

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CLAUDIA OCORO, ISRAEL ROSALES, §
DIANA ALVARADO HARRIS, §
CYNTHIA WOODS JONES, §
GALE JONES, et al., §

Plaintiffs, §

v. §

ARMANDO MONTELONGO JR., §
REAL ESTATE TRAINING §
INTERNATIONAL, LLC, §
PERFORMANCE ADVANTAGE §
GROUP, INC., LICENSE BRANDING, §
LLC. §

Defendants. §

Case No. 5:16-cv-01278-RCL

[ORAL HEARING REQUESTED]

**DECLARATION OF CHRISTOPHER WIMMER IN SUPPORT OF
PLAINTIFFS' MOTION
FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT**

I, Christopher Wimmer, declare as follows:

1. I am the founding partner of Emergent LLP, lead counsel for plaintiffs in this action. I have personal knowledge of the facts set forth in this declaration. If called upon to do so, I would testify competently to all its contents. I submit this declaration in support of Plaintiffs' Motion for Leave to File a First Amended Complaint.

A. The *Skurkis* Action

2. In late February 2016, Emergent filed an action on behalf of 164 plaintiffs against defendants Armando Montelongo, Jr. ("Montelongo"), Real Estate Training International, LLC ("RETI"), Performance Advantage Group, Inc. ("PAG"), and License Branding, LLC ("LB") (collectively, "Defendants") in the United States District Court for the Northern District of California under the name *Skurkis v. Montelongo*, No. 16-cv-972-KAW.

3. In March 2016, Defendants were served in the *Skurkis* action. That month, Defendants' counsel, Fletcher Alford of Gordon & Rees, called me to discuss defects he saw with the *Skurkis* complaint. Mr. Alford raised the question whether the pleading should have been filed as a class action, and whether there were joinder issues. I told Mr. Alford that I was open to any creative resolution of the numerous claims against Montelongo, and Mr. Alford told me Defendants would meet and confer before instituting any motion practice. That conversation was confirmed in an email that day.

4. In April, without any attempt to meet and confer, Defendants filed a motion to dismiss—not on joinder grounds, but on personal jurisdiction grounds, something they had never raised in our call.

5. The motion to dismiss contended that the complaint failed to plead facts sufficient to establish personal jurisdiction over Defendants in California. The plaintiffs mooted Defendants' motion by amending their complaint to further specify Defendants' California-directed activities, including sales of seminars to 35 of the plaintiffs in that

action, and sales of seminars to 83 other plaintiffs who traveled to California from other states to attend Defendants' "bus tours."

6. In late May 2016, Defendants moved to dismiss the complaint a second time, on identical grounds. The Students opposed.

7. On September 6, 2016, while Defendants' motion was pending, the parties filed a joint case management statement, attached as Exhibit A. In that statement, Defendants contended that at least 58 of the *Skurkis* plaintiffs had signed arbitration agreements, and indicated that the Defendants would move to compel those plaintiffs to arbitration.

8. On September 9, 2016, the court granted Defendants' motion to dismiss for lack of personal jurisdiction, and granted the plaintiffs who lived in or attended events in California, or could otherwise allege their claims arose out of Defendants' contacts with California leave to amend.

9. On September 30, 2016, in light of Defendants' concession that they were subject to general jurisdiction in Texas, all the *Skurkis* plaintiffs voluntarily dismissed their complaint without prejudice so that all their claims could be pursued here, in one venue, rather than occupying two courts' dockets with piecemeal litigation. A copy of that voluntary dismissal is attached as Exhibit B.

B. Defendants' Waiver of Their Right to Insist on Arbitration

10. On December 20, 2016, 138 plaintiffs filed the complaint in this action, pleading civil RICO claims, as well as claims for negligence and negligent misrepresentation.

11. When preparing the complaint in this action, plaintiffs' counsel sought to identify and exclude all plaintiffs in the *Skurkis* action who had signed arbitration agreements—and so avoid an unnecessary motion to compel. Consequently, 42 individuals who were plaintiffs in the *Skurkis* action were not named in the complaint

here. At the same time, 14 new clients who had retained plaintiffs' counsel since the filing of the *Skurkis* action were joined in this action.

12. On March 6, 2017, Defendants brought a motion to dismiss the claims of 36 of the plaintiffs in this action for lack of subject matter jurisdiction and to compel those plaintiffs to arbitrate their claims.

13. The plaintiffs identified in Defendants' motion were included in this action initially because the clients no longer had the purchase agreements containing the arbitration agreements, and so plaintiffs' counsel could not determine that they were bound to arbitrate their disputes. Accordingly, on March 20, 2017, instead of opposing the motion, the plaintiffs identified in Defendants' motion voluntarily dismissed their claims in order to pursue them in arbitration.

14. Meanwhile, on March 8, 2017, Mike and Susan Crabtree, two of Defendants' students who were not named as plaintiffs in this lawsuit, filed a request for dispute resolution services with the AAA, the organization specified in Defendants' purchase agreements with the Crabtrees. One of those purchase agreements is attached as Exhibit C.

15. Consistent with the arbitration provision's language, the Crabtrees elected to proceed under the AAA's Consumer Arbitration Rules ("Consumer Rules"), and paid the \$200 filing fee called for by those Rules. The Crabtree's demand is attached as Exhibit D.

16. On March 22, Defendants filed a response to the Crabtrees' demand, attached as Exhibit E.

17. Between April 7 and June 20, the AAA, Defendants, and the Crabtrees exchanged letters and emails regarding whether the Consumer Rules or the Consumer Arbitration Rules applied to the dispute, what filing fees the parties were required to pay, and whether the Crabtrees were required to split the costs of arbitration evenly, or

whether their costs were instead capped at \$200. Those letters and emails are attached as Exhibits F to M.

C. This Motion to Amend, and Conference of Counsel

18. Plaintiffs now seek to amend their complaint to join the 42 plaintiffs from the *Skurkis* action who did not join this action, because of Defendants' stated intent to enforce the arbitration provision; the 36 plaintiffs who voluntarily dismissed their claims in this action based on Defendants' motion to compel arbitration; and an additional 114 plaintiffs who have not previously asserted their claims in any forum. The proposed amended complaint is attached as Exhibit N.

19. Plaintiffs offered Defendants two opportunities to stipulate to the relief sought by this motion. The first is reflected in the June 30, 2017 letter attached as Exhibit O.

20. Additionally, on September 11, I emailed Defendants' counsel, Jeffrey Cawdrey and Kimberly Howatt, seeking to meet and confer as required by Local Rule CV-7(i). I spoke with Mr. Cawdrey and Ms. Howatt by telephone on September 13, but Defendants refused to stipulate to the proposed amendment on three grounds: (1) The motion was premature, because the court had not yet ruled on Defendants' pending motions to dismiss and for costs; (2) all plaintiffs who previously voluntarily dismissed their claims were barred by res judicata from rejoining this action; and (3) plaintiffs who signed purchase agreements containing the arbitration provision rejected by the AAA were still contractually obligated to arbitrate their respective claims with an alternative arbitration provider.

I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct, and that this declaration was executed on September 22, 2017 in San Francisco, California.



Christopher Wimmer

EXHIBIT A

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13 *Attorneys for Specially Appearing Defendants*

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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 MICHELLE SKURKIS, TRINADH
BYLIPUDI, et al.,

18 Plaintiffs,

19 v.

20 ARMANDO MONTELONGO, JR.; REAL
21 ESTATE TRAINING INTERNATIONAL,
LLC, dba ARMANDO MONTELONGO
22 SEMINARS; PERFORMANCE
ADVANTAGE GROUP, INC.; LICENSE
23 BRANDING, LLC; and entities and
individuals not yet identified,

24 Defendants.

Case No. 4:16-cv-00972-YGR

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER**

Date: September 12, 2016
Time: 2:00 p.m.
Place: Courtroom 1, 4th Floor
1301 Clay Street
Oakland, California
Judge: Hon. Yvonne Gonzales Rogers
Action Filed: February 26, 2016
Trial Date: Not set

1 The 163 student plaintiffs (“the Students”) and specially appearing defendants Armando
2 Montelongo, Jr., Real Estate Training International, LLC dba Armando Montelongo Seminars,
3 Performance Advantage Group, Inc., and License Branding, LLC (together, “Defendants”)¹
4 submit this Joint Case Management Statement & [Proposed] Order pursuant to the Standing Order
5 for All Judges of the Northern District of California dated July 1, 2011 and Civil Local Rule 16-9.

6 **1. Jurisdiction & Service**

7 The complaint was filed on February 26, 2016; an amended complaint was filed on May 2,
8 2016, which is the operative pleading. All parties have been served. This court has subject matter
9 jurisdiction pursuant to 18 U.S.C. § 1964, which gives those injured by RICO violations the right
10 to sue in any United States district court.

11 Plaintiffs contend that this court has jurisdiction over all Defendants and that venue is
12 proper here because 118 of the Students base their claims for more than \$3.1 million in damages
13 (which would be trebled, under RICO) on AMS events they attended in California, or events sold
14 to them while they lived in California.

15 Defendants contend that this Court does not have personal jurisdiction over all or any of
16 Defendants, and that venue is likewise improper, and have moved to dismiss the amended
17 complaint on such bases pursuant to Fed. R. Civ. P. 12(b)(2) and (b)(3). In addition, based upon
18 the facts that, *inter alia*, all Defendants are Texas residents, 16 of the Plaintiffs live in Texas, and
19 Defendants’ books, records, and witnesses are located in Texas, they have proposed that venue
20 should be transferred to the Western District of Texas. Defendants are specially appearing and
21 submit this joint statement without waiving their objections to jurisdiction and venue, and subject
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23
24 ¹ Defendants participate in the submission of this report following the denial of their application to
25 continue the scheduling conference pending a ruling on their motion to dismiss for lack of
26 personal jurisdiction or venue, or alternatively, to transfer to W.D. Tex. (Dkt. Nos. 55, 58), and do
27 so in reliance upon Plaintiffs’ representation that they do not consider Defendants’ participation in
the court-mandated scheduling conference proceedings to be a waiver of their challenges to
jurisdiction or venue (Dkt. No. 57). Defendants maintain that this Court does not have personal
jurisdiction over the Defendants and that venue is improper.

1 to their pending motion to dismiss on these grounds; Plaintiffs have stipulated that no such waiver
2 has occurred by Defendants' submission of this joint statement.

3 In addition, there are at least 58 Plaintiffs over whom Defendants contend this Court does
4 not have subject matter jurisdiction because those plaintiffs entered a written agreement to
5 arbitrate their disputes with one or more of Defendants. Defendants will move to dismiss pursuant
6 to Fed. R. Civ. P. 12(b)(1), or compel these Plaintiffs to arbitration, once the district court forum is
7 established. The Students contend that the arbitration agreements are not enforceable by all
8 Defendants against even the signatory Students, and that more than 100 of them did not sign
9 arbitration agreements at all.

10 **2. Facts**

11 The Students, who live all over the United States, allege that the Defendants collectively
12 operate the Armando Montelongo Seminars ("AMS"), a nationwide real estate education business,
13 and between 2009 and the present used coercive and deceptive sales tactics to market their
14 worthless, dangerous house flipping "system" to the Students, engage in self-dealing transactions
15 with them, and push the Students into the grasp of AMS allies who also preyed upon them. They
16 believe the RICO statute is appropriately used to remedy conduct that violates federal criminal
17 statutes barring interstate transfer of money taken by fraud, inducement of people to travel in
18 interstate commerce for the purpose of defrauding them, and use of the internet to conduct a
19 fraudulent scheme.

20 The Defendants deny and dispute Plaintiffs' allegations, claims, hyperbole, and legal
21 theories, which lack any particularized or plaintiff-specific allegations. Armando Montelongo
22 Seminars ("AMS"), which is the fictitious business name for only one of the Defendants, and the
23 employer of the sole individual defendant, offers unique and valuable goods and services in the
24 real estate industry, which many of Plaintiffs have successfully used, as evidenced in some cases
25 by their own admissions and publications, as have multitudes of other, satisfied AMS students.
26 Plaintiffs' two RICO counts are unfounded for lack of an enterprise, racketeering activity (based
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1 on any of the alleged predicate acts), any identifiable pattern, causation, resultant injury, or
2 conspiracy. Their RICO theory, in general, is a misplaced use of the statute.

3 **3. Legal Issues**

4 The main disputed points of law at this point in the litigation are:

- 5 • Whether the Defendants are subject to personal jurisdiction in this state or district
6 (*see* Dkt. No. 39);
 - 7 • Whether this action is properly venued in this district (*see id.*);
 - 8 • Whether this Court has subject matter jurisdiction over Plaintiffs who signed
9 arbitration agreements;
 - 10 • Whether Plaintiffs have alleged facts sufficient to state their proffered claims under
11 Fed. R. Civ. P. 12(b)(6);
 - 12 • Whether some Students signed enforceable arbitration agreements;
 - 13 • Whether Plaintiffs are improperly joined in this one lawsuit;
 - 14 • Whether all necessary or intended parties have been named, and if not, whether this
15 Court has jurisdiction and venue over those additional parties;
 - 16 • Whether Plaintiffs have standing;
 - 17 • Whether Plaintiffs' claims are barred by the statute of limitations;
 - 18 • Whether AMS is a RICO enterprise;
 - 19 • Whether Defendants have conducted AMS through a pattern of racketeering
20 activity, including wire fraud, interstate transportation of money obtained by fraud,
21 and inducement of persons to travel across state lines for the purpose of defrauding
22 them, or conspired to do so;
 - 23 • Whether Plaintiffs can establish Defendants' intent or their own reliance;
 - 24 • Whether Plaintiffs, or any of them, can establish causation;
 - 25 • Whether Plaintiffs, or any of them, have sustained damages; and,
 - 26 • Whether Plaintiffs failed to mitigate their damages.
- 27

- Defendants are in the process of investigating and reserve the right to assert counterclaims that would raise additional legal issues.

4. Motions

On April 8, 2016, Defendants moved to dismiss the complaint (Dkt. No. 19); the Students amended as of right on April 29 (Dkt. No. 28), and refiled their amended complaint at the clerk’s request on May 2 (Dkt. No. 29).

On May 27, Defendants moved to dismiss the first amended complaint (Dkt. No. 39). That motion is fully briefed and pending.

Whether this action is transferred to the Western District of Texas or tried here, Defendants intend to move to dismiss (for lack of subject matter jurisdiction), or compel to arbitration, the claims of approximately 60 of the Students’ claims based on Defendants’ records identified to date (it is anticipated that discovery and/or Plaintiffs’ proposed addition of new plaintiffs, if granted, will identify additional persons that are subject to an arbitration clause). Defendants also intend to move to dismiss the remaining Students’ claims based on improper joinder because their claims do not arise from the same transaction or occurrence (Fed. R. Civ. P. 20, 21) and based on their failure to allege facts sufficient to state their proffered RICO counts (Fed. R. Civ. P. 12(b)(6)). The Students will oppose the motion to compel arbitration on the grounds noted above. They believe their amended complaint sufficiently alleges a nationwide scheme to defraud through a RICO enterprise, and that claims by 160-plus people who purchased the same handful of seminars are properly joined.

The Defendants believe that Plaintiffs’ proposed addition of more plaintiffs and defendants (which proposed defendants are yet unknown), discussed *infra*, if granted, may give rise to additional Rule 12(b) grounds for dismissal or arbitration, and thus Defendants may file such motions, accordingly. The Students do not think that adding other individuals who purchased the same set of seminar products would give rise to any additional defenses or motion practice.

Defendants will seek this Court’s permission to bring two separate Rule 56 motions: the first at the outset of the case to dismiss the Plaintiffs’ claims that are barred by the statute of

1 limitations issues, and the second at the close of discovery to challenge Plaintiffs’ anticipated lack
2 of evidence to establish all elements of their asserted claims. The Students believe the documents
3 and testimony necessary to resolve Defendants’ proposed limitations motion would overlap with
4 their proposed merits motion, and so that there should be only a single dispositive motion deadline
5 for both sides at the end of discovery.

6 Unless otherwise addressed by stipulation or in this Court’s scheduling order, Defendants
7 will bring a motion for permission to take greater than the 10 depositions allotted under Fed. R.
8 Civ. P. 30. The Students believe that the parties can work together to limit the number of
9 depositions required, but agree that more than 10 may be necessary.

10 The parties will seek to enter into a mutually agreeable stipulation governing confidential,
11 competitive, and sensitive matter, belonging to the parties as well as third parties, in this matter,
12 which stipulation will be submitted to the forum court with the request that it be entered as an
13 order of that court. If the parties are unable to reach agreement on terms of a stipulated protective
14 order, Defendants will bring a motion for a protective order before the forum court, once
15 established.

16 **5. Amendment of Pleadings**

17 Plaintiffs’ position: After the motion to dismiss is decided, the Students will move to
18 amend their complaint to add the additional plaintiffs who have retained Emergent, PC as counsel
19 since the filing of the original complaint. Based on Defendants’ apparent use of numerous
20 corporate entities to conduct their business, the Students expect they will need to name additional
21 entities, and potentially additional individuals, as defendants. They are not aware of any potential
22 counterclaims the Defendants could assert against the Students who took their courses. The
23 Students propose an amendment deadline of February 10, 2017.

24 Defendants’ position: Defendants are in the process of investigating and anticipate filing
25 counterclaims against some of the Plaintiffs, and may include as counterdefendants additional
26 parties not yet named. The filing deadline for the counterclaims will not be ripe until after rulings
27 on the Rule 12(b) motions outlined above; that said, Plaintiffs’ proposed additional of more

1 plaintiffs *and* defendants may give rise to additional Rule 12(b) motions (the nature of which will
2 not be clear until Plaintiffs’ name their referenced new parties). Moreover, the conduct of
3 discovery may lead to the identification of additional potential counterdefendants. Therefore,
4 Defendants assert that it is premature to set any such deadline; in the instance that this Court elects
5 to set dates, an amendment deadline should either be triggered upon the answer/counterclaims
6 filing deadline, or in accord with Defendants’ proposed schedule in Section 17, below, i.e.,
7 October 31, 2017.

8 **6. Evidence Preservation**

9 The parties certify that they have reviewed the Guidelines Relating to the Discovery of
10 Electronically Stored Information (“ESI Guidelines”), and confirm that they have had initial
11 discussions regarding reasonable and proportionate steps taken to preserve evidence relevant to the
12 issues reasonably evident in this action and will continue to engage in same.

13 **7. Disclosures**

14 As of the date of this report, Rule 26(a) disclosures have not been served. The parties
15 propose that the Rule 26(a) disclosures be due on September 19, 2016, one week after the
16 scheduling conference, pending this Court’s evaluation of the ripeness of the disclosures at that
17 time.

18 **8. Discovery**

19 A. Scope of Discovery

20 No discovery has been taken to date. The Students intend to serve discovery requests on
21 the Defendants for documents, information, and testimony about:

- 22 • The relationships among Defendants’ corporate entities;
- 23 • The other names under which Defendants sell real estate education;
- 24 • The origin and development of the AMS seminars and other products;
- 25 • The marketing of AMS seminars and other products;
- 26 • The delivery of AMS seminars and other products;
- 27 • Revenues received from the Students’ purchase of AMS seminars and products;

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- Defendants’ sales of real estate to the Students;
- Defendants’ vetting and referral of the Students to mentors, contractors, realtors, developers, self-directed IRA providers, property managers, and lenders.

The Defendants intend to serve discovery requests on each and all of Plaintiffs seeking documents, information, admissions, and testimony on the following topics, but not limited thereto:

- When and where each Plaintiff attended any AMS events, each Plaintiff’s participation and assignment to a team/bus at such event(s), each Plaintiff’s communications with both AMS-personnel and non-AMS personnel/fellow students at such event(s), and the purchase agreements, contracts, disclosures, and other documentation signed by or provided to each Plaintiff related thereto
- Any investment, flipping, and/or cashflow property experiences/efforts of each Plaintiff prior to attending his or her respective AMS Events
- Any investment, flipping, and/or cashflow property experience, efforts, and education of each Plaintiff after attending AMS Event
- Any other seminar programs, whether real estate education or otherwise, in which each Plaintiff was involved or made purchases
- Each Plaintiff’s use and application of information obtained through AMS products and services
- Each Plaintiff’s communications with any of Defendants
- Each Plaintiff’s financial (retirement account, income, business transaction, credit, etc.), medical, and psychological records, in accord with their respective damages claims
- Each Plaintiff’s educational, employment, and business background
- Each Plaintiff’s method of learning about AMS and/or its products and services

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- Each Plaintiff’s social media accounts, social media postings, and social media access relative to his or her involvement in the real estate industry, AMS, and/or other real estate education or seminar programs (including competitors of AMS)
- Plaintiffs’ communications regarding AMS, regarding their real estate, business, or seminar experiences, and with each other or other AMS students
- Solicitation of Plaintiffs for this lawsuit (to the extent non-privileged), and representations and admissions made during same

Defendants also intend to conduct third party discovery, including relative to the Plaintiffs’ designated partners in their AMS purchases/events and AMS students supportive of its products/services, and issue Rule 35 demands for mental/physical examinations, as appropriate.

