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23 UNITED STATES DISTRICT COURT
24 CENTRAL DISTRICT OF CALIFORNIA

25 GREAT PACIFIC SECURITIES, on) CASE NO. 14-cv-1210-MMM-SH
26 behalf of itself and all others)
27 similarly situated,)

28 Plaintiff,)

vs.)

29 BARCLAYS CAPITAL, INC.,)
30 BARCLAYS PLC, and DOES 1-10,)
31 inclusive,)

32 Defendants.)

33 **SECOND AMENDED CLASS
34 ACTION COMPLAINT FOR:**

35 **(1) CONCEALMENT;**
36 **(2) VIOLATION OF CAL.
37 BUS. & PROF. CODE
38 § 17200; and**
39 **(3) VIOLATION OF CAL.
40 BUS. & PROF. CODE
41 § 17500**

42 **JURY TRIAL DEMAND**

43 Honorable Margaret M. Morrow

1 Plaintiff Great Pacific Securities, on behalf of itself and all
2 others similarly situated, makes the following allegations, except as
3 to allegations pertaining to Plaintiff, based on its investigation and
4 the investigation of its counsel, including a review of legal and
5 regulatory filings, press releases, media reports about Barclays PLC
6 and Barclays Capital, Inc., the allegations in the Complaints filed on
7 June 25, 2014, and February 3, 2015 against Barclays by the New
8 York Attorney General, and other public statements issued by
9 Barclays. Plaintiff believes that substantial additional evidentiary
10 support will exist for the allegations set forth herein after a
11 reasonable opportunity for discovery.

12 I. OVERVIEW

13 1. Plaintiff alleges a concealment claim against defendants
14 Barclays PLC and Barclays Capital, Inc. (“Barclays”) on behalf of a
15 Class of all institutional trading and/or brokerage persons and entities
16 who were clients of Barclays and whose trades were submitted for
17 execution by Barclays from January 1, 2011 to the present and were
18 harmed (the “Class”). Plaintiff also asserts claims under Cal. Bus. &
19 Prof. Code §§ 17200 and 17500 on behalf of all Class members who are
20 California persons (the “Sub-Class”).

21 2. Barclays runs one of Wall Street’s largest “dark pools,” a
22 private trading venue where investors can trade stocks almost
23 anonymously. Unlike national exchanges, like the New York Stock
24 Exchange or NASDAQ, investors trading in a dark pool do not have to
25 contemporaneously reveal their buy or sell orders to other investors.
26 Thus, they are less likely to be victimized by high frequency traders
27 who use their rapid access to information to trade ahead of an
28 anticipated stock purchase or sale and exploit pricing inefficiencies.

1 3. Dark pools have proliferated over the past three years, as
2 modern technology has changed the landscape of the securities
3 markets. Billions of dollars now change hands in thousandths of a
4 second, or milliseconds, and speed has become the “holy grail” on Wall
5 Street.

6 4. In 2010, Barclays decided to dramatically expand its dark
7 pool business in a quest to boost profits. Beginning no later than 2011,
8 and continuing to the present, Barclays promoted its dark pool
9 platform as a means to avoid high frequency traders, providing
10 safeguards to detect and deter “aggressive” traders and ensure that
11 clients of its platform received the best prices for their trades.

12 5. As set forth *infra* in detail, the term “aggressive” traders
13 was not some amorphous, vague term, but was a specific term used by
14 Barclays itself to refer to traders that it knew its clients wanted to
15 avoid. In its marketing materials, Barclays identified “aggressive”
16 traders by using objective, measurable criteria such as “high alpha
17 takers” and “aggressive liquidity providers.” *See, e.g., Ex. A*, at p. 59.¹
18 Barclays further misrepresented to Plaintiff Great Pacific Securities
19 and the Class that its new LX Liquidity Profiling technology would be
20 automatically “seamlessly integrated with our Dynamic Router and
21 algorithmic trading strategies,” thus “increas[ing] fill rates and
22 improv[ing] performance for institutions trading in LX by targeting
23 beneficial counterparties.” *See Ex. A* at pp. 57-58 (emphasis added).
24 Barclays represented to Plaintiff and the Class that the LX Liquidity

25
26
27 ¹ Barclays also stated in its marketing materials that “Aggressive
28 clients are liquidity takers with high short term alpha and smaller
order sizes.” *Ex. A* at p. 59.

1 Profiling “creates objective criteria to profile clients, e.g., short-term
2 alpha, order size, provide vs. take ratio” (see **Ex. A** at pp. 58, 60) but
3 concealed the highly material fact that it was actually encouraging
4 these very short-term alpha traders to trade in its LX dark pool,
5 directly contrary to Barclays’ representation that “high alpha takers
6 can be held accountable . . . by refusing [them] access.” **Ex. A** at p. 59.

7 6. Barclays’ dark pool – called Barclays LX – was not the safe
8 haven it was promoted and advertised to be. Rather, under the
9 supposedly watchful eyes of Barclays, aggressive high frequency
10 traders² were not only allowed to trade on Barclays LX, but given
11 unfair perks over other traders to encourage them. Indeed, contrary to
12 Barclays’ marketing materials, aggressive high frequency trading
13 activity was rampant in Barclays LX. While Barclays promoted and
14 touted a proprietary system designed to monitor and curtail aggressive
15 trading called “Liquidity Profiling,” it provided little protection to its
16 client base.

17 7. In June 2014, New York Attorney General Eric T.
18 Schneiderman (“NYAG”) filed a Complaint against Barclays under the
19 New York Martin Act. The NYAG alleged that Barclays concealed
20 material information to clients about the way its dark pool was
21 operated and did not have in place the safeguards it said it did to
22 protect against “predatory” high frequency traders. The NYAG also
23 cited internal documents and emails, as well as statements by
24 Barclays’ former employees, revealing that Barclays intentionally

25
26
27 ² All high frequency traders (“HFTs”) are not the same. Barclays
28 specifically misrepresented and concealed material information
regarding the percentage of HFTs in LX that were “aggressive.”

1 “falsified marketing materials” showing the type of trading in its dark
2 pool as part of a business strategy to dramatically increase its market
3 share. When asked whether other institutions were being probed, the
4 NYAG said, referring to Barclays: “I cannot comment on ongoing
5 investigations. The conduct here was so egregious and ongoing we felt
6 we had to move on this.”

7 8. This conduct is substantially similar to that experienced by
8 Plaintiff and other institutional clients of Barclays who submitted
9 trades for execution by Barclays, either directly or using one of
10 Barclays’ algorithms. When one of Barclays’ clients submitted a trade
11 for execution, Barclays swept its own LX dark pool with the requested
12 trades, in addition to sweeping other trading venues. The purpose of
13 sweeping multiple trading venues, including both traditional
14 exchanges and dark pools, was purportedly to try to obtain the most
15 advantageous execution for the client. However, unbeknownst to
16 Barclays’ clients, when Barclays swept its LX dark pool with the
17 information about the requested trades, large numbers of predatory
18 traders were lurking. They were able to obtain information about the
19 desired trades before the trades were executed, and then trade ahead
20 of the Barclays client, either in the LX dark pool or on any other
21 exchange or ATS. Thus, whenever a Barclays’ client submitted a trade
22 for execution through Barclays, and Barclays submitted the trade for
23 potential execution in the Barclays LX dark pool, the client was
24 harmed by the skimming of information by the predatory traders
25 lurking in the LX dark pool, regardless of whether the Barclays’
26 client’s order ended up being executed in the LX dark pool, in another
27 Alternative Trading System or “ATS,” or on a traditional “lit”
28 exchange.

1 Plaintiff's customers submitted trades for execution by Plaintiff, and
2 based the amount of trades given to Plaintiff on Plaintiff's performance
3 in executing such trades. Because of Defendants' wrongdoing, Plaintiff
4 was damaged and suffered economic harm and damages. Plaintiff
5 seeks recovery for itself and other institutional class members of its
6 own damages, lost profits, and for restitution.

