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

19 **Federal Trade Commission,**

20 Plaintiff,

21 vs.
22

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

24 Defendants.
25

No. 8:20-cv-287

PLAINTIFF'S MEMORANDUM OF
LAW IN SUPPORT OF ITS NOTICED
EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE

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INTRODUCTION

The Federal Trade Commission (“FTC”) respectfully requests that the Court bring an immediate halt to Defendants’ fraudulent investment training scheme.

Operating as Online Trading Academy (“OTA”), Defendants prey on consumers, focusing on older individuals, with false and unsubstantiated promises of generating substantial earnings through trading in the financial markets.¹ OTA charges consumers hundreds or thousands of dollars, often as much as \$50,000,² and has already taken more than \$370 million from consumer victims across the nation.³

OTA represents that it has a patented “strategy” to “time the market” that anyone can apply to generate substantial profits through trading in stocks, foreign currencies, commodities, or other assets. OTA “instructors,” who market its “training” and purported strategy to consumers in live seminars, often hold themselves out as converts and successful traders. OTA’s earnings representations are false and unfounded. OTA does not track the trading results of its customers, and the limited surveys it has conducted indicate that its customers are not making the type of income OTA advertises. Moreover, trading data strongly indicates that most customers do not make any money, and many lose money on top of the thousands of dollars they pay OTA.

In addition to collecting hundreds of millions of dollars from its victims for its “training,” OTA also bilks many customers through short term high interest loans. OTA lures consumers into taking on debt to finance its training programs with a promise that no interest is due if the loan is repaid within six months. But,

¹ The FTC submits over 8,000 pages of exhibits, including an expert report and declarations from consumers, former OTA employees, and FTC investigators, in support of this Application. References to exhibits appear as “EX [number], [page].” *See* Table of Exhibits, above.

² *See e.g.*, EX 13, 302 (¶79).

³ EX 13, 301-302 (¶¶75-79).

1 nearly all borrowers fail to repay within six months, and end up paying OTA
2 approximately 18% interest on the loan.⁴

3 To preserve its scheme, OTA has sought to gag dissatisfied customers who
4 sought a refund, requiring many to sign contracts barring the customer from
5 publishing negative comments about OTA or its personnel and from reporting
6 wrongdoing by OTA and its personnel, even to law enforcement agencies.

7 OTA's deceptive conduct violates Section 5(a) of the FTC Act, 15 U.S.C.
8 § 45(a), and the Consumer Review Fairness Act of 2016 ("CRFA"), 15 U.S.C. § 45b.
9 Despite being on notice of the FTC's fraud investigation since February 2019, OTA
10 has continued its unlawful scheme in full force. Recently, the FTC offered to
11 negotiate a preliminary injunction that would require OTA to cease its deceptive
12 conduct. Instead, OTA requested meetings with the Commissioners of the FTC,
13 then cancelled all meetings less than a day before they were to commence, while
14 filing a meritless declaratory judgment action against the FTC in the Northern
15 District of Illinois (OTA is based in Irvine, CA).

16 To protect consumers, the FTC seeks a temporary restraining order ("TRO")
17 that enjoins Defendants' unlawful conduct, freezes OTA's assets and requires all
18 Individual Defendants to disclose and preserve their assets, appoints a temporary
19 receiver over OTA, and requires Defendants to show cause why a preliminary
20 injunction should not issue against them. In numerous similar FTC actions, district
21 courts, including in this Circuit and District, have granted such preliminary relief.⁵

22
23 ⁴ Some OTA loans are purchased by a third party, others OTA holds on its books.
EX 13, 316 (¶109) & 6169 (OTA Meeting Tr. 137:11-19).

24 ⁵ See, e.g., *FTC v. AWS, LLC, et al.*, No. 2:18-CV-0442 (C.D. Cal. Mar. 14, 2018)
25 (TRO, asset freeze against individual and corporate defendants, and receiver);
26 *FTC v. Digital Altitude, LLC, et al.*, No. 2:18-CV-0729 (C.D. Cal. Feb. 1, 2018)
(same); *FTC v. BunZai Media Grp., Inc.*, No. 2:15-CV-4527, 2015 WL 5305243
27 (C.D. Cal. Sep. 9, 2015) (same); *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176
(C.D. Cal. 2000) (same); *FTC v. Arlington Press, Inc.*, No. 2:98-CV-9260, 1999
28 WL 33562452 (C.D. Cal. Jan. 18, 1999) (same); *FTC v. Equifin Int'l*, No. 2:97-CV-
4526, 1997 U.S. Dist. LEXIS 10288 (C.D. Cal. July 3, 1997) (same). The Ninth
Circuit has affirmed such cases. See, e.g., *FTC v. Affordable Media, LLC*, 179 F.3d

STATEMENT OF FACTS

I. OTA's Deceptive Business Practices

Since at least 2012, OTA has conned consumers into spending hundreds or as much as tens of thousands of dollars with claims that its courses, materials, or other products or services (collectively, "OTA Training") will enable them to generate substantial earnings through trading in the financial markets.

A. Wide Net of Advertisements

Defendants advertise OTA Training to consumers nationwide through a variety of marketing mediums, including television, radio, direct mail, and online.⁶ OTA runs half-hour-long infomercials on nationwide television.⁷ OTA radio ads play across the country,⁸ from New York City (where they aired over 10,000 times in the last two years)⁹ to Los Angeles,¹⁰ to Fargo, North Dakota.¹¹ And OTA advertises through videos on its website and YouTube.¹²

Although OTA operates through ten separate locations across the United States and abroad,¹³ as well as over thirty franchise locations,¹⁴ OTA's advertising campaign is centrally controlled by Defendants.¹⁵

1228, 1232 & n.2 (9th Cir. 1999); *FTC v. Am. Nat'l Cellular, Inc.*, 810 F.2d 1511, 1512 (9th Cir. 1987).

⁶ EX 2, 8 (Ciaraulo Dec. ¶2); EX 3, 20 (Katukota Dec. ¶7); EX 8, 185 (Luu Dec. ¶¶15-16); EX 13, 8136 (OTA Sales Process), 8131 (OTA Sales Training Binder).

⁷ EX 13, 330 (¶¶157-158) (OTA infomercials ran over 500 times in 2018 on national cable, and over 3,000 times in 2017 and 2018 in over two dozen major metro areas), 303 (¶83), 5079-5080 (Letter from Venable).

⁸ EX 13, 330 (¶¶157-158) (OTA radio ads aired over 3,000 times, on over 20 stations, in a dozen major metro areas across the country, since 2013).

⁹ EX 13, 303-304 (¶84).

¹⁰ EX 13, 330 (¶¶157-158) (showing airings in LA).

¹¹ EX 13, 288-289 (¶4) (radio ad claims most OTA purchasers "don't know a stock from a rock" when they start).

¹² EX 13, 290-291 (¶¶8-9).

¹³ Irvine, California; Westwood Los Angeles, California; Woodland Hills Los Angeles, California; Sacramento, California; Long Island, New York; New York City, New York; Boston, Massachusetts; Austin, Texas; Vancouver, Canada; and London, England. EX 13, 7409 (OTA Franchise Disclosure Document).

1 The focus of OTA's advertisements, regardless of medium, is that OTA
2 Training is likely to lead to better financial results for consumers, including, in
3 many cases, claims that consumers will generate substantial income through
4 trading in the financial markets. For example, OTA's television infomercial touts a
5 "rules-based strategy" to "generate daily or monthly income," calling it "a proven
6 step-by-step approach," and offers testimonials including a consumer who "made
7 \$12,000" in three hours, and another who "made \$32,000 in less than seven trading
8 days."¹⁶ A New York-area radio ad that ran at least 581 times in 2018 featured a
9 supposed OTA "student" claiming "it's almost like having a second paycheck
10 without having a second job," and that any ordinary person can do it.¹⁷ Another
11 New York radio ad, played at least 880 times throughout 2018, offered "more
12 income" through a "proven step by step approach to investing" that "can work in
13 any market condition," and "generate active income ... and create passive income
14 to build your retirement."¹⁸ Other OTA ads similarly claim that consumers will
15 learn to "generate income," or "daily income," or "monthly cash flow."¹⁹

16 OTA's advertisements also claim that anyone can learn and use their strategy
17 to make money, including claims that:

18
19 ¹⁴ EX 13, 7456-7464 (OTA Franchise Disclosure Document).

20 ¹⁵ OTA requires franchisees to pay significant fees into a Marketing Fund. *Id.* at
21 7502. OTA Corp. has "sole discretion over all matters relating to the Marketing
22 Fund." *Id.* Specifically, OTA's Chief Marketing Officer, Jeremy Nosek, had
23 "ultimate ... approval or control over" content of all OTA ads, including
"infomercials," "[r]adio spots," and "[t]hings on the website." *Id.* at 7760 (Hubbard
IH Tr. 203:09-21).

24 ¹⁶ EX 13, 5145-5151 (New Infomercial Tr. 6:12-21; 11:15-16; 11:21-12:01). OTA
25 "developed this version" of the infomercial in late 2018 and has run it in 2019. *Id.*
26 at 5080 (OTA Letter to FTC). The prior version was played over 3,700 times in
2017 and 2018, and includes similar claims. EX 13, 329-330 (¶¶157-158), 303
(¶¶81-83), 5140-5199 (transcripts of infomercials).

27 ¹⁷ EX 13, 304 (¶85).

28 ¹⁸ EX 13, 304-305 (¶87).

¹⁹ EX 13, 303-306 (¶¶84, 88, 89, 91).

- 1 • “[A]nybody could do this from any level. You don’t need to have a
2 special type of background.”²⁰
- 3 • All consumers can benefit from OTA, “[w]hether you only have a
4 few hours a week or a few hours a month....”²¹
- 5 • “80 percent of the individuals that come through our doors don’t
6 know a stock from a rock.”²²

7 OTA’s advertisements direct consumers to attend a free three-hour seminar
8 Defendants call “Market Timing Preview” or “Power Trading Workshop”
9 (“Preview Event”).²³ The ads often suggest that consumers will learn how to earn
10 income in the financial markets at the Preview Event.²⁴ For example, OTA’s
11 television infomercial claims, “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....”²⁵

14 **B. OTA’s Preview Event**

15 In reality, the Preview Event is a sales presentation, pitching another, longer
16 seminar, called a “Market Timing Orientation” (“MTO”).²⁶ To induce consumers to
17 purchase and attend the MTO, OTA’s salespeople, aided by a set of OTA-provided
18

19 ²⁰ EX 13, 5160 (New Infomercial Tr. 21:18-21).

20 ²¹ EX 13, 5186-5187 (2018 Infomercial Tr. 17:20-18:02).

21 ²² EX 13, 336-337 (Fargo Radio Ad Tr. 4:25-5:09).

22 ²³ EX 2, 8 (Ciaraulo Dec. ¶2) (postcard “inviting me to a free workshop”); EX 3,
23 20 (Katukota Dec. ¶7) (postcard “advertising a free half-day seminar”); EX 8, 185
(Luu Dec. ¶¶15-16); EX 13, 8136 (OTA Sales Process); *id.* at 305 (¶89) (radio ad
24 claimed “Attend one of Online Trading Academy’s free introductory classes and
25 they will show how to create monthly, weekly, and even daily income”).

26 ²⁴ EX 13, 306 (¶91) (“[A]ttend one of [OTA’s] free classes where you can learn
27 how to earn income in the market and achieve a life of financial freedom.”); *id.* at
28 304 (¶85) (ad claimed that at the “free class [t]hey go over everything, and
they’ll show you all the different ways to make money in the market.”).

²⁵ EX 13, 5151-5152 (New Infomercial Tr. 12:24-13:04).

²⁶ EX 8, 185 (Luu Dec. ¶¶15 & 17); EX 13, 8136 (OTA Sales Process); EX 1, 1-2
(Busche Dec. ¶6) (“The purpose of the class seemed to be to get you to sign up for
the next course, which was 2 or 3 days and cost a few hundred dollars.”).

PowerPoint slides,²⁷ reiterate and expound on the earnings claims made in OTA's advertisements,²⁸ including making claims such as:

- Consumers "could potentially make \$50,000 of annual income with an account size as low as \$5,000."²⁹
- OTA can help consumers make "trading [your] primary source of ... income," calling it "fire [your] boss level" income.³⁰
- Consumers come to OTA to make income that allows them to work less, "so you can spend more time with the family."³¹

OTA's presenters explain that this income is possible because OTA has discovered how to reliably time the markets.³² They hold up OTA's patent as proof

²⁷ EX 13, 320 (¶127) & 7250 (Preview Event slides produced by OTA state, on first page, "Only pre-approved slides may be used in any OTA Preview").

²⁸ EX 1, 1-2 (Busche Dec. ¶6) (instructors claimed "people using [OTA's] algorithm were successfully making money and doing that as their primary source of income," and were "finding it more profitable to trade using [OTA's] algorithm for a few hours a day than to work a full time job."); EX 3, 21 (Katukota Dec. ¶¶8-10) (presenter claimed OTA "would teach you how to make money with investments using their strategy" and "gave lots of examples of how much money you could make," such as "'do this, make \$10,000 here; do that, make \$2,000 here.' They claimed that you could make enough to buy a house, and threw out figures like \$430,000 or \$100,000. They showed how with one or two trades, you could make \$6,000, or \$15,000."); EX 5, 30 (Quintas Dec. ¶¶8-9) ("Based on OTA's presentation, I thought I could" "leverage my money to make more money" and "live comfortably."); EX 7, 147 (Richins Dec. ¶4) ("The presenter claimed [OTA] had a technique to make money by trading in the markets.").

²⁹ EX 13, 360 (CA Preview Event Tr. 19:17-18); *see also id.* at 1967 (NYC Preview Event Tr. 30:06-19) (similar); 7262 (Preview Event slide asks "What Size Of A Brokerage Account Would You Need To Potentially Generate \$50k/Year? Use a Leveraged Asset Class to have the Potential to do this with an Account Size as Small as \$5,000").

³⁰ EX 13, 1961 (NYC Preview Event Tr. 24:5-10); *see also id.* at 357 (CA Preview Event Tr. 16:3-15) ("you can actually use the trading to create a secondary income and then also the potential of making it a full-time career") & 3731-3732 (VA Preview Event Tr. 19:24-20:12) (suggesting any consumer can "get[] to fire their boss and have complete financial freedom" through OTA's system).

³¹ EX 13, 2008 (NYC Preview Event Tr. 71:4-17).

³² EX 3, 21 (Katukota Dec. ¶11).

