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(Each appearing pursuant to DUCivR 83-1.1(d)(1))

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UTAH DIVISION OF CONSUMER PROTECTION

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

FEDERAL TRADE COMMISSION, and

UTAH DIVISION OF CONSUMER  
PROTECTION,

Plaintiffs,

vs.

Case Number :

**FILED UNDER SEAL  
PURSUANT TO COURT ORDER  
(DOCKET NO. \_\_\_\_\_)**

ZURIXX, LLC, a Utah limited liability company,

CARLSON DEVELOPMENT GROUP, LLC, a Utah limited liability company,

CJ SEMINAR HOLDINGS, LLC, a Utah limited liability company,

ZURIXX FINANCIAL, LLC, a Utah limited liability company,

CRISTOPHER A. CANNON, individually and as an officer of ZURIXX, LLC,

JAMES M. CARLSON, individually and as an officer of ZURIXX, LLC, and

JEFFREY D. SPANGLER, individually and as an officer of ZURIXX, LLC

Defendants.

**PLAINTIFFS' *EX PARTE* MOTION TO TEMPORARILY SEAL THE DOCKET AND ENTIRE FILE**

I. REQUESTED RELIEF

Pursuant to DUCivR 5-2(a) and (b)(1), Plaintiffs Federal Trade Commission (“FTC”) and Utah Division of Consumer Protection (“Division”) respectfully move the Court *ex parte* for an order to temporarily seal the docket and entire file in this matter, including, but not limited to, the Complaint for Permanent Injunction and other Equitable Relief (“Complaint”), Plaintiffs’ *Ex Parte* Motion for a Temporary Restraining Order with Asset Preservation, Appointment of a Temporary Monitor Over Corporate Defendants, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO Motion”), and all other pleadings, motions, exhibits, and other papers and materials filed in support thereof, including this Motion. The Plaintiffs request that the seal remain in effect until Plaintiffs have served all Defendants or until seven (7) days following the entry of a Temporary Restraining Order, whichever occurs

earlier. The temporary seal is necessary to prevent immediate and irreparable harm to the Plaintiffs' ability to obtain effective final relief in this matter.

As more fully explained below, and in the TRO Motion and the Certification of Federal Trade Commission Counsel Collot Guerard pursuant to Fed. R. Civ. P. 65(b)(1) in Support of Plaintiffs' *Ex Parte* Motion for Temporary Restraining Order and *Ex Parte* Motion to Temporarily Seal the Entire File and Docket ("Counsel Certification"), filed concurrently, an order temporarily sealing the docket and entire file is necessary to prevent Defendants from learning of this action before they can be served with a Temporary Restraining Order ("TRO"). If Defendants prematurely learn of this action or the Court's orders, they are likely to dissipate or conceal assets or destroy records, thereby frustrating the Court's ability to grant complete and permanent relief in this case.

## II. STATEMENT OF FACTS

As alleged in the Complaint, and described more fully in the TRO Motion and accompanying exhibits, Defendants have made millions of dollars by deceptively marketing and selling real estate investment products and services ("products") to consumers. The evidence shows that Defendants lure consumers with a free event where they make false and unsubstantiated claims that (1) consumers will earn thousands of dollars per deal using Defendants' flipping "system; (2) little time and effort is required to profit from real estate investing; (3) consumers will have access to 100% funding for real estate deals; and (4) consumers who attend the 3-day workshop will learn all they need to know to become successful in real estate investing. Consumers pay thousands of dollars for Defendants' products.

Dissatisfied consumers who seek the refunds from Defendants are often required to sign a nondisclosure agreement in exchange for a partial or full refund, which typically states:

Customer agrees that it shall not file or pursue any other claim or action pertaining to Customer's interactions with [Zurixx brand name], its clients, officers, directors, affiliates, members, owners, employees, agents, spouses, partners, heirs, successors and assigns, including but not limited to administrative complaints with the Better Business Bureau, civil litigation, internet postings or blogs, magazine, newspaper or other such published articles, complaints with any state or federal government agency, including but not limited to **Attorneys' General or FTC**, or credit card/merchant chargeback,/refund transactions.... (emphasis added).

