

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into by and between Plaintiff Brandon Wendell ("Plaintiff") on the one hand, and Defendant OTA Franchise Corporation dba Online Trading Academy ("OTA"), on the other hand. Plaintiff and OTA are collectively referred to as the "Parties" or individually as a "Party."

WHEREAS, on or about April 1, 2021, Plaintiff filed a Complaint in the matter of *Brandon Wendell v. Online Trading Academy, Inc.*, Case No. 37-2021-00014172-CU-OE-CTL, in the Superior Court of the State of California, County of San Diego (the "Civil Action"), asserting class causes of action for (1) Unfair Competition; (2) Failure to Pay Minimum and Overtime Compensation; (3) Failure to Provide Accurate Itemized Statements, (4) Failure to Provide Wages When Due, (5) Non-Payment of Wages; (6) Waiting-Time Penalties For Nonpayment of Wages; (7) Willful Misclassification; (8) Failure to Reimburse Required Expenses; (9) Civil Penalties for Failure to Pay Wages Due and Payable Twice Each Calendar Month; and (10) Breach of Contract; and subsequently filed a First Amended Complaint in the Civil Action;

WHEREAS, on or about October 26, 2021, the Court in the Civil Action Ordered Plaintiff's class claims dismissed from the Lawsuit; Plaintiff's Causes of Action #1-10 to be submitted to binding, individual arbitration, and Plaintiff's eleventh cause of action stayed pending the completion of proceedings on Plaintiff's other claims;

WHEREAS, on or about December 1, 2021, Plaintiff filed individual claims in arbitration before JAMS in its Case No. 5240000019 ("Arbitration") (collectively with the Civil Action and all claims filed therein, referred to as the "Lawsuit")

WHEREAS, without admitting any liability, the Parties desire in good faith to forever settle disputes and compromise and release claims made by Wendell against OTA as set forth herein to the extent the law permits such matters to be resolved by this Agreement, including but not limited to, all claims alleged in or related to the Lawsuit, and to document herein the settlement between the Parties. The Parties acknowledge that they have been given time to consider this Agreement and are entering into it voluntarily and for the purpose of resolving any and all claims.

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein and other good and valuable consideration, the sufficiency of which the Parties acknowledge, the Parties mutually represent and agree as follows:

1. Settlement Payment and Dismissal of Lawsuit with Prejudice.

1.1 Assuming that Plaintiff does not revoke this Agreement as set forth in Section 11 below, OTA shall deliver to Plaintiff's counsel the gross sum of \$50,000.00 dollars, plus statutory interest at 10 percent, which shall represent compensation for all of Plaintiff' disputed claims as set forth in Section 9 below, including attorneys' fees paid on Plaintiff's behalf (the "Settlement Payment"). The Settlement Payment shall be paid in twenty-five (25) installments, as described below, and delivered to Plaintiff's counsel of record:

- a) The first installment payment of \$2,000.00 will be received via ACH transfer on or before Friday September 16, 2022. This assumes that Defendant is in receipt of the Plaintiff's execution of this Agreement and his counsel's return of that signed Agreement and receipt by OTA's counsel of record of the appropriate tax forms from Plaintiff's counsel and ACH wire transfer information for the purposes of effectuating the settlement payment terms (anticipated to be provided by Plaintiff on Tuesday September 13, 2022); and
- b) Following the first installment payment, OTA shall issue twenty-four additional monthly payments of \$2,000.00 each; altogether with the initial payment totaling \$50,000.00, each to be paid within a month of the prior installment payment.

Each of the payments mentioned above and below shall be distributed to the Webb Law Group Trust Account via ACH for receipt on or by the date due.

Lenden F. Webb – Attorney Client Trust Account
EIN: 45-4079959
Bank of America, Fresno Fig Garden
5292 N Palm Avenue, Fresno, CA 93704
ROUTING#: 121 000 358
ACCOUNT#: 00 16648 61728
SWIFT #: BOFA US 3N

1.2 A Form 1099 and W2 will be issued as follows:

- a) To Webb Law Group, APC: \$20,000, which serves as compensation for Plaintiff's attorneys' fees and costs, for which a Form 1099 will be issued to Webb Law Group, APC;
- b) To Brandon Wendell: \$7,500, as compensation for Plaintiff's gross lost wages less applicable tax and other required holdings and deductions, for which a Form W-2 will issue;
- c) To Brandon Wendell: \$22,500, as compensation for Plaintiff's non-wage claims/penalties/interest, for which a Form 1099 will be issued;

In addition to the \$50,000, statutory interest of 10% shall be calculated upon all sums stated above running from the date of settlement to the date of each payment stated above, on a daily, non-compounding rate, and shall be paid on three final checks based on the amounts stated above, with the twenty-fifth monthly payment.