1 that the strategy works.³³ As one Preview Event presenter at OTA’s headquarters in
2 California put it, OTA “has a patent on the fact that you can time the markets,” and
3 the “strategy” it teaches is “a set of rules” that “gives us the ability to know when
4 to get in and when to get out.”³⁴ Similarly, a Preview Event presenter in New York
5 assured consumers they can safely ignore people who “say, ‘Oh, they can’t time
6 the market,’” because “to get a patent, we had to ... prove it to the Government.”³⁵
7 This claim comes right from the top of OTA: consumers who enroll in the MTO
8 receive a welcome letter from Defendant Shachar, claiming that the MTO will
9 introduce OTA’s “patented supply and demand trading and investing strategy
10 which allows us to *anticipate market moves with a high degree of accuracy.*”³⁶

11 C. The MTO

12 The MTO is a three-day long sales pitch and Defendants’ main sales
13 platform.³⁷ The MTO is presented by an OTA representative called an “instructor,”
14 and staffed by “Education Counselors” (“ECs”)—but all are actually salespeople
15 paid on commission.³⁸ OTA trains this salesforce and provides a “coursebook” and

16 ³³ EX 1, 3 (Busche Dec. ¶12) (“The fact that Online Trading Academy had a
17 patent on their algorithm was a significant part of their sales pitch. My impression
18 was that they didn’t want anyone else to copy their strategy, or start up a copycat
business.”).

19 ³⁴ EX 13, 385, 404 (CA Preview Event Tr. 44:10-21; 63:12-23).

20 ³⁵ EX 13, 2062-2063 (NYC Preview Event Tr. 125:23-126:14).

21 ³⁶ EX 13, 475 (emphasis added).

22 ³⁷ EX 13, 5120 (OTA letter states purchases from MTO attendees “accounted for
23 approximately 80 percent of OTA’s revenue in 2018”); EX 1, 2 (Busche Dec. ¶7)
24 (“In the 2 or 3-day course, they did teach some things, but the purpose of the class
seemed to be to get you to sign up for the courses that really cost something.”).

25 ³⁸ EX 8, 184-185 (Luu Dec. ¶¶9 & 14) (“It was clear to me from the beginning of
the recruiting process that the “Education Counselor” position was a sales
26 position.” And “[a]s an Education Counselor, my role was to sell Online Trading
Academy courses and seminars to potential students.”); *id* at 184 (¶¶12-13) & EX
27 13, 7856-7861 (offer letter with compensation plan stating “[y]ou will earn
commissions from leads and registrations assigned to you by management based
28 on cash collected from your individual ‘gross sales.’”); *see also* EX 8, 186-187
(¶23) & EX 13, 8053 & 8056 (sales training booklet advises “Don’t look like, act
like or sound like, a traditional salesperson,” and promising “We ask questions to

1 a PowerPoint slideshow to guide the sales pitch—whether the MTO is held at a
2 location owned by OTA or at a franchisee.³⁹

3 At the MTO, OTA’s salesforce continues to expand on the earnings and
4 related claims made in the advertisements and at the Preview Event. For example,
5 MTO presenters use numerous testimonials and hypothetical trades to paint a
6 picture of substantial trading profits awaiting purchasers, including:⁴⁰

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8
9
10 discover the *IMPACT* of the *PAIN* so they will make a decision to buy a
11 *SOLUTION*”); EX 13, 7690 & 7702-7703 (Hubbard IH Tr. 23:16-24, 77:11-78:23)
12 (experience in financial markets or educational counseling not required to be hired
13 as an EC, Preview Event presenters paid 2% of sales, and MTO instructors paid
14 3%); 6165 (OTA Meeting Tr. 133:08-23) (MTO instructors get 3% of gross).

15 ³⁹ EX 13, 7691-7692 (Hubbard IH Tr. 29:04-30:01) (Preview Event and MTO
16 were “not supposed to” be different “between the franchisees and HQ centers,”
17 rather, there was “an MTO instructor pool where corporate would assign the
18 instructor for [an MTO],” and they were “supposed to [use a] standardized ... slide
19 deck presentation”), 5127-5128 (OTA letter states its employees curate the slide
20 deck, which it provides to MTO presenters), 5134 (OTA letter states it “provides
21 extensive and ongoing training to MTO presenters”), 6104 (OTA Meeting Tr.
22 72:09-21) (regarding MTO instructors, OTA COO Gene Longobardi states “We
23 have a standard three-day [PowerPoint] deck that goes through a training process.
24 They go through online sessions to reinforce part of the training process. Again, the
25 compliance program is important because we don’t want them stepping outside the
26 boundaries.”); EX 8, 186-187 (¶23) & EX 13, 8041-8384 (EC Training Manual).

27 ⁴⁰ EX 1, 2 (Busche Dec. ¶¶7-10) (OTA represented that “you could get a high rate
28 of return,” “mak[e] a lot of money with very little to start with,” gave impression
consumers could make “20% to 30% return annually”); EX 6, 110 (Ramez Dec.
¶5) (“you can increase your income from trading”); EX 7, 148 (Richins Dec. ¶6)
 (“They gave examples of people who had made thousands, tens of thousands, or
hundreds of thousands of dollars.”); EX 5, 31 (Quintas Dec. ¶15) (“The presenter
gave several examples of very successful people, some of whom he said were now
teaching the program. He said that the chance of making money was very high.”).
Defendants continue to make such earnings claims, including in a November 2019
MTO in Vienna, Virginia. EX 13, 4671 (VA MTO Day 2 Tr. 195:3-9) (instructor
only spends “30 minutes to an hour a day” trading), 4542 (Day 2 Tr. 66:5-7) (OTA
“students ... averag[e] about 300 dollars a day”), 4153 (Day 1 Tr. 83:12-16)
(instructor suggests consumers could make “75 grand a year as a secondary form
of income”), 4467-4471 (Day 1 Tr. 396:14-401:14) (with \$5,000 futures account
and “3,300 invested” you could earn “100 grand a year”).

- A testimonial stating, “I’m doing an average of \$800 a day now.”⁴¹
- A testimonial from a “student” who achieved a 31.7% profit in “Short Term Income” with “No Prior Trading Knowledge.”⁴²
- A testimonial stating, “I’m profitable 85% of the time,”⁴³ and claiming monthly profits in the thousands or tens of thousands of dollars.⁴⁴
- A testimonial stating, “It took me 18 years to develop a decent salary. After three months here at OTA, I’m making almost as much money as my business.”⁴⁵
- A purported OTA student who had been laid off from a job as an engineer and had only \$3,000 to invest after paying for OTA Training, but a year later was supporting his wife and two children with income from trading.⁴⁶
- A hypothetical trade where “Risk of \$100” yields “Profit of \$3000.”⁴⁷
- A hypothetical trade where “a 825 dollar investment” yields “a 900 dollar profit.”⁴⁸
- A hypothetical trade yielding “a 19 percent return in two weeks.”⁴⁹
- A “plan” for a consumer yielding “Avg. \$300/Day” using only “\$5,000” of capital and “2 Hours/Day.”⁵⁰

⁴¹ EX 13, 314 (¶103) & 5895 (MTO Slides, Day 3). In much smaller font, near the bottom, the slide includes the text “These results are not typical of results investor may expect to achieve. Your results will vary.”

⁴² EX 13, 314 (¶103) & 5477 (MTO Slides, Day 1).

⁴³ EX 13, 314 (¶103) & 5474 (MTO Slides, Day 1).

⁴⁴ EX 13, 293 (¶25) & 857-859 (CA MTO Day 1 Tr. 355:10-357:03).

⁴⁵ EX 13, 293 (¶25) & 1304-1305 (CA MTO Day 2 Tr. 373:23-374:03).

⁴⁶ EX 13, 296 (¶46) & 2833-2841 (NYC MTO Day 2 Tr. 139:01-147:15).

⁴⁷ EX 13, 314 (¶103) & 5454 (MTO Slides, Day 1).

⁴⁸ EX 13, 299 (¶64) & 4254 (VA MTO Day 1 Tr. 184:10-15).

⁴⁹ EX 13, 299 (¶64) & 4826 (VA MTO Day 2 Tr. 350:02-11).

⁵⁰ EX 13, 314 (¶103) & 5472 (MTO Slides, Day 1).

- A “solution” for a working couple with children with “Lack of Time” and “Limited Resources,” with goal to yield “\$100 Average Per Day.”⁵¹
- “[I]f you make 9,000 dollars in a day, you know, or five grand in a day, how many of these do you need to pay off the [OTA] tuition? I’m just saying, you know. Not too many, yes or no?”⁵²
- A claim that OTA’s “students ... [are] averaging about 300 dollars a day” in trading profits.⁵³

OTA intends that its MTO presenters use testimonials, like those above, to create the impression that consumers can generate trading profits that will “replace or supplement [their] job,” or “provide for retirement and wealth objectives.”⁵⁴ An “MTO Master Document” disseminated to MTO presenters by OTA directs them to use testimonials, stating in bold, “**Pinnacle on the testimonials for the wow factor,**” and noting “Key Loops” for this section of the presentation include “Trading can replace or supplement my job” and “Trading can provide for retirement and wealth objectives.”⁵⁵

Aware that the complexity of the financial markets may prove daunting to some consumers, OTA stresses that it is offering “[a]n objective rules-based strategy” composed of “a simple, sequential set of steps.”⁵⁶ Thus, OTA claims that

⁵¹ EX 13, 314 (¶103) & 5859 (MTO Slides, Day 2).

⁵² EX 13, 296 (¶46) & 2862 (NYC MTO Day 2 Tr. 168:16-21).

⁵³ EX 13, 299 (¶64) & 4541-4542 (VA MTO Day 2 Tr. 65:25-66:12).

⁵⁴ EX 13, 7848-7853 (OTA “Master MTO Document” outlines points to make in MTO, including use of testimonials). And the PowerPoint presentation OTA provides and directs presenters to use in the MTO contains a number of such testimonials, and has for years. EX 13, 313-315 (¶¶102-105).

⁵⁵ EX 13, 7848-7853.

⁵⁶ EX 13, 1836 (Market Timing Class Booklet); *see also* EX 6, 111 (Ramez Dec. ¶¶7-8) (“their approach is rules-based, and like a science” and “I thought that ... I would learn how to use an automated system, like a robot or algorithm”); EX 1, 3 (Busche Dec. ¶14) (OTA “gave the impression that making money with their system is relatively easy and straightforward ... if you follow their step-by-step process”); EX 13, 5145 (New Infomercial Tr. 6:12-21) (touting “rules-based strategy” to “generate daily or monthly income,” calling it “a proven step-by-step

1 anyone can learn and use its “strategy” to make money, regardless of background,
2 education, or aptitude,⁵⁷ and that following the steps will mechanically yield
3 profits.⁵⁸ For example, Defendant Kimoto told MTO attendees that making money
4 with OTA’s strategy is as easy as baking cookies: just follow the recipe.⁵⁹ He also
5 claimed that, “[t]here’s not one of you that we cannot help,”⁶⁰ and “it’s not an *if*,
6 it’s *when* you get it.”⁶¹ MTO presenter Dariusz “Darek” Zelek similarly attributed
7 his success to a “system,” saying, “as long as I follow the system, the outcome will
8 be provided,”⁶² claiming “this is a skill set that anyone can attain,”⁶³ and the
9 “market doesn’t care whether somebody’s old, young, has experience, has no
10 experience, we just simply plug yourselves into the equation and the outcome will
11 be spitted out.”⁶⁴ MTO presenter Dale Sargood told consumers at a Vienna,
12 Virginia MTO in November 2019 that “income production is pretty simple,
13

14 approach”); *id.* at 291 (¶13) & 404 (CA Preview Event Tr. 63:12-23) (Preview
15 Event presenter says “core strategy is a set of rules” that identifies where “there’s a
16 high probability” price will move to a certain point); *id.* at 293 (¶25) & 1734 (CA
17 MTO Day 3 Tr. 373:10-15) (Kimoto claims OTA gives purchasers “rules, verified
18 rules, tested rules that we know work”); *id.* at 7849 (MTO Master Document states
19 “Key Loops that must be laid out on day 1 are the Copy Principle (Anyone can do
20 it)”).

21 ⁵⁷ For example, the MTO coursebook claims that OTA Training “is designed for
22 students of all experience levels.” EX 13, 1838; *see also* EX 1, 6 (Busche Dec.
23 ¶30) (“[T]hey give the impression that anyone can learn to use their algorithm.”);
24 EX 5, 39 (Quintas Dec. ¶49) (EC “made me think I could do it,” despite
25 consumer’s reservations).

26 ⁵⁸ The MTO coursebook claims OTA’s strategy is “a simple step-by-step, rule-
27 based strategy,” that will “consistently identify ... quality trading and investing
28 opportunities with a high degree of accuracy.” EX 13, 1838; *see also* EX 1, 3
(Busche Dec. ¶14) (OTA “gave the impression that ... what they are offering is a
high probability of success proposition if you follow their step-by-step process”).

⁵⁹ EX 13, 293 (¶25) & 602-603 (CA MTO Day 1 Tr. 100:19-101:06).

⁶⁰ EX 13, 293 (¶25) & 929 (CA MTO Day 1 Tr. 427:13-14).

⁶¹ EX 13, 293 (¶25) & 1593 (CA MTO Day 3 Tr. 232:15-19).

⁶² EX 13, 296 (¶46) & 2906-2907 (NYC MTO Day 2 Tr. 212:15-213:01).

⁶³ EX 13, 296 (¶46) & 2332-2333 (NYC MTO Day 1 Tr. 88:25-89:01).

⁶⁴ EX 13, 296 (¶46) & 2263 (NYC MTO Day 1 Tr. 19:12-17).

1 straightforward, follow the rules, apply the rules, get the result.”⁶⁵ And the MTO
2 coursebook claims OTA’s strategy “has proven to successfully work regardless of
3 the type of investor you are or the financial markets you trade in.”⁶⁶ In reality,
4 many consumers find they lack computer skills or other aptitudes necessary to
5 deploy OTA’s purported strategy.⁶⁷

6 OTA also creates the impression that consumers can use its “strategy” to
7 make money even if they do not have much time to devote to it,⁶⁸ such as if they
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10 ⁶⁵ EX 13, 299 (¶¶64) & 4259 (VA MTO Day 1 Tr. 189:06-19).

11 ⁶⁶ EX 13, 1836.

12 ⁶⁷ EX 5, 41 (Quintas Dec. ¶¶53-54) (“You really need to be somewhat proficient
13 at computers and be quick of mind in the class.... I noticed some people in the ...
14 class struggling with their computers. I [think] OTA preyed on older people
15 with money without properly vetting their ability to be successful in the
16 program.”); EX 13, 309-310 (¶¶99-100) (consumers responding to OTA’s survey
complained of difficulties due to lack of needed aptitudes or skills, including
facility with computers). OTA does not require that purchasers have even basic
computer skills, and would take anyone who could pay. EX 13, 7693-7694, 7698
(Hubbard IH Tr. 40:21-41:22, 45:08-12).