7 **B. Defendants**

8 16. Defendant **Barclays PLC** is a British multinational
9 banking and financial services firm with its principal place of business
10 in London, England. Barclays PLC—directly and/or through its
11 subsidiaries—dramatically increased the market share of its dark pool
12 by misleading clients about its operations and treatment of high-
13 frequency traders, including in this district, during the Class Period.
14 Barclays PLC is a subject of a foreign state.

15 17. Defendant **Barclays Capital, Inc.** (“BCI”) is a securities
16 brokerage and financial advisory services firm incorporated under the
17 laws of Connecticut, and with its principal place of business in New
18 York, New York. BCI is a subsidiary of Barclays Group US, Inc., a
19 Delaware corporation, which is a subsidiary of Barclays PLC. BCI
20 dramatically increased the market share of its dark pool by misleading
21 clients about its operations and treatment of high-frequency traders,
22 including in this district, during the Class Period. At all times during
23 the Class Period, its activities in the United States were under the
24 control and direction of its British parent. BCI is a citizen of
25 Connecticut and New York.

26 18. Defendants Barclays PLC and BCI shall together be
27 referred to herein as “Barclays” or “Defendants.”
28

1 execution. Thus, the volume of trades executed by the dark pools
2 significantly increased after 2007, and trading volume on the eleven
3 traditional public stock exchanges decreased.

4 23. Today, an estimated 14% of United States stock-market
5 volume is executed in dark pools. According to FINRA, the three
6 largest dark pools in the United States are run by large institutional
7 banks, Credit Suisse, UBS AG, and Barclays. According to estimates,
8 the combined commissions for the three banks alone, based on
9 executed trades, was \$800 million in 2013. There are a number of
10 smaller dark pools that are either independently owned or controlled
11 by consortia of banks, but they typically represent a small percentage
12 of daily trading volume of stocks.

13 24. Ironically, while dark pools were designed to help give
14 investors a safe haven from rapid traders, many dark pools are now
15 “stomping grounds” for high-speed firms. In high frequency trading,
16 investors use computers to buy and sell stock at extremely quick
17 speeds to take advantage of small, momentary changes in stock prices.
18 According to some reports, over 50% of all equity trading volume is
19 from high frequency traders. Because trading details in dark pools are
20 typically delayed, high frequency traders try to link their computers
21 with those of the public exchanges and dark pools and often pay for
22 direct feeds of information that retail investors cannot get. This allows
23 them to identify large trades, often from institutional investors, and
24 then “trade ahead” of the purchase and exploit the inefficiencies of
25 price delays.

26 25. In his book, “Flash Boys,” released in 2014, Michael Lewis
27 wrote that bank-owned dark pools now often serve as a key
28 intersection between high-frequency traders and banks’ investor

1 clients. The banks charge high-frequency traders for the right to trade
2 against orders placed by their brokerage customers. “Why would
3 anyone pay for access to the customers’ orders inside a Wall Street
4 bank’s dark pool?” Lewis wrote. “The straight answer was that a
5 customer’s stock market order, inside a dark pool, was fat and juicy
6 prey.”

7 **B. Barclays and the Expansion of Its LX Dark Pool**

8 26. Barclays describes itself as a major global financial services
9 provider engaged in personal banking, credit cards, corporate and
10 investment banking, and wealth and investment management with an
11 extensive international presence in Europe, the Americas, Africa and
12 Asia. Barclays operates in over 50 countries and, according to its
13 website, “moves, lends, invests and protects money for customers and
14 clients worldwide.”

15 27. According to Barclays, its “business model” offers clients “a
16 rounded value proposition – a full range of products and services – and
17 thereby, we aim to achieve a smoother income stream and sustainable
18 returns.” Its operations include retail banks in the UK, Africa, and
19 Europe, as well as investment banking and wealth management
20 services that it offers on a global basis, including in California. With
21 respect to such services, Barclays has declared its commitment to
22 working with regulators to reduce risk to both clients and the industry
23 as a whole, stating “Our international reach and scale means we have
24 the responsibility, indeed obligation following our designation as a
25 Global Systemically Important Financial Institution, to work together
26 with our regulators to de-risk the industry and provide a more
27 sustainable banking landscape over the long term.”

28

1 28. By 2010, just prior to the start of the Class Period, Barclays
2 had become one of the largest banks in the world, with extensive
3 operations in the United States and in California specifically.

4 However, internally, it was on a desperate quest to boost revenues.

5 29. In 2010, executives at Barclays initiated a concerted plan to
6 expand its stock-trading business, and a core ingredient of the plan
7 was to boost trading in its dark pool ATS, known as Barclays LX,
8 shorthand for “Liquidity Cross.”

9 30. Barclays asked Bill White to spearhead the effort. White
10 had worked on Wall Street for years and ran Barclays’ market-making
11 unit on the floor of the New York Stock Exchange.

12 31. In 2011, Barclays informed its employees to push more
13 order flow to the dark pool. According to the NYAG Complaint,
14 Barclays told employees that “[a]ggregating [order] flow into Barclays
15 LX has strategic and economic value for the entire Equities business,”
16 allowing the bank to earn more fees and avoid paying commissions for
17 trades on other venues. According to the NYAG, internal Barclays’
18 documents valued this growth opportunity at between \$37 and \$50
19 million per year. The project was so important to Barclays that
20 employees internally referred to the dark pool as “The Franchise.”

21 32. According to a former senior Director at Barclays cited by
22 the NYAG, “[a]t every sales meeting or product meeting, the main goal
23 they were talking about was to grow the size of [Barclays’ dark pool] to
24 become the largest pool. All the product team’s goals, which would
25 also include their compensation[,] were tied to making the pool bigger.
26 [Barclays had] great incentive at all costs to make the pool bigger.”

27 33. Barclays’ strategy was to increase the number of orders
28 that clients sent to Barclays for handling and execution. Barclays also

1 wanted to increase the market share of its dark pool. To achieve this,
2 Barclays had to route more of its clients' orders through Barclays LX.
3 Barclays also had to ensure that there was sufficient liquidity in its
4 dark pool to fill the increasing number of orders, which it achieved by
5 attracting high frequency traders to the LX.

6 34. At the same time it was increasing the volume of trades in
7 its LX and courting high frequency traders to obtain liquidity in its
8 dark pool, Barclays sought to convince Plaintiff and other brokerage
9 clients that the LX was a safe place to trade and that it was insulated
10 from aggressive and predatory practices employed by high frequency
11 traders.

12 35. In 2012, White hired a trusted friend to help his efforts,
13 Dave Johnsen, to help run electronic trading at Barclays. Johnsen had
14 previously served as a senior executive at Goldman Sachs Group Inc.'s
15 dark pool, but was reportedly fired in 2012 by Goldman Sachs for
16 "concerns relating to the performance of his supervisory
17 responsibilities," including not completing certain reports on a timely
18 basis, according to FINRA's BrokerCheck. In the BrokerCheck report,
19 Johnsen admitted that "the dates didn't reflect the date I completed
20 the reports." After joining Barclays, Johnsen worked closely with
21 White, and soon was running the day-to-day operations of Barclays LX
22 while White worked on client relationships.

23 36. Barclays contacted existing brokerage clients and other
24 investors, to steer their business to its dark pool, and to convince them
25 to allow their trades to be submitted for potential execution in
26 Barclays LX. Barclays used a full court press of marketing materials
27 representing that its dark pool provided a safe, transparent trading
28

1 environment, and helped protect its clients from the risks of aggressive
2 high frequency traders.

3 37. Part of the selling point of dark pools is that by keeping
4 orders to transact securities private, they are less likely to be prowled
5 by speed traders looking to beat investors who are slower to react to
6 new information. Seeking to reassure customers that their stock
7 orders wouldn't be picked off by predatory counterparties, Barclays'
8 marketing materials touted its "Liquidity Profiling" service by which it
9 purportedly monitored and policed trading behavior in its dark pool.
10 As described below, these materials purported to show that very little
11 of the trading within its dark pool was "aggressive" and that operating
12 there was safe for its clients.

