

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:23-cv-23139-SCOLA/GOODMAN

KRISTOFFER JON HIND, an individual;
JASON THOMAS WAITON, an individual;
CHRISTOPHER CAMPBELL, an
individual; PAUL DOUGLAS
STOEPPELWERTH, an individual;
LUCAS LONGMIRE, an individual;
THOMAS BLAIR PHILLIPS, an
individual; TYLER JENKINS, an
individual; JORDEN DAVID NEIL
MALCOLM, an individual; ROBERT
TAYLOR YATES, an individual; RAFAEL
REYES SALMERON, an individual;
RYAN ANTHONY FLOYD, an individual;
MATT SCOTT VOGEL, an individual;
MARK ALAN BENTLEY, an individual;
PETER SHANE DONAHUE, an individual;
AGATA AGNIESZKA POWERS, an
individual, AVYA LINDSEY WAITON, an
individual; TIMOTHY MICHAEL
MORGAN, an individual; TARSIS
CARVALHO HUMPHREYS, an
individual; ZACHARY MICHAEL
SELLERS, an individual; and BRANDON
MICHAEL HARROLD, an individual,

JURY TRIAL DEMANDED

Plaintiffs,

v.

FXWINNING LIMITED, a Hong Kong
limited company; CFT SOLUTIONS, LLC,
a Delaware limited liability company;
RENAN DE ROCHA GOMES BASTOS,
an individual; RAFAEL BRITO CUTIE, an
individual; ARTHUR PERCY, an
individual; ROMAN CARDENAS, an
individual; and DAVID MERINO, an
individual,

Defendants.

FIRST AMENDED COMPLAINT

Plaintiffs Kristoffer Jon Hind, Jason Thomas Waiton, Christopher Campbell, Paul
Douglas Stoeppelwerth, Lucas Longmire, Thomas Blair Phillips, Tyler Jenkins, Jorden David
Neil Malcolm, Robert Taylor Yates, Rafael Reyes Salmeron, Ryan Anthony Floyd, Matt Scott

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Vogel, Mark Alan Bentley, Peter Shane Donahue, Agata Agnieszka Powers, Avya Lindsey Waiton, Timothy Michael Morgan, Tarsis Carvalho Humphreys, Zachary Michael Sellers, and Brandon Michael Harrold (collectively “Plaintiffs”), by and through their undersigned attorneys, commence this action against FxWinning Limited (“FxWinning”), CFT Solutions, LLC (“CFT,” and together with FxWinning, the “Companies”), Renan de Rocha Gomes Bastos, Rafael Brito Cutie, Arthur Percy, Roman Cardenas, and David Merino (individually together the “Individual Defendants,” and together with the Companies the “Defendants”), and allege as follows¹:

INTRODUCTION

1. This action arises from Defendants’ numerous fraudulent actions and misrepresentations regarding the Companies’ foreign exchange (forex) trading platform and services, for which the Companies and Individual Defendants have converted tens of millions of dollars belonging to Plaintiffs for Defendants’ benefit.

2. Defendants represented to Plaintiffs that Defendant Merino had invented an algorithm that would allow clients such as Plaintiffs to receive high returns on forex trading, which would be collectively run by CFT and its broker, FxWinning. Defendants pitched the Companies as providing not just high returns, however, but they also guaranteed the security of Plaintiffs’ funds – investments which would, in the end, total tens of millions of dollars.

3. But Defendants’ representations turned out to be false. While Defendants initially permitted several withdrawals by Plaintiffs from their accounts through December 2022 – to lull Plaintiffs into a false sense of security and convince Plaintiffs to deposit

¹ Plaintiffs Hind, Waiton, Stoeppelwerth, Jenkins, Malcolm, Salmeron, Floyd, Vogel, Bentley, Donahue, Powers, Waiton, Morgan, Tarsis, Sellers, and Harrold have agreed to arbitrate their claims against Defendants CFT, de Rocha, and Percy in Counts I, II, III, IV, VI, VII, VIII, IX, X, and XI pursuant to the limited powers of attorney agreements they signed. They remain plaintiffs here against Defendants FxWinning, Brito, Cardenas, and Merino.

additional funds – Defendants discontinued all withdrawals in early 2023 under the guise of instituting new security-guided procedures to comply with requirements of its liquidity provider, i.e., new Know Your Customer (KYC) and Anti-Money Laundering (AML) procedures.

4. Defendants' purported justifications were farcical – and indeed fraudulent – because, even after purportedly establishing the KYC and AML procedures and expressly informing Plaintiffs in May and June 2023 that their KYC and AML updates were “successfully completed” and that Plaintiffs would have their funds within fifteen working days, Defendants have still failed to release a single dollar.

5. To this day, Defendants have wrongfully held – and continue to withhold – more than \$27,000,000.00 belonging to Plaintiffs.

6. For these and the following reasons, Plaintiffs bring this action to recover their wrongfully withheld funds and seek damages against Defendants as a result of Defendants' fraudulent and improper actions.

THE PARTIES

7. Plaintiff Kristoffer Jon Hind is an individual over the age of eighteen who resides in San Diego County, California.

8. Plaintiff Jason Thomas Waiton is an individual over the age of eighteen who resides in San Diego County, California.

9. Plaintiff Christopher Campbell is an individual over the age of eighteen who resides in Williamson County, Tennessee.

10. Plaintiff Paul Douglas Stoeppelwerth is an individual over the age of eighteen who resides in Miami-Dade County, Florida.

11. Plaintiff Lucas Longmire is an individual over the age of eighteen who resides in Miami-Dade County, Florida.

12. Plaintiff Thomas Blair Phillips is an individual over the age of eighteen who resides in Okaloosa County, Florida.

13. Plaintiff Tyler Jenkins is an individual over the age of eighteen who resides in Okaloosa County, Florida.

14. Plaintiff Jorden David Neil Malcolm is an individual over the age of eighteen who resides in British Columbia, Canada.

15. Plaintiff Robert Taylor Yates is an individual over the age of eighteen who resides in Utah County, Utah.

16. Plaintiff Rafael Reyes Salmeron is an individual over the age of eighteen who resides in Collier County, Florida.

17. Plaintiff Ryan Anthony Floyd is an individual over the age of eighteen who resides in Sedwick County, Kansas.

18. Plaintiff Matt Scott Vogel is an individual over the age of eighteen who resides in Santa Rosa County, Florida.

19. Plaintiff Mark Alan Bentley is an individual over the age of eighteen who resides in York County, South Carolina.

20. Plaintiff Peter Shane Donahue is an individual over the age of eighteen who resides in Santa Rosa County, Florida.

21. Plaintiff Agata Agnieszka Powers is an individual over the age of eighteen who resides in Orange County, Florida.

22. Plaintiff Avya Lindsey Waiton is an individual over the age of eighteen who resides in San Diego County, California.

23. Plaintiff Timothy Michael Morgan is an individual over the age of eighteen who resides in Orange County, Florida.

24. Plaintiff Tarsis Carvalho Humphreys is an individual over the age of eighteen who resides in San Diego County, California.

25. Plaintiff Zachary Michael Sellers is an individual over the age of eighteen who resides in San Diego County, California.

26. Plaintiff Brandon Michael Harrold is an individual over the age of eighteen who resides in Miami-Dade County, Florida.

27. Upon information and belief, Defendant CFT Solutions, LLC is a Delaware limited liability company with its principal place of business in Miami-Dade County, Florida.

28. Upon information and belief, Defendant FxWinning Limited is a Hong Kong limited company, which is registered under number 2930110. Upon information and belief, FxWinning operates without a principal place of business. FxWinning's website lists locations in Hong Kong and Saint Vincent and the Grenadines but provides a contact number with a Cyprus country code. Upon information and belief, FxWinning maintains a workspace in Cyprus, a workspace in Dubai where its Chief Executive Officer (Rafael Brito Cutie) operates the company, and a workspace in Miami-Dade County, Florida, where FxWinning's vice president (Roman Cardenas) assists with operating the company.

29. Upon information and belief, Defendant Renan de Rocha Gomes Bastos (de Rocha) is an individual over the age of eighteen who resides in Miami-Dade County, Florida. Upon information and belief, de Rocha is a founder of CFT and its Chief Executive Officer (CEO).

30. Upon information and belief, Rafael Brito Cutie (Brito Cutie) is an individual over the age of eighteen who resides partially in Miami-Dade County, Florida, partially in Dubai, partially in the United Arab Emirates, and partially in Cyprus. Upon information and belief, Brito Cutie is a co-owner of FxWinning and its CEO.