17 ⁶⁸ EX 1, 5 (Busche Dec. ¶27) (“[T]hey implied that it would only take you a few
18 minutes a day, once you get the hang of it. At least initially, it’s definitely more like
19 hours. Even after spending several weeks working on it, I found the process too
20 tedious and time-consuming.”); EX 5, 31 & 38 (Quintas Dec. ¶¶15 & 44) (MTO
21 presenter “gave several examples of very successful people,” saying that “some of
22 those people began the process in their spare time” and “said you could do OTA’s
23 program in your spare time”); EX 13, 293 (¶25) & 973-974 (CA MTO Day 2 Tr.
42:18-43:08) (Kimoto suggests consumers could make \$800 per day, which is
24 \$200,000 per year, spending an hour a day on trading.); *id.* at 620 (Day 1 Tr.
118:17-24) (Kimoto says you can “[f]ind, analyze, execute,” a trade “in less than
25 10 minutes,” and that you can do “that every day, find a trade every other day,
26 make an extra 600 bucks.”); *id.* at 320 (¶126) & 6876-6878 (Utah MTO Day 1 Tr.
149:25-151:13) (presenter claims that once you learn the strategy, “it will probably
27 take about two to three minutes” to review a chart to find a trade); *id.* at 7001
(Utah MTO Day 1 Tr. 274:05-23) (instructor claims he spends “a total of about 30
28 minutes ... looking at the screen to see if there’s a trade”); *id.* at 299 (¶64) & 4144
(VA MTO Day 1 Tr. 74:14-19) (“so 3,000 dollar investment, right, to make 300
bucks, right, took a couple minutes of time”); *id.* at 7849 (MTO Master Document
lists “Key Loops” for Day 1, including “Takes Minimal Time: Introduce the
concept of set and forget trading.”).

1 are already working a full-time job.⁶⁹ Indeed, presenters go so far as to admonish
2 consumers not to quit their day jobs once income from OTA's strategy eclipses
3 their salary.⁷⁰ Many consumers' experience contradicts the impression that little
4 time need be devoted in order to succeed.⁷¹

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9 ⁶⁹ EX 13, 314-315 (¶105) & 5859 (MTO slide claiming "solution" for family
10 with both parents working full time that would yield "\$100 Average Per Day"); *id.*
11 at 293 (¶25) & 654 (CA MTO Day 1 Tr. 152:08-10) (Kimoto claims consumers can
12 make profitable trades, such as "a few thousand dollars" on their commutes to
13 work); EX 14, 8451 (¶4) & 8551-8567 (VA MTO Day 3 Tr. 100:11-116:15)
14 (Sargood claims consumers working full time can pay off \$60,000 in debt in a year,
and be able to quit their job a few years later); *see also id.* at 356-357 (CA Preview
Event Tr. 15:24-16:01) ("[Y]ou can keep working your job and keep trading behind
the scenes."); EX 13, 7849 (MTO Master Document lists "Key Loops" for Day 1
including "Time (you don't need to quit your job).").

15 ⁷⁰ EX 13, 293 (¶25) & 534-535 (CA MTO Day 1 Tr. 32:10-34:12) (Kimoto asks
16 consumers to imagine being "able to set up trades and generate enough income off
17 of that half an hour of work in the morning" to live off of, asks if they would quit
18 their jobs. Kimoto then tells consumers to keep working their jobs even once
19 income from OTA's strategy eclipses income from their job, to have "multiple
20 income streams"); *id.* at 320 (¶126) & 6756-6757 (Utah MTO Day 1 Tr. 29:06-
21 30:11) (MTO presenter asks consumers to imagine making "100 grand a year" at
22 the job, then adding "100 grand a year" from trading, and implores them to keep
the job to have multiple "income streams"); *id.* at 296 (¶46) & 2271-2272 (NYC
MTO Tr. Day 1 27:17-28:02) (Zeleg uses similar hypothetical to implore
consumers not to quit their jobs as they begin making money with OTA's strategy,
because of the importance of "multiple streams of income").

23 ⁷¹ EX 1, 5 (Busche Dec. ¶27) ("[T]hey implied that it would only take you a few
24 minutes a day, once you get the hang of it. At least initially, it's definitely more like
25 hours. Even after spending several weeks working on it, I found the process too
26 tedious and time-consuming."); EX 5, 37-38 (Quintas Dec. ¶¶43-45) (consumer
27 spoke with other purchasers upset because "they had been with OTA for six
28 months but had not made any money," and after taking classes, consumer realized
"there was too much to learn to become proficient in my spare time," and "it would
have taken more time than OTA representatives indicated it would"); *see also* EX
13, 308-309 (¶¶96-99) & 5281-5287, 5374 (majority of surveyed customers are not
making money) & 309-313 (consumer complaints include lack of time to
implement OTA's strategy, including due to working full time job).

1 And OTA creates the impression that consumers can use its strategy to make
2 money even if they have only a small amount of money to start with.⁷² Many
3 consumers find this is not the case.⁷³

4 OTA salespeople tell consumers the strategy “stack[s] odds in your favor,”⁷⁴
5 and that profits are a “mathematical certainty.”⁷⁵ Presenters routinely cite the
6 strategy’s “3-1 reward-to-risk ratio,”⁷⁶ explaining that this means that each winning
7 trade will yield profits of three times what is risked, more than making up for
8 losses on losing trades.⁷⁷ MTO presenters illustrate this math on a whiteboard at

9 ⁷² EX 13, 7849 (MTO Master Document lists “Key Loops” including “Money:
10 Does not require large assets to start”); *id.* at 5470 (MTO slides state minimum
11 required to trade Forex or Stocks is \$500); *id.* at 293 (¶25) & 1019 (CA MTO Day
12 2 Tr. 88:14-22) (Kimoto shows example trade where “You would have made ...
13 \$1,000 in a day off this trade only using \$2,000 in capital to do it”); *id.* at 296 (¶46)
14 & 2833-2841 (NYC MTO Day 2 Tr.139:01-147:15) (Darek Zelek tells story of
15 student who started with only \$3,000 but now supports his family by trading),
16 2804-2805 (Tr. 110:09-111:03) (Zelek tells consumers you can start trading futures
17 with as little as \$1,700); EX 1, 2 (Busche Dec. ¶9) (“The instructors told us that
18 you don’t need much money to start with in order to use their algorithm to make
19 money....”); EX 14, 8451 (¶4) & 8673-8674 (VA MTO Day 3 Tr. 222:19-223:03)
20 (Sargood tells consumers those with \$10,000 to trade can make \$60,000 per year);
21 EX 13, 299 (¶64) & 4590 (VA MTO Day 2 Tr. 114:08-19) (Sargood claims
22 consumers with only \$4,000 can make \$200/day trading forex, or could earn the
23 same using only \$1,650 if trading in futures).

24 ⁷³ EX 13, 309-313 (some respondents to OTA’s survey felt more funds were
25 necessary to implement OTA’s strategy than OTA represented); EX 10, 199-204
26 (Geiran Dec. ¶¶17-31) (records from OTA’s preferred trading platform show that
27 most OTA customers don’t make money, and the majority who trade lose money).

28 ⁷⁴ EX 13, 293 (¶25) & 567 (CA MTO Day 1 Tr. 65:17-19); *see also id.* at 593
(91:17-21) (strategy “puts odds in our favor in a dramatic way”).

⁷⁵ EX 13, 293 (¶25) & 516, 568, 580, 694 (CA MTO Day 1 Tr. 14:06-08, 66:10-
13, 78:08-09, 192:06-12).

⁷⁶ EX 13, 293 (¶25) & 705 (CA MTO Day 1 Tr. 203:05-09) (“[W]e can easily get
a three-to-one reward to risk ratio when done properly.”).

⁷⁷ EX 13, 293-300 (¶¶28, 50, 68 & images); *id.* at 293 (¶25) & 1044-1045 (CA
MTO Day 2 Tr. 113:23-114:03) (“So every day you expect one to be a loser, one to
be a winner, on average. Three-to-one. So you lose one on one and you make three
on the other, so everyday you’re coming out with a -- basically two times your risk.
So whatever you’re risking, every day you’re making twice that on average.”); *id.*
at 320 (¶126) & 6851-6852 (Utah MTO Day 1 Tr. 124:08-125:13) (“Reward-to-
risk ratio. [Y]ou should start with a 3 to 1. I’m going to risk 10 bucks to make

1 the front of the room, writing out the results of each trade in a hypothetical trading
2 week, where each trade either loses what is risked or earns three times that in
3 profits.⁷⁸ The presenter totals up the profits, writes that, too, on the board, and then
4 leaves this clean, seemingly mathematical result on the whiteboard for all three
5 days of the seminar.⁷⁹ But the picture painted by this “hypothetical” week is utterly
6 divorced from reality. As OTA has conceded to the FTC, most trades picked by its
7 purported strategy do not come to fruition at all—i.e., they yield nothing but a
8 waste of time.⁸⁰ And OTA has conceded to the FTC that many profitable trades fail
9 to achieve the 3-to-1 results that OTA tells consumers to expect.⁸¹

10 In addition to all of the above, OTA’s presenters play a trump card: they
11 claim that they themselves are living proof that OTA Training works, representing
12 that they became successful traders and amassed substantial wealth using OTA’s
13 strategy.⁸² The “instructors” supposed success is material to consumers’ decision
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16 30.... [I]f you’re disciplined and can follow the rules, you only have to be right
17 ... 25 percent of the time ... to break even.”); *id.* at 296 (¶46) & 2683-2689 (NYC
18 MTO Day 1 Tr. 439:24-445:19) (Zepek illustrates the effect of the “3-1 reward-to-
19 risk ratio” with a hypothetical week of trading in which each trade either loses
20 \$100 or gains \$300, yielding a profit of \$2,000 for the week); *id.* at 299 (¶64) &
4289-4295 (VA MTO Day 1 Tr. 219:17-225:19) (Sargood describes hypothetical
week of ten trades in which each trade either loses \$4,000 or gains \$12,000, with
only three winning, overall yielding a profit of \$8,000 for the week).

21 ⁷⁸ EX 13, 293-300 (¶¶28, 50, 68 & images).

22 ⁷⁹ *Id.*

23 ⁸⁰ *See infra* Note 138 & accompanying text.

24 ⁸¹ *See infra* Note 140 & accompanying text.

25 ⁸² EX 4, 25 (Kazi Dec. ¶5) (“OTA’s presenter told us that he had nothing before
26 he learned about trading from OTA and now he was wealthy. Again, this gave me
27 hope that I could be a successful trader.”); EX 1, 6-7 (Busche Dec. ¶32); EX 7, 147
28 (Richins Dec. ¶5) (Kimoto “gave us to understand that he had gone through Online
Trading Academy’s training program, and that he had become quite wealthy by
using [its] strategy in his trading.”); *see also* EX 5, 36 (Quintas Dec. ¶36) (EC tells
consumer that “[a]ll” OTA instructors “are seasoned ‘active’ traders” who are
“highly vetted” and “must provide ongoing documented evidence of their ongoing
trading success”).

1 to buy OTA Training.⁸³ OTA is well aware of this tactic.⁸⁴ For example, at a March
2 2019 MTO in California, Defendant Kimoto:

- 3 • Claimed he once “was sitting in your seat right there,” and “had been
4 struggling as a trader,” with “close to \$60,000 in losses.”⁸⁵
- 5 • Claimed that, after learning to apply OTA’s strategy, he quit his job
6 “because I was making as much in the trading.”⁸⁶
- 7 • Told stories about travelling the globe, including an anniversary trip to
8 Bora Bora with his wife where they swam with sharks,⁸⁷ visiting
9 castles while vacationing in Scotland with his wife,⁸⁸ and claiming
10 “I’ve taken my kids all over the world. You know, we’ve been to Asia,
11 we’ve been to Europe, South America.”⁸⁹
- 12 • Described enjoying expensive hobbies, including paragliding,⁹⁰
13 surfing,⁹¹ golf (including hiring a golf pro to improve his game),⁹² and
14 surfing behind his expensive ski boat.⁹³
- 15 • Described the “very affluent neighborhood” he lives in, where “kids in
16 the neighborhood” have “live-in nannies, cooks, gardeners,” and the
17 latest iPhones and Apple watches.⁹⁴

18 ⁸³ EX 4, 25 (Kazi Dec. ¶5) (instructor’s claimed success “gave me hope that I
19 could be a successful trader”); EX 1, 6-7 (Busche Dec. ¶32) (when consumers ask
20 how much they will make, OTA salespeople point to instructors’ success).

21 ⁸⁴ OTA gave talking points to its ECs for use in handling consumers’ questions
22 about why the “instructors” would spend time teaching if they made so much
23 money trading. EX 13, 7728-7730 (Hubbard IH Tr. 103:12-105:07).

24 ⁸⁵ EX 13, 293 (¶25) & 624-626 (CA MTO Day 1 Tr. 122:16-124:04).

25 ⁸⁶ EX 13, 293 (¶25) & 986 (CA MTO Day 2 Tr. 55:20-25).

26 ⁸⁷ EX 13, 293 (¶25) & 611-614 (CA MTO Day 1 Tr. 109:10-112:05).

27 ⁸⁸ EX 13, 293 (¶25) & 1644 (CA MTO Day 3 Tr. 283:03-15).

28 ⁸⁹ EX 13, 293 (¶25) & 832 (CA MTO Day 1 Tr. 330:09-15).

⁹⁰ EX 13, 293 (¶25) & 610-611 (CA MTO Day 1 Tr. 108:08-109:05).

⁹¹ EX 13, 293 (¶25) & 626 (CA MTO Day 1 Tr. 124:04-23).

⁹² EX 13, 293 (¶25) & 1028-1031 (CA MTO Day 2 Tr. 97:05-100:05).

⁹³ EX 13, 293 (¶25) & 1496-1497 (CA MTO Day 3 Tr. 135:17-136:13).

- 1 • Described how, once you are earning a million dollars a year,
2 “[y]ou’re able to associate with another socio-economic group....”⁹⁵
- 3 • Described how his income from trading has improved his life,
4 allowing him to attend his younger daughter’s competitions and
5 events⁹⁶ and removing a source of stress from his marriage.⁹⁷ He
6 boasted, “money is not a limiting factor in our lives anymore.”⁹⁸

7 Similarly, at a June 2019 New York MTO, OTA presenter Zelek:

- 8 • Said he was a full-time trader,⁹⁹ but previously was a contractor who
9 knew nothing about trading until becoming an OTA “student.”¹⁰⁰
- 10 • Claimed that he struggled to pay the cost of his OTA courses, saying,
11 “I had to decide whether it was, you know, food or utilities, and how
12 do you think the conversation went with my wife?”¹⁰¹ He claimed that
13 after financing much of his OTA training,¹⁰² he was left with only
14 \$7,000 he could invest, yet made sufficient profits investing that
15 \$7,000 to live off of it, and pay off his loan within eight months.¹⁰³
- 16 • Described the wealth and exclusivity of the town where he now lives,
17 including that his neighbor is swimming champion Michael Phelps,
18 who taught his daughter to swim,¹⁰⁴ and told consumers they would
19

20 ⁹⁴ EX 13, 293 (¶25) & 827-828 (CA MTO Day 1 Tr. 325:09-326:24).

21 ⁹⁵ *Id.* at 293 (¶25) & 849-851 (CA MTO Day 1 Tr. 347:1-349:4).

