:

- Consumers could potentially make \$50,000 of annual income with an account size as low as \$5,000.
- OTA can help consumers make "trading ... [your] primary source of ... income," calling it "fire [your] boss level" income.
- Consumers come to OTA to make income that allows them to work less, "so you can spend more time with the family."

- 1 • With OTA's strategy, "you can be wrong 60 percent of the time
2 and still end up on top."

3 61. At the Preview event, Defendants typically offer the Market Timing
4 Orientation workshop at \$299, or a similar price, while claiming that this is a
5 "special discount," and that the "retail" price is \$600 or considerably higher.

6 62. After they enroll in the Market Timing Orientation workshop,
7 consumers typically receive a letter from Shachar, welcoming them to the "Online
8 Trading Academy Family." The letter states that during the Market Timing
9 Orientation, the consumer will "start to define [her] strategy for generating short-
10 term income and building long-term wealth" and "be introduced to Online Trading
11 Academy's patented supply and demand trading and investing strategy which
12 allows us to anticipate market moves with a high degree of accuracy."

13 63. Shachar's letter also claims that "[o]ver 35,000 of our graduates have
14 the opportunity to live more comfortable and satisfied lives as a result of the skills
15 they've learned here at the Academy."

16 **Defendants' "Education Counselors"**

17 64. OTA typically assigns an "Education Counselor" to enrollees in a
18 Market Timing Orientation workshop.

19 65. OTA's Education Counselors are salespersons hired by OTA or its
20 franchisees to sell OTA Training. They earn commissions based on the payment
21 collected from their gross sales of OTA Training.

22 66. Education Counselors typically do not reveal to consumers that they
23 are commission-based salespersons.

24 67. Education Counselors often have little to no experience with
25 education or counseling.

26 68. Education Counselors typically make contact with consumers in
27 preparation for the Market Timing Orientation workshop. OTA often refers to
28 these contacts as "Touch Points" or TPs."

1 69. Education Counselors typically conduct the Touch Points by
2 telephone and email before the classes begin and then conduct in-person Touch
3 Points during the event.

4 70. Defendants use the Touch Points to reinforce the notion that
5 consumers are likely to profit substantially if they purchase OTA Training.

6 71. For example, during a Touch Point telephone call on March 19, 2019,
7 Online Trading Academy Education Counselor Erik Leoni made the following
8 representation to an FTC investigator who attended a Preview Event undercover:
9 “[W]hen we talk about wealth management we call it [P]roactive [I]nvestor.
10 Basically what we do is we teach our students how to move it around once a
11 month. You know, we’re not active in there, but we’re making our 1 to 2 percent a
12 month and, you know, we’re protecting if a crash and, you know, compounding
13 that so that -- you know, that adds up pretty quick.”

14 72. During a Touch Point meeting on June 27, 2019, an OTA Education
15 Counselor Adam Sande told an FTC investigator, who attended a Market Timing
16 Orientation workshop undercover, that with OTA’s strategy, “you can make a profit
17 on your trade if [the market] goes up, down, or it just stays sideways,” and that “a
18 lot of students” who finance their OTA purchase use trading profits to pay off their
19 loans. Mr. Sande also claimed that some consumers simply copy OTA instructors’
20 trades, “[a]nd they’re happy – and that’s their trading income. they’re happy
21 with that.”

22 73. Defendants train their Education Counselors not to “look like, act like
23 or sound like, a traditional salesperson,” but instead to take on a “role” and lead
24 consumers through “The Pain Funnel,” a set of questions designed to elicit and
25 overcome consumers’ problems and fears, to induce them to purchase.

26 74. During the sales process, Education Counselors give consumers the
27 impression that admission into the Online Trading Academy is selective and based
28 on admissions criteria designed to determine whether it is suitable for them.

1 75. In truth and in fact, Defendants will enroll anyone who has the money
2 to pay for their courses and seminars or who is eligible for financing. OTA Corp.
3 instructs their Education Counselors to turn someone away only if he or she will
4 “poison” the “room.” That is, that the consumer’s skepticism might dissuade other
5 consumers from purchasing.

6 76. During the Touch Points, Education Counselors typically ask each
7 consumer to complete a questionnaire known as an Income and Wealth Education
8 Planner (“IWEP”). The IWEP asks consumers to disclose all of their assets,
9 including real estate and tax-protected retirement accounts.

10 77. Education Counselors typically tell consumers that they will use the
11 IWEP to prepare a customized “Education Plan” for each of them. Education
12 Counselors typically present consumers with their Education Plan during the
13 Market Timing Orientation workshop.