1.3 Approval and Dismissal: Notwithstanding anything to the contrary in this Agreement, a *Notice of Settlement* will be filed and served by Plaintiff's counsel within ten (10) days of the first settlement payment, in both the Civil Action and the Arbitration. If any jurisdiction requires a dismissal prior to the final payment being made, both sides agree to sign a stipulation for the court to retain jurisdiction. The parties agree that they will file a jointly-signed request for approval of settlement in this case, to be prepared by OTA and filed with the

court in the Civil Action pursuant to Labor Code Section 2699(k)(2) within 30 days of the execution by the parties of the settlement, and that Plaintiff's counsel shall file notice of the settlement with the LWDA pursuant to Labor Code Section 2699(k)(2) at the same time that it is submitted to the Court by the parties.

Within ten (10) business days after Plaintiff's counsel of record receives the final Settlement Payment, Plaintiff through their counsel shall file a *request for dismissal* with prejudice of both the Civil Action and the Arbitration. Plaintiff's counsel shall also simultaneously serve the *request for dismissal* upon counsel for OTA in the Civil Action and the Arbitration. Since this is a payment plan over time, Plaintiff's counsel has one (1) grace period to perform after being notified by Defense counsel. This is a material term of the agreement.

1.4 Plaintiff agrees to be solely and fully responsible for any and all of Plaintiff's local, state and federal tax consequences, including interest and penalties, if any, associated with the Settlement Payment. Plaintiff is not relying on OTA for any tax or legal advice.

2. Waiver of Attorneys' Fees and Costs.

Except as expressly set forth in this Agreement, each Party shall bear its own costs and attorneys' fees incurred in connection with their claims against each other and the Lawsuit.

3. No Admissions of Liability.

The Parties are entering into this Agreement for the sole purpose of avoiding the time and expense involved in the litigation of this matter. This Agreement shall not in any way be construed as an admission by either Plaintiff or OTA that they have acted wrongfully with respect to each other or any other person, or that the Parties have any rights whatsoever against each other or any of their current or former employees or agents, and the Parties specifically deny any liability to or wrongful acts against each other or any other person, on the part of themselves, or any of their current or former employees or agents.

4. Confidentiality.

If asked, Defendant agrees to give a simple statement of dates of employment, job title and that the employee is "eligible for rehire". Unless otherwise required by law, the Parties agree that they will keep this Agreement and its terms, and all settlement discussions, negotiations and communications leading up to this Agreement, completely confidential and will not disclose to any person (a) that this Agreement exists, (b) the consideration provided pursuant to this Agreement, (c) any term or condition of this Agreement, or (d) any of the information exchanged by the Parties in writing or otherwise in negotiating this Agreement; provided, however, that this provision shall not preclude a Plaintiff from making such disclosures (1) as are necessary to comply with a valid subpoena or court order; (2) to his attorneys in this Lawsuit, accountants, or tax preparers as necessary for them to comply with law or generally-accepted accounting principles, and/or (3) to his spouse. If asked about any of Plaintiff's claims against OTA by an outside party, the only response the Parties and/or their attorneys may make shall be that "The case has resolved."

Notwithstanding anything to the contrary in this Agreement, this Section regarding Confidentiality does not apply to the disclosure of factual information regarding an act of

workplace harassment or discrimination, failure to prevent an act of workplace harassment or discrimination, or an act of retaliation against a person for reporting harassment or discrimination, as described in subdivisions (a) (h), (i), (j), and (k) of Section 12940 of the California Government Code. Plaintiff nevertheless agrees that, even to the extent he may have any claims identified in the immediately preceding sentence, Plaintiff shall not disclose to any person or entity information regarding the amount paid in settlement of claims related to this Agreement other than the statement "the Case has resolved".

5. No Filings.

Plaintiff represents that he has not filed any other lawsuit, claim, charge, complaint, or grievance, with any local, state, or federal agency or court other than the Lawsuit and arbitration aside from his notice filed with the California Labor and Workforce Development Agency regarding his PAGA allegations outlined in his Complaint in the Lawsuit. In the event that any agency or court assumes jurisdiction of any lawsuit, claim, charge, complaint, or grievance, or purports to bring any legal proceedings on either Plaintiff's behalf against OTA or any OTA Releasee, then that Plaintiff shall promptly request that the agency or court withdraw from and dismiss the lawsuit, claim, charge, complaint, or grievance with prejudice.