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31. Upon information and belief, Defendant Arthur Percy is an individual over the age of eighteen who resides in Miami-Dade County, Florida. Upon information and belief, Percy is the Chief Operating Officer (COO) of CFT.

32. Upon information and belief, Defendant Roman Cardenas is an individual over the age of eighteen who resides partially in Miami-Dade County, Florida and partially in Cyprus. Upon information and belief, Cardenas is FxWinning's vice president.

33. Upon information and belief, Defendant David Merino is an individual over the age of eighteen who resides in Las Palmas De Gran Canaria, Spain, and who has conducted business in Miami-Dade County, Florida. Upon information and belief, Merino is a founder and owner of FxWinning. Merino is also the founder and owner of Merino Capital Solutions, Inc. ("Merino Capital"), a Florida corporation with its principal place of business in Miami-Dade County, Florida.

JURISDICTION AND VENUE

34. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the case arises, in part, under Sections 5 and 12(a)(1) of the Securities Act of 1933, 15 U.S.C. §§ 77e and 771(a)(1), and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the Securities Exchange Commission ("SEC"), 17 C.F.R. § 240.10b-5.

35. This Court alternatively has subject-matter jurisdiction over this action because it arises, in part, under Sections 6 and 25 of the Commodity Exchange Act, 7 U.S.C. §§ 6b, 6e, 6o, and 25.

36. This Court has supplemental jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1337 because such claims are so closely related to the Securities claims and/or Commodity Exchange Act claims that they are part of the same case and controversy.

37. Personal jurisdiction exists over Defendants because this dispute arises out of, or is related to, the Defendants' contacts with this forum, including but not limited to operating the Companies from Miami-Dade County, Florida (as both CFT Solutions and FxWinning have their principal or other places of business in the state) and directing their operations to citizens in Florida (among numerous U.S. citizens in several states). Indeed, FxWinning's partner CFT stated in its own lawsuit against FxWinning that FxWinning "operates, conducted, engaged in, or carried on a business venture in Florida and breached the contract at issue in this action in Florida by failing to perform acts required by the contract to be performed in Florida."²

38. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the acts that form the basis of this action occurred in this district, the Companies operate out of Miami-Dade County, Florida, and the Companies sold the investment accounts in their platform out of Florida.

GENERAL ALLEGATIONS

39. Upon information and belief, CFT was established in 2019 by de Rocha. Upon further information and belief, de Rocha hired Percy to be CFT's COO.

40. CFT purports to offer investors a "High-Frequency Trading System" that "use[s] . . . high-power computers . . . to execute a large number of orders at extremely high speeds, detecting emerging trends in a fraction of a second," that accordingly allows "traders [to] make profits even with very small price fluctuations."³

² CFT's lawsuit is captioned *CFT Solutions, LLC et al. v. FxWinning LTD*, and was filed on May 5, 2023 as local case no. 2023-016392-CA-01 in the Circuit Court of the Eleventh Judicial Circuit of Florida. In separate filings in that lawsuit, CFT has similarly described FxWinning as operating a "fraudulent enterprise." See Docket No. 48 for CFT's *Ex Parte* Motion for Alternative Service on Roman Cardenas.

³ CFT Solutions, Common Questions Page, <https://www.cftolutions.info/perguntas-frequentes?lang=en>.

41. CFT's software allegedly conducts trades on the foreign exchange (forex) market.

42. According to CFT, investors gain access to its software only by opening an account with FxWinning (and in pari passu, that through the FxWinning brokerage account, the investor can access CFT's "High-Frequency Trading System").

43. Upon information and belief, FxWinning was established in early 2020 by Brito Cutie and Merino. Upon information and belief, Brito Cutie and Merino hired Cardenas to be FxWinning's vice president of operations in the United States.

44. FxWinning operates at least two websites, fxwinning.net and fxwinning.pro, which are online platforms where customers can access their CFT/FxWinning accounts.

45. According to its website, FxWinning is a "brokerage firm" offering a "powerful [] trading platform" "exclusive . . . to retail and institutional clients around the world" that "guarantee[s] you the best spreads and trading conditions."⁴ FxWinning's description of its platform and services mirrors CFT's description of its own software. Upon information and belief, the Companies' platforms are one-and-the-same, if any such platform or software ever existed.

46. FxWinning represents that it "has purchased Client Money Insurance (CMI) on behalf of our clients and is a member of a network of responsible global financial service providers offering additional layers of security."⁵

47. Moreover, FxWinning represents that its platform is "transparen[t]" and that FxWinning segregates all client funds from its separate company accounts.⁶

⁴ FxWinning Net, Home Page, https://fxwinning.net/index_en.html; and FxWinning Net, News Page, <https://www.fxwinning.pro/news?lang=en>.

⁵ *Id.*; FxWinning Pro, Home Page, <https://www.fxwinning.pro/?lang=en>.

⁶ *Id.*

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48. FxWinning represented on its FxWinning.net⁷ website that its servers were located in New York and London, respectively, to facilitate fast transactions:

Why choose us?

At FxWinning we want to offer you what you are really looking for: the best prices on the market, trust and security. That is why you are here with us today, with a team of professionals who will guarantee you the best spreads and trading conditions.

Quick Execution

FxWinning's servers are hosted on NY4 and LD4, New York and London, respectively. Connections to our pricing providers, via fiber optics, ensure the lowest latency, thus offering the fastest executions for you.

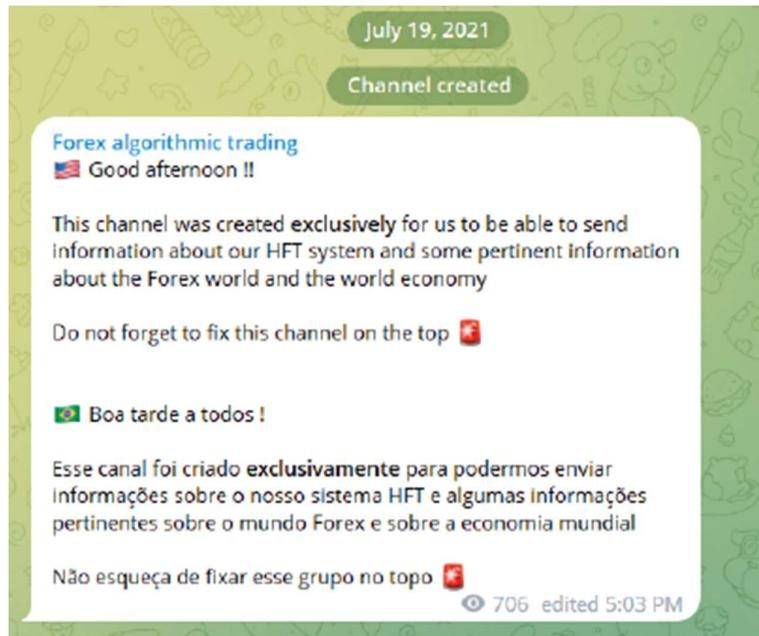
49. Upon information and belief, FxWinning.net continues to represent that its servers are based in New York and London.

50. Collectively, CFT, FxWinning, de Rocha, and Brito Cutie touted the Companies' services and platform to Plaintiffs to induce Plaintiffs to invest millions of dollars with the Companies.

51. To that end, CFT created a Telegram channel on July 19, 2021 to "send information about our HFT [High-Frequency Trading] system and some pertinent information about the Forex world and the world economy." The Telegram channel was directed specifically to U.S. based investors, among others. Included here is a true and correct copy of a screenshot of CFT's Telegram channel dated July 19, 2021:

⁷ Past screenshots of FxWinning.net's website are available through the Wayback Machine: https://web.archive.org/web/20220704063456/https://fxwinning.net/index_en.html.

