

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**JUSTIN LONDON**

Plaintiff.

v.

**FINANCIAL INDUSTRY REGULATORY  
AUTHORITY, INC., and  
E\*TRADE SECURITIES, LLC**  
Defendants.

Case No: 21-cv-06434

Judge Chang

Jury Demand

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**THIRD AMENDED COMPLAINT AT LAW**

**NOW COMES** Plaintiff Justin London and submits his third amended complaint at law against defendants Etrade Securities, LLC and Financial Industry Regulatory Authority, Inc., in support states:

**Parties**

1. Plaintiff Justin London is an individual and citizen of Illinois.

Defendant Financial Industry Regulatory Authority, Inc. ("FINRA") is an independent, nongovernmental organization that writes and enforces the rules governing registered brokers and broker-dealer firms in the United State headquartered in Washington, D.C.

2. Defendant Etrade Securities, LLC (E\*TRADE) is a citizen of Delaware and New York. E\*TRADE's sole member is ETCM Holdings, LLC. ETCM Holdings, LLC's sole member is Morgan Stanley Domestic Holdings, Inc. Morgan Stanley Domestic Holdings, Inc. is incorporated in Delaware and has its principal place of business in New York, New York.

3. This Court has diversity jurisdiction over this matter pursuant to 28 USC §1332. The amount in controversy exceeds \$75,000. Venue is proper pursuant 28 U.S.C. §1391(a) as all transactions and events pertaining to this matter occurred in Cook County, Illinois.

**Allegations**

4. E\*TRADE acquired Plaintiff's account from HarrisDirect in 2006, but did not obtain any original signed agreements from HarrisBank or obtain any signed agreements from plaintiff after the transfer.

5. Plaintiff never received or executed E\*TRADE's Customer Account Agreement at the time of transfer. Pursuant to FINRA Notice of Members 02-57, E\*TRADE was required to furnish and obtain executed versions of their agreements from plaintiff after the transfer. Plaintiff also never signed a margin agreement either.

6. E\*TRADE fabricated/created an account profile indicating that plaintiff had an agreement when in fact E\*TRADE did not have any HarrisDirect account or margin agreement. The account profile created by E\*TRADE indicated that plaintiff had no investing experience or knowledge, but approved plaintiff for Level 2 margin trading.

7. Between 2006 and 2015, without any documentation or option upgrade agreement, E\*TRADE upgraded plaintiff to Level 3. E\*TRADE's printed non-IRA option upgrade forms require a signature. There are no records that indicate that plaintiff ever requested to be upgraded to Level 3.

8. On or about June 11, 2015, E\*TRADE opened a cash account "6819" that did not have any margin features. The cash account is subject to different FINRA, SEC, and Reg T rules and regulations than plaintiff's margin account "0136". The cash account was never used by plaintiff. E\*TRADE alleges that plaintiff logged into his account and clicked the submit button to open the account, but the purported datetime stamp that the account was opened occurred before any of E\*TRADE's account logins times that day. While the purported web form references E\*TRADE Customer Agreement, there are no disclosures or conspicuous language that reference

margin disclosures or indicate to the customer that they are being subject to margin terms and conditions for a different and separate account. Such margin terms are hidden away in E\*TRADE's lengthy Customer Agreement, a unilateral contract of adhesion.<sup>1</sup>

9. On or about December 2015, E\*TRADE upgraded plaintiff to Level 4 trading.

E\*TRADE does not have any signed margin or option upgrade agreement with plaintiff.

E\*TRADE fabricated/created a dummy account to create the appearance of what they contend was the form as shown in *Exhibit C*.

10. E\*TRADE has no documentation or authentication records that indicate when the option Upgrade form was purportedly submitted and the form does not reference or make conspicuous any margin disclosures. Section 10 of E\*TRADE's Customer Agreement does not state any terms or conditions relating to margin and nor do the Characteristics and Risks of Standardized Options. The web form in *Exhibit C* completely different from E\*TRADE's printed forms which do have margin disclosures as shown in *Exhibit B*.

11. On July 25, 2018, plaintiff received a written email confirmation indicating that any smart alerts would be delivered to his new email address. *Exhibit D*. Plaintiff relied upon this representation.

12. On October 24, 2018, in a recorded call, plaintiff told E\*TRADE representative Clint Mozert that he was not receiving any electronic notices to his email and needed them so he could get margin call alerts. The representative confirmed plaintiff's email address and represented to plaintiff he would be switched to paperless for all notifications. Plaintiff relied upon these representations.

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<sup>1</sup> In fact, Illinois law does not permit the guarantees, obligations, or immediate ratification language pertaining to an account to be applied silently to a very different later relationship with a higher risk to the customer-guarantor." *Straits Fin. LLC v. Ten Sleep Cattle Co.*, 900 F.3d 359 note 10 (7th Cir. 2018)

13. From 2016 through 2018, plaintiff always received phone call margin call notifications from E\*TRADE. Plaintiff always resolved the margin calls by contacting E\*TRADE and working with their representatives to close out positions with gains and/or to transfer additional funds.

14. On December 21, 2018, E\*TRADE contacted plaintiff by phone notifying him of a margin call. After approximately 35 minutes of working with E\*TRADE's representative to close out positions with gain to increase the equity maintenance, the representative notified plaintiff that E\*TRADE's risk department had gone in and simultaneously liquidated more positions that caused losses to plaintiff of over \$120,730.32. Plaintiff notified E\*TRADE in several recorded calls that the additional liquidations without prior notice were unauthorized. E\*TRADE indicated to plaintiff that they could so because of a signed agreement, but in fact E\*TRADE never had any such signed agreement.