22 ⁹⁶ EX 13, 293 (¶25) & 706-708 (CA MTO Day 1 Tr. 204:14-206:02).

23 ⁹⁷ EX 13, 293 (¶25) & 1716-1717 (CA MTO Day 3 Tr. 355:17-356:24).

24 ⁹⁸ *Id.*

25 ⁹⁹ EX 13, 296 (¶46) & 2334 (NYC MTO Day 1 Tr. 90:05-08).

26 ¹⁰⁰ EX 13 296 (¶46) & 2255-2257 (NYC MTO Day 1 Tr. 11:18-13:01), 2773-
27 2774 (NYC MTO Day 2 Tr. 79:19-80:23), 3205 (NYC MTO Day 3 Tr. 34:16-22).

28 ¹⁰¹ EX 13, 296 (¶46) & 2773-2774 (NYC MTO Day 2 Tr. 79:19-80:23).

¹⁰² EX 13, 296 (¶46) & 2925 (NYC MTO Day 2 Tr. 231:12-20).

¹⁰³ EX 13, 296 (¶46) & 2297, 2612 (NYC MTO Day 1 Tr. 53:21-22, 368:02-04),
3491-3496 (Day 3 Tr. 320:12-325:03).

¹⁰⁴ EX 13, 296 (¶46) & 2609-2610 (NYC MTO Day 1 Tr. 365:14-366:04).

not be able to achieve such wealth “from a regular job,” but only
“through investments,”¹⁰⁵ claiming that he purchased his home there
with profits from trading.¹⁰⁶

- Claimed income from trading has enabled him to live abroad,
including in Dubai,¹⁰⁷ Europe (where his family lives three months per
year),¹⁰⁸ and India (where he had household staff).¹⁰⁹
- Described the expensive hobbies he and his family enjoy, including
frequent scuba diving,¹¹⁰ skiing at resorts such as Whistler,¹¹¹ and, for
his young daughter, horseback riding and ballet.¹¹²
- Claimed he drives a “750”¹¹³ (the BMW 750 is a luxury car) and that
he built a “casita” on his property so that his parents can have their
own residence when they come to visit his family.¹¹⁴
- Claimed he makes so much money, just his tax payments could
support more than three families, or buy a “super luxury car” every
year.¹¹⁵
- Implied that anyone can be as successful as him by attributing his
success to OTA’s strategy: “as long as I follow the system, the
outcome will be provided.”¹¹⁶

¹⁰⁵ EX 13, 296 (¶46) & 2610-2611 (NYC MTO Day 1 Tr. 366:17-368:04).

¹⁰⁶ EX 13, 296 (¶46) & 3452-3453 (NYC MTO Day 3 Tr. 281:13-282:21).

¹⁰⁷ EX 13, 296 (¶46) & 3342-3343 (NYC MTO Day 3 Tr. 171:10-172:07).

¹⁰⁸ EX 13, 296 (¶46) & 2259 (NYC MTO Day 1 Tr. 15:04-17).

¹⁰⁹ EX 13, 296 (¶46) & 3074-3075 (NYC MTO Day 2 Tr. 380:11-381:23).

¹¹⁰ EX 13, 296 (¶46) & 2799-2800 (NYC MTO Day 2 Tr. 105:11-106:05). Zelek
says he has “278 dives already recorded” and goes diving with his family,
including his young daughter. *Id.* at 2947 (Tr. 253:06-17).

¹¹¹ EX 13, 296 (¶46) & 3013-3014 (NYC MTO Day 2 Tr. 319:09-320:230).

¹¹² EX 13, 296 (¶46) & 2799-2800 (NYC MTO Day 2 Tr. 105:11-106:05).

¹¹³ EX 13, 296 (¶46) & 2904-2906 (NYC MTO Day 2 Tr. 210:11-212:07).

¹¹⁴ EX 13, 296 (¶46) & 2775-2776 (NYC MTO Day 2 Tr. 81:11-82:06).

¹¹⁵ EX 13, 296 (¶46) & 2750 (NYC MTO Day 2 Tr. 56:11-25).

¹¹⁶ EX 13 296 (¶46) & 2906-2907 (NYC MTO Day 2 Tr. 212:15-213:01).

1 Dale Sargood, the presenter at a November 2019 MTO in Vienna, VA,
2 similarly claimed he takes his family on seven or eight multi-week vacations every
3 year, for which he budgets \$15,000 per week,¹¹⁷ that he and his children enjoy
4 expensive hobbies,¹¹⁸ and that OTA “cannot pay me enough” to teach their asset
5 class courses because of their longer duration, which “takes me away from ...
6 making money.”¹¹⁹

7 Presenters even make this ‘proof’ concrete by purporting to make profitable
8 trades during the MTO, often live while consumers watch.¹²⁰

9 But OTA’s trump card is a fake. Defendant Kimoto’s trading has yielded a
10 net loss of tens of thousands of dollars over the past several years (January 2016 –
11 October 2019), despite a historic bull market.¹²¹ OTA presenter Zelek lost money
12 in 2018, and as of last August had made only a few thousand dollars in 2019.¹²²
13 MTO “instructor” Sean Kim, who appears in OTA infomercials and is held up by
14 other OTA salespeople as an expert trader, for years has only managed to break
15 even, despite heavy trading on a six-figure account.¹²³ Even Defendant Seiden,
16 held up as the inventor and most-skilled practitioner of OTA’s method, has done

17 ¹¹⁷ EX 14, 8451 (¶4) & 8572-8574 (VA MTO Day 3, 121:15-123:04).

18 ¹¹⁸ EX 14, 8451 (¶4) & 8575-8576 (VA MTO Day 3 Tr. 124:22-125:17).

19 ¹¹⁹ EX 14, 8451 (¶4) & 8709-8710 (VA MTO Day 3 Tr. 258:16-259:23).

20 ¹²⁰ *See, e.g.*, EX 13, 293 (¶25) & 605-606 (CA MTO Day 1 Tr. 103:18-104:22)
21 (“this morning ... I went ahead and placed a trade So that was in ... 30-minute
22 period of time, ended up locking in \$1,200 in profit.”); *id.* at 296 (¶46) & 2299-
23 2306 (NYC MTO Day 1 Tr. 55:15-62:21) (“I actually have a position right now
24 that I should probably manage. Is it okay if I make some adjustments on my
25 stocks, guys? There, done, I closed for [\$]6,050, done.”); *id.* at 299 (¶64) &
26 4141-4144 (VA MTO Day 1 Tr. 71:07-74:07) (“So this is a, a live trade we have on
right now with the S&P 500. this is this morning that we got into that trade
here so worst case scenario on this trade we’ll make 300 bucks. All right. Are
we going to put that in the bank? So we just hit the stop loss there. We are
now out of that transaction.”); EX 7, 147 (Richins Dec. ¶5) (“He claimed to have
made \$6,000 or so in a trade ... earlier that day.”).

27 ¹²¹ EX 13, 317-318 (¶¶110-114) (Kimoto had overall loss of \$17,349).

28 ¹²² EX 13, 319 & 322-323 (¶117 & 132) (summarizing Zelek’s results by month).

¹²³ EX 13, 319 & 322 (¶¶120 & 131) (summarizing Kim’s results).

1 very little trading in recent years (January 2016 to October 2019), and the trades he
2 did make yielded a net loss of approximately \$20,000.¹²⁴ And OTA makes no effort
3 to ensure its presenters are actually successful traders.¹²⁵

4 Like their claims of trading-generated wealth, the trades MTO presenters
5 purport to make in front of MTO attendees are also often fake.¹²⁶ Defendants admit
6 that Defendant Kimoto “generally only uses simulated trades” when presenting at
7 MTOs,¹²⁷ and that presenter Zelek “also uses simulation account trades in his MTO
8 classes.”¹²⁸ All of the other MTO presenters the FTC has questioned on this point
9 also admit they use simulated, not actual trades in their presentations.¹²⁹ In addition
10 to the inherent deception in passing off a simulation as reality, using simulated
11 trades also allows presenters to make multiple trades, but display to MTO
12 attendees only cherry-picked successful trades.¹³⁰

13 The Daily Grid

14 The MTO presentation is designed to induce consumers to purchase OTA
15 Training, and specifically seeks to induce as many sales as possible of OTA’s most

16 ¹²⁴ EX 13, 318-319 & 325 (¶¶116 & 141) (from Jan. 2016 to Oct. 2019, all but
17 one trade was in joint account with Jasmine Wang that lost \$20,291.58).

18 ¹²⁵ EX 13, 7699-7700 (Hubbard IH Tr. 74:19-75:16) (Hubbard not aware of any
19 instructors terminated for failing to be an active or profitable trader). OTA
20 informed FTC that it required “instructors” to regularly provide evidence to OTA
21 of their ongoing trading. In response to FTC’s request for the details of such policy
22 and the evidence “instructors” provided, OTA stated that “instructor trading
23 verification forms and supporting documentation are collected annually in the
24 normal course of business solely to confirm that instructors are actively trading in
25 the markets.” *Id.* at 5099 (OTA Letter to FTC). OTA produced numerous
26 documents, many of which document only a handful of trades, or merely assert
27 (without any documentation) that the instructor is actively trading. *Id.* at 316
28 (¶108).

¹²⁶ The FTC understands that OTA may contend that the simulated nature of the
trades was disclosed to consumers. The transcripts belie this assertion.

¹²⁷ EX 13, 5132 (OTA Letter to FTC).

¹²⁸ *Id.* at 5133.

¹²⁹ EX 13, 319-320 (¶122).

¹³⁰ *See* EX 13, 329 (¶154) & 7644-7648 (online post by purported OTA insider,
claiming presenters cherry-pick and show only successful simulated trades).

1 expensive offering, “Mastermind.” The presentation typically includes significant
2 discussion of one “Mastermind” feature in particular, called the “Daily Grid” or the
3 “Supply and Demand Grid,” which provides consumers with the purported results
4 of OTA’s application of its strategy.¹³¹ OTA’s “strategy” revolves around
5 identifying price ranges, or “zones,” in which an asset’s price will change
6 direction.¹³² Foreknowledge of these turning points allows a trader to enter a
7 position just before the turn, buying before the price rises and selling before it falls.
8 Thus the name “market timing.” This is the basis for the claimed profits.¹³³ The
9 Daily Grid is a list of “zones” for several dozen specific financial assets, identified
10 by OTA’s “best traders” using OTA’s strategy, and provided daily to Mastermind
11 subscribers.¹³⁴ For each asset, the Daily Grid identifies different zones for “Daily
12 Income Trades,” “Weekly Income Trades,” and “Wealth accumulation and
13 protection.”¹³⁵

14 OTA claims that the Daily Grid identifies market turning points “with a high
15 degree of accuracy,” applying OTA’s “education in real market conditions” to
16 reduce the time Mastermind subscribers must spend identifying profitable trades.¹³⁶

18 ¹³¹ EX 13, 306 (¶92).

19 ¹³² EX 13, 293 (¶25) & 653 (CA MTO Day 1 Tr. 151:19-22) (“Market timing is
20 simply identifying market [turns] and move[s] before they happen with a high
21 enough degree of probability. That’s what these zones are, these pockets are, is
22 turning points.”); EX 1, 2 (Busche Dec. ¶8) (OTA presenters claim strategy
23 identifies “zones” where price is likely to change direction).

24 ¹³³ EX 1, 2 (Busche Dec. ¶8).

25 ¹³⁴ EX 13, 293 (¶25) & 1288-1289 (CA MTO Day 2 Tr. 357:18-358:03) (“The
26 mastermind grid is the name of it, but we just call it for short the grid. What it does
27 is our senior trading staff, some of our best traders in the company, every morning
28 before the market opens they go through 36 individual charts, the most common
charts that our students trade in the futures market, Forex market, stock market, the
most common charts that their students will trade. And they go through all 36
charts and they identify the three best demand zones and the three best supply
zones on each chart.”); *id.* at 1918 (MTO course book describing Daily Grid).

¹³⁵ EX 13, 308 (¶95) & 5200-5207 (Daily Grid “User Guide”).

¹³⁶ EX 13, 1918 (MTO course book describing Daily Grid).

1 OTA salespeople describe the Daily Grid as OTA's "crown jewel," and present it as
2 the major selling point for the Mastermind offering.¹³⁷

3 However, OTA's own analysis of the success of the Daily Grid's picks paints
4 a very different picture. It shows that the majority of "zones" identified in the
5 Daily Grid never yielded an actual trade (because the asset's price did not move
6 into the "zone").¹³⁸ And while it appears that OTA's profitability analysis for the
7 actual trades relies on techniques at odds with those advertised to consumers,¹³⁹
8 even so, it shows that a majority of the profitable trades did not produce the "3-to-
9 1" results OTA tells consumers they should expect.¹⁴⁰

10 OTA's salespeople represent that consumers can begin making money while
11 they are still learning OTA's strategy, by "copying" the "picks" provided in the
12 Daily Grid, or that are recommended by OTA in its "Pro Picks" or by OTA
13 "instructors" in "XLT" sessions.¹⁴¹ This message is designed to boost sales of the
14 expensive Mastermind offer.¹⁴²

15 ¹³⁷ EX 13, 306 (¶92); *id.* at 299 (¶64) & 4727 (VA MTO Day 2 Tr. 251:1-4)
16 (Sargood calls Daily Grid "powerhouse" of OTA's program).

17 ¹³⁸ EX 13, 306-308 (¶93) (OTA's own calculation of the "zone hit rate"—i.e.,
18 how frequently the "zones" OTA picks are "hit" by price, such that the
recommended trade can be implemented—is below 50%).

19 ¹³⁹ For example, OTA's analysis assumes active management of trades, in contrast
20 to the "set and forget" nature of the system touted to consumers. *Compare* EX 13,
21 306-308 (¶93) *with id.* at 293 (¶25) & 1045-1046 (CA MTO Day 2 Tr. 114:25-
22 115:10) (Kimoto tells consumers they won't be "watching it this whole time," not
23 "sitting there babysitting it," but "off living our life, doing our thing"); *id.* at 296
(¶46) & 3478-3481 (NYC MTO Day 3 Tr. 307:19-310:2) (Zepek describes trade as
24 taking 32 seconds to set up, you don't have to watch it after that); *id.* at 7849
(MTO Master Document lists "Key Loops" for Day 1, including "Takes Minimal
Time: Introduce the concept of set and forget trading.").

25 ¹⁴⁰ EX 13, 306-308 (¶93) (by OTA's own calculations, most profitable trades
26 yielded less than 3 times the amount risked).

