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Attorneys for Defendants

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

FEDERAL TRADE COMMISSION, and UTAH
DIVISION OF CONSUMER PROTECTION,

Plaintiffs,

vs.

ZURIXX, LLC; CARLSON DEVELOPMENT
GROUP, LLC; CJ SEMINAR HOLDINGS,
LLC; ZURIXX FINANCIAL, LLC;
CRISTOPHER A. CANNON; JAMES M.
CARLSON; and JEFFREY D. SPANGLER,

Defendant.

**DEFENDANTS' EX PARTE MOTION
FOR LEAVE TO FILE OVERLENGTH
PARTIAL MOTION TO DISMISS**

Case No.: 2:19-cv-00713-DAK-CMR

Judge Dale Kimball

Pursuant to DUCivR 7-1(a) & (e), Defendants Zurixx, LLC; Carlson Development Group, LLC; CJ Seminar Holdings, LLC; Zurixx Financial, LLC; Christopher A. Cannon; James M. Carlson; and Jeffrey D. Spangler (collectively “Defendants”), by and through undersigned counsel respectfully move the Court for leave to file Defendants’ Partial Motion to Dismiss, consisting of thirty (30) substantive pages.

PRECISE RELIEF SOUGHT AND SPECIFIC GROUNDS THEREFOR

By the instant Motion for Leave, Defendants seek leave of Court to file their Partial Motion to Dismiss, which includes five (5) more pages than the twenty-five (25) pages authorized by DUCiv R 7-1(a)(3)(A). Such relief is supported by good cause and exceptional circumstances that justify the need for the additional pages inasmuch as the Partial Motion to Dismiss seeks to address several distinct deficiencies in Plaintiffs Federal Trade Commission’s and Utah Division of Consumer Protection’s (“Plaintiffs”) improper exercise of authority. Further, Plaintiffs’ seek an extraordinary award of equitable monetary relief against Defendants through substantially complex allegations of wrongdoing involving thousands of individuals and transactions renders this action necessarily complex. Defendants should be afforded a full opportunity to address Plaintiffs’ claims and overreach. Accordingly, for the reasons discussed more fully below, this Motion for Leave should be granted, and the proposed order attached hereto authorizing Defendants to file a Partial Motion to Dismiss consisting of up to thirty (30) substantive pages should be entered.

ARGUMENT

For Motions under Rule 12(b)–(c), DUCivR 7-1(a)(3)(A) authorizes up to twenty-five (25) pages, excluding the “face sheet, table of contents, table of authorities, signature block, certificate of service, and exhibits.” Nevertheless, DUCivR 7-1(e) allows the Court to “approve” a “motion

for leave to file overlength motion or memorandum” upon a showing of “good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations.”

Here, Defendants seek leave to file their Partial Motion to Dismiss consisting of thirty (30) substantive pages, five (5) more than the number of pages typically allotted under DUCivR 7-4(a)(3)(A). Defendants have sought to be concise, but require additional pages to adequately develop the arguments and address the alleged facts on which those arguments are based. Moreover, good cause and exceptional circumstances exist.

Defendants’ Partial Motion to Dismiss several of Plaintiffs’ causes of action addressed in Plaintiffs’ nine-count Complaint is based on interpreting the governing federal and state statutes that outline Plaintiffs’ authority in investigating matters and seeking relief. This includes arguments concerning several aspects of the relevant statutes, which aspects are distinct from one another and require unique analysis. In doing so, Defendants’ Partial Motion to Dismiss in part also addresses Supreme Court case law that has abrogated certain outdated interpretations of the relevant statutes by the Tenth Circuit, including discussion of jurisprudence from other jurisdictions that have since had opportunity to address the relevant issues to an extent not yet afforded the Tenth Circuit.

The Partial Motion to Dismiss additionally addresses the boundaries around Plaintiffs’ authority and the Court’s ability to grant monetary relief under the statutes through which the Complaint was brought. Considering the complexity of these arguments and the enormous monetary award Plaintiffs seek, Defendants should be afforded an opportunity to fully develop their arguments. The number of named defendants in this action and the nature of the allegations

in Plaintiffs' Complaints has rendered the page limitation contemplated by the rules inexpedient for Defendants despite counsels' best efforts.

CONCLUSION

For the foregoing reasons, Defendants respectfully submit that good cause and exceptional circumstances support granting leave to file the Partial Motion to Dismiss consisting of thirty (30) total substantive pages. The instant Motion for Leave should, accordingly, be granted and the proposed order included herewith should be entered.

DATED this 18th day of November, 2019.

Respectfully Submitted,

KIRTON McCONKIE

By: /s/ Benson L. Hathaway, Jr.
Benson Hathaway
Ryan R. Beckstrom

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November, 2019, I caused a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR LEAVE TO FILE OVERLENGTH PARTIAL MOTION TO DISMISS** to be served on the following by email:

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CARLSON; and JEFFREY D. SPANGLER,

Defendant.

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION FOR LEAVE
TO FILE OVERLENGTH PARTIAL
MOTION TO DISMISS**

Case No.: 2:19-cv-00713-DAK-CMR

Judge Dale Kimball

The Court, having reviewed Defendants' Motion for Leave to File Overlength Partial Motion to Dismiss ("Motion for Leave"), for good cause appearing in support, hereby GRANTS the Motion for Leave.

IT IS HEREBY ORDERED that the Motion for Leave is Granted. Defendants are authorized to file an overlength Partial Motion to Dismiss not to exceed thirty (30) substantive pages.

DATED this 18th day of November, 2019.

BY THE COURT:

By: _____
Judge Dale Kimball
United States District Court Judge

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