15. On March 2, 2020, E\*TRADE entered liquidating orders to close five-options contracts that Claimant had written against Amazon. Unbeknownst to Claimant, the margin requirement for Amazon had increased to 40%, but Claimant had never received such notice. Plaintiff notified E\*TRADE that they liquidated a greater amount than was necessary once he learned about them through trade confirmations he did receive via email. Any notifications that E\*TRADE purportedly sent to plaintiff's account were unread because plaintiff was unaware of them as Claimant did not receive any email notifications and did not see them when logging into his account.

16. On March 4, 2020, E\*TRADE issued another margin call to Claimant's account. Claimant never saw, read, or was aware of that alert either because he had not received any email notifications from E\*TRADE that he had relied upon receiving, as E\*TRADE represented he

would both in writing and verbally. Plaintiff received trade confirmations of positions that plaintiff had not closed and suspected that E\*TRADE was engaging in unauthorized liquidations. On March 6, 2020, Claimant logged into his E\*TRADE account and placed a series of limit orders to close positions, but none were executed.

17. Plaintiff attempted to stop the authorized liquidations by transferring in \$100,000, even though plaintiff did not know the amount of the calls, but E\*TRADE continued to liquidate positions the same day the funds were received and so plaintiff transferred the funds back out. E\*TRADE also limited the amount that plaintiff could transfer via ACH to \$100,000.

18. On March 12, 2020, E\*TRADE issued plaintiff yet another margin call, but E\*TRADE did not notify plaintiff either by phone or via email and plaintiff was unaware of it. On March 13, 2020, E\*TRADE entered liquidating orders for plaintiff's account to satisfy the margin call.

19. Prior to March 2020, Plaintiff had always been contacted by phone by E\*TRADE pertaining to margin calls and plaintiff had always resolved the calls by either transferring additions funds voluntarily closing out positions, and/or taking offsetting positions to bring the account out of the call. The liquidations by E\*TRADE in March 2020 were not authorized or consented to by plaintiff and caused substantial realized losses of \$208,232.40.

20. On June 5, 2020, Plaintiff submitted a claim, Case 20-01792, against E\*TRADE with FINRA involving unauthorized margin liquidation of his positions that caused substantial losses to plaintiff.

21. On September 25, 2020, E\*TRADE provided its FINRA Rule 12506 responses to the Discovery Guide Document Production List. Documents Bates labelled ET000001-ET001421 and 26, recorded telephone calls, were produced.

22. On November 4, 2020, an Initial Pre Hearing Conference (IPHC) Scheduling Order was entered by the panel after conducting a telephonic hearing in which the parties agreed to scheduling and hearing deadlines. The discovery cutoff date, the last date to serve discovery requests was December 31, 2020. The parties agreed to the discovery response date: "Responses to discovery requests are due within 60 days from the date the discovery request is received in accordance with Rules 12507 and 13507 of the Code of Arbitration Procedure." *Exhibit B*. The in-person arbitration hearing date was set to May 25, 2021.

23. FINRA Rule 12507/13507 state:

Unless the parties agree otherwise, **within 60 days** from the date a discovery request other than the Document Production Lists is received, the party receiving the request **must** either:

(A) Produce the requested documents or information to all other parties by serving the requested documents or information by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile;

(B) Identify and explain the reason that specific requested documents or information cannot be produced within the required time, state when the documents will be produced, and serve this response on all parties and file this response with the Director; or

(C) Object as provided in Rule 12508 and serve this response on all parties and file this response with the Director.

(2) A party must act in good faith when complying with subparagraph (1) of this rule. "Good faith" means that a party must use its best efforts to produce all documents or information required or agreed to be produced. If a document or information cannot be produced in the required time, a party **must** establish a reasonable timeframe to produce the document or information.

24. FINRA Rule 4210(g)(5) Opening of Accounts, states:

(A) Members must notify and receive approval from FINRA, or the member's DEA if other than FINRA, prior to establishing a portfolio margin methodology for eligible participants.

(B) Only eligible participants that have been approved to engage in uncovered short option contracts pursuant to Rule 2360, or the rules of the member's DEA if other than FINRA, are permitted to utilize a portfolio margin account. If eligible participants engage in security futures products transactions, approval from the member will also be required pursuant to Rule 2370.

(C) On or before the date of the initial transaction in a portfolio margin account, a member **shall**:

(i) furnish the eligible participant with a special written disclosure statement describing the nature and risks of portfolio margining which includes an acknowledgement for all portfolio margin account owners to **sign**, attesting that they have read and understood the disclosure statement, and agree to the terms under which a portfolio margin account is provided (see Rule 2360(c)); and

(ii) obtain the **signed acknowledgement** noted above from the eligible participant and record the date of receipt  
(*emphasis added.*)

FINRA Rule 2360(c) states:

The special written disclosure statement describing the nature and risks of portfolio margining, and acknowledgement for an eligible participant **signature, required by Rule 4210(g)(5)(C)** shall be in a format prescribed by FINRA or in a format developed by the member, provided it contains substantially similar information as in the prescribed FINRA format and has received the prior written approval of FINRA. (*emphasis added.*)

25. On March 3, 2021, FINRA sent a letter postponing all in person arbitration and mediation proceedings due to COVID-19.

26. On March 15, 2021, E\*TRADE's counsel filed a motion to amend the IPHC scheduling order that discovery motions be due 60 days prior to the first day of the evidentiary hearing date and to compel Claimant to produce documents within 60 days.