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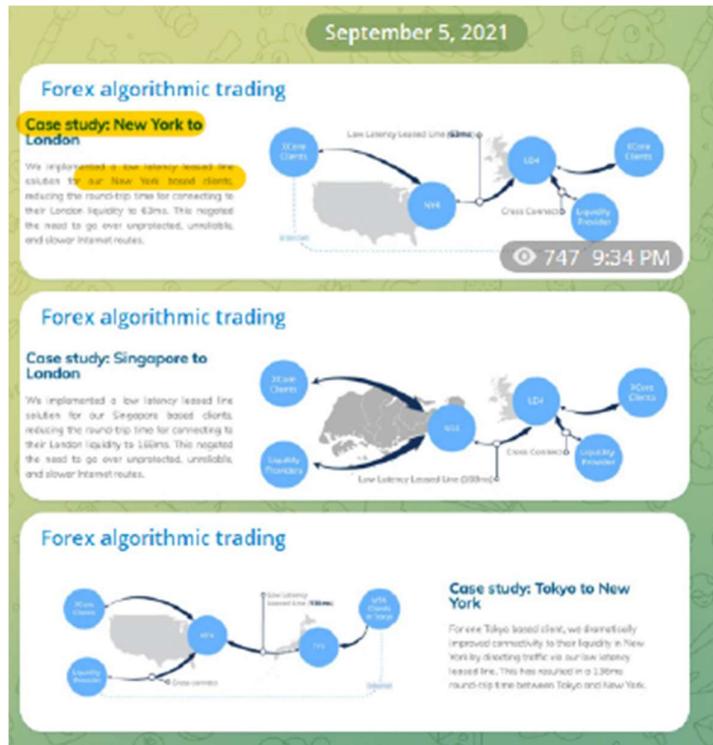


52. CFT immediately began promoting the success rate of its platform and thanked its customers for their “trust” in CFT. Included here is a true and correct copy of a screenshot of CFT’s Telegram channel dated July 23, 2021 (with highlights added):



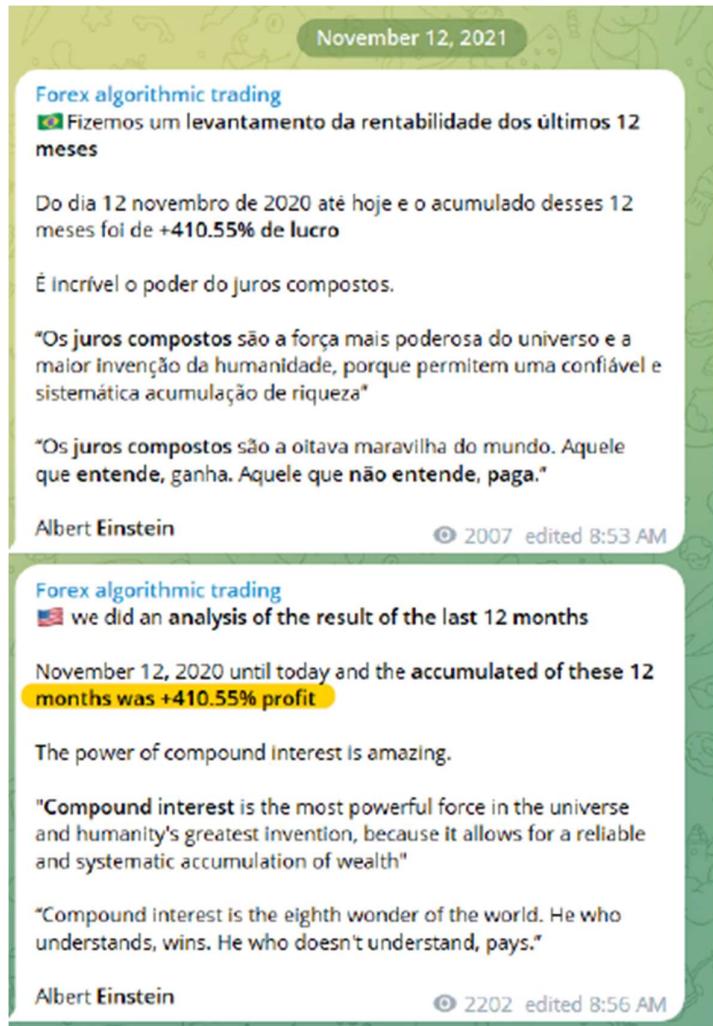
53. CFT actively marketed its platform and services to U.S. customers from the very beginning. Included here is a true and correct of a screenshot of CFT’s Telegram channel dated September 5, 2021 (with highlights added demonstrating its “New York based clients”):

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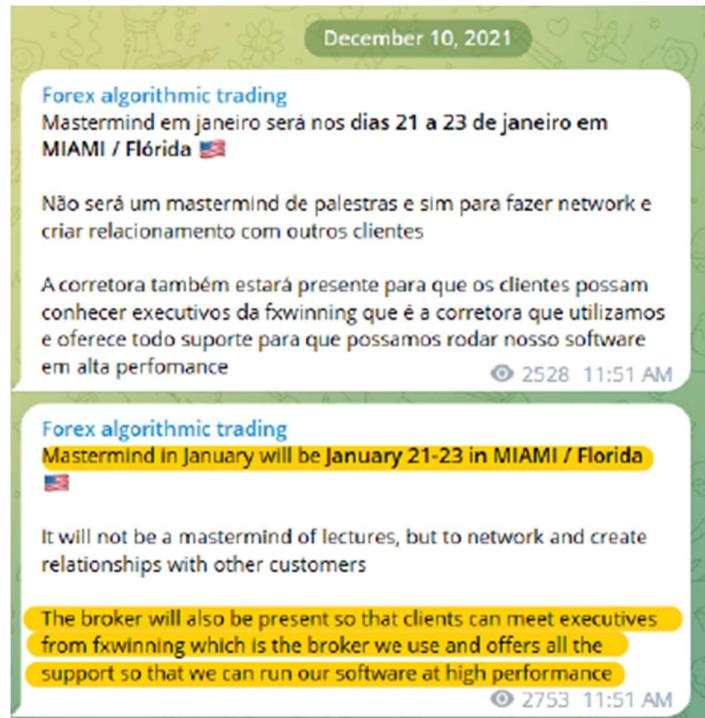
54. In November 2021, CFT posted that its analysis of results over the last 12 months was a positive 410.55% profit. Included here is a true and correct copy of a screenshot of CFT's Telegram channel dated November 12, 2021 (with highlights added):

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55. In December 2021, CFT posted that it would hold a “Mastermind” event in Miami, Florida from January 21-23, 2022, for investors to meet the Companies’ Masterminds. CFT stated that FxWinning “will also be present so that clients can meet executives from fxwinning which is the broker we use and offers all the support so that we can run our software at high performance.” Included here is a true and correct copy of a screenshot of CFT’s Telegram channel dated December 10, 2021 (with highlights added):

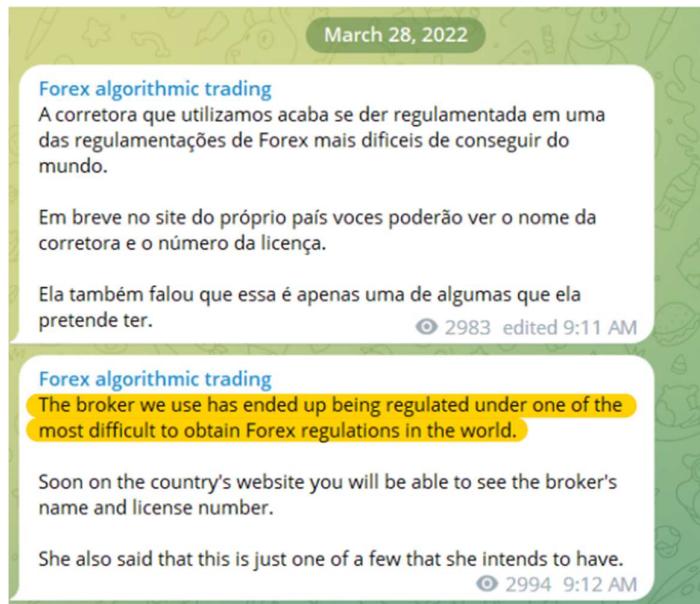
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56. FxWinning's executives met U.S. based clients at the Miami, Florida "Masterminds" event and upon information and belief knew and were informed, to the extent FxWinning did not previously know, that its clients were based in the U.S. (in Florida, among other states).

57. CFT continuously touted its link with its broker—FxWinning—which it claimed was “regulated under one of the most difficult to obtain Forex regulations in the world” (without specifying which regulations FxWinning was regulated under). Included here is a true and correct copy of a screenshot of CFT’s Telegram channel dated March 28, 2022 (with highlights added):

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58. CFT stated in March 2022 that funds were transferred directly to the Companies' liquidity provider.

59. On April 10, 2022, CFT stated that it was “+44% positive this year 2022,” compared to all other markets, which CFT contended “are all in the negative.” CFT told Plaintiffs through its Telegram channel that “2022 is going to be an amazing year.”

60. And on May 24, 2022, CFT represented to Plaintiffs that the Companies were “ending the month with an AMAZING result” and that even in a recession “Our software will always perform better in situations of chaos and extreme volatility.” In so doing, CFT acknowledged that it was its purported “software” that provided profits to investors, not any independent action by the investors.

61. Defendants also represented higher returns were available to investors that invested (either individually or as a pool) \$4 million or more.

62. In addition to its Telegram channel, de Rocha hosted monthly Zoom sessions proclaiming the benefits to investing with CFT and FxWinning, stating (through his translator Renaud Adorno) that de Rocha had “zero” issues with FxWinning and trusted it over any other

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potential broker. Plaintiffs viewed de Rocha's Zoom sessions both before and after investing with CFT and FxWinning.