14 78. The Education Plans presented to consumers are typically based on
15 predetermined templates.

16 79. Education Counselors typically use the Education Plan as a sales tool
17 to upsell packages of courses and seminars to consumers during the Market Timing
18 Orientation workshop.

19 80. Education Counselors also can, and sometimes do, directly leverage
20 the asset disclosures in their sales pitch. For example, by suggesting higher-priced
21 products to wealthier consumers, and identifying specific assets, such as retirement
22 accounts, that they suggest the consumer liquidate or borrow from to fund the
23 purchase of OTA Training.

24 **Defendants’ Three-Day “Market Timing Orientation” Workshops**

25 81. Defendants hold three-day Market Timing Orientation workshops at
26 OTA centers worldwide and online.

27 82. During the Market Timing Orientation workshops, OTA presenters
28 attempt to convince consumers to enroll in courses that are more expensive and

1 buy additional products and services. These include, among others, OTA's
2 "Income Solution" package for \$18,995 and "Mastermind Total Solution" package
3 for \$51,995.

4 83. During the Market Timing Orientation workshops, Defendants repeat,
5 reinforce, and expand on the earnings claims made in the mass marketing and in
6 the Preview Events.

7 84. The Market Timing Orientation workshops consist mainly of oral
8 presentation by OTA representatives, presented as "instructors," aided by a
9 slideshow prepared and provided by OTA Corp.

10 85. The "instructors" are OTA salespeople paid on commission. They
11 typically do not reveal that fact to workshop attendees.

12 86. During breaks in the presentation, OTA Education Counselors meet
13 with consumers to attempt to close sales, leveraging the earnings and similar
14 claims made by the presenters.

15 87. OTA presenters often convey to workshop attendees that OTA's
16 strategy will enable them to replace their income from work and quit their jobs.
17 For example, in workshops held in March 2019 at OTA's California headquarters,
18 and in June 2019 at an OTA New York City office, OTA presenters asked attendees
19 whether they would quit their day jobs if OTA showed them how to make more
20 money with its strategy than they currently earn at their jobs.

21 88. Indeed, the slides that OTA Corp. provides to the presenters instruct
22 the presenters to tell attendees that "quite a few" people come to OTA seeking to
23 trade for "supplemental income or their main stream of income for their family."

24 89. During the Market Timing Orientation workshops, OTA presenters
25 routinely show consumers purported trades yielding significant profits. Presenters
26 routinely claim that they have made these trades, often earlier that same day, and
27 that they have reaped certain specific dollar amounts in profits from them.
28

1 90. In some instances, these claims are not true; rather, trades shown to
2 consumers are simulated, not real trades.

3 91. OTA presenters state or imply that consumers, too, are likely to
4 achieve similar profits using OTA's strategy. Defendants provide workshop
5 attendees with a booklet that, among other things, represents that the presenter's
6 trades are real trades.

7 92. For example, Defendant Kimoto – an OTA presenter who also
8 oversees OTA's other Market Timing Orientation presenters – led a March 2019
9 workshop held at OTA's California headquarters, where he made the following
10 statements:

- 11 • “So this trade executed right here and then it dropped down to
12 an area right here where I anticipated that it should start to rally.
13 So I got out right here. And that trade literally, just so you
14 know, that's on five-minute intervals. So that was in five, 10,
15 15, 20, 25, 30-minute period of time, ended up locking in
16 \$1,200 in profit. How many of you think you might be
17 interested in short-term trading? ... But you've got to learn how
18 to time the market. And we can do that with a high degree of
19 certainty. Not a guarantee, but do I need to be right all the
20 time? ... No. I can be right ...40 percent, and I'm still making
21 good money.”
- 22 • “How much money? \$15,000 was tied up ... So if you tie up 15
23 grand and make 12 [hundred dollars], that's almost 8 percent in
24 half an hour. How many of you are making 8 percent a year, in
25 let alone a half an hour? Right. Most of you are making half a
26 percent a year, right?”
- 27 • “Daily income is money that we make every...day. So the trade
28 that I showed you today, that would be what kind of

1 income?...Daily. I was in and out within the day, \$1,200, daily
2 income. All right? Imagine if you could make \$1,000 a day
3 consistently. That is a decent additional income, yes or no?"