27 ¹⁴¹ EX 13, 293 (¶25) & 978 (CA MTO Day 2 Tr. 47:11-18) ("we don't want you
28 going out and finding your own trades at first. So we give you another bank of
trades that are pre-vetted called pro picks."), 1033-1034 (Tr. 102:03-103:08)
(Kimoto claims that in 2018, consumers "would have made about \$94,000 last year
just taking those trades in those [XLT] sessions with us."); *id.* at 296 (¶46) & 3455-
3457 (NYC MTO Day 3 Tr. 284:19-286:17) (Zepek directs consumers to get

D. Education Counselors Leverage Pitch to Induce Purchase

The MTO presenters' message is reinforced by ECs in individual meetings with consumers. ECs first contact consumers before the MTO, and meet with them multiple times throughout the three-day presentation.¹⁴³ In the meetings, ECs attempt to close the sale of high-priced packages of courses, pressuring consumers to sign purchase agreements before the end of the seminar.¹⁴⁴ At the outset of the process, ECs ask consumers to disclose all of their assets, including real estate and retirement accounts, as part of completing a "questionnaire."¹⁴⁵ ECs leverage this knowledge in their sales pitch. For example, wealthier consumers may be pitched the most expensive offering, "Mastermind," at over \$50,000.¹⁴⁶ Others may be pitched different packages, with prices ranging from thousands to tens of thousands of dollars. ECs tell consumers that the prices offered are heavily discounted, and

second monitor, and copy the XLT trades in their own accounts as the instructor makes them); *id.* at 299 (¶64) & 4146 (VA MTO Day 1 Tr. 76:10-24) (Sargood says consumers will learn by copying instructor's successful trades using their own money); *id.* at 316 (¶109) & 6154 (OTA Meeting Tr. 122:13-20) (OTA executive tells FTC that XLT and Daily Grid trades are "potential opportunities that are presented to students that they could use to execute trades").

¹⁴² EX 13, 7848-7853 (Seiden circulates "MTO Master Document" to OTA executives including COO Gene Longobardi, stating "Key Loops that must be laid out on day 1 are the Copy Principle (Anyone can do it)" and directing that Day 2 begin with demonstration of "Pro Picks" and "XLT," with objective to show successful "trades that students are doing with us in the XLT / ProPicks. This closes the loops set on day on[e] of copying leads to success," noting the "Key Loop" for this section is: "Can you copy? Learn while you earn? Don't have to be an expert at first to be successful.").

¹⁴³ EX 1, 3 (Busche Dec. ¶15); EX 3, 22 (Katukota Dec. ¶16).

¹⁴⁴ EX 4, 26 (Kazi Dec. ¶¶7-10); EX 6, 111 (Ramez Dec. ¶9); EX 5, 32 (Quintas Dec. ¶¶19-22) (EC "was pressuring me to sign up for OTA courses").

¹⁴⁵ EX 8, 186 (Luu Dec. ¶¶19-20); EX 5, 30 (Quintas Dec. ¶11); EX 13, 293 (¶22) & 480-485 (investigator posing as consumer asked to complete questionnaire).

¹⁴⁶ EX 1, 1-3 (Busche Dec. ¶¶2 & 15) ("My Education Counselor recommended I take the \$50,000 Mastermind package, because I had a lot of assets and was retired."); EX 5, 35 (Quintas Dec. ¶34) (OTA did not use disclosed information to give advice about consumer's specific investments, and "[i]t seemed like it was not to benefit me, but rather so OTA would know my ability to pay for additional courses").

1 that the discounts will not be available to consumers who wait until after the MTO
2 to buy.¹⁴⁷ Consumers who still hesitate or balk may be offered “special” discounts
3 on condition that the consumer sign before leaving the seminar.¹⁴⁸

4 **E. OTA’s High Interest Lending to Purchasers**

5 OTA offers to help consumers finance the purchase of OTA Training through
6 short-term loans with no interest due for the first six months.¹⁴⁹ After that, interest
7 is due at rates near 18%.¹⁵⁰ OTA’s representations create the impression that
8 consumers will quickly generate sufficient trading revenue to pay off the loan,
9 avoiding the hefty interest charges.¹⁵¹ But that impression is false. As OTA should
10 know from its own data, very few (██████) borrowers repay their loans in full
11 before the six month period is up,¹⁵² and a large proportion (██████) still have
12

13 ¹⁴⁷ EX 5, 32 (Quintas Dec. ¶¶19-20) (EC claims prices are “wholesale” and
14 consumers otherwise have to pay higher, “retail” prices); EX 14, 8451 (¶4) &
15 8656-8657 (VA MTO Day 3 Tr. 205:17-206:17) (EC claims prices are at a 40%
discount that expires when the MTO ends).

16 ¹⁴⁸ EX 4, 26 (Kazi Dec. ¶¶7-10).

17 ¹⁴⁹ EX 13, 316 (¶109) & 6168-6169 (OTA Meeting Tr. 136:01-137:03); EX 1, 4
18 (Busche Dec. ¶19); EX 2, 9 (Ciaraulo Dec. ¶9); EX 3, 22 (Katukota Dec. ¶19); EX
19 5, 33 (Quintas Dec. ¶¶24-25).

20 ¹⁵⁰ EX 13, 316 (¶109) & 6168-6169 (OTA Meeting Tr. 136:01-137:03).

21 ¹⁵¹ EX 1, 4 (Busche Dec. ¶21) (“Although they never said it explicitly, they
22 implied that you would be able to pay back your loan with money you made
23 through trading with their strategy.”); EX 7, 149 (Richins Dec. ¶11) (“While they
24 didn’t say explicitly that you would be able to use income from trading to pay off
25 the tuition, they gave so many examples of people making lots of money, so
26 quickly, the understanding that you got was that you would be making so much
27 money so soon that the payments wouldn’t matter.”); *see also* EX 5, 32 (Quintas
28 Dec. ¶21) (“At some point during the three-day seminar, one of OTA’s
representatives said that I could make back my \$50,000 investment within six
months to a year. I’m pretty sure it was Dave [the EC] who told me that.”); *id.* at
39 (¶50) (EC said committed purchasers make enough to pay back cost of tuition
“within six months to a year”).

¹⁵² Loan servicing data produced by Universal Guardian Acceptance Corporation
shows that ██████ of loans are repaid in full within 6 months of origination. EX 10,
197 (Geiran Dec. ¶12). This data is available to OTA, as it is the lender. Defendant
Shachar reviews reports on the loans’ performance. EX 13, 7757 (Hubbard IH Tr.
200:07-16).

1 not paid in full after two years.¹⁵³ Of loans at least one year old, a significant
2 number ([REDACTED]) had gone into default or other non-payment status, such
3 as bankruptcy.¹⁵⁴

4 **F. OTA Has No Basis for Claiming Purchasers Will Likely Make**
5 **Money**

6 Even though OTA's marketing and sales process is largely driven by claims
7 of substantial earnings,¹⁵⁵ OTA has no basis for representing that purchasers of
8 OTA Training are likely to make such earnings.¹⁵⁶ At the outset, OTA does not
9 systematically collect information about its "students'" financial performance,¹⁵⁷
10 and thus has no basis to represent that typical purchasers make money trading in
11 the financial markets.¹⁵⁸

12 ¹⁵³ EX 10, 198 (Geiran Dec. ¶15).

13 ¹⁵⁴ EX 10, 197 (Geiran Dec. ¶11).

14 ¹⁵⁵ See e.g., EX 7, 149 (Richins Dec. ¶11) (consumer bought as he was looking
15 for "supplemental income—possibly doubling or tripling my monthly income from
16 teaching," and "that seemed possible with [OTA's] strategy, based on what they
17 had said about it"); EX 1, 2 (Busche Dec. ¶7) ("The impression they gave was that
18 you would get a high rate of return. This was the main lure for people to sign up.").

19 ¹⁵⁶ In response to the FTC's request for "[s]ubstantiation that consumers are
20 likely to profit using OTA's patented trading strategy and that OTA's patented
21 strategy achieves the results described in its [ads]," Defendants produced only
22 documentation for a handful of specific trades used in certain testimonials in its
23 ads. EX 13, 315-316 (¶¶106-107). Although Defendants claim that the profits
24 documented in the testimonials are "typical," and that consumers who apply OTA's
25 strategy "will achieve results similar to those depicted in our testimonials," they
26 have provided FTC with no evidence substantiating that claim. EX 13, 6187 (OTA
27 Meeting Tr. 155:09-18).

28 ¹⁵⁷ EX 13, 7705-7707 (Hubbard IH Tr. 80:23-82:01) ("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." And among OTA's management, "there
was no discussion of tracking" OTA "student success."); *id.* at 6167 (OTA Meeting
Tr. 135:07-14) (OTA executive "[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."); Certification and Declaration of Notice to Defendants by
Plaintiff FTC's Counsel, Thomas M. Biesty, in Support of Plaintiff's *Ex Parte*
Applications ("Biesty Cert."), filed herewith, ¶ 12.

¹⁵⁸ And many consumers do not. See EX 1, 5 (Busche Dec. ¶¶26-27) (not able to
use OTA's strategy to make trades, as it is "too tedious and time-consuming"); EX

1 To the extent OTA has sought to obtain information about its purchasers’
2 trading activities, that information indicates strongly that its purchasers were not
3 making money. For example, in mid-2018, OTA conducted a survey of its
4 “students” that asked, among other things, about trading performance.¹⁵⁹ The
5 results were so disastrous that, when they were presented to him, OTA’s CEO,
6 Defendant Shachar, forbid anyone in the meeting from taking a copy out of the
7 room.¹⁶⁰ Specifically, the survey asked, “As a result of your experience at Online
8 Trading Academy, would you say you’re ‘making money’ through trading and
9 investing?”¹⁶¹ The results: 66% stated that they were making no money, 31% were
10 making “a little money,” and just 3% claimed to be making “a lot of money.”¹⁶²
11 Even among purchasers of OTA’s high-end offering, “Mastermind,” who obtain the
12 most extensive OTA training and support,¹⁶³ 58% said they were making no money,
13 and only 10% claimed that they were making “a lot of money.”¹⁶⁴

14 A second, re-tooled survey, administered shortly thereafter (presumably in
15 an attempt to find better results), showed a similar, bleak picture: fully a third of

16 2, 9 (Ciaraulo Dec. ¶12) (“I had no success in making profitable trades with the
17 strategies [I was] taught by OTA.”); EX 13, 309-313 (¶100) (numerous
18 respondents to OTA’s survey stated they are not making money).

19 ¹⁵⁹ EX 13, 7706 (Hubbard IH Tr. 81:09-17) (“Q. [W]ere there any efforts at
20 tracking on the long-term how students were performing in the markets? A: Not
21 that I’m aware of when I was there. From my understanding, there was a survey
22 conducted after I left. I believe it was in June of last year.”); *id.* at 7763-7799
(June 2018 survey results) & 5216. Survey respondents were consumers who had
23 been “enrolled” with OTA between 60 days and three years, and who had
24 purchased one of OTA’s upper-level courses. *Id.* at 5112 (OTA Letter to FTC).

25 ¹⁶⁰ EX 13, 7715-7716 (Hubbard IH Tr. 90:18-91:05); *id.* at 7763-7799 (June 2018
26 survey results) & 5216 (same).

27 ¹⁶¹ EX 13, 5216 & 7782.

28 ¹⁶² *Id.*

¹⁶³ EX 13, 1916-1926 (noting Mastermind members must have completed three
other OTA courses, and describing Mastermind’s many features, including tools
such as the Daily Grid, “Market Screener,” “Mastermind daily market outlook,”
and “exclusive trade picks from ... top level instructors,” as well as community
features and additional instruction such as the “All Asset Mastery XLT”).

¹⁶⁴ EX 13, 7782.

1 respondents were not trading at all, and of those who did trade, less than 4%
2 claimed they were “making lots of money.”¹⁶⁵ Of trading consumers, over 23%
3 stated that they were losing money and another 22% were making no money.¹⁶⁶ As
4 to the remainder, who reported making “some” money, the survey provides no
5 reason to believe they were making more than minimal income.

6 But there is better evidence of OTA purchasers’ results, and it shows they are
7 even worse than OTA’s self-administered surveys suggest. For several years, OTA
8 has recommended that purchasers use TradeStation, an online brokerage platform,
9 to conduct their trading and deploy OTA’s strategy.¹⁶⁷ Until recently, OTA
10 advertised discounted commissions at TradeStation for OTA “students,”¹⁶⁸ and its
11 courses on equities, options, and futures used TradeStation (and no other brokerage
12 platform) when demonstrating OTA’s strategy in their “classes.”¹⁶⁹ TradeStation

13
14 ¹⁶⁵ EX 13, 5281 & 5287. Like OTA’s first survey, the second survey was given to
15 consumers who had been “enrolled” with OTA between 60 days and three years,
16 and who had purchased one of OTA’s upper-level courses (respondents to the first
survey were excluded). *Id.* at 5112 (OTA Letter to FTC).

17 ¹⁶⁶ EX 13, 5281 & 5287.

18 ¹⁶⁷ *Id.* at 814-815 (CA MTO Day 1 Tr. 312:17-313:16) (Kimoto says he uses
19 TradeStation, says its “features ... are ideal” for OTA’s method and its
20 commissions are low); EX 1, 4 (Busche Dec. ¶22); EX 7, 148 & 170-177 (Richins
21 Dec. ¶8 & Attach C) (OTA “Begin Your Education Checklist” lists only one
platform, TradeStation, for stocks, ETFs, futures, and options); EX 3, 22-23
(Katukota Dec. ¶20); EX 6, 113 (Ramez Dec. ¶22). TradeStation paid OTA more
than \$60,000 per month to advertise its brokerage platform to consumers. EX 13,
7394-7396 (TradeStation Interrogatory No. 2 Response).

22 ¹⁶⁸ EX 1, 4 (Busche Dec. ¶22); EX 7, 148 (Richins Dec. ¶8); EX 13 296 (¶46) &
23 3507-3509 (NYC MTO Day 3 Tr. 336:11-338:14) (OTA arranged 20% commission
24 discount with TradeStation for OTA purchasers); *id.* at 7395 (TradeStation
Interrogatory No. 2 Response) (“TradeStation agreed that any [OTA purchaser who
25 completed an OTA class on equities, futures, or options] who became a
TradeStation brokerage customer would be offered a 20% commission discount
26 from TradeStation’s standard, published commission rates until the cost of the OTA
class taken by the OTA Student was recouped.”).

27 ¹⁶⁹ EX 13, 7394-7396 (TradeStation Interrogatory No. 2 Response) (under August
28 2013 contract with OTA, TradeStation provided its platform, accounts, and data to
OTA for use in classrooms, and OTA agreed not to use any other platform but
TradeStation in classes on equities, options, or futures); EX 1, 4 (Busche Dec. ¶22)

1 records of all accounts of OTA “students” show that roughly half never make a
2 trade, and of those who do trade, most (74.9%) lose money.¹⁷⁰ Very few (less than
3 5%) made more than \$10,000.¹⁷¹

4 Nor is this surprising, when even the most experienced traders on OTA’s
5 staff are unable to earn substantial profits with its purported strategy. Sean Kim, for
6 example, is held up to consumers as an expert trader with valuable experience
7 working directly in the financial markets.¹⁷² Yet, despite years of active trading in
8 high volumes and a six-figure trading account to work with, Kim has been unable
9 to earn substantial income from his trades.¹⁷³

10 Thorough analysis and testing by an expert with academic credentials and
11 professional experience on Wall Street, retained by the FTC, has also shown that
12 OTA’s strategy is unlikely to yield substantial income.¹⁷⁴ The first problem is that
13 the purported strategy is so vague that it will yield no trading suggestions.¹⁷⁵ The
14 FTC’s expert described it as “like a car without an engine—it may look good from
15 the outside, but it will not get you anywhere under its own power.”¹⁷⁶ Contrary to

16 (“They taught their algorithms on TradeStation in the classroom.”); EX 6, 113
17 (Ramez Dec. ¶22) (“The OTA instructor in the course I attended on options used
18 TradeStation in the class presentations.”). OTA terminated its contractual
19 relationship with TradeStation as of September 2019. EX 13, 7394-7396
(TradeStation Interrogatory No. 2 Response).

