

Eric G. Benson (No. 10414)
Z. Ryan Pahnke (No. 11146)
RAY QUINNEY & NEBEKER P.C.
35 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Fax: (801) 532-7543
EBenson@rqn.com
RPahnke@rqn.com

Leonard L. Gordon (*pro hac vice*)
Elliot Kelly (*pro hac vice*)
VENABLE LLP
1270 Avenue of the Americas
24th Floor
New York, NY 10020
Telephone: (212) 370-6277
Fax: (212) 307-5598
LLGordon@venable.com
EKelly@venable.com

Stephen R. Freeland (*pro hac vice*)
Mary M. Gardner (*pro hac vice*)
Michael A. Munoz (*pro hac vice*)
VENABLE LLP
600 Massachusetts Ave., N.W.
Washington, D.C. 20001
Telephone: (202) 344-4000
Fax: (202) 344-8300
SRFreeland@venable.com
MMGardner@venable.com
MAMunoz@venable.com

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,

Defendants.

**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

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

Judge Dale Kimball

Magistrate Judge Evelyn J. Furse

Defendants Zurixx, LLC (“Zurixx”); Carlson Development Group, LLC; CJ Seminar Holdings, LLC; Zurixx Financial, LLC; Cristopher A. Cannon; James M. Carlson; and Jeffrey D. Spangler, (collectively “Defendants”), by and through their undersigned attorneys, hereby submit their Answer to Plaintiffs’ Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”).

Defendants deny that they have violated any laws and further deny that Plaintiffs are entitled to any relief against any of them. Prior to this lawsuit, Zurixx provided real estate education to over 100,000 students since the company’s founding in 2012. Plaintiffs’ allegations against Defendants are based on 24 declarations from former Zurixx students and 239 unspecified complaints the FTC allegedly received about Zurixx. The complaints cited by the Plaintiffs amount to approximately one-quarter of one percent of all students who received real estate education and training from Zurixx. Put simply, contrary to the Plaintiffs’ assertions, there is no evidence of any widespread consumer fraud or deception to justify the extraordinary relief already obtained by Plaintiffs in this action on an *ex parte* basis. To the contrary, the evidence in this case will demonstrate widespread satisfaction among Zurixx students. Specifically, over 99% of all prior Zurixx students rated their educational experience as insightful, valuable, worthwhile, understandable and helpful. This customer satisfaction data, yielded from detailed surveys of Zurixx’s students, was audited and verified by an independent accounting firm (Squire & Company, PC).

Zurixx’s commitment to providing high-quality educational experiences to its customers is also exemplified by the training and certification of its customer service and instructional teams. All members of Zurixx’s customer service department not only underwent a detailed

internal on-boarding and training process, but all members also completed an external training and certification program administered by an independent third-party company. After completion of the program, each employee was tested and all received certification. Zurixx's instructors, trainers, and coaches were also vetted to ensure that they had several years of experience in their field of instruction. Zurixx then required each of them to complete an internal training, after which, the individual was required to pass an examination. As with customer service, Zurixx supplemented its internal training with third-party training and certification as a quality assurance measure. Further, all of Zurixx's coaches attended a two-day training and certification course where they were trained in best practices for helping students, diagnosing problems, and creating success. The course was offered and administered through the Association for Talent Development, which is the world's largest association dedicated to talent development and training effectiveness. Instructors and presenters who violated Zurixx's compliance policies were subject to discipline including, but not limited to, suspension without pay and termination.

Because of the value that Zurixx's educational training provided to its students, Zurixx received many awards from local and national business review organizations, including, by way of example, being inducted into the Salt Lake City Business Hall of Fame, being awarded the Best of Salt Lake City for Education award, as well as achieving a rank of forty-three (43) on Inc. 500's list of Fastest Growing Companies in 2016, and a rank of two (2) in the Top Education Company category. Zurixx has also donated millions of dollars and a significant amount of its officer's and staff's time to charitable organizations in Utah, the U.S., and around the world.

Defendants also participated in ERSP, an independent advertising review program administered by the Better Business Bureau. A little more than a year ago, Defendants through ERSP affirmatively reached out to the FTC to meet with staff within the FTC's Bureau of Consumer Protection – the Bureau that brought this lawsuit – to discuss advertising and business practices affecting ERSP's members. Indeed, Defendants Jeffrey Spangler and James Carlson, two of the owners of Defendant Zurixx and individual defendants in this enforcement action, along with their counsel from Venable LLP who are defending them herein, met in person at the FTC's headquarters in Washington, D.C. with Andrew Smith, the Director of the FTC's Bureau of Consumer Protection, several other high-ranking FTC staff members, as well as other industry participants to discuss advertising and marketing practices in the real estate education industry and to solicit the FTC's views on ERSP's efforts in industry self-regulation. During that meeting, ERSP participants discussed with the FTC what concerns the FTC had with advertising, marketing practices, or the educational training, and the participants also reaffirmed their continued commitment to make any changes the FTC requested as they had in the past. Despite the fact that the FTC's investigation that led to the filing of this case was already well underway, albeit in secret, the FTC did not disclose the investigation to Zurixx. Nor did the FTC, at that meeting or subsequently, identify any specific concerns with respect to Zurixx, nor ask Zurixx to change any of its advertising practices or educational training.

Further, the Plaintiffs' claims in this case that Defendants' educational training provided little to no value to its students is unsupported and unsupportable. Specifically, the expert on which Plaintiffs relied to obtain an *ex parte* TRO is not only unqualified to give opinions on Defendants' training, his opinions are also based on the wrong data and belied by the enormous

evidence of success experienced by Zurixx's students and others who use the same flipping formula taught by Zurixx. Indeed, the educational training taught by Zurixx is widely accepted and used throughout the real estate investing industry by real estate investors.

Even though the real estate education taught by Defendant Zurixx is widely accepted and used by real estate investors and, more importantly, can work to generate profit, Zurixx's policy was always to make it clear to students before they paid for the initial level of training that their individual success was not guaranteed, that they may not succeed, and that their results would vary. The disclaimers used by Zurixx were reviewed and approved by ERSP through the industry self-regulatory process. When the cherry-picked statements upon which the Plaintiffs rely in bringing this action are viewed in context, the evidence will show that, while specific results of past students, real deals, or hypothetical deals were used by instructors to teach the real estate education, Zurixx did not represent that those results and numbers were what the student would achieve or should expect to achieve.