13 38. Consistent with the above, and as detailed by the NYAG,
14 Barclays' marketing strategy was premised on "End-to-End Client
15 Order Protection," pursuant to which Barclays represented to its
16 clients that its electronic trading products and services worked
17 together to "protect client orders and minimize information leakage,"
18 in order to "maximize fill rates" and "minimize market impact."
19 Specifically, Barclays represented to its clients that it would use its
20 algorithms, router, and dark pool to increase the number of its clients'
21 trades that were executed, secure better prices for those trades, and
22 minimize the ability of high frequency traders to anticipate orders and
23 trade ahead of them.

24 39. Barclays' executives made similar statements to the
25 financial press. For example, in "Finding the 'Right' Liquidity,
26 published on March 14, 2013 on marketsmedia.com, Barclays' White
27 touted the Liquidity Profiling feature on its LX dark pool to protect
28 clients trading in the dark: "It's a sophisticated surveillance

1 framework that protects clients from predatory trading activity in LX,
2 the second-largest broker-dealer dark pool in the U.S. . . . By
3 identifying aggressive behavior, we can take corrective action with
4 clients who exhibit opportunistic behavior in the pool.” Similarly, in
5 “Dark Pools deliver price improvement and anonymity,” published on
6 June 6, 2013 in Hedgeweek, White touted the firm’s ability to identify
7 “low toxicity flow” in its pool and “to restrict HFTs [High Frequency
8 Traders] interacting with our clients.”

9 40. Barclays’ marketing efforts were hugely successful. Today,
10 Barclays LX is the second-largest dark pool in the United States,
11 according to data from FINRA. However, as alleged herein, Barclays
12 achieved such success only by concealing from its clients the actual
13 operations of its dark pool, the true extent of aggressive high frequency
14 trading activity in the pool, and the level of protection Barclays
15 provided from such activity.

16 **C. Barclays Provides Marketing Material to Plaintiff and the**
17 **Class to Convince Them to Trade on Barclays’ LX**

18 41. During the Class Period, Plaintiff Great Pacific Securities
19 was contacted by Barclays and provided with marketing materials
20 describing the Barclays LX pool. One of such documents, entitled,
21 “Liquidity Products,” dated February 2012, and attached hereto as
22 **Exhibit A**, purported to show Plaintiff how it would be protected from
23 aggressive high frequency trading activity, and underscored Barclays’
24 purported commitment to transparency. Barclays represented that it
25 would use its algorithms, router, and dark pool to increase the number
26 of its clients’ trades that were executed, secure better prices for those
27 trades, and minimize the ability of aggressive high frequency traders
28 to anticipate the orders and trade ahead of them. Barclays

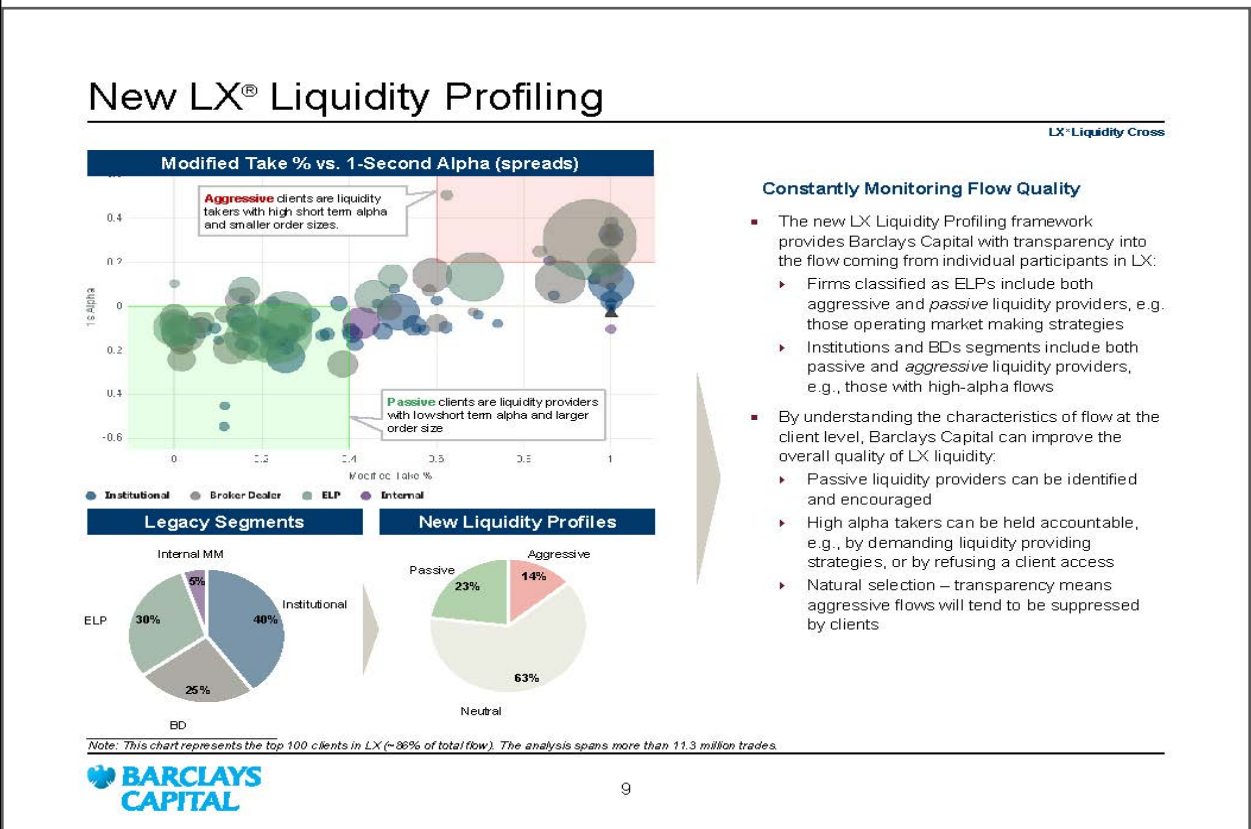
1 represented that its LX dark pool provided “continued quantitative
2 research on the Liquidity Profiling initiative to protect customer order
3 flow.” Specifically, “[t]he objective of the new LX Liquidity Profiling
4 framework is to increase fill rates and improve performance for
5 institutions trading in LX by targeting beneficial counterparties.”
6 With respect to the Electronic Liquidity Provider or “ELP” segment —
7 Barclays’ term for high frequency traders — Barclays reassured
8 investors that it was able to “proactively monitor” and distinguish
9 between “aggressive” clients and those who provided “beneficial
10 liquidity” in order to “improve the quality of flows into the pool.”

11 42. The marketing materials provided to Plaintiff also
12 contained a number of misleading, graphical charts. One chart
13 contained a number of colored circles, representing “the top 100 clients
14 in LX.” The size of the circles on the chart corresponded to the level of
15 trading activity conducted in the dark pool by that firm, with traders
16 assigned colored circles based on their trading characteristics. Also
17 within the chart are two color-coded, rectangular regions: a green
18 rectangle representing “passive clients” with safe trading activity; and
19 a red rectangle representing “aggressive clients” with unsafe trading.
20 Similar to the colored circles, the size of the rectangles on the chart
21 corresponded to the level of trading activity in the LX by “passive” and
22 “aggressive” clients, as defined by Barclays. The proportional sizes of
23 the two rectangles in the chart left the clear message that very little
24 trading in the pool was “aggressive,” as defined by Barclays.

25 43. Similarly, another chart in the materials stated that **only**
26 **14% of trading** in the pool was by “aggressive” high frequency
27 traders. The word “aggressive” was supplied by Barclays itself.

