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

Federal Trade Commission,

Plaintiff,

vs.

OTA Franchise Corporation, et al.,

Defendants.

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

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Relief (“Complaint”), Dkt. No. 1, for a permanent injunction, and other equitable relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Consumer Review Fairness Act of 2016 (“CRFA”), 15 U.S.C. § 45b. The Commission and Defendants OTA Franchise Corporation, Newport Exchange Holdings, Inc., NEH Services, Inc., Eyal Shachar, Samuel R. Seiden, and Darren Kimoto stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

1 **FINDINGS**

2 1. This Court has jurisdiction over this matter.

3 2. The Complaint charges that Defendants participated in deceptive acts
4 or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the
5 Consumer Review Fairness Act, 15 U.S.C. § 45b, in the marketing and sale of
6 trading and investing training programs, instructional materials, and related goods
7 and services.

8 3. Only for purposes of this action, Defendants admit the facts necessary
9 to establish jurisdiction.

10 4. Defendants waive any claim that they may have under the Equal
11 Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action
12 through the date of this Order, and agree to bear their own costs and attorney fees.

13 5. Defendants and the Commission waive all rights to appeal or
14 otherwise challenge or contest the validity of this Order.

15 6. Defendants have voluntarily dismissed with prejudice their Complaint
16 for Declaratory and Injunctive Relief in *OTA Franchise Corp. v. Federal Trade*
17 *Commission*, Case No. 1:20-cv-802 (N.D. Ill.).

18 7. Defendants have held their appeal in this matter (No. 20-55356) in
19 abeyance pending entry of this Order. Defendants stipulate that entry of this Order
20 moots their appeal, and Defendants will dismiss the appeal within 24 hours of
21 entry of this Order.

22 **DEFINITIONS**

23 For the purposes of this Order, the following definitions apply:

24 A. **“Corporate Defendants”** means OTA Franchise Corporation (also
25 doing business as “Online Trading Academy”), Newport Exchange Holdings, Inc.
26 (also doing business as “Online Trading Academy”), NEH Services, Inc. (also
27 doing business as “Online Trading Academy”), and their subsidiaries, affiliates,
28 successors, and assigns.

1 B. **“Covered Communication”** means a written, oral, or Pictorial
2 review, performance assessment, or other similar analysis of goods or services,
3 including conduct related to the goods or services.

4 C. **“Covered Consumer Debt”** means debt currently owed to any
5 Corporate Defendant which was issued to a consumer who purchased Defendants’
6 trading or investing training programs (regardless of whether such purchase was
7 directly from a Corporate Defendant), on or before the entry date of this Order,
8 including all unpaid interest and fees related to that debt.

9 D. **“Defendant(s)”** means all of the Individual Defendants and the
10 Corporate Defendants, individually, collectively, or in any combination.

11 E. **“Earnings Claim(s)”** means any representation to a consumer,
12 specific or general, about income, financial gains, percentage gains, profit, net
13 profit, gross profit, or return on investment.

14 F. **“Individual Defendant(s)”** means Eyal Shachar (also known as Eyal
15 Shahar), Samuel R. Seiden, and Darren Kimoto, individually, collectively, or in
16 any combination.

17 G. **“Liquidator”** means Thomas McNamara, the liquidating equity
18 receiver appointed in Section XII of this Order, and any deputy liquidators that
19 shall be named by Thomas McNamara.

20 H. **“Pictorial”** includes pictures, photographs, video, illustrations, and
21 symbols.

22 I. **“Review-Limiting Contract Term”** means a standardized contract
23 term that:

24 1. prohibits or restricts the ability of a person who is a party to the
25 contract to engage in a Covered Communication;

26 2. imposes a penalty or fee against a person who is a party to the
27 contract for engaging in a Covered Communication; or
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1 amount of capital typically needed by consumers using Defendants' trading
2 strategy, unless the claim is non-misleading, and, at the time such claim is made,
3 Defendants: (a) have a reasonable basis for the claim; (b) have in their possession
4 written materials that substantiate that the claim is typical for consumers similarly
5 situated to those to whom the claim is made; and (c) make the written
6 substantiation available upon request to the consumer, prospective client, or the
7 FTC.