4 93. In a June 2019 workshop held at an OTA office in New York City,
5 OTA presenter Darek Zelek made the following statements to attendees:

- 6 • "I actually have a position right now that I should probably
7 manage. Is it okay if I make some adjustments on my stocks,
8 guys? ... so let's, here, so I have 10 contracts on this, guys ... So
9 what I'm going to do, let me do this, let's, it's moving pretty
10 fast, guys, okay, so, so what I'm going to do is I'm going to
11 adjust my stocks [stops] ... So I went short NASDAQ, I'm still
12 in it. There we go, price is still moving down, okay, so this is
13 this, this number, are you guys connecting on this? ... I just
14 adjusted my stock [stop], so I'm guaranteed to walk away with
15 the 5 grand, now that's a guarantee ... What I'm doing is I'm
16 just waiting for price to further go down ... I took this trade
17 today in the morning right around 8:30 or so. I like to take
18 some of the transactions on futures just about an hour before
19 market opens ... There, done, I closed for 6,050, done."
- 20 • "So what is your rate of return on something like this? The way
21 you calculate this, you take 6,050 ... Divide by the money that
22 you outlay, which is 20,900, and what do you get? ... Right, so
23 basically it's 28 percent rate of return, ROR, on your capital, 28
24 percent."

25 94. During the Market Timing Orientation workshops, OTA presenters
26 typically make numerous representations about their own purported trading and
27 personal experience, creating the impression that they are successful traders who
28 have become wealthy by employing OTA's strategy.

1 95. For example, in the March 2019 California workshop, Defendant
2 Kimoto:

- 3 • Claimed he once “was sitting in your seat right there,” and “had
4 been struggling as a trader,” with “close to \$60,000 in losses.”
- 5 • Claimed that, after learning to apply OTA’s strategy, he quit his
6 job “because I was making as much in the trading.”
- 7 • Told stories about travelling the globe, including an anniversary
8 trip to Bora Bora with his wife where they swam with sharks,
9 visiting castles while vacationing in Scotland with his wife, and
10 claiming “I’ve taken my kids all over the world. You know,
11 we’ve been to Asia, we’ve been to Europe, South America.”
- 12 • Described enjoying expensive hobbies, including paragliding,
13 surfing, golf (including hiring a golf pro to improve his game),
14 and surfing behind his expensive ski boat.
- 15 • Described the “very affluent neighborhood” he lives in, where
16 “kids in the neighborhood” have “live-in nannies, cooks,
17 gardeners,” and the latest iPhones and Apple watches.
- 18 • Described how, once you are earning a million dollars a year,
19 “[y]ou’re able to associate with another socio-economic
20 group....”
- 21 • Described how his income from trading has improved his life,
22 allowing him to attend his younger daughter’s competitions and
23 events and removing a source of stress from his marriage. He
24 boasted, “money is not a limiting factor in our lives anymore.”

25 96. Also in the March 2019 California workshop, OTA presenter Ryan
26 Kaestner described his idyllic life living “on the beach down in Florida,” and
27 claimed he recently spent six weeks on vacation in Thailand with his fiancé.
28

1 97. Similarly, in the June 2019 workshop in New York City, Darek Zelek:

- 2 • Said he was a full-time trader, but previously was a contractor
3 who knew nothing about trading until becoming an OTA
4 “student.”
- 5 • Claimed that he struggled to pay the cost of his OTA courses,
6 saying, “I had to decide whether it was, you know, food or
7 utilities, and how do you think the conversation went with my
8 wife?” He claimed that after financing much of his OTA
9 training, he was left with only \$7,000 he could invest, yet made
10 sufficient profits investing that \$7,000 to live off of it, and pay
11 off his loan within eight months.
- 12 • Described the wealth and exclusivity of the town where he now
13 lives, including that his neighbor is swimming champion
14 Michael Phelps, who taught his daughter to swim, and told
15 consumers they wouldn’t be able to achieve such wealth “from
16 a regular job,” but only “through investments,” claiming that he
17 purchased his home there with profits from trading.
- 18 • Claimed income from trading has enabled him to live abroad,
19 including in Dubai, Europe (where his family lives three
20 months per year), and India (where he had household staff).
- 21 • Described the expensive hobbies he and his family enjoy,
22 including frequent scuba diving, skiing at resorts such as
23 Whistler, and, for his young daughter, horseback riding and
24 ballet.
- 25 • Claimed he drives a “750” (the BMW 750 is a luxury car) and
26 that he built a “casita” on his property so that his parents can
27 have their own residence when they come to visit his family.

