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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 No.:

**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.

CERTIFICATION OF FTC COUNSEL COLLOT GUERARD PURSUANT TO FED. R. CIV. P. 65(b) IN SUPPORT OF EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER AND EX PARTE MOTION TO TEMPORARILY SEAL THE DOCKET AND ENTIRE FILE

I, Collot Guerard, certify as follows:

1. I am over twenty-one years of age and am a citizen of the United States. I am one of the attorneys representing the Plaintiff Federal Trade Commission (“FTC”) in the above-captioned action against Zurixx, LLC, Carlson Development Group, LLC, CJ Seminar Holdings, LLC, Zurixx Financial, LLC, Cristopher A. Cannon, James M. Carlson, and Jeffrey D. Spangler (“Defendants”).

2. I am a member in good standing of the bar of Washington, D.C. My business address is Federal Trade Commission, 600 Pennsylvania Ave., N.W., Mailstop CC-8528, Washington, DC 20580. Unless indicated otherwise, I have personal knowledge of the facts stated herein and if called as a witness, would competently testify thereto.

3. I submit this certification pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1746 in support of the Plaintiffs' *Ex Parte* Motion for a Temporary Restraining Order ("TRO Motion") and in support of the Plaintiffs' request that the Temporary Restraining Order ("TRO") be issued without notice to Defendants. I also submit this certification in support of the Plaintiffs' concurrently filed Motion to Temporarily Seal the Docket and Entire File ("Motion to Seal"). As required by DUCivR 5-2, this certification shows good cause for the Plaintiffs' request that the Court seal the docket and entire file in this matter temporarily.

4. Pursuant to Rule 65(b)(1), this Court may issue a TRO without notice to Defendants if "(A) specific facts in an affidavit...clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required."

5. For the reasons discussed below, the Plaintiffs have not provided Defendants with notice of the filing of this action, and request that the Court issue the proposed *ex parte* TRO and seal the entire docket until: (1) all Defendants are served, or (2) seven (7) days following entry of the TRO, whichever occurs earlier. The interests of justice require that the Court consider the Plaintiffs' filings *ex parte*.

6. The evidence set forth in the Plaintiffs' Complaint, TRO Motion, and in Plaintiffs' Exhibits Volumes I-XXI demonstrates that Defendants have deceptively marketed and sold real estate investment products and services ("products") to consumers throughout the United States. Defendants routinely make false or unsubstantiated claims to convince consumers

to spend thousands of dollars for Defendants' products. Defendants repeatedly represent that consumers who purchase Defendants' products are likely to earn thousands of dollars in profit, often with little risk, time, or effort. Defendants also represent that consumers who purchase their 3-day workshop will receive 100% funding for their real estate investments regardless of their credit history and that they will learn all they need to know to make thousands of dollars through real estate investing. They back up these representations with a money-back guarantee. In reality, consumers are unlikely to earn thousands of dollars in profit from real estate investments by spending just a few hours each week using Defendants' products. Consumers are unlikely to receive 100% funding for real estate deals through Defendants nor do they learn to know to make thousands of dollars in profit through real estate investing at the 3-day workshop. Moreover, Defendants' guarantee contains substantial limitations that Defendants fail to disclose adequately until after consumers have paid for the 3-day workshop. Many consumers have requested refunds. When Defendants agree to refund consumers' money, they routinely provide only a partial refund, which in many instances, Defendants condition on the consumers signing an agreement barring them from speaking with the FTC, state Attorneys General, and other regulators, or posting negative reviews or complaints about Zurixx and its products.

7. In perpetuating their scheme, Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Consumer Review Fairness Act, 15 U.S.C. §45b, Utah Consumer Sales Practices Act, Utah Code § 13-11-1 *et seq.* and Business Opportunity Disclosure Act, Utah Code § 13-15-1 *et seq.* by, among other things: (1) making false or unsubstantiated earnings claims regarding Defendants' real estate investment products or services; (2) making false or unsubstantiated claims that consumers will receive 100% funding to do real estate deals

regardless of their credit, spend little time and effort to make thousands of dollars in profit through real estate investing, and/or learn everything they need to know at the 3-day workshop to make thousands of dollars in profit through real estate investing; (3) failing to disclose, or disclose adequately, material aspects of Defendants' refund policy; (4) using form contract provisions that unlawfully bar or restrict the ability of the consumer purchasing Defendants' products from engaging in reviews, performance assessments, and similar analyses of Defendants' goods, services or conduct; (5) failing to file information with the Utah DCP that is required of companies selling assisted marketing plans within the state; and (6) failing to make the required disclosures to purchasers of the company's assisted marketing plan.