63. As a result of Defendants' representations, which were made in person by the Companies' executives, and includes the representations on their websites, on CFT's Telegram channel, and via de Rocha's Zoom sessions, each of the Plaintiffs opened accounts with the Companies and began depositing funds into their trading accounts:

- a. Kristoffer Jon Hind opened his account (account number ending in *220) on or about August 1, 2022.
- b. Jason Thomas Waiton opened his account (account number ending in *982) on or about September 1, 2022.
- c. Christopher Campbell opened his accounts (account numbers ending in *184 and *512) on or about March 14, 2022.
- d. Paul Douglas Stoeppelwerth opened his account (account number ending in *371) on or about June 16, 2022.
- e. Lucas Longmire opened his account (account number ending in *499) on or about February 7, 2021.
- f. Thomas Blair Phillips opened his account (account number ending in *464) on or about December 3, 2021.
- g. Tyler Jenkins opened his account (account number ending in *633) on or about February 9, 2022.
- h. Jorden David Neil Malcolm opened his account (account number ending in *240) on or about August 31, 2022.
- i. Robert Taylor Yates opened his account (account number ending in *516) on or about April 14, 2022.

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- j. Rafael Reyes Salmeron opened his account (account number ending in *508) on or about January 27, 2022.
 - k. Ryan Anthony Floyd opened his account (account number ending in *762) on or about May 1, 2022.
 - l. Matt Scott Vogel opened his account (account number ending in *332) on or about January 11, 2023.
 - m. Mark Alan Bentley opened his account (account number ending in *729) in or about November 2022.
 - n. Peter Shane Donahue opened his account (account number ending in *556) on or about December 15, 2022.
 - o. Agata Agnieszka Powers opened her account (account number ending in *856) on or about August 12, 2022.
 - p. Avya Lindsey Waiton opened her account (account number ending in *235) on or about December 1, 2022.
 - q. Timothy Michael Morgan opened his account (account number ending in *573) on or about November 7, 2022.
 - r. Tarsis Carvalho Humphreys opened his account (account number ending in *103) on or about February 13, 2023.
 - s. Zachary Michael Sellers opened his account (account number ending in *042) on or about September 12, 2022.
 - t. Brandon Michael Harrold opened his account (account number ending in *270) on or about May 19, 2022.
64. Each of the Plaintiffs also signed limited power-of-attorney agreements with CFT for CFT to effectuate trading on the FxWinning accounts. **In exchange for its services, CFT charged Plaintiffs either a 40% or 50% account management fee.**

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65. Relevant here, Plaintiffs Campbell, Longmire, Phillips, and Yates signed an approximately five-page limited power of attorney. The limited power of attorney provided that CFT would “manage [the customer’s] trading account with a 50% account management fee.” Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff Campbell’s limited power of attorney.

66. Upon information and belief, Plaintiffs’ funds were pooled together to effectuate CFT’s and FxWinning’s operation of its software.

67. Importantly, CFT maintained complete control over its software and the alleged trading it and FxWinning conducted using its and FxWinning’s software. Plaintiffs did not possess any control over any alleged trades on the Companies’ platform and instead were only able to see their purported account balances.

68. Plaintiffs were not permitted to create an account and “start trading” until they certified that they agreed to FxWinning’s terms and conditions, available on both the fxwinning.net and fxwinning.pro websites.

69. Section 3.4 of the terms and conditions provides that at “all times” Plaintiffs “have the right to withdraw [the amount owed as the balance of the account]”:

3.4 After the activation of the account, the Client will be able to see the amount owed as the balance of the account in MyFxWinning (the Company’s online portal) at all times and will have the right to withdraw the same, upon request.

70. The terms and conditions provided no restrictions on Plaintiffs’ ability to withdraw their funds.

71. But for Defendants’ representations (in person, through its agents and representatives, online on FxWinning’s website, and on CFT’s Telegram channel and through de Rocha’s Zoom sessions), including Defendants’ guarantees of security of Plaintiffs’ funds and the promise of the “best spreads” available, Plaintiffs would not have opened their accounts.

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72. Even after Plaintiffs opened their accounts, Defendants pushed Plaintiffs to continuously deposit more and more money into their accounts—all of which greatly benefited CFT as it earned a 40% or 50% fee based on a percentage of the funds in the accounts.

73. Upon information and belief, Percy benefited through Plaintiffs' investments and received at least \$141,625.48 in commissions.

74. Defendants also invited Plaintiffs to a yacht party in January 2022, with de Rocha (CFT's CEO) and Cardenas (FxWinning's VP) both in attendance, and discussed further investment in the Companies and the returns that the Companies were earning.

75. Plaintiffs Longmire and Phillips personally attended the yacht party and relied on de Rocha's and Cardenas' representations regarding the Companies' returns to increase their investments. Upon information and belief, de Rocha and Cardenas knew that Plaintiffs Longmire and Phillips were U.S. residents.

76. Defendants also held conferences and invited Plaintiffs (among other potential investors) as their guests to a “summit” in the Bahamas in December 2022 during which CFT and FxWinning (through their executives, including but not limited to de Rocha) celebrated the high returns that Plaintiffs were purportedly earning and pushed Plaintiffs to increase their investments.

77. Plaintiff Campbell personally attended the Bahamas summit and heard and relied on Defendants' representations, including those by de Rocha. Upon information and belief, Defendants knew that its visiting investors were U.S. residents and had traveled to the Bahamas from the U.S.

78. To promote the platform and services during the summit to, among others, U.S. investors, Defendants introduced attorneys general Matthew Whitaker (former acting United States Attorney General) and Todd Rokita (Indiana Attorney General) as CFT's latest board

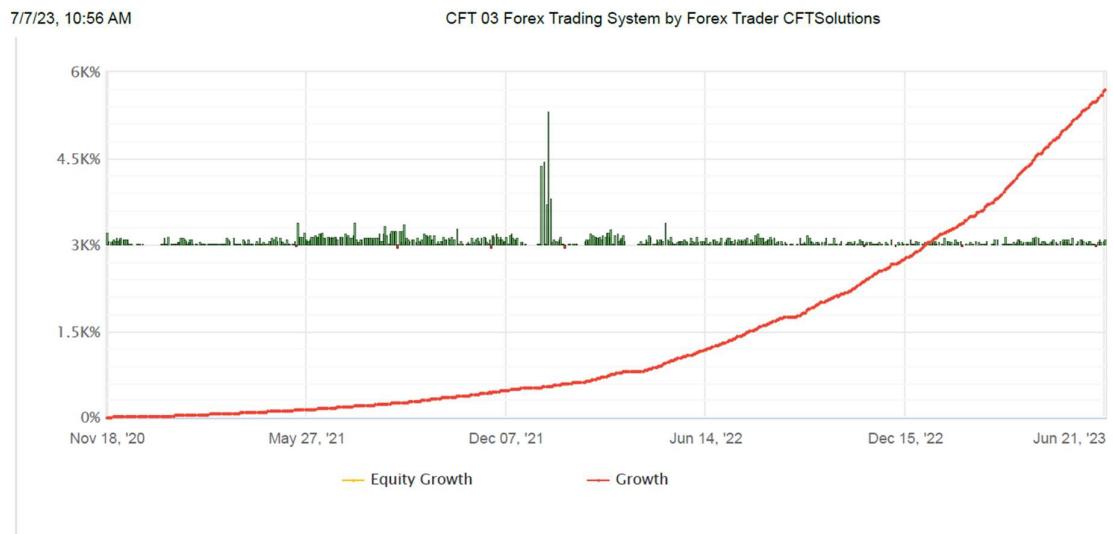
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members and paid them to speak regarding Defendants' (particularly de Rocha's) professionalism and business judgment.

79. Indeed, Defendants went to great lengths to hold the Companies out as legitimate, both in the United States and abroad, through the Companies' websites, and at the Companies' events Defendants made numerous representations to encourage U.S. customers to invest with Defendants.

80. To further convince investors of the security of its and FxWinning's software, CFT presented a purported KPMG audit report stating that all trades had been reviewed. Upon information and belief, the representation regarding a KPMG audit report was false because the audit report was fake.

81. Defendants also provided Plaintiffs what was purported to be the CFT dashboard showing the success of the Companies' forex trading:



Upon information and belief, CFT's dashboard representation was false because the Companies did not earn such high returns and/or did not make any trades at all.

82. CFT stated that the Companies' trading was 71% successful and "one of the best software in the world." Upon information and belief, CFT's (and FxWinning's) success

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rate was false because the Companies did not earn such high returns and/or did not make any trades at all.