27. On March 31, 2021, Claimant filed a motion for ruling on jurisdiction and seeking leave to withdraw his claims and to be able to pursue his claims in federal court on the grounds that no signed and binding agreement existed between Plaintiff and E\*TRADE that required Plaintiff to submit to arbitration as plaintiff had mistakenly believed. Plaintiff realized this mistake after E\*TRADE was unable to produce any signed agreement during discovery. E\*TRADE responded that Plaintiff had signed the FINRA submission agreement, attached as *Exhibit A*, agreed to

arbitration, and therefore was subject to FINRA Rule 12100(dd). However, the agreement is with FINRA, not E\*TRADE, and E\*TRADE cannot enforce an agreement between other parties.

28. On April 12, 2021, a telephonic Hearing was held on E\*TRADE's motions to amend and compel and Plaintiff's motion for a ruling on jurisdiction. The panel granted E\*TRADE's motion to amend and compel where Plaintiff was ordered to produce documents responsive to FINRA Discovery list 2 within 28 days of the order.

29. On May 12, 2021, a telephonic hearing was held on plaintiff's motion for ruling on jurisdiction. The panel ruled that FINRA had jurisdiction over this claim due to Plaintiff's submission of the claim and the arbitration terms in the agreement. The panel denied plaintiff's request to be able to withdraw his claims and pursue them in federal court without explanation even though plaintiff argued that it was submitted as a mistake of fact regarding the existence of an arbitration provision with E\*TRADE.

30. On May 25, 2021, the parties were ordered by the panel to confer with each other and to propose to FINRA four alternative sets of agreed dates (each date including three consecutive days) for hearing on the merits by June 4, 2021. On June 21, 2021, based on the agreed upon proposed dates by the parties, the hearing was rescheduled by FINRA to December 16-17, 2021 in Chicago, Illinois with a location to be determined.

31. As part of its discovery requests, Plaintiff served its First Set of Interrogatories dated December 16, 2020 and its First Request for Production dated December 7, 2020. On February 5, 2021, E\*TRADE responded to Plaintiff's First Request for Production and to plaintiff's amended First Set of Interrogatories. On May 10, 2021, E\*TRADE responded to Plaintiff's second set of interrogatories dated March 11, 2021 and provided supplemental production Bates labeled ET001422-ET003575 in response to Plaintiff's First Request for Production.



32. As part of its discovery requests, plaintiff requested that plaintiff produce any and all signed account and margin agreements with plaintiff. E\*TRADE did not produce and was unable to produce any signed agreements containing either plaintiff's handwritten or electronic signature with plaintiff's name because it did not have any. E\*TRADE was fully aware of what a signed agreement was because its account and margin upgrade agreements have explicit signature pages with signature lines. *Exhibit B*. E\*TRADE also referenced plaintiff's signed FINRA submission agreement as the basis to subject plaintiff to the FINRA rules. FINRA also is aware of what a signed agreement is because they require an actual signature on their submission agreements as in *Exhibit A*. FINRA requires a signature as specified and intended in FINRA Rule 2360(c).

33. Plaintiff discussed having a mediation with E\*TRADE to try and resolve the dispute. Until discovery was completed, E\*TRADE's counsel, Meredith Hoffman, told plaintiff that mediation was not ripe. After discovery was completed, E\*TRADE agreed to submit to voluntary mediation and on October , 6 2021, signed a mediation agreement. FINRA appointed a mediator and on October 13, 2021 a mediation session was held on Zoom with E\*TRADE's counsel, Hoffman, plaintiff, and the mediator. Provision 2 under the Terms and Conditions of the mediation agreement states:

The parties and the mediator "agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the proceeding or compelled by law, except that the fact that mediation has occurred shall not be considered confidential.

34. After plaintiff pointed out that E\*TRADE had no signed account or margin agreements with plaintiff as required by FINRA Rule 4120(g)(5), E\*TRADE's counsel told the mediator in a one on one phone call that she wanted to look for more documents. The mediator did not object and/or tell Hoffman that discovery was over. The plaintiff told the mediator in a call that

E\*TRADE was acting in bad-faith, it was unacceptable that further discovery was being conducted by E\*TRADE during the mediation and the discovery response deadline had long passed. However, the mediator said there was nothing he could do to stop E\*TRADE from looking for more documents. The mediation was paused as E\*TRADE spent a week looking for more documents. On October 20, 2021, Hoffman produced 1,784 pages of new documents Bates labeled ET003576-ET005359. The mediator also did not disclose to plaintiff that he had served as an arbitrator involving E\*TRADE in a prior case involving margin liquidation and had ruled in E\*TRADE's favor.

35. Prior to October 20, 2021, E\*TRADE failed to identify and explain the reason that specific requested documents or information could not be produced within the required time, state when the documents would be produced, and served such response on all parties and file this response with the Director as required by FINRA Rule 12507/13507. At all relevant times, E\*TRADE was aware of these documents and/or knew or had reason to know it possessed/could access them.

36. As part of this production, E\*TRADE fabricated evidence by creating a dummy test account and included a screen shot with a button and associated documents for an option account upgrade. E\*TRADE contended that plaintiff clicked the button and ratified the E\*TRADE Customer Account Agreement when he did. Therefore, E\*TRADE sought to use these documents as evidence at arbitration as evidence and/or an "admission" that plaintiff purportedly clicked the button and thus agreed to E\*TRADE's terms and conditions.