B. Discovery Plans, Anticipated Motions, and Potential Disputes

Plaintiffs’ position: The Students believe that the merits of this case turn primarily on Defendants’ development, marketing, and operation of their seminars, not any individual conduct by the Students. They also recognize, however, that certain elemental facts about their claims should be established to provide Defendants with a fair opportunity to defend the claims.

Consequently, they propose to phase discovery as follows:

- Between September 12, 2016 and February 17, 2017, the Students will serve and work with Defendants on their responses to document requests, interrogatories, and Defendant and third-party depositions.
- By December 9, 2016 the Students:
 - Will produce a claims chart identifying (a) the AMS events each current plaintiff attended and products they purchased by type, month and year, city and state, amount paid, and parties to which payment was made, (b) all other damages claimed, including the particular properties, accounts, and individuals involved. Each Student shall verify the accuracy of their entries as though they were made under Rule 33.

- 1 ○ Will produce documents (or, if documents are missing, a sworn declaration)
2 sufficient to show each Student’s purchase of AMS seminars or events, and
3 any other items of damages in excess of \$100.
- 4 ○ For any plaintiff added after this date, the Students will produce the
5 information and documents above within 14 days of any order or stipulation
6 naming them as plaintiffs.
- 7 • Between February 17 and March 31, 2017, the Defendants will take targeted
8 discovery of a limited number of plaintiffs, including document requests,
9 interrogatories, and depositions, with the number and selection of plaintiffs and
10 scope of discovery to be determined by the parties or, if they are unable to agree, by
11 the court.

12 Defendants’ position: Defendants disagree with Plaintiffs’ assessment and believe that
13 each and every Plaintiff must actually define the basis of his or her *individual* claim against *each*
14 of the Defendants at the outset of discovery, and that, once commenced, discovery should proceed
15 in the normal course under the Federal Rules of Civil Procedure. The exception is that Defendants
16 will seek permission to exceed the 10 depositions per side allotted under Rule 30 so that each of
17 Plaintiffs can be deposed. Defendants will not and do not agree to Plaintiffs’ proposed “targeted
18 discovery of a limited number of plaintiffs” as such would be inequitable and deprive Defendants
19 of the right to investigate each Plaintiff’s claim, simply because Plaintiffs elected to join in one
20 single lawsuit; Defendants intend to take discovery as to the claims of each and all Plaintiffs,
21 particularly given the inherently individualized nature of their alleged experiences (pre-, post- and
22 during the AMS events) and damages claims.

23 That said, Defendants object to the conduct of discovery prior to the ruling on their
24 pending objection to jurisdiction and venue in this court, particularly given that the entry of a
25 protective order by the forum court will be required preparatory to much of Defendants’
26 production, and are of the position that all such discovery is premature. Defendants further assert
27 that discovery would be premature and improper prior to Defendants’ motion to compel certain

1 Plaintiffs to arbitration. Accordingly, Defendants propose that discovery be stayed until the Rule
2 12 and improper joinder issues are decided by the forum court.

3 Once the forum court is established, Defendants will move for a general protective order to
4 govern confidential, competitive, and sensitive matter, belonging to the parties as well as third
5 parties, in this matter.

6 The Students propose to adopt the district’s Model Stipulated Order Re: Discovery of
7 Electronically Stored Info. Their counsel has informed them of the obligation to preserve relevant
8 documents, and has already collected much of what will need to be produced in the litigation.

9 **9. Class Actions**

10 This is not a class action.

11 **10. Related Cases**

12 The parties are not aware of any related cases or proceedings pending before another judge
13 of this court, or before another court or administrative body.

14 **11. Relief**

15 Plaintiffs’ position: The Students seek as compensatory damages the money they paid
16 Defendants for their services and products; the interest, penalties, and fees they incur to pay for
17 those seminars and products; the losses they incurred following Defendants’ “system”; the
18 expenses they incurred to travel interstate for Defendants’ seminars; the losses they incurred from
19 Defendants’ self-dealing sale of real estate to them; the losses they incurred from working with
20 mentors, contractors, realtors, developers, self-directed IRA providers, property managers, and
21 lenders recommended by Defendants; and emotional distress damages. Trebled under RICO, and
22 based on their receipts and other records, the Students estimate those damages at more than \$12
23 million. The Students also seek their reasonable attorneys’ fees, costs of suit, and pre- and post-
24 judgment interest.

25 Defendants’ position: Should, *arguendo*, liability be established against one of more of the
26 Defendants, Defendants assert that the RICO statute pleaded (18 U.S.C. §1964) allow for recovery
27 of damages for an individual Plaintiff’s injury to his or her business or property by reason of the

1 alleged predicate act, and the potential for treble damages (threefold) and a “reasonable”
2 attorney’s fee. Defendants further assert that each Plaintiff’s damages claim must be calculated on
3 an individual plaintiff-by-plaintiff basis, and not as a group.

4 In addition, Defendants are in the process of investigating and reserve the right to assert
5 counterclaims that would raise additional claims for relief. Defendants will seek their attorneys’
6 fees and costs upon a favorable judgment, upon the dismissal of each and all Plaintiffs,
7 respectively and/or collectively. .

8 **12. Settlement and ADR**

9 The parties have filed the notice of need for ADR telephone conference and their ADR
10 certifications. The ADR conference was held on August 31, 2016. (Dkt. No. 56.)

11 The parties believe that settlement talks would not be productive until after a court,
12 arbitrator, or the parties resolve the questions of jurisdiction, the forum (or forums) for this
13 dispute, the impropriety of the joinder of all Plaintiffs, and the sufficiency of the RICO
14 allegations. The Defendants also believe the statute of limitations issue needs to be resolved
15 before settlement talks can be had. The Students believe that issue cannot be resolved until the
16 close of discovery, and so should not serve as a barrier to settlement discussions.

17 **13. Consent to Magistrate Judge For All Purposes**

18 Not all parties consent to have a magistrate judge conduct all further proceedings including
19 trial and entry of judgment.

20 **14. Other References**

21 Defendants believe approximately 60 (at least) of the Students’ claims are subject to
22 binding arbitration, and the parties have begun discussing whether and how those Students’ claims
23 (and any other Students’ claims) could be adjudicated in that forum.

24 **15. Narrowing of Issues**

25 The Students believe that issues related to Defendants’ liability to all plaintiffs should be
26 the initial focus of discovery, as discussed in section 8. They do not believe any other issue,
27 claim, or defense should be bifurcated or phased.

1 The Defendants disagree, and believe that Plaintiffs must each identify the basis of their
 2 respective, individual claims at the outset, so that issues of statute of limitations, additional
 3 arbitration claims, and standing can be addressed at the outset. Defendants dispute that questions
 4 or discovery related to their alleged liability should be addressed before this threshold showing is
 5 made by each and all Plaintiffs.

6 **16. Expedited Trial Procedure**

7 The parties do not believe this is the type of case that can be handled under the Expedited
 8 Trial Procedure of General Order 64, Attachment A.

9 **17. Scheduling**

10 The Students propose the following schedule:

11 Complete Initial Disclosures	September 19, 2016
12 Complete ADR Process	February 10, 2017
13 Last Day to Join Parties or Amend Pleadings	February 17, 2017
14 Non-Expert Discovery Cutoff	March 31, 2017
15 Expert Disclosure Opening	April 28, 2017
16 Expert Disclosure Rebuttal	May 12, 2017
17 Expert Discovery Cutoff	June 2, 2017
18 Dispositive and <i>Daubert</i> Motions Heard	August 4, 2017
19 Compliance Hearing	October 6, 2017 at 9:01 a.m.
20 Joint Pretrial Conference Statement	October 13, 2017
21 Pretrial Conference	October 27, 2017 at 9:01 a.m.
22 Trial	November 13, 2017 at 8:30 a.m.

23
 24 Defendants' position: Given the pendency of the current Rule 12(b)(2) and (b)(3) motion,
 25 and the anticipated additional Rule 12(b) motion, motion to compel claims to arbitration, motion
 26 re improper joinder, and Rule 56 motions, and the number of plaintiffs and third party witnesses
 27

1 from which Defendants will seek discovery, Plaintiffs' proposed schedule is wholly unrealistic.

2 Thus, Defendants propose the following schedule:

3 Complete Initial Disclosures	September 19, 2016
4 Complete ADR Process	November 7, 2017
5 Last Day to Join Parties or Amend Pleadings	October 31, 2017
6 Non-Expert Discovery Cutoff	December 27, 2017
7 Expert Disclosure Opening	January 23, 2018
8 Expert Disclosure Rebuttal	February 6, 2018
9 Expert Discovery Cutoff	March 6, 2018
10 Dispositive and <i>Daubert</i> Motions Heard	May 4, 2018
11 Compliance Hearing	July 6, 2018 at 9:01 a.m.
12 Joint Pretrial Conference Statement	July 13, 2018
13 Pretrial Conference	July 27, 2018 at 9:01 a.m.
14 Trial	August 13, 2018 at 8:30 a.m.

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16 **18. Trial**

17 The case will be tried to a jury. The Students estimate the trial will last four weeks. The
18 Defendants estimate 6 weeks.

19 **19. Disclosure of Non-party Interested Entities or Persons**

20 The Students have filed the "Certification of Interested Entities or Persons" required by
21 Civil Local Rule 3-15, which stated that other than the named parties, there are no persons,
22 associations of persons, firms, partnerships, corporations (including parent corporations) or other
23 entities that (i) have a financial interest in the subject matter in controversy or in a party to the
24 proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be
25 substantially affected by the outcome of this proceeding.

26 The Defendants have filed their "Certification of Interested Entities" pursuant to Civil L.R.
27 3-15, reflecting the below-listed persons, associations of persons, firms, partnerships, corporations

1 (including parent corporations) or other entities (i) have a financial interest in the subject matter in
2 controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject
3 matter or in a party that could be substantially affected by the outcome of this proceeding:

- 4 1. Real Estate Training International, LLC (dba Armando Montelongo Seminars), a Delaware
5 Limited Liability Company.
- 6 2. Performance Advantage Group, Inc., a Nevada Corporation and wholly owned subsidiary
7 of Armando Montelongo Companies.
- 8 3. Armando Montelongo Companies, Inc., a privately held Delaware corporation. No
9 publically held corporation owns more than 10% of its stock.
- 10 4. License Branding, LLC, a Delaware Limited Liability Company
- 11 5. Armando Montelongo, Jr..

12 **20. Professional Conduct**

13 All attorneys of record for the parties have reviewed the Guidelines for Professional
14 Conduct for the Northern District of California.

15 **21. Other**

16 The parties are discussing possible approaches to arbitration, but are not seeking any order
17 from the court on these issues. The Students believe that bellwether trials and mediation should
18 also be considered. Defendants do not agree to a “bellwether” approach to the plaintiffs’ claims,
19 and believe that a discussion regarding mediation is premature.

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Dated: September 6, 2016

Respectfully submitted,

EMERGENT, PC

By: 

Christopher Wimmer

Attorneys for the 163 Student Plaintiffs

Dated: September 6, 2016

GORDON & REES LLP

By: /s/ Jeffrey D. Cawdrey
Jeffrey D. Cawdrey

Attorneys for Specially Appearing Defendants

ECF Attestation

I am the person who efiled this document. Pursuant to Local Rule 5-1(i)(3), I attest that concurrence in its filing was obtained from each of the other signatories.

Dated: September 6, 2016

By: 

Christopher Wimmer

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CASE MANAGEMENT ORDER

The above Joint Case Management Statement & Proposed Order is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the court makes the further orders stated below:]

IT IS SO ORDERED

Dated:

HON. YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT B

1 CHRISTOPHER WIMMER (SBN 263275)
PETER ROLDAN (SBN 227067)
2 EMERGENT, PC
535 Mission Street, 14th Floor
3 San Francisco, California 94105
p: 415/894-9284
4 f: 415/276-8929
e: chris@emergent.law
5 e: peter@emergent.law

6 Attorneys for the Student Plaintiffs

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 MICHELLE SKURKIS, TRINADH
BYLIPUDI, et al.,

11 Plaintiffs,

12 v.

13 ARMANDO MONTELONGO; ARMANDO
14 MONTELONGO SEMINARS, LLC;
15 PERFORMANCE ADVANTAGE GROUP,
INC.; and 2015 LICENSE BRANDING, LLC;

16 Defendants.

Case No. 4:16-cv-00972-YGR

NOTICE OF DISMISSAL

Complaint Filed: February 26, 2016
Trial Date: Not set

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Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A), and in light of defendants’ concession that they are subject to general jurisdiction in Texas, the 163 student plaintiffs (“the Students”) provide notice of their dismissal, without prejudice, of this entire action. They will refile their claims in the defendants’ home state.

Dated: September 30, 2016

Respectfully submitted,
EMERGENT, PC



By: _____
Christopher Wimmer

Attorneys for the Student Plaintiffs

EXHIBIT C



PERFORMANCE ADVANTAGE GROUP, INC

Purchase Agreement

ID: BLA

PA #: 001234

Primary Student Information				
First Name	Donna 'Susan'		Last Name	Crabtree
Address	[REDACTED]		Phone # 1	[REDACTED]
City, State, Zip	[REDACTED]		Phone # 2	[REDACTED]
Email	[REDACTED]			
Primary Partner Information				
First Name	Michael David		Last Name	Crabtree
Address	[REDACTED]		Phone # 1	[REDACTED]
City, State, Zip	[REDACTED]		Phone # 2	[REDACTED]
Email	[REDACTED]			
Products and Services				
Three (3) Day Master Mentor Training Eight (8) Real Estate Coaching Sessions One (1) Year Mentoring Hotline Support One (1) Property Acquisition Guarantee (see Terms and Conditions)				Tuition: \$27,500.00
Payment Type	Amount	CC Last 4	Check #	Notes
<input type="radio"/> Check <input type="radio"/> Credit <input type="radio"/> Cash	27,500.00		3107	Hold CHK / Payment w/ cc. Thursday.
<input type="radio"/> Check <input type="radio"/> Credit <input type="radio"/> Cash				
<input type="radio"/> Check <input type="radio"/> Credit <input type="radio"/> Cash				
<input type="radio"/> Check <input type="radio"/> Credit <input type="radio"/> Cash				

Partial Payment. Partial payments are nonrefundable and do not entitle you to attend any event, including without limitation seminars, workshops, training sessions and tours. You may attend an event only upon payment in full.

Fulfillment Policy. It is your obligation to attend any scheduled events you purchase, such as workshops and training sessions. If you do not attend or complete your workshops or training sessions within 30 days of the dates scheduled, Performance Advantage Group, Inc ("PAG") reserves the right to provide you with alternative training materials or services as fulfillment of your purchase. Any alternative training materials are provided for personal use only and do not constitute a license to duplicate such materials.

Electronic Devices and Disruptive Behavior. Use of mobile phones, and use or possession of cameras or any recording device, is strictly prohibited at all events. If a mobile phone is used by, or a camera or recording device is discovered in possession of, a student or a student causes a disturbance, he or she will be asked to leave the event and will not be entitled to a refund.

No Professional Advice or Guarantee. You acknowledge that PAG has not and will not render financial, investment, legal, accounting or other professional services or advice and has not and will not guarantee or warranty, in any respect, the benefits, monetary or otherwise, of its products and services. If you choose to purchase real estate or otherwise invest, it is your sole responsibility to seek independent advice from professionals of your choosing such as real estate agents, brokers, appraisers, title companies, accountants, attorneys and mortgage and stock brokers.

Limitation of Liability. The price of the products and/or services purchased pursuant to this Agreement (the "Tuition") is based upon the provisions of this Agreement that limit the liability of PAG and under which you accept certain risks. In no event shall the aggregate liability of PAG to you arising under this Agreement for all damages, including without limitation any special, consequential, or indirect damages, exceed the Tuition.

Governing Law. Unless prohibited by the laws of the state in which this Agreement is entered, this Agreement shall be interpreted and in all respects governed by the laws of the state of Texas.

Entire Agreement. This Agreement INCLUDING THE TERMS AND CONDITIONS, contains the entire agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations and agreements between you and any authorized representative of PAG, whether written or oral. This Agreement shall not be amended, modified, or altered except by written agreement signed by all the parties hereto.

Congratulations on your order! If you have any questions please contact our Customer Service Department, toll free, at: **(877) 619-6013**

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

Primary Student Signature: <u>Donna Susan Crabtree</u>	Date: <u>10-5-15</u>	Two Notice of Cancellation Forms Received <u>05051-5MBC</u>
Primary Partner Signature: <u>Michael D. Crabtree</u>	Date:	
Company Authorization: <u>[Signature]</u>	Date: <u>10-5-15</u>	

PERFORMANCE ADVANTAGE GROUP, INC
Purchase Agreement Terms and Conditions

Each student may bring one guest as a part of the Tuition ("Primary Partner"). If two students join in an enrollment each is joint and severally liable for the purchase price and Armando Montelongo Seminars, its affiliates, assigns, officers, and employees shall not be responsible or held liable for agreements made between students or other third parties. Primary Partner acknowledges the responsibilities and liabilities by signing on the reverse. If a student should cancel within the 3 day right of rescission whether as a Primary Student or a Primary Partner, Armando Montelongo Seminars reserves the right to fulfill the other partner without canceling this Agreement.

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling our customer service department at (877) 619-6015. In the event that the customer service department is unable to resolve a complaint you may have to your satisfaction, PAG and Primary Student and Primary Partner all agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. Applying the laws of contracts and equity, the parties agree that Any Dispute arising from or out of the formation and fulfillment of this agreement to engage in arbitration (the "Agreement"), will be submitted to an independent arbitrator, so that a resolution may be reached. This Agreement is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of this Agreement.

Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into this Agreement, you and PAG are each waiving the right to a trial by jury or to participate in a class action. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement. A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to PAG should be addressed to, the "Notice Address" at:

Performance Advantage Group, Inc
 Attn: Legal Department
 2935 Thousand Oaks Dr. #6-285
 San Antonio, TX 78247

The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If PAG and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, either party may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by either party shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which either party is entitled.

The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at www.ADR.org, by calling the AAA at 1-800-778-7879. The parties agree that the validity of this arbitration agreement will be solely decided by the arbitrator. Unless the Parties agree otherwise, the location of the arbitration will take place in a neutral location, which is to be determined by the arbitrator. Unless otherwise agreed or provided herein this Agreement, the Parties will split only the costs and fees associated with conducting the arbitration.

The arbitrator shall apply applicable federal and Texas substantive law and the terms of this Agreement. The arbitrator must apply the terms of this arbitration agreement, including without limitation the waiver of class-wide arbitration. The arbitrator shall make written findings and the arbitrator's award may be filed with any court having jurisdiction. The arbitration award shall be supported by substantial evidence and must be consistent with this Agreement and with applicable law, and if it is not, it may be set aside by a court. The Parties agree that any decision delivered by the arbitrator will be forever binding upon the parties.

The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. YOU AND PAG AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and PAG agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Notwithstanding any other portion of this Agreement, if this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

Unless otherwise provided herein, if any term or condition provided herein is found to not be in compliance with the law, as provided by the Federal Arbitration Act or the local state law, which would otherwise govern the Agreement, then that term(s) or condition(s) shall be severed from this Agreement, with the rest of this Agreement remaining intact.

This arbitration provision shall survive: (1) termination or changes to this Agreements, the Account, or the relationship between you and us concerning the Account; (2) the bankruptcy of any party; and (3) any transfer, sale, or assignment of your Account, or any amounts owed on your Account, to any other person or entity.

Property Acquisition Guarantee. If you complete all of your training, including coaching sessions and still have not purchased a property at the end of one year, our highly trained staff will continue to work with you for an additional six months via the telephone or electronic forum at no additional expense to you, conditioned on the fact that you submit proof of offers you have made on properties to your coach via e-mail attachment or fax demonstrating that you have made a minimum of ten offers per month starting from the first coaching session through the last month which you wish to receive coaching.