8. To further the public interest, Plaintiffs ask the Court to grant, *ex parte*, a TRO against Defendants, pursuant to Fed. R. Civ. P. 65. The TRO would immediately halt Defendants' misleading and deceptive conduct, and preserve the Court's ability to grant complete and permanent relief in this case, consistent with the Court's broad equitable powers. *FTC v. LoanPointe, LLC*, 525 F. App'x 696, (10th Cir. 2013) (“[Section] 13(b)'s grant of authority to provide injunctive relief carries with it the full range of equitable remedies....”); *FTC v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1202 n. 6 (10th Cir. 2005). Specifically, Plaintiffs seek an *ex parte* TRO that: (1) halts Defendants' misrepresentations, misleading and deceptive conduct, and use of the gag clause; (2) orders Defendants to comply with Utah law by filing with the Division and providing to consumers the information required under BODA; (3) imposes an asset preservation provision on the corporate defendants; (4) appoints a temporary monitor to oversee the corporate defendants' operations, evaluate the business practices, analyze their finances, and report the findings to this Court; and (5) allows the plaintiffs and the monitor

immediate access to Defendants' premises and business and financial records, and allows them to undertake expedited discovery.

9. As described more fully in the TRO Motion and the accompanying exhibits, the evidence establishes that the Plaintiffs are likely to prevail on the merits of their action against Defendants. 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. Furthermore, Defendants frequently require consumers who seek a refund from Defendants to sign a gag clause that prohibits them from contacting the FTC and other state and federal regulators about Defendants and their real estate investing products to evade attention from law enforcement.

10. Consequently, there is good cause to believe that immediate and irreparable damage to Plaintiffs' ability to obtain, and this Court's ability to craft, complete and effective final relief will occur if Plaintiffs' present filings are not under seal or if, in any manner, Defendants receive advance notice of any aspect of this enforcement action. To my knowledge, Defendants are unaware of Plaintiffs' application for a TRO.

11. In fulfilling its mandate to combat fraud in interstate commerce, the FTC has requested TROs in appropriate cases, including on an *ex parte* basis, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the District of Utah and other district courts within the Tenth Circuit have granted the FTC's requests. *See, e.g., See FTC v. Elite IT Partners, Inc.*, No.

2:19-cv-125-RJS (D. Utah Feb. 27, 2019) (unpublished) (*ex parte* TRO with conduct prohibitions and asset freeze); *Utah Division of Consumer Protection v. Troy Stevens*, No. 2:19-cv-00441-HCN (D. Utah July 8, 2019) (unpublished) (*ex parte* TRO with conduct prohibitions and asset freeze) *dismissed for lack of standing*, *Utah v. Stevens*, 2019 U.S. Dist. LEXIS 140665, at *16-18 (D. Utah Aug. 19, 2019); *FTC v. Peterson*, No. 4:18-cv-00049-DN (D. Utah July 10, 2018) (unpublished) (*ex parte* TRO with conduct prohibitions and asset freeze); *FTC v. Your Yellow Book, Inc.*, No. 5:14-cv-00786-D (W.D. Okla. July 25, 2014) (unpublished) (same); *FTC v. Skybiz.com, Inc.*, No. 01-CV-396-K(E) (N.D. Okla. June 6, 2001) (unpublished) (same).

12. Plaintiffs' have not made Defendants aware of Plaintiffs' undercover investigation into Defendants' business practices. As illustrated by the following examples, it has been the FTC's experience that Defendants who engage in deceptive practices, and who receive notice of the filing of an action by the FTC, often attempt to undermine the FTC's efforts to preserve the status quo by immediately dissipating or concealing assets and/or destroying documents. Often defendants or their affiliates who have been served with a temporary restraining order attempt to remove assets from their financial institutions or conceal offshore assets. The examples in paragraphs thirteen (13) and fourteen (14) have been identified within the FTC as incidents in which defendants acted in such a manner, and these are provided on information and belief to illustrate the FTC's previous experiences.