37. E\*TRADE produced the documents in violation of the discovery deadlines that it agreed to in accordance with FINRA Rules 12507/13507 and in violation of the mediation agreement that it signed. Consequently, plaintiff filed a motion to bar and exclude the documents

at arbitration and also sought relief to be able to amend plaintiff's complaint to seek damages for any losses from 2006 through 2016 in light of E\*TRADE newly produced documents which established that they had no signed margin documentation and had not provided required margin disclosure during this period. and to also obtain a FINRA opinion regarding the discovery rules.<sup>2</sup>

38. Defendant argued that the newly discovered evidence, produced during mediation, was "detrimental" to plaintiff's claims and thus should be admitted. After the motion was briefed, but prior to ruling on plaintiff's motion, without explanation one of the panel members unexpectedly withdrew. FINRA replaced the member with another arbitrator who disclosed he only had experience with two FINRA arbitration and included plaintiff's case as one of them. Without explanation or a hearing on the matter, the panel with the new member denied plaintiff's motion and all requested relief.

39. Plaintiff filed a motion for reconsideration to the Director of FINRA and to replace the panel arguing that plaintiff could not get an impartial hearing and would not follow the rules since the panel was imposing a double standard by subjecting the plaintiff to the FINRA rules, but not enforcing them against E\*TRADE. The FINRA Director denied the motion.

40. Plaintiff filed an emergency motion for injunctive to stay the hearing pending adjudication of the claims, but the motion was denied, in part, due to purported defects in the pleading of diversity jurisdiction. Unable to stay proceedings and seek relief to prevent the inevitable harm plaintiff was going to sustain, plaintiff appeared at the hearing on December 16-17, 2021. Prior to the start of the hearing, plaintiff asked the panel what rules and law would apply.

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<sup>2</sup> None of the documents comply with the signed agreement requirements of Rule 4120(g)(5) or 2360(c) or meet the definition of an electronic/digital signature as required by the Illinois Uniform Electronic Security Commerce Act ("ESCA"), 5 ILCS 175, which was in effect at all relevant times during this matter until it was repealed on June 25, 2021 by the Illinois Uniform Electronics Transactions Act (UETA), 815 ILCS 333. Prior to June 25, 2021, Illinois was one of three states that did not adopt UETA.<sup>2</sup>

The panel said it could not say and said that would be decided later. The panel would not affirm whether the FINRA rules applied and whether they would follow them.

41. To curry favor with the panel, E\*TRADE's in-house counsel, John Bersin, told the panel that he was also an arbitrator and thus one of them. He also told them that "we all know that this case is heading to federal court anyways." Based on information and belief, prior to Bersin's statement, the panel was not notified and/or unaware that there was a pending federal suit. Bersin's statement was meant to cause further bias against the plaintiff by insinuating to the panel that the plaintiff was challenging their authority and/or ruling.

42. The panel not only allowed E\*TRADE to introduce and produce documents in violation of the discovery rules and their IPHC order, but allowed E\*TRADE to admit fabricated documents into evidence and considered them. E\*TRADE also admitted that plaintiff's Customer Account Profile, produced during discovery, was also fabricated/created and that plaintiff had not clicked any button even though the Profile said "Agreed." E\*TRADE would not have had to fabricate any documents if they had followed the FINRA rules. E\*TRADE also withheld and/or failed to turn over several critical recorded calls on December 21, 2018 in their possession relating to their liquidation of plaintiff's positions while plaintiff was on the phone for over approximately 35 minutes with E\*TRADE's representative having already resolved most of the margin call. The panel never got to hear this key evidence.

43. Unsurprisingly, without any reasoning and/or opinion, the panel ruled in E\*TRADE favor and denied all of plaintiff's claims and requested relief thereby manifestly disregarding the FINRA rules and laws that the plaintiff had previously alleged that they would not follow.

44. E\*TRADE has a documented pattern, practice, and history of violating FINRA rules and regulations having at least 88 regulatory actions (sanctions and/or fines) taken against them including recently for \$2.3 million in November 2020 and 132 arbitration complaints.

**COUNT I**  
**DECLARATORY JUDGMENT**  
(against E\*TRADE and FINRA)

1-44. Plaintiff realleges and incorporates paragraphs 1-44 as fully forth set herein.

45. Plaintiff brings this cause of action against Defendants E\*TRADE and FINRA seeking a declaration as a matter of law that E\*TRADE violated FINRA discovery rules 12507/13507, IPHC order, and the mediation agreement and therefore E\*TRADE is in breach of agreement with plaintiff to comply with all FINRA rules, codes, and procedures.

46. Plaintiff seeks a declaration as a matter of law that FINRA rules and Illinois law governs.

47. Plaintiff seeks a declaration as a matter of law of what a signed agreement is and what a signature means per the plain language FINRA Rules 4120(g)(5)/2360(c). Plaintiff also seeks a declaration that E\*TRADE does not have a valid enforceable signed account or margin agreement within the plain meaning of FINRA Rule 4120(g)(5) and the Illinois ECSA which was in full force and effect at all relevant times.

48. Plaintiff seeks a declaration as a matter of law that E\*TRADE is subject to all applicable FINRA rules and laws and that such rules are to be enforced by FINRA, including, but not limited to discovery rules 12507/13507.

49. Plaintiff seeks a declaration as a matter of law that E\*TRADE did not fully and strictly comply with all applicable FINRA, federal, and state laws at the time it liquidated plaintiff's positions without authorization, notice, and consent, including, but not limited to, FINRA Rule

4120(g)(5), Illinois Securities Act 815 ILCS 5/12, and the Securities Exchange Act of 1934 10b-5.

