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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

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-02 (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.

1 3. transfers, or requires a person who is a party to the contract to
2 transfer, to any other person any inte

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1 amount of capital typically needed by consumers using Defendants' trading
2 strategy, unless the claim is non-misleading, at the time ~~an~~ 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~~ consumer, prospective client, or the
7 FTC.

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- 1 B. Defendants must notify consumers online:
- 2 1. Defendants must post a webpage notice as shown in

3 Attachment A

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1 purpose other than payment to the Commission. Such payment, as potentially
2 reduced by the provisions of Section IX.H., shall be made within 7 days of the end
3 of the Election Period by electronic funds 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
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- 1 8. 2016 Dodge Grand Caravan, N.I.2C4RDGCG0GR169321;
- 2 9. 2017 Dodge Caravan, M.I. 2C4RDGC0HR562186;
- 3 10. 2017 Dodge Grand Caravan, N.I.2C4RDGCG1HR672163;
- 4 F. In addition to the payments to the Commission specified in Subsection

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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 judgment pursuant to this Order, such as a nondischargeability complaint in any

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1 notification provided as Attachment B to this Order (“Notification”). Corporate
2 Defendants shall send the Notification:

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

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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 the 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, 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 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 responsibility 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 designating points of contact, which

1 representatives of the Commission may communicate with Defendant; (b)
2 identify all of that Defendant's businesses by all of their names, telephone
3 numbers, and physical, postal, mail, 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 the 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, mail 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 B. Personnel records showing, for each person providing services,
2 whether as an employee or otherwise, a person's: name, addresses; telephone
3 numbers; job title or position; dates of ~~see~~ and (if applicable) the reason for
4 termination;

5 C. Records of all consumer complaints and refund requests, whether
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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 affili2 2i.296 0 Td2TjETq0 792 612 -7925vor entitys8a
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James V. Kelly

1 **ATTACHMENT A – CRFA Notice**

2 The notice must be in the following form, appearing on Defendants’ letterhead, email, and
3 www.tradingacademy.com website with the underlined text completed as directed:

4 **Your Right to Post Honest Reviews and File Complaints**

5 Dear Clients:

6 The Federal Trade Commission (FTC), the nation’s consumer protection agency, in a
7 lawsuit filed against us alleged that certain contracts we offered our Online Trading Academy
8 clients violated the law. According to the lawsuit, these contracts violated the Consumer Review
9 Fairness Act (CRFA). The CRFA protects your ability to share your honest opinions about a
business’s products, services, or conduct. This includes online reviews, social media posts, up-
loaded photos, and videos.

10 The lawsuit says that provisions in our “Amendment and Release,” which we required
11 certain clients to sign in order to receive refunds, restricted our clients [for letter and email no-
12 tices add “(including you)”] from sharing truthful information and their honest opinions about
13 their experiences with us. These provisions are void and we cannot enforce them against our cli-
ents. **You can publish your honest review, even if you say something negative about us or
our services.**

14 Our services and products are also subject to state and federal laws, and to regulation by
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