28

1 44. Alongside both charts, Barclays reaffirmed its ability to
 2 “constantly monitor flow quality” with the “Liquidity Profiling”
 3 framework, providing “transparency,” and “improving the overall
 4 quality” of LX. Specifically, Barclays touted its ability to hold
 5 “aggressive” traders or “[h]igh alpha takers” “accountable” by “refusing
 6 a client access” and “suppress[ing]” “aggressive flows.” The charts
 7 from **Exhibit A** are reproduced below:



22 45. This chart specifically stated: “Note: This chart represents
 23 the top 100 clients in LX (~86% of total flow).” This representation
 24 and the accompanying chart were false because eight out of the ten
 25 largest traders by volume of shares in LX were predatory or aggressive
 26 HFTs.

27 46. Based on allegations in the NYAG Complaint, Barclays
 28 used virtually identical marketing materials with other clients during

1 the Class Period, including a widely-disseminated document intended
2 for institutional clients entitled, “Liquidity Profiling – Protecting You
3 in the Dark.” Like the brochure provided to Plaintiff, that document
4 included an analysis purporting to represent the “liquidity landscape”
5 of Barclays’ dark pool, along with colored circles supposedly
6 representing firms trading in Barclays’ dark pool and the level of their
7 trading activity. The document also contained the same color-coded
8 regions, a green rectangle representing “passive” trading activity, and
9 a red rectangle representing “aggressive” trading. As with the
10 materials provided to Plaintiff, Barclays’ chart represented that very
11 little of the trading in Barclays’ dark pool was “aggressive,” that most
12 trading in the dark pool was “passive,” and that most of the high
13 frequency activity was “passive.”

14 **D. Barclays’ Marketing Materials Concealed Material**
15 **Information**

16 47. These charts, substantially similar in their form and
17 message, and distributed throughout the Class Period to Class
18 members, concealed the true nature and extent of aggressive, high
19 alpha, high-frequency trading within Barclays’ dark pool.

20 **1. Barclays Misrepresented That It Disciplined**
21 **Predatory Traders in the LX Dark Pool, Including**
22 **Removing Such Traders From the Dark Pool,**
23 **When in Fact it Did Not Do So and Instead Gave**
24 **Them Perks and Benefits to Continue Trading in**
25 **the LX Dark Pool**

26 48. The uniform, written marketing materials that Barclays
27 disseminated to Plaintiff and the Class stated that Barclays’ new LX
28 Liquidity Profiling technology employed sophisticated technology to
identify objective and quantifiable characteristics which allowed

1 Barclays to identify aggressive HFTs that it knew its clients wanted to
2 avoid. Barclays' marketing materials were very specific in identifying
3 "aggressive" HFTs using specific, measurable terms: "Aggressive
4 clients are liquidity takers with high short term alpha and smaller
5 order sizes." See **Ex. A** at p. 59. These objective factors included: (1)
6 1-Second Take Alpha; (2) Modified Take Percentage; and (3)
7 Normalized Order Size. See **Ex. A** at p. 60.

8 49. After assuring clients that it could identify the very type of
9 "toxic" and "predatory" HFTs the clients wanted to avoid using its
10 sophisticated Liquidity Profiling technology in combination with its
11 new dynamic router, Barclays represented that it would police the
12 dark pool by removing traders who exhibited "aggressive" trading —
13 *i.e.*, "liquidity takers with high short term alpha and smaller order
14 sizes." Barclays' marketing materials were very specific in this regard,
15 stating that LX Liquidity Profiling allowed it to "improve the overall
16 quality of LX liquidity by punishing and removing aggressive and
17 predatory traders from the LX dark pool:

18 "High alpha takers can be held accountable, *e.g.*, by demanding
19 liquidity providing strategies, or by refusing a client access."

20 See **Ex. A** at p. 59.

21 50. These representations were false and misleading because
22 Barclays did not in fact require aggressive or predatory traders to
23 provide liquidity, nor did Barclays ever remove such traders from the
24 LX dark pool. Far from it, Barclays has never prohibited a single firm
25 from participating in its dark pool, despite knowledge of aggressive
26 trading in its dark pool. For example, according to the NYAG, on
27 January 16, 2014, senior leaders in the Equities Electronic Trading
28 division were told of over a dozen major high frequency trading firms

1 engaged in significant trading activity in Barclays' dark pool, including
2 one firm whose trades were described as "historically . . . very toxic."
3 Barclays did not deny them access to its dark pool. This contradicts
4 representations in materials provided to Plaintiff and the Class that
5 Barclays would "refuse a client access" to the dark pool if such
6 aggressive trading strategies were discovered.

7 51. Barclays advertised and represented that its Liquidity
8 Profiling service was provided for all clients who traded in LX and
9 used its algorithms. Plaintiff relied on the representations and
10 statements made by Barclays regarding Liquidity Profiling when
11 deciding to submit its clients' trades for potential executions on LX and
12 when deciding to use Barclays' Hydra and Implementation Shortfall
13 ("IS") algorithms.

14 **2. Barclays Made Misrepresentations in Its Uniform**
15 **Written Marketing Materials Regarding Its**
16 **Algorithms and Dynamic Router**

17 52. Plaintiff Great Pacific Securities used Barclays' algorithms
18 and Dynamic Router to seek best execution for its clients, including
19 the Hydra and IS algorithms. It did so based on the representations
20 made by Barclays in its marketing materials that Barclays' algorithms
21 and Dynamic Router allegedly:

- 22 (a) Maximized fill rates;
- 23 (b) Minimized information leakage and market impact;
- 24 (c) Protected against adverse price moves; and
- 25 (d) "Hunted" liquidity through probability of fill models,
26 factoring in both probability of fill for both aggressive
27 and passive trading.

28 See **Ex. A**, at p. 62.

1 53. Moreover, Barclays’ marketing materials specifically
2 represented that Barclays’ algorithms and Dynamic Router utilized
3 sophisticated technology which resulted in “orders [being] post[ed] to
4 venues based on probability of fill.” **Ex. A** at p. 63. Barclays also
5 represented that “Orders to dark venues are sized to match the
6 expected liquidity” and that Barclays’ algorithms and Dynamic Router
7 utilized a system which resulted in “parallel routing to all venues
8 based on probability of fill.” Barclays contrasted these supposed
9 benefits of its algorithms and Dynamic Router with Traditional Static
10 Order Routers, which Barclays claimed used inferior systems which
11 resulted in “sequential pinging (all dark venues before going to lit
12 markets)” “orders continue to check venues that do not fill orders
13 (leakage),” and “orders posted to venues with the highest rebate.” *See*
14 **Ex. A** at p. 63.

15 54. Barclays’ marketing materials also affirmatively
16 represented that Barclays’ algorithms and Dynamic Router “Reduced
17 dark venues checked and pinged to reduce information leakage” and
18 “Increased overall order placement efficiency.” **Ex. A** at p. 63.

19 55. With respect to the Hydra algorithm, Barclays’ marketing
20 materials contained the following half-truths, creating a duty to
21 disclose the related but omitted material facts set forth below:

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

Statement	Material Facts Concealed
<p>1. “No pre-determined trade scheduling here. Hydra is built on Barclays Capital’s Implementation Shortfall strategy which determines the optimal order size in response to real-time price movements. Its dynamic behavior minimizes slippage and information leakage.”</p>	<p>Barclays concealed the fact that it had intentionally modified its Hydra algorithm to increase the rate at which the algorithm executed orders in Barclays’ own LX dark pool (see more detailed facts below).</p>
<p>2. “The Step-Ahead Function will take into consideration the impact of executing in the dark and will optimize the order size determined by IS to take advantage of liquidity and price.”</p>	<p>Barclays concealed the fact that it had intentionally modified its Hydra algorithm to increase the rate at which the algorithm executed orders in Barclays’ own LX dark pool (see more detailed facts below).</p>
<p>3. “Hydra maximizes execution rates in dark pools and opportunistically executes on traditional markets. It is configurable to execute in dark and lit venues, intelligently adjusting exposure when liquidity is discovered.”</p>	<p>Barclays concealed the fact that it had changed the Hydra algorithm, resulting more often in rebate taking and targeting LX more frequently. The statement also concealed the fact that the Hydra algorithm resulted in aggressive HFTs trading ahead of institutional clients, hurting overall execution and</p>

	execution rates.
4. "Simultaneous placement of lit and dark orders reduces footprint."	The Hydra algorithm did not reduce footprint or information leakage because Barclays had intentionally structured the algorithm to prefer its own LX dark pool and had concealed the fact that up to 70% of the trading in LX was being conducted by HFTs who were predatory and aggressive due to their high short term beta rating, aggressive taking of liquidity, and small order size.