6. Covenant Not to Sue.

In consideration for the promises set forth in this Agreement, each Party promises and agrees on behalf of herself and her heirs and representatives not to bring any other judicial claim against the other party.

7. The parties Release and Waiver of California Civil Code § 1542.

As a material inducement to enter into this Agreement, both OTA and Plaintiff, for himself and each of his current or former heirs, successors, agents, employees, representatives, executors and assigns, does hereby irrevocably and unconditionally waive and release and forever discharge each other and its respective subsidiaries, parents, predecessors, successors, assigns, and affiliated or related corporations and entities, past and present, as well as each and all of its and their owners, trustees, officers, directors, managers, shareholders, members, partners, administrators, fiduciaries, representatives, attorneys, assignees, successors, insurers, benefit plans, agents and employees, past and present, and each of them, including but not limited to Newport Exchange Holdings, Inc. (collectively, the "OTA Releasees") from and with respect to any and all claims, wages, demands, actions, class actions, rights, liens, agreements, contracts, covenants, suits, causes of action, charges, grievances, obligations, debts, costs, expenses, penalties, attorneys' fees, damages, judgments, orders, liabilities, injunctive relief, restitution, liquidated damages, and other legal responsibilities of any kind, known or unknown, suspected or unsuspected, unforeseen, unanticipated, unsuspected, or latent, and whether or not concealed or hidden, based upon any other law, rule, or regulation, whether known or unknown, that the each party has asserted, could have asserted, or could bring against the other.

The Claims Released under this Settlement Agreement include, but are not limited to, any and all claims for breach of contract, intentional tort, intentional infliction of emotional distress, violation of any statute, constitution or regulation, including but not limited to any claim under the California Fair Employment and Housing Act ("FEHA"), California Government Code

§ 12940, the Pregnancy Disability Act of 1978, Title VII of the Civil Rights Act of 1964, the California Family Rights Act ("CFRA"), the Age Discrimination in Employment Act (ADEA), the Civil Rights Act of 1991 (prohibits discrimination), the Family and Medical Leave Act of 1993 ("FMLA"), Retirement Income Security Act of 1974 ("ERISA"), the federal Consolidated Omnibus Budget Reconciliation Act ("COBRA") and Cal-COBRA, the Americans with Disabilities Act of 1990 ("ADA"), the Fair Labor Standards Act ("FLSA"), the California Labor Code and Industrial Welfare Commission Wage Orders, California Business & Professions Code § 17200, The California Private Attorneys General Act (Labor Code §2698 *et seq.*) including the right to make claims on behalf of Plaintiff and/or any other aggrieved employees, or any other federal, state or local laws, regulations or ordinances, claims asserted or that could have been asserted in the Lawsuit, any other claims arising out of or in any way connected with the Plaintiff's employment with OTA, and any claim for severance pay, bonus, sick or medical leave, holiday pay, reimbursement, vacation pay, life insurance, health or medical insurance or any other fringe benefit, or disability, claims of discrimination, harassment, retaliation, wrongful termination, violation of public policies, application or misapplication of leave policies, failure to accommodate a disability or engage in the interactive process, claims for injuries, wage and hour claims, penalties, and every type of relief (legal, equitable and otherwise) available to Plaintiff, from the beginning of time to the date Plaintiff signs this Agreement. This release applies to claims or rights that Plaintiff may possess either individually or as a class member, collective action member, or member or beneficiary of a representative action, and Plaintiff waives and releases any right to receive money or benefits from the participation in any class, collective, or representative action settlement or judgment after the date this Agreement is signed that relates in any way to Plaintiff's employment with OTA, provided, however, that the foregoing does not purport to release any Claims that may not be released as a matter of law.

Each Party hereby covenants and agrees that this Release shall constitute a complete and binding judicial bar to the institution and maintenance of any such claims, disputes, lawsuits, and complaints that are herein released by that Plaintiff. This Release is intended to resolve any and all disputes of each party that exist or could exist against any other party to the agreement that can be validly released. Accordingly, this Release does not release claims that cannot be released by Plaintiff as a matter of law, including but not limited to Plaintiff's right to file a charge with or participate in a charge by the Department of Fair Employment and Housing or any other federal, state, or local administrative body or government agency (Plaintiff agrees, however, to waive and release any right to seek or receive monetary damages resulting from any such charge or complaint or any action or proceeding), claims for Workers' Compensation, unemployment compensation, or state disability insurance benefits pursuant to the terms of applicable state law.