Defendants incorporate the above preliminary statements into its responses to the specific allegations in Plaintiffs' Complaint and deny each and every allegation of Plaintiffs' Complaint not specifically admitted, qualified or explained and, in response to each of the numbered allegations in the Complaint state as follows:

1. The FTC brings this action under Section 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Consumer Review Fairness Act ("CRFA"), 15 U.S.C. § 45b, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement

of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and CRFA, 15 U.S.C. § 45b.

RESPONSE TO PARAGRAPH 1: Defendants admit that the FTC has brought his action pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FCT ACT"), 15 U.S.C. §§ 53(b) and 57b, and the Consumer Review Fairness Act ("CRFA"), 15 U.S.C. § 45b, and that it seeks the relief stated. Defendants deny that the FTC is entitled to any relief and otherwise deny the allegations contained in Paragraph 1 of the Complaint.

2. The Division brings this action pursuant to the authority granted by Utah Code §§ 13-2-5(3), 13-11-17, 13-15-6, and 15 U.S.C. § 45b. The Division seeks, among other things, temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, civil penalties, fines, and other equitable relief for Defendants' acts, omissions, or practices in violation of the Utah Consumer Sales Practices Act ("UCSPA"), Utah Code § 13-11-1 *et seq.*, and the Business Opportunity Disclosure Act ("BODA"), Utah Code § 13-15-1 *et seq.*

RESPONSE TO PARAGRAPH 2: Defendants admit that the Division has brought this action pursuant to Utah Code §§ 13-2-5(3), 13-11-17, 13-15-6, and 15 U.S.C. § 45b, and that it seeks the relief stated. Defendants deny that the Division is entitled to any relief and otherwise deny the allegations contained in Paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

RESPONSE TO PARAGRAPH 3: Defendants deny the allegations contained in Paragraph 3 of the Complaint.

4. This Court has supplemental jurisdiction over the Division’s claims pursuant to 28 U.S.C. § 1367.

RESPONSE TO PARAGRAPH 4: Defendants deny the allegations contained in Paragraph 4 of the Complaint.

5. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

RESPONSE TO PARAGRAPH 5: Defendants admit the allegations contained in Paragraph 5 of the Complaint.

SUMMARY OF THE CASE

6. Since at least July 2013 and continuing through the present, Defendants Zurixx, LLC, Carlson Development Group, LLC, CJ Seminar Holdings, LLC, and Zurixx Financial, LLC (collectively “Zurixx”) – led by individual defendants Cristopher Cannon, James Carlson, and Jeffrey Spangler – have marketed and sold real estate investment products and services (“products”) that purport to allow consumers to make thousands of dollars in profit using Zurixx’s system.

RESPONSE TO PARAGRAPH 6: Defendants admit that from 2013 until the Court’s entry of the *ex parte* and stipulated relief against Defendants in this matter that caused the Zurixx business to be shut down by the Court-appointed receiver that Defendant Zurixx, LLC marketed and sold real estate education training. Defendants deny the remaining allegations contained in Paragraph 6 of the Complaint.

7. Zurixx's "system" comprises two flipping strategies: "fix and flip" and "wholesale flips." A "fix and flip" involves purchasing and renovating a property before selling it to an end user. A "wholesale flip" involves acquiring an interest in a property and then transferring that interest to a wholesale buyer, who will, in turn, fix and flip the property.

RESPONSE TO PARAGRAPH 7: Defendants deny that Paragraph 7 of the Complaint accurately or completely characterizes Zurixx's real estate education training and therefore deny the allegations in Paragraph 7.

8. To entice consumers to purchase its products, Zurixx routinely hosts free live events that depict celebrities from house flipping and home renovation television programs, who indicate that their team of "experts" will teach consumers how to make money by following their system of real estate investing.

RESPONSE TO PARAGRAPH 8: Defendants admit that Defendant Zurixx has at times worked with persons from television programs. Defendants further admit that Defendant Zurixx has hosted free live events. Defendants deny that the remainder of Paragraph 8 of the Complaint accurately or completely characterizes what was said and presented to students at these events and therefore deny the remaining allegations contained in Paragraph 8.

9. During the free events, Zurixx repeatedly represents that consumers who sign up for its 3-day workshop are likely to earn thousands of dollars in profit, often with little risk, time, or effort. Zurixx also represents that consumers who purchase the workshop will receive 100% funding for their real estate investments regardless of their credit history. It backs up these representations with a money-back guarantee – consumers who do not make "a minimum of three times" the price of the 3-day workshop within six months will receive their money back.

RESPONSE TO PARAGRAPH 9: Defendants deny that Paragraph 9 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced events and therefore deny the remaining allegations contained in Paragraph 9.

10. For example, a Zurixx presenter made the following representations during a December 2018 free event in Georgia:

Not only are [Tarek and Christina El Moussa] going to give you a professional education, not only are they going to give you a list of all their lending partners to fund all your deals plus to rehab regardless of your credit, not only are they going to give you the cash buyers list so you have the buyers, but they are going to guarantee that you or your partners closes a deal within three months, you get your money back...

RESPONSE TO PARAGRAPH 10: Defendants deny that Paragraph 10 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced event and therefore deny the allegations contained in Paragraph 10.

11. A Zurixx presenter at a June 2018 free event in California told attendees, “[i]f it doesn’t work for you, we still give you \$2,000 back. This really is a no-lose situation as long as you try it.”

RESPONSE TO PARAGRAPH 11: Defendants deny that Paragraph 11 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced event and therefore deny the allegations contained in Paragraph 11.

12. Zurixx’s representations are false or unsubstantiated. Consumers are unlikely to earn thousands of dollars in profit from real estate investments by using Zurixx’s products. Consumers are unlikely to receive 100% funding for real estate deals through Zurixx or its partners and affiliates. Moreover, Zurixx’s six-month money-back guarantee contains

substantial limitations that Zurixx fails to disclose adequately until after consumers have paid for the 3-day workshop.

RESPONSE TO PARAGRAPH 12: Defendants deny the allegations contained in Paragraph 12 of the Complaint.

13. Many dissatisfied consumers have requested refunds from Zurixx. When Zurixx agrees to refund consumers' money, it routinely provides only a partial refund, which in many instances, Zurixx conditions on the consumers signing an agreement barring them from speaking with the FTC, state Attorneys General, and other regulators, submitting complaints to the Better Business Bureau, or posting negative reviews or complaints about Zurixx and its products.

RESPONSE TO PARAGRAPH 13: Defendants deny the allegations contained in Paragraph 13 of the Complaint.