13. The following examples come from FTC actions where defendants, either not subject to an *ex parte* TRO or despite it, hid assets and destroyed documents, and illustrate the FTC's concern that the Defendants in this case would do the same.

- a. In *FTC v. Elite IT Partners, Inc.*, No. 2:19-cv-125-RJS (D. Utah Feb. 27, 2019), the FTC sought and obtained an *ex parte* TRO with a receivership and asset freeze. On the day the FTC served the defendant with the TRO and the receiver assumed control of the premises, the defendant secretly removed a hard drive from the premises that contained evidence inculcating the defendant and his companies in a tech support scam. When the FTC discovered that the hard drive was missing, the defendant lied about the contents of the hard drive and forensic analysis showed that the hard drive had been modified before its return to the receiver.
- b. In *FTC v. Hite Media Group, LLC*, Case no. 2:18-cv-02221-SPL (D. Ariz. July 17, 2018), the FTC sought and obtained an *ex parte* TRO with an asset freeze. On the day the FTC served the defendant with the TRO, he transferred one of his properties to another individual.
- c. In *FTC and the State of Georgia v. Laptop and Desktop Repair, LLC*, Case No. 1:16-CV-3591-AT (N.D. Ga. 2016), the FTC sought and obtained an *ex parte* TRO with an asset freeze. After learning that the TRO had been granted, one defendant immediately withdrew money and transferred it to a non-defendant limited liability company. On the day that the court entered a preliminary injunction with an asset freeze, the same defendant withdrew \$103,369 from his personal, online brokerage account and transferred the money to another personal account.

- d. In *FTC v. Dayton Family Productions, Inc.*, No. 97-00750 (D. Nev. 2013), the FTC obtained an *ex parte* TRO prohibiting defendants from destroying business records and granting the FTC immediate access to such records. The FTC served the TRO on the defendants' employees at a primary office and then discovered the existence of a second office. Upon arriving at the second location, the FTC learned that an employee served with the TRO that morning had already accessed a computer in that location. FTC forensic examiners confirmed that the computer's hard drive was erased in the hours after the employee received the TRO. The data from the hard drive was never recovered.
- e. In *FTC v. E.M.A. Nationwide Inc.*, No. 12-cv-02394 (N.D. Ohio 2012), the court denied the FTC's request for an *ex parte* TRO with a corporate asset freeze. Within days, the defendants withdrew more than \$152,000 from a bank account.
- f. In *FTC v. Transcontinental Warranty, Inc.*, No. 09-2927 (N.D. Ill. 2009), the FTC moved for a TRO with notice to the defendants and the court issued it, freezing defendants' assets and appointing a receiver. However, when the receiver and counsel for the FTC arrived at the corporate defendants' premises pursuant to the court's order, hundreds of folders with labels indicating that they contained records of defendants' most recent transactions were found empty. In addition, five computers, including that of the corporate defendants'

CFO, were missing—allegedly stolen the night before the arrival of the receiver and counsel for the FTC.

- g. In *FTC v. Connelly*, No. 06-701 (C.D. Cal. 2006), the court, following notice to two of the three individual defendants, issued an *ex parte* TRO with an asset freeze against a third individual defendant. After receiving notice of the TRO, all three defendants withdrew a total of at least \$800,000, some of which was subject to the asset freeze, and most of which was never recovered.
- h. In *FTC v. Global Marketing Group, Inc.*, No. 06-2272 (M.D. Fla. 2006), the court granted the FTC an *ex parte* TRO with an asset freeze that the FTC served on banks known to hold the defendants' assets. After being served with the TRO, one of the defendants successfully withdrew over \$500,000 from accounts previously unknown to the FTC, most of which were wired to offshore bank accounts.
- i. In *FTC v. National Consumer Council*, No. 04-0474 (C.D. Cal. 2004), the court granted the FTC's *ex parte* application for a TRO with asset freeze and the appointment of a temporary receiver against all but one of the corporate defendants. One of the individual defendants then deleted key electronic files on defendants' shared network server by accessing his account through a computer under the control of the corporate defendant that was not under the receivership.
- j. In *FTC v. Canada Inc., et al.*, No. 04 C 4694 (N.D. Ill. 2004), Canadian authorities executed a search warrant on the business premises of Canadian