28

- 1 • Claimed he makes so much money, just his tax payments could
2 support more than three families, or buy a “super luxury car”
3 every year.
- 4 • Implied that anyone can be as successful as him by attributing
5 his success to OTA’s strategy: “as long as I follow the system,
6 the outcome will be provided.”

7 98. In numerous cases, the presenters’ claims of personal trading success
8 are false. And in numerous cases, OTA does not have substantiation for presenters’
9 claims of personal trading success.

10 99. The Market Timing Orientation workshops typically include examples
11 and testimonials of purportedly successful OTA “students.” For example, a 2019
12 slideshow presentation provided by OTA Corp. includes:

- 13 • A testimonial stating, “I’m doing an average of \$800 a day
14 now.”
- 15 • A testimonial from a “student” who achieved a 31.7% profit in
16 “Short Term Income” with “No Prior Trading Knowledge.”
- 17 • A testimonial stating, “I’m profitable 85% of the time.”
18 Expanding on this testimonial at the March 2019 California
19 workshop, Defendant Kimoto added, “In November, he made
20 \$7,000 in profit ... December made \$17,000 ... January made
21 \$41,000 in profit.”

22 100. During the March 2019 Workshop Defendant Kimoto also:

- 23 • Related the story of an underprivileged youth who was trained
24 by OTA, then “[r]ealized gains [of] almost a million dollars in
25 six months.”
- 26 • Related the story of an OTA employee, Jasmine Wang, who set
27 herself a challenge to grow a \$12,000 account using only trades
28 taken from the Daily Grid, a menu of trade suggestions

1 provided by OTA to Mastermind-level purchasers every trading
2 day. Ms. Wang purportedly grew the account to \$128,000
3 (1,067% increase) in just nine months.

- 4 • Read a testimonial from a consumer stating, “It took me 18
5 years to develop a decent salary. After three months here at
6 OTA, I’m making almost as much money as my business.”

7 101. During the June 2019 New York City workshop, presenter Zelek
8 presented the following purported success stories to attendees:

- 9 • An engineer who had been laid off and had only \$3,000 to
10 invest after paying for OTA Training; a year later, he supported
11 his wife and two children with income from trading.
- 12 • A hedge fund manager, who, after being trained by OTA,
13 deployed its “strategy” to manage a majority of the fund’s
14 assets.

15 102. During the March 2019 California workshop, Defendant Kimoto, who
16 is in charge of all Market Timing Orientation presenters and curates the slide
17 presentation, told consumers that all of the testimonials “have been audited,”
18 explaining, “[o]therwise it’s not fair because maybe they had one week where they
19 were successful, but maybe they just got lucky. Right?”

20 103. In truth, Defendants do not audit testimonials to ensure that the results
21 presented in the testimonials are typical for consumers who purchase OTA Training
22 and attempt to deploy its strategy.

23 104. In the Market Timing Orientation workshops, Defendants also use
24 hypotheticals, including purported trading plans, to convey the type of profit that
25 OTA “students” should expect. Typical examples include:

- 26 • A hypothetical trade where “Risk of \$100” yields “Profit of
27 \$3000.”

- 1 • A “plan” for a consumer yielding “Avg. \$300/Day” using only
2 “\$5,000” of capital and “2 Hours/Day.”
- 3 • A “plan” for a working couple with children with “Lack of
4 Time” and “Limited Resources” yielding “\$100 Average Per
5 Day.”
- 6 • “Now, this was on a little longer term time frame. So in about a
7 week, you had a nice runoff of that, you know, a week later. If
8 you had done this investment, you would have had a 30-to-one
9 reward to risk ratio. That means every \$1,000 you risk, you
10 made \$30,000 within a week off of that trade...”
- 11 • “[I]f you make 9,000 dollars in a day, you know, or five grand
12 in a day, how many of these do you need to pay off the [OTA]
13 tuition? I’m just saying, you know. Not too many, yes or no?”
- 14 • “How many of you would like to invest \$1.4 million? All you
15 need is \$15,000 in the futures market to do it. And then you
16 benefit from the \$1.4 million investment. If \$1.4 million moves
17 by 2 percent, that’s a \$20,000 return. And all you had was
18 \$15,000 posted. That’s fan-freaking-tastic. Does everybody
19 see why we like futures, yes or no?”
- 20 • “How many of you, if you made \$1,000 a day of additional
21 income that would change your life? Yeah. Change your zip
22 code for sure.”
- 23 • “And it can compound very, very fast. What if you -- okay. Six
24 thousand dollars extra in a month. Six thousand dollars extra in
25 a month. Would that be meaningful? For some of you, that’s
26 another income stream. Does that make sense?”