8 B. Misrepresenting or assisting others in misrepresenting, expressly or by
9 implication, that:

10 1. Any consumer can attain proficiency in using Defendants'
11 trading strategy, regardless of education, background, skills or other inherent
12 aptitudes;

13 2. Consumers can effectively use Defendants' trading strategy to
14 make significant returns without the need to possess or deploy significant amounts
15 of investable capital;

16 3. Consumers can effectively use Defendants' trading strategy to
17 make significant returns without spending significant time trading; or

18 4. Instructors of Defendants' trading strategy are active traders
19 who have achieved significant results through trading in financial markets; and

20 C. Misrepresenting or assisting others in misrepresenting, expressly or by
21 implication, any fact material to consumers concerning any good or service, such
22 as: the total costs; any material restrictions, limitations, or conditions; or any
23 material aspect of its performance, efficacy, nature, or central characteristics.

24 **III. PROHIBITION ON MISREPRESENTATIONS CONCERNING**
25 **SALES REPRESENTATIVES**

26 IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents,
27 and employees, and all other persons in active concert or participation with any of
28 them, who receive actual notice of this Order, whether acting directly or indirectly,

1 in connection with the advertising, marketing, promoting, or offering for sale, or
2 selling of any good or service, are permanently restrained and enjoined from:

3 A. Identifying any commission based sales representative as an
4 “Education Counselor”;

5 B. Failing to clearly and conspicuously disclose in writing to a consumer
6 that Defendants’ sales representatives’ compensation is based, in whole or in part,
7 on commissions derived from consumers’ purchases of Defendants’ goods or
8 services.

9 **IV. PROHIBITIONS ON RESTRICTION OF CONSUMERS’**
10 **COMMUNICATION WITH LAW ENFORCEMENT**

11 IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents,
12 and employees, and all other persons in active concert or participation with any of
13 them, who receive actual notice of this Order, whether acting directly or indirectly,
14 in connection with the sale or leasing of any good or service, are permanently
15 restrained and enjoined from including in a contract any provision that (a) prohibits
16 or restricts the ability of any person who is a party to the contract to communicate,
17 in any way, with the Commission or any other law enforcement entity, or (b)
18 imposes a penalty or fee against any person for communicating, in any way, with
19 the Commission or any other law enforcement entity.

20 **V. PROHIBITED USE OF REVIEW-LIMITING AND RELATED**
21 **CONTRACT TERMS**

22 IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents,
23 and employees, and all other persons in active concert or participation with any of
24 them, who receive actual notice of this Order, whether acting directly or indirectly,
25 in connection with the sale or leasing of any good or service, are permanently
26 restrained and enjoined from:

27 A. Offering to any prospective client a contract, or offering to any client a
28 renewal contract, that includes a Review-Limiting Contract Term;

1 B. Requiring that a client accept a Review-Limiting Contract Term as a
2 condition of any Defendant's fulfillment of its obligations under a client contract
3 that a Defendant entered into before the effective date of this Order; or

4 C. Attempting to enforce or assert the validity of any Review-Limiting
5 Contract Term in any client contract that a Defendant entered into before the
6 effective date of this Order.

7 Nothing in this Section shall require a Defendant to publish or host the
8 content of any person, affect any other legal duty of a party to a contract, or affect
9 any cause of action arising from the breach of such duty.

10 **VI. NOTICE TO CLIENTS CONCERNING RIGHT TO POST REVIEWS**

11 IT IS FURTHER ORDERED that Defendants must notify clients as follows:

12 A. Within 30 days after the effective date of this Order, Defendants must
13 notify all clients who entered into a contract with any Defendant that included any
14 Review-Limiting Contract Term, such as Defendants' "Amendment and Release,"
15 used on or after March 14, 2017 through the effective date of this Order, by
16 mailing or emailing each a notice as shown in **Attachment A**:

17 1. The heading of the notice and the subject line for any email
18 must read "Your Right to Post Honest Reviews and File Complaints," and the
19 email must be sent to each recipient individually from an address with the
20 tradingacademy.com domain.

21 2. The Corporate Defendant's name, including the d/b/a "Online
22 Trading Academy," and return address, for any mailing, must appear on the front of
23 the envelope, the client's name and address must be printed on the front of the
24 envelope or be visible through a window in the envelope, and the words "Your
25 Right to Post Honest Reviews and File Complaints" must be printed in easily
26 noticed text near the client's name and address.

27 3. The notice must not include any other materials or message
28 about a Defendant, or otherwise concern a Defendant's goods or services.