19 ¹⁷⁰ EX 10, 200-204 (Geiran Dec. ¶¶22-31).

20 ¹⁷¹ *Id.* at 203 (Geiran Dec. ¶30 & table).

21 ¹⁷² EX 13, 5159-5160 (New Infomercial Tr. 20:09 - 21:04) (nationally-televised
22 infomercial features Sean Kim, who explains the value his background in the
23 market provides for his students); *id.* 442 (CA Preview Event Tr. 101:03-17)
24 (California MTP instructor calls Sean Kim “probably the biggest deal here,” claims
25 he learned how to trade from OTA, then went on to be top market maker at
26 Scottrade for five years using that knowledge); *id.* at 296 (¶46) & 2331 (NYC
MTO Day 1 Tr. 87:11-19) (Zepek identifies Sean Kim as a valuable teacher and
mentor because of his experience working for Scottrade).

26 ¹⁷³ EX 13, 322 (¶131) (summary of Kim’s trading records at TradeStation) &
27 6368-6369 (Kim lists trading results from January 2016 to October 2019).

27 ¹⁷⁴ *See generally* EX 11 (Expert Report of Kapil Jain); EX 15 (Jain Dec.).

28 ¹⁷⁵ EX 11, 212-213 & 236-248 (¶¶18, 66-96).

¹⁷⁶ EX 11, 212-213 (¶18).

1 OTA's claims of an "objective" and "step-by-step" system, the strategy is silent on
2 critical steps of the process, requiring consumers to substitute their own best
3 guesses to fill in the gaps.¹⁷⁷ This lack of specificity allows OTA to blame
4 purchasers for their trading losses and hide the true cause: the strategy does not
5 work.

6 The FTC's expert put OTA's claims to the test by testing OTA's own trading
7 picks—specifically, the trades that OTA suggested for ten different exchange-
8 traded fund (ETF) assets in its Daily Grid, for all of 2018.¹⁷⁸ OTA's strategy's
9 trades had wildly divergent results across the different ETFs, with some ETFs
10 being profitable over the course of the year, and some sustaining significant
11 losses.¹⁷⁹ In none of the 10 ETFs did the trades come close to attaining the reward-
12 to-risk ratio of 3-to-1 that OTA tells consumers to expect: the best ETF had an
13 average reward-to-risk ratio of 1.8-to-1, the worst, 1-to-1.¹⁸⁰ Nor would deploying
14 more assets change the results.¹⁸¹ Thus OTA's own implementation of its strategy

15 ¹⁷⁷ EX 11, 236-237 & 241 (¶¶67-68 & 76) ("[OTA's] Core Strategy lacks
16 specificity on how to perform key steps of the process. Consumers are left
17 searching for vaguely-defined patterns in charts, with no way to know for sure
whether they have found a relevant pattern or not.").

18 ¹⁷⁸ See EX 11, 252-259 (¶¶103-117) (the simulation tracked inner zone picks for
19 all ten ETFs in the Daily Grid, for all of 2018). The expert explained that the
20 industry standard test of a trading strategy, called a backtest, is an objective
21 measure of a rules-based strategy's performance, and is typically implemented
22 through a computer algorithm that implements the trading strategy's rules using
23 historical data. *Id.* at 243 (¶¶82-83). Because OTA's strategy is vague and
subjective, it cannot be objectively backtested. *Id.* at 244 (¶84). And OTA offers
consumers no other reliable metrics of its strategy's profitability. *Id.* at 244-246
(¶¶84-91).

24 ¹⁷⁹ EX 11, 253-255 (¶107, Table 1, & Figure 6).

25 ¹⁸⁰ EX 11, 254 (Table 1).

26 ¹⁸¹ The simulation assumed modest-sized trades (\$100 of risk each), but a
27 sensitivity analysis showed that even if the trading sizes were tenfold, the
28 simulation yields similar results: a range of outcomes from profits to losses across
the different ETFs, and even lower reward-to-risk ratios (an average of 1.3-to-1
across all trades). EX 11, 255-256 (¶109 & Table 2). Although profits appear to
increase with trade size, much of this is driven by the decreasing significance of
fees (which are flat rates, not percentage-based), and it ignores that the bigger the

1 flatly refutes OTA's claims that it will work in any asset, and will generate 3-to-1
2 reward-to-risk ratios. Instead, the wildly divergent results across the different ETFs
3 suggest that profits and losses alike are driven by chance, not a consistent strategy.

4 **G. OTA's Attempts to Silence Consumer Complaints**

5 Some dissatisfied purchasers seek a refund.¹⁸² OTA often resists giving
6 refunds outside the three-day window provided for in its contracts,¹⁸³ but
7 sometimes agrees to issue a refund if the consumer threatens negative publicity, a
8 lawsuit, or files a complaint with the BBB or a law enforcement agency.¹⁸⁴ In many
9 cases, OTA conditions refunds on agreement to a form contract that includes a
10 broad non-disparagement provision, barring any negative statements or reviews
11 about OTA or its employees, even reports of law violations to law enforcement
12 agencies.¹⁸⁵ OTA will not negotiate these provisions.¹⁸⁶ These provisions have led
13

14 trades, the less accurate historical price data is, due to slippage. *Id.* at 246 & 255-
15 257 (¶¶1 note 130 & ¶¶109-112).

16 ¹⁸² EX 13, 6182-6183 (OTA Meeting Tr. 150:19-151:20) (Longobardi, OTA's
17 COO, describes refund policy); EX 6, 112 (Ramez Dec. ¶¶15).

18 ¹⁸³ EX 13, 6182-6183 (OTA Meeting Tr. 150:19-152:21) (Longobardi, OTA's
19 COO, says "[t]he three days is statutory" and explains that OTA would initially try
20 to talk a consumer out of seeking a refund for OTA Training); EX 3, 23-24
21 (Katukota Dec. ¶¶21-25) (consumer had to withdraw from course and have
22 emergency brain surgery, and afterward was in no shape to attend, but OTA refused
23 to refund purchase); EX 5, 33-42 (Quintas ¶¶28-57) (detailing OTA's efforts to
24 persuade consumer not to seek refund); EX 13, 7727-7728 (Hubbard IH Tr.
25 102:21-103:11) (OTA would "initially refuse[]" to give refunds).

26 ¹⁸⁴ EX 13, 7721-7722 (Hubbard IH Tr. 96:13-97:05) (refunds would be given if
27 consumer "caused a big enough stink," e.g., such as by saying they were "calling
28 an attorney"); EX 2, 10 (Ciaraulo Dec. ¶¶15-19) (attempts to raise concerns with
OTA were "fruitless," OTA offered to repay \$11,900 only after he sued OTA).

¹⁸⁵ EX 13, 6182-6185 (OTA Meeting Tr. 150:19-153:11) (COO Longobardi
explains OTA sometimes gives refunds to consumers "who have taken a lot of
education," but are unhappy, because "we don't need the brand risk. We don't
need the reputation risk," and "[u]sually we'll get a signed settlement
agreement."); EX 6, 112-144 (Ramez Dec. ¶¶15-20 & Attach. A-H); EX 5, 41-42
& 92-94 (Quintas Dec. ¶¶55-56 & Attach. M); EX 2, 10 & 16-19 (Ciaraulo Dec.
¶¶19 & Attach. B).

¹⁸⁶ EX 6, 112-144 (Ramez Dec. ¶¶15-20 & Attach. A-H).

1 consumers to believe they may not report OTA's misconduct, or cooperate with law
2 enforcement agencies investigating OTA.¹⁸⁷

3 **H. Defendants Have Continued Their Deception Despite Learning of**
4 **the FTC's Investigation**

5 Defendants learned of the FTC's nonpublic fraud investigation into OTA in
6 February of 2019.¹⁸⁸ Despite learning this nearly a year ago, Defendants have
7 continued to use the same deceptive claims to sell their OTA Training programs. In
8 multiple independent undercover purchases over the course of the past year, at
9 OTA locations in California, New York, and a franchise in Vienna, VA, FTC
10 investigators documented OTA's continued use of the deceptive sales pitch
11 described above, including as recently as November 2019.¹⁸⁹ Copies of the MTO
12 PowerPoint presentation provided to the FTC by OTA show that despite revising it
13 over time, OTA has not removed the misleading testimonials cited above.¹⁹⁰

14 When OTA learned that the FTC anticipated pursuing legal action against
15 OTA for its continued deception, OTA requested a copy of the proposed complaint,
16 and also requested meetings with the FTC Commissioners.¹⁹¹ In an effort to afford
17 OTA every opportunity to be heard, the FTC provided OTA with a copy of the
18 proposed complaint. Four of the five FTC Commissioners accommodated OTA's
19 request to meet with them on an expedited basis (the fifth Commissioner arranged
20 for his staff to sit in on a meeting with one of the other Commissioners), setting
21 meetings within a week of the request. And FTC staff offered to negotiate a
22

23
24 ¹⁸⁷ EX 6, 113-114 (Ramez Dec. ¶¶23); EX 5, 41-42 (Quintas Dec. ¶¶55 & 59); EX
2, 10 (Ciaraulo Dec. ¶19).

25 ¹⁸⁸ See Biesty Cert. ¶ 12.

26 ¹⁸⁹ EX 13, 291-300 (¶¶10-70) & EX 14, 8451 (Tavares Dec. ¶¶3-4); *see also*
27 Facts Section I.B-C, above, and notes.

28 ¹⁹⁰ EX 13, 313-315 (¶¶102-105) (noting changes made to OTA PowerPoint
presentations); *see supra* footnotes 41-43, 47, 50, & 51 and accompanying text.

¹⁹¹ Certification and Declaration of Counsel, filed herewith.

preliminary injunction with OTA that would have protected consumers.¹⁹² Defendants responded by waiting until the eve of the Commissioner meetings to inform the FTC that they had decided, apparently days earlier, that they no longer wished to meet with them, and filing, without notice to the FTC, a baseless declaratory judgment action against the FTC in the Northern District of Illinois.¹⁹³ To this day, Defendants continue to bilk consumers.

II. The Defendants

A. The Corporate Defendants

OTA Franchise Corporation (“OTA Corp.”), also doing business as Online Trading Academy,¹⁹⁴ is a Nevada corporation with its principal place of business at 17780 Fitch Avenue, Irvine, California 92614.¹⁹⁵ It is wholly owned by Defendant Newport Exchange Holdings, Inc.¹⁹⁶ OTA Corp. purports to operate ten OTA centers,¹⁹⁷ holding itself out to consumers as “Online Trading Academy.”¹⁹⁸

Newport Exchange Holdings, Inc. (“NE Holdings”), also doing business as Online Trading Academy,¹⁹⁹ is a California corporation with its principal place of business at 17780 Fitch Avenue, Irvine, California 92614.²⁰⁰ It is wholly owned by Defendant Eyal Shachar and his spouse.²⁰¹ NE Holdings purportedly operates the

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ EX 13, 7408 (OTA Franchise Disclosure Document) (“OTA Franchise Corporation,...does business under the name ... Online Trading Academy”).

¹⁹⁵ *Id.*

¹⁹⁶ EX 13, 5137 (OTA Letter to FTC).

¹⁹⁷ EX 13, 7409 (OTA Franchise Disclosure Document).

¹⁹⁸ *Id.* (OTA Corp. operates the New York City location); *id.* at 2118-2120 & 3710-3712 (contracts for FTC investigator’s undercover purchase from New York City OTA center are between consumer and “Online Trading Academy”).

¹⁹⁹ NE Holdings has bank accounts held in the name “Newport Exchange Holdings Inc. DBA Online Trading Academy.” EX 13, 325 (¶144).

²⁰⁰ EX 13, 7408 (OTA Franchise Disclosure Document).

²⁰¹ EX 13, 5138 (OTA Letter to FTC).

1 OTA center in Irvine, CA,²⁰² holding itself out to consumers as “Online Trading
2 Academy,”²⁰³ and extending credit to consumers interested in a loan to fund their
3 purchase.²⁰⁴ NE Holdings also purports to hold the “patent” OTA touts in its
4 marketing and sales pitch.²⁰⁵

5 **NEH Services, Inc.** (“NE Services”), also doing business as Online Trading
6 Academy, is a California corporation with its principal place of business at 17780
7 Fitch Avenue, Irvine, California 92614.²⁰⁶ It is wholly owned by Defendant NE
8 Holdings.²⁰⁷ NE Services purportedly does not operate any OTA centers, but was
9 created by OTA Corp. to funds loans made by OTA franchisees to consumers
10 seeking to purchase OTA Training.²⁰⁸ NE Services has guaranteed a loan taken out
11 by NE Holdings.²⁰⁹ NE Services’ bank accounts suggest it is nothing more than a
12 conduit through which funds pass from a third-party loan servicer to NE
13 Holdings.²¹⁰

14 **B. The Individual Defendants**

15 **Eyal Shachar** (“Shachar”) is the founder and owner, directly or indirectly,
16 of all of the Corporate Defendants.²¹¹ Shachar is the sole Director and President of
17 OTA Corp., and the CEO of NE Holdings and NE Services.²¹² He is responsible for
18 the direction of OTA’s global expansion, is involved in OTA’s day-to-day

19 ²⁰² EX 13, 7408 (OTA Franchise Disclosure Document).

20 ²⁰³ The Irvine, CA, OTA center uses form contracts identifying the company as
21 “Online Trading Academy.” EX 13, 472-474.

22 ²⁰⁴ EX 7, 149 & 151-165 (Richins Dec. ¶¶14 & Attach. A) (loan agreement
23 between the “seller,” “Online Trading Academy – Irvine,” and consumer, Richins).

24 ²⁰⁵ EX 13, 7658-7678 (patent).

25 ²⁰⁶ EX 13, 7639-7640 (corporate filings with California Secretary of State).

26 ²⁰⁷ EX 13, 5138 (OTA Letter to FTC).

27 ²⁰⁸ EX 13, 7408 & 7426 (OTA Franchise Disclosure Document).

28 ²⁰⁹ EX 13, 7402 (Pacific Premier Bank record).

²¹⁰ EX 13, 327-328 (¶¶146-147) (summarizing contents of bank records).

²¹¹ *Id.* at 5137-5138 (OTA Letter to FTC).