27
28

- 1 • “If you could make \$700 in cash flow per day, because this
2 hasn’t even been 24 hours, by the way, is that good cash flow
3 for a day? Extra cash flow.”
- 4 • “If you did two contracts, you’re up \$800. If you make \$800 in
5 a trading session, \$800 a day, that’s ... [f]our grand a week, 16
6 grand a month. That’s about \$200,000 a year. \$800 a day is
7 \$200,000 a year of additional income. How many of you, that’s
8 an okay additional income for you? And this was done in,
9 what, an hour? So you could have just gone in that
10 morning, looked at all the trades he identified and said I’ve got
11 to run off to work, set your stops, your targets and go to work.”
- 12 • “You would have made \$2,000 in a day off of this trade, or
13 \$1,000 in a day off this trade only using \$2,000 in capital to do
14 it, which is a 50 percent rate of return potential per day in the
15 currency market. That’s your opportunity here, everybody.”
- 16 • “So every day you expect one to be a loser, one to be a winner,
17 on average. Three-to-one. So you lose one on one and you
18 make three on the other, so everyday you’re coming out with a -
19 - basically two times your risk. So whatever you’re risking,
20 every day you’re making twice that on average. If you risk
21 \$100 per trade, you’re pacing at \$200 a day with that formula.
22 Does everybody see that?”
- 23 • “So that trade would have made us \$12,825 ... for a little over a
24 month-and-a-half worth of time ... How many of you think you
25 might like an additional \$12,000 in monthly income?
- 26 • “If you want to make six, seven figures in a year, this is a skill,
27 and it will pay, it will pay well, but it takes time to develop that
28 skill.”

1 **OTA’s Daily Grid**

2 105. At the Market Timing Orientation workshops, OTA presenters
3 promote Defendants’ most expensive offering, “Mastermind,” typically spending
4 significant time on one of its features in particular, referred to as the “Daily Grid”
5 or the “Supply and Demand Grid.”

6 106. The Daily Grid is a set of buy and sell signals for several dozen
7 specific financial assets, created by OTA’s “best traders” and provided daily to
8 Mastermind subscribers. Defendants claim that the Daily Grid identifies market
9 turning points “with a high degree of accuracy,” applying “our education in real
10 market conditions” to reduce the time Mastermind subscribers must spend
11 identifying profitable trades.

12 107. The workshop slideshow includes numerous examples of profitable
13 Daily Grid trades. Defendant Kimoto told consumers in the March 2019 California
14 workshop that the Daily Grid is OTA’s “crown jewel,” that a majority of the trades
15 it suggests are winners, and that consumers could make \$10,000 in a single day,
16 just by making two trades off the Daily Grid.

17 **Claims That Everyone Can Make Money with OTA’s Proven Strategy**

18 108. Throughout the sales process, from its advertisements to the Market
19 Timing Orientation workshops, OTA routinely represents, explicitly or implicitly,
20 that anyone, regardless of skill level and experience, can learn to use OTA’s
21 strategy to profit; that the strategy is rules-based, objective, or otherwise accessible
22 to all; and that attaining proficiency in deploying it does not require any special
23 aptitude or facility.

24 109. For example, one OTA infomercial that aired in 2019 advertises
25 OTA’s “rules-based strategy” to “generate daily or monthly income,” calling it “a
26 proven step-by-step approach.” The ad claims “anybody could do this from any
27 level. You don’t need to have a special type of background.”
28

1 110. Another infomercial that aired in 2018 and early 2019 claims that
2 consumers will learn “how to make money whether the markets are going up,
3 down or sideways,” that consumers can use OTA’s strategy to profit “[w]hether
4 you only have a few hours a week or a few hours a month,” and that OTA “can
5 help you generate monthly cash flow so you’re able to spend more time on the
6 things that matter most to you.” The ad further claims that “it doesn’t matter how
7 much or how little you currently know about the financial markets,” and that “the
8 markets know no age, no race, no gender, no background or even education level.”