56. These representations were also false because Barclays concealed the fact that its algorithms and Dynamic Router were intentionally structured to maximize the probability of trades being executed in the LX, despite the high concentration of predatory and aggressive traders in the LX. In other words, despite its representations to the contrary, Barclays' algorithms and Dynamic Router favored the LX over other dark pools and traditional "lit" exchanges. Barclays did this to increase volume in the LX so as to increase the size and prestige of Barclays' LX, and fees Barclays earned from LX, regardless of whether execution in the LX was in the client's best interests.

57. As a specific indication of the falsity of Barclays' marketing materials, according to the NYAG, internal Barclays' documents demonstrate that on January 31, 2011, William Libby, Barclays' Vice

1 President of Electronic Trading Services, sent a document entitled
2 “2011 Goals” to William White. In that document, Libby
3 acknowledged that a goal of the division was to “Rewrite Hydra
4 [algorithm] and add components to all liquidity seeking algos like
5 [Implementation Shortfall] to increase LX cross rates” — in other
6 words, to increase the rate at which the algorithms executed orders in
7 Barclays’ own dark pool.

8 58. Further, according to the NYAG’s lawsuit against Barclays,
9 Barclays’ concealed scheme of re-writing its algorithms to favor the LX
10 was accomplished by early 2012. According to minutes of an August
11 30, 2012 “Best Execution Committee” meeting, Merrell Hora (then the
12 Head of Algorithms) told the Committee that Barclays had “chang[ed]
13 the overall algo plant” which “resulted more often in rebate taking and
14 which often involved targeting LX more frequently.” Further, Hora
15 explained that one particular algorithm “had been decommissioned
16 because the core algos has been updated at this point to preference LX
17 anyway” (emphasis added).

18 59. Later in the meeting, Jacek Janczewski, head of dark pool
19 operations, explained that “a big focus for the remainder of the year
20 was to identify and enable more flow to be internalized that was
21 currently not accessing” the dark pool.

22 60. The NYAG’s lawsuit also cites a November 6, 2012 email
23 from Nej D’jelal, a Barclays employee, to senior leadership in the
24 Equities Electronic Trading Division, including White and Johnsen,
25 noting that “As expected, LX volumes and our cross rate continue to
26 grow . . . Deliverables this month saw the introduction of key LX items
27 in the form of Liquidity Profiling and *new LX friendly algo logic*”
28 (emphasis added).

1 61. The NYAG’s complaint also cites to minutes of Barclays’
2 June 7, 2012 Best Execution Committee meeting, at which Jacek
3 Janczewski, head of dark pool operations, stated to other senior
4 division personnel present (including David Johnsen) that
5 “approximately 70% of the algo crossing in LX was with ELPs.”³

6 62. A high percentage of trading with aggressive HFT
7 counterparties was exactly the outcome that Barclays told Great
8 Pacific and the Class that it would protect them against.

9 63. Plaintiff Great Pacific Securities would not have utilized
10 Barclays’ algorithms and Dynamic Router to execute its clients’ trades
11 during the Class Period had it known these facts. Great Pacific’s
12 clients had specifically told Great Pacific they did not want to submit
13 trades for execution on venues where a material amount of aggressive
14 and predatory HFTs was present. When the truth about Barclays’
15 wrongdoing was publicly revealed, Great Pacific Securities’ clients told
16 it to avoid submitting trades for execution on the LX and/or using
17 Barclays’ algorithms, and Great Pacific did so. Moreover, had Great
18 Pacific known the truth, it would not have utilized Barclays’
19 algorithms or Dynamic Router because Great Pacific was most

21 ³ ELPs are “Electronic Liquidity Providers”, which Barclays used to
22 refer to “High frequency and multi-strategy firms who make markets
23 in LX” (*e.g.*, HFTs). See **Ex. A** at p. 58. Significantly, not all HFTs are
24 “aggressive” or predatory traders. For example, Barclays’ marketing
25 materials stated that 41% of the liquidity in LX was provided by ELPs
26 (a term Barclays used to refer to HFTs), but stated that only 14% of
27 the trading was from aggressive HFTs. See **Ex. A** at pp. 57, 59. The
28 whole point of Barclays’ advertising was to emphasize Barclays’
alleged ability to identify and block “aggressive” HFTs from trading in
LX. Plaintiff Great Pacific wanted to avoid trading against aggressive
HFTs, not HFTs in general.

1 concerned with ensuring best execution for its clients, and Barclays'
2 algorithms and Dynamic Router did not ensure best execution because
3 they favored the LX to the exclusion of other venues and allowed a
4 material amount of predatory and aggressive HFTs to trade ahead of
5 Great Pacific to the detriment of Great Pacific and its clients.

6 **3. Barclays Conceals the Presence in LX of a**
7 **Particularly Large, Aggressive HFT Firm**

8 64. Indeed, the NYAG Complaint cites several October 2012
9 emails from Barclays employees regarding a decision to remove data
10 from a version of the chart used in marketing materials showing that a
11 particularly large, aggressive HFT firm, Tradebot Systems Inc.,
12 participated in its dark pool. Specifically, on October 5, 2012, a draft
13 version of the analysis was emailed to senior executives in Barclays'
14 Equities Electronic Trading division, with a note that Barclays "de-
15 emphasized the number of ELPs [electronic liquidity providers, or high
16 frequency traders] by moving them to the back." The email also stated
17 that the chart "remov[es] Tradebot," which on information and belief
18 was the largest participant in Barclays' dark pool. When one employee
19 objected to the modified chart, stating that removing Tradebot from
20 the analysis was a falsification of the data, Roland Jarquio, a Director
21 in the Equities Division, allegedly responded that "the point of the
22 chart is not to show what's in the pool. The point is to market our
23 capability . . . to monitor individual participants in the pool."

24 65. The issue did not die, however. According to the Wall
25 Street Journal article, "Barclays Pool Drew Fast-Trade Alarms," dated
26 July 21, 2014, other employees continued to raise concerns. Further,
27 as alleged by the NYAG, Sarah Naegele, a Vice President responsible
28 for selling the dark pool to clients, confirmed that the chart was meant

1 to show the actual traders, replying to the group that “[m]y point when
2 selling that picture was always: ‘here is a snapshot of the participants
3 in [Barclays’ dark pool] as an accurate view of our pool.’ I was never
4 using it like an ‘illustration’” of Barclays’ capability to monitor the
5 pool. “I had always liked the idea that we were being transparent, but
6 happy to take liberties if we can all agree.”

7 66. According to the NYAG, Jarquio responded, indicating that
8 the doctored chart would help Barclays appeal to institutional
9 investors concerned with the amount of high frequency trading in the
10 LX:

11 67. “The answer is simple: we are talking to institutional, long
12 only, nervous clients. That’s the target audience. Our solution to calm
13 their fears could be 1/ show them we have the capability . . . to police
14 and/or 2/ show them exactly what is in the pool.”

15 68. Jarquio ultimately concluded that showing the clients
16 “exactly what [was] in the pool” was “the wrong way to go” in quelling
17 their fears.

18 69. Ultimately, according to the NYAG’s complaint, Dave
19 Johnsen agreed and responded, “I think the accuracy [of the chart] is
20 secondary to [the] objective” of showing clients that Barclays monitors
21 the trading in its dark pool, and “so if you want to move/kill certain
22 bubbles, it doesn’t really matter.” Barclays’ Head of Equities Sales
23 responded, “Yes! U smart.”