Both Plaintiff and Defendant expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542. Section 1542 of the Civil Code of the State of California states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of each of the Released Parties, each party to this agreement expressly acknowledges that this Agreement is intended to include in its effect, without limitation, all claims which each party does not know or suspect to exist in their favor at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such claim or claims that each party have asserted, could have asserted, or could bring against the other.

This Agreement is to be construed in a manner that is as broad and as comprehensive as possible so that no party shall ever be liable in any manner whatsoever, directly or indirectly, for any claim, demand, cause of action, suit of any kind or character, or of whatsoever nature, related to the matters and incidents constituting the Lawsuit.

8. Plaintiff's Release of Age Discrimination Claim.

Plaintiff hereby releases any claims he may have for age discrimination under the Age Discrimination in Employment Act ("ADEA"), the Older Worker's Benefit Protection Act ("OWBPA") ("ADEA Release") and is hereby advised:

- (a) to consult with an attorney if Plaintiff desires prior to signing this Agreement;
- (b) that this Agreement does not waive rights or claims that may arise after it is executed by Plaintiff;
- (c) that Plaintiff has twenty-one (21) days in which to consider and accept this Agreement by signing and returning this Agreement to OTA; and
- (d) that, in addition, Plaintiff has a period of seven (7) days following Plaintiff's execution of this Agreement in which Plaintiff may revoke this ADEA Release. This Agreement will not become effective or enforceable until the seven (7) day revocation period has passed without revocation ("Effective Date"). If Plaintiff does not advise OTA (by communicating such revocation in writing via facsimile and email c/o Jacqueline Beaumont, Call & Jensen, 610 Newport Center Drive Suite 700, Newport Beach, CA 92660, Facsimile: 949-717-3100, Email: jbeaumont@calljensen.com within such seven (7) day period) of Plaintiff's intent to revoke the Agreement, Plaintiff has waived the right to revoke the Agreement, and it will become effective and enforceable.
- (e) Should Plaintiff revoke the ADEA Release as set forth above, the amount of the Settlement Payment shall be discounted by \$10,000, and the ADEA Release set forth in this Section 8 shall be effectively revoked; however the remainder of this Agreement shall remain in full force and effect.

9. Other Important Terms.

9.1 Each Party expressly assumes and accepts the risk that any fact with respect to any matter covered by this Agreement could hereafter be found to be other than, or different from, the facts now believed by either of the Parties to be true. The Parties agree that the release

provisions hereof shall remain effective notwithstanding any such difference in fact. This Agreement shall not be subject to attack on the ground that any or all of the theories or factual assumptions used for negotiating purposes are for any reason inaccurate or inappropriate.

9.2 This instrument supersedes all prior discussions and contains all representations and agreements between the Parties relating to the rights herein granted and the obligations herein assumed with respect to the Lawsuit and its resolution, other than where prior arbitration agreements and confidentiality agreements that are mentioned in this Agreement continue in full force and effect without being superseded. This Agreement constitutes the entire agreement among the Parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either Party or agents of either Party not contained in this written Agreement, shall be enforceable.

This Agreement may neither be modified nor amended except in a writing executed by all the Parties hereto. The provisions of this Agreement may be waived, altered, amended or repealed, in whole or in part, only upon the express written consent of all Parties. No breach of any provision of this Agreement shall be deemed waived unless the waiver is in writing signed by a duly authorized representative of the waiving party. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

9.3 The Parties represent and acknowledge that this Agreement is given and executed voluntarily and free from duress, and is not based upon any representation by any of the Parties to another Party as to the merits, legal liability, or value of any claim of the Parties or any matters related thereto.

9.4 This Agreement has been negotiated at arm's length between persons knowledgeable in the matters dealt with herein. In addition, Plaintiff has had access to legal counsel of his choosing. Accordingly, the Parties agree that any rule of law, statute, legal decision, or common law principles of similar effect that would require interpretation of any ambiguities in this Agreement against the Party who has drafted it, is of no application and is hereby expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the intentions of the Parties. This Agreement shall be deemed to have been entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of the State of California as applied to contracts made and to be performed entirely within California, except that parole evidence shall not be admissible to vary or modify any of its terms.