9 111. During the March 2019 workshop, Defendant Kimoto told consumers:

- 10 • That making money with OTA’s strategy was like baking
11 cookies: all you have to do is follow the recipe.
- 12 • That OTA’s strategy “stack[s] odds in your favor,” and thus
13 profits are a “mathematical certainty.”
- 14 • “And so every day you spend an hour, identify your trades,
15 you’re done for the day. And it’s a money-making machine
16 that’s just happening in the background for you. Does
17 everybody get that? Set and forget, set and forget.
- 18 • “[D]o you have to sit here and monitor and watch this all the
19 time? No. It can fit into any lifestyle. So if you have a job, no
20 big deal.”
- 21 • “Because it takes how long to analyze and find one of these
22 trades? You can do that per chart in 10 minutes. Ten minutes
23 per chart, you should be able to identify a good quality zone,
24 execute a trade.”
- 25 • Regardless of how big the shortfall between a consumer’s
26 retirement goal and current means, “[t]here’s not one of you
27 that we cannot help fix. Is everybody clear? Because it really
28 all starts with increased income. If all of a sudden I help you

1 start generating an extra \$1,000 a day in income, that will
2 forever change your life.”

3 112. Also during the March 2019 workshop, Education Counselor Erik
4 Leoni told an undercover FTC investigator that he “never went to college” and
5 “barely made it through high school,” and “if I can get it, anybody can get it.”

6 113. The Market Timing Orientation course book further reinforces these
7 claims, stating that:

- 8 • “Core Strategy offers students very low-risk, high-reward, and
9 high-probability trading and investing opportunities. Through a
10 simple step-by-step, rule-based strategy, you learn the
11 fundamentals to consistently identify these quality trading and
12 investing opportunities with a high degree of accuracy.”
- 13 • OTA’s strategy “has proven to successfully work regardless of
14 the type of investor you are or the financial markets you trade
15 in.”
- 16 • The minimum time commitment needed to use OTA’s strategy
17 to trade different asset classes starts as low as 1 hour per day.

18 114. In fact, in numerous cases consumers have been unable to attain
19 proficiency in OTA’ strategy, or have been unable to implement it due to their
20 limited time or financial resources.

21 115. Through the representations described above, Defendants create the
22 impression that consumers who purchase OTA Training are likely to earn
23 substantial income.

24 116. In truth, consumers who purchase OTA Training are not likely to earn
25 substantial income, and Defendants have no adequate basis for conveying such a
26 claim.

1 **Defendants’ Disclaimers Do Not Cure their Deception**

2 117. In some instances, Defendants include disclaimers in their marketing,
3 course materials, and contracts.

4 118. For example, pages 2-4 of the 2019 Course Workbook for OTA’s
5 Market Timing Orientation includes the following dense and wordy disclaimer:

6 **Disclosure Acknowledgment**

7 Parts of this course of instruction may refer to trading concepts and
8 strategies but none of this education is designed to prepare you to
9 actively invest or trade securities and/or other financial instruments.
10 OTA’s full courses of instruction are designed to prepare you to
11 actively invest/trade securities and/or other financial instruments only
12 for your own account at an appropriate financial firm which utilizes
13 the electronic transmissions of securities and other financial
14 instruments to execute transmissions of securities and other financial
15 instruments to execute trades for its customers. None of OTA’s
16 education will prepare you to be a Licensed Broker in the financial
17 industry and will not provide any education credits of certification or
18 prepare you to find employment in any area of business.

19
20 **Disclosure for Crypto Currency** This course of instruction is not a
21 trading course. This course is informational only. This course will
22 not prepare you to actively invest/trade in crypto-currencies or any
23 other asset class. None of this information or education is designed to
24 prepare you to actively invest or trade cryptocurrencies securities
25 and/or other financial instruments.

Representations

1
2 Online Trading Academy makes no representations or warranties,
3 guarantee[s] or promises. All participants recognize and
4 acknowledge[] that individual performance depends upon the
5 individual skills, time availability and dedication of each Student in
6 the training program. This Online Trading Academy program should
7 not be construed as a recommendation or an offer to buy or sell any
8 security or the suitability of any investment strategy for Student. The
9 purchase, sale, or advice regarding any security, other financial
10 instrument or system can only be performed by a licensed Industry
11 representative such as, but not limited to a Broker/Dealer, Introducing
12 Broker, FCM and/or Registered Investment Advisor. Neither Online
13 Trading Academy nor its representatives are licensed to make such
14 advisements. All purchasers of the Online Trading Academy training
15 programs or products are encouraged to speak with a licensed
16 representative of their choice regarding the appropriateness of
17 investing/trading or of any particular investment/trading strategy.

18
19 **Additional Representations for Cryptocurrencies** This Online
20 Trading Academy informational course should not be construed as a
21 recommendation or an offer to buy or sell any crypto-currency or as to
22 the suitability of any investment strategy for any Student.