50. Plaintiff seeks a declaration as a matter of law that the FINRA has imposed a double standard by enforcing and applying the FINRA rules to plaintiff, but not enforcing the FINRA rules on E\*TRADE and therefore has shown fundamental unfairness and/or bias that is prejudicial to plaintiff.

51. Plaintiff seeks a declaration that an unsigned agreement for a separate cash account cannot be used to ratify an agreement pertaining to the terms and conditions for a different margin account at issue. Plaintiff seeks a declaration that clicking a button without any secure procedure for user authentication and verification (e.g. use of public/private keys) does not constitute a signature under the meaning of signed agreement of FINRA Rule 4120(g)(5) and the Illinois ECSA.

WHEREFORE, Plaintiff prays for declaratory judgment that FINRA Rule 12507/13507 and 4120(g)(5) are in full force and effect, that E\*TRADE is in violation of these rules, that E\*TRADE does not have a legally enforceable signed account or margin agreement with plaintiff, and for any other relief that this Court deems just and equitable.

**COUNT II**  
**BREACH OF CONTRACT-**  
**COVENANT OF GOOD-FAITH AND FAIR DEALING**  
(against E\*TRADE and FINRA)

1-44. Plaintiff realleges and incorporates paragraphs 1-44 as fully forth set herein.

52. When submitting to mediation, E\*TRADE impliedly agreed to act in good-faith through the implied covenant of good-faith and fair dealing.

53. E\*TRADE breached their agreement and covenant of good-faith and fair-dealing with plaintiff after they submitted to arbitration and mediation by signing the mediation agreement.

E\*TRADE agreed to follow and adhere to FINRA Rule 12507/13507 and agreed not to use alleged “admissions” disclosed during mediation in arbitration. E\*TRADE created a dummy test account to create purported screen shots and related documents as an “admission” by plaintiff that he ratified the E\*TRADE Customer Account Agreement when he purportedly clicked a button.

54. FINRA and/or their appointed panel agreed to enforce the FINRA Rules that they require the parties who submit to FINRA arbitration to follow and be bound to. FINRA breached this agreement when the panel allowed E\*TRADE to violate FINRA discovery rules and the mediation agreement to the prejudice of plaintiff.

55. E\*TRADE agreed that they or their representative(s) have read the procedures and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules. Furthermore, E\*TRADE as a registered broker-dealer, E\*TRADE is subject to FINRA, SEC, and Reg T rules and regulations.

56. Rather than engage in actual good-faith mediation, E\*TRADE spent one week conducting additional discovery.

57. As a direct and proximate result of E\*TRADE’s and FINRA’s breach, Claimant has incurred substantial financial harm and prejudice.

WHEREFORE, Plaintiff prays that:

- A. Plaintiff be entitled to rescind the arbitration submission agreement, withdraw his claims from FINRA, and be able to pursue his claims against E\*TRADE in federal court in Counts III, IV, V, VI, VII.
- B. For compensatory damages including costs and expenses incurred by plaintiff as a consequence of the breach.
- C. For any other relief that this Court deems just and equitable.

**COUNT III**  
**VIOLATION ILLINOIS SECURITIES ACT OF 1953**  
**815 ILCS 5**  
**(against E\*TRADE)**

1-44. Plaintiff realleges and incorporates paragraphs 1-44 as fully forth set herein.

58. As a regulated broker-dealer, E\*TRADE knew or should have known it was required to comply with all FINRA rules and securities laws.

59. By engaging in unauthorized liquidations, E\*TRADE engaged in transactions and a course of conduct which was deceptive, manipulative, and fraudulent pursuant under Section 12.

60. E\*TRADE does not have any signed margin or account agreement with plaintiff. Furthermore, E\*TRADE does not have any documentation, records, and/or written requests from plaintiff to change his option Level from 2 to Level 3 during the period from January 2006 through December 2015. E\*TRADE's printed forms have the requisite margin disclosures that are FINRA compliant, but not their online web forms. Customers who receive and sign the printed forms get the proper and required margin disclosures, but those using E\*TRADE's online web forms do not.

61. E\*TRADE does not highlight, make conspicuous, and/or reference any margin statements or disclosures on any of E\*TRADE's online web forms relating to plaintiff's account.

62. It is unconscionable and deceptive that customers who receive and complete the printed forms get the proper margin disclosures while those who use E\*TRADE's online forms do not.

63. On September 18, 2020, E\*TRADE's counsel was notified that pursuant to Section 13 of the Illinois Securities Act of 1953, plaintiff elected to rescind the closing of his written puts by E\*TRADE. E\*TRADE ignored the demand. *Exhibit D*.

WHEREFORE, Plaintiff prays for

- A. Rescission of all written puts and positions that E\*TRADE liquidated from the time E\*TRADE upgraded plaintiff to Level 3 through March 2020.
- B. Compensatory damages in the amount of all sustained losses from E\*TRADE's unauthorized liquidations and commission earned from such liquidations.
- C. Attorney fees and costs.
- D. Any other relief this court deems just and equitable.



**COUNT IV**  
**PROMISSORY ESTOPPEL**  
(against E\*TRADE)

1-44. Plaintiff realleges and incorporates paragraphs 1-44 as fully forth set herein.

64. The representations and promises made by E\*TRADE were clear and unambiguous.

65. Plaintiff detrimentally relied upon written and verbal communications and assurances from E\*TRADE that he would receive electronic mail notification alerts, including margin call alerts. Exhibit E.