83. Around the same time as the Summit, CFT posted on its Telegram channel on December 16, 2022, that the Companies would soon stop accepting new clients and thus promote a limited supply, to increase demand on the accounts. CFT stated there were only “2,000 vacancies left”: “You will see that when people start to see that they will no longer be able to use our software, they will start to value it much more and will be desperate for a spot. Congratulations to those who are taking advantage of this technology that God has given us and are getting rich using **this wonder called compound interest**. 2023 the world will know about our software but it will be too late for many.”

84. Following the December Bahamas summit, however, and beginning in or around January 2023, Defendants began informing Plaintiffs that their withdrawals would be delayed. Whereas withdrawals initially took 24-48 hours, Defendants represented that due to the holidays and for other reasons, withdrawals would take several days to process.

85. By the middle of January, Defendants informed Plaintiffs that any requested withdrawals would take up to two weeks.

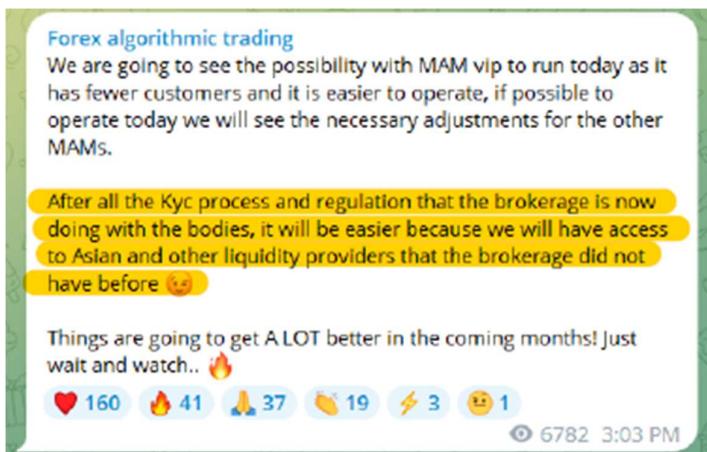
86. Defendants continued to nevertheless request that Plaintiffs deposit additional funds – despite disallowing any withdrawals. For example, de Rocha stated on CFT’s telegram channel on February 3, 2023, that the Companies would soon close out new investments and that “if interested, get in now.” CFT represented that “nobody new will be able to use the software, only if one of you wants to give your software license to someone else.” CFT accordingly represented that its “software license”—which CFT claimed entitled the individual to its high returns—was transferrable.

87. By the end of February 2023, Defendants told Plaintiffs that no withdrawals would be made. Defendants blamed the inability to process any withdrawals on new

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KYC/AML requirements that FxWinning's liquidity provider had purportedly instituted. Defendants did not provide a timeline when the KYC/AML process would be complete.

88. CFT sold the KYC process as a positive and represented an increase in regulatory oversight and would also increase profits: "After all the Kyc process and regulation that the brokerage is now doing with the bodies, it will be easier because we will have access to Asian and other liquidity providers that the brokerage did not have before." CFT further stated that things would "get A LOT better in the coming months" and for everyone to "Just wait and watch." Included here is a true and correct copy of CFT's Telegram channel dated February 19, 2023 (with highlights added):



89. By or around late March and early April 2023, Plaintiffs had submitted all requested information to comply with Defendants' purported updated KYC/AML procedures.

90. The information that Plaintiffs submitted to CFT and FxWinning included documentation further showing the Plaintiffs' U.S. residencies.

91. In April 2023, FxWinning advised Plaintiffs that the time to process withdrawals would depend on the KYC/AML process.

92. On April 16, 2023, FxWinning posted the following on its website:

The KYC process continues to evolve, and many clients have already been approved through emails. For those who were approved and had pending withdrawals, we are happy to inform you that the withdrawals have been processed and your accounts are properly normalized. . . .

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Our goal is to normalize all withdrawals as soon as possible, ensuring security and compliance with applicable regulations. We value your trust in our platform and strive to offer the highest level of service and professionalism.

93. By or around late May and early June 2023, FxWinning informed Plaintiffs by email that their applications/updated information were “successfully completed” and that FxWinning would process Plaintiffs’ withdrawals within “15 working days”:

Dear customer,

We are pleased to inform that your KC and AML process has been successfully completed. Your account is now able to withdraw normally.

This process was necessary due to instruction from our liquidity provider to implement advanced KYC and AML procedures to all existing clients. This ensures compliance with legal and regulatory standards to prevent money laundering, thus guaranteeing the security and stability of our platform.

Remember that in case you have any pending withdrawal you will be able to have this money in your wallet in 15 working days, once it is processed we will send you the confirmation via email.

94. Despite representing by June 2023 that Plaintiffs’ withdrawals would be processed within fifteen days, Defendants have yet to release any of Plaintiffs’ funds.

95. On June 12, 2023, FxWinning posted to its website that “We expect withdrawal payments to become effective immediately, having received the green light to start this process.”

96. On June 17, 2023, Plaintiff Campbell messaged Brito Cutie stating that he had “put in a withdrawal request on Monday and haven’t gotten the confirmation email. No response from support either.” Brito Cutie informed Campbell on June 20, 2023, that FxWinning would have to close the company, but nevertheless reassured Campbell that the “client portal will remain, so everyone can see all,” withdrawals would happen soon, and “Nothing [is] lost as people believe.”

97. Despite FxWinning’s and Brito Cutie’s representations that the withdrawals would be forthcoming, FxWinning posted the following on its website on June 20, 2023:

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Important Notice: FxWinning Limited regrets to inform you that due to unforeseen circumstances, our services will cease on **Thursday, 22.06.2023**. Please close all open trades before **Wednesday 21.06.2023 13:00 GMT+3** to avoid possible problems. Kindly withdraw your remaining funds promptly, and our team will assist you in the process. Withdrawals will be available until Friday 30.06.2023. We apologize for any inconvenience caused and appreciate your understanding during this challenging time. (Emphasis in original.)

98. FxWinning has, to date, failed to release any of Plaintiffs' funds or process their withdrawals, despite numerous requests to do so, and any "normalizing" or "approval" that FxWinning and Brito Cutie stated would occur did not result in any withdrawals being processed.

99. Contrary to FxWinning's representations that it would segregate accounts and provide the "highest standards of security and trust for clients funds," none of FxWinning representations (or CFT's representations about FxWinning) were true when made.

100. Upon information and belief, whereas Defendants prevented any withdrawals by Plaintiffs, Defendants (including de Rocha, Percy, Cardenas, Merino, and Brito Cutie) withdrew millions of dollars for their own personal benefit.

101. Upon information and belief, the Individual Defendants received substantial commissions and profits (totaling millions of dollars) from each Plaintiff that signed up and invested with the Companies (commissions and profits which were, upon information and belief, based on the amount of money that Plaintiffs invested).

102. At present, the total value of Plaintiffs' accounts is approximately \$27,311,827.00 :

- a. Kristoffer Jon Hind has an account value of at least \$444,367.59.
- b. Jason Thomas Waiton has an account value of at least \$701,392.67.
- c. Christopher Campbell has account values of at least \$10,847,597.00.
- d. Paul Douglas Stoeppelwerth has an account value of at least \$448,783.71.
- e. Lucas Longmire has an account value of at least \$9,359,107.30.

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- f. Thomas Blair Phillips has an account value of at least \$1,795,595.32.
- g. Tyler Jenkins has an account value of at least \$520,533.89.
- h. Jorden David Neil Malcolm has an account value of at least \$279,266.10.
- i. Robert Taylor Yates has an account value of at least \$231,043.10.
- j. Rafeal Reyes Salmeron has an account value of \$1,431,730.68.
- k. Ryan Anthony Floyd has an account value of \$100,000.00.
- l. Matt Scott Vogel has an account value of \$128,465.00.
- m. Mark Alan Bentley has an account value of \$124,126.64.
- n. Peter Shane Donahue has an account value of \$121,495.32.
- o. Agata Agnieszka Powers has an account value of \$127,460.00.
- p. Ayva Lindsey Waiton has an account value of \$209,977.28.
- q. Timothy Michael Morgan has an account value of \$95,496.09.
- r. Tarsis Carvalho Humphreys has an account value of \$79,712.11.
- s. Zachary Michael Sellers has an account value of \$112,126.25.
- t. Brandon Michael Harrold has an account value of \$153,550.89.