EXHIBIT D

AMERICAN ARBITRATION ASSOCIATION ONLINE FILING ACKNOWLEDGEMENT

This confirmation serves as the Demand for Arbitration or Request for Mediation for this filing.

To institute proceedings, please send a copy of this form and the parties' dispute resolution agreement to the opposing party.

Case # : 01-17-0001-3486

This will acknowledge receipt of a request for dispute resolution services for the claim and parties detailed below.

This claim has been filed for	Arbitration
This matter has been filed in accordance with	Consumer Arbitration Rules
The fee paid at the time of filing was	\$200.00
This request was received by the AAA on	08-Mar-2017

Claim Description

Mike and Susan Crabtree are two of the nearly 300 former students of Armando Montelongo, Jr. ("Montelongo") who have banded together to pursue claims against Montelongo and his corporate alter egos (together, "Defendants") arising from his nationwide fraudulent "real estate education" scheme.

Montelongo has made hundreds of millions of dollars selling real estate education programs to Americans who long for financial security in uncertain times. But although Montelongo styles himself as the "epitome of the American dream," he is, for his students, a nightmare. Acting through his many corporate shells, Montelongo sells worthless, dangerous, and unlawful advice about real estate investing; takes advantage of the students' trust to loot their retirement accounts; sells them properties at inflated prices without disclosing his stake in them; encourages them to pursue their real estate investments using his allies, who also victimize the students; and harasses those who dare to speak out against him.

Based on representations made by Defendants, including at a Montelongo "free event" in Atlanta, Georgia in June 2015, the Crabtrees paid \$1,497 to attend Montelongo's "three day event" in July 2015 in Atlanta, Georgia; paid \$32,490 to attend Montelongo's "asset protection event" in August 2015 in San Antonio, Texas and "bus tour" in October 2015 in Miami, Florida; and paid \$27,500 to participate in Montelongo's "master mentor" program in November 2015 in San Antonio, Texas. They also incurred approximately \$4,400 in travel expenses to attend those events, and purchased a CD product from Defendants for approximately \$250.

The Crabtrees followed the advice they received in Montelongo's seminars, and found that it was untrue, worthless, and dangerous in a number of ways, including (a) suitable properties that could be purchased, rehabilitated, and resold for a profit were not available as Defendants had represented they would be; (b)

financing was not available as Defendants had represented it would be; (c) Defendants had not told the Crabtrees about the importance of getting an appraisal before purchasing a property. As a result, the Crabtrees lost \$1,000 in earnest money deposits, and have incurred over \$36,000 in expenses on a property that they purchased and are unable to re-sell; the eventual sale of that property may yield yet further losses.

The Crabtrees also were charged \$3,495 without authorization by Seed Capital LLC, to which they were referred by Defendants, for "credit management services" that consisted of taking out credit cards in the Crabtrees' name without their permission; paid \$1,997 to Steve "the Lawyer" Szostek, to whom they were referred by Defendants, for a will and trust that appears illegitimate (Mr. Szostek has refused to respond to the Crabtrees' repeated attempts to contact him); and have suffered severe emotional distress and reputational harm. They seek trebled damages for all amounts they have lost as a result of Defendants' scheme (totaling about \$108,000, about \$325,000 after trebling), general damages for their emotional distress and reputational harm, punitive damages, and their attorneys' fees and costs.

Claim Amount	\$325,000.00	
Do you have a Non-monetary aspect to your claim?	N	
Additional Damages		Amount
Requested Hearing Locale	Atlanta, Georgia, United States of America	
Fee Schedule Option	Standard	
ADR Agreement	The Crabtrees executed at least three agreements with Defendants which may contain an arbitration provision, but only have one of their agreements. The dispute resolution portion of that document is attached.	

Parties and Representatives

Party 1

Category	Consumer
Name	Michael Crabtree
Company Name	None
Address	3229 Clarks Ridge Road Gainesville, GA 30506
Phone	
Fax	
Email	
The Party is the	Individual

Representative 1

Name	Christopher Wimmer
Firm Name	Emergent LLP

Address 535 Mission Street
14th Floor
San Francisco, CA 94105

Phone
Fax
Email chris@emergent.law

Party 2

Category Consumer
Name Susan Crabtree
Company Name
Address 3229 Clarks Ridge Road
Gainesville, GA 30506

Phone
Fax
Email
The Party is the Individual

Representative 2

Name Christopher Wimmer
Firm Name Emergent LLP
Address 535 Mission Street
14th Floor
San Francisco, CA 94105

Phone
Fax
Email chris@emergent.law

Party 3

Category Business
Name Armando Montelongo, Jr.
Company Name
Address 11503 Jones Maltberger Road
San Antonio, TX 78216

Phone
Fax
Email
The Party is the Individual

Representative 3

Name Jeffrey Cawdrey
Firm Name Gordon & Rees
Address 101 W. Broadway
Suite 2000
San Diego, CA 92101

Phone
Fax
Email JCawdrey@gordonrees.com

Party 4

Category Business

Name
Company Name Real Estate Training International, LLC
Address 11503 Jones Maltberger Road
San Antonio, TX 78216
Phone
Fax
Email
The Party is the Company

Representative 4

Name Jeffrey Cawdrey
Firm Name Gordon & Rees
Address 101 W. Broadway
Suite 2000
San Diego, CA 92101
Phone
Fax
Email JCawdrey@gordonrees.com

Party 5

Category Business
Name
Company Name Performance Advantage Group, Inc.
Address 11503 Jones Maltberger Road
San Diego, CA 78216
Phone
Fax
Email
The Party is the Company

Representative 5

Name Jeffrey Cawdrey
Firm Name Gordon & Rees
Address 101 W. Broadway
Suite 2000
San Diego, CA 92101
Phone
Fax
Email JCawdrey@gordonrees.com

Party 6

Category Business
Name
Company Name License Branding, LLC
Address 11503 Jones Maltberger Road
San Antonio, TX 78216
Phone
Fax
Email
The Party is the Company

Representative 6

Name	Jeffrey Cawdrey
Firm Name	Gordon & Rees
Address	101 W. Broadway Suite 2000 San Diego, CA 92101
Phone	
Fax	
Email	JCawdrey@gordonrees.com

EXHIBIT E

1 JEFFREY D. CAWDREY (SBN: 120488)
 jcawdrey@gordonrees.com
 2 KIMBERLY D. HOWATT (SBN: 196921)
 khowatt@gordonrees.com
 3 BRITTANY L. MCCARTHY (SBN: 285947)
 bmccarthy@gordonrees.com
 4 GORDON & REES LLP
 101 W. Broadway Suite 2000
 5 San Diego, CA 92101
 Telephone: (619) 696-6700
 6 Facsimile: (619) 696-7124

7 Attorneys for Respondents ARMANDO MONTELONGO, JR., REAL ESTATE TRAINING
 8 INTERNATIONAL, LLC, PERFORMANCE ADVANTAGE GROUP, INC., and LICENSE
 9 BRANDING, LLC

10 AMERICAN ARBITRATION ASSOCIATION

11 MIKE CRABTREE and SUSAN	)	AAA CASE NO. 01-17-0001-3486
12 CRABTREE,)	
13 Claimants,	)	RESPONDENTS ARMANDO
14 vs.	)	MONTELONGO, JR., REAL
15 ARMANDO MONTELONGO, JR., REAL	)	ESTATE TRAINING
16 ESTATE TRAINING INTERNATIONAL,	)	INTERNATIONAL, LLC,
17 LLC, PERFORMANCE ADVANTAGE	)	PERFORMANCE ADVANTAGE
18 GROUP, INC., and LICENSE BRANDING,	)	GROUP, INC., AND LICENSE
19 LLC,	)	BRANDING, LLC'S OBJECTION
20 Respondents.	)	AND RESPONSE TO CLAIMANTS'
	)	DEMAND FOR ARBITRATION
	)	Date filed: March 8, 2017
	)	Arbitration Hearing Date: None Set

21 Respondents ARMANDO MONTELONGO, JR., REAL ESTATE TRAINING
 22 INTERNATIONAL, LLC, PERFORMANCE ADVANTAGE GROUP, INC., and LICENSE
 23 BRANDING, LLC (collectively "Respondents"), by and through their attorneys of record,
 24 hereby respond to the Demand for Arbitration ("Demand") of Claimants MIKE CRABTREE and
 25 SUSAN CRABTREE (collectively "Claimants") as follows:

26 **GENERAL DENIAL**

27 Respondents generally and specifically deny each, every, and all allegation(s) in
 28 Claimants' Demand, and each and every purported legal cause of action contained or alleged

Gordon & Rees LLP
 101 W. Broadway Suite 2000
 San Diego, CA 92101

1 therein, whether or not specified or delineated, and each and every claim for damages.
2 Respondents further deny that Claimants have sustained or will sustain damages in the amounts
3 alleged, or in any amount whatsoever, by reason of any act, conduct, breach or omission by, on
4 behalf of, or on the part of Respondents, or any of them, and Respondents further deny that
5 Claimants are entitled to any relief whatsoever from Respondents, or any of them.

6 **OBJECTION TO IMPROPER CONSOLIDATION;**

7 **DISMISSAL OF CLAIM REQUIRED**

8 Respondents object to Claimants' attempt to consolidate two claims, which is expressly
9 impermissible under the subject contract(s). The contract(s) at issue expressly preclude(s) the
10 consolidation of more than one person's claims. Therefore, the claim of one of the Claimants
11 must be dismissed. Because Susan Crabtree is the second-named claimant, Respondents propose
12 that her claim is the proper one to be dismissed; however, Respondents are agreeable to the
13 dismissal of the claim of Michael Crabtree instead.

14 **OBJECTION TO RULES INVOKED/NON-PAYMENT OF FULL INITIAL FILING FEE**

15 Respondents object to Claimants' Demand on the basis that their invocation of a certain
16 category of AAA Rules is incomplete and thus incorrect, in that the contract(s) require the
17 application of the Commercial Arbitration Rules and the Supplementary Procedures for
18 Consumer Related Disputes (i.e., the latter now referred to as "Consumer Arbitration Rules"), in
19 that order. The Commercial Arbitration Rules require an initial filing fee of \$4,000 for the claim
20 asserted in the Demand, based upon its alleged value, and therefore the Claimants have not yet
21 paid the full initial filing fee so as to allow this matter to proceed.

22 **OBJECTION TO CLAIMANTS' REQUESTED HEARING LOCATION**

23 Respondents object to Claimants' request to have this matter heard in Atlanta, Georgia,
24 and request instead that it be heard in San Antonio, Texas.

25 Respondents are based in San Antonio, Texas; the contract(s) at issue are governed by the
26 laws of the State of Texas; at least two of the events at issue are alleged to have been venued in
27 San Antonio, Texas; and, the contract(s) at issue require that the arbitration hearing take place in
28 a neutral location, to be determined by the arbitrator, which Atlanta, Georgia is not.

Gordon & Rees LLP
101 W. Broadway Suite 2000
San Diego, CA 92101

1 **AFFIRMATIVE DEFENSES**

2 Respondents assert the following affirmative defenses. These affirmative defenses,
3 except where otherwise indicated, are being asserted as to each and every allegation, claim, and
4 cause of action, in Claimants' Demand.¹ By pleading these affirmative defenses, Respondents
5 do not assume the burden of proving any fact, issue, or element of a cause of action where such
6 burden properly belongs to Claimants. Moreover, nothing stated herein is intended or shall be
7 construed as a concession as to any particular allegation, issue, or subject matter.

8 **FIRST AFFIRMATIVE DEFENSE**

9 Claimants failed to comply with conditions precedent to bringing this Demand, required
10 by the underlying contract(s), including but not limited to the issuance of a Notice of Dispute 30
11 days before filing the Demand; therefore, the Demand is barred and/or unripe.

12 **SECOND AFFIRMATIVE DEFENSE**

13 Claimants' Demand fails as to each or either of them for lack of standing.

14 **THIRD AFFIRMATIVE DEFENSE**

15 Claimants' Demand fails to state a cause of action for which relief can be granted for
16 some or all of each of their claims, as to Respondents, collectively and respectively.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 To the extent the intend to pursue an alter ego, agency, or conspiracy theory Claimants'
19 Demand fails to state any such legal theories, as to Respondents, collectively and respectively.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 The alleged claims in the Demand, and each of them, are uncertain, ambiguous,
22 irrelevant, improper, and/or unintelligible.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 Claimants' claims are barred by the doctrines of waiver, unclean hands, estoppel, and/or,
25 laches.

26
27 ¹ The terms "allegation", "claim", "count", and "cause of action" are used interchangeably
28 herein, as appropriate, with an intent to be inclusive and not exclusive, and so as to give the
affirmative defenses the broadest application possible.

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SEVENTH AFFIRMATIVE DEFENSE

Claimants assisted, consulted, directed, ordered, approved and/or ratified each Respondents' conduct, and are therefore estopped from claiming any damages, if any there were.

EIGHTH AFFIRMATIVE DEFENSE

Claimants consented and/or acquiesced to, and/or accepted, the acts and events set forth in the Demand.

NINTH AFFIRMATIVE DEFENSE

Claimants have failed to name and/or join all necessary and/or indispensable parties to the action asserted in the Demand.

TENTH AFFIRMATIVE DEFENSE

Claimants' Demand and each cause of action therein is barred by the applicable and governing statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

Claimants' Demand and each cause of action therein is barred by the Statute of Frauds.

TWELFTH AFFIRMATIVE DEFENSE

Claimants breached the contract(s) alleged between the parties by failing to comply with the terms of the agreements and is barred from any recovery as a result.

THIRTEENTH AFFIRMATIVE DEFENSE

Any alleged damages were proximately and actually caused, in whole or in part, and contributed to by reason of the carelessness, negligence, breach of obligation or other breach of duty on the part of Claimants, which fault bars the Demand against Respondents or, in the alternative, reduces Claimants' right of recovery by that amount which the fault of Claimants contributed to the alleged damages, if any there were.

FOURTEENTH AFFIRMATIVE DEFENSE

Respondents duly performed, offered to perform, satisfied, and discharged all duties and obligations it allegedly or may have owed to Claimants arising out of any and agreements, including by not limited to the contract between the parties, and this action is therefore barred.

Gordon & Rees LLP
101 W. Broadway Suite 2000
San Diego, CA 92101

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101 W. Broadway Suite 2000
San Diego, CA 92101

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FIFTEENTH AFFIRMATIVE DEFENSE

Claimants failed to perform, offered to perform, satisfy, or discharge all duties and obligations it owed to Respondents arising out of any and agreements, including by not limited to the contract between the parties, and this action is therefore barred.

SIXTEENTH AFFIRMATIVE DEFENSE

The Demand and each claim therein, is barred on the grounds that the performance of the Respondents was excused by Claimants' breaches and non-performance.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Demand and each claim therein, is barred on the grounds that Claimants failed to satisfy conditions precedent to any obligation of Respondents under the subject contract(s).

EIGHTEENTH AFFIRMATIVE DEFENSE

Claimants had knowledge of the risks of the matters set forth in the Demand, as well as the magnitude of the risks, and thereafter, knowingly, willingly, and voluntarily assumed those risks in their conduct, which proximately caused the damages and losses alleged, if any there were.

NINETEENTH AFFIRMATIVE DEFENSE

Respondents were privileged and justified in undertaking the alleged actions which gave rise to the Demand, whether by constitution, law, or otherwise.

TWENTIETH AFFIRMATIVE DEFENSE

Claimants' allegations assume obligations non-existent, not contracted for, and/or outside any agreement or relationship with Respondents.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Any duty or performance by Respondents is excused by reason of failure of consideration, waiver, novation, mistake, misrepresentation, impossibility of performance, prevention by Claimants, frustration of purpose, anticipatory breach, failure of condition precedent, non-performance by Claimants, breach by Claimants, release (whether express or implied), license (whether express or implied), and/or acceptance by Claimants.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Respondents do not and did not owe a duty to Claimants, nor did a special relationship

1 ever exist between Claimants and Respondents, nor are or were they aware of any existing or
2 prospective relationships between Claimants and third parties.

3 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

4 The claim for damages asserted in Claimants' Demand is barred and/or limited by the
5 express terms of the underlying contract(s).

6 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

7 Claimants' claim for "treble" damages is unsupported by any cited law, other law, or fact,
8 and therefore is not recoverable.

9 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

10 The nature of Claimants' Demand, seeking damages related to property and/or financial
11 interests, and/or a RICO theory, precludes an award of emotional distress damages, as a matter of
12 law, and therefore such damages are not recoverable in this matter.

13 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

14 Respondents allege that Claimants are barred from recovery because any damages
15 alleged by Claimants, if any, were the result of new, independent, intervening, or superseding
16 causes that are unrelated to Respondents' conduct. Any actions on the part of Respondents were
17 not the proximate or producing cause of any alleged damages Claimants claim were sustained.

18 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

19 Claimants' alleged damages are speculative or uncertain, and therefore are not
20 compensable.

21 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

22 Respondents allege that Claimants have suffered no damages as a result of any alleged
23 act or omission of Respondents, and even if Claimants had suffered damages or injuries, all or
24 some portion of said damages or injuries were caused or attributable to Claimants' failure to take
25 reasonable action to mitigate said damages or injuries, if any.

26 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

27 The damages claimed by Claimants, if any there were, were proximately caused by the
28 intervening and superseding action and/or omissions of either Claimants, themselves, or others

1 for which Respondents are not responsible or liable, which intervening and superseding actions
2 and/or omissions bar each of Claimants' claims against Respondents or, in the alternative,
3 diminish their recovery against them.

4 **THIRTIETH AFFIRMATIVE DEFENSE**

5 Respondents are not legally responsible for the damages claimed by Claimants, which
6 Respondents deny exist at all; however, if Respondents were to be found legally responsible,
7 then Respondents provisionally allege that their legal responsibility is not the sole legal cause of
8 the loss, and that the damages awarded to Claimants, if any, should be apportioned according to
9 the respective fault and legal responsibility of all parties, persons, and entities, or their agents,
10 who contributed to and/or caused the subject incident, according to proof at the time of hearing.

11 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

12 Respondents assert that Claimants failed to exhaust administrative and internal remedies
13 available under the subject contract(s), and, as a result of that failure, some or all of Claimants'
14 causes of action are barred.

15 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

16 Respondents presently have insufficient knowledge or information on which to form a
17 belief as to whether it may have additional, as yet unstated, defenses available. Respondents
18 reserve the right to assert additional defenses in the event discovery indicates they would be
19 appropriate.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Respondents pray for judgment as follows:

- 22 1. That the Demand of one of the two Claimants be dismissed due to improper
23 consolidation under the terms of the underlying contract(s);
- 24 2. That Claimants take nothing by reason of the Demand on file herein, and that the
25 Demand be dismissed with prejudice;
- 26 3. That judgment be entered in favor of Respondents;
- 27 4. For costs of suit incurred herein awarded to Respondents;
- 28

1 5. For an award of attorneys' fees in favor of Respondents as allowed by contract or
2 statute; and,

3 6. For any such other and further relief to Respondents as the Arbitrator or Panel
4 deems just and proper.

5
6 Dated: March 22, 2017

GORDON & REES LLP



7
8
9 By: _____

Jeffrey D. Cawdrey
Kimberly D. Howatt
Attorneys for Respondents
ARMANDO MONTELONGO, JR. ,
REAL ESTATE TRAINING
INTERNATIONAL, LLC,
PERFORMANCE ADVANTAGE
GROUP, INC. and LICENSE
BRANDING, LLC

Gordon & Rees LLP
101 W. Broadway Suite 2000
San Diego, CA 92101

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 101 W. Broadway, Suite 2000, San Diego, CA 92101. On **March 22, 2017**, I served the within documents:

RESPONDENTS ARMANDO MONTELONGO, JR., REAL ESTATE TRAINING INTERNATIONAL, LLC, PERFORMANCE ADVANTAGE GROUP, INC., AND LICENSE BRANDING, LLC'S OBJECTION AND RESPONSE TO CLAIMANTS' DEMAND FOR ARBITRATION

- VIA MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at LOS ANGELES, addressed as set forth below.
- VIA OVERNIGHT MAIL: by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FedEx as part of the ordinary business practices of Gordon & Rees LLP described below, addressed as follows:
- VIA ELECTRONIC MAIL: by transmitting said document(s) via electronic mail to the addresses on the attached Service List.
- VIA FACSIMILE: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00pm.

Christopher Wimmer, Esq.
EMERGENT LLP
535 Mission Street, 14th Floor
San Francisco, CA 94105
Tel: 415-894-9284
Fax: 415-276-8929
E-mail: chris@emergent.law

Attorney for Claimants

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **March 22, 2017** at San Diego, California.