66. Plaintiff's reliance was reasonable and foreseeable because E\*TRADE made the affirmed the representations and/or promises both verbally and in writing.

67. E\*TRADE never sent margin call alerts to plaintiff's email address or notified plaintiff that any alerts were ever sent to his account or that such alerts could even be received or accessed from logging into the account as plaintiff never saw them when logged in.

68. Up until December 21, 2018, E\*TRADE had always contacted plaintiff by phone to notify him of any margin calls. Plaintiff relied upon fully resolving margin calls by phone with E\*TRADE's representations to work and coordinate close out positions, typically with gains and/or to transfer additional funds.

69. Plaintiff did not expect, consent, or authorize that E\*TRADE could engage in involuntary liquidation of positions while plaintiff was already on the phone for more than 35 minutes having resolved most of the equity maintenance issues and in the process of resolving any remaining balances to clear the margin call.

70. As a direct and proximate result of plaintiff's reliance of E\*TRADE's false representations and/or assurances, plaintiff sustained significant financial harm.

WHEREFORE, Plaintiff prays for:

- A. Compensatory damages of at least \$329,566.82.
- B. Expected and provable lost profits from lost earned premiums of \$252,836.00
- C. Costs and fees
- D. Any other relief this court deems just and equitable

**COUNT V**  
**CONVERSION**  
(against E\*TRADE)

1-44. Plaintiff reallages and incorporates paragraphs 1-44 as fully forth set herein.

71. Plaintiff had ownership and/or possessory rights to the written put positions because he never agreed that E\*TRADE could liquidate them at any time without actual notice as plaintiff never signed a margin agreement or received margin disclosure statements for Level 2, 3, or 4 trading.

72. E\*TRADE retained possession of plaintiffs' funds/positions when it involuntarily liquidated them.

73. E\*TRADE liquidated more than amounts needed to meet the margin calls/equity maintenance and thus plaintiff sustained losses that were larger than were necessary.

74. E\*TRADE converted plaintiff's funds/positions to their control inconsistent with the property rights of the plaintiff.

75. Plaintiff has been damaged by the loss of funds and amount of commission taken from him directly and proximately caused by E\*TRADE's unauthorized margin liquidations and failure to comply with the FINRA rules including, but not limited to, providing and receiving a signed acknowledgement of the margin disclosure statement.

WHEREFORE, Plaintiff prays for:

- A. Restitution and compensatory damages at least \$329,566.82.
- B. Costs and expenses
- C. Any other relief this Court deems just and equitable.

**COUNT VI**  
**UNJUST ENRICHMENT**  
(against E\*TRADE)

1-44. Plaintiff reallages and incorporates paragraphs 1-44 as fully forth set herein.

76. E\*TRADE has earned commissions from its unauthorized liquidations and losses that plaintiff sustained while trading at Level 3 as there is no documentation that plaintiff requested or agreed to the terms and conditions for Level 3 trading since 2006 through December 2015. Likewise, plaintiff never signed a margin agreement when E\*TRADE upgraded his account to Level 4.

77. E\*TRADE remains unjustly enriched by taking commissions from plaintiff (by deducting said commissions from plaintiff's account) from their unauthorized conduct. E\*TRADE has benefited at plaintiff's expense.

78. E\*TRADE's retention of plaintiff's property and funds/benefit violates the fundamental principles of justice, equity, and good conscience.

WHEREFORE, Plaintiff prays for:

- A. Restitution and compensatory damages at least \$329,566.82.
- B. Costs and expenses
- C. Any other relief this Court deems just and equitable.

**COUNT VII**  
**RESPONDEAT SUPERIOR AND CONTROL PERSON LIABILITY**  
(against E\*TRADE)

1-44. Plaintiff reallages and incorporates paragraphs 1-44 as fully forth set herein.

79. As a regulated broker-dealer, E\*TRADE was required to comply with all applicable FINRA rules and securities laws. FINRA Rule 3110 governs the supervision of activities of the associated persons with the broker-dealer to achieve compliance.

80. E\*TRADE was the principal of and controlled their respective brokers, representatives,

compliance officers, and agents that interacted with plaintiff and/or responsible for ensuring compliance with the FINRA rules and securities laws before allowing plaintiff to trade, especially options at Level 3 and Level 4.

81. Under the theory of *respondeat superior*, the principal is liable for the wrongful acts of its agents. Closely related to this theory, in the securities context, is control person liability under the federal securities laws, which makes any person who “controls” another party jointly and severally liable for the acts of that person.

82. The unauthorized margin liquidations, failures to comply with FINRA Rule 4120(g)(5) and 2360(c), failure to obtain documentation for approval of Level 3 and Level 4 trading, and omission to provide required margin disclosure statements to plaintiff constituted activities within the scope of the agents’ employment.

83. E\*TRADE is responsible for the acts and omissions of their agents that occur in the course of their employment and should be held liable.

WHEREFORE, Plaintiff prays for:

- A. Restitution and compensatory damages of at least \$329,566.82.
- B. Costs and expenses
- C. Any other relief this Court deems just and equitable.

**COUNT VIII**  
**NEGLIGENCE**  
(against E\*TRADE)

1-44. Plaintiff reallages and incorporates paragraphs 1-44 as fully forth set herein.

84. E\*TRADE owed plaintiff a duty of care as well as to act with good-faith and fair dealing. E\*TRADE had a duty to comply with all applicable FINRA rules and securities laws.

