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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)

Preliminary Injunction

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

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

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

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

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

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

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

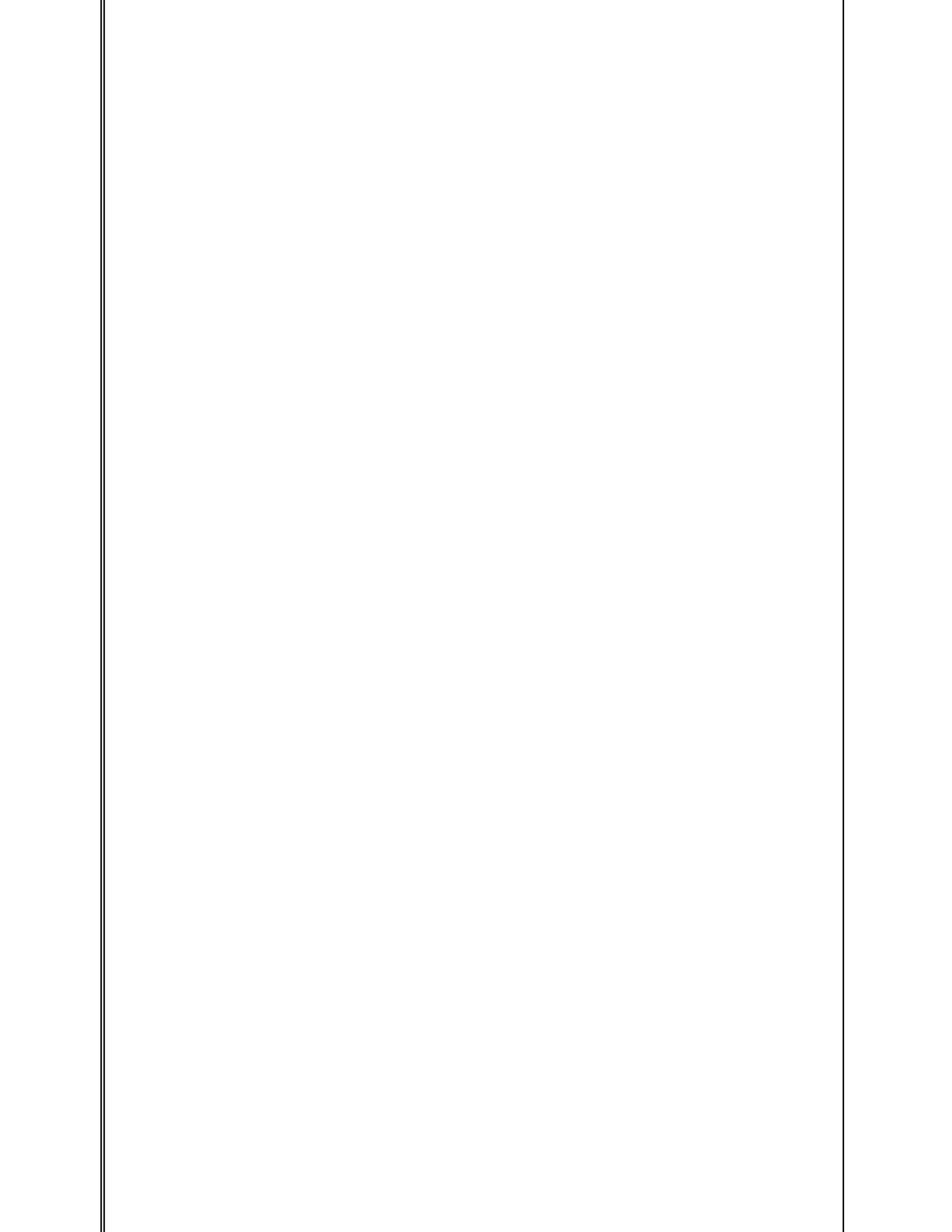
11 I. There is good cause to believe that immediate and irreparable harm
12 will result from Defendants' ongoing violations of the FTC Act and the CRFA
13 unless Defendants are restrained and enjoined by order of this Court.