24 70. According to the NYAG, in another email that same day,
25 Barclays’ Head of Equities Sales noted in reference to the analysis that
26 some in the industry viewed Barclays’ dark pool as a “toxic landfill,”
27 and so “[i]f we can help ourselves we should[;] its in our control.”
28

1 71. Notably, as alleged by the NYAG, Tradebot was concealed
2 from the subject chart *after* the Compliance Department at Barclays
3 had approved the content of the chart and *after* the Compliance
4 Department had questioned the accuracy of the chart and its potential
5 to mislead.

6 **4. Barclays Conceals the Extent of Aggressive Trading**
7 **in LX**

8 72. The marketing materials distributed to Plaintiff Great
9 Pacific also concealed information about the level of *aggressive* trading
10 activity occurring in Barclays' dark pool.⁴ For example, in the
11 materials sent to Plaintiff in 2012, Barclays claimed that the trading
12 in its dark pool was "23% passive," "63% neutral," and just "14%
13 aggressive." See **Ex. A**, at p. 59. Similarly, in marketing materials
14 released in early 2013, Barclays claimed that the trading in its dark
15 pool was "48% passive," "43% neutral," and "9% aggressive." In March
16 2014, Barclays said that trading in its dark pool was "36% passive,"
17 "58% neutral," and just "6% aggressive." These progressively
18 improving figures concealed the actual nature and extent of
19 "aggressive" activity in Barclays' dark pool.

20 73. Indeed, these representations were false because Barclays
21 concealed the fact that trading by "aggressive" HFTs constituted at
22 least 30% of all trading in the LX. This 30% figure was a number
23 calculated *by Barclays itself*, using the objective criteria it developed
24 based on such factors as 1-second alpha take, modified take

25
26 ⁴ Contrary to Barclays' previous arguments, trading by HFTs is not
27 necessarily "aggressive." HFT trading can be either passive or
28 aggressive. Plaintiff specifically alleges that Barclays concealed the
level of trading by "aggressive" HFTs.

1 percentage, and normalized order size. Barclays simply manipulated
2 its own data to misrepresent the data presented to clients in its
3 marketing materials.

4 74. For example, according to the NYAG Complaint, an
5 “Execution Aggressiveness” analysis of trading in the LX conducted by
6 Barclays in August 2012 revealed that ***between 25% and 30%*** of all
7 activity in the LX was, in Barclays’ own terminology, “aggressive.”
8 According to the NYAG, that analysis was circulated via e-mail to key
9 personnel in the Equities Electronic Trading Division.

10 75. The same analysis conducted by Barclays in August 2013
11 revealed that **32%** of the activity in the LX was “aggressive.” The
12 “Execution Aggressiveness” analysis also included a breakdown of
13 traders in the LX, which showed that eight out of the ten largest
14 traders by volume of shares were known HFT firms.

15 76. Barclays concealed this material information from Plaintiff
16 and the Class. Again, for example, the marketing materials given to
17 Plaintiff misrepresented that ***only 14%*** of the overall trading in LX
18 was conducted by “aggressive” traders. *See Ex. A*, at p. 59.⁵

19 77. According to the NYAG, Barclays’ own analysis in May
20 2014 revealed that ***over 30%*** of all activity in the LX was “aggressive.”

21
22
23 ⁵ Barclays has previously attempted to make much ado about the fact
24 that the existence of Tradebot, one of many HFTs, was allegedly not
25 concealed in the chart on p. 59 of **Ex. A**. Whether it was or was not,
26 Barclays did conceal and misrepresent the overall percentage of
27 aggressive trading in LX. Again, as demonstrated *supra*, Barclays
28 misrepresented that percentage to be just 14%, when in fact it was
well over 30% based on Barclays’ own analysis. Thus, whether or not
Barclays concealed Tradebot from the chart in Ex. A, the chart was
still highly inaccurate and misleading.

1 78. In fact, according to the NYAG Complaint, Barclays has
2 never prohibited a single firm from participating in its dark pool,
3 despite knowledge of aggressive trading in its dark pool. For example,
4 according to the NYAG, on January 16, 2014, senior leaders in the
5 Equities Electronic Trading division were told of over a dozen major
6 high frequency trading firms engaged in significant trading activity in
7 Barclays' dark pool, including one firm whose trades were described as
8 "historically . . . very toxic." Barclays did not deny them access to its
9 dark pool. This contradicts representations in materials provided to
10 clients, including Plaintiff, that Barclays will try to identify
11 "aggressive" flows, hold such traders "accountable," and "refuse a
12 client access" to the dark pool if such aggressive trading strategies are
13 discovered.

14 **5. Barclays Concealed that Liquidity Profiling Did Not**
15 **Protect Its Clients**

16 79. One of the benefits that Barclays purports to offer to its
17 clients trading in the LX is a proprietary service called "Liquidity
18 Profiling." Barclays represented that Liquidity Profiling was a service
19 provided to all its clients which monitors each trade in the LX,
20 objectively and fairly grades traders by how "toxic" or "aggressive"
21 their trading activity is, and allows clients to decline to trade with
22 "toxic" traders.

23 80. According to the NYAG's complaint, Liquidity Profiling was
24 intended to group traders in the LX into six categories based on their
25 trading behavior, ranked "0" through "5," with "0" and "1" representing
26 the most "aggressive" traders and "4" and "5" representing the most
27 "passive" traders. Barclays told its clients that they could disable their
28

1 orders from interacting with traders falling into any of the above
2 categories.

3 81. As revealed in the NYAG's complaint, however, Liquidity
4 Profiling offered little or no benefit to Plaintiff and Barclays' other
5 clients for five reasons: (i) Barclays did not actually police or punish
6 bad trading behavior; (ii) Barclays failed to regularly update the
7 profiles of traders in the LX; (iii) Barclays altered the profiles of
8 certain predatory traders when that benefitted Barclays; (iv) Liquidity
9 Profiling did not apply to the bulk of orders submitted to LX; and (v)
10 Barclays' employees knew that the service was of little benefit to
11 investors.

12 82. Barclays also concealed from Plaintiff and the Class that it
13 applied "overrides" to a number of traders in the dark pool, improperly
14 assigning them safe Liquidity Profiling ratings, and further concealed
15 that Liquidity Profiling did not apply to a significant portion of the
16 trading activity in Barclays' dark pool, such as when client orders are
17 routed to the dark pool via Barclays' proprietary algorithms.

18 83. As revealed in the NYAG investigation, Barclays was well
19 aware of these Liquidity Profiling issues, and in an internal document
20 dated December 2013, admitted that "Liquidity Profiling reviews may
21 not be completed for all clients, may rely on inaccurate information
22 and results and rationale for profiling changes may not be evidenced;
23 leading to reputational damage as the service . . . may not function as
24 advertised to clients."

25 84. The NYAG also cited interviews with high ranking
26 employees, including a former Barclays Director in the Equities
27 Electronic Trading division, who said that Barclays "purport[s] to have
28 a toxicity framework that will protect you when everybody knows

1 internally that that thing is done manually with outliers removed and
2 things are classified [only] if they feel like it.” Another former Director
3 in the Equities Electronic Trading division allegedly told the NYAG
4 that Liquidity Profiling is “a scam.”

5 **6. Barclays Catered to Aggressive HFT Traders**

6 85. Barclays not only failed to weed out aggressive high
7 frequency traders, but actually encouraged them to continue using its
8 pool, all the while concealing this from Plaintiff and other members of
9 the Class and the Sub-Class. For example, while Barclays told clients
10 like Plaintiff that it was able to “refuse” access to aggressive, high
11 frequency traders, it supplied high frequency trading firms with
12 advantages over more traditional investors trading in its dark pool.

13 86. As described by one former senior-level Director within the
14 Equities Electronics Trading division, cited by the NYAG Complaint:
15 “Barclays was doing deals left and right with high frequency firms to
16 invite them into the pool to be trading partners for the buy side. So
17 the pool is mainly made up of high frequency firms.” “[T]he way the
18 deal would work is [Barclays] would invite the high frequency firms in.
19 They would trade with the buy side. The buy side would pay the
20 commissions. The high frequency firms would pay basically nothing.
21 They would make their money off of manipulating the price. Barclays
22 would make their money off the buy side. And the buy side would
23 totally be taken advantage of because they got stuck with the bad
24 trade . . . this happened over and over again.”