²¹² *Id.* at 7635 & 7640 (State Filings); *id.* at 7410 (OTA Franchise Disclosure Document); *id.* at 328-329 (¶¶149-151).

1 operations in marketing, finance and sales,²¹³ and has ultimate control of all of
2 OTA's business.

3 Shachar is directly involved in OTA's sales and marketing, including the
4 performance of MTO presenters, and their struggles with consumers who want
5 evidence that people actually make money with OTA's strategy.²¹⁴ He reviewed
6 OTA's first internal survey, which showed that most respondents were not making
7 money,²¹⁵ and knew of the high percentage of purchasers who were unable to
8 quickly pay back their loans.²¹⁶ In March 2019 Shachar learned, through counsel,
9 that FTC staff were concerned OTA was a fraud.²¹⁷ And FTC staff provided to
10 Shachar, through counsel, copies of transcripts of MTOs attended by the FTC's
11 investigators, which reflect widespread use of earnings claims.²¹⁸

12 **Samuel R. Seiden** ("Seiden") is the creator and most visible exponent of
13 OTA's proprietary trading strategy, whose benefits and income generation potential
14 are the main reason offered for consumers to purchase OTA Training.²¹⁹ Seiden has

15 ²¹³ *Id.* at 7410 (OTA Franchise Disclosure Document).

16 ²¹⁴ *Id.* at 7816-7819 (email from Shachar responding to a summary of an MTO in
17 Boston, noting he "read all the comments," which include a note that consumers
18 "continue to ask for social proof 'who's making money?' 'Can you give me the
19 names of successful students?' , [sic] etc. Need help here."); *id.* at 7836-7838
20 (email from Shachar responding to request by Keeley Hubbard to revise offerings
21 to "resource challenged" consumers, including statement from Hubbard that
22 consumers need to "feel like they have education included in their package that
23 allows them to earn while they learn—this is the sizzle that gets people to move
24 forward"); *id.* at 7751-7753 (Hubbard IH Tr. 171:17-173:03) (Hubbard discussed
25 marketing pitch with Shachar, warned him his idea was deceptive).

26 ²¹⁵ *Id.* at 7715-7716 (Hubbard IH Tr. 90:18-91:05) (survey results so upset
27 Shachar, he ordered summary was not to leave the room); *id.* at 7749 (164:11-19)
28 (Shachar wanted to keep people from learning of the survey).

²¹⁶ *Id.* at 7757 (Hubbard IH Tr. 200:07-16) (Shachar "was big on" knowing "the
status of the billing portfolio and what were cancellation rates" and "default
rates"). Shachar also got reports on refunds. *Id.* at 7758 (Hubbard IH Tr. 201:11-
15).

²¹⁷ Biesty Cert. ¶ 10.

²¹⁸ *Id.* at ¶ 13; Facts Section I.C, *supra*.

²¹⁹ EX 13, 329 (¶156) & 7679-7681 (OTA press release noting that "Seiden
developed the Online Trading Academy's core curriculum....").

1 been featured prominently in OTA's marketing, including infomercials²²⁰ and
2 letters,²²¹ and has been held out to consumers at seminars as the "creat[or of] the
3 patent,"²²² and "an impeccable master" of the strategy.²²³ Seiden is OTA's Chief
4 Trading Strategist and has previously served in a number of other executive roles at
5 OTA, in at least some of them reporting directly to Defendant Shachar.²²⁴

6 Seiden has been extensively involved in OTA's sales process. He curated the
7 MTO slide presentation for the first three years of its existence, including revising
8 it and drafting new content.²²⁵ Seiden has also participated in managing the MTO
9 sales process more generally, including addressing issues with individual
10 salespeople's compensation or performance,²²⁶ and disseminating an "MTO Master
11 Document" outlining the content to be delivered at each phase of the MTO sales
12 pitch, including "Anyone can do it," "Making money is like making cookies....all

13 ²²⁰ EX 13, 5177 (2018 Infomercial Tr. 8:7-12) ("For more on this, let's meet
14 Online Trading Academy's chief trading strategist and the architect of our patented
15 investment strategy, Sam Seiden. Sam began his financial career on the floor of the
16 Chicago Mercantile Exchange."); *id.* at 6538 (Utah Preview Event Tr. 155:21-25)
(Seiden "created the patent").

17 ²²¹ EX 5, 33 & 66-67 (Quintas Dec. ¶26 & letter from Seiden).

18 ²²² EX 13, 6538-6539 (Utah Preview Event Tr. 155:21-156:01).

19 ²²³ EX 13, 1283-1286 (CA MTO Day 2 Tr. 352:22-355:01) (Kimoto describes
20 Seiden's unsurpassed expertise, including his "uncanny ability" and [h]uge reward-
21 to-risk ratios").

22 ²²⁴ EX 13, 7733 (Hubbard IH Tr. 143:06-24).

23 ²²⁵ EX 13, 5128 (OTA Letter to FTC); *id.* at 7820 (email from Seiden directs that
24 MTO slideshow "needs to include the new stock section ... I will send today."); *id.*
25 at 7839-7846 (email from Seiden sends new slides showing winning trades,
26 including one he made, and testimonials, including "I'm taking the rest of the year
27 off live trading' ... 'I hit my year end financial targets as of market close today");
28 *id.* at 7821 (email from Seiden attaches revised MTO slides, notes he "built" one of
them, notes it "really needs to make the stock program sizzle").

²²⁶ *Id.* at 7814-7815 (email from Seiden proposes beginning to "disqualify"
prospects whose finances suggest they will not be able to pay); *id.* at 7812-7813
(Shachar participates in email discussion with Seiden about compensation for sales
team member); *id.* at 7806-7811 (Seiden and Shachar participate in email chain
about individual MTO instructor performance); *id.* at 7822-7830 (email from
Seiden attaching slide presentation he will give regarding changes to MTO,
including use of testimonials and the "MTO Outline Document").

1 you need is a good recipe,” and “Can you copy? Learn while you earn?”²²⁷ Seiden
2 reviewed OTA’s first internal survey, which showed that most respondents weren’t
3 making money.²²⁸ His own trading yielded losses.²²⁹

4 Seiden briefly left OTA in late 2018, citing a dispute about pay, a “decline in
5 student success,” “Unethical & Deceptive Sales Messaging,” and hearing from
6 students who were “struggling to pay monthly finance payment[s].”²³⁰ At the time,
7 Seiden called OTA a “fraudulent business,” claimed to have “overwhelming proof
8 of that fraud,” and noted “I have seen 2 other companies in our industry be shut
9 down by regulators within 24 hours for far less than what Eyal [Shachar] is
10 allowing to happen through OTA. OTA has employees who worked at those
11 firms.”²³¹ Seiden also noted receiving emails “every day” from consumers “that are
12 losing money because of OTA.”²³² OTA transferred \$500,000 to Seiden in
13 December 2018,²³³ and he returned to work at OTA shortly thereafter.²³⁴

14 **Darren Kimoto** (“Kimoto”) is one of OTA’s chief salespeople,²³⁵ and the
15 head of its most important sales force: MTO “instructors.”²³⁶ Since the end of
16

17 ²²⁷ EX 13, 7848-7853 (“MTO Master Document” goals for MTO presenters also
18 include “you don’t need to quit your job,” “Don’t have to be an expert at first to be
19 successful,” and “You can make money in any market as long as it moves. Show[]
them the money.”).

20 ²²⁸ EX 13, 7730-7731 (Hubbard IH Tr.105:08-106:10) (Seiden was in meeting
21 where summary of first OTA internal survey was circulated, and “for him ... this
22 was proof” of “student success declining” and he procured a copy despite
Shachar’s order quarantining it).

23 ²²⁹ *See supra* footnote 124 and accompanying text.

24 ²³⁰ EX 13, 7800-7804 (Seiden e-mail to Keeley Hubbard forwarding e-mail chain
25 with attachment).

26 ²³¹ *Id.* at 7805 (Seiden e-mail copied to Keeley Hubbard).

27 ²³² *Id.*

28 ²³³ EX 13, 328 (¶148).

²³⁴ Seiden states he assumed his current role at OTA in January 2019. EX 13,
6267-6268 (Seiden Interrogatory Responses, No. 6).

²³⁵ Defendant Seiden says “Dar[r]en is our top guy, especially for big rooms.” EX
13, 7806.

1 2017, Kimoto has curated the MTO slide presentation, initially reporting directly to
2 Shachar.²³⁷ Kimoto has routinely made deceptive earnings claims to consumers in
3 MTOs,²³⁸ and knows they are deceptive, as his own experience with OTA's
4 purported strategy is one of consistent, significant losses.²³⁹

5 **III. Consumer Injury**

6 Defendants have taken in over \$370 million from just January 2014 to May
7 4, 2019. More than 150 consumers victimized by OTA complained to the FTC,
8 with many reporting losses of several thousand dollars or more.²⁴⁰ Over 90,000
9 consumers have paid money to OTA, with over 11,000 paying more than \$10,000,
10 and some paying \$50,000 or more.²⁴¹ OTA's own customer surveys, and customers'
11 trading data, confirm that the vast majority of OTA customers do not generate the
12 substantial earnings that OTA advertises, most make little or nothing at all, and a
13 large number lose substantial amounts of money in addition to the cost of their
14 OTA purchases and the high interest associated with OTA's loans.²⁴²

15 **ARGUMENT**

16 **I. The FTC Act Authorizes the Requested Relief**

17 Section 13(b) of the FTC Act gives the Court authority to issue an injunction
18 against violations of any provisions of law enforced by the FTC and "any ancillary
19

20 ²³⁶ EX 13, 7737 (Hubbard IH Tr. 152:06-12) (Kimoto "is in charge of the MTO
21 instructors"); *id.* at 5134-5135 (OTA Letter to FTC) (Kimoto leads OTA's trainings
22 for MTO presenters); *id.* at 6244 (Kimoto Interrogatory Responses, No. 6) (same).

23 ²³⁷ EX 13, 5128 (OTA Letter to FTC).

24 ²³⁸ *See* Facts Section I.C, above.

25 ²³⁹ EX 13, 317-318 & 321-322 (¶¶111 & 130) (summarizing trading account
26 statements produced by Defendant Kimoto in response to FTC interrogatories).

27 ²⁴⁰ *Id.* at 329 (¶153). "Consumer complaints are highly probative of whether a
28 practice is deceptive" *FTC v. Willms*, No. 2:11-CV-0828, 2011 WL 4103542,
*5 (W.D. Wash. Sept. 13, 2011).

²⁴¹ EX 13, 302 (¶79) (summarizing data derived from OTA customer relationship
management database).

²⁴² EX 13, 7782 (First Survey); *id.* at 5281 & 5287 (Second Survey); EX 10, 200-
204 (Geiran Dec. ¶¶22-31).

1 relief necessary to accomplish complete justice.” *FTC v. Commerce Planet, Inc.*,
2 815 F.3d 593, 598 (9th Cir. 2016) (quoting *FTC v. Pantron I Corp.*, 33 F.3d 1088,
3 1102 (9th Cir. 1994)). This ancillary relief can include, among other remedies, a
4 TRO, a preliminary injunction, an asset freeze, and the appointment of a receiver.
5 *See, e.g., FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1232 & n.2 (9th Cir.
6 1999) (TRO and preliminary injunction, both including asset freeze); *FTC v. Am.*
7 *Nat’l Cellular, Inc.*, 810 F.2d 1511, 1512 (9th Cir. 1987) (TRO and preliminary
8 injunction including asset freeze and appointment of a receiver). Courts in this
9 District have repeatedly granted preliminary relief similar to that sought here.²⁴³

10 In determining whether to grant preliminary relief under Section 13(b), the
11 Court must consider two factors: (1) the FTC’s likelihood of ultimate success, and
12 (2) whether the public equities outweigh any private equities. *Affordable Media*,
13 179 F.3d at 1233. Unlike private litigants, the FTC does not need to prove
14 irreparable injury. *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir.
15 1989); *FTC v. Warner Communications Inc.*, 742 F.2d 1156, 1159 (9th Cir. 1984);
16 *see also FTC v. Wealth Educators, Inc.*, No. 2:15-CV-2357, 2015 WL 11439063, at
17 *5 (C.D. Cal. Apr. 6, 2015) (FTC faces “more lenient standard” than private
18 litigants). Because irreparable injury is presumed, the burden of establishing
19 success on the merits is decreased, and the Court “need only . . . find some chance
20 of probable success on the merits” in order to award preliminary relief. *World Wide*
21 *Factors*, 882 F.2d at 347 (quoting *United States v. Odessa Union Warehouse Co-*
22 *op*, 833 F.2d 172, 176 (9th Cir. 1987)). When weighing the equities, the public
23 interest should receive greater weight than private interests. *Id.*

24 **II. The Proposed Temporary Restraining Order is Warranted**

25 The evidence shows that the FTC is likely to succeed on its claims that
26 Defendants have violated the FTC Act and the equities weigh heavily in favor of
27 the requested preliminary relief.

28 ²⁴³ *See supra*, note 5 (collecting cases).

A. The FTC Is Likely to Succeed on the Merits

1. Defendants Have Violated Section 5 of the FTC Act

Section 5 of the FTC Act empowers the FTC to prevent “deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a). “An act or practice is deceptive if first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material.” *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009) (quoting *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001)). A misrepresentation may be either express or implied. *FTC v. Figgie Int’l*, 994 F.2d 595, 604 (9th Cir. 1993). A representation is likely to mislead consumers if (1) the express or implied message conveyed is false, or (2) the maker of the representation lacked a reasonable basis for asserting that the message was true. *Pantron I*, 33 F.3d at 1096; *see also FTC v. Lights of America, Inc.*, No. 8:10-CV-1333, 2013 WL 5230681, at *40 (C.D. Cal. Sept. 17, 2013) (holding defendants liable for claims made without adequate substantiation). Where the maker lacks adequate substantiation evidence, the maker necessarily lacks any reasonable basis for its claims. *FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 8 (1st Cir. 2010).

In determining whether a representation is likely to mislead consumers, courts consider the overall “net impression” it creates. *Stefanchik*, 559 F.3d at 928.²⁴⁴ Claims of “potential” earnings imply that such earnings are representative of what the typical consumer achieves. *See FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000).

A representation, omission, or practice is material if it “involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.” *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (quoting *In re Cliffdale Assocs.*, 103 F.T.C. 110, 165, 1984 WL

²⁴⁴ “A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.” *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006).

1 565319 (F.T.C. 1984)). If consumers are likely to have chosen differently but for
2 the deception, then a misrepresentation is material. *FTC v. Southwest Sunsites, Inc.*,
3 105 F.T.C. 7, 1985 WL 668880, at *109, *aff'd*, 785 F.2d 1431 (9th Cir. 1986).
4 Express claims are presumed to be material, as are claims that go to the central
5 characteristics of a product or service. *Pantron I Corp.*, 33 F.3d at 1095-96; *Lights*
6 *of Am.*, 2013 WL 5230681, at *41. Consumer reliance is presumed if defendants
7 made material misrepresentations that were widely disseminated, and consumers
8 purchased the defendant's product. *Figgie Int'l*, 994 F.2d at 605-6.