14. In perpetrating its scheme, Zurixx has violated the FTC Act, the CRFA, the UCSPA, and the BODA.

RESPONSE TO PARAGRAPH 14: Defendants deny the allegations contained in Paragraph 14 of the Complaint.

PLAINTIFFS

15. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the CRFA, 15 U.S.C § 45b. The CRFA prohibits the offering of provisions in form contracts that restrict individual consumers' ability to communicate reviews, performance assessments, and similar analyses about a seller's products, services, or conduct.

RESPONSE TO PARAGRAPH 15: Defendants admit that the FTC is an independent agency created by statute. Defendants further admit that the FTC has limited powers to enforce the statutes and the regulations referenced in Paragraph 15 of the Complaint, and Defendants deny any characterization of those statutes and that regulation inconsistent therewith.

16. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the CRFA and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 57b and the CRFA, 15 U.S.C. § 45b.

REPONSE TO PARAGRAPH 16: Paragraph 16 of the Complaint purports to characterize the statutes and regulation cited therein. Those statutes and regulation speak for themselves, and the Defendants deny any characterization of those statutes and regulation inconsistent with the express language of those statutes and regulation. Defendants further deny that the FTC is entitled to the relief it seeks in this action and otherwise deny the allegations contained in Paragraph 16 of the Complaint.

17. The Division is an agency of the State of Utah created by statute. Utah Code § 13-2-1(1). The Division administers and enforces the UCSPA, which prohibits deceptive acts and practices in connection with consumer transactions. It administers and enforces the BODA, which required sellers of assisted marketing plans to file certain information with the Division and to provide disclosures to prospective purchasers.

RESPONSE TO PARAGRAPH 17: Defendants admit that the Division is an agency of the State of Utah created by statute. Defendants further admit that the Division has limited

powers to enforce the statutes referenced in Paragraph 17 of the Complaint, and Defendants deny any characterization of those statutes inconsistent therewith.

18. The Division is authorized to take legal action against persons who violate the UCSPA and the BODA to enjoin violations of the acts, seek other equitable relief, and to obtain damages, fines, civil penalties, fees, and costs. Utah Code §§ 13-2-5(3); 13-11-17(1)(a)-(d); 13-15-6(3).

RESPONSE TO PARAGRAPH 18: Paragraph 18 of the Complaint purports to characterize the statutes cited therein. Those statutes speak for themselves, and Defendants deny any characterization of those statutes inconsistent with the express language of those statutes. Defendants further deny that the Division is entitled to the relief it seeks in this action and otherwise deny the allegations contained in paragraph 18 of the Complaint.

DEFENDANTS

19. Defendant Zurixx, LLC is a Utah limited liability company with its principal place of business at 2750 East Cottonwood Parkway, Suite 200, Cottonwood Heights, Utah 84121. It does business under numerous fictitious names including, but not limited to, Advanced Financial Training, Advanced Real Estate Education, Doug Hopkins Real Estate Formula, Fast Track Flips, Flip Advantage, Flip It Forward, Flipping' On The Side, Flipping Formula Education, Good Flips, High Point Training, LLC, Property Wars, Real Estate Elevated, Rules of Renovation, Side Flips, Success Path Education, Two Chicks and Training Tools, and Winning the Property War. Zurixx, LLC transacts or has transacted business in this District and throughout the United States. At all times material to this Complaint, acting alone or in concert

with others, Zurixx, LLC has advertised, marketed, distributed, or sold the real estate investment products at issue in this Complaint to consumers throughout the United States.

RESPONSE TO PARAGRAPH 19: Defendants admit the allegations contained in the first sentence of Paragraph 19 of the Complaint. Defendants further admit that, in the past, Zurixx LLC has transacted business in this District and throughout the United States as Zurixx and under assumed names, but deny that Zurixx is currently transacting any business and further deny that Zurixx will transact any business in the future. Defendants also admit that Zurixx has advertised, marketed, distributed, or sold real estate education training to students in the United States. Defendants deny the remaining allegations contained in Paragraph 19 of the Complaint.

20. Defendant Carlson Development Group, LLC ("CDG") is a Utah limited liability company with its principal place of business at 2750 East Cottonwood Parkway, Suite 200, Cottonwood Heights, Utah 84121. CDG is a manager of Zurixx Financial, LLC. CDG transacts or has transacted business in this District and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, CDG, by way of Zurixx Financial LLC and through Zurixx, LLC, has advertised, marketed, distributed, or sold the real estate investment products at issue in this Complaint to consumers throughout the United States.

RESPONSE TO PARAGRAPH 20: Defendants admit the allegations contained in the first and second sentences of Paragraph 20 of the Complaint. Defendants admit further that, in the past, Carlson Development Group, LLC has transacted business in this District and throughout the United States, but deny that Carlson Development Group is currently transacting any business and further deny that it will transact any business in the future. Defendants deny the remaining allegations contained in Paragraph 20 of the Complaint.

21. Defendant CJ Seminar Holdings, LLC ("CJ Seminar") is a Utah limited liability company with its principal place of business at 2750 East Cottonwood Parkway, Suite 200, Cottonwood Heights, Utah 84121. CJ Seminar is a member of Zurixx, LLC. CJ Seminar transacts or has transacted business in this District and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, CJ Seminar, as a member of Zurixx, LLC, has advertised, marketed, distributed, or sold the real estate investment products at issue in this Complaint to consumers throughout the United States.

RESPONSE TO PARAGRAPH 21: Defendants admit the allegations contained in the first and second sentences of Paragraph 21 of the Complaint. Defendants admit further that, in the past, CJ Seminar Holdings, LLC has transacted business in this District and throughout the United States, but deny that CJ Seminar Holdings, LLC is currently transacting any business and further deny that CJ Seminar Holdings, LLC will transact any business in the future. Defendants deny the remaining allegations contained in Paragraph 21 of the Complaint.

22. Defendant Zurixx Financial, LLC ("Zurixx Financial") is a Utah limited liability company with its principal place of business at 2750 East Cottonwood Parkway, Suite 200, Cottonwood Heights, Utah 84121. Zurixx Financial also operates out of 12 Dorado Beach East, Dorado, Puerto Rico. Zurixx Financial is a manager of Zurixx, LLC. Zurixx Financial transacts or has transacted business in this District and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Zurixx Financial, as a manager of Zurixx, LLC, has advertised, marketed, distributed, or sold the real estate investment products at issue in this Complaint to consumers throughout the United States.