Risk Disclosure

23
24
25 No offer on our part with respect to the sale or purchase of any
26 cryptocurrency or any securities is intended or implied, and nothing
27 contained herein is to be construed as a recommendation to take a
28 position in any market. It is possible that at this date or some

1 subsequent date the officers, directors, and/or shareholders of Online
2 Trading Academy and its affiliates own cryptocurrency, securities, or
3 buy or sell cryptocurrency or securities mentioned in this presentation
4 or those not so mentioned. The intent of the information is for
5 instructional purposes only. The material presented herein has been
6 obtained or derived from sources believed to be accurate, but we do
7 not guarantee its accuracy. Any fair use of third-party trademarks or
8 logos does not imply affiliation or sponsorship.

9
10 **All trading involves high risk; past performance is not necessarily**
11 **indicative of future results. There have been no promises,**
12 **guarantees or warranties suggesting that any trading – training**
13 **will result in a profit or will not result in a loss.**

14
15

16 **Risk**

- 17 • All trading involves high risk
 - 18 • Past performance is not necessarily indicative of future results
 - 19 • We do not endorse trading in any crypto currencies. Crypto
20 currencies involve exceptional high risks as it is easy to lose it all,
21 the operation of crypto currency is currently unregulated, and may
22 become regulated.
 - 23 • We make no promises, guarantees or warranties suggesting that
24 any trading or training will result in a profit or will not result in a
25 loss
- 26
27
28

1 119. Such disclaimers do not cure the impression created by Defendants'
2 extensive use of earnings and related claims that purchasers of OTA Training are
3 likely to earn substantial income.

4 **Defendants' Attempts to Silence Consumer Complaints**

5 120. In numerous instances, purchasers of OTA Training have concluded
6 that the impression created by OTA of the consumer's ability to generate
7 substantial income using OTA's strategy is not consistent with their experience.

8 121. Many dissatisfied purchasers sought refunds from OTA after the three-
9 day cancellation window allowed under OTA's form purchase agreement.
10 Defendants have often refused to grant refunds under these circumstances.

11 122. In numerous instances, Defendants, as a condition for a refund, have
12 required that consumers sign a form contract with a non-disparagement provision
13 inhibiting consumers' ability to communicate with others, including law
14 enforcement agencies and the Better Business Bureaus, about OTA and its conduct.

15 123. For example, some such contractual provisions bar consumers from
16 making "negative ... comments" about OTA, its business, its management,
17 officers, and employees to "any person or entity," including "any ... government
18 entity." These contractual provisions also specifically bar posting negative
19 comments "on any blog, internet chat room, website, including all forms of social
20 media."

21 124. Based on the facts and violations of law alleged in this Complaint, the
22 FTC has reason to believe that Defendants are violating or are about to violate laws
23 enforced by the Commission.

24 **VIOLATIONS OF THE FTC ACT**

25 125. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or
26 deceptive acts or practices in or affecting commerce."

27 126. Misrepresentations of material fact constitute deceptive acts or
28 practices prohibited by Section 5(a) of the FTC Act.

1 d) OTA's instructors are active traders who have amassed
2 substantial wealth through trading in financial markets.

3 131. The representations set forth in paragraph 130 are false or misleading
4 or were not substantiated at the time the representations were made.

5 132. Therefore, Defendants' representations as set forth in paragraph 130
6 of this Complaint constitute deceptive acts or practices in violation of Section 5(a)
7 of the FTC Act, 15 U.S.C. §45(a).

8
9 **VIOLATION OF THE**
10 **CONSUMER REVIEW FAIRNESS ACT OF 2016**

11 133. In 2016, Congress passed the Consumer Review Fairness Act of 2016,
12 P.L. 114-258, 15 U.S.C. § 45b.

13 134. The Consumer Review Fairness Act of 2016 ("CRFA") defines
14 "covered communication" to mean "a written, oral, or pictorial review,
15 performance assessment of, or other similar analysis of, including by electronic
16 means, the goods, services, or conduct of a person by an individual who is party to
17 a form contract with respect to which such person is also a party." 15 U.S.C. §
18 45b(a)(2).

19 135. The CRFA defines "form contract" to mean "a contract with
20 standardized terms (i) used by a person in the course of selling or leasing the
21 person's goods or services; and (ii) imposed on an individual without a meaningful
22 opportunity for such individual to negotiate the standardized terms." 15 U.S.C. §
23 45b(a)(3).