Sylvia Durazo

Gordon & Rees LLP
101 W. Broadway Suite 2000
San Diego, CA 92101

EXHIBIT F



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

1101 Laurel Oak Road, Suite 100
Voorhees, NJ 08043

April 7, 2017

Jeffrey D. Cawdrey, Esq.
Gordon & Rees, LLP
101 West Broadway
Suite 2000
San Diego, CA 92101-8217
Via Email to: jcawdrey@gordonrees.com

Case Number: 01-17-0001-3486

Michael Crabtree and Susan Crabtree
v.
Armando Montelongo, Jr.,
Real Estate Training International, LLC,
Performance Advantage Group, Inc., and
License Branding, LLC

Dear Parties:

The claimant has filed with us a demand for arbitration. The American Arbitration Association (“AAA”) has determined that this arbitration arises out of a consumer agreement and, as such, the Consumer Arbitration Rules (“Consumer Rules”) apply to this dispute. The Consumer Rules may be found on our website at www.adr.org.

We note that the contract references the Commercial Arbitration Rules. According to R-1* of the Commercial Arbitration Rules, the AAA applies the Consumer Arbitration Rules to disputes arising out of consumer arbitration agreements.

Under R-12 of the Consumer Rules, businesses that provide for AAA arbitration in a consumer contract are obligated to submit their current or proposed consumer agreements to the AAA for review and inclusion on the Consumer Clause Registry (“Registry”). The AAA reviews the agreement for material compliance with the due process standards of the Consumer Due Process Protocol (“Protocol”) and the Consumer Rules. The AAA’s review is administrative; it is not an opinion on whether the arbitration agreement, the contract, or any part of the contract is legally enforceable.

This business has not previously submitted its consumer arbitration clause for review. As such, the AAA will review the clause for this matter on an expedited basis. The additional fee for this expedited review is \$250, payable by the business.

The business is also directed to submit its current consumer arbitration clause for inclusion on the Registry at www.adr.org/consumerclauseregistry, at which time the business will also incur a \$500 Registry fee. Once the business’ clause is registered, it will no longer be assessed the \$250 additional expedited review fee on each consumer case filed.

We note that the arbitration provision has a material or substantial deviation from the Consumer Rules and/or Protocol. Specifically, the provision states, “*Unless otherwise or provided herein this Agreement, the Parties will split only the costs and fees associated with conducting the arbitration.*” The foregoing is a substantial deviation

from Principle 6 of the Protocol, requiring that the arbitration entail reasonable cost to consumers. Under the Consumer Due Process Protocol, the consumer's fee is capped at \$200.

If a party believes that there are additional conflicts with the Protocol and/or Consumer Rules, those issues may be brought before the arbitrator once one has been appointed.

However, so that we may commence administration of this matter, **we are requesting that the business waive the above provision and agree to have this matter administered under the Consumer Rules and Protocol.** Please confirm your agreement to waive the above-quoted provision by signing and dating below and returning a copy of this letter. **Absent receipt of the requested waiver, the AAA will decline to administer this dispute and possibly any future consumer arbitrations involving this business. Please note that pursuant to the R-1(d) of the Consumer Rules, should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.**

Business (authorized representative)

Date

Under the Consumer Rules, the consumer pays a filing fee of \$200 and the business pays a filing fee of \$1,700. We have received the consumer's \$200 portion of the filing fee. So that the filing requirements are complete, **the business is requested to submit filing fees of \$1,700, the expedited consumer clause review fee of \$250 and its arbitrator's compensation deposit of \$1,500.00, totaling \$3,450.**

Please make the check payable to the American Arbitration Association and include a reference to the case number. Checks should be mailed to 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. In the event that payment is being made by a third party, such as an insurance company, please request that payment be sent directly to the business' representative. The business' representative should then forward payment to the AAA in accordance with the foregoing instructions.

The requested payment and waiver should be received no later than **April 21, 2017** and the AAA may decline to administer this dispute if the business does not timely respond. It should be noted that the consumer's satisfaction of the filing requirements triggers the business' obligation to promptly pay its share of the filing fees under the rules and the business may owe all or a portion of the filing fees even if the matter is settled or withdrawn.

No answering statement or counterclaim is due at this time and the parties will be notified of the applicable deadlines upon satisfaction of all the filing requirements.

Please email ConsumerFiling@adr.org if you have any questions. The AAA appreciates the opportunity to assist you with your dispute resolution needs.

Sincerely,

Consumer Filing Team
ConsumerFiling@adr.org
Fax (877) 304-8457

CC: Christopher Wimmer, Esq.
Emergent Legal
535 Mission Street
14th Floor
San Francisco, CA 94105
Via Email to: chris@emergent.law

EXHIBIT G

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KHOWATT@GORDONREES.COM

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FAX: (619) 696-7124
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April 21, 2017

VIA E-MAIL AND U.S. MAIL

Consumer Filing Team
American Arbitration Association
1101 Laurel Oak Road, Suite 100
Voorhees, NJ 08043
Email: consumerfiling@adr.org

Re: *Michael and Susan Crabtree v. Armando Montelongo, Jr., et al.*
AAA Case Number 01-17-0001-3486

Objection to Application of Consumer Arbitration Rules and Request for Waiver of Contractual Modification

Dear Consumer Filing Team:

This correspondence is in response to your April 7, 2017 letter whereby the American Arbitration Association (“AAA”) Consumer Filing Team asserts that the Consumer Arbitration Rules are controlling in the above-referenced matter, and therefore requests Respondents’ waiver of the parties’ contractual modification of such rules as well as the payment of filing fees.

Respondents hereby disagree with and object to such interpretation, as set forth below, and further request that the issues of the applicability and/or control of the Consumer Arbitration Rules over the Commercial Arbitration Rules, and the parties’ contractual agreement to modify the AAA rules, be determined by the arbitrator assigned to this matter, pursuant to Rule R-1(e) of the Consumer Arbitration Rules.

I. Relevant Factual Background

The arbitration provision in the contract at issue states, in relevant part:

The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at www.ADR.org, by calling the AAA at 1-800-778-7879. The parties agree that the validity of this arbitration agreement will be solely decided by the arbitrator. Unless the Parties agree otherwise, the location of the arbitration will take place in a neutral location,

Consumer Filing Team
American Arbitration Association
April 21, 2017
Page 2

which is to be determined by the arbitrator. Unless otherwise agreed or provided herein this Agreement, the Parties will split only the costs and fees associated with conducting the arbitration. [Emphasis added.]

The subject agreement was drafted prior to the 2014 enactment of the Consumer Arbitration Rules (as evidenced by the express reference to the predecessor rules), and was not in contemplation thereof. Instead, it was contemplated that the Commercial Arbitration Rules would be controlling, as supplemented – and not contradicted – by the Supplementary Procedures for Consumer Related Disputes. Even so, the parties agreed to the modification of any and all of the AAA Rules – whether the Commercial Arbitration Rules of the Supplementary Procedures for Consumer Related Disputes – specifically as to their splitting of fees for the conduct of the arbitration.

II. Respondents Submission to the AAA Registry

At the outset, Respondents acknowledge that in the subject arbitration provision there is a reference to, *inter alia*, the Supplementary Procedures for Consumer Related Disputes (albeit secondary to the Commercial Arbitration Rules), which Procedures have been replaced by the Consumer Arbitration Rules, and thus will submit such agreement for inclusion in the Registry as requested, pay the \$250 expedited review fee under separate cover, and upon charge by the AAA, pay the \$500 registry fee.¹ These fees are not included in the below discussion.

III. Objection to Application of the Consumer Arbitration Rules

Pursuant to Consumer Arbitration Rule R-1(e), the AAA has the initial authority to apply or not to apply the Consumer Arbitration Rules, and if either party disagrees with the AAA's decision, the objecting party must submit an objection by the due date for filing an answer to the demand for arbitration. (Id.) If an objection is filed, the arbitrator shall have the authority to make the final decision on which AAA rules will apply. (Id.) Respondents submit this letter as their disagreement with and objection to application of the Consumer Arbitration Rules as controlling over the Commercial Arbitration Rules.

The subject arbitration provision, by its express terms, invokes the Commercial Arbitration Rules as controlling, and the secondary application of the Supplementary Procedures for Consumer Related Disputes. The agreement was drafted before the Consumer Arbitration Rules were implemented, and thus such Rules were not intended as part of the offer contained in the subject contract (nor, inherently, the acceptance thereof). This lack of intent is evidenced by, *inter alia*, the parties' agreement on allocation of fees and costs in a manner that conflicts with the subsequently-enacted fee schedule contained in the Consumer Arbitration Rules. Notably, under the Commercial Arbitration Rules and Supplementary Procedures for Consumer Related Disputes, this fee-splitting modification would have inured to the benefit of the client, and not the business, in that the business was agreeing to pay half of the filing fee under the Commercial

¹ Respondents do not agree or concede that the agreement at issue is a consumer contract, as discussed in R-1(a) of the Consumer Arbitration Rules,

Consumer Filing Team
American Arbitration Association
April 21, 2017
Page 3

Arbitration Rules, which would otherwise have been the responsibility of the client. It was thus a reasonable and valuable modification to the AAA Rules.

Accordingly, it is Respondents' position that the Commercial Arbitration Rules are controlling, and the Consumer Arbitration Rules are secondary and supplementary. Thus, to the extent the Consumer Arbitration Rules conflict, the Commercial Arbitration Rules shall govern; to the extent that the Consumer Arbitration Rules address an issue not covered by the Commercial Arbitration Rules, then the Consumer Arbitration Rules apply. As a result of such application, as relevant to the matters addressed in your April 7th letter, the governing Commercial Arbitration Rules require that each claimant² pay \$4,000 as an initial filing fee for its claim (stated by claimants as in the \$300,000 to \$500,000 range).

Respondent seeks a determination by the arbitrator on this issue, pursuant to Rule R-1(e) of the Consumer Arbitration Rules.

IV. Objection to Request for Waiver of Parties' Contacted-for Modification of Rules Regarding Fee-Splitting

Rule R-1(c) of the Consumer Arbitration Rules states that, "[t]he consumer and the business may agree to change these Rules. If they agree to change the Rules, they must agree in writing." This is precisely what occurred here; therefore, the AAA's request for a waiver of such language is unfounded.

As set forth above, the applicable arbitration clause provides for the application of the AAA rules, "as modified by this agreement." [Emphasis added.] Within the same paragraph and as cited above, the arbitration provision states that "the Parties will split only the costs and fees associated with conducting the arbitration." [Emphasis added.] Accordingly, the parties have validly "agree[d] to change" the AAA rules – whether the Commercial Arbitration Rules or the Consumer Arbitration Rules – to provide for equal fee sharing for the arbitration conduct charges, and such agreement is in in the written contract.

Therefore, the fees charged by AAA for the conduct of the arbitration are to be shared equally by the parties. If the Commercial Arbitration Rules govern, as is the position of Respondents, both parties will share in the \$4,000 initial filing fee set forth in that fee schedule, i.e., \$2,000 from Claimant and \$2,000 from Respondents. If the arbitrator applies the Consumer Arbitration Rules and its corresponding fee schedule, which requires \$200 from Claimant, as well as \$1700 plus a \$1500 deposit from Respondents; the total fees for *both* parties is \$3,400, which should likewise be split, i.e., each providing \$1700 as per the contract, for the costs and fees associated with conducting the arbitration. If the Claimant has already provided \$200, then

² Note, Respondents have previously objected to the AAA's joint treatment of the two claimants' arbitration demand, which is in direct violation of the terms of the arbitration agreement, which provides that "the arbitrator may not consolidate more than one person's claims." Respondents maintain this objection and demand that one of the two claimants be dismissed from this case, and required to file a separate arbitration demand if he or she wished to continue to pursue a claim.

Consumer Filing Team
American Arbitration Association
April 21, 2017
Page 4

an additional \$1,500 is owed. Respondents will thus pay at this time (under separate cover) \$1,700 towards their share of the filing fees, an amount that would be due whether the fees are split under the Commercial or Consumer rules, and pay any additional monies due upon the arbitrator's decision regarding the final applicable fees and division of same.

Due to the parties' agreement, in writing, to modify the AAA rules relative to fee-splitting, as the Consumer Arbitration Rules authorizes them to do, the AAA's request for a waiver of such language appears to be unfounded and in conflict with its own rules (namely, Rule R-1(c) of the Consumer Arbitration Rules). Rule R-1(c) does not provide for any limitations or exclusions as to on what issues the parties can agree to a change, and thus there is no apparent basis for the AAA's position that the parties cannot change the rules to as to agree to fee-splitting. Further, this provision does not violate Principle 6 on Protocol for at least two reasons: (1) the parties validly contracted to split fees; and, (2) the application of the Commercial Arbitration Rules and the fee-splitting provision do not result in an unreasonable cost to the consumer.³ Therefore, without further explanation and arbitrator-consideration of this issue, Respondents cannot and will not agree to waiver of such contractual language.

V. Action on Objection Requested

Based on the foregoing, and the subject contract at issue, Respondents request that the AAA arbitrator:

1. Determine that the Commercial Arbitration Rules are controlling over the Consumer Arbitration Rules, and that the Consumer Arbitration Rules are secondary and supplementary, such that, to the extent the Consumer Arbitration Rules conflict, the Commercial Arbitration Rules shall govern, and to the extent that the Consumer Arbitration Rules address an issue not covered by the Commercial Arbitration Rules, then the Consumer Arbitration Rules apply;
2. Upon such application, require from Claimant the filing fee in accord with the fee schedule to the Commercial Arbitration Rules, i.e., \$4,000 for a claim in the \$300,000 to \$500,000 range;
3. Acknowledge and accept the parties' agreement, in writing, to change the AAA rules so as to allow for the split of costs and fees of the conduct of the arbitration, in accord with Rule R-1(c) of the Consumer Arbitration Rules; and,
4. Withdraw the AAA's request for a waiver of the parties' contracted for agreement to change the AAA rules relative to fee-splitting.

³ The Claimants have valued their arbitration demand at \$325,000. Under the Commercial Rules, the Claimants' share of the filings fees would range from \$3,750 -\$4,250 (standard/flex), or approximately 1.15-1.3% of their total claim. This is a "reasonable cost to the consumer" consistent with Principle 6.

Consumer Filing Team
American Arbitration Association
April 21, 2017
Page 5

Thank you for your time and attention to this matter. Should you have any questions or concerns, please do not hesitate to contact this office.

Sincerely,

GORDON & REES SCULLY MANSUKHANI

A handwritten signature in black ink, appearing to read "K. Howatt", with a long horizontal flourish extending to the right.

Kimberly D. Howatt
Counsel for Respondents

cc: Christopher Wimmer, Esq. (via email)
Counsel for Claimants

EXHIBIT H

EMERGENT

May 2, 2017

By Email

Consumer Filing Team
American Arbitration Association
1101 Laurel Oak Road, Suite 100
Voorhees, NJ 08043
consumerfiling@adr.org

Re: Michael and Susan Crabtree v. Armando Montelongo, Jr., et al.
AAA Case Number 01-17-0001-3486

Response to Administrator's Determinations and Respondents' Objection

Dear Consumer Filing Team:

This correspondence responds to your April 7, 2017 letter, notifying the parties of your assessment that the Consumer Arbitration Rules ("Consumer Rules") apply to our dispute, and Respondents' April 21 missive, objecting to that determination and its consequences.

Claimants agree with the American Arbitration Association ("AAA") that the Consumer Rules are applicable here and that, therefore, in accordance with those rules and the Consumer Due Process Protocol ("Consumer Protocol"), their filing fee should be capped at \$200. Claimants acknowledge that Respondents may object to the AAA's decision to apply the Consumer Rules, rather than solely the Commercial Arbitration Rules ("Commercial Rules"), and leave that determination for the arbitrator. *See* Consumer Rules, R-1(e). Claimants take issue with Respondents' rationale for objecting, however, and, as such, request that the arbitrator:

1. Determine the Consumer Rules, by delegation, govern this arbitration;
2. Require from Claimant a filing fee no greater than \$200; and
3. Reject Respondents' proposed even split of costs and fees.

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San Francisco, CA 94105

Consumer Filing Team
American Arbitration Association
May 2, 2017
Page 2 of 6

Relevant Background

The parties signed the agreement at issue on October 5, 2015. The arbitration clause contained in that agreement appears on a sheet Respondents generated, which includes information indicating it was printed in 2015—“© 2015.” In pertinent part, the arbitration clause states:

The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by this Agreement, and will be administered by the AAA. . . . [U]nless otherwise agreed or provided herein this Agreement, the Parties will split only the costs and fees associated with conducting the arbitration.

The most recently enacted Commercial Rules were made effective as amended on October 1, 2013. R-1(a) of the Commercial Rules provides, “These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a Demand for Arbitration . . . received by the AAA.”¹ R-1 of the Commercial Rules states that “[a] dispute arising out of a consumer arbitration agreement will be administered under the AAA’s Consumer Arbitration Rules.”

The most recently enacted Consumer Rules were made effective as amended on September 1, 2014. R-1(a) of the Consumer Rules explains that those rules apply when the parties have provided for arbitration by the AAA and:

(1) have specified that these Consumer Arbitration Rules shall apply; (2) have specified that the Supplementary Procedures for Consumer-Related Disputes (“Supplemental Procedures”) shall apply, which have been amended and renamed the Consumer Arbitration Rules; (3) the arbitration agreement is contained within a consumer agreement . . . that does not specify a particular set of rules; or (4) the arbitration agreement is contained within a consumer agreement . . . that specifies a particular set of rules other than the Consumer Arbitration Rules.

¹ This same language appeared in R-1(a) of the preceding version of the Commercial Rules, which were made effective as amended on June 1, 2009.

Consumer Filing Team
American Arbitration Association
May 2, 2017
Page 3 of 6

For purposes of R-1(a) of the Consumer Rules, a “consumer agreement” is defined as an “agreement between an individual consumer and a business where the business has a standardized, systemic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized . . . services [for personal use] are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices.”

R-1(d) of the Consumer Rules indicates that the AAA administers only consumer disputes that meet the due process standards contained in the Consumer Protocol. Principle 6 of the Consumer Protocol concerns reasonable cost, and states:

Providers of good and services should develop ADR programs which entail reasonable cost to Consumers based on the circumstances of the dispute, including, among other things, the size and nature of the claim, the nature of goods or services provided, and the ability of the Consumer to pay. In some cases, this may require the Provider to subsidize the process.

The AAA has determined that requiring consumers involved in consumer arbitrations to pay a filing fee of any more than \$200 would violate that principal and due process. See Consumer Rules, Costs of Arbitration.²

Application of the Consumer Rules

The Consumer Rules, as incorporated by the Commercial Rules, govern this arbitration. Respondents’ arguments to the contrary are untenable.

First, Respondents’ contention that the Consumer Rules should not apply because only the Supplementary Procedures were referenced in the parties’ agreement, and that the Supplemental Procedures themselves are to be applied only secondarily because they were mentioned after the Commercial Rules, are of no moment. The modifications made for consumer-oriented arbitrations, whether presented in the Consumer Rules or Supplementary

² The current Costs of Arbitration was made effective as amended on January 1, 2016. The preceding version of the Costs of Arbitration, which was made effective on September 1, 2014, also contained the \$200 filing fee cap for consumers.

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Consumer Filing Team
American Arbitration Association
May 2, 2017
Page 4 of 6

Procedures, are part of the Commercial Rules, and are to be applied based on the nature of the contract underlying the dispute, not on the labels used or the order in which they appear. *See, e.g., Loewen v. Lyft, Inc.*, 129 F. Supp. 3d 945, 961 (N.D. Cal. 2015) (citing R-1(a)(4) of the Consumer Rules in stating the “consumer rules apply where an arbitration agreement is contained within a consumer agreement that specifies a particular set of rules other than the consumer rules”); *Adamson v. Foulke Mgmt. Corp.*, 2009 WL 5174642, at *12 & n.9 (D.N.J. Dec. 18, 2009) (“[T]he Court is convinced that the Consumer Rules are not separate set of AAA rules, but are instead a part of, and a supplement to, the Commercial Rules. Thus[,] the arbitration agreement’s reference to the Commercial Rules does not prevent the application of the Consumer fees.”). And there can be no serious debate that the agreement between the parties is a “consumer agreement” under the AAA’s rules. The purchase agreements that give rise to this dispute and contain the arbitration provision are standardized form contracts issued to every one of the thousands of customers who purchase Respondents’ real estate seminar offerings (personal services); the only terms that change are the particular seminar purchased, and the price. *See* Consumer Rules, R-1(a).