RESPONSE TO PARAGRPH 22: Defendants admit the allegations contained in the first sentence of Paragraph 22 of the Complaint. Defendants deny the allegations contained in the second sentence of Paragraph 22 of the Complaint. In responding to the remainder of Paragraph 22 of the Complaint, Defendants admit further that, in the past, Zurixx Financial, LLC has transacted business in this District and throughout the United States, but deny that Zurixx Financial, LLC is currently transacting any business and further deny that Zurixx Financial, LLC will transact any business in the future. Defendants deny the remaining allegations contained in Paragraph 22 of the Complaint.

23. Defendant Cristopher A. Cannon is an officer of Zurixx, LLC and a manager of CJ Seminar. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Cannon, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

RESPONSE TO PARAGRAPH 23: Defendants admit that Defendant Cannon was an officer of Zurixx, LLC and a manager of CJ Seminar. Defendants further admit that Defendant Cannon has, as a corporate officer, transacted business in this District and in the United States. Defendants deny the remaining allegations contained in Paragraph 23 of the Complaint.

24. Defendant James M. Carlson is the chief executive officer of Zurixx, LLC and manager of CDG. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Carlson, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

RESPONSE TO PARAGRAPH 24: Defendants admit that Defendant Carlson was the chief executive officer of Zurixx, LLC and manager of CDG. Defendants further admit that Defendant Carlson has, as a corporate officer, transacted business in this District and in the United States. Defendants deny the remaining allegations contained in Paragraph 24 of the Complaint.

25. Defendant Jeffrey D. Spangler is an officer of Zurixx, LLC and a manager of CJ Seminar. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Spangler, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

RESPONSE TO PARAGRAPH 25: Defendants admit that Defendant Spangler was an officer of Zurixx, LLC and a manager of CJ Seminar. Defendants further admit that Defendant Spangler has, as a corporate officer, transacted business in this District and in the United States. Defendants deny the remaining allegations contained in Paragraph 25 of the Complaint.

DEFENDANTS ARE A COMMON ENTERPRISE

26. Defendants Zurixx, LLC, CDG, CJ Seminar, and Zurixx Financial (collectively "Corporate Defendants" or "Zurixx") have operated as a common enterprise while engaging in the deceptive acts or practices and other violations of the law alleged herein. Corporate Defendants have conducted the business practices described herein through an interrelated and interdependent network of companies that have a common business purpose, ownership, officers, managers, members, business functions, and office locations. Because Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts

and practices alleged herein. Individual Defendants Cristopher A. Cannon, James M. Carlson, and Jeffrey D. Spangler have formulated, directed, controlled, or had the authority to control the acts or practices of the Corporate Defendants that constitute the common enterprise.

RESPONSE TO PARAGRAPH 26: Defendants deny the allegations contained in Paragraph 26 of the Complaint.

COMMERCE

27. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

RESPONSE TO PARAGRAPH 27: Defendants admit the allegations contained in Paragraph 27 of the Complaint.

ZURIXX’S BUSINESS ACTIVITIES

28. Since at least July 2013, Zurixx has advertised, marketed, distributed, promoted, and sold its products to consumers throughout the United States and Canada.

RESPONSE TO PARAGRAPH 28: Defendants admit that Zurixx has advertised, marketed, distributed, promoted and/or sold real estate education training to students in the United States and Canada. Defendants deny the remaining allegations contained in Paragraph 28 of the Complaint.

29. Zurixx has sold its products under numerous brand names including, but not limited to: Advanced Financial Training, Advanced Real Estate Education, Doug Hopkins Real Estate Formula, Fast Track Flips, Flip Advantage, Flip It Forward, Flippin' On The Side, Flipping Formula Education, Good Flips, High Point Training, LLC, Property Wars, Real Estate

Elevated, Rules of Renovation, Side Flips, Success Path Education, Two Chicks and Training Tools, and Winning the Property War.

RESPONSE TO PARAGRAPH 29: Defendants admit that Zurixx has sold real estate education training to students as Zurixx and under assumed names. Defendants deny the remaining allegations contained in Paragraph 29 of the Complaint.

30. The advertised “retail” prices for Zurixx’s products typically range from \$5,995 to \$73,973; the “discounted” prices typically range from \$1,997 to \$41,297.

RESPONSE TO PARAGRAPH 30: Defendants deny that Paragraph 30 of the Complaint accurately or completely characterizes the pricing structure for the real estate education training sold to students and therefore deny the allegations contained in Paragraph 30 of the Complaint.

31. Zurixx claims to have sold its products to more than 70,000 individuals.

RESPONSE TO PARAGRAPH 31: Defendants admit that Zurixx has sold real estate education training to more than 70,000 individuals. Defendants deny the remaining allegations contained in Paragraph 31 of the Complaint.

32. Zurixx’s products are “assisted marketing plans” as defined by the BODA because the products cost \$500 or more and are sold for the purpose of enabling consumers to start a real estate investing business. Utah Code § 13-15-2(1). In addition, Zurixx has represented that its real estate investment products will enable the consumer to derive a profit that exceeds the price paid for the products. Utah Code § 13-15-2(1)(a)(iv).

RESPONSE TO PARAGRAPH 32: Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Zurixx is a “seller” as that term is defined by the BODA because Zurixx has sold or offered to sell assisted marketing plans. Utah Code § 13-15-2(8).

RESPONSE TO PARAGRAPH 33: Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Zurixx has sold assisted marketing plans, but has not filed the required information with the Division, including names and addresses of the business, trademarks or trade names, the business experience of the company's directors and officers, amounts to be paid by consumers, a statement of services the seller will perform for the purchaser, a statement of representations made to prospective purchasers, a copy of any contracts, numbers of marketing plans sold to date; and numbers of cancelled sales.

RESPONSE TO PARAGRAPH 34: Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Zurixx has sold assisted marketing plans to consumers, but has not provided consumers with a disclosure statement containing the following warning after any earnings representation:

CAUTION

No guarantee of earnings or ranges of earnings can be made. The number of purchasers who have earned through this business an amount in excess of the amount their initial payment is at least ____ which represents ____% of the total number of purchasers of this business opportunity.

Utah Code §§ 13-15-4; 13-15-5.

RESPONSE TO PARAGRAPH 35: Defendants deny the allegations contained in Paragraph 35 of the Complaint.

Zurixx's Free Teaser Event

36. In an effort to lure consumers into purchasing its products, Zurixx conducts free live events throughout the country.

RESPONSE TO PARAGRAPH 36: Defendants admit that Defendant Zurixx has conducted free live events in the United States. Defendants deny the remaining allegations contained in Paragraph 36 of the Complaint.

37. Zurixx markets its free events via direct mailers, the internet, email, radio, social media, and newspaper advertisements.