25 87. Further, as alleged by the NYAG, Barclays repeatedly
26 disclosed selected material information only to aggressive HFT firms
27 to encourage them to increase their activity in Barclays’ dark pool,
28 including data that helped those firms maximize their aggressive

1 trading strategies, such as the routing logic of Barclays' order router,
2 the percentage of Barclays' internal order flow that was first directed
3 into its own dark pool, and a breakdown of trades executed in the dark
4 pool by participant type and "toxicity" level. Barclays concealed its
5 disclosure of such information to aggressive HFTs from Plaintiff.

6 88. Barclays also concealed from Plaintiff and the Class the
7 fact that it provided other material services — including co-location —
8 to aggressive HFTs, which assisted those HFTs in trading ahead of
9 Plaintiff and the Class.

10 89. Barclays also reportedly charged little or nothing to high
11 frequency trading firms to trade in its dark pool, and allowed high
12 frequency traders to "cross-connect" to its servers. According to the
13 NYAG, this practice continues even today and several dozen HFT
14 firms are still linked to Barclays and able to take advantage of
15 Barclays' non-HFT clients.

16 90. For example, according to the NYAG's complaint, on
17 January 3, 2013, Dave Johnsen met with representatives from
18 Tradebot (the particularly "toxic" HFT firm that was concealed from
19 the chart that Barclays provided to its clients) regarding Tradebot's
20 request to lower its already-favorable pricing on additional trading. In
21 his "talking points" notes, Johnsen noted that Tradebot was "already
22 [Barclays'] largest toxic client" and that Barclays "already dropped
23 [Tradebot's] rate 40% for the month." According to the NYAG,
24 Johnsen further noted that in his previous employment with Golden
25 Sachs, "there was real pressure to boot [Tradebot]" from the dark pool
26 because it conducted abusive latency arbitrage in the pool, but that
27 Tradebot had the attitude that "we took care of you then . . . need you
28 to return the favor now."

1 obtain the most advantageous execution for the client. However,
2 unbeknownst to Barclays' clients, when Barclays swept its LX dark
3 pool with the information about the requested trades, large numbers of
4 predatory traders were lurking. They were able to obtain information
5 about the desired trades before the trades were executed, and then
6 trade ahead of the Barclays' client, either in the LX dark pool or on
7 any other exchange. Thus, whenever a Barclays' client submitted a
8 trade for execution through Barclays, they were harmed by the
9 skimming of information by the predatory traders lurking in the LX
10 dark pool, regardless of whether the Barclays' client's order ended up
11 being executed in the LX dark pool, another ATS, or any other
12 traditional "lit" exchange.

13 95. Plaintiff and other Barclays' clients wanted to avoid trading
14 in venues where proprietary or predatory traders existed. To convince
15 Plaintiff and Class Members to allow Barclays to execute their trades,
16 and to allow their trades to be swept through the LX dark pool for
17 potential execution, Barclays concealed material information about the
18 identity of predatory traders in LX, as well as the volume of trading in
19 its LX dark pool being conducted by predatory traders. Barclays
20 concealed these material facts from both its retail and institutional
21 clients, since it wanted to maximize volume and liquidity in its LX
22 dark pool. Regardless of whether trades ended up being executed in
23 its LX dark pool, Barclays wanted to increase the liquidity and volume
24 of requested trades in the LX dark pool, since increased liquidity and
25 volume were attractive to clients, and thus increased the willingness of
26 clients to trade in the LX dark pool. Thus, Barclays concealed
27 material facts from Plaintiff and the Class in order to induce them to
28

1 allow their trades to be submitted for potential execution in the LX
2 dark pool.

3 96. The advantage to the predatory traders, however, was
4 unique – they would be allowed to see the requested trades and then
5 utilize that information to their advantage, either by trading ahead of
6 Barclays’ other clients on the LX or other trading venues, or otherwise
7 utilizing the information to their advantage and to the disadvantage of
8 Barclays’ other clients.

9 97. Barclays’ conduct with respect to its LX dark pool appears
10 to be part of a systemic, firm-wide pattern of deceptive and unfair
11 business practices. Barclays was the first bank to be fined for rigging
12 the benchmark interest rates, costing Bob Diamond, the bank’s CEO at
13 the time, his job. It was also fined in May 2014 for manipulating gold
14 prices. On July 29, 2014, the *Wall Street Journal* reported that
15 banking regulators may install government monitors inside Barclays’
16 United States offices after concluding that the bank may have
17 manipulated the foreign-exchange market. According to the London
18 Times, Barclays recently created a Compliance Career Academy in
19 partnership with Cambridge University to try to restore its reputation.
20 The bank’s chairman, David Walker, conceded:

21 98. “Compliance has not been seen as a serious enough
22 specialist activity. Our track record in culture has not been good. It’s
23 important for us all to have a concept of culture, conduct and
24 compliance.”

25 99. Given the series of incidents, Walker also said the bank had
26 to work on the basis that “we are guilty until we prove ourselves to be
27 innocent.”

28

1 **E. Fraudulent Concealment and Equitable Tolling**

2 100. During the relevant period, Plaintiff did not discover and
3 could not have discovered, through the exercise of due diligence,
4 Defendants' breaches of their fiduciary duties or their violations of
5 California law because Defendants did not disclose, and actively
6 concealed, their wrongdoing and the presence of predatory and
7 aggressive HFTs in the LX. The true facts regarding Barclays' LX and
8 Barclays' algorithms and Dynamic Router were exclusively within
9 Defendants' knowledge and control.

10 101. Plaintiff was unaware of and had no knowledge of
11 Defendants' wrongdoing.

12 102. Plaintiff could not have discovered Defendants' wrongdoing
13 and violations of law prior to filing suit because Defendants
14 fraudulently concealed the material facts set forth herein from
15 Plaintiff.

16 103. Moreover, Defendants not only failed to disclose any
17 information whatsoever that would have allowed Plaintiff, exercising
18 due diligence, to discover the truth, but Defendants also intentionally
19 concealed and attempted to disguise the material facts alleged herein
20 from Plaintiff and the public.

21 **V. CLASS ALLEGATIONS**

22 104. Plaintiff brings this action as a class action under Rule
23 23 of the Federal Rules of Civil Procedure on behalf of the following
24 Class:

25 **All institutional trading and/or brokerage persons and**
26 **entities who, during the Class Period (January 1, 2011**
27 **to the present), were clients of Barclays and whose**

1 **trades were submitted for execution by Barclays and**
2 **suffered harm as a result (the “Class”).**

3 Plaintiff further brings this action on behalf of the following Sub-
4 Class:

5 **All Class Members who, during the Class Period**
6 **(January 1, 2011 to the present), were California**
7 **residents (the “Sub-Class”).**

8 Excluded from the Class and Sub-Class are the Defendants herein
9 and their subsidiaries, parents, affiliates, and controlled persons or
10 entities, including specifically all of their past or present officers and
11 directors. For the avoidance of any doubt, also excluded from the
12 Class and Sub-Class are the predatory and proprietary traders who
13 utilized any information obtained from Class and Sub-Class
14 members from the LX dark pool exchange to benefit themselves and
15 harm the Class and Sub-Class members.

16 105. The members of the Class and Sub-Class are so numerous
17 that joinder of all members is impracticable. Plaintiff does not know
18 the exact number of Class and Sub-Class members because such
19 information is in the exclusive control of Defendants. Upon
20 information and belief, there are hundreds or thousands of Class and
21 Sub-Class members, geographically dispersed, such that joinder of all
22 class members is impracticable.

23 106. Plaintiff’s claims are typical of the claims of the members of
24 the Class and Sub-Class, as Plaintiff used the Barclays LX and the
25 claims are based upon similar conduct affecting all Class and Sub-
26 Class members.