24 136. Effective March 14, 2017, the CRFA renders void any provision of a
25 form contract if such provision (A) prohibits or restricts the ability of an individual
26 who is a party to the form contract to engage in a covered communication or (B)
27 imposes a penalty or fee against an individual who is a party to the form contract
28 for engaging in a covered communication. 15 U.S.C. § 45b(b)(1).

1 137. Effective March 14, 2017, the CRFA prohibits any person from
2 offering a form contract containing a provision described as void in sub-section (b)
3 of the CRFA. 15 U.S.C. § 45b(c).

4 138. Pursuant to the CRFA, a violation of sub-section (c) of the CRFA shall
5 be treated as a violation of a rule defining an unfair or deceptive act or practice
6 prescribed under Section 18(a)(1)(B) of the FTC Act, 15 U.S.C. § 57a(a)(1)(b), and
7 the FTC shall enforce the CRFA in the same manner, by the same means, and with
8 the same jurisdiction, powers, and duties as the FTC Act. 15 U.S.C. § 45b(d).
9 Congress empowered the FTC to enforce the CRFA with respect to contracts in
10 effect on or after December 14, 2017. 15 U.S.C. § 45b(e).

11 139. Corporate Defendants and Defendant Shachar have offered “form
12 contract[s],” as that term is defined in the CRFA. 15 U.S.C. § 45b(a)(3).

13 **Count III — Unlawful Use of Non-Disparagement Provisions**

14 (Against the Corporate Defendants and Defendant Shachar)

15 140. In numerous instances on or after December 14, 2017, Corporate
16 Defendants and Defendant Shachar have offered, in the course of selling their
17 goods or services, form contracts containing provisions that (A) prohibit or restrict
18 the ability of an individual who is a party to the form contract to engage in a
19 covered communication and/or (B) impose a penalty or fee against an individual
20 who is a party to the form contract for engaging in a covered communication.

21 141. Corporate Defendants and Defendant Shachar have thereby violated
22 the CRFA, 15 U.S.C. § 45b(c).

23 **CONSUMER INJURY**

24 142. Consumers have suffered and will continue to suffer substantial injury
25 as a result of Defendants’ violations of the FTC Act and the CRFA. In addition,
26 Defendants have been unjustly enriched as a result of their unlawful acts or
27 practices. Absent injunctive relief by this Court, Defendants are likely to continue
28 to injure consumers, reap unjust enrichment, and harm the public interest.

1 **THE COURT’S POWER TO GRANT RELIEF**

2 143. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
3 to grant injunctive and such other relief as the Court may deem appropriate to halt
4 and redress violations of any provision of law enforced by the FTC. The Court, in
5 the exercise of its equitable jurisdiction, may award ancillary relief, including
6 rescission or reformation of contracts, restitution, the refund of monies paid, and
7 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any
8 provision of law enforced by the FTC.

9 144. Section 19 of the FTC Act, 15 U.S.C. §57b, authorizes this Court to
10 grant such relief as the Court finds necessary to redress injury to consumers
11 resulting from Defendants’ violations of the CRFA, including the rescission or
12 reformation of contracts, and the refund of monies paid, the disgorgement of ill-
13 gotten monies, and prejudgment interest.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act,
16 15 U.S.C. §§ 53(b) and 57b, and Section 2(d) of the CRFA, 15 U.S.C. § 45b(d),
17 and the Court’s own equitable powers, requests that the Court:

18 A. Award Plaintiff such preliminary injunctive and ancillary relief as may
19 be necessary to avert the likelihood of consumer injury during the pendency of this
20 action and to preserve the possibility of effective final relief, including but not
21 limited to, temporary and preliminary injunctions;

22 B. Enter a permanent injunction to prevent future violations of the FTC
23 Act and the CRFA by Defendants;

24 C. Award such relief as the Court finds necessary to redress injury to
25 consumers resulting from Defendants’ violations of the FTC Act and the CRFA,
26 including but not limited to, rescission or reformation of contracts, restitution, the
27 refund of monies paid, and the disgorgement of ill-gotten monies; and
28

1 D. Award Plaintiff the costs of bringing this action, as well as such other
2 and additional relief as the Court may determine to be just and proper.

3 Respectfully submitted,

4 ALDEN F. ABBOTT
5 General Counsel

6
7 Dated: February 12, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2020, I caused a copy of the foregoing Complaint to be served on all parties in the manner specified below:

Via Email

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