1 B. Defendants must notify consumers online:

2 1. Defendants must post a web page notice as shown in
3 **Attachment A**, with the heading “Your Right to Post Honest Reviews and File
4 Complaints,” on a separate page on the www.tradingacademy.com website, in the
5 same format as Defendants’ other web pages relating to Defendants’ trading and
6 investing training programs, instructional materials, and related goods and
7 services.

8 2. For as long as the web page notice is posted, Defendants must
9 maintain a clear and conspicuous link to the web page notice and embed the link in
10 the words “Your Right to Post Honest Reviews and File Complaints” near the top
11 of the www.tradingacademy.com home page, the “Reviews” page, and any web
12 pages at which purchasers input payment information for purchases of Defendants’
13 trading and investing training programs, instructional materials, and related goods
14 and services.

15 3. The web page notice and any link to it must, by its size,
16 contrast, location, and other characteristics, stand out from any accompanying text
17 or other visual elements so that it is easily noticed, read, and understood.

18 4. The web page notice must be posted not later than 3 days after
19 the effective date of this Order and for at least 3 years after the effective date of
20 this Order.

21 **VII. MONETARY JUDGMENT AND PARTIAL SUSPENSION**

22 IT IS FURTHER ORDERED that:

23 A. Judgment in the amount of Three Hundred Sixty-Two Million Dollars
24 (\$362,000,000.00) is entered in favor of the Commission against Defendants,
25 jointly and severally, as equitable monetary relief.

26 B. Individual Defendant Eyal Shachar (“Shachar”) is ordered to pay to
27 the Commission Eight Million Three Hundred Thousand Dollars (\$8,300,000),
28 which, as Shachar stipulates, his undersigned counsel holds in escrow for no

1 purpose other than payment to the Commission. Such payment, as potentially
2 reduced by the provisions of Section IX.H., must be made within 7 days of the end
3 of the Election Period by electronic fund transfer in accordance with instructions
4 previously provided by a representative of the Commission.

5 C. Individual Defendant Samuel R. Seiden (“Seiden”) is ordered to pay
6 to the Commission One Hundred Fifty-Eight Thousand Dollars (\$158,000), which,
7 as Seiden stipulates, his undersigned counsel holds in escrow for no purpose other
8 than payment to the Commission. Such payment must be made within 7 days of
9 entry of this Order by electronic fund transfer in accordance with instructions
10 previously provided by a representative of the Commission.

11 D. Individual Defendant Darren Kimoto (“Kimoto”) is ordered to pay to
12 the Commission Seven Hundred Thirty-Six Thousand Three Hundred Dollars
13 (\$736,300), which, as Kimoto stipulates, his undersigned counsel holds in escrow
14 for no purpose other than payment to the Commission. Such payment must be
15 made within 7 days of entry of this Order by electronic fund transfer in accordance
16 with instructions previously provided by a representative of the Commission.

17 E. In addition to the payments to the Commission specified in Subsection
18 B, above, immediately upon entry of this Order, Individual Defendant Eyal
19 Shachar and Blue White LLC are ordered to surrender to the Commission all
20 control, title, dominion and interest each has to the following assets:

- 21 1. 2009 Sportscoach Legend motor home;
- 22 2. 2012 Bentley Mulsanne, VIN: SCBBB7ZH1CC016279;
- 23 3. 2006 Columbia Aircraft Mfg LC41-550FG, Serial No. 41663, Aircraft
24 Registration No. N14100;
- 25 4. 2015 Cadillac Escalade, VIN: 1GYS4TKJ7FR597571;
- 26 5. 2010 Chrysler Town & Country, VIN: 2A4R5D11AR479141;
- 27 6. 2015 KIA Sedona, VIN: KNDMA5C10F6035661
- 28 7. 2016 Dodge Grand Caravan, VIN: 2C4RDGCG7GR168781;

1 8. 2016 Dodge Grand Caravan, VIN: 2C4RDGCG0GR169321;

2 9. 2017 Dodge Caravan, VIN: 2C4RDGC0HR562186;

3 10. 2017 Dodge Grand Caravan, VIN: 2C4RDGCG1HR672163;

4 F. In addition to the payments to the Commission specified in Subsection
5 D above, immediately upon entry of this Order, Individual Defendant Darren
6 Kimoto is ordered to surrender to the Commission all control, title, dominion and
7 interest he has to the following assets:

8 1. 2017 Landrover Discovery, VIN: SALRHBBV3HA025641.

9 G. Defendants shall deliver the assets identified in Subsections E-F
10 above to the Liquidator's possession within 7 days of the entry of this Order.