103. Upon information and belief, the Defendants have known (or should have known) since the beginning of the creation of the Companies that the Companies were nothing more than a fraudulent scheme to induce potential transfers of money to CFT and FxWinning, no high rate of return would be possible, and that Plaintiffs would never receive a full withdrawal from their accounts as they were promised. Most egregiously:

- a. CFT represented that FxWinning was regulated under one of the most difficult to obtain Forex regulations in the world. This statement was either knowingly false or should have been known to have been false because, upon information and belief, FxWinning was not regulated under one of the most difficult to obtain Forex regulations in the world. This fact was also easily verifiable

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through due diligence by CFT and its executives as account managers to the investors and as partners to FxWinning.

- b. CFT represented that it had conducted and been provided a KPMG audit report stating that all trades had been reviewed. This statement was either knowingly false or should have been known to have been false because, upon information and belief, the audit report was fake and/or no trades had occurred. This fact was also easily verifiable through due diligence by CFT and its executives as account managers to the investors and as partners to FxWinning.
- c. FxWinning represented that it had purchased Client Money Insurance (CMI) on behalf of its clients and was a member of a network of responsible global financial service providers offering additional layers of security. This statement was either knowingly false or should have been known to have been false because, upon information and belief, FxWinning did not purchase CMI, nor was FxWinning a member of a network of responsible global financial service providers offering additional layers of security. This fact was also easily verifiable to CFT through due diligence by CFT and its executives as account managers to the investors and as partners to FxWinning.
- d. CFT created a dashboard purporting to show the exponential increase in the value of each investors' account. CFT's dashboard representation was knowingly false or should have been known to have been false because the Companies did not earn such high returns and/or did not make any trades at all. This fact was also easily verifiable to CFT through due diligence by CFT and its executives as account managers to the investors and as partners to FxWinning.

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104. Upon information and belief, Individual Defendants used their ill-gotten gains to purchase real property and cryptocurrency.

105. Upon information and belief, de Rocha, through his shell entity BBRC, purchased real property at 2608 Biarritz Drive in Miami Beach, Florida in or about September 2022 using his ill-gotten gains.

106. Upon information and belief, Merino purchased real property at 725 NE 24th St in Miami, Florida in or about November 2022 for \$4.7 million using his ill-gotten gains. Merino’s assistant has confirmed that Merino knew FxWinning was fraudulent and used ill-gotten gains for his personal benefit.⁸

107. Upon information and belief, Defendants have also withdrawn millions from CFT and/or FxWinning accounts and/or cryptocurrency wallets belonging to CFT and/or FxWinning, despite no other investor withdrawals being permitted.

108. Defendants’ actions have led to worldwide press beyond numerous lawsuits already filed in the United States. For example, an article on Portal do Bitcoin is titled: “FX Winning: Brazilian company is suspected of joining an international pyramid and leaving investors with millionaire losses.” The article notes that “Through his company CFT Solutions, Renan [de Rocha Gomes] Bastos was the main money raiser in Brazil for a global scheme that has not paid customers since February.” A true and correct copy of the article, translated in English using Google Translate, is available at: <https://portaldobitcoin.uol.com.br/fx-winning-empresa-brasileira-e-acusada-de-integrar-piramide-internacional-e-deixar-investidores-com-prejuizo-milionario/>. The article notes that FxWinning was being investigated by the Mexican government as a “possible financial pyramid” scheme and that regulators in Spain, France, and other countries as well “are seeing more and more evidence of fraud in the FX Winning scheme,

⁸ See Exhibit C to Plaintiffs’ Motion for *Ex Parte* Temporary Injunction in *Robles et al. v. FXWinning LTD. et al.*, Case No. 2023-026279-CA-01, filed in the Circuit Court of the Eleventh Judicial Circuit of Florida, In and For Miami-Dade County, Florida.

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and that this strengthens suspicions that the blocking of withdrawals was the result of the collapse of a financial pyramid.” The article further notes that investors were deceived “by Renan’s company” (i.e., CFT) because he claimed his “trading robot” only worked on FX Winning and which supposedly generated average profits of 9% per month. The investors were “told that this profit came **automatically from the high-frequency algorithm supposedly developed by CFT and integrated into FX Winning. All the customer needed to do was deposit cryptocurrencies with the broker and wait for the magic to happen.**” (Emphasis added.) As the article states regarding the coordination between CFT and FxWinning, “The entire CFT Solutions scheme only worked at FX Winning, presented by Renan as the fastest broker on the market.” Finally, the article notes de Rocha’s prior promotions of “Cash Time 1” and “Wish Money,” separate possible financial pyramid schemes that similarly prevented customers from withdrawing their money and establishing a pattern of conduct by de Rocha.

109. A separate article regarding Wish Money noted that its leaders, including de Rocha, knew that Wish Money was a fraudulent pyramid scheme and that de Rocha stated he could simply “clos[e] the company arbitrarily without talking to anyone,” which is “very easy.” A true and correct copy of the article, translated in English using Google Translate, is available at: <https://br.cointelegraph.com/news/audio-reveals-wish-money-knew-about-financial-pyramid-scheme>.

110. A third article, from Brazil, further notes that CFT, de Rocha, and FxWinning defrauded customers “from all over Brazil, Poland and the United States.” The article similarly notes that de Rocha, “formerly of Wish Money, also participated in the possible FXWinning fraud by trapping clients for the company.” A true and correct copy of the article, translated in English using Google Translate, is available at: <https://thenationview.com/cryptocurrency/184771.html>.

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111. All conditions precedent to the maintenance of this action have occurred, been satisfied, or have otherwise been waived.

COUNT I

(Violation of the Securities Act of 1933, 15 U.S.C. § 77e and 77l(a)(1) – against Defendants CFT and FxWinning)

112. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

113. Section 5(a) of the Securities Act states: “Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.” 15 U.S.C. § 77e(a).

114. Section 5(c) of the Securities Act states: “It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security[.]” *Id.* § 77e(c).

115. When the accounts to CFT and FxWinning were first created, they constituted securities.

116. Section 2(1) of the Securities Act and Section 39(a)(10) of the Exchange act define a “security” to include, inter alia, “any investment contract,” which the United States Supreme Court has defined to be: (1) an investment of money; (2) in a common enterprise; (3) with an expectation of profits derived from the efforts of others. *S.E.C. v. W.J. Howey*, 328 U.S. 293, 298-299 (1946).

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- a. **An investment of money.** Plaintiffs invested millions of dollars with CFT and FxWinning based on Defendants' representations of a high-frequency trading system and unique algorithm.
- b. **A common enterprise.** "A common enterprise exists where the fortunes of the investor are interwoven with and dependent on the efforts and success of those seeking the investment or of third parties." *T.J. Eberhardt v. Waters*, 901 F.2d 1578 (11th Cir. 1990). The thrust of the common enterprise test is that the investors have no desire to perform chores necessary for a return and are attracted to the investment solely by the prospects of a return. *S.E.C. v. Unique Fin. Concepts*, 119 F. Supp. 2d 1332 (S.D. Fla. 1998) (rejecting defendants' arguments that the investments offered were currency transactions exempt from regulation where defendants actually offered a fractional interest in a currency trading program (i.e., in an investment contract that involved foreign currency options) and maintained complete control over the purported transactions). CFT and FxWinning did not sell individual foreign currencies to Plaintiffs. Instead, CFT and FxWinning touted their combined platform(s) and software, to which CFT mandated that any account holder for CFT open an account through FxWinning (and in pari passu, that through the FxWinning brokerage account, the investor could access CFT's "High-Frequency Trading System"). CFT received both commissions from FxWinning for investor sign ups as well as a management fee up to 50% from investors for managing their purported accounts on FxWinning. CFT and FxWinning also held several joint marketing events: in Miami at CFT Masterminds, in December in the Bahamas, and on a Yacht with multiple Plaintiffs. Throughout the entire scheme, CFT pushed Plaintiffs to continuously invest more and more in their CFT/FxWinning

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accounts while touting the success of CFT's and FxWinning's trading platform in-person and on its Telegram channel, among other forums. In short, investors' fortunes in Defendants' trading platform(s) were intrinsically tied together with both CFT and FxWinning and reliant on CFT and FxWinning's platform(s) and unique HFT algorithm and purported account management, without any efforts by Plaintiffs beyond their initial investment of money and account creation.

c. **Expectation of profits derived from the efforts of others.** Defendants touted the platform(s) as offering extremely high returns that would make their investors rich. CFT's Telegram channel also stated that the "software licenses" that enabled account holders to achieve such high returns were transferrable, thus suggesting they could be sold and that, indeed, what CFT and FxWinning offered were not foreign currencies in-and-of themselves, but the platform(s) and software. And Plaintiffs' expectation of profit was entirely dependent on CFT and FxWinning's platform(s) and the efforts of their executives and officers.