85. E\*TRADE breached its duties to plaintiff by upgrading plaintiff to Level 3 trading, sometime between 2006 and 2016, without any written option upgrade documentation or request

from plaintiff. E\*TRADE breached its duties by failing to comply with FINRA rules such as 4120(g)(5) and 2360(c).

86. E\*TRADE policies of not sending notifications of margin calls to plaintiff's email after representing in writing and verbally that they would as well as not allowing client's to send unlimited funds to satisfy them and then engaging in liquidation is below the applicable standard of care.

87. E\*TRADE's policy of liquidating more positions than was required to meet a margin call as well as limiting the amount that can be transferred via ACH to meet a margin call is below the applicable standard of care.

88. E\*TRADE fell below the applicable standard of care by giving him an opportunity to resolve any outstanding margin requirements, including giving him proper notice that the equity requirement for AMZN had been increased in March 2020.

89. E\*TRADE fell below the standard of care by not furnishing plaintiff with its margin disclosure statement and obtaining a signature of acknowledgment as E\*TRADE does in its printed forms, but not online forms.

90. E\*TRADE's conduct was not fair dealing as it ensured plaintiff would sustain realized losses since plaintiff was unaware of the margin calls, was unable to transfer in all the funds in via ACH required to meet any call over \$100,000.

91. Hedging with offsetting positions, such as purchasing puts in the same securities with similar strikes and expiration could have been taken to limit further losses.

92. Since plaintiff did not receive notification via email, phone, or text and restricted plaintiff's ability to satisfy margin calls, E\*TRADE's conduct created a situation where plaintiff was guaranteed to sustain realized losses.

93. E\*TRADE breached their duty of care by not giving plaintiff actual notice, any reasonable or sufficient opportunity to be able to take offsetting (hedge) positions and/or to voluntarily close positions himself.

94. As a direct and proximate cause of E\*TRADE breach of duty of care and failure to act with good-faith and fair dealing, plaintiff sustained substantial losses and damages.

- A. Restitution and compensatory damages at least \$329,566.82.
- B. Costs and expenses
- C. Any other relief this Court deems just and equitable.

**COUNT IX**  
**VIOLATION OF**  
**ILLINOIS CONSUMER FRAUD AND DECEPTIVE PRACTICES ACT**  
**815 ILCS 505/2**  
(against E\*TRADE)

1-44. Plaintiff realleges and incorporates paragraphs 1-44 as fully forth set herein.

95. E\*TRADE is a “person” within the meaning of the Act, engaged in trade and commerce involving selling, advertising, promoting, and providing brokerage and trading services. Such services are included in the term “merchandise.” E\*TRADE offers and sells such services for cash deposited in the customer’s account and/or credit through margin.

96. Plaintiff is a consumer who placed option trades for a commission for his personal use in his personal account “0136.”

97. E\*TRADE engaged in an unfair and deceptive practice by omitting to disclose the written margin disclosures to plaintiff, including that E\*TRADE could liquidate his positions at any time without notice.

98. E\*TRADE engaged in an unfair and deceptive practice by liquidating plaintiff’s positions without a signed margin agreement as required by FINRA Rule 4120(g)(5) and 2360(c) with plaintiff and without plaintiff’s authorization and consent.

99. E\*TRADE engaged in deceptive practices by representing to the plaintiff in writing and verbally that he would receive margin notification alerts sent to his email address when in fact he did not.

100. E\*TRADE engaged in unfair and deceptive practices by liquidating more positions than was necessary to meet several margin calls.

101. E\*TRADE omitted to disclose that certain customers receive the proper margin disclosures that comply with the FINRA rules if they get and/or use E\*TRADE's printed forms which are materially different than their online forms which do not have such margin disclosures. In fact, E\*TRADE's fabricated/created web forms do not reference, highlight, or make conspicuous any margin disclosures.

102. E\*TRADE omitted to disclose to plaintiff that E\*TRADE had upgraded him to Level 3 without any documentation, request, or authorization from plaintiff from some time during 2006 through December 2015.

103. E\*TRADE omitted to disclose to plaintiff that they were not in compliance with numerous FINRA rules, document retention policies, and that plaintiff should not have been allowed to trade until they obtained the proper signed documents and agreements after they transferred plaintiff's from HarrisBank Direct. Since E\*TRADE never obtained any signed documents, account, or margin agreements from HarrisDirect or otherwise, E\*TRADE engaged in unauthorized liquidations.

104. E\*TRADE's conduct was done in reckless disregard of plaintiff's financial interests especially since E\*TRADE, as a regulated broker-dealer, knew or had reason to know they were not in compliance with applicable FINRA rules and securities law. There is a public interest that a broker-dealer not engage in conduct that is not authorized and which causes harm to consumers.

105. As a result of E\*TRADE's unfair and deceptive practices, the plaintiff has sustained substantial financial harm.

- A. Restitution and compensatory damages at least \$329,566.82.
- B. Punitive damages pursuant to 815 ILCS/10a.
- C. Costs and expenses
- D. Any other relief this Court deems just and equitable.

**COUNT X**  
**9 U.S.C. 10**  
**VACATUR OF AWARD**  
(against E\*TRADE and FINRA)

1-44. Plaintiff reallages and incorporates paragraphs 1-44 as fully forth set herein.

106. The arbitrators knew of the governing FINRA rules and legal principles yet refused to apply them or ignored them altogether.

107. The FINRA rules and law ignored by the arbitrators were well-defined, explicit, and clearly applicable to the case. For instance, the plain meaning of the language in FINRA Rules of 4120(g)(5) and 2360(c) are clear, unambiguous, and applicable as are the discovery rules and their ICPH order.