9 The FTC is likely to prevail on Count I of the Complaint, which alleges that
10 Defendants have violated Section 5 by misrepresenting the amount of income
11 consumers are likely to earn with Defendants' program. As shown above,
12 Defendants admitted they do not track purchasers' trading performance and, as a
13 result, have no reliable data with which to support their income claims. OTA's own
14 surveys and the FTC's analyses of actual trading data paint a very different picture.
15 While Defendants tell consumers that they can expect to generate substantial
16 income from trading if they purchase OTA Training, in reality, most purchasers do
17 not make substantial income from trading, and many make nothing at all or lose
18 money. Defendants' representation that consumers are likely to generate substantial
19 income is false or unsubstantiated. Such false earnings claims are both likely to
20 deceive and material.²⁴⁵

21 The FTC is also likely to prevail on Count II of the complaint, which alleges
22 that Defendants made related misrepresentations about consumers' ability to attain
23 proficiency in and deploy Defendants' "strategy" for making money, including

24 ²⁴⁵ "Courts consistently conclude that misrepresentations regarding income
25 potential are material and violate the FTC Act." *FTC v. Vemma Nutrition Co.*, No.
26 2:15-CV-1578, 2015 WL 11118111, *5 (D. Ariz. Sept. 18, 2015) (citing *Five-Star*
27 *Auto*, 97 F. Supp. 2d at 528-29); *see also* *FTC v. Kitco of Nevada, Inc.*, 612 F.
28 Supp. 1282, 1292 (D. Minn. 1985) ("exaggerated profit and earning prediction cut
to the core of the customer's decision to invest"); *FTC v. Sage Seminars*, No. 4:95-
CV-2854, 1995 WL 798938, *3-5 (N.D. Cal. Nov. 2, 1995) (misrepresentations
about potential earnings were material).

1 “instructors” trading success. As shown above, Defendants tell consumers that any
2 consumer can learn and use OTA’s “strategy” to earn income, that consumers can
3 do so without significant investable capital or significant free time, and hold out
4 OTA’s “instructors” as wealthy traders whose success demonstrates that the
5 strategy works. But these claims are not true. Defendants’ false or misleading
6 claims are presumed material because they are express, go to the central
7 characteristics of the product, or both.²⁴⁶

8 The FTC is likely to prevail on Count III of the complaint, which alleges that
9 the Corporate Defendants and Defendant Shachar’s use of non-disparagement
10 clauses in their standard refund contracts violates the Consumer Review Fairness
11 Act (“CRFA”). The CRFA bars the use of such clauses in form contracts after
12 December 14, 2017. The evidence unequivocally shows that such provisions were
13 used, and that they were used after December 14, 2017. Purchaser experience
14 shows the contracts constitute “form” contracts under the CRFA,²⁴⁷ as the terms are
15 standardized across different contracts,²⁴⁸ purchasers have no meaningful
16 opportunity to negotiate them,²⁴⁹ and the refund is part of the overall sales
17 process.²⁵⁰ Further, the evidence shows that these gag clauses were successful in

18 ²⁴⁶ See *Pantron I*, 33 F.3d at 1095-96; *Lights of Am.*, 2013 WL 5230681, at *41.

19 ²⁴⁷ 15 U.S.C. § 45b (a)(3) (defining “form contract” as one used in the course of
20 selling, with standardized terms, and no opportunity for meaningful negotiation).

21 ²⁴⁸ Compare EX 5, 92-93 (Quintas Settlement, ¶3) with EX 2, 17 (Ciaraulo
Settlement, ¶6) and EX 6, 143 (Ramez Settlement, ¶3).

22 ²⁴⁹ See, e.g., EX 6, 112-113 (Ramez Dec. ¶¶15-20) (detailing negotiation process,
23 and OTA’s refusal to amend the provision per consumer’s request). The provision’s
uniformity across contracts further attests to OTA’s refusal to negotiate it.

24 ²⁵⁰ The CRFA prohibition applies to contracts “used by a person in the course of
25 selling or leasing the person’s goods or services.” 15 U.S.C. § 45b (a)(3)(A)(i).
The CRFA does not explicitly carve out refunds from the overall sales process, and
26 as a remedial statute intended to curtail the use of non-disparagement provisions to
help preserve the credibility and value of online consumer reviews (H.R. Rep. No.
27 114-731, at 6 (2016)), the CRFA should be construed broadly, and its exceptions
read narrowly, to effectuate its purposes. See *FTC v. AT&T Mobility LLC*, 883 F.3d
28 848, 854 (9th Cir. 2018) (en banc) (FTC Act is a remedial statute that should be
construed broadly to effectuate its purposes); *National Automatic Laundry &*

1 chilling purchasers' ability to make truthful public comments about their
2 experience with OTA and specifically in impeding the FTC's ability to gather
3 information from these purchasers.²⁵¹

4 **2. The Corporate Defendants Are Subject to Joint and Several**
5 **Liability as a Common Enterprise**

6 The Corporate Defendants have operated as a common enterprise and thus
7 "each may be held liable for the deceptive acts and practices of the others." *FTC v.*
8 *Grant Connect, LLC*, 763 F.3d 1094, 1105 (9th Cir. 2014) (citing *FTC v. Network*
9 *Servs. Depot, Inc.*, 617 F.3d 1127, 1143 (9th Cir. 2010) (shared resources, staff,
10 funds, ownership and management)); *see also FTC v. J.K. Publ'ns, Inc.*, 99 F.
11 Supp. 2d 1176, 1202 (C.D. Cal. 2000) ("maze of interrelated companies").²⁵² As
12 shown in Facts Section II.A, above, the Corporate Defendants are commonly
13 owned and controlled by Shachar and share the same office space. OTA Corp. and
14 NE Holdings directly operate the OTA business, holding themselves out to
15 consumers as "Online Trading Academy,"²⁵³ and they created NE Services to
16 further that business by helping fund the loans that consumers use to purchase OTA
17 Training. The Corporate Defendants also intermingle finances,²⁵⁴ and they operate
18

19
20 *Cleaning Counc. v. Shultz*, 443 F.2d 689, 706-07 (D.C. Cir. 1971) (remedial
21 legislation is traditionally construed broadly to effectuate its purposes with
22 exceptions narrowly construed) (internal quotations omitted).

23 ²⁵¹ EX 6, 113-114 (Ramez Dec. ¶¶23-26); EX 5, 42 (Quintas Dec. ¶59); EX 2, 10
24 (Ciaraulo Dec. ¶19).

25 ²⁵² Courts weighing a claim of common enterprise consider non-exclusive factors
26 such as whether the companies were under common ownership and control,
27 whether they pooled resources and staff, whether they shared marketing and phone
28 numbers, and whether they jointly participated in a common venture in which they
benefited from a shared business scheme. *Network Servs.*, 617 F.3d at 1136, n.6
and 1143.

²⁵³ Compare EX 13, 472-474 (Irvine, CA center – purportedly operated by NE
Holdings); 2118-2120 and 3710-3712 (NYC center); and 3911-3912 (Vienna, VA
franchisee).

²⁵⁴ EX 13, 325-328 (¶¶142-147).

1 for a common, singular purpose: executing the OTA business. Each of the
2 Corporate Defendants is therefore liable for the total injury caused by the business.

3 **3. The Individual Defendants Are Personally Liable**

4 The Individual Defendants are liable for injunctive and monetary relief
5 because, as shown above (see Facts Section II.B), they directly participated in and
6 had control over OTA's deceptive marketing, and knew of, or at minimum
7 recklessly disregarded, the false, misleading, and unsubstantiated nature of the
8 claims.²⁵⁵ Shachar's status as the ultimate controller of OTA's operations, as well as
9 evidence showing his direct involvement in the marketing and sales of OTA
10 Training, evidence control and knowledge of the unlawful claims.²⁵⁶ Seiden and
11 Kimoto have direct knowledge of earnings and related claims through their own
12 participation in making those claims in MTOs.²⁵⁷ Seiden and Kimoto's own trading
13

14 ²⁵⁵ An individual defendant is liable (1) for injunctive relief if he directly
15 participated in the unlawful acts or had some control over the acts, and (2) for
16 monetary relief if he also possessed actual or constructive knowledge of the
unlawful acts. *Network Servs.*, 617 F.3d at 1138-39; *FTC v. Publ'g Clearing*
House, 104 F.3d 1168, 1170-71 (9th Cir. 1997).

17 ²⁵⁶ "Status as a corporate officer is sufficient to establish individual liability."
18 *FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1080 (C.D. Cal.
2012) (granting summary judgment for FTC) (citing *FTC v. Amy Travel Service,*
19 *Inc.*, 875 F.2d 564, 573 (7th Cir. 1989), overruled on other grounds by *FTC v.*
Credit Bureau Center, LLC, 937 F.3d 764 (7th Cir. 2019)), *aff'd*, 644 Fed. Appx.
20 709 (9th Cir. 2016); *J.K. Publ'ns*, 99 F. Supp. 2d at 1204 ("[S]tatus as a corporate
21 officer and authority to sign documents on behalf of the corporate defendant can be
22 sufficient to demonstrate the requisite control."); *FTC v. Am. Standard Credit Sys.*,
23 874 F. Supp. 1080, 1089 (C.D. Cal. 1994) ("Authority to control the company can
be evidenced by active involvement in business affairs and the making of corporate
policy, including assuming the duties of a corporate officer.").

24 ²⁵⁷ The knowledge element is satisfied if the individual was recklessly indifferent
25 to the possibility the business was fraudulent, or was aware of a high probability
that the business was engaged in fraud and intentionally avoided learning the truth.
26 *Network Servs.*, 617 F.3d at 1138-39. A showing that an individual has willfully
27 ignored warning signs can meet this standard. *Id.* at 1141 (finding reckless
indifference for ignoring "numerous warning signs" including "multiple customer
28 complaints" and "suspicious financial practices"). For example, "awareness of
consumer complaints is sufficient to establish" knowledge. *Lights of Am.*, 2013 WL
5230681, at *50.

1 results put them on notice that the claims were likely false.²⁵⁸ Further, Shachar and
2 Seiden also were aware that OTA's own surveys showed the claims were untrue.²⁵⁹
3 And Seiden flat-out said that OTA was "fraudulent."²⁶⁰ They are all therefore
4 personally liable, jointly and severally, for the total injury caused by OTA.
5 *Commerce Planet*, 815 F.3d at 600.

6 **B. The Equities Weigh in the Public's Favor**

7 "[W]hen a district court balances the hardships of the public interest against
8 a private interest, the public interest should receive greater weight." *Affordable*
9 *Media*, 179 F.3d at 1236 (quoting *World Wide Factors*, 882 F.2d at 347). The
10 public interest in this case is compelling—halting unlawful and injurious conduct
11 and preserving assets for restitution to injured consumers. Defendants, by contrast,
12 have no legitimate interest in continuing to deceive and bilk consumers.²⁶¹ Based
13 on the evidence before the Court, the FTC is likely to succeed on the merits, and
14 the equities tip decidedly in the public's favor. Thus, a TRO is warranted.

15 **C. The Proposed Injunctive Relief is Appropriate**

16 The FTC has filed this action to stop Defendants' unlawful conduct and to
17 obtain redress for their victims. The proposed TRO would put an immediate stop to
18 OTA's deceptive earnings claims and bar Defendants from hiding or dissipating
19 assets that should be returned to defrauded consumers. Immediate relief is
20 necessary because Defendants' actions show that nothing short of a court order will
21 change their behavior. Despite learning the FTC was investigating them for fraud
22 nearly a year ago, Defendants have continued to use the same deceptive claims to
23

24 ²⁵⁸ See *supra* footnotes 124 & 239 and accompanying text.

25 ²⁵⁹ See *supra* footnotes 215 & 228 and accompanying text.

26 ²⁶⁰ See *supra* footnote 231 and accompanying text.

27 ²⁶¹ See *World Wide Factors*, 882 F.2d at 347 ("no oppressive hardship to
28 defendants in requiring them to comply with the FTC Act, refrain from fraudulent
representation or preserve their assets from dissipation or concealment") (quotation
marks omitted).

1 sell their OTA Training programs.²⁶² Nor was that the first that Defendants learned
2 that their sales pitch was deceptive. At least as early as June 2018, their own
3 internal surveys of OTA customers showed that most did not make any money,
4 much less the substantial income OTA advertises.²⁶³ And just days ago, the FTC
5 offered to negotiate a preliminary injunction that would have protected consumers.
6 Instead of engaging with the FTC, Defendants filed a meritless declaratory
7 judgment action, claiming they have done nothing wrong.²⁶⁴ Plainly, Defendants
8 will not stop the fraud themselves—this Court must.

9 To preserve the possibility of effective final relief, including restitution to
10 the consumers who have collectively lost millions of dollars to Defendants’ fraud,
11 the proposed TRO would: (1) freeze the Corporate Defendants’ assets and order the
12 Individual Defendants to preserve their assets;²⁶⁵ (2) ban the use of deceptive
13 earnings claims; and (3) appoint a temporary receiver over the Corporate
14 Defendants.²⁶⁶

15 Appointing a temporary receiver is critical. Defendants’ actions demonstrate
16 that they are not willing to operating their business in a lawful manner. In this
17 circumstance, taking the business out of Defendants’ hands is the only way to
18 ensure the fraud stops, and stops now. *See, e.g., Canada Life Ins. Co. v. LaPeter*,
19 563 F. 3d 837, 845 (9th Cir. 2009) (receiver appropriate to avert “danger of
20 substantial waste and risk of loss”); *SEC v. Presto Telecomm., Inc.*, 153 Fed. Appx.
21 428, 430 (9th Cir. 2005) (receiver “necessary to prevent further dissipation of
22 [defendant’s] assets and to protect the interests of its investors”). The receiver will
23

24 ²⁶² *See* Biesty Cert. ¶ 10.

25 ²⁶³ EX 13, at 7782.

26 ²⁶⁴ *See* Biesty Cert. ¶ 20.

27 ²⁶⁵ As the FTC is likely to succeed in showing that the Individual Defendants are
28 personally liable, an asset preservation order should issue against them as well as
the Corporate Defendants. *See supra*, note 5 (collecting cases issuing and affirming
such relief).

²⁶⁶ The Ninth Circuit has repeatedly upheld such relief. *See, e.g., supra* note 5.

1 also help ensure that the Corporate Defendants do not dissipate their ill-gotten
2 gains by identifying and securing their assets and records; he may also help
3 determine the full extent of the fraud and identify victims.²⁶⁷

4 Respectfully submitted,

5 ALDEN F. ABBOTT
6 General Counsel

7
8 Dated: February 12, 2020

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²⁶⁷ See *id.*

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2020, I caused a copy of the foregoing Plaintiff's Memorandum of Law in Support of Its Noticed *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue to be served on all parties in the manner specified below:

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