117. Defendants promoted, solicited, or sold the accounts, i.e., the investments in Defendants' platform(s) and software, to Plaintiffs. But no registration statements have been filed with the SEC or have been in effect with respect to Defendants' platform(s) and software.

118. Section 12(a)(1) of the Securities Act provides in relevant part: "Any person who offers or sells a security in violation of Section 77e of this title . . . shall be liable . . . to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security." 15 U.S.C. § 77l(a)(1).

119. Defendants have violated Sections 5(a), 5(c), and 12(a)(1) of the Securities Act.

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120. Plaintiffs seek rescissory damages with respect to their accounts.

COUNT II

**(Violation of the Securities Exchange Act of 1934 and Rule 10b-5, 15 U.S.C. § 78j(b) and
17 C.F.R. § 240.10b-5 – against Defendants CFT, FxWinning, de Rocha, Cardenas, and
Brito Cutie)**

121. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

122. This claim is brought under § 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5, against all Defendants.

123. The Defendants: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact; and (c) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon Plaintiffs in violation of § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

124. As set forth above, Defendants, individually and in concert, directly and indirectly, represented to Plaintiffs that their investment funds were held in accounts that would be used by the Companies' platform(s) and software for forex trading and that investors could withdraw funds from the accounts at any time upon request.

125. Defendants' representations were material to Plaintiffs and induced Plaintiffs to invest their funds in Defendants' schemes and artifices.

126. Defendants' representations were made in connection with the purchase of securities, as detailed above.

127. But Defendants knew that they in fact did not intend to honor the terms of Plaintiffs' investments and that the statements that Defendants made to solicit Plaintiffs' funds regarding the platform(s) and software were materially false and misleading.

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128. Had Plaintiffs known that Defendants' representations regarding the platform(s) and software were false and misleading, Plaintiffs would not have invested with the Companies.

129. As a result of Defendants' wrongful conduct, as alleged herein, Plaintiffs have suffered economic damages in an amount to be established at trial.

130. Defendants are jointly and severally liable to Plaintiffs for substantial damages that Plaintiffs have suffered in connection with their CFT and FxWinning accounts.

COUNT III

(Violation of the Commodities Exchange Act, Sections 6 and 25, 7 U.S.C. §§ 6b, 6e, 6o, and 25 – against Defendants CFT, FxWinning, de Rocha, Cardenas, and Brito Cutie)

131. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

132. To the extent Defendants actually purchased and sold foreign currencies on Plaintiffs' behalf and did not sell a security, Defendants violated the Commodities Exchange Act by selling such commodities.

133. Foreign exchange trading is subject to the Commodities Exchange Act. *See, e.g., Commodity Futures Trading Comm'n v. Nawabi*, No. 22-cv-00717 KJM JD (E.D. Cal. Apr. 28, 2022) (concluding that the Commission had made a *prima facie* showing that defendant committed violations of Sections 6b, 6k, 6m, and 6o by operating “a fraudulent scheme in which Defendants solicited, accepted, and misappropriated funds for a pooled investment in off-exchange leveraged or margined retail foreign currency exchange (‘forex’) contracts” and “knowingly made fraudulent and material misrepresentations and omissions, in both conversations and written communications, about their forex trading and returns to persuade potential and existing pool participants (‘Pool Participants’) to transfer funds to Defendants for the purpose of participating in a forex pool”); *U.S. Commodity Futures Trading Comm'n v. Wright*, No. 17 CV 4722-LTS-DCF (S.D.N.Y. Dec. 7, 2018) (concluding that

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defendants violated the Commodity Exchange Act by engaging in fraudulent forex transactions).

134. Commodity Exchange Act Section 6b makes it unlawful for any person, in or in connection with the making of any contract of sale of any commodity to cheat or defraud the other person, to willfully make or cause to be made to the other person any false report or statement, or to willfully deceive or attempt to deceive another person by any means whatsoever in regard to the contract.

135. Commodity Exchange Act Section 6e prohibits dealings by unregistered floor traders or brokers in executing purchases and sales of any commodity.

136. Commodity Exchange Act Section 6o makes it unlawful for a commodity trading advisor, pool operator, or associated person to, by use of the mails or other means or instrumentality of interstate commerce, employ any device, scheme, or artifice to defraud any client or participant, or engage in any transaction, practice, or course of business which operates as a fraud or deceit.

137. Commodity Exchange Act Section 25 provides that a private right of action to any person who received trading advice from a violator for a fee, made through such person any contract of sale of any commodity or swap, who deposited with or paid to such person money, securities, or other property in connection with any order to make such contract or any swap, who purchased from or sold to such person or placed through such person an order for purchase or sale of an interest or participation in a commodity pool or a swap, or who used manipulative devices or contrivances in connection with the swap or contract of sale of a commodity.

138. As described above, Defendants each made false statements, used a false scheme, and/or intended to and thereafter did cheat Plaintiffs in connection with contracts for

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the sale of a commodity or a commodity pool, in violation of Sections 6b, 6e, and 6o of the Commodity Exchange Act.

139. As a result of Defendants wrongful conduct, as alleged herein, Plaintiffs have suffered economic damages in an amount to be established at trial, but at least \$27,000,000.00.

COUNT IV

(Violation of the Florida Securities and Investor Protection Act, Sections 517.301 and 517.211 – against Defendants CFT, FxWinning, de Rocha, Cardenas, and Brito Cutie)

140. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

141. The investments made by Plaintiffs were “securities” as defined by the Florida Securities and Investor Protection Act, Section 517.301, Florida Statutes, *et seq.* (the “Florida Act”).

142. Section 517.301 makes it unlawful for a person, in connection with the offer, sale, or purchase of any investment or security, directly or indirectly:

- a. To employ any device, scheme, or artifice to defraud;
- b. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading; or
- c. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

143. As alleged, Defendants violated the Florida Act by, among other things: (i) employing a device, scheme or artifice to defraud; (ii) making untrue statements of material facts and omitting to state material facts that would render the statements misleading in light of the circumstances under which they are made; (iii) engaging in an act, practice, or course of business which operates or would operate as a fraud or deceit upon a person; and (iv) knowingly

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and willfully falsifying, concealing, or covering up, by any trick, scheme, or device, a material fact, making any false, fictitious, or fraudulent statement or representation, or making or using any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

144. The Florida Act provides for civil liability for these violations:

Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

Section 517.211.

145. Plaintiffs are each “person[s] … purchasing the security” from Defendants, and each Defendant constitutes either a person selling the security, or a director, officer or agent of the seller who personally participated or aided in making the sale.

146. Defendants have directly sold securities to Plaintiffs or have aided in making the sale of securities as a director, officer, partner, or agent of the seller for such securities.

147. Pursuant to the Florida Act, the Defendants are jointly and severally liable to Plaintiffs as sellers of the securities.

148. Plaintiffs have been, and continue to be, directly and indirectly injured and damaged, as a result of Defendants’ schemes, acts, practices, and courses of business which operated to deceive Plaintiffs relative to the investments in question, pursuant to the securities laws of the State of Florida, and have suffered financial losses in an amount to be proven at trial.

COUNT V
(Breach of Contract – against FxWinning)

149. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

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150. Upon information and belief, Plaintiffs and FxWinning entered into an agreement governing the Plaintiffs' investments in their accounts with FxWinning. The terms of the investment agreement are reflected in FxWinning's terms and conditions, which include the customer agreement.

151. FxWinning's terms and conditions constitute a valid contract between Plaintiffs and FxWinning.

152. Pursuant to the investment agreement (as reflected by the terms and conditions), Plaintiffs agreed to invest money in FxWinning accounts subject to a right to withdraw all available funds from the accounts upon request. Upon information and belief, FxWinning agreed to manage Plaintiffs' accounts in return for collecting a commission from the accounts.

153. FxWinning has committed material breaches of the terms and conditions by, among other actions, prohibiting withdrawal of Plaintiffs' funds despite multiple requests.

154. As a direct result of FxWinning's breaches of the investment agreement (as reflected by the terms and conditions), Plaintiffs have suffered, and continue to suffer, damages in excess of \$27 million.

COUNT VI
(Breach of Fiduciary Duty – against all Defendants)

155. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

156. As alleged herein, Plaintiffs entrusted Defendants (the Companies as well as the Individual Defendants) with millions of dollars of Plaintiffs' funds.

157. As holders and overseers of Plaintiffs' funds, Defendants owed fiduciary duties to Plaintiffs including, without limitation, duties of good faith and care with regard to Plaintiffs' funds.

158. By virtue of the conduct and acts described herein, Defendants have breached their fiduciary duties to Plaintiffs.

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159. As a result of Defendants' conduct and actions as described herein, Plaintiffs have been damaged in an amount to be proven at trial, but at least \$27,000,000.00.