108. The majority of the arbitrators deliberately disregarded and ignored what they knew to be the FINRA rules and law in order to reach their result.

109. Prior to the hearing, the arbitrators had shown their propensity to deliberately disregard and ignore FINRA Rule 12507/13507 and their own IPHC order that the parties had agreed to.

110. FINRA also showed their deliberate disregard of the FINRA Rules and the inevitable prejudice and harm that plaintiff would face, including, but not limited to, denying plaintiff's motion to have the panel replaced and denial to have a FINRA opinion issued regarding the requirement that parties follow the FINRA discovery rules 12507/13507 and IPCH order.



111. FINRA and the arbitrators exhibited bias and/or prejudice by subjecting and binding the plaintiff to the FINRA rules, but not E\*TRADE. FINRA and the arbitrators denied all of plaintiff's motions and requested relief and granted all of E\*TRADE's motions and requested relief, manifestly disregarding the FINRA rules that they were to enforce and apply equally to both parties.

112. The arbitrators could appreciate the existence of the FINRA rules and clearly governing principles, as they agreed to take oaths to follow the FINRA Code of Arbitration Procedure, but decided to ignore and/or pay not attention to them.

113. The arbitrators exceeded their authority in manifestly disregarding the FINRA rules and applicable law by failing to rule in accordance with the relevant rules and provisions of the law which any average person qualified to serve as an arbitrator would have readily and instantly perceived. In fact, the arbitrators refused to even state whether the FINRA rules would apply prior to the hearing and what state law they would apply.

114. The award has resulted in significant injustice especially given that the plaintiff sought relief prior to the arbitration, to prevent that inevitable harm he alleged would occur and did occur, including, but not limited to, seeking to replace the panel and seeking injunctive and declaratory relief. The plaintiff did not delay in seeking prevent the injustice and prejudice he sustained by arbitrators unwilling to follow and adhere to the applicable FINRA rules and law.

115. E\*TRADE's in-house counsel also sought to cause further prejudice to the plaintiff by telling the panel he also was an arbitrator like them and that due to plaintiff's suit, the dispute was heading to federal court. E\*TRADE was insinuating to the panel that plaintiff would not abide by their ruling thereby seeking to ensure the panel was all even more partial against plaintiff. Plaintiff could not seek to have FINRA exclude this information because he did not know that

Bersin was also a FINRA arbitrator until the hearing. E\*TRADE had not filed an appearance in this case yet and plaintiff did not believe that the pending suit would be brought up especially as plaintiff's motion for injunctive relief to stay proceedings had been denied.

116. Since E\*TRADE withheld and/or failed to turnover certain crucial recordings and evidence which wasn't discovered until the arbitration, the FINRA arbitrators were also unable to consider such evidence even though they allowed and considered E\*TRADE's fabricated/created documents which still did not comply with the FINRA rules and requirements. Thus, plaintiff's case was prejudiced by the inability to present all material evidence in support of his claims.

WHEREFORE, Plaintiff prays for vacatur of the arbitration award and any other relief that it deems just and equitable.

**COUNT XI**  
**RECISSION**  
(against FINRA)

1-44. Plaintiff realleges and incorporates paragraphs 1-44 as fully forth set herein.

117. At the time plaintiff submitted his FINRA claims, plaintiff was mistaken as to the material fact that he was subject an arbitration provision with E\*TRADE.

118. During discovery, E\*TRADE did not and could not produce any signed agreements with plaintiff that contained an arbitration provision. Once plaintiff realized no agreement existed with E\*TRADE requiring arbitration and that he had erroneously submitted to arbitration under the belief that there was, plaintiff sought to withdraw his claims from FINRA and sought a ruling on jurisdiction, but his motion was denied without explanation.

119. Had plaintiff known that he was mistaken as to the arbitration requirement and that E\*TRADE could not compel arbitration through FINRA, he would not would have submitted his claims through FINRA. Plaintiff's claims belong to plaintiff, not E\*TRADE or FINRA. Plaintiff

was legally entitled to voluntarily withdraw his claims from FINRA and pursue them in federal court once plaintiff learned that he was mistaken as to a material fact that led him to file the arbitration claim initially through FINRA.

120. FINRA breached the submission agreement by failing to apply and enforce compliance of the FINRA rules to E\*TRADE. FINRA submission agreement states:

The parties hereby states that they or their representative(s) have read the procedure and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules.

However, FINRA and the arbitrators knowingly allowed E\*TRADE to violate the discovery rules and IPHC orders, but required plaintiff to comply with them.

123. FINRA and the arbitrators acted in bad-faith and/or demonstrated partiality by subjecting the plaintiff to the FINRA rules, but not E\*TRADE. They granted all of E\*TRADE's motions and relief, but denied all the motions and relief that plaintiff sought.

124. As a direct consequence of FINRA's breach and plaintiff's mistake of material fact, plaintiff has been prejudiced and sustained significant financial harm.

WHEREFORE, as a matter of equity and law, plaintiff seeks rescission of the submission agreement, to be able to pursue his claims in federal court, for all costs and expenses, and any other relief that this Court deems just and equitable.

Respectfully Submitted,

/s/ Justin London

Justin London, Ph.D.  
LONDON LAW GROUP  
1920 N. Maud, #A  
Bar No: 6293251  
Chicago, IL 60614  
Phone: (312) 909-6170  
Fax: (773) 346-1227  
Email: [jlondonlaw@gmail.com](mailto:jlondonlaw@gmail.com)