Second, Respondents’ assertion that the arbitration clause in the parties’ agreement was drafted before the Consumer Rules replaced the Supplementary Rules has no bearing on which of the two regimes should apply. The agreement between the parties was signed in October 2015, the print date of the form on which the arbitration clause was printed is 2015, and the Commercial Rules, which incorporate the Consumer Rules/Supplemental Procedures, have long stated that the AAA rules existing at the time the administrative requirements for an arbitration demand are completed are to be used. *See* Commercial Rules, R-1(a). Respondents cannot be permitted to hide behind their claimed ignorance of the AAA’s 2014 amendments to the Supplementary Procedures when they drafted and continue to use the arbitration clause at issue to the detriment of their customers: In March 2017, Respondents moved in the United States District Court for the Western District of Texas to compel the arbitration before this tribunal of the claims of 36 seminar purchasers who had sued Respondents in that court. Moreover, if Respondents, a sophisticated businessman and his entities, wished to lock a particular set of rules in place for use in any subsequent arbitration, they could have inserted the date of the version of the rules they wished to govern. *See id.*

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Consumer Filing Team
American Arbitration Association
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Page 5 of 6

No Modification of the Consumer Rules Regarding Fees

There is also no cause to modify the Consumer Rules to order a 50/50 split of costs and fees, as Respondents request.

First, the contractual language Respondents rely upon, when read in context, does not evidence an intent to modify the Consumer Rules. The full sentence at issue states: “[U]nless otherwise agreed or provided herein this Agreement, the Parties will split only the costs and fees associated with conducting the arbitration.” The parties did otherwise agree: They directed that the Consumer Rules would apply, which limit the fees chargeable to the consumer. Additionally, the text’s inclusion of the word “only” before “the costs and fees” shows that the point of the provision was to *exclude* attorneys’ fees, not modify the Consumer Rules.

Second, even if the language was intended to vary the Consumer Rules, Respondents’ interpretation of the parties’ agreement to divide arbitration costs and fees *evenly* between the two in the event of a dispute is too generous. Nothing in the text specifies a 50/50 allocation. The use of the term “split,” in and of itself, certainly does not. *See, e.g., Black’s Law Dictionary*, 1133 (Bryan A. Garner ed., 7th ed. 2000) (defining the word as “to divide into segments or parts”); *Merriam-Webster Dictionary*³ (giving the term’s meaning as “to divide into parts or portions”). Rather, it merely recognizes that the parties acknowledge that costs and fees may be shared in some way. As such, the plain language of the provision does not conflict with the Consumer Rules, which apportion the costs and fees associated with arbitration between the parties: The consumer pays \$200, the business pays the remainder.

Third, as the AAA has already correctly determined, requiring consumers such as Claimants to pay anything more than \$200 of arbitration costs and fees would be inconsistent with due process and the AAA’s rules. If the agreement could be read as Respondents suggest, therefore, and if Respondents insist on that reading, then the AAA should decline to administer any proceedings involving Respondents.

Viewed within the context of the broader agreement, the plain language of Respondents’ form contract leads to a conclusion contrary to their position: namely, that the arbitration clause does not call for the parties to share the costs and fees of arbitration equally, and, therefore,

³ <https://www.merriam-webster.com/dictionary/split>

Consumer Filing Team
American Arbitration Association
May 2, 2017
Page 6 of 6

does not modify the AAA's rules to limit application of the Consumer Rules or their allocation of costs.

Conclusion

For the foregoing reasons, Claimants support the Consumer Filing Team's determination that the Consumer Rules apply to this arbitration and contest Respondents' opposition to the AAA's decision and objection to the use of those rules. Because there are scores, if not hundreds of additional consumers who are prepared to file arbitration demands against Respondents based on these same purchase agreements, Claimants further request that the AAA apply its determination—or a subsequent determination by the arbitrator—to all other demands involving Respondents.

Sincerely,



Jason Fisher

Counsel for Claimants Michael Crabtree and Susan Crabtree

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EXHIBIT I



Christopher Wimmer <chris@emergent.law>

Michael Crabtree and Susan Crabtree V. Armando Montelongo, Jr. - Case 01-17-0001-3486

Tara Parvey <ParveyT@adr.org>

Tue, Jun 20, 2017 at 4:11 PM

To: Christopher Wimmer <chris@emergent.law>, Consumer Case Filing Team <ConsumerFiling@adr.org>

Cc: Peter Roldan <peter@emergent.law>, Jason Fisher <jason@emergent.law>, Stacie Smith <stacie@emergent.law>,

"JCawdrey@gordonrees.com" <JCawdrey@gordonrees.com>, Kimberly Howatt <khowatt@gordonrees.com>, Brittany McCarthy <bmccarthy@gordonrees.com>

Dear Counsel:

We have reviewed the parties' comments and are in receipt of \$1,700 from respondent.

Because the parties do not agree to proceed on a consolidated basis, the AAA requests that the claimant amend the demand to remove one of the claimants and file a separate demand and filing fee for the other claimant.

Regarding the applicable rules, the Consumer Arbitration Rules and the Consumer Due Process Protocol apply to this dispute. Accordingly, the AAA will not proceed with administration absent receipt of a waiver of the substantial and material deviation from the Consumer Rules and the Consumer Due Process Protocol. The requested waiver will apply in this case and all future cases. Should the business fail to submit the waiver, the AAA will decline to administer this dispute and any future consumer arbitrations involving this business.

Respondent's argument appears to be that the parties intended the Supplementary Procedures for Consumer-Relate Disputes ("Consumer Supplement") to apply to this dispute and that under those procedures, fee splitting would have been permissible. Even if we put aside that R-1 of the Consumer Rules states that contracts referring to the Consumer Supplement will be administered under the Consumer Rules, fee splitting is not permissible and the Consumer Rules apply.

I have attached a copy of the Supplementary Procedures for Consumer-Relate Disputes ("Consumer Supplement"). First, those rules, and indeed every set of AAA's rules state that the AAA's rules in effect at the time of filing will be used when the arbitration is commenced. As the Consumer Supplement has been replaced by the Consumer Rules, the Consumer Rules are appropriate and contemplated by the parties' agreement. Second, the Consumer Supplement also capped the consumer's costs at \$200. Third, regardless of the particular set of rules, the Consumer Due Process Protocol has been applied to all consumer arbitration since its adoption and cost splitting has always been considered a material and substantial deviation from which the AAA required a waiver to proceed. Fourth, the Commercial Rules incorporate the Consumer Rules by reference for consumer arbitrations. Therefore, even if we carve out the reference to the Consumer Supplement as impossible, the Commercial Rules lead us back to the Consumer Rules. Finally, the Consumer Rules state that the Consumer Rules apply to any consumer arbitration that designates any set of AAA rules, however named and regardless of party intent. A business may not avoid application of the Consumer Rules or the Consumer Due Process Protocol by designating another set of rules; that would swallow the Consumer Rules.

As a private administrator, it is the AAA's policy to administer arbitration in accordance with the Consumer Due Process Protocol. The parties are free to agree to terms that deviate from the AAA's procedures; however, the AAA will decline to administer consumer arbitrations that do not comply with its policies on consumer arbitrations and reasonable costs to the consumer is one of the fundamental policies.

Accordingly, the AAA reaffirms its determination to apply the Consumer Rules and require the respondent's waiver of the cost splitting provision.

Sincerely,

Tara Parvey

Director of Intake

From: Christopher Wimmer [mailto:chris@emergent.law]

Sent: Thursday, June 15, 2017 9:19 PM

To: Consumer Case Filing Team

Cc: Peter Roldan; Jason Fisher; Stacie Smith; JCawdrey@gordonrees.com; Kimberly Howatt; Brittany McCarthy

Subject: Re: Michael Crabtree and Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Dear Consumer Filing Team,

We write to follow up on our May 2nd letter, and to ask that the AAA assign an arbitrator to this matter promptly, so that a determination of the proper filing fees to be paid by the claimants and respondents can be resolved. We have well over 100 clients in the same position as the Crabtree claimants, and the parties would greatly benefit from resolution of these procedural issues.

Kind regards,

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On Tue, May 2, 2017 at 11:23 AM, Stacie Smith <stacie@emergent.law> wrote:

Dear Consumer Filing Team,

Please see the attached correspondence regarding the above-referenced case.

Thank you.

--

9/22/2017

Stacie Smith
EMERGENT LLP
535 Mission Street, 14th Floor

San Francisco, CA 94105

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Consumer-Related Disputes Supplementary Procedures.pdf

211K

EXHIBIT J



Christopher Wimmer <chris@emergent.law>

RE: Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Consumer Case Filing Team <ConsumerFiling@adr.org>

Wed, Jul 5, 2017 at 1:29 PM

To: Kimberly Howatt <khowatt@gordonrees.com>, Brittany McCarthy <bmccarthy@gordonrees.com>

Cc: Consumer Case Filing Team <ConsumerFiling@adr.org>, Peter Roldan <peter@emergent.law>, Jason Fisher <jason@emergent.law>, Stacie Smith <stacie@emergent.law>, "JCawdrey@gordonrees.com" <JCawdrey@gordonrees.com>, Tara Parvey <ParveyT@adr.org>, Christopher Wimmer <chris@emergent.law>

Counsel:

Absent receipt of the requested waiver by **July 12, 2017**, we will close our file on this matter.

Please note: should the business not comply with our request by the above response date, we may decline to administer any other consumer disputes involving this business and request that the business remove the AAA name from its arbitration clause so that there is no confusion to the public regarding our decision. Furthermore, pursuant to the R-1(d) of the Consumer Arbitration Rules, should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.

**Consumer Case Filing Team**1101 Laurel Oak Road
Suite 100, Voorhees, NJ 08043
E: ConsumerFiling@adr.org

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From: Tara Parvey**Sent:** Monday, June 26, 2017 3:51 PM**To:** Christopher Wimmer**Cc:** Consumer Case Filing Team; Peter Roldan; Jason Fisher; Stacie Smith; JCawdrey@gordonrees.com; Kimberly Howatt; Brittany McCarthy**Subject:** RE: Michael Crabtree and Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Thank you, Mr. Wimmer. The AAA lacks the authority to consolidate the claims absent party agreement.

Accordingly, we will remove Mr. Crabtree from the file.

Sincerely,
Tara Parvey**From:** Christopher Wimmer [<mailto:chris@emergent.law>]**Sent:** Monday, June 26, 2017 3:46 PM**To:** Tara Parvey**Cc:** Consumer Case Filing Team; Peter Roldan; Jason Fisher; Stacie Smith; JCawdrey@gordonrees.com; Kimberly Howatt; Brittany

McCarthy

Subject: Re: Michael Crabtree and Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Ms. Parvey,

Thank you for your detailed response, with which claimants agree in every respect but one: the suggestion that the Crabtrees need to file separate demands. Susan and Michael Crabtree are husband and wife, and signed the same agreements to purchase respondents' real estate seminars. See attached. Accordingly, they have a single, unified claim, and it is inappropriate and impractical to "split" their claim.

We ask that the AAA amend its determination on this issue, and permit the Crabtrees to pursue their claim together. Alternatively, Michael will dismiss his demand, and Susan will pursue the claims on her and her husband's behalf.

Regards,

Christopher Wimmer
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1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043

On Tue, Jun 20, 2017 at 4:11 PM, Tara Parvey <ParveyT@adr.org> wrote:

Dear Counsel:

We have reviewed the parties' comments and are in receipt of \$1,700 from respondent.

Because the parties do not agree to proceed on a consolidated basis, the AAA requests that the claimant amend the demand to remove one of the claimants and file a separate demand and filing fee for the other claimant.

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Respondent's argument appears to be that the parties intended the Supplementary Procedures for Consumer-Relate Disputes ("Consumer Supplement") to apply to this dispute and that under those procedures, fee splitting would have been permissible. Even if we put aside that R-1 of the Consumer Rules states that contracts referring to the Consumer Supplement will be administered under the Consumer Rules, fee splitting is not permissible and the Consumer Rules apply.

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Accordingly, the AAA reaffirms its determination to apply the Consumer Rules and require the respondent's waiver of the cost splitting provision.

Sincerely,

Tara Parvey

Director of Intake

From: Christopher Wimmer [mailto:chris@emergent.law]

Sent: Thursday, June 15, 2017 9:19 PM

To: Consumer Case Filing Team

Cc: Peter Roldan; Jason Fisher; Stacie Smith; JCawdrey@gordonrees.com; Kimberly Howatt; Brittany McCarthy

Subject: Re: Michael Crabtree and Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Dear Consumer Filing Team,

We write to follow up on our May 2nd letter, and to ask that the AAA assign an arbitrator to this matter promptly, so that a determination of the proper filing fees to be paid by the claimants and respondents can be resolved. We have well over 100 clients in the same position as the Crabtree claimants, and the parties would greatly benefit from resolution of these procedural issues.

Kind regards,

Christopher Wimmer
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Tara Parvey
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On Tue, May 2, 2017 at 11:23 AM, Stacie Smith <stacie@emergent.law> wrote:

Dear Consumer Filing Team,

Please see the attached correspondence regarding the above-referenced case.

Thank you.

--

Stacie Smith
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San Francisco, CA 94105

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EXHIBIT K



Christopher Wimmer <chris@emergent.law>

RE: Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Tara Parvey <ParveyT@adr.org>

Thu, Jul 13, 2017 at 11:49 AM

To: Kimberly Howatt <khowatt@grsm.com>, Consumer Case Filing Team <ConsumerFiling@adr.org>

Cc: Peter Roldan <peter@emergent.law>, Jason Fisher <jason@emergent.law>, Stacie Smith <stacie@emergent.law>, Jeffrey Cawdrey <jcawdrey@grsm.com>, Christopher Wimmer <chris@emergent.law>

This will confirm that an extension has been granted. I apologize for my delayed response. I just returned from a week out of the office.

**Tara Parvey**
Director of Intake

American Arbitration Association

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From: Kimberly Howatt [mailto:khowatt@grsm.com]**Sent:** Tuesday, July 11, 2017 7:10 PM**To:** Consumer Case Filing Team; Tara Parvey**Cc:** Peter Roldan; Jason Fisher; Stacie Smith; Jeffrey Cawdrey; Christopher Wimmer**Subject:** RE: Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Ms. Parvey:

Respondents respectfully request an extension of time to respond relative to the below-referenced issue, from July 12th to July 18th, as the relevant personnel for such decision are traveling.

Regards,

KIMBERLY D. HOWATT | Partner
GORDON & REES
SCULLY MANSUKHANI

D: 619-230-7461

khowatt@grsm.com

[vCard](#) | [Bio](#)

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www.grsm.com

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From: Consumer Case Filing Team [<mailto:ConsumerFiling@adr.org>]
Sent: Wednesday, July 05, 2017 1:29 PM
To: Kimberly Howatt; Brittany McCarthy
Cc: Consumer Case Filing Team; Peter Roldan; Jason Fisher; Stacie Smith; Jeffrey Cawdrey; Tara Parvey; Christopher Wimmer
Subject: RE: Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Counsel:

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GORDON REES SCULLY MANSUKHANI, LLP
<http://www.grsm.com>

EXHIBIT L



Christopher Wimmer <chris@emergent.law>

RE: Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Kimberly Howatt <khowatt@grsm.com>

Tue, Jul 18, 2017 at 1:18 PM

To: Consumer Case Filing Team <ConsumerFiling@adr.org>

Cc: Peter Roldan <peter@emergent.law>, Jason Fisher <jason@emergent.law>, Stacie Smith <stacie@emergent.law>, Jeffrey Cawdrey <jcawdrey@grsm.com>, Tara Parvey <ParveyT@adr.org>, Christopher Wimmer <chris@emergent.law>

Respondents Real Estate Training International, LLC, Performance Advantage Group, Inc., License Branding, LLC, and Armando Montelongo, Jr. (collectively "RETI") maintain their disagreement with the AAA's determination, on the grounds detailed in its April 21, 2017 letter. As previously stated by RETI, the AAA Consumer Case Filing Team's proposed application of the RETI provision conflicts with the actual terms agreed to by the parties in the subject contract, in disregard of Rule R-1(c), which is included in the very same Consumer Arbitration Rules that it seeks to invoke, and which rule does not specify or carve out any particular type of "change [in] these Rules" on which the parties can agree.

Therefore, RETI hereby declines to provide the requested waiver, as such would deviate from the terms agreed to by the parties as permitted by Rule R-1(c) of the AAA Consumer Arbitration Rules.

Further, RETI objects to the fact that the below determination was not made by "the arbitrator" (in contrast to "[t]he AAA"), which conflicts with the procedure described in AAA Rule R-1(e). If, however, the AAA continues to refuse to administer the claim, RETI requests reimbursement of its \$1,700.

Also, AAA's Rule R-1(d) – cited below – is, of course, non-binding on the parties. It is RETI's position that, notwithstanding the AAA's declination to administer the matter, the claimants are contractually obligated to arbitrate their respective claims (separately, per the contract terms) with an alternate arbitration provider.

Please let us know how the AAA wishes to proceed.

KIMBERLY D. HOWATT | Partner
GORDON & REES
SCULLY MANSUKHANI

D: 619-230-7461

khowatt@grsm.com

[vCard](#) | [Bio](#)

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Please consider the environment before printing this email.

From: Consumer Case Filing Team [mailto:ConsumerFiling@adr.org]
Sent: Wednesday, July 05, 2017 1:29 PM
To: Kimberly Howatt; Brittany McCarthy
Cc: Consumer Case Filing Team; Peter Roldan; Jason Fisher; Stacie Smith; Jeffrey Cawdrey; Tara Parvey; Christopher Wimmer
Subject: RE: Susan Crabtree V. Armando Montelongo, Jr. - Case 01-17-0001-3486

Counsel:

Absent receipt of the requested waiver by **July 12, 2017**, we will close our file on this matter.

Please note: should the business not comply with our request by the above response date, we may decline to administer any other consumer disputes involving this business and request that the business remove the AAA name from its arbitration clause so that there is no confusion to the public regarding our decision. Furthermore, pursuant to the R-1(d) of the Consumer Arbitration Rules, should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.



Consumer Case Filing Team

1101 Laurel Oak Road
Suite 100, Voorhees, NJ 08043
E: ConsumerFiling@adr.org

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From: Tara Parvey
Sent: Monday, June 26, 2017 3:51 PM
To: Christopher Wimmer
Cc: Consumer Case Filing Team; Peter Roldan; Jason Fisher; Stacie Smith; JCawdrey@gordonrees.com; Kimberly Howatt; Brittany McCarthy
Subject: RE: Michael Crabtree and Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Thank you, Mr. Wimmer. The AAA lacks the authority to consolidate the claims absent party agreement.

Accordingly, we will remove Mr. Crabtree from the file.

Sincerely,
Tara Parvey

From: Christopher Wimmer [mailto:chris@emergent.law]
Sent: Monday, June 26, 2017 3:46 PM
To: Tara Parvey

Cc: Consumer Case Filing Team; Peter Roldan; Jason Fisher; Stacie Smith; JCawdrey@gordonrees.com; Kimberly Howatt; Brittany McCarthy

Subject: Re: Michael Crabtree and Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Ms. Parvey,

Thank you for your detailed response, with which claimants agree in every respect but one: the suggestion that the Crabtrees need to file separate demands. Susan and Michael Crabtree are husband and wife, and signed the same agreements to purchase respondents' real estate seminars. See attached. Accordingly, they have a single, unified claim, and it is inappropriate and impractical to "split" their claim.

We ask that the AAA amend its determination on this issue, and permit the Crabtrees to pursue their claim together. Alternatively, Michael will dismiss his demand, and Susan will pursue the claims on her and her husband's behalf.

Regards,

Christopher Wimmer
EMERGENT LLP
535 Mission Street, 14th Floor

San Francisco, CA 94105

p: [415.894.9284](tel:415.894.9284) x101

f: [415.276.8929](tel:415.276.8929)

e: chris@emergent.law

w: emergent.law

Tara Parvey
Director of Intake

T: [856 679 4602](tel:856.679.4602) F: [877 304 8457](tel:877.304.8457) E: ParveyT@adr.org
1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043

On Tue, Jun 20, 2017 at 4:11 PM, Tara Parvey <ParveyT@adr.org> wrote:

Dear Counsel:

We have reviewed the parties' comments and are in receipt of \$1,700 from respondent.

Because the parties do not agree to proceed on a consolidated basis, the AAA requests that the claimant amend the demand to remove one of the claimants and file a separate demand and filing fee for the other claimant.