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

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

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

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

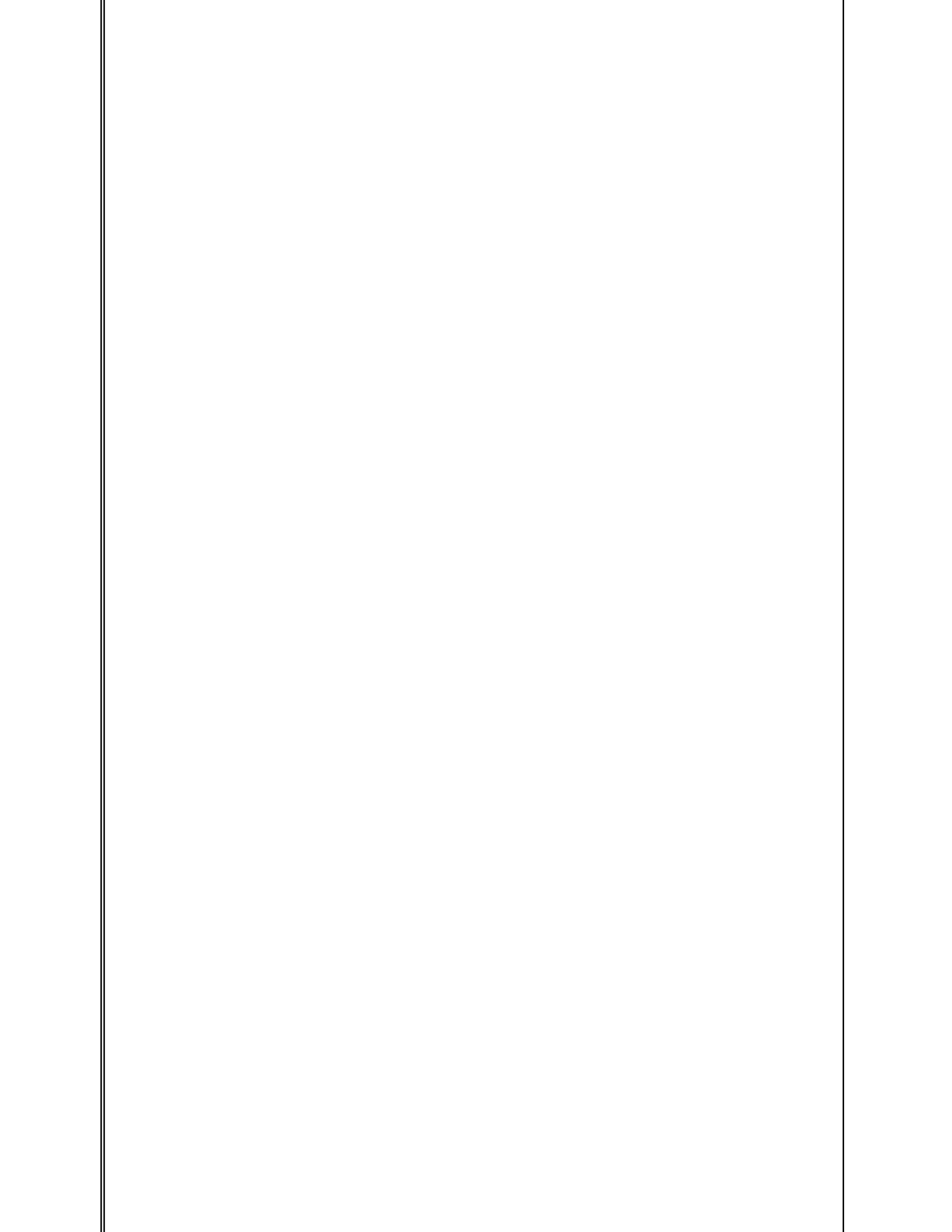
4 E. **“Earnings Claim”** means any representation to consumers, specific
5 or general, about income, financial gains, percentage gains, profit, net profit, gross
6 profit, or return on investment. Earnings Claims include, but are not limited to: (a)
7 the details of specific profitable trades, whether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

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

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

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

24 I. **“Monitored Entities”** means the Corporate Defendants as well as any
25 other entity that the Monitor determines is controlled or owned by any Corporate
26 Defendant or Eyal Shachar and (1) conducted any business related to Defendants’



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

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

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

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

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

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

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

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

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

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

2 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,
3 agents, employees, and attorneys, and all other persons in active concert or
4 participation with any of them, who receive actual notice of this Order, whether
5 acting directly or indirectly, are hereby preliminarily restrained and enjoined from
6 selling, renting, leasing, transferring, or otherwise disclosing, the name, address,
7 birth date, telephone number, email address, credit ca

1 **V. PRESERVATION OF RECORDS**

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

6 A. Destroying, erasing, falsifying, writing over, mutilating, concealing,
7 altering, transferring, or otherwise disposing of, in any manner, directly or
8 indirectly, Documents that relate to: (1) the business, business practices, assets, or
9 business or personal finances of any Defendant; (2) the business practices or
10 finances of entities directly or indirectly

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The assets affected by this Section shall include: (1) all assets of the

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

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

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

10 1) The identification number of each such account or asset;

11 2) The balance of each such account, or a description of the nature
12 and value of each such asset as of the close of business on the
13 day on which this Order is served, and, if the account or other
14 asset has been closed or removed, the date closed or removed,
15 the total funds removed in order to close the account, and the
16 name of the person or entity to whom such account or other
17 asset was remitted;

18 3) The identification of any safe deposit box, commercial mail
19 box, or storage facility that is either titled in the name,
20 individually or jointly, of any De

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

3 **X. FINANCIAL DISCLOSURES**

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

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

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Provided that the creation of a single

- 1 1) All information or Documents the Monitor deems necessary or
2 appropriate to carrying out the Monitor's duties pursuant to this
3 Order;
- 4 2) Access to all property or premises in possession of, owned by,
5 or under the control of the Monitored Entities related to the
6 marketing, advertising, promotion, offer for sale, or sale of their
7 trading or investing training programs, wherever located.
- 8 3) The right to copy or image any and all Documents as the
9 Monitor deems necessary or appropriate to carrying out the
10 Monitor's duties pursuant to this Order, including any
11 Documents in the custody, or control of Individual Defendants;
- 12 4) The right to interview any current or former employee,
13 independent contractor, principal, owner, manager, member, or
14 other person

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

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

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

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

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

9 **XV. COOPERATION WITH THE MONITOR**

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

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

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

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

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

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

6 **XVII. COMPENSATION OF THE MONITOR**

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

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

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

1 D. Plaintiff may serve subpoenas upon non-parties that direct production

James V. Nelson