160. Defendants' actions were willful and in reckless disregard of Plaintiffs' rights and interests, entitling Plaintiffs to punitive damages in an amount to be proven at trial.

COUNT VII

(Fraud in the Inducement – against Defendants CFT, FxWinning, de Rocha, Cardenas, and Brito Cutie)

161. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

162. As alleged herein, Defendants represented to Plaintiffs, among other things, that CFT and FxWinning were partners, that investing money with FxWinning was the exclusive means by which to gain access to CFT's trading platform, that CFT and FxWinning were operating successful companies, that Defendants would use investment funds to engage in forex trading, and that investors could withdraw the funds invested in the Companies upon request.

163. Defendants' representations were false and intended to deceive and mislead Plaintiffs as to the terms of the investment opportunity.

164. Defendants (including de Rocha, Brito Cutie, and Cardenas), acting personally and as agents and executives of, and in concert with, CFT and FxWinning, fraudulently induced Plaintiffs to transfer funds to the Companies.

165. As alleged herein, the Companies have failed to honor their own terms and have improperly withheld more than \$27 million of Plaintiffs' funds.

166. As alleged herein, Defendants knew the Companies were operating under common ownership, in concert, and were set up to defraud investors.

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167. Plaintiffs reasonably and justifiably relied on Defendants' representations and, as a direct result of Defendants' representations, invested millions of dollars in their CFT/FxWinning accounts.

168. Defendants received substantial economic benefit from Plaintiffs' investments.

169. Upon information and belief, Defendants' actions were willful, malicious, and wanton.

170. As a result of Defendants' willful, malicious, and wanton conduct, Plaintiffs are entitled to a damages award of over \$27,000,000.00, together with punitive damages, costs, and interest, against all Defendants.

COUNT VIII

(Negligent Misrepresentations – against Defendants CFT, FxWinning, de Rocha, Cardenas, and Brito Cutie)

171. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

172. Defendants provided false information to Plaintiffs regarding the Companies' trading platform and services.

173. Defendants had a duty to disclose truthful information to Plaintiffs about the Companies' trading platform and services, including historically accurate rates of return and forex trading mechanisms.

174. Defendants intended for Plaintiffs to rely on the information or knew that Plaintiffs would reasonably rely on Defendants' representations.

175. Defendants failed to exercise reasonable care in obtaining or communicating the information that was provided to Plaintiffs regarding the Companies' trading platform and services, including historically accurate rates of return and forex trading mechanisms.

176. Plaintiffs justifiably relied on Defendants' incorrect information and representations.

177. Plaintiffs have suffered damages in an amount to be determined at trial, but at least \$27,000,000.00, as a direct result of Defendants' incorrect information and representations.

COUNT IX
(Conversion – against all Defendants)

178. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

179. Defendants accepted millions of dollars from Plaintiffs as a result of representations including the promise that Plaintiffs would have the ability to withdraw their funds upon request, at any time.

180. To the contrary, Defendants have prevented the withdrawal of Plaintiffs' funds since January 2023.

181. As of the date of this complaint, Plaintiffs' funds in their CFT/FxWinning accounts total more than \$27 million. Plaintiffs' accounts are identified by the last three digits, above.

182. Plaintiffs are the rightful owners of the funds in their accounts.

183. Inconsistent with Plaintiffs' ownership rights, Defendants' refusal to permit Plaintiffs to withdraw funds from their accounts has deprived Plaintiffs of their funds permanently or for an indefinite time.

184. The actions of Defendants constitute an unlawful conversion of Plaintiffs' interest in the funds.

185. As a result, Defendants have wrongfully converted \$27 million of Plaintiffs' funds.

186. Plaintiffs are entitled to an award for their damages, plus costs and interest.

COUNT X
(Unjust Enrichment – against all Defendants)

187. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

188. The Defendants will be unjustly enriched if they are allowed to retain Plaintiffs' funds.

189. As set forth above, Plaintiffs transferred funds to the Companies through their accounts.

190. Defendants received the funds, and upon information and belief Individual Defendants also obtained commissions and other financial benefits from the deposit of Plaintiffs' funds including CFT's receipt of account managements fees.

191. Defendants have failed to release Plaintiffs' funds despite numerous requests in accordance with Plaintiffs' ownership rights in their funds, and their right to demand withdrawal at any time upon request.

192. It would be inequitable and unjust for Defendants to retain the benefit of the funds (and any commissions or other ill-gotten gains) under the circumstances.

193. Plaintiffs have been and will continue to suffer damages, in an amount no less than \$27,000,000.00, as a result of Defendants' actions.

194. Plaintiffs are entitled to restitution from Defendants, plus costs and interest.

COUNT XI
(Civil Conspiracy – against all Defendants)

195. Plaintiffs reallege and incorporate Paragraphs 1 through 111 as if fully set forth herein.

196. As set forth above, CFT, FxWinning, and the Individual Defendants acted with a common purpose to defraud potential investors.

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197. Defendants' actions (including the representations discussed above) were done in furtherance of Defendants' common purpose.

198. Defendants established the Companies, and induced investors with promises of a proprietary algorithm, high returns, and secure and segregated accounts, with a common purpose to defraud Plaintiffs and divest Plaintiffs of millions of dollars. To wit:

- a. Defendants CFT and FxWinning represented repeatedly that they had a platform and software that could effectuate forex trading earning high returns for Plaintiffs. But upon information and belief, no such platform or software existed, no trading occurred, and instead CFT and FxWinning stole Plaintiffs' money.
- b. Defendant David Merino created the "software" and helped found FxWinning, helping to launch the conspiracy to defraud Plaintiffs. Upon information and belief, no "software" was ever created, though Merino was one of the architects of the visual products and website that FxWinning demonstrated and made available to Plaintiffs in order to convince them to invest.
- c. Defendant Renan de Rocha Gomes Bastos founded CFT, oversaw CFT's operations as its CEO, was a primary salesperson for both CFT and FxWinning's platform, hosted Zoom sessions touting both CFT and FxWinning's success, and hosted Plaintiffs on a yacht and in the Bahamas at which he pushed Plaintiffs to increase their investments.
- d. Defendant Arthur Percy was CFT's COO and similarly oversaw CFT's operations and finances, including, upon information and belief, the management fees that CFT earned and commissions its executives and representatives received, including for himself.

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e. Defendant Rafael Brito Cutie was FxWinning's co-owner and CEO. In addition to creating and helping to found FxWinning and overseeing its daily operations, upon information and belief, Brito Cutie oversaw the purported updated KYC/AML procedures and falsely represented for several months that investors' funds were not lost and would be returned once the KYC/AML processes were complete. Upon information and belief, Brito Cutie's representations were designed to buy Defendants time to siphon Plaintiffs' money and distribute it through various means (including the blockchain) to the Individual Defendants.

f. Defendant Roman Cardenas was FxWinning's vice president in charge of its U.S. operations in Florida and attended events (including on the Yacht with de Rocha) at which he pushed Plaintiffs to increase their investments and represented the high profits that Defendants' platform and software earned.

199. Upon information and belief, discovery will uncover further acts that each Defendant undertook as part of their shared conspiracy to defraud Plaintiffs.

200. Plaintiffs have suffered more than \$27,000,000.00 in damages as a direct and proximate result of Defendants' conspiracy.

201. Plaintiffs are entitled to an award of compensatory damages in an amount to be proven at trial, but at least \$27,000,000.00, against Defendants, plus costs and interest.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendants as follows:

- A. An award of compensatory damages in an amount to be determined at trial, but no less than \$27,000,000.00.
- B. An order requiring that Plaintiffs' funds be released and returned to Plaintiffs.

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- C. An accounting of all sums received by Defendants (each individually) and any proceeds from the withheld funds.
- D. Disgorgement of any and all ill-gotten gains.
- E. The imposition of a constructive trust of all accounts (of any type, including bank accounts and cryptocurrency wallets) held by Defendants.
- F. An award of punitive damages against Defendants.
- G. An injunction in Plaintiffs' favor enjoining Defendants (and anyone acting in concert with Defendants) from moving, transferring, or otherwise disposing of Plaintiffs' funds.
- H. An award of pre-judgment and post-judgment interest on all amounts.
- I. An award of Plaintiffs' attorneys' fees and costs.
- J. All other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial for all issues so triable.

Respectfully submitted this 1st day of December 2023.

/s/ Mark A. Salky _____
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SERVICE LIST

Kristoffer Jon Hind et al. v. FxWinning Limited et al.
Case No. 1:23-cv-23139-SCOLA/GOODMAN
United States District Court, Southern District of Florida

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