RESPONSE TO PARAGRAPH 37: Defendants admit the allegations contained in Paragraph 37 of the Complaint.

38. Zurixx has routinely advertised its free events as sponsored by celebrities from fix-and-flip and home renovation television programs including, among others, Peter Souhleris and Dave Seymour from the A&E show "Flipping Boston," Hilary Farr from the HGTV show "Love It or List It," and Tarek and Christina El Moussa from the HGTV show "Flip or Flop."

RESPONSE TO PARAGRAPH 38: Defendants admit that Defendant Zurixx has at times worked with the individuals from television programs identified in Paragraph 38 of the Complaint.

39. Zurixx invites consumers to attend the free event to learn how to make thousands of dollars in profit by investing in real estate "using other people's money."

RESPONSE TO PARAGRAPH 39: Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. In some instances, the free event starts with welcome videos by celebrity endorsers who indicate that their team of "experts" will teach consumers how to make money by following their system of real estate investing.

RESPONSE TO PARAGRAPH 40: Given the vague nature of the allegations in Paragraph 40 of the Complaint, Defendants lack sufficient information to either admit or deny the allegations and therefore deny them.

41. In numerous instances at the free event, Zurixx teaches consumers very little, if anything, about how to make thousands of dollars in profit by investing in real estate. Instead, Zurixx uses the free event to sell its 3-day workshop, which it advertises as retailing for \$5,995. It routinely uses misrepresentations to convince consumers to pay the "discounted" price of \$1,997 for the workshop, a price Zurixx represents is available only at the free event.

RESPONSE TO PARAGRAPH 41: Defendants deny the allegations contained in Paragraph 41 of the Complaint.

Misrepresentations At The Free Event That Consumers Are Likely To Earn Thousands Of Dollars In Profit Through Real Estate Investing

42. To persuade attendees to pay for the 3-day workshop, Zurixx routinely makes earnings claims and shares testimonials about or from purportedly successful purchasers of its products. For example, Zurixx presenters made the following representations between March 2018 and July 2019 in California, Florida, Georgia, and Virginia:

- A. "...our students are making right now in this area anywhere from \$60,000 to upwards of \$150,000 per flip, per transaction they do."
- B. "The average profit margin's about 20 percent [per flip]. So on a \$500,000, I expect to walk away with...\$100,000 on one check."

- C. The “average profit last year along on a flip was about \$68,000, which, by the way, represent a 40 percent – just under a 50 percent ROI...Is 50 percent, is that a pretty good ROI?”
- D. “. . . the average profit margin up here is about 25 percent. So 25 percent of \$200,000 is \$50,000 per flip.”
- E. “. . . average fix and flip profit margin in this country per house, do you want to know why so many people are loving and doing it, 68,000 dollars, per deal.”
- F. “As far as expected profits – and these are averages for this area – on average with wholesale deals, you can expect to put \$3,000 to \$15,000 cash in your pocket. Now, flipping is where you are going to make your bigger paychecks, \$20,000, 50--, 100-- . . .”
- G. “. . . you’re making \$15,000, \$20,000” with a wholesale deal.
- H. “Now write this down, in this area finder’s fee, low end, are going to be 6 grand, high end 20” for a wholesale deal.

RESPONSE TO PARAGRAPH 42: Defendants deny that Paragraph 42 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced events and therefore deny the allegations contained in Paragraph 42.

43. Zurixx's earnings claims are false and unsubstantiated. Consumers who attend its 3-day workshop are not likely to earn thousands of dollars in profit through real estate investing.

RESPONSE TO PARAGRAPH 43: Defendants deny the allegations contained in Paragraph 43 of the Complaint.

Misrepresentations At the Free Event That Consumers Will Receive 100% Funding For Their Real Estate Investments

44. Zurixx routinely promises that consumers will have access to lenders that will provide 100% funding for consumers' real estate deals, including any rehabilitation costs. In some instances, Zurixx represents that consumers will obtain 100% funding regardless of their credit score or background.

RESPONSE TO PARAGRAPH 44: Defendants deny that Paragraph 44 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 44 of the Complaint.

45. In numerous instances, Zurixx represents to consumers that they will not have to use any of their own money for real estate deals because they will be using "other people's money." In some instances, Zurixx represents that consumers will incur "no liability" investing in real estate. For example, Zurixx presenters made the following representations between March 2018 and July 2019 in California, Florida, Georgia, and Virginia:

- A. We have "our own group of private money lenders who will put up 100 percent of the money to fund your real estate deals, including rehab with no regard to your personal income, assets or credit."
- B. "Would you like to know how you can make some immediate profits in real estate without using any money, none of your, none of ours, and have no liability, yes or no?"
- C. Tarek and Christina's lending partners "will fund 100 percent of the real estate you buy, fund 100 percent of the rehab, regardless of your credit or your background."

- D. "... we're going to give you money to buy and to renovate" the properties.
- E. Trusted lending partners "will fund all of your deals, folks."
- F. "Our lending partners, they don't care about your credit. They don't care about your job history. All that they care about is the what? Is the deal. If the deal is a good deal, then they will fund it."
- G. The funding sources will help the audience "with no money out of your own pocket."
- H. "Okay, then we're going to teach you to implement the right plan, start to finish. When that happens, call us up, we get the funding for you, not you. We deal with these 100 percent funding partners every day, not you . . . And if they won't fund it, we'll get your deal funded, just know that, and we do that, not you, all right."

RESPONSE TO PARAGRAPH 45: Defendants deny that Paragraph 45 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced events and therefore deny the allegations contained in Paragraph 45 of the Complaint.

46. Zurixx's 100% funding claims are false or unsubstantiated. In numerous instances, if not virtually always, consumers who attempt to get 100% funding for potential real estate investments are unable to do so.

RESPONSE TO PARAGRAPH 46: Defendants deny the allegations contained in Paragraph 46 of the Complaint.

Misrepresentations At The Free Event That Making Thousands of Dollars In Profit From Real Estate Investing Requires Little Time And Effort

47. Zurixx routinely represents to consumers that little time and effort are required to make thousands of dollars in profit through real estate investing.

RESPONSE TO PARAGRAPH 47: Defendants deny that Paragraph 47 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 47 of the Complaint.