defendants. The FTC subsequently filed its complaint and its motion for a TRO with asset freeze, and provided notice to the defendants. The FTC subsequently discovered that the defendants had made several transfers totaling approximately \$70,000 after receiving notice of the FTC's action. The FTC was unable to recover the \$70,000.

- k. In *FTC v. Access Resource Services, Inc.*, No. 02-60226 (S.D. Fla. 2002), when an individual defendant became aware of the noticed TRO hearing, he attempted to exploit the Florida homestead exemption by making a \$579,600 payment to pay off the mortgage on his residence.
- l. In *FTC v. Physicians Healthcare Development, Inc.*, No. 02-02936 (C.D. Cal. 2002), the defendants were given advance notice of a TRO hearing. Prior to the hearing and entry of the TRO, the defendants removed all business records and computer equipment from the business premises, none of which were recovered.
- m. In *FTC v. Thomas E. O'Day*, No. 94-1108-CIV-ORL-22 (M.D. Fla. 1994), the district court denied the FTC's request for an *ex parte* TRO with asset freeze and scheduled a noticed hearing on the relief sought. Several days later, the FBI executed a search warrant on defendants' business premises as the FTC served notice of its action and the upcoming hearing. Within hours, an individual defendant withdrew approximately \$200,000 from one of his bank accounts.

n. In *FTC v. Applied Telemedia Engineering and Management, Inc., et al.*, No. 91-635 (S.D. Fla. 1991), the defendants were advised, pursuant to an agreement with the FTC, that the FTC had filed its complaint and intended to seek a TRO with an asset freeze from the court. When the FTC's agents went to the defendants' offices to serve process, they observed defendants removing boxes of documents from the premises. The FTC moved for, and received, an *ex parte* TRO the following day.

14. The following examples have been identified within the FTC as incidents in which an *ex parte* order helped remedy or mitigate defendants' attempts to dissipate assets or destroy documents:

- a. In *FTC v. AWS, LLC, et al.*, Case No. 2:18-cv-00442-JCM-PAL (D. Nev. filed Mar. 12, 2018), the FTC sought and obtained an *ex parte* TRO with an asset freeze. After being served with the TRO, one of the individual defendants attempted to dissipate more than \$400,000 in violation of the asset freeze by visiting two local banks and purchasing certified checks and wire transferring funds to a business associate. A second individual defendant immediately withdrew \$2,400 from his credit union upon learning of the TRO. The individual defendants' financial institutions alerted the FTC shortly thereafter in compliance with TRO asset freeze provisions and the transactions were successfully reversed.
- b. In *FTC v. Goldman Schwartz Inc.*, No. 13-cv-00106 (S.D. Tex. 2013), the FTC obtained an *ex parte* TRO with an asset freeze against numerous

corporate and individual defendants, including the companies' owner. Within an hour of being served with the TRO, but before the asset freeze had been fully implemented, the owner withdrew approximately \$268,000 from a frozen corporate account. Shortly thereafter, the owner sold approximately \$160,000 in securities held in a personal trading account. The next day, the owner's wife withdrew another \$18,500 from a non-defendant corporation's account that was subject to the asset freeze. Because the court had issued its asset freeze in advance of these actions, the FTC and a court-appointed monitor were able to recover all of the money.

- c. In *FTC v. Sameer Lakhany*, No. SACV 12-337 CJC (C.D. Cal. 2012), the day after the court granted the TRO, but before the FTC could effect service, the defendant's employee notified the defendant of the FTC's lawsuit and receivership. The individual defendant proceeded to withdraw \$204,000 from corporate bank accounts in violation of the asset freeze. The defendant later stipulated to the contempt, and the majority of the withdrawn funds were recovered.
- d. In *FTC v. Prime Legal Plans LLC*, No. 12-cv-61872 (S.D. Fla. 2012), upon hearing of the *ex parte* TRO including an asset freeze, the defendants transferred \$1.7 million in assets to a girlfriend and a mother. The bank was able to recover most of the money, but approximately \$200,000 was not returned.