11 H. The Liquidator shall, as soon as practicable, commence the sale of the
12 unliquidated assets identified in Subsections E-F above and surrendered pursuant
13 to this Order using a commercially reasonable procedure. The Liquidator shall hold
14 the surrendered assets, and the proceeds from the income produced by, and sale of,
15 the unliquidated assets for future transfer to the Commission in accordance with
16 further instructions from the Court.

17 I. Upon delivery of the payments specified in Subsections B-D above to
18 the Commission, and turnover of all the assets specified in Subsections E-F above
19 to the Liquidator, the remainder of the judgment is suspended, subject to the
20 Subsections below.

21 J. The Commission's agreement to the suspension of part of the
22 judgment is expressly premised upon the truthfulness, accuracy, and completeness
23 of Defendants' sworn financial statements, testimony, and related documents
24 (collectively, "financial representations") submitted to the Commission, namely:

25 1. the Financial Statement of Corporate Defendant OTA Franchise
26 Corporation signed by Aaron Neilsen, Chief Financial Officer, on March 5,
27 2020, including the attachments, along with the supplemental disclosures
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1 signed by Aaron Neilsen on April 3, 2020 and exhibits provided to the FTC
2 on or about April 6, 2020;

3 2. the Financial Statement of Corporate Defendant Newport Exchange
4 Holdings, Inc. signed by Aaron Neilsen, Chief Financial Officer, including
5 the attachments provided to the FTC on or about March 2, 2020 and March
6 5, 2020, along with the supplemental disclosure signed by Aaron Neilsen on
7 April 3, 2020, along with all exhibits and attachments;

8 3. the Financial Statement of Corporate Defendant NEH Services, Inc.
9 signed by signed by Aaron Neilsen, Chief Financial Officer, and provided to
10 the FTC on or about March 5, 2020, including the attachments, along with
11 the supplemental disclosures provided on or about April 6, 2020;

12 4. the Financial Statement of Individual Defendant Eyal Shachar signed
13 on March 9, 2020, including the attachments, along with the supplemental
14 information in the Declaration of Eyal Shachar re Financial Disclosures Per
15 Section X of Preliminary Injunction provided on April 7, 2020, including all
16 exhibits and attachments thereto;

17 5. the documents provided by counsel for Individual Defendant Eyal
18 Shachar via email on March 2 and March 5, 2020;

19 6. the Financial Statement of Individual Defendant Samuel R. Seiden
20 signed on March 1, 2020, including the attachments, along with the
21 supplemental information and documents provided on March 3, March 4,
22 and May 28, 2020, including all attachments;

23 7. the Financial Statement of Individual Defendant Darren Kimoto
24 signed on February 28, 2020, including the attachments, along with the
25 supplemental materials and documents provided on March 3, 2020 and
26 March 8, 2020, including all attachments;

27 8. the March 5, 2020 deposition of Darren Kimoto, including all exhibits
28 referenced during the deposition;

1 9. the March 5, 2020 deposition of Samuel R. Seiden, including all
2 exhibits referenced during the deposition;

3 10. the March 5, 2020 deposition of Eyal Shachar, including all exhibits
4 referenced during the deposition;

5 11. the March 6, 2020 deposition of OTA Franchise Corporation,
6 including all exhibits referenced during the deposition;

7 12. the March 6, 2020 deposition of NEH Services, Inc., including all
8 exhibits referenced during the deposition; and

9 13. the March 6, 2020 deposition of Newport Exchange Holdings, Inc.,
10 including all exhibits referenced during the deposition.

11 K. The suspension of the judgment will be lifted as to any Defendant if,
12 upon motion by the Commission, the Court finds that Defendant failed to disclose
13 any material asset, materially misstated the value of any asset, or made any other
14 material misstatement or omission in the financial representations identified above.

15 L. If the suspension of the judgment is lifted, the judgment becomes
16 immediately due as to that Defendant in the amount specified in Subsection A
17 above (which the parties stipulate only for purposes of this Section represents the
18 consumer injury alleged in the Complaint), less any payment previously made
19 pursuant to this Section, plus interest computed from the date of entry of this
20 Order.

21 **VIII. ADDITIONAL MONETARY PROVISIONS**

22 IT IS FURTHER ORDERED that:

23 A. Defendants relinquish dominion and all legal and equitable right, title,
24 and interest in all assets transferred pursuant to this Order and may not seek the
25 return of any assets.