48. For example, Zurixx presenters made the following representations between March 2018 and December 2018 in California and Florida:

- A. "A lot of our students are spending anywhere from eight to 10 hours a week and getting above average results. Because once you know the recipe, you're able to get the results a whole lot faster."
- B. "Flipping . . . figure 10 to 20 hours of your time. . . ."
- C. A single mother who spent "twenty hours of work, [earned a] \$42,000 profit" on her "first deal from start to finish."
- D. "So, in the beginning, to make 40 offers, that would take anywhere from about 15 to maybe 20 hours over the next 12 months"
- E. "Frank" who purchased property for \$335,000, sold it for \$490,000, for a profit of \$131,000 and spent "25 hours of [his] time total invested in this deal."
- F. ". . . it will take anywhere from ten hours to 40 hours in the next six months to make ten offers."
- G. ". . . wholesaling, figure five to ten hours of your time"

RESPONSE TO PARAGRAPH 48: Defendants deny that Paragraph 48 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced events and therefore deny the allegations contained in Paragraph 48 of the Complaint.

49. Zurixx's claims that little time and effort are needed to make thousands of dollars in profit by investing in real estate are false and unsubstantiated. Consumers are not likely to make thousands of dollars in profit by spending only a few hours a week on their real estate investment business.

RESPONSE TO PARAGRAPH 49: Defendants deny the allegations contained in Paragraph 49 of the Complaint.

Misrepresentations At The Free Event That Consumers Who Attend the 3-Day Workshop Will Learn Everything They Need To Know To Make Thousands of Dollars in Profit From Real Estate Investing

50. Zurixx routinely represents that consumers will learn all they need to know at the 3-day workshop to make thousands of dollars in profit through real estate investing.

REPONSE TO PARAGRAPH 50: Defendants deny that Paragraph 50 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 50 of the Complaint.

51. For example, Zurixx made the following representations between March 2018 and July 2019 in California, Florida, Georgia, and Virginia:

- A. "By the end of our three-day investment accelerator, graduates will have the knowledge, expertise, and training to put together sound, effective loan packages that are custom-tailored to appeal to the right lending solutions to fit your needs. We will teach you what to do and what not to do to make sure your deals are profitable and attractive to lenders whether you're wholesaling, flipping, or acquiring income-producing properties."

- B. "You are going to come out of our three-day training class all set to be making ten offers a week on distressed properties"
- C. "Not only are [Tarek and Christina El Moussa] going to give you a professional education, not only are they going to give you a list of all their lending partners to fund all your deals plus to rehab regardless of your credit, not only are they going to give you the cash buyers list so you have the buyers, but they are going to guarantee that you or your partners closes a deal within three months, you get your money back or you and partner don't do the deal in six months, if you want to make five offers and your partner makes five offers, that includes the ten right here."
- D. "Our three day investment accelerator will teach you to leverage cutting-edge real estate strategies to generate profits repeatedly and we'll grant you access to our network of lenders and private investors who are always looking to lend capital on sound real estate deals."

RESPONSE TO PARAGRAPH 51: Defendants deny that Paragraph 51 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced events and therefore deny the allegations contained in Paragraph 51 of the Complaint.

52. The claim that consumers are likely to learn at the 3-day workshop all they need to know to make thousands of dollars in profit from investing in real estate is false or unsubstantiated. In fact, at the 3-day workshop, Zurixx itself routinely represents to consumers that the workshop is a just a "beginner" course, and in order to make thousands of dollars in profit, consumers need to also purchase Zurixx's Diamond, Platinum, or Gold advanced package,

which it advertises as "retailing" from \$35,792 to \$73,973, and is available at discounted prices from \$21,297 to \$41,297, but only if purchased at the 3-day workshop.

RESPONSE TO PARAGRAPH 52: Defendants deny the allegations contained in the first sentence of Paragraph 52 of the Complaint. Defendants further deny that the remainder of Paragraph 52 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in the remainder of Paragraph 52 of the Complaint.

Failure To Disclose Material Aspects Of Zurixx's Refund Policy At The Free Event

53. Zurixx routinely touts two money-back guarantees to convince consumers to purchase the 3-day workshop. Zurixx represents that consumers who successfully complete a "positive cash flow real estate transaction" within three months, and provide a testimonial to Zurixx, will get their workshop purchase price back (the "three-month guarantee").

RESPONSE TO PARAGRAPH 53: Defendants deny that Paragraph 53 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 53 of the Complaint.

54. Zurixx also represents that consumers who fail to "make a minimum of THREE TIMES the amount" of the 3-day workshop within six months will receive 100% of the workshop purchase price back (the "six-month guarantee").

RESPONSE TO PARAGRAPH 54: Defendants deny that Paragraph 54 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 54 of the Complaint.

55. For example, Zurixx presenters made the following representations between March 2018 and July 2019 in California, Florida, Georgia, and Virginia:

- A. ". . . we know our system works . . . And because of the fact that we are confident in our system, we're willing to give you not only one but two 100 percent money-back guarantees around your success with this program."
- B. "If it doesn't work for you, we still give you \$2,000 back. This really is a no-lose situation as long as you try it."
- C. "Remember, do a deal in 90 days, get your \$2,000 back. Don't do a deal in six months, still get your \$2,000 back."
- D. "You will either close your first profitable real estate deal within the first six months after that three-day [workshop] or 100 percent of your tuition will be sent back to you."
- E. "So do a deal within three months after the [3-day workshop], give us a testimonial, you get your tuition back . . . You then have six months. If you have not closed at least one profitable real estate deal in six months with our help, the company sends you back 100 percent of your tuition anyway."
- F. "If you don't make any money, you're going to get your money back . . . If it does not work out for you and your family, as long as you make an effort, they're going to give you your money back, okay?"
- G. "If you didn't make at least 6 grand, which is basically a finder's fee, if we didn't teach you how to find a property and where the buyers are to sell them and at least make a little [over] 6 grand, then you get your 2 grand back."

H. "If this isn't everything you said it was or I said it was, six months, you'll know, if we weren't great at teaching you how to do it and it didn't work, you'll get your 2 grand back, in writing."

RESPONSE TO PARAGRAPH 55: Defendants deny that Paragraph 55 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced events and therefore deny the allegations contained in Paragraph 55 of the Complaint.

56. Zurixx's oral representations at the free event about the six-month guarantee are false or misleading. Its presenters routinely fail to disclose material conditions that Zurixx requires consumers to meet in order to receive a refund of the money that they paid for the 3-day workshop.

RESPONSE TO PARAGRAPH 56: Defendants deny the allegations contained in Paragraph 56 of the Complaint.