- e. In *FTC v. Asia Pacific Telecom, Inc. et al.*, No. 10-cv-3168 (N.D. Ill. 2010), the FTC obtained an *ex parte* TRO freezing the defendants' assets and prohibiting them from destroying documents. After being served with the TRO, one of the individual defendants deleted an email account used to conduct many of the illegal practices at issue in the FTC's complaint. The defendant took this step despite being served with a discovery request by the FTC for documents in the account and despite multiple demands from the court-appointed receiver for access to the account. The court ultimately held that defendant in contempt for deleting the account in violation of the TRO.
- f. In *FTC v. Fereidoun Khalilian*, No. 10-21788 (S.D. Fla. 2010), the Commission sought and obtained an *ex parte* TRO with an asset freeze. Before the banks in which the defendants held accounts could put in place the freeze, one of the individual defendant's employees withdrew large amounts of money from the company's bank accounts. The individual eventually returned some—but not all—of this money. Additionally, the individual defendant, under cover of darkness, attempted to remove assets located in his personal residence.
- g. In *FTC v. Data Medical Capital, Inc.*, No. 99-1266 (C.D. Cal. 2009), the Commission moved for civil contempt and obtained an *ex parte* TRO and asset freeze. When one of the defendants learned the Commission was investigating his possibly contemptuous actions, he transferred approximately \$1 million to a new personal bank account prior to the Commission's filing.

While the receiver appointed pursuant to the *ex parte* TRO traced these assets, found the new account, and returned the funds to the receivership estate, the receivership estate was still diminished by the fees accrued by the receiver's efforts to retrieve the funds.

- h. In *FTC v. American Entertainment Distributors, Inc.*, No. 04-22431 (S.D. Fla. 2004), the court, pursuant to an *ex parte* TRO, entered an asset freeze that froze assets of both corporate and individual defendants. Within hours of receiving notice of the asset freeze, one of the individual defendants withdrew \$39,500 from his bank account. Because he violated the terms of the asset freeze, the FTC was able to compel the individual defendant to return the money.
- i. In *FTC v. Assail Inc.*, No. 03-007 (W.D. Tex. 2003), the court issued an *ex parte* TRO, including an asset freeze. The lead defendant nonetheless transferred \$200,000 after being served with the TRO. Following contempt proceedings and a lengthy appeal, the defendant repaid the transferred funds.
- j. In *FTC v. Hanson Publications, Inc.*, No. 02-2205 (N.D. Ohio 2002), Canadian defendants transferred \$105,000 from a U.S. account to a Canadian account within two days of receiving service of the TRO with asset freeze. This money was later returned as a predicate to the release of attorney's fees.
- k. In *FTC v. SkyBiz.com, Inc.*, No. 01-396 (N.D. Okla. 2001), within days of the service of the TRO with an asset freeze provision, one of the primary defendants convinced an overseas trustee to withdraw \$1,000,000 from the

offshore account of a foreign affiliate. Because a domestic correspondent bank had been served with the TRO, it refused to transfer the funds. The money in the offshore account was preserved, and ultimately used to provide consumer redress.

15. For the above reasons, as contemplated by Fed. R. Civ. P. 65(b)(1), there is good cause to believe that immediate and irreparable damage will result to consumers, including the destruction of Defendant's records and the dissipation or concealment of assets, if Defendants receive advance notice of Plaintiffs' application for a TRO. Thus, it is in the interests of justice that this Court grant such application without notice.

16. For the same reasons, there is good cause to believe that immediate and irreparable harm will result to consumers if any of the Defendants receive premature notice of the filing of this action. Thus, the interests of justice would be served if the Court grants Plaintiffs' *Ex Parte* Motion for a Temporary Restraining Order and *Ex Parte* Motion to Temporarily Seal the Docket and Entire File.

Dated: September 30
2019

Collet Guerard
COLLOT GUERARD
Attorney for Plaintiff
Federal Trade Commission