26 B. The facts alleged in the Complaint will be taken as true, without
27 further proof, in any subsequent civil litigation by or on behalf of the Commission,
28 including in a proceeding to enforce its rights to any payment or monetary

1 judgment pursuant to this Order, such as a nondischargeability complaint in any
2 bankruptcy case.

3 C. The facts alleged in the Complaint establish all elements necessary to
4 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
5 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
6 estoppel effect for such purposes.

7 D. Defendants acknowledge that their Taxpayer Identification Numbers
8 (Social Security Numbers or Employer Identification Numbers), which Defendants
9 previously submitted to the Commission, may be used for collecting and reporting
10 on any delinquent amount arising out of this Order, in accordance with 31 U.S.C.
11 §7701.

12 E. All money paid to the Commission pursuant to this Order may be
13 deposited into a fund administered by the Commission or its designee to be used
14 for equitable relief, including consumer redress and any attendant expenses for the
15 administration of any redress fund. If a representative of the Commission decides
16 that direct redress to consumers is wholly or partially impracticable or money
17 remains after redress is completed, the Commission may apply any remaining
18 money for such other equitable relief (including consumer information remedies)
19 as it determines to be reasonably related to Defendants' practices alleged in the
20 Complaint. Any money not used for such equitable relief is to be deposited to the
21 U.S. Treasury as disgorgement. Defendants have no right to challenge any actions
22 the Commission or its representatives may take pursuant to this Subsection.

23 **IX. CONSUMER INDEBTEDNESS RELIEF**

24 IT IS FURTHER ORDERED that Corporate Defendants shall:

25 A. Within seven days of entry of this Order, notify each consumer with
26 Covered Consumer Debt that the consumer may elect to require Corporate
27 Defendants to forgive the consumer's Covered Consumer Debt, using the
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1 notification provided as **Attachment B** to this Order (“Notification”). Corporate
2 Defendants shall send the Notification:

3 1. By electronic mail to the most recent electronic mail address of
4 the consumer known to the Corporate Defendants; and

5 2. By United States Postal Service Priority Mail, to the most
6 recent residential address of the consumer known to the Corporate
7 Defendants.

8 3. The outside of the envelope and the subject of the email shall
9 include the statement: “Notice of Right for Debt Forgiveness under
10 Settlement in FTC v. Online Trading Academy.”

11 B. Corporate Defendants shall forgive all Covered Consumer Debt owed
12 by any consumer who, within 45 days of Corporate Defendants’ mailing of the
13 Notification (the “Election Period”), requests debt forgiveness from Corporate
14 Defendants by email or telephone.

15 C. With entry of this Order, Corporate Defendants shall cease collecting
16 on all Covered Consumer Debt and notify any collection agency or other third
17 party collecting Covered Consumer Debt to cease such collection efforts until
18 expiration of the Election Period. Nothing in this Agreement shall prevent
19 Corporate Defendants or their agents from sending invoices in the ordinary course
20 of business or receiving voluntary payments on Covered Consumer Debt during
21 such Election Period.

22 D. To the extent Corporate Defendants receive any payment for Covered
23 Consumer Debt that was subject to a debt forgiveness request from the consumer
24 within the Election Period, Corporate Defendants shall, within 14 days of receipt
25 of such a payment, refund the full payment amount to the consumer who made the
26 timely forgiveness request.

27 E. For any forgiven Covered Consumer Debt that has been reported to a
28 Consumer Reporting Agency (“CRA”), Corporate Defendants shall, within 14 days

1 of expiration of the Election Period request that each CRA delete the forgiven
2 Covered Consumer Debt from the consumer's credit reporting file.

3 F. Corporate Defendants shall, within 14 days of sending the Notification
4 to the applicable consumers pursuant to Subsection IX.A above, provide the FTC
5 with a signed declaration identifying the name of each consumer to whom they
6 sent a Notification, including: (i) mailing address; (ii) email address; (iii) telephone
7 number; (iv) the method or methods of notification; and (v) whether any
8 electronically or physically mailed Notification was returned undelivered.

9 G. Corporate Defendants shall, within 14 days after expiration of the
10 Election Period, provide the FTC with a signed declaration identifying each
11 consumer that, pursuant to Subsection IX.B above, has elected to require Corporate
12 Defendants to forgive the consumer's Covered Consumer Debt and the amount of
13 debt forgiven as to each such consumer. In the same declaration, Corporate
14 Defendants shall also identify any additional (i.e., not previously identified in the
15 declaration provided to the FTC pursuant to Subsection IX.F) electronically or
16 physically mailed Notification that was returned undelivered.