57. To be eligible for a refund under Zurixx's six-month guarantee, the consumer must make more than 25 offers within the time period, and make 15 offers under the "guidance of [Zurixx's] resource line help desk associates" if "in the first ten offers, [the consumer] ha[s] not made THREE TIMES [the] purchase price" of the 3-day workshop.

RESPONSE TO PARAGRAPH 57: Defendants deny that Paragraph 57 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 57 of the Complaint.

58. Numerous consumers first receive any information about the conditions described in Paragraph 57 after they pay Zurixx for the 3-day workshop. These conditions are written, in

fine print, in a "Guarantee Certificate," which Zurixx includes in a package of materials it provides to consumers who purchased the 3-day workshop.

RESPONSE TO PARAGRAPH 58: Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Zurixx's presenters routinely fail to mention these restrictions in their oral presentations, and often provide consumers the package that includes the Guarantee Certificate only after the consumers have paid for the 3-day workshop.

RESPONSE TO PARAGRAPH 59: Defendants deny the allegations contained in Paragraph 59 of the Complaint.

60. In numerous instances, consumers are not able to obtain a refund of the \$1,997 they paid for the 3-day workshop because they do not meet the fine print requirements relating to the six-month guarantee.

RESPONSE TO PARAGRAPH 60: Defendants deny the allegations contained in Paragraph 60 of the Complaint.

61. Zurixx also fails to inform consumers that, as described in Paragraphs 87 through 91 below, in order to receive a refund of the \$1,997 fee for the 3-day workshop, a consumer must sign Zurixx's standard form agreement, which prohibits them from filing a complaint about Zurixx or its products with regulators, including the FTC and state Attorneys General, or communicating with others about Zurixx or their settlement. The form agreement also prohibits consumers from posting reviews regarding Zurixx or its products in written publications and on the internet.

RESPONSE TO PARAGRAPH 61: Defendants deny the allegations contained in Paragraph 61 of the Complaint.

The 3-Day Workshop

62. Zurixx typically conducts the 3-day workshops a week or two after holding the free event in a given locale.

RESPONSE TO PARAGRAPH 62: Given the vague nature of the allegations in Paragraph 62 of the Complaint, Defendants lack sufficient information to either admit or deny the allegations and therefore deny them.

63. Zurixx's presenters typically ask the audience how many attendees are new or just getting started in real estate investing. In numerous instances, consumers attending the 3-day workshop do not have experience in real estate investing.

RESPONSE TO PARAGRAPH 63: Defendants deny that Paragraph 63 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 63 of the Complaint.

64. The presenters speak generally about "fix and flipping" and "wholesaling" real estate investments. However, they spend much of the three days telling attendees they need to purchase one of Zurixx's three "advanced" packages in order to make thousands of dollars in profit through real estate investing.

RESPONSE TO PARAGRAPH 64: Defendants deny that Paragraph 64 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 64 of the Complaint.

65. At the workshop and on the receipts, Zurixx represents that the "retail" prices for its advanced Gold, Platinum, and Diamond packages are \$35,972, \$45,997, and \$73,973, respectively. The least expensive is the Gold package, which includes various components such as attendance at a Las Vegas Investors Summit, where consumers can purchase purported "discounted 'turnkey'" properties, and access to an online resource center. The Platinum package, the mid-level package, includes the components in the Gold package and adds the "Fast Start Three-Day Bootcamp," at which Zurixx's instructors "come to your area and work in a small group setting in class and in the field." The Diamond package, the most expensive package, includes all of the components from the two less expensive packages and adds a two-day one-on-one mentorship.

RESPONSE TO PARAGRAPH 65: Defendants deny that Paragraph 65 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 65 of the Complaint.

66. Zurixx's presenters and its receipts state that the "discounted" prices, which are \$21,297, \$26,297, and \$41,297 for the Gold, Platinum, and Diamond packages, are only available if purchased at the 3-day workshop.

RESPONSE TO PARAGRAPH 66: Defendants deny that Paragraph 66 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 66 of the Complaint.

67. Zurixx sells its three pricier "advanced" packages and related products, such as on-site mentoring or one-on-one telephone coaching, with misrepresentations designed to

convince consumers they need to purchase one of the three advanced packages or the related products in order to make thousands of dollars in profit through real estate investing.

RESPONSE TO PARAGRAPH 67: Defendants deny the allegations contained in Paragraph 67 of the Complaint.

Misrepresentations At The 3-Day Workshop That Consumers Are Likely To Make Thousands Of Dollars In Profit Through Real Estate Investing

68. Zurixx makes representations about profit in order to sell its Gold, Platinum, and Diamond packages. For instance, Zurixx presenters made the following representations between April 2018 and July 2019 in Florida, Texas, and Virginia:

- A. "So that's a pretty average flip, \$40,000."
- B. "The average rehab makes \$66,000 in the U.S."
- C. With flipping, "you make a lot more money, probably about 40 to 100 [thousand] in your market."
- D. ". . . we set goals of \$120,000 to \$180,000 your first year."
- E. "Most of our rehab deals are 20 to 30 percent. 25 percent of 230,000 in Richmond, that's about 60 grand, maybe 55."
- F. ". . . allows you to make well over \$100,000 in a fraction of the time with even still the same set of repairs and things factored in."
- G. If "I'm not making \$30,000 on each flip, its not worth my time. Investors make far more money than most people do in the workplace."
- H. "That's what most of our students make on their first or second deal. Sometimes you can make more than that. So \$25,000 to \$55,000."

- I. "It doesn't take long to get \$2 million when you're flipping houses over the years that you're working."
- J. "With wholesaling . . . you make about three to five thousand dollars in profit, just pure cash" whereas flipping leads to about "40 to 100 grand"
- K. "So somewhere between three to five grand is typical for a wholesale deal."
- L. "\$384,126. Now, let's say you make 10 percent of that on your first wholesale deal. That's \$38,000. How many think that's okay? I said okay."
- M. "So if you do \$100,000-plus deals, you can probably do one deal a month and make 10 grand from wholesaling."

RESPONSE TO PARAGRAPH 68: Defendants deny that Paragraph 68 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced events and therefore deny the allegations contained in Paragraph 68 of the Complaint.

69. In addition, Zurixx typically distributes workbooks to attendees that contain the following earnings representations regarding wholesale deals:

- A. "Make \$5,000 (Minimum) . . . 6 Hours Total"
- B. "How much is that per hour? . . . \$833.33 per hour!!!"
- C. "Two Wholesale Deals Per Month is \$120,000 Annual Income!"

RESPONSE TO PARAGRAPH 69: Defendants deny that Paragraph 69 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 69 of the Complaint.