27 107. Plaintiff will fairly and adequately protect the interests of
28 the members of the Class and Sub-Class and has retained counsel

1 competent and experienced in class litigation. Plaintiff has no
2 interests which are contrary to or in conflict with those of the Class
3 and Sub-Class members which it seeks to represent.

4 108. A class action is superior to other available methods for the
5 fair and efficient adjudication of this controversy since joinder of all
6 members is impracticable. Furthermore, as the damages suffered by
7 individual members may be relatively small, the expense and burden
8 of individual litigation make it virtually impossible for the Class and
9 Sub-Class members to individually seek redress for the wrongs done to
10 them. Plaintiff knows of no difficulty which will be encountered in the
11 management of this litigation which would preclude its maintenance
12 as a class action.

13 109. There is a well-defined community of interest in the
14 questions of law and fact involved in this case. Common questions of
15 law and fact exist as to all members of the Class and Sub-Class, and
16 predominate over any questions affecting solely individual members of
17 the Class and Sub-Class. Questions of law and fact common to the
18 Class and/or Sub-Class include, but are not limited to:

19 (a) whether Plaintiff and the Class and Sub-Class
20 members were Barclays' clients during the Class Period;

21 (b) whether Plaintiff and the Class and Sub-Class
22 members submitted trades for execution by Barclays during the Class
23 Period, and had one or more of such trades submitted by Barclays for
24 potential execution in the Barclays LX dark pool;

25 (c) whether Defendants engaged in unfair and/or
26 unlawful business practices;

27 (d) whether Defendants disseminated advertisements
28 that had a tendency to mislead a reasonable person;

1 (e) whether Defendants had a duty to disclose and
2 omitted to disclose material facts;

3 (f) whether Class and Sub-Class members were harmed;
4 and

5 (g) whether declaratory, injunctive and/or restitutionary
6 relief is appropriate and, if so, the proper measure of the relief.

7 110. The names and address of the Class and Sub-Class
8 members are available from the business records of Defendants.
9 Notice can be provided by first class mail and by using other
10 techniques customarily used in class actions.

11 VI. CAUSES OF ACTION

12 FIRST CAUSE OF ACTION

13 CONCEALMENT

14 (On Behalf of Plaintiff and the Class)

15 111. Plaintiff hereby incorporates all of the foregoing
16 paragraphs.

17 112. As a result of the conduct described herein, Barclays
18 committed deceit by concealment.

19 113. Barclays intentionally failed to disclose important facts to
20 Plaintiff and the Class concerning the LX exchange, including the
21 nature and extent of aggressive high frequency trading activity in the
22 LX dark pool and its efforts to monitor and curb such trades.

23 114. Barclays further disclosed some facts to Plaintiff and the
24 Class but intentionally failed to disclose other important facts, making
25 the disclosure deceptive.

26 115. Barclays further actively concealed important facts from
27 Plaintiff and the Class and/or prevented Plaintiff and the Class from
28 discovering such facts.

1 116. Plaintiff and the Class were unaware of the true facts that
2 were concealed, and had no means of ascertaining such concealed
3 facts.

4 117. Barclays intended to deceive Plaintiff and the Class by
5 concealing these facts.

6 118. At all relevant times, Plaintiff and the Class reasonably
7 relied on Barclays' deception and would have acted differently had
8 they known the true facts. Plaintiff's clients specifically instructed
9 Plaintiff that they did not want their trades submitted for potential
10 execution in dark pools exchanges where there was a high
11 concentration of high alpha taker, aggressive liquidity takers.
12 Plaintiff's clients knew that the presence of such traders adversely
13 affected the quality of trade execution, and thus instructed Plaintiff to
14 avoid trading venues with a large concentration of such traders and/or
15 where such traders were active. Moreover, the concealed facts were
16 highly material to Plaintiff and the Class, and Plaintiff and the Class
17 would not have paid fees or commissions, or allowed Barclays to
18 submit their trades for potential execution in the LX dark pool, had
19 they known the true facts. When the truth concerning Barclays'
20 wrongdoing was revealed, Plaintiff's clients instructed Plaintiff to
21 cease submitting their trades for execution on the LX dark pool, and
22 Plaintiff did so.

23 119. As a result of Barclays' concealment, Plaintiff and the Class
24 were harmed and Barclays' concealment was a substantial factor in
25 causing the harm.

26 ///

27 ///

28 ///

1 commit violations of Bus. & Prof. Code § 17200 and other laws. This
2 Court is empowered to, and should, grant preliminary and permanent
3 injunctive relief against such acts and practices.

4 125. Barclays' conduct is "unlawful" because Barclays committed
5 false or untrue advertising in violation of Cal. Bus. & Prof. Code §
6 17500.

7 126. Barclays' conduct also is "unfair" due to the conduct alleged
8 herein.

9 127. Barclays' conduct also violates Bus. & Prof. Code § 17200
10 because Barclays' conduct, as alleged herein, is "fraudulent."

11 128. Plaintiff, on behalf of itself and the Sub-Class, seeks
12 restitution of all money and property which Barclays obtained or may
13 have obtained from Plaintiff and the Sub-Class as a result of its unfair
14 business practices.

15 **THIRD CAUSE OF ACTION**

16 **FALSE ADVERTISING**

17 **CALIFORNIA BUS. & PROF. CODE § 17500**

18 **(On Behalf of Plaintiff and the Sub-Class)**

19 129. Plaintiff hereby incorporates all of the foregoing
20 paragraphs.

21 130. Barclays, acting directly or indirectly with intent to induce
22 Plaintiff, the Sub-Class, and members of the California general public
23 to allow Barclays to execute their trades, in violation of Cal. Bus. &
24 Prof. Code § 17500, made or disseminated or caused to be made or
25 disseminated the deceptive statements alleged in this Complaint.

26 131. The statements and representations made by Barclays were
27 deceptive and concealed important information, and were known, or
28

1 which by the exercise of reasonable care should have been known, to
2 be deceptive and misleading.

3 132. Barclays made or disseminated or caused to be made such
4 statements as part of a plan or scheme with no intent to sell its
5 services as so advertised. Barclays engaged in a widespread
6 advertising campaign throughout California and the United States in
7 order to induce Plaintiff and the Class to use the LX exchange.
8 Barclays utilized print and media advertisements to widely promote
9 its LX exchange.

10 133. Plaintiff actually saw and relied upon one or more of
11 Barclays' advertisements, representations, and statements, including
12 Exhibit A hereto, and suffered actual injury and harm as a result of
13 Barclays' violation of Cal. Bus. & Prof. Code § 17500.

14 **VII. REQUEST FOR RELIEF**

15 WHEREFORE, Plaintiff requests judgment against Defendants
16 as follows:

17 A. A declaration that this action is a proper class action under
18 F.R.C.P. 23 on behalf of the Class and Sub-Class as defined herein,
19 and an order directing that reasonable notice of this action be given to
20 each member of the Class and Sub-Class;

21 B. A declaration that Barclays' conduct alleged herein
22 constitutes a violation of California Bus. & Prof. Code § 17200 and a
23 violation of Bus. & Prof. Code § 17500;

24 C. An injunction enjoining, preliminarily and permanently,
25 Barclays from continuing the unlawful conduct alleged herein;

26 D. An award for Plaintiff and the Class and Sub-Class for the
27 costs of this suit (including expert fees), and reasonable attorneys' fees,
28 as provided by law;

1 E. Restitution for Plaintiff and the Class and Sub-Class on the
2 claims; and

3 F. All such other and further relief as the Court deems just
4 and proper.

5 **VIII. JURY TRIAL DEMAND**

6 Plaintiff demands a jury trial of all issues subject to adjudication
7 by a trier of fact.

8 Dated: October 19, 2015

Respectfully submitted,
BOTTINI & BOTTINI, INC.
Francis A. Bottini, Jr.
Albert Y. Chang
Yury A. Kolesnikov

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11
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