17 H. For each dollar (\$1.00) of Covered Consumer Debt that is forgiven as
18 a result of a consumer election, the monetary amount owing in Section VII.B by
19 Eyal Shachar shall be reduced by seventy-percent of one dollar (\$0.70), up to a
20 maximum reduction of four million dollars (\$4,000,000.00).

21 **X. CUSTOMER INFORMATION**

22 IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents,
23 and employees, and all other persons in active concert or participation with any of
24 them, who receive actual notice of this Order, are permanently restrained and
25 enjoined from directly or indirectly:

26 A. Failing to provide sufficient customer information to enable the
27 Commission to efficiently administer consumer redress. If a representative of the
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1 Commission requests in writing any information related to redress, Defendants
2 must provide it, in the form prescribed by the Commission, within 14 days.

3 B. Disclosing or selling customer information, including the name,
4 address, telephone number, email address, social security number, other identifying
5 information, or any data that enables access to a customer's account (including a
6 credit card, bank account, or other financial account), that any Defendant obtained
7 prior to entry of this Order in connection with the marketing and sale of trading
8 and investing training programs, instructional materials, and related goods and
9 services.

10 Provided, however, that customer information need not be disposed of, and
11 Defendants may disclose such identifying information: (1) to the extent requested
12 by a government agency or required by law, regulation, or court order; and (2) to
13 companies that provide services to Corporate Defendants related to trading or
14 investing training programs, to the extent that such persons have provided written
15 consent for their identifying information to be provided to such companies. Such
16 written consent will not be valid for purposes of this Order unless Corporate
17 Defendants have identified to the person the name of the company that will receive
18 the identifying information and the reason the information is being shared, prior to
19 the person's execution of the written consent.

20 **XI. COOPERATION**

21 IT IS FURTHER ORDERED that Defendants must fully cooperate with
22 representatives of the Commission in this case and in any investigation related to
23 or associated with the transactions or the occurrences that are the subject of the
24 Complaint. Such Defendants must provide truthful and complete information,
25 evidence, and testimony. Such Individual Defendants must appear and such
26 Corporate Defendants must cause Defendants' officers, employees, representatives,
27 or agents to appear for interviews, discovery, hearings, trials, and any other
28 proceedings that a Commission representative may reasonably request upon 5 days

1 written notice, or other reasonable notice, at such places and times as a
2 Commission representative may designate, without the service of a subpoena.

3 **XII. MONITOR TERMINATION**

4 IT IS FURTHER ORDERED that the Court-appointed monitorship is hereby
5 terminated. Additionally, the Monitor, Thomas McNamara, is hereby directed to,
6 within fourteen (14) days of this Order, file and serve on the parties a final
7 application for fees and expenses. Upon this Court's Order for final payment from
8 the assets of the Corporate Defendants, the monitorship shall terminate.

9 **XIII. LIQUIDATOR**

10 IT IS FURTHER ORDERED that Thomas McNamara is hereby appointed
11 Liquidator for the purpose of liquidating assets and paying any net proceeds to the
12 Commission to satisfy the monetary judgment in this Order. In carrying out these
13 duties, the Liquidator shall be the agent of this Court, shall be accountable directly
14 to this Court, and is authorized and directed to:

15 A. Take exclusive custody, control, and possession of all Settlement
16 Estate Assets, any income generated by such assets, and proceeds generated
17 through the liquidation of such assets.

18 B. Manage and sell the Settlement Estate Assets using a commercially
19 reasonable procedure. The Liquidator shall hold the Settlement Estate Assets, any
20 income generated by such assets, and the proceeds from the sale of the
21 unliquidated assets, for future transfer to the Commission in accordance with
22 further instructions from the Court.

23 C. Take the steps Liquidator deems necessary or advisable to ensure
24 Settlement Estate Assets are not lost, stolen, or dissipated.

25 D. Maintain accurate records of all receipts and expenditures incurred as
26 the Liquidator.

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1 E. Perform all acts necessary or advisable to complete an accurate
2 accounting of Settlement Estate Assets, and prevent unauthorized transfer,
3 withdrawal, or misapplication of said assets.