Regarding the applicable rules, the Consumer Arbitration Rules and the Consumer Due Process Protocol apply to this dispute. Accordingly, the AAA will not proceed with administration absent receipt of a waiver of the substantial and material deviation from the Consumer Rules and the Consumer Due Process Protocol. The requested waiver will apply in this case and all future cases. Should the business fail to submit the waiver, the AAA will decline to administer this dispute and any future consumer arbitrations involving this business.

Respondent's argument appears to be that the parties intended the Supplementary Procedures for Consumer-Relate Disputes ("Consumer Supplement") to apply to this dispute and that under those procedures, fee splitting would have been permissible. Even if

we put aside that R-1 of the Consumer Rules states that contracts referring to the Consumer Supplement will be administered under the Consumer Rules, fee splitting is not permissible and the Consumer Rules apply.

I have attached a copy of the Supplementary Procedures for Consumer-Related Disputes ("Consumer Supplement"). First, those rules, and indeed every set of AAA's rules state that the AAA's rules in effect at the time of filing will be used when the arbitration is commenced. As the Consumer Supplement has been replaced by the Consumer Rules, the Consumer Rules are appropriate and contemplated by the parties' agreement. Second, the Consumer Supplement also capped the consumer's costs at \$200. Third, regardless of the particular set of rules, the Consumer Due Process Protocol has been applied to all consumer arbitration since its adoption and cost splitting has always been considered a material and substantial deviation from which the AAA required a waiver to proceed. Fourth, the Commercial Rules incorporate the Consumer Rules by reference for consumer arbitrations. Therefore, even if we carve out the reference to the Consumer Supplement as impossible, the Commercial Rules lead us back to the Consumer Rules. Finally, the Consumer Rules state that the Consumer Rules apply to any consumer arbitration that designates any set of AAA rules, however named and regardless of party intent. A business may not avoid application of the Consumer Rules or the Consumer Due Process Protocol by designating another set of rules; that would swallow the Consumer Rules.

As a private administrator, it is the AAA's policy to administer arbitration in accordance with the Consumer Due Process Protocol. The parties are free to agree to terms that deviate from the AAA's procedures; however, the AAA will decline to administer consumer arbitrations that do not comply with its policies on consumer arbitrations and reasonable costs to the consumer is one of the fundamental policies.

Accordingly, the AAA reaffirms its determination to apply the Consumer Rules and require the respondent's waiver of the cost splitting provision.

Sincerely,

Tara Parvey

Director of Intake

From: Christopher Wimmer [mailto:chris@emergent.law]

Sent: Thursday, June 15, 2017 9:19 PM

To: Consumer Case Filing Team

Cc: Peter Roldan; Jason Fisher; Stacie Smith; JCawdrey@gordonrees.com; Kimberly Howatt; Brittany McCarthy

Subject: Re: Michael Crabtree and Susan Crabtree V. Armando Montelongo, Jr., - Case 01-17-0001-3486

Dear Consumer Filing Team,

We write to follow up on our May 2nd letter, and to ask that the AAA assign an arbitrator to this matter promptly, so that a determination of the proper filing fees to be paid by the claimants and respondents can be resolved. We have well over 100 clients in the same position as the Crabtree claimants, and the parties would greatly benefit from resolution of these procedural issues.

Kind regards,

Christopher Wimmer
EMERGENT LLP
535 Mission Street, 14th Floor

San Francisco, CA 94105

p: [415.894.9284](tel:415.894.9284)

f: 415.276.8929

e: chris@emergent.law

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Tara Parvey
Director of Intake

American Arbitration Association

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On Tue, May 2, 2017 at 11:23 AM, Stacie Smith <stacie@emergent.law> wrote:

Dear Consumer Filing Team,

Please see the attached correspondence regarding the above-referenced case.

Thank you.

--

Stacie Smith
EMERGENT LLP
535 Mission Street, 14th Floor

San Francisco, CA 94105

p: [415.894.9284](tel:415.894.9284)

f: [415.276.8929](tel:415.276.8929)

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EXHIBIT M



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Voorhees, NJ 08043
Telephone: (856)435-6401

July 18, 2017

Christopher Wimmer, Esq.
Emergent Legal
535 Mission Street, 14th Floor
San Francisco, CA 94105
Via Email to: chris@emergent.law

Jeffrey D. Cawdrey, Esq.
Gordon Rees Scully Mansukhani, LLP
101 West Broadway, Suite 2000
San Diego, CA 92101
Via Email to: jcawdrey@gordonrees.com

Case Number: 01-17-0001-3486

Susan Crabtree

-vs-

Armando Montelongo, Jr., Real Estate Training International, LLC, Performance Advantage Group, Inc., and License Branding, LLC

Dear Parties:

We are in receipt of correspondence from respondents' counsel refusing to provide the waiver of the material and substantial deviation from the Consumer Rules and the Consumer Due Process Protocol. Accordingly, we must decline to administer this case and have closed our file.

According to R-1(d) of the Consumer Arbitration Rules, should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.

Further, because the business' failure to remit the waiver constitutes a failure to adhere to our policies regarding consumer claims, we may decline to administer future consumer arbitrations involving Armando Montelongo, Jr., Real Estate Training International, LLC, Performance Advantage Group, Inc., and License Branding, LLC. The AAA's consumer policies can be found on the AAA's website, www.adr.org.

We request that the businesses remove the AAA name from its consumer arbitration clause so that there is no confusion to the public regarding our decision.

The \$200 received from claimant will be refunded shortly. We received a credit card authorization from the respondents, but the card has not been charged. Therefore, respondents will not receive a refund.

Pursuant to the AAA's current policy, in the normal course of our administration, the AAA may maintain certain electronic case documents in our electronic records system. Such electronic documents may not constitute a complete case file. Other than certain types of electronic case documents that the AAA maintains indefinitely, electronic case documents will be destroyed 18 months after the date of this letter.

If you have any questions, please email ConsumerFiling@adr.org.

Sincerely,

Consumer Filing Team
Email: ConsumerFiling@adr.org
Fax: (877)304-8457

EXHIBIT N

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CLAUDIA OCORO, ISRAEL ROSALES, §
ESTRELLITA ACCAD, PEDRO ACCAD, §
MARIE AGUIRRE, TAHERA AHMED, §
PAUL AHRENS, ANDREA §
ALLBRIGHT, KIMBERLY ALLEN- §
BECK, DIANA ALVARADO-HARRIS, §
JOSEPHINE AMAEFULE, RICK §
AMATO, MARLENE ANDERSON, §
SHARON ANDERSON, JACQUELINE §
ANTEAU, KIM ARENDT, GAIL §
ARNAULT, CHARLENE AVILA, §
BARBARA BACK, JAMES BACK, §
LEOTA BALTZELL, CORINA BARBU , §
FRIZZET BARNES, BRUCE BARTELT, §
DEVIN BATES, TIM BAUER, VI §
BECKER, KATHRYN BERGAMI, §
DENNIS BERKLEY, GEORGIA §
BERKLEY, ROGER BIRT, TANIA BIRT, §
ELIZABETH BOWNE, VINNIE §
BRANCH, AARON BREITMAN, §
JONATHAN BREITMAN, KAREN §
BRODIE, JESSICA BROWER, CAROL §
BROWN, JUSTIN WILLIAM BROWN, §
MARY BUCKLEY, RICHARD §
BUCKLEY, CECILIA BUNNELL, §
TIFFANY BUNNELL, FRANCIS §
BURKE, TRINADH BYLIPUDI, §
HEATHER CALLAHAN, DANIEL §
CALLAWAY, ED CALLAWAY, ERROL §
J. CAMPBELL, TERESA CAMPBELL, §
BRAD CARVER, CYNTHIA CASEY, §
DENA CASTELLO, CECILIA CHAVEZ, §
KUM-LOK CHIA, ROBERT §
CLAYPOOLE, THERESA COLEMAN, §
ALYSSA COLINA, SHAWNNA §
CONNER, GREG CONTRERAS, §
DANETTE COOK, ROBERTO CORREA, §
SHERILYN CORREA, JOAN COVER, §
KAREN COX, STEVE COX, MIKE §
CRABTREE, SUSAN CRABTREE, §
PAMELA CREEK, STEVE CREEK, §
JANET CRISTALLO, JORY CUMMINS, §
HEATHER DAMON, VERONICA §

Case No. 5:16-cv-01278-RCL

DAVILA, BRUCE DAWSON, §
CATHERINE DEL FERRARO, RON T. §
DENISEN, PAMELA DENNY, NOEL §
DEWVEALL, BRIDGETT DILL, §
MAURICIO DILL, AYESHA DINKINS, §
STACY DINTER, ROBERT DRAKE, §
SUSAN DRAKE, TANYA DRAKE, §
PAMELA DUQUE, GENEVIEVE §
EDWARDS, JANICE EDWARDS, §
KEITH ELAM, DAWN ELROD, JAMES §
ELROD, LOUIS ENGLISH, ALEX §
ESCALANTE, JAMES FAJARDO, §
PATTY FARKAS, BRIAN FARRIS, §
COLLEEN FARRIS, JAN FAVORITE, §
TINA FERRERO, JOE FILIPPO, AGNES §
FLORENDO, JOSE FLORES, PHILLIP §
FLORES, KELLY FLOYD, JAMES §
FORD, RAVAE FORD, STEPHANIE §
FREE, CUAHUTE FUENTES, KATHY §
FUENTES, KAREN FURLOW, §
GARRETT GARCIA, MICHELLE §
GARCIA, ROSALIE GARCIA, §
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GAVIN, CYNTHIA GEPHARDT, §
JOSEPH GEPHARDT, MARY §
GERHART, SUSAN GLASS, DOUGLAS §
GLENN, JOSE GONZALEZ, MANUEL §
GONZALEZ, ROSA GONZALEZ, §
AARON GORDON, TARA GREEN, §
VICTOR GUTIERREZ, ERIC HANSEN, §
NANCY HANSEN, RHONDA HANSEN, §
SUSAN HARBOLT, ROBIN HARMON- §
TATUM, KEIDRA HARVEY, RONALD §
HARVEY, NOREEN HAWORTH, TED §
HAWORTH, CHRISTINA §
HEADINGTON, CHRIS HEPBURN, §
NICOLE HEPBURN, DEBE HICKMAN, §
JAMES HIGGINS, JOAN HIGGINS, §
JAN HIGHMAN, LAWRENCE §
HIGHMAN, DONNA HIRTH, SHARRI §
HOFFMAN, KIM HOLSTEIN, MONICA §
HOLTZHAUER, GREGORY HUNTER, §
JUDY HUNTER, ROB JANESH, §
BARBARA JOHANNABER, EARL §
JOHANNABER, JILL JOHNSON, §
JOHN PAUL JOHNSON, KRANDALL §
JOHNSON, MONICA JOHNSON, §

RANDY JOHNSON, RONN JOHNSON, §
CHUCK JONES, CYNTHIA JONES, §
GALE JONES, TERRI JONES, §
SHIRLEY JOSEPH, JOHN §
KACHNOWSKI, MAUREEN §
KACHNOWSKI, KELLI KAESTLER, §
MITCH KAUFMAN, HOWARD §
KINSEY, SHERRIE KINSEY, DAWN §
KLAPCUNIAK, KENNETH §
KLAPCUNIAK, BRIAN KLOSS, §
ROBERT KNIGHT, SHANNON §
KNIGHT, TAMMY KNUTSON, §
HEATHER KOHL, KIRK KREMPEL, §
DONALD KRUTA, EDWIN J. KULM, §
MARLEEN A. KULM, TAMMY KURTZ, §
LIANA KUTEJOVA, CAROLE §
LALLANDE, THOMAS LAM, CHERYL §
LARDINOIS, GREGG LARDINOIS, §
MARIAN LEBEN, ANTHONY §
LEDESMA, ELIZABETH LEDESMA, §
HEATHER LEVINE, GLADYS LEVY, §
JANELLA LEVY, KAREN LEWIS, MIKE §
LEWIS, PEGGY LIAO, VOIDREY §
LINDSAY, SHARON LOUROS, JANINE §
LU, YASMINE LU, RANDY MACK, §
LUCY MAHONEY, SUSAN MALBIN, §
MARK MANIS, SHERRY MARLER, §
BRIAN MARTIN, WENDY MARTIN, §
MANUEL MATA, GINGER MCCURRY- §
MILLER, FRAN MCFARLAND, §
RICHARD MCFARLAND, CHRIS §
MCHATTON, MICHAEL MCKAIN, §
ELLEN MENTER, WILLIAM MENTER, §
STEVEN L. MILLS, KIMBERLEE §
MITCHELL-TONETTI, NICHOLE §
MOLLIKA, ANDY MONSON, LEANNA §
MOORE, ROBERT MOORE, STEVEN §
MOORE, CINDY MORRIS, CLAIR §
MORRIS, DONNA MORRIS, BARBARA §
MOWERY, SHERRY MULLINS-BRILL, §
CONNIE MUSILEK, MECHELLE §
MYLES, YOSHI NAKAYAMA, §
ELIZABETH NASH, KEITH NASH, §
RIZALINA NAVARRO, WILFREDO §
NAVARRO, MICHAEL NERI, §
BRIDGETTE NEWSOME, CHAUNCE §
NGUYEN, DONALD NICOLAS, §

CHARLOTTE CHRISTINE NOONAN, §
DARYL NOONAN JR., CINDY §
NORBUT, JEAN NORTON, LINDA §
OATES, KAREN OKERMAN, CARLOS §
ORTIZ, CRISTINE OSBORNE, LAUREE §
OTERO, DIANE OTTOLENGHI, §
JOHNNIE PARKER, JOHNETTE §
PARMELEE, HARI PATEL, GABRIELA §
PEREZ, NANCY PEREZ, JENNIFER §
PIGG, GARY PLUMMER, LORENE §
PLUMMER, RICH POPKO, KNICOLE §
PORTER, STACEY PRICE-BROWN, §
LINDA QUELET, MARIO RAMIREZ, §
ANTHONY RANGEL, TINA RASALLA, §
TONY RASALLA, CECILIA REDMOND, §
BARBARA REYES-RODRIGUEZ, §
SANDY RHEINECKER, CHERYL RICH, §
LAURIE RIOUX, KRISTY RITZ, DIEGO §
RODRIGUEZ, SUSAN ROGGE, LISA §
ROMEO, COLLEEN RUPPE, SANDY §
RUTHRUFF, THOMAS SABATINO, §
CARLENE SAELG, REHAB SALEM , §
ELIZABETH SCEARCE, JIM SCEARCE, §
VICKI SCHACHTER, ANGIE §
SCHLECTER, DARLENE SCHMICK, §
SHAWN SCHNOOR, RANDALL §
SCOVILLE, JORIE SCULL, LAURA §
SERRANO, MOISES SERRANO, §
SHERRY SETZER, LEATRICE §
SHEPHERD, BROOKS SILVA, VICKI §
SIMMONS, DAVID SISNETSKY, CHAD §
SKURKIS, MICHELLE SKURKIS, §
KAREN SKYLER, EDWARD JOSEPH §
SMITH III, LY SMITH, CHRISTY §
STACY, MICHAEL STACY, SUZAN §
STARKEY, DALE STARKS, ALAN §
ORLANDO STARKS, CARLA STRAND, §
JOE STRAND, KAREN SUING, LAURIE §
TATUM, JOSHUA TAYLOR, SUZANNE §
TERPAK, COLLETTE TERRY, THE §
ESTATE OF GAIL COX, THE ESTATE §
OF LESLEY O'NEAL, THE ESTATE OF §
MARGARET MONSON, CAROL §
THOMAS, JILL TORRES, MARTINA §
TORRES, LOANN TRAN, ANNE §
TRAVIS, RICHARD SCOTT TRAVIS, §
CHUNG MAI TSENG, SUZANNE §

TUSKEY, KIMBERLEY TUTEN, GREG §
TUTTLE, TRISHA TUTTLE, DUANE §
VADNAIS, LINDA VAN ORSDOL, §
NANCY VANDELOOP, CHRISTIAN §
VANDERFORD, GORDON §
VERBERKMOES, SUSAN VESEL, §
MICHAEL VORONKOV, LAURA §
VORONKOVA , DOROTHY WALCOTT, §
JEAN LYNN WALKER, TK WECK, §
JEMILA WELDENHAWARYAT, §
MICHELLE WESTSTEYN, LINDA §
WHEELER, ROBERT WHEELER, §
PHILIP WHITE, CLARENCE §
WILKERSON, CYNTHIA WILKERSON, §
CHARLES WILLISON, JANET §
WILLISON, LINDA WILSON, §
MICHELLE WILSON, TIM WILSON, §
LINDA WOODS, KIM WOZNIAK, §
GLEN YOUNG, MARK ZAKREZEWSKI, §
SHARON ZAKREZEWSKI, RENEE §
ZELENOY, LORI ZUANICH, TONY §
ZUANICH, §

Plaintiffs, §

v. §

ARMANDO MONTELONGO JR., REAL §
ESTATE TRAINING INTERNATIONAL, §
LLC, PERFORMANCE ADVANTAGE §
GROUP, INC., LICENSE BRANDING, §
LLC., §

Defendants. §

Dill, Mauricio Dill, Ayesha Dinkins, Stacy Dinter, Robert Drake, Susan Drake, Tanya Drake, Pamela Duque, Genevieve Edwards, Janice Edwards, Keith Elam, Dawn Elrod, James Elrod, Louis English, Alex Escalante, James Fajardo, Patty Farkas, Brian Farris, Colleen Farris, Jan Favorite, Tina Ferrero, Joe Filippo, Agnes Florendo, Jose Flores, Phillip Flores, Kelly Floyd, James Ford, RaVae Ford, Stephanie Free, Cuahute Fuentes, Kathy Fuentes, Karen Furlow, Garrett Garcia, Michelle Garcia, Rosalie Garcia, Garlande Garry, James W. Gavin, Cynthia Gephardt, Joseph Gephardt, Mary Gerhart, Susan Glass, Douglas Glenn, Jose Gonzalez, Manuel Gonzalez, Rosa Gonzalez, Aaron Gordon, Tara Green, Victor Gutierrez, Eric Hansen, Nancy Hansen, Rhonda Hansen, Susan Harbolt, Robin Harmon-Tatum, Keidra Harvey, Ronald Harvey, Noreen Haworth, Ted Haworth, Christina Headington, Chris Hepburn, Nicole Hepburn, Debe Hickman, James Higgins, Joan Higgins, Jan Highman, Lawrence Highman, Donna Hirth, Sharri Hoffman, Kim Holstein, Monica Holtzhauer , Gregory Hunter, Judy Hunter, Rob Janesh, Barbara Johannaber, Earl Johannaber, Jill Johnson, John Paul Johnson, Krandal Johnson, Monica Johnson, Randy Johnson, Ronn Johnson, Chuck Jones, Cynthia Jones, Gale Jones, Terri Jones, Shirley Joseph, John Kachnowski, Maureen Kachnowski, Kelli Kaestler, Mitch Kaufman, Howard Kinsey, Sherrie Kinsey, Dawn Klapcuniak, Kenneth Klapcuniak, Brian Kloss, Robert Knight, Shannon Knight, Tammy Knutson, Heather Kohl, Kirk Krempel, Donald Kruta, Edwin J. Kulm, Marleen A. Kulm, Tammy Kurtz, Liana Kutejova, Carole Lallande, Thomas Lam, Cheryl Lardinois, Gregg Lardinois, Marian Leben, Anthony Ledesma, Elizabeth Ledesma, Heather LeVine, Gladys Levy, Janella Levy, Karen Lewis, Mike Lewis, Peggy Liao, Voidrey Lindsay, Sharon Louros, Janine Lu, Yasmine Lu, Randy Mack, Lucy Mahoney, Susan Malbin, Mark Manis, Sherry Marler, Brian Martin, Wendy Martin, Manuel Mata, Ginger McCurry-Miller, Fran McFarland, Richard McFarland, Chris

McHatton, Michael McKain, Ellen Menter, William Menter, Steven L. Mills, Kimberlee Mitchell-Tonetti, Nichole Mollica, Andy Monson, Leanna Moore, Robert Moore, Steven Moore, Cindy Morris, Clair Morris, Donna Morris, Barbara Mowery, Sherry Mullins-Brill, Connie Musilek, Mechelle Myles, Yoshi Nakayama, Elizabeth Nash, Keith Nash, Rizalina Navarro, Wilfredo Navarro, Michael Neri, Bridgette Newsome, Chaunce Nguyen, Donald Nicolas, Charlotte Christine Noonan, Daryl Noonan Jr., Cindy Norbut, Jean Norton, Linda Oates, Karen Okerman, Carlos Ortiz, Cristine Osborne, Lauree Otero, Diane Ottolenghi, Johnnie Parker, Johnette Parmelee, Hari Patel, Gabriela Perez, Nancy Perez, Jennifer Pigg, Gary Plummer, Lorene Plummer, Rich Popko, Knicole Porter, Stacey Price-Brown, Linda Quelet, Mario Ramirez, Anthony Rangel, Tina Rasalla, Tony Rasalla, Cecilia Redmond, Barbara Reyes-Rodriguez, Sandy Rheinecker, Cheryl Rich, Laurie Rioux, Kristy Ritz, Diego Rodriguez, Susan Rogge, Lisa Romeo, Colleen Ruppe, Sandy Ruthruff, Thomas Sabatino, Carlene Saelg, Rehab Salem, Elizabeth Scarce, Jim Scarce, Vicki Schachter, Angie Schlecter, Darlene Schmick, Shawn Schnoor, Randall Scoville, Jorie Scull, Laura Serrano, Moises Serrano, Sherry Setzer, Leatrice Shepherd, Brooks Silva, Vicki Simmons, David Sisnetsky, Chad Skurkis, Michelle Skurkis, Karen Skyler, Edward Joseph Smith III, Ly Smith, Christy Stacy, Michael Stacy, Suzan Starkey, Dale Starks, Alan Orlando Starks, Carla Strand, Joe Strand, Karen Suing, Laurie Tatum, Joshua Taylor, Suzanne Terpak, Collette Terry, The Estate of Gail Cox, The Estate of Lesley O'Neal, The Estate of Margaret Monson, Carol Thomas, Jill Torres, Martina Torres, Loann Tran, Anne Travis, Richard Scott Travis, Chung Mai Tseng, Suzanne Tuskey, Kimberley Tuten, Greg Tuttle, Trisha Tuttle, Duane Vadnais, Linda Van Orsdol, Nancy Vandeloop, Christian Vanderford, Gordon Verberkmoes, Susan Vesel, Michael Voronkov, Laura Voronkova, Dorothy Walcott, Jean Lynn Walker, TK Weck, Jemila Weldenhawaryat, Michelle

Weststeyn, Linda Wheeler, Robert Wheeler, Philip White, Clarence Wilkerson, Cynthia Wilkerson, Charles Willison, Janet Willison, Linda Wilson, Michelle Wilson, Tim Wilson, Linda Woods, Kim Wozniak, Glen Young, Mark Zakrezewski, Sharon Zakrezewski, Renee Zelenoy, Lori Zuanich, and Tony Zuanich (“Plaintiffs”), and hereby file this Original Complaint against Defendants Armando Montelongo Jr. (“Montelongo”), Real Estate Training International, LLC (“RETI”), Performance Advantage Group, Inc. (“PAG”), and License Branding, LLC (“LB”) (collectively, “Defendants”) and for their causes of action herein would respectfully show the Court as follows:

I.