9.5 Plaintiff represents and warrants that he has not sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands or causes of action relating to any matter covered by this Agreement. Plaintiff hereby agrees and promises to indemnify OTA and the OTA Releasees in the event that another party seeks to exercise any of Plaintiff's rights against them on any claim covered by this Agreement. The terms of this Agreement are, and shall be, binding upon each of the Parties, their subsidiaries, directors, officers, agents, attorneys, successors, and assigns, and upon all other persons and entities claiming an interest in the subject matter hereof through either Party.

9.6 Each Party respectively represents and warrants that it is fully authorized to enter into the terms and conditions of, and to execute and be bound by, this Agreement. The Parties agree to use their best efforts promptly to execute and to effectuate the terms provided for herein.

9.7 The intent of this Agreement and release is to compromise, resolve and release any and all present and future claims of any kind, whether now known or unknown, that Plaintiff may have arising out of or related to the allegations in the Lawsuit. This Agreement shall be construed liberally to accomplish those intents and purposes. The settlement, this document and any documents referred to herein, and any ambiguities or uncertainties herein or therein, shall be interpreted and construed equally and fairly without reference to the identity of who prepared the document, on the express understanding and agreement that all Parties participated equally in the negotiation and preparation of the release and the Agreement, or had equal opportunity to do so. Accordingly, the Parties hereby waive the benefit of California Civil Code § 1654 and any similar, successor or amended statute providing that in cases of uncertainty, the language of a contract should be interpreted most strongly against the drafter of the contract.

9.8 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed or DocuSign signatures shall be deemed valid as if they were inked originals.

10. Voluntary Agreement.

Each party understands and agrees they have:

- (a) Had a reasonable time and opportunity within which to consider the terms and conditions of this Agreement before executing it;
- (b) Carefully read and fully understands all the provisions of this Agreement;
- (c) Been provided with the opportunity to consult with counsel of their choosing prior to their execution of the Agreement based on his own decision to do so or not do so;
- (d) Have not relied upon any representation not set forth herein with regard to the subject matter, basis or effect of this Agreement or otherwise;
- (e) Knowingly and voluntarily agreed to all of the terms set forth in this Agreement and to be legally bound by the terms set forth herein;
- (f) Through this Agreement, covenanted not to file a claim or action against the other, as of the date of signing this Agreement;
- (g) Agreed that the only consideration to Plaintiff for signing this Agreement is set forth herein and Plaintiff is expecting to receive nothing other than what is explicitly set forth in this Agreement as a result of his execution of this Agreement;

- (h) Warrants that no promises or representations, whether written or oral, were made to Plaintiff in connection with this Agreement, that are not contained within the Agreement; and
- (i) Agreed to be legally competent and to have all necessary authority to execute this Agreement and accept full responsibility therefor.

11. Arbitration.

This Agreement is subject to the arbitration agreements previously signed between Plaintiff and Defendant, which continue in full force and expressly are not superseded. Each Party consents to the jurisdiction of the arbitrator in connection with the enforcement of this Agreement, as set forth in the prior agreements signed between the Parties. The construction and interpretation of this Agreement shall be governed by the laws of California applicable to contracts made and wholly to be performed in California.

12. Severability.

The Parties agree that all aspects of this Agreement are valid and enforceable. The invalidity or unenforceability of any provision of this Agreement shall not impair other provisions, which shall remain in full force and effect. If any portion of this Agreement is found invalid or unenforceable, such provision shall be severable from the Agreement.

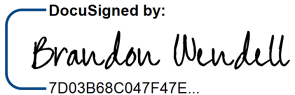
13. Circular 230 Disclaimer.

Each Party to this Agreement acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular (31 CFR PART 10, as amended); (2) each Party has relied exclusively upon the Party's own independent legal and tax advisors for advice (including tax advice) in connection with this Agreement; (3) neither Party has entered into this Agreement based upon the recommendation of the other Party or any attorney or advisor to the other Party; (4) neither Party is entitled to rely upon any communication or disclosure by any attorney or advisor to the other Party to avoid any tax penalty that may be imposed on the Party; and (5) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies upon disclosure by the Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

BY EXECUTING THIS AGREEMENT, EACH PARTY ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, UNDERSTANDS ITS TERMS AND PROVISIONS AND AGREES TO BE BOUND BY ALL OF THEM.

Dated: September 6, 2022, 2022

Brandon Wendell

By: 
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Brandon Wendell

Dated: 9/7/2022, 2022

**OTA Franchise Corporation dba Online
Trading Academy**

By: 
Eyal Shahr

Its: CEO