4 F. Receive reasonable compensation with Court approval, for the
5 performance of the Liquidator's duties pursuant to this Order, including duties
6 performed by Liquidator's agents, including accountants and lawyers, for the cost
7 of actual out-of-pocket expenses incurred by them, from the Settlement Estate
8 Assets, at a reasonable hourly rate not to exceed the hourly rate Liquidator agreed
9 to in his capacity as Monitor and used as the basis for prior fee applications
10 approved by the Court.

11 G. In liquidating the Settlement Estate Assets, the following provisions
12 apply:

13 1. Defendants shall cooperate fully with the Liquidator and take such
14 other steps as the Liquidator may require in connection with the listing, marketing,
15 and sale of the Settlement Estate Assets.

16 2. Defendants shall sign any documents necessary for the sale of the Set-
17 tlement Estate Assets, including, but not limited to, powers of attorney and any
18 documents necessary to effectuate a transfer of any such assets to third parties.

19 3. All ad valorem taxes, any transfer fees, recording fees, other fees, ad-
20 vertising, and any commissions associated with or resulting from the sale of the
21 Settlement Estate Assets shall be paid from the proceeds of the sale(s) at the time
22 the Settlement Estate Assets are sold.

23 H. The Liquidator shall liquidate the Settlement Estate Assets and all net
24 proceeds, after payment of any liens and necessary expenses of the Liquidator,
25 shall be paid to the Commission. Such payment shall be made within 7 days fol-
26 lowing the Court's approval of the Liquidator's final application for compensation
27 and expenses, by electronic fund transfer in accordance with instructions to be pro-
28 vided by a representative of the Commission.

1 **XIV. ORDER ACKNOWLEDGMENTS**

2 IT IS FURTHER ORDERED that Defendants obtain acknowledgments of
3 receipt of this Order:

4 A. Each Defendant, within 7 days of entry of this Order, must submit to
5 the Commission an acknowledgment of receipt of this Order sworn under penalty
6 of perjury.

7 B. For 4 years after entry of this Order, each Individual Defendant for
8 any business that such Defendant, individually or collectively with any other
9 Defendants, is the majority owner or controls directly or indirectly, and each
10 Corporate Defendant, must deliver a copy of this Order to: (1) all principals,
11 officers, directors, and LLC managers and members; (2) all franchisees; (3) all
12 employees having managerial responsibilities for conduct related to the subject
13 matter of the Order and all agents and representatives who participate in conduct
14 related to the subject matter of the Order; and (4) any business entity resulting
15 from any change in structure as set forth in the Section titled Compliance
16 Reporting. Delivery must occur within 7 days of entry of this Order for current
17 personnel. For all others, delivery must occur before they assume their
18 responsibilities.

19 C. From each individual or entity to which a Defendant delivered a copy
20 of this Order, that Defendant must obtain, within 30 days, a signed and dated
21 acknowledgment of receipt of this Order.

22 **XV. COMPLIANCE REPORTING**

23 IT IS FURTHER ORDERED that Defendants make timely submissions to
24 the Commission:

25 A. One year after entry of this Order, each Defendant must submit a
26 compliance report, sworn under penalty of perjury:

27 1. Each Defendant must: (a) identify the primary physical, postal,
28 and email address and telephone number, as designated points of contact, which

1 representatives of the Commission may use to communicate with Defendant; (b)
2 identify all of that Defendant's businesses by all of their names, telephone
3 numbers, and physical, postal, email, and Internet addresses; (c) describe the
4 activities of each business, including the goods and services offered, the means of
5 advertising, marketing, and sales, and the involvement of any other Defendant
6 (which Individual Defendants must describe if they know or should know due to
7 their own involvement); (d) describe in detail whether and how that Defendant is in
8 compliance with each Section of this Order; and (e) provide a copy of each Order
9 Acknowledgment obtained pursuant to this Order, unless previously submitted to
10 the Commission.

11 2. Additionally, each Individual Defendant must: (a) identify all
12 telephone numbers and all physical, postal, email and Internet addresses, including
13 all residences; (b) identify all business activities, including any business for which
14 such Defendant performs services whether as an employee or otherwise and any
15 entity in which such Defendant has any ownership interest; and (c) describe in
16 detail such Defendant's involvement in each such business, including title, role,
17 responsibilities, participation, authority, control, and any ownership.