INTRODUCTION

1. Montelongo has made hundreds of millions of dollars selling real estate education programs to Americans who long for financial security in uncertain times. Montelongo styles himself as the “epitome of the American dream.” For his students, however, he is a nightmare.

2. Acting through his many corporate shells, Montelongo sells worthless, dangerous, and unlawful advice about real estate investing; takes advantage of the students’ trust to loot their accounts; sells them properties at inflated prices without disclosing his stake in them; encourages them to pursue their real estate investments using his allies, who also victimize the students; and harasses those who dare to speak out against him.

3. By this action, 138 former students—part of a still larger group of 197, the rest of whom are pursuing their claims in arbitration—now seek to remedy the financial devastation Montelongo’s predation has wreaked.

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II.

JURISDICTION

A. Subject Matter Jurisdiction

4. This court has subject matter jurisdiction over this action pursuant to 18 U.S.C. § 1964, which gives those injured by RICO violations the right to sue in any appropriate United States district court. Because Defendants reside and have their corporate headquarters here in San Antonio, Texas, make all decisions in San Antonio, Texas, and approve all marketing and issue instructions to seminar teachers and agents selling the seminars in San Antonio, Texas, this honorable court has subject matter jurisdiction over all Defendants.

B. Personal Jurisdiction

5. This court has general personal jurisdiction over Montelongo because he is a resident of this state and of this federal district, and over all other Defendants identified in this complaint because they are headquartered and do extensive business in this federal district in Texas as referenced above.

III.

VENUE

6. Venue is proper in the San Antonio Division of this court. Under 28 U.S.C. § 1391, Montelongo is an individual, and Defendants RETI, PAG, and LB are corporations, that “reside” in the Western District of Texas and, more particularly, in the City of San Antonio, Texas. Montelongo maintains his residence in San Antonio, while Defendants RETI, PAG, and LB maintain and operate their headquarters within the City of San Antonio, Texas, employ officers and personnel at the Defendants’ headquarters in that city, and conduct extensive business activities and take decisions within this judicial district and division. Additionally, the actions, omissions, events, and violations giving rise to the claims asserted herein occurred within this judicial district and division.

IV.

PARTIES

PLAINTIFFS

7. Plaintiffs reside in and around the San Antonio, Texas area, or other areas of the United States, and are current or former students of Defendants.

8. Plaintiffs are part of a larger group of individuals victimized by Defendants who have chosen to work together to pursue claims against Defendants for their fraudulent scheme. The members of that group not plaintiffs in this action signed arbitration agreements when they purchased Defendants' products, and are pursuing their claims before the American Arbitration Association.

DEFENDANTS

9. On information and belief, Montelongo is a resident of San Antonio, Texas.

10. On information and belief, RETI is a Delaware limited liability company with its principal place of business in San Antonio, Texas.

11. On information and belief, PAG is a Nevada corporation with its principal place of business in San Antonio, Texas.

12. On information and belief, LB is a limited liability company with its principal place of business in San Antonio, Texas.

V.

FACTS

A. Montelongo and His Seminars

13. Montelongo began his career as a real estate investor in Texas in 2001 and began offering real estate investment seminars in 2005. He rose to national prominence between 2006 and 2008 as a star on the cable television reality show "Flip This House," and when he departed the show used his stardom

to expand his seminar offerings nationwide. He now offers his seminars through a web of companies, including defendants RETI, PAG, and LB. Montelongo and these entities, along with other entities and individuals not yet known to the plaintiffs, operate together an enterprise called in this complaint the “Armando Montelongo Seminars,” or “AMS.”

14. What Defendants claim to offer through AMS’s education programs is a “methodical step-by-step system for building wealth in real estate” purportedly modeled on Montelongo’s own experiences. One of their websites (arandomontelongo.com) claims: “I was fortunate enough to find millionaire mentors without whom I would have lost a lot of time, money, and hope. They helped me accomplish my goals and reach my dreams. This is why I am happy to share my secrets and help others succeed. Coming from living in my in-law’s garage and \$50,000 in debt, I know what it’s like to struggle. I am the epitome of the American dream. I turned my misfortunes into millions, and I can help you do the same.” That same website also claims the AMS system is bulletproof: “Armando’s step-by-step methodical system works in any financial market, at any given time.”

15. Defendants offer the AMS system through several education seminars, or “events.” According to their website, they sell the following products which they falsely describe as follows:

- a. The “preview event,” “taught by Armando’s personal partners, provides an inside look at the house flipping business and teaches about proven house flipping techniques. Network with successful partners and learn why anytime is the time for real estate. Learn about how to make money by flipping houses, build a retirement income through cash flow properties, and about how to keep your wealth through asset protection. At the

Preview Events, you will: Network with Armando's hand-picked partners; See the options you can begin in real estate; Learn Armando's step-by-step system to investing...and so much more!"

- b. The "foundation event" (sometimes called the "three-day event") is "an intensive, information packed workshop that gives you the foundation to build your own house flipping business. Learn all about how to find and fund your deals, how to use the techniques and rules Armando actively uses, and how to overcome common difficulties in real estate. The three[-]day event covers all important topics for beginning real estate investors. You will learn the ABC's of real estate investing, such as: After repair value vs. fair market value[;] The 1% Rule versus Mixed Rate[;] Various options for fixing and flipping[.] Upon completion of this in-depth, accelerated seminar, you'll be equipped [with] all the groundwork necessary for flipping properties."
- c. The "bus tour" is a "three[-]day event filled with Armando's most successful and exclusive partners and students. At the bus tour, you will learn first-hand about house flipping techniques and easy fixes for profit and personal tips and advice from Armando Montelongo. This is your opportunity to network with other investors, money lenders, and students from all across the US. Learn how to properly assess properties with Armando and his most successful students as your guide. A one-of-a-kind event taught by Armando himself[;] Get hands-on training from a team of mentors[;] Network with other investors, money

lenders, & students[;] Learn how to have a successful business[.]

It took Armando a decade to establish his phenomenal house-flipping system. Learn it from the bus tour in just 3 days!”

- d. The “master mentor” program, which promises “access to Armando’s real estate hotline for any question you may have now or in the future. Call to update your knowledge on rehabbing different types of rental properties, tips on how to work with the constant changing commercial market, and guidance whenever, wherever. Do you want to increase your cash flow and maximize your capital investment? Are you ready to strengthen your real estate portfolio with big commercial flips? YOUR VERY OWN MASTER MENTOR CAN HELP GET YOU THERE! Your Master Mentor[] will teach you how to effectively connect with investors specializing in commercial properties, lay out contracts, and much, much more.”
- e. “Continuing education” services, including the “asset protection” program, which Defendants falsely claim teaches “the most essential tools for protecting your finances,” “healthy, strategic, and beneficial business planning,” “[i]nformation on corporate structure and management,” and “the latest information on how to save tax money for your business”; the “market domination” program, which Defendants falsely claim provides “the most efficient ways to flip in any market at this two[-]day event,” “training on how to flip and find deals in the smallest markets” and “where the top real estate markets in the nation are,” and the chance for students to “[n]etwork with sellers and investors to get tips from markets nationwide”; and

the “cash flow” program, which Defendants falsely claim teaches students “to manage rental properties,” “the system for rehabbing different types of rental properties[,]” “how to work with the always changing commercial market[,]” and how to “[a]ccelerate your real estate portfolio with commercial flips[.]”

16. The AMS enterprise has been hugely successful for Defendants. In 2011, Inc. 500 listed Montelongo’s group of companies as the 19th fastest growing business in the nation. Montelongo claimed to Forbes magazine in 2013 that his seminars would bring in \$100 million that year alone from 350,000 students attending over 3,500 events. On his prolific Facebook page, Twitter feed, and Periscope channel, Montelongo trumpets his wealth—expensive cars, flashy jewelry, extravagant vacations—using the hashtag #millionaire.

B. Defendants’ Fraudulent Scheme

17. Although the ostensible purpose of the AMS programs is to educate students about how to gain economic security and independence by flipping houses, their real aim and result is to enrich Montelongo and his related entities and allies at the expense of the students, including the Plaintiffs herein. The “seminars” or “events” are not genuine educational offerings. They are ruses to sell more AMS products, engage in self-dealing transactions with the students (whose trust Montelongo cultivates), and expose the students, including Plaintiffs herein, to predation at the hands of AMS allies.

Defendants’ Coercive and Deceptive Sales Tactics

18. Defendants market the AMS programs extensively through websites, email campaigns, late-night television, radio, and social media in the hopes of luring students to attend the programs, where they will be deceived into purchasing additional AMS products. These programs include free preview

events, foundation courses, bus tours, and master mentor programs held throughout the United States.

19. The AMS system is a series of upsells. At the free preview event, the students are sold the approximately \$1,500 to \$2,700 “foundation” course (as well as a \$797 to \$997 “tax lien” product); at the foundation course they are sold bus tour packages priced between \$18,000 and \$54,000, usually held within the next few weeks in the same area; and on the bus tours they are sold the \$25,000-plus “master mentor” program, as well as the \$25,000 “market domination,” \$5,000 to \$27,000 “asset protection,” and \$5,000 “cash flow” courses.

20. Defendants sell their products using coercion and deception. At the group events, students are crowded together into rooms or buses, where they are pounded with loud music, flashing lights, and chanting; told not to take breaks or leave the room lest they miss a critical piece of information; and deprived of food and sleep by seminars that run until late in the night without end, and which begin again early the next morning.

21. At the end of the events, when the students are physically and mentally exhausted, they are promised that, if they purchase the next AMS product in line that very day, they will finally get the information that will make them successful in real estate investing (*i.e.*, the information they were told they would get in the event they already purchased). Having committed thousands of dollars to the AMS programs, and desperate to recoup their investment, many students comply and purchase more high-priced products. Defendants deliberately cultivate this sense of desperation: Former employees report that Montelongo coaches them to ensure the students “feel like they have received some content, but do not actually know what to do on Monday.”

22. Defendants also engage in outright lies to sell their products, for example, creating fake personal success stories—different employees reuse the

same slides of rehabilitated houses, each claiming them as his or her own—and planting employees at events to pose as students who have taken the courses before, and have returned for more “valuable education.”

23. As another example of Defendants’ sales tactics, they claim to offer students a “Triple Your Money Back Limited Guarantee,” under which Defendants purportedly promise to refund students’ money if they follow the AMS system and yet do not make three times their purchase price back from real estate investments. This guarantee is persuasive, and a significant factor in convincing many students to purchase AMS programs. However, AMS insiders report that Defendants do not intend to honor these guarantees, and direct their sales agents not to sign the guarantees on behalf of Defendants in the belief the lack of signature would render them unenforceable.

24. To further their scheme, Defendants encourage students to contact their credit card companies and report that they already have the income that they hope to make from flipping houses—hundreds of thousands of dollars that they are not earning, and that Defendants know the students have no realistic chance of earning—in order to raise their credit limits to purchase more AMS products. Montelongo justifies this practice to his students as incurring “education debt,” which he claims is “good debt.”

25. Defendants also encourage students to transfer money in their employer-controlled or other secure retirement accounts to self-directed IRAs held by companies allied with Montelongo and the Defendant entities. Until at least mid-2015, Defendants’ chosen company was Preferred Trust Company, LLC (“Preferred Trust”), run by Kurt “the Shirt” Weinrich. After that time, Weinrich continued to be Defendants’ chosen self-directed IRA provider, apparently through a new entity the identity of which Plaintiffs do not yet know.

26. Defendants' alliance with Preferred Trust benefited them, Preferred Trust, and Weinrich at the expense and deception of the students. Preferred Trust charges extremely high fees for its services. As but one example of many, a San Diego resident put \$5,000 in a Preferred Trust self-directed IRA and, within three years, was charged \$4,200 in fees—even though she had done nothing with her account.

27. Weinrich also permits Montelongo access to confidential information about the students' finances that Defendants then use to prey upon them. During the asset protection events, Montelongo's employees ask students to share their financial information (including about their Preferred Trust accounts) in the name of educating the students. The employees then share that information with Montelongo, whose response to a positive account balance is visceral: Multiple former employees report that he shouts angrily, saying, "That's my money! You're not doing your job to get that in my pocket!" The employees comply, using their knowledge of the students' finances to sell them more AMS "education" or encourage them to invest in properties with AMS-allied developers.

28. To hide their deception, Montelongo and his employees instill fear in the students to discourage them from questioning the AMS system, and attacking or silencing those who attempt to speak out. For example, early on in a group event, when someone asks a question, Montelongo will berate the speaker, deriding him or her for wasting the other students' time. Cowed, few others will dare to interrupt again. At other points in an event, Montelongo will mention his in-house legal team, and claim that no one could possibly sue him and win. The crux of these remarks is that anyone who would cross Montelongo on a business deal would lose, and that any student who would cross him would lose, too.

29. Defendants also carefully monitor the private Facebook groups to which they invite their past and present students, immediately deleting anything critical of not only AMS or Montelongo, but also of anyone else who is a member of the group—even if that person has cheated other students of money—and forcing out those who continue to dissent.

30. When pressed to prove their claims, Defendants have resorted to harassment. In late 2013, the news show *20/20* taped an interview with a student who complained that she and her husband had been cheated by Montelongo’s seminars. Montelongo had her followed by a private investigator (as one of his employees later admitted). When Montelongo provided a student who was a “success story” to the news show, that student began recounting the wealth he had earned by following the AMS system, and then broke down and admitted it was a lie. Montelongo pursued this student, too—calling him personally and demanding he sign a declaration affirming that he had been successful.

Defendants’ Worthless, Dangerous Offerings

31. Defendants’ high-pressure sales tactics and promises of future fortune do not come with any educational substance. The core of AMS’s “methodical step-by-step system” is so simple it can be taught in a sentence: Take out high-interest debt to purchase dilapidated homes, make cosmetic repairs, and then quickly flip them to the next investor. It is also a recipe for financial disaster. As just a partial list of the system’s failings:

- a. A central tenet of the AMS sales pitch is that students do not need their own money to purchase, rehabilitate, and sell houses, and can instead obtain funding from private and hard money lenders. But these lenders generally require that the borrower front at least 20% of the project cost.

- b. The “65% rule” Montelongo claims provides the ideal price for any property (take 65% of the planned sale price of the property once it has been rehabilitated, and then deduct repairs and holding costs to determine your offer price) does not account for local variations in market conditions, material prices, or labor prices, making it useless (or worse) in many regions of the country.
- c. The similarly central “price reduction strategy”—submit an all-cash, no-contingency offer with a very short closing period, and then, once the property is in contract, demand a price reduction based on a new inspection and announce that, instead of cash, the deal will be funded by a hard money lender—has become anathema to realtors, who will often not even submit students’ bids once the realtors realize the students are using the AMS system. This ethically questionable strategy also cannot be used at all with certain types of properties (*e.g.*, auction sales).
- d. Homes cannot reliably be sold quickly enough and for prices high enough to cover the debt on them (especially when that debt is financed by high-interest hard money lenders, as the AMS system directs), leaving students with either unsaleable homes that end up in foreclosure or losses on their deals.
- e. Federal and state regulations (*e.g.*, a Fannie Mae requirement prohibiting sales of homes to FHA buyers unless the property has been held for 90 days) have altered the legality and profitability of house-flipping, but the AMS system—which has reportedly not been updated in 10 years—does not reflect them.

f. So many investors have entered the rehabilitation market (both the thousands of students AMS churns out annually and well-funded private equity investors) that prices for properties have increased, and margins have decreased. As a result, many students are unable to find suitable investment properties, and are left with mountains of debt from the AMS seminars and their account withdrawals, and no potential of recouping their losses.

32. Thus, contrary to Defendants' central claim, and as Defendants well know, the "system" does not "work[] in any financial market, at any given time."

Defendants' Self-Interested Business Dealings with their Students

33. Defendants also victimize their students by engaging in self-dealing transactions with them, frequently without disclosing their own interests. For example, before a bus tour event, Montelongo will use an affiliate to purchase properties in the area where the event will occur, and then, during the event, sell the properties to students at inflated prices without disclosing that he has an interest in the sales or receives a share of the profits. (One student fortuitously overheard Montelongo discussing this scheme when she dialed in early to a planned group call for AMS students.)

34. As another example, Montelongo solicited large amounts of student money for an investment in a marina near Sarasota, Florida called the Olde Fish House Marina. It may have reaped benefits for Montelongo—the AMS website describes it as a "successful casual dining establishment"—but the students who invested with him sustained heavy losses.

Defendants' Exposure of Students to Predation by their Allies

35. Defendants also harm students by encouraging them to work with AMS allies—"mentors" who are paid to provide the students with supposedly in-

depth advice on rehabilitating particular types of properties and changing market conditions, but who often lack the experience to provide insight, take advantage of the students' trust to enrich themselves, or simply fail to respond to student questions; "hard money lenders" or "gap funders" who lend money to the students to purchase their homes at extremely high rates; and "developers" who solicit investments from students to be used in rehabilitation deals, which frequently end in inadvertent disaster or outright embezzlement.

36. Although Defendants handpick mentors, lenders, and developers, recommend to students that they work with those particular individuals, and benefit from these recommendations by appearing to offer students a comprehensive, practical program for real estate investing, Defendants refuse to take responsibility when those allies cause students harm. Some of these allies have reportedly come under criminal investigation; their identities will be revealed in the course of the prosecution of this case.

C. The Harm to the Students

37. Defendants' conduct has damaged their students, including Plaintiffs herein, in multiple ways.

38. First, the students pay thousands of dollars (and often tens of thousands of dollars) for real estate investment education that, contrary to Defendants' promises, does not give them the skills necessary to succeed "in any financial market, at any given time," but is instead a jumble of empty, contradictory aphorisms and outdated, risky strategies that might have been useful in 2005, when Montelongo launched his seminars, but that have failed to keep up with the changing market and legal landscape; and that ignores critical distinctions between various states' treatment of mortgages, costs of construction, taxes, and insurance requirements. Sometimes, Defendants even

fail to provide the promised services at all, charging students for AMS programs, and then providing neither the purchased services nor refunds.