Defendants' gag provision is more than mere words on a page. Effectively silencing testimony and frustrating the FTC's and Division's investigation, the provision specifically prohibits complaints to Attorneys' General and the FTC, the very entities responsible for regulating Defendants' business. In fact, some consumers are afraid to speak to the FTC and the Division, believing that the provision is enforceable if they do. For example, one consumer who gave Zurixx more than \$72,000 declined to provide testimony to the FTC, affirming in a declaration: "Had I not signed the Settlement Agreement and Mutual Release with [Zurixx brand name], I would have been willing to speak with Federal Trade Commission staff about my experience with the company."<sup>1</sup> Others stated the same.<sup>2</sup> The gag clause impedes law enforcement by preventing consumers from conveying information about Zurixx's deceptive sales tactics to regulators or anyone else who might hold Defendants accountable. Defendants' scare tactics and the deceptive nature of their scheme demonstrates a strong desire and conduct to prevent the FTC and Attorneys Generals from learning about complaints. Therefore, it is likely that

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<sup>1</sup> Ex. 28 at ¶6

<sup>2</sup> Ex. 29 at ¶6 (same); Ex. 31 at ¶6 (same); Ex. 37 at ¶6 (same); Ex. 40 at ¶6 (same); Ex. 45 at ¶6 (same).

Defendants will destroy electronic and other documents absent temporary and preliminary relief. Once destroyed, documents cannot be retrieved.

### III. LEGAL ARGUMENT

The District of Utah has recognized that, while the records of its courts are presumptively public, this Court may seal a case upon motion of a party and a showing of good cause. *See* DUCivR 5.2(a). Further, in extraordinary circumstances, the Court may seal the entire case based on an *ex parte* request. *See* DUCivR 5.2(b)(1). The Court has discretion to seal documents if the public's right to access is outweighed by competing interests.<sup>3</sup> To overcome the presumption against sealing records, the party seeking to seal records must articulate a real and substantial interest that justifies depriving the public of access to the records.<sup>4</sup> To further the interests of justice, courts within the Tenth Circuit have granted orders, similar to the one the Plaintiffs seek here, to temporarily seal the entire file and docket in other FTC actions.<sup>5</sup> The real and substantial interest that justifies temporarily sealing the entire record on an *ex parte* basis is to maintain the status quo and to preserve the possibility of final relief. As explained in the Counsel Certification, based on the FTC's experience, defendants that operate unlawful or fraudulent schemes are likely to conceal or dissipate assets or destroy records if given premature

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<sup>3</sup> *Helm v. Kansas*, 656 F.3d 1277, 1292 (10th Cir. 2011).

<sup>4</sup> *Id.*

<sup>5</sup> *See, e.g., FTC v. Elite IT Partners*, No. 2:19-cv-125-RJS (D. Utah February 27, 2019); *FTC v. Peterson*, No. 4:18-cv-00049-DN (D. Utah July 10, 2018) (unpublished); *FTC v. Apply Knowledge, LLC*, No. 2:14-cv-00088-DB (D. Utah Feb. 11, 2014) (unpublished); *FTC v. Your Yellow Book, Inc.*, No. 5:14-cv-00786-D (W.D. Okla. July 25, 2014) (unpublished); *FTC v. Skybiz.com, Inc.*, No. 4:01-cv-00396-CVE-FHM (N.D. Okla. May 30, 2001) (unpublished).

notice of the FTC's action against them. The District of Utah and other district courts have agreed.<sup>6</sup>

Here, the overwhelming evidence demonstrates that Defendants are currently operating a scheme permeated by fraud that violates both federal and state law.<sup>7</sup> The Defendants have ample opportunity and motivation to easily conceal and dissipate assets and destroy important documents: (1) Defendants operate a pervasive, fraudulent enterprise dependent on misrepresentations; (2) Plaintiffs are seeking monetary relief in the form of compensation to consumers; (3) Defendants' assets can be transferred, hidden, encumbered, or dissipated to avoid discovery; and (4) computer equipment, including the equipment Defendants use to run their business, can easily be wiped and business records destroyed.