18 B. For 10 years after entry of this Order, each Defendant must submit a
19 compliance notice, sworn under penalty of perjury, within 14 days of any change in
20 the following:

21 1. Each Defendant must report any change in: (a) any designated
22 point of contact; or (b) the structure of any Corporate Defendant or any entity that
23 Defendant has any ownership interest in or controls directly or indirectly that may
24 affect compliance obligations arising under this Order, including: creation, merger,
25 sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages
26 in any acts or practices subject to this Order.

27 2. Additionally, each Individual Defendant must report any change
28 in: (a) name, including aliases or fictitious name, or residence address; or (b) title

1 or role in any business activity, including any business for which such Defendant
2 performs services whether as an employee or otherwise and any entity in which
3 such Defendant has any ownership interest, and identify the name, physical
4 address, and any Internet address of the business or entity.

5 C. Each Defendant must submit to the Commission notice of the filing of
6 any bankruptcy petition, insolvency proceeding, or similar proceeding by or
7 against such Defendant within 14 days of its filing.

8 D. Any submission to the Commission required by this Order to be
9 sworn under penalty of perjury must be true and accurate and comply with 28
10 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
11 the laws of the United States of America that the foregoing is true and correct.
12 Executed on: _____” and supplying the date, signatory’s full name, title (if
13 applicable), and signature.

14 E. Unless otherwise directed by a Commission representative in writing,
15 all submissions to the Commission pursuant to this Order must be emailed to
16 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
17 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
18 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
19 subject line must begin: FTC v. OTA Franchise Corporation, et al., No. X200032.

20 **XVI. RECORDKEEPING**

21 IT IS FURTHER ORDERED that Defendants must create certain records for
22 10 years after entry of the Order, and retain each such record for 5 years.
23 Specifically, Corporate Defendant and each Individual Defendant for any business
24 that such Defendant, individually or collectively with any other Defendants, is a
25 majority owner or controls directly or indirectly, must create and retain the
26 following records:

27 A. Accounting records showing the revenues from all goods or services
28 sold;

1 B. Personnel records showing, for each person providing services,
2 whether as an employee or otherwise, that person's: name; addresses; telephone
3 numbers; job title or position; dates of service; and (if applicable) the reason for
4 termination;

5 C. Records of all consumer complaints and refund requests, whether
6 received directly or indirectly, such as through a third party, and any response;

7 D. All records necessary to demonstrate full compliance with each
8 provision of this Order, including all submissions to the Commission;

9 E. All written consent forms provided pursuant to Section X, above; and

10 F. A copy of each unique advertisement or other marketing material.

11 **XVII. COMPLIANCE MONITORING**

12 IT IS FURTHER ORDERED that, for the purpose of monitoring
13 Defendants' compliance with this Order, including the financial representations
14 upon which part of the judgment was suspended and any failure to transfer any
15 assets as required by this Order:

16 A. Within 14 days of receipt of a written request from a representative of
17 the Commission or Plaintiff, each Defendant must: submit additional compliance
18 reports or other requested information, which must be sworn under penalty of
19 perjury; appear for depositions; and produce documents for inspection and
20 copying. The Commission is also authorized to obtain discovery, without further
21 leave of court, using any of the procedures prescribed by Federal Rules of Civil
22 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

23 B. For matters concerning this Order, the Commission is authorized to
24 communicate directly with each Defendant. Defendant must permit representatives
25 of the Commission to interview any employee or other person affiliated with any
26 Defendant who has agreed to such an interview. The person interviewed may have
27 counsel present.

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1 C. The Commission may use all other lawful means, including posing,
2 through its representatives as consumers, suppliers, or other individuals or entities,
3 to Defendants or any individual or entity affiliated with Defendants, without the
4 necessity of identification or prior notice. Nothing in this Order limits the
5 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
6 the FTC Act, 15 U.S.C. §§ 49, 57b-1.

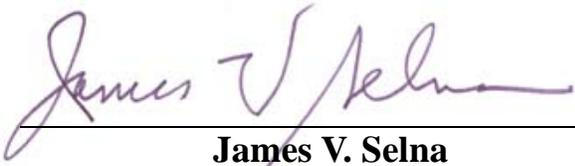
7 D. Upon written request from a representative of the Commission, any
8 consumer reporting agency must furnish consumer reports concerning Individual
9 Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
10 §1681b(a)(1).

11 **XVIII. RETENTION OF JURISDICTION**

12 IT IS FURTHER ORDERED that this Court retains jurisdiction of this
13 matter for purposes of construction, modification, and enforcement of this Order.

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Dated: September 11, 2020



James V. Selna
United States District Judge