39. Second, the students pay significant travel and meal expenses to attend the AMS seminars (as Defendants would reasonably foresee given the markets they target and the locations of the events).

40. Third, the students incur interest on the credit card debt that Defendants encourage them to incur, and penalties and fees on the self-directed IRAs that Defendants encourage them to use.

41. Fourth, Defendants engage in self-dealing transactions with the students in ways designed to cause the students additional pecuniary harm.

42. Fifth, this accumulation of losses and unpayable debts destroys the students' credit ratings, and pushes many of them into bankruptcy.

43. Sixth, Defendants provide dangerous and unlawful tax advice—for example, that the students can reduce their tax burden by naming their infant children and elderly parents as “employees” in order to deduct their “salaries” from their house-flipping revenues, or that the AMS seminars are fully tax deductible because they are “educational debt.”

44. Seventh, Defendants recommend that the students work with particular mentors, contractors, realtors, developers, property managers, and lenders, even when they know or should know that these third parties are likely to cause the students harm through their negligence or intentional wrongdoing.

45. Eighth, the financial devastation wrought by the AMS programs has taken a heavy emotional toll, destroying friendships, wrecking marriages, driving students into clinical depression, and even resulting in suicide.

D. The Student Plaintiffs

46. The 138 student plaintiffs are all victims of Defendants' fraudulent scheme who, as a result of Defendants' actions and omissions have suffered,

continue to suffer, and will suffer into the foreseeable future damages and injuries. Each purchased one or more of the AMS foundation event, bus tour, master mentor, asset protection, market domination, and cash flow products; attended those events and attempted to employ the “advice” they received; and suffered financial injury as a result, including the money they paid directly to Defendants, the expenses they incurred to attend the events, the investments they lost due when they followed Defendants’ “system,” predation by Defendants’ allies, penalties from their use of retirement funds, interest on consumer debt used to purchase AMS seminars, damage to their credit rating, bankruptcy, and (in some cases) severe emotional distress.

E. RICO Allegations

47. The persons culpable for the pattern of racketeering activity and conspiracy to commit it alleged in this complaint are defendants Montelongo, RETI, PAG, and LB, and entities and individuals not yet known to Plaintiffs.

48. The enterprise operated by these culpable persons is referred to here as “Armando Montelongo Seminars,” or “AMS,” and is comprised of Montelongo, the defendant companies, and the unknown entities and individuals.

49. The activity of the enterprise and the racketeering acts described here affect interstate commerce, because the AMS enterprise is primarily located in San Antonio, Texas, and yet conducts business and defrauds students throughout the United States.

50. Defendants have engaged in racketeering activity by violating three predicate statutes. First, in violation of 18 U.S.C. § 1961, Defendants have committed at least the following instances of wire fraud:

- a. On October 18, 2011, Montelongo posted on his Facebook page a link and photos from the “AM Bus Tour September 2011” page.

- b. On January 28, 2012, Montelongo posted on his Facebook page photos from a bus tour in Cerritos, California.
- c. On March 13, 2012, Montelongo posted on his Facebook page photos from a bus tour in Pomona, California.
- d. On July 13, 2012, Montelongo posted on his Facebook page photos from a bus tour.
- e. On September 22, 2012, Montelongo sent an email blast titled “Executive Summary - Day 6 of 6 High Level Investment Strategy.”
- f. On September 24, 2012, Montelongo sent an email blast titled “Armando Says[—]“This Is a First Ever.””
- g. On September 26, 2012, Montelongo sent an email blast titled “Armando’s Double Header Reminder.”
- h. On October 2, 2012, Montelongo sent an email blast titled, “Best Opportunity Ever.”
- i. On November 3, 2012, Montelongo posted on his Facebook page photos showing “[t]hree full days of Armando teaching his AMazing students how to Dominate their Market.”
- j. On March 12, 2013, Montelongo posted on his Facebook page photos from a bus tour captioned “Best Real Estate Seminars in the business.”
- k. On June 23, 2013, Montelongo posted on his Facebook page photos showing “Students continu[ing] their education during June’s Cash Flow weekend” program.
- l. On August 25, 2013, Montelongo posted on his Facebook page photos of students “learn[ing] real estate from Armando Montelongo and his team” on a bus tour.

- m. On October 3, 2013, Montelongo posted on his Facebook page photos from a bus tour in San Antonio, Texas.
- n. On November 8, 2013, Montelongo posted on his Facebook page photos from a bus tour in Phoenix, Arizona.
- o. On April 27, 2014, Montelongo posted on his Facebook page a video from a bus tour in Miami, Florida.
- p. On July 13, 2014, Montelongo posted on his Facebook page a video from a bus tour.
- q. On August 24, 2014, Montelongo posted on his Facebook page a video from a bus tour.
- r. On February 6, 2015, Montelongo and a number of his companies' employees appeared on the CBS show "Undercover Boss."
- s. On July 28, 2015, Montelongo posted on his Facebook page a photo and invitation to the introductory AMS events.
- t. On November 23, 2015, Montelongo posted on his Facebook page photos from an AMS "bootcamp" event in Las Vegas, Nevada.
- u. On December 10, 2015, Montelongo posted on his Facebook page a video from a bus tour in Miami, Florida.
- v. On January 12, 2016, Montelongo posted a video on YouTube promoting the AMS "asset protection" program.
- w. On February 23, 2016, Montelongo posted on his Facebook page a photo from a bus tour.
- x. On April 24, 2016, Montelongo posted on his Facebook page a video from an "advanced rehab" class.

- y. On June 11, 2016, Montelongo posted on his Facebook page a video from a bus tour in Riverside, California.
- z. On July 17, 2016, Montelongo posted on his Facebook page a video from an AMS wholesaling seminar in San Antonio, Texas.
- aa. On August 27, 2016, Montelongo posted on his Facebook page a photo of him speaking at a cash flow seminar in San Antonio, Texas.
- bb. On September 12, 2016, Montelongo posted on his Facebook page a video of an AMS “advanced rehab” class.
- cc. On November 11, 2016, Montelongo posted on his Facebook page an announcement about a bus tour event in Doral, Florida.
- dd. Since about August 2006, and continuously to the present, Defendants have maintained the website arandomontelongo.com and promoted the AMS programs there. Since about April 2007, and continuously to the present, Defendants have maintained the website arandolive.com and promoted the AMS programs there. Defendants conceal the ownership of their websites using a private domain registrar.

51. These acts constitute wire fraud because Defendants developed a scheme to defraud Plaintiffs out of their money by false promises and misrepresentations about their products and about the market for house flipping, and by self-dealing transactions with them; Defendants had the intent to defraud Plaintiffs; it was reasonably foreseeable to Defendants that the wires would be used in that scheme; and Defendants used the wires to further that scheme by promoting their products.

52. Second, in violation of 18 U.S.C. § 2314, Defendants have transported in interstate commerce money in excess of \$5,000 they knew to have

been taken by fraud. They set up events in states across the nation, defrauded students (including Plaintiffs herein) of thousands or tens of thousands of dollars each, and then transported those funds across state lines by transmitting them either to their corporate offices or to financial institutions in Texas.

53. Third, also in violation of 18 U.S.C. § 2314, Defendants devised a scheme to defraud and then induced persons to travel in interstate commerce so that they could defraud those persons of more than \$5,000. At live events, over the phone, and online, Defendants persuaded students (including some Plaintiffs herein) to travel to events in other states, where they were deceived into spending thousands or tens of thousands of dollars on AMS products. These include:

- a. In February 2012, students living in Glendora, California were induced to travel to Las Vegas, Nevada for an asset protection event.
- b. In April 2012, students living in Glendora, California were induced to travel to Las Vegas, Nevada for a “buy and hold” event.
- c. In May 2013, students living in San Diego, California were induced to travel to San Antonio, Texas for an asset protection event.
- d. In August and October 2013, a student living in Norco, California was induced to travel to San Antonio, Texas for asset protection events.
- e. In October 2013, a student living in West Hills, California was induced to travel to an asset protection event in San Antonio, Texas.

- f. In October 2013, a student living in Eastvale, California was induced to travel to an asset protection event in San Antonio, Texas.
- g. In November 2013, students living in Bellflower, California were induced to travel to a bus tour event in Mesa, Arizona.
- h. In November 2013, a student living in Manhattan Beach, California was induced to travel to a bus tour event in Phoenix, Arizona.
- i. In December 2013, a student living in Eastvale, California was induced to travel to a bus tour event in Scottsdale, Arizona.
- j. In April 2014, a student living in Manhattan Beach, California was induced to travel to a market domination event in San Antonio, Texas.
- k. In October 2015, students living in Orange, California were induced to travel to a bus tour event in Miami, Florida.
- l. In November 2015, students living in Orange, California were induced to travel to a master mentor program in San Antonio, Texas.

54. Defendants have conducted the enterprise through a pattern of racketeering activity that satisfies both the close-ended and open-ended continuity requirements of RICO, because (a) they committed a series of acts of wire fraud, interstate transportation of money obtained by fraud, and inducement of persons to travel across state lines for the purpose of defrauding them within ten years that were related in their purpose, results, participants, victims, and methods of commission; and (b) Defendants threaten to continue to carry out wire fraud, interstate transportation of money obtained by fraud, and

inducement of persons to travel across state lines for the purpose of defrauding them in the same manner and to the same ends now.

55. Plaintiffs are persons who have sustained injury to their business or property by reason of Defendants' racketeering activity and overt acts committed in furtherance of their conspiracy to operate the enterprise.

56. Plaintiffs do not believe their claims are barred by the statute of limitations but, if any individual Plaintiff's claim would be barred in whole or in part, Defendants may not rely upon that bar because they fraudulently concealed from Plaintiffs that (a) the AMS programs exist only to sell more AMS programs and did not confer the skills promised, and (b) Defendants were engaging in self-dealing transactions with Plaintiffs, giving rise to equitable tolling.

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

RICO § 1962(c)

(Conducting a RICO Enterprise by a Pattern of Racketeering Activity)

57. Plaintiffs incorporate by reference paragraphs 1 through 56 above.

58. AMS is an enterprise engaged in and whose activities affect interstate commerce. Defendants are employed by or associated with the enterprise.

59. Defendants agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of racketeering activity and for the unlawful purpose of intentionally defrauding Plaintiffs.

60. Pursuant to and in furtherance of their fraudulent scheme, Defendants committed multiple related acts of wire fraud, interstate transportation of money obtained by fraud, and inducement of persons to travel across state lines for the purpose of defrauding them, as described herein.

61. The acts set forth above constitute a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5).

62. Defendants have directly and indirectly conducted and participated in the conduct of the enterprise's affairs through the pattern of racketeering activity described above, in violation of 18 U.S.C. § 1962(c).

63. As a direct and proximate result of Defendants' racketeering activities and violations of 18 U.S.C. § 1962(c), Plaintiffs have been injured in their business and property.

SECOND CAUSE OF ACTION

RICO § 1962(d)

(Conspiring to Conduct a RICO Enterprise by a Pattern of Racketeering Activity)

64. Plaintiffs incorporate by reference paragraphs 1 through 63 above.

65. As set forth above, Defendants agreed and conspired to violate 18 U.S.C. § 1962(a). Specifically, they agreed to market and conduct the AMS programs through a pattern of deceptive behavior, wire fraud, interstate transportation of money obtained by fraud, and inducement of persons to travel across state lines for the purpose of defrauding them, and use the proceeds from their misconduct to market and sell still further AMS programs.

66. Defendants have intentionally conspired and agreed to conduct and participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity. Defendants knew that their predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes described above. That conduct constitutes a conspiracy to violate 18 U.S.C. § 1962(a) in violation of 18 U.S.C. § 1962(d).

67. As direct and proximate result of Defendants' conspiracy, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962(d), Plaintiffs have been injured in their business and property.

THIRD CAUSE OF ACTION

Negligence

68. Pleading in the alternative, Plaintiffs incorporate by reference paragraphs 1 through 67 above.

69. Defendants owed Plaintiffs a duty to use reasonable care in providing their services and not self-deal for their own benefit. Defendants also had a special relationship with Plaintiffs, because Montelongo encouraged Plaintiffs to treat him and his employees, who are also employees of the entity Defendants, as mentors, and to put trust in Defendants' superior expertise in real estate investment.

70. Defendants breached their duties to Plaintiffs. They charged Plaintiffs thousands of dollars (and frequently tens of thousands of dollars) for real estate investment education, but did not use reasonable care to ensure that the AMS seminars and events gave Plaintiffs the skills necessary to succeed "in any financial market, at any given time," as Defendants promised; failed to use reasonable care to avoid engaging in self-dealing; knew or should have known, but failed to warn Plaintiffs, that the individuals and entities with whom Defendants recommended Plaintiffs do business were likely to cause harm to Plaintiffs through incompetence or intentional misconduct; and failed to use reasonable care to ensure that Plaintiffs received the promised services at all.

71. Defendants' conduct has damaged Plaintiffs as described herein.

72. Montelongo and the other Defendants' breaches of their duties proximately caused Plaintiffs' injuries.

73. Plaintiffs seek millions of dollars in damages, above and beyond the jurisdictional limits of this court.

FOURTH CAUSE OF ACTION

Negligent Misrepresentation

74. Pleading in the alternative, Plaintiffs incorporate by reference paragraphs 1 through 73 above.

75. Defendants owed Plaintiffs a duty to use reasonable care in representing their products and services. Defendants also had a special relationship with Plaintiffs, because Montelongo encouraged Plaintiffs to treat him and his employees, who are also employees of the entity Defendants, as mentors, and to put trust in Defendants' superior expertise in real estate investment.

76. Defendants represented to Plaintiffs that the AMS seminars, events, and related products would give them the skills necessary to succeed "in any financial market, at any given time," that the properties sold by Defendants at their events were good investment opportunities, and that the individuals and entities with whom Defendants recommended Plaintiffs do business were skilled in their respective fields and trustworthy.

77. Defendants failed to disclose to Plaintiffs that the AMS seminars were not genuine educational offerings, but instead ruses to sell more seminars and products; that the properties sold at Defendants' events were owned by Defendants or others in league with them, and were being offered at prices that made them poor investment opportunities; and that they knew or should have known of the risks that the AMS allies to whom they referred the students were likely to harm Plaintiffs through incompetence or intentional misconduct. The truth of these matters were material facts that, had they been disclosed to Plaintiffs, would have prevented Montelongo and the other Defendants from

engaging in their improper sales tactics, self-dealing, and referrals to their allies at the expense of Plaintiffs.

78. Defendants made the false representations, affirmatively and by omission, in the course of Defendants' businesses and in transactions in which Defendants had pecuniary interests, and supposedly for the guidance of Plaintiffs in their real estate activities, investments, and financial transactions.

Defendants' misrepresentations were concerted tactical and specific failures to disclose information when Defendants had a duty to do so.

79. Defendants did not exercise reasonable care or competence in obtaining or communicating the information they presented to Plaintiffs.

80. Plaintiffs justifiably relied on Defendants' false information and false representations by enrolling in and paying for Defendants' phony and fraudulent programs, unknowingly participating in financial and real estate transactions in which Defendants were engaged in self-dealing, and engaging in transactions with individuals and businesses they did not know were likely to cause them harm.

81. Montelongo's and the other Defendants' false information and false representations proximately caused, continue to cause, and will continue to cause the injuries and damages to Plaintiffs specifically pled in this complaint, which damages are above and beyond the jurisdictional limits of this court.

VII.

ATTORNEYS FEES AND COSTS

82. Plaintiffs incorporate by reference paragraphs 1 through 81 above.

83. By reason of Defendants' refusal to refund the money Plaintiffs spent on Defendants' products, it has been necessary for them to employ attorneys to prosecute this cause for them and Plaintiffs hereby request an award of reasonable attorneys' fees and costs.

VIII.

JURY TRIAL IS DEMANDED

84. Plaintiffs hereby demand a jury trial of all issues triable by jury.

IX.

PRAYER

85. WHEREFORE, Plaintiffs hereby request:

- A. Judgment against Defendants in the amounts respectively due each Plaintiff for past, present, and future compensatory damages;
- B. Treble the amount of compensatory damages;
- C. Exemplary damages;
- D. Reasonable attorneys' fees and costs;
- E. Such further relief as the court deems just and proper.

Date: September __, 2017

Respectfully Submitted,

SERNA & ASSOCIATES PLLC

By: _____

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EXHIBIT O

EMERGENT

June 30, 2017

By Email

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**Re: Michael and Susan Crabtree v. Armondo Montelongo, Jr., et al.
AAA Case Number 01-17-0001-3486**

Jeff:

As you know, on March 7, 2017, Susan and Michael Crabtree filed and served an arbitration demand with the American Arbitration Association ("AAA") against your clients, Armando Montelongo, Jr., Real Estate Training International, LLC, Performance Advantage Group, Inc., and License Branding, LLC (together, "Respondents"). The Crabtrees elected to proceed under the AAA's Consumer Arbitration Rules, and paid the \$200 fee called for by those Rules.

On March 22, Respondents filed a response and objection, contending the Consumer Rules did not apply, and insisting that the Crabtrees were required to pay \$4,000, rather than \$200, in filing fees.

On April 7, the AAA notified the Crabtrees and Respondents that it had determined the Consumer Rules and Consumer Protocol applied to the dispute, limiting the Crabtrees' filing fee to \$200. The AAA also observed that the provision of Respondents' purchase agreements requiring the consumer to split with Respondents the costs of any arbitration was "a material or substantial deviation from the Consumer Rules and/or Protocol." The AAA stated:

Specifically, the provision states, "Unless otherwise or provided herein this Agreement, the Parties will split only the costs and fees associated with conducting the arbitration." The foregoing is a substantial deviation from Principle 6 of the [Consumer] Protocol, requiring that the arbitration entail

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Jeffrey Cawdrey
June 30, 2017
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reasonable cost to consumers. Under the Consumer Due Process Protocol, the consumer's fee is capped at \$200.

The AAA requested that Respondents waive this provision, and agree to have the matter administered under the Consumer Rules and Protocol. The AAA also warned:

Absent receipt of the requested waiver, the AAA will decline to administer this dispute and possibly any future consumer arbitrations involving this business. Please note that pursuant to [] R-1(d) of the Consumer Rules, should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.

On April 21, Respondents responded to the AAA's determination by letter, objecting to the application of the Consumer Rules, insisting again that the Crabtrees pay a \$4,000 filing fee, and arguing that the Crabtrees should be required to split the arbitration costs.

On May 2, the Crabtrees replied to your letter, and asked the AAA to "1. Determine the Consumer Rules, by delegation, govern this arbitration; 2. Require from Claimant a filing fee no greater than \$200; and 3. Reject Respondents' proposed even split of costs and fees."

On June 20, Tara Parvey, the AAA's Director of Intake, emailed the parties reaffirming that the AAA agreed with the Crabtrees on all points, and indicating that, apart from the \$200 filing fee, all costs for the entire arbitration must be borne by Respondents. Ms. Parvey again requested that Respondents waive the cost-splitting provision in their purchase agreement, and again warned of the consequences of Respondents' refusal to do so:

As a private administrator, it is the AAA's policy to administer arbitration in accordance with the Consumer Due Process Protocol. The parties are free to agree to terms that deviate from the AAA's procedures; however, the AAA will decline to administer consumer arbitrations that do not comply with its policies on consumer arbitrations and reasonable costs to the consumer is one of the fundamental policies.

Accordingly, the AAA reaffirms its determination to apply the Consumer Rules and require the respondent's waiver of the cost splitting provision.

By July 12, 2017, please either provide the cost-splitting waiver to the AAA and confirm that waiver applies to all claims brought by any consumer who signed an arbitration agreement with Respondents, or confirm you will not object to the prosecution of those consumers' claims in

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the currently pending *Ocoro* action in the Western District of Texas. If Respondents do neither, we will seek a ruling from the court that Respondents have waived their right to insist on arbitration, and seek to bring all our many clients' claims in that court.

A handwritten signature in black ink, appearing to read 'Wimmer', with a stylized flourish extending to the right.

Christopher Wimmer

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CERTIFICATE OF SERVICE

I hereby certify that counsel of record listed below, who are deemed to have consented to electronic service, are being served this 25th day of September 2017 with a copy of this document via the court's CM/ECF system per Local Rule CV-5.

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/x/ Christopher Wimmer
Christopher Wimmer