The evidence also shows that Defendants have attempted to conceal their deception by requiring silence from dissatisfied consumers in exchange for refunds. Consequently, if Defendants become aware of the Plaintiffs' case before the Plaintiffs can serve the TRO on third parties that hold assets of Defendants, such as financial institutions and credit card payment processors, there is a substantial risk that Defendants might conceal or dissipate assets or destroy documents, frustrating the Court's ability to provide restitution to the victims of Defendants' unlawful scheme. Thus, premature notice of this action would likely lead to potentially

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<sup>6</sup> See, e.g., *FTC v. Elite IT Partners*, No. 2:19-cv-125-RJS (D. Utah February 27, 2019) (Dkt. 7) (granting motion to seal where the FTC alleged that the business was permeated by fraud, but no evidence of asset dissipation). *FTC v. Int'l Computer Concepts, Inc.*, No. 5:94CV1678, 1994 WL 730144, at \*16 (N.D. Ohio Oct. 24, 1994) ("Where, as in this case, business operations are permeated by fraud, there is a strong likelihood that assets may be dissipated....") (internal citation omitted).

<sup>7</sup> See the TRO Motion, Counsel Certification, and supporting exhibits.

irreversible conduct by Defendants relating to assets and records. Entry of an *ex parte* order temporarily sealing the file is consistent with the purpose of Fed. R. Civ. P. 65(b), which permits motions without notice to prevent “immediate and irreparable injury, loss, or damage.”


The public’s interest in preserving the Court’s ability to award monetary relief outweighs its interest in having access to the judicial records of this matter during the short temporary seal period. Therefore, an order by the Court sealing the entire file and docket temporarily is necessary and in the public interest to prevent Defendants from learning of this action before the FTC can implement the Court’s TRO.

#### IV. CONCLUSION

Absent an order by the Court sealing the entire file and docket in this matter, there is a real danger that Defendants will conceal or dissipate assets or destroy documents. Therefore, for all these reasons and in the interest of justice, the FTC respectfully asks that the Court temporarily seal the entire file and docket in this matter until it has served all Defendants, or until seven (7) days following the entry of the Temporary Restraining Order, whichever occurs earlier. A proposed order is attached.

Respectfully submitted,

Dated: September 30  
2019

  
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Dated: Sept. 30, 2019



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UNITED STATES DISTRICT COURT  
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FEDERAL TRADE COMMISSION, and

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Defendants.

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**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' *EX PARTE* MOTION  
FOR AN ORDER TEMPORARILY  
SEALING THE DOCKET AND ENTIRE  
FILE**

Upon consideration of the Plaintiffs Federal Trade Commission and Utah Division of Consumer Protection's *Ex Parte* Motion for an Order to Temporarily Seal the Docket and Entire File, the Court, having reviewed the submission of counsel, finds that good cause exists to

temporarily seal the file in this matter. It is hereby: **ORDERED** that the motion is **GRANTED**, and **IT IS FURTHER ORDERED** that the file and docket in this action, including the Complaint, *Ex Parte* Motion for Temporary Restraining Order and Memorandum in Support Thereof, and the accompanying exhibits, **shall be sealed until** the Plaintiffs file a notice with the Court indicating that Plaintiffs have served all Defendants, or seven (7) days following the entry of the Temporary Restraining Order, whichever occurs earlier. At this time, the seal automatically shall be lifted by the clerk without motion by the Plaintiffs or further order of the Court.

This Order shall not be construed to prohibit service or other disclosure by the Plaintiffs; any Court-appointed temporary monitor, or those acting at their direction, of any *Ex Parte* Temporary Restraining Orders and any papers filed in support thereof to: (1) the parties; (2) nonparty financial institutions; or (3) any law enforcement agency.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2019

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United States District Judge  
District of Utah