70. Zurixx presenters commonly reference consumers who purportedly purchased Zurixx's advanced packages and made a profit from fixing and flipping or wholesaling real estate properties, or completed numerous deals within a short period.

RESPONSE TO PARAGRAPH 70: Defendants deny that Paragraph 70 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 70 of the Complaint.

71. For example, Zurixx presenters made the following representations between April 2018 and July 2019 in Florida, Texas, and Virginia:

- A. Brian did 40 flips in his first year.
- B. Izzie made \$75 thousand on his first flip in Tulsa.
- C. Courtney and his wife used the credit they raised during the first day of the workshop to pay for the advanced education. He was able to make \$35,000 on his first flipping deal after the advanced education and \$67,000 after a second deal.
- D. "Brittany joined us. She was living in her car at one point . . . The first year, she did four deals, made about 300 grand using other people's money."
- E. "Our students are at least doing 10, 15, 20, 30 deals a month."
- F. "A lot of [our students] net 20 to 30 percent, sometimes 40 percent on their rehabs."
- G. "We've had students literally in their first year make upwards of half a million dollars. That's not an exaggeration."
- H. "We have students . . . making 30 grand a year doing five deals a year. 40, 50, 60, 70 grand, making hundreds of thousands of dollars"

- I. "A lot of our students on a deal or two make about 75 grand"
- J. "[MF], one of our students, he's a wholesaler in Hagerstown, Maryland, Washington, D.C., somewhere here in Virginia . . . He does 30 to 50 wholesale deals a month."

RESPONSE TO PARAGRAPH 71: Defendants deny that Paragraph 71 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced events and therefore deny the allegations contained in Paragraph 71 of the Complaint.

72. Zurixx's earnings claims are false or unsubstantiated. Contrary to its representations, consumers who purchase one of the advanced packages are not likely to earn thousands of dollars in profit through real estate investing.

RESPONSE TO PARAGRAPH 72: Defendants deny the allegations contained in Paragraph 72 of the Complaint.

Zurixx Instructs Consumer At The 3-Day Workshop To Provide Speculative And Unsubstantiated Future Income On Credit Applications

73. Many consumers need to rely on credit to pay for Zurixx's pricey advanced packages.

RESPONSE TO PARAGRAPH 73: Given the vague nature of the allegations in Paragraph 73 of the Complaint, Defendants lack sufficient information to either admit or deny the allegations and therefore deny them.

74. Zurixx routinely instructs consumers to contact credit card issuers during the workshops in order to obtain new credit cards or increases in credit limits on existing cards to fund real estate deals. It often provides a list of banks it suggests consumers contact.

RESPONSE TO PARAGRAPH 74: Defendants deny that Paragraph 74 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 74 of the Complaint.

75. Zurixx presenters routinely instruct workshop attendees, to represent to credit card issuers, income that is significantly higher than the consumer's current income.

RESPONSE TO PARAGRAPH 75: Defendants deny that Paragraph 75 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 75 of the Complaint.

76. Zurixx's presenters routinely tell consumers that it is permissible to state a higher income to credit issuers because of the income the consumers will realize from investing in real estate. For example, Zurixx presenters made the following statements in April 2018 and September 2018 in Texas and Virginia:

- A. "Tell them [(credit card issuers)] how much you are going to make this year as a real estate investor, okay? So a good rule of thumb there would be about 100K more than you did last year . . . We are not lying. We are projecting."
- B. You are "legally able to . . . reasonably estimate the next 12 months of income" and "you decide anywhere between \$120,000 to \$200,000 . . . you're reasonable estimating your next 12 months of income."

RESPONSE TO PARAGRAPH 76: Defendants deny that Paragraph 76 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced events and therefore deny the allegations contained in Paragraph 76 of the Complaint.

77. Zurixx's income projection instructions to consumers, as described in Paragraphs 74 through 76, constitute another example of its use of false or unsubstantiated earnings claims to persuade consumers to purchase its products. Zurixx has no reasonable basis for the earnings projections it instructs consumers to submit to credit issuers.

RESPONSE TO PARAGRAPH 77: Defendants deny the allegations contained in Paragraph 77 of the Complaint.

78. In numerous instances, Zurixx's presenters tell consumers to use their credit cards to purchase the advanced packages. In numerous instances, consumers spend some or all the money that they obtain from their increased credit limits to pay for Zurixx's advanced packages.

RESPONSE TO PARAGRAPH 78: Defendants deny the allegations contained in Paragraph 78 of the Complaint.

Misrepresentations At The 3-Day Workshop That Profitable Real Estate Investing Requires Little Time And Effort

79. Zurixx often reiterates that making thousands of dollars in profit from real estate investing takes little time and effort.

RESPONSE TO PARAGRAPH 79: Defendants deny that Paragraph 79 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 79 of the Complaint.

80. For example, Zurixx presenters made the following representations between February 2019 and July 2019 in Florida and Virginia:

- A. "Our system is designed to fit into your life because it's been . . . changed in order to say, okay, start off at five to 10 hours a week . . . Because it was designed for adults with children and full-time jobs."

B. "Most of our students are part-time."

C. "It's easy to find great deals."

D. "It's easy to find buyers and money."

E. "Three to five hours a week focused."

RESPONSE TO PARAGRAPH 80: Defendants deny that Paragraph 80 of the Complaint accurately or completely characterizes what was said and presented to students at the referenced events and therefore deny the allegations contained in Paragraph 80 of the Complaint.

81. The claims that little time and effort are needed to generate thousands of dollars in profit from real estate investing are false or unsubstantiated.

RESPONSE TO PARAGRAPH 81: Defendants deny the allegations contained in Paragraph 81 of the Complaint.

82. Purchasers of Zurixx's products are not likely to make thousands of dollars in profit through real estate investing with little time or effort.

RESPONSE TO PARAGRAPH 82: Defendants deny that Paragraph 82 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 82 of the Complaint.

Zurixx's Additional Products

83. In numerous instances, Zurixx pitches via its telemarketers one-on-one telephone coaching or on-site mentoring programs to consumers regardless of whether they have purchased one of its products. Zurixx often tells consumers who purchased its products that one-on-one coaching and on-site mentoring are necessary to generate a profit of thousands of dollars in real estate investing.

RESPONSE TO PARAGRAPH 83: Defendants deny the allegations contained in the first sentence of Paragraph 83 of the Complaint. Defendants deny that the second sentence of Paragraph 83 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in the second sentence of Paragraph 83.

84. Numerous consumers have paid Zurixx thousands of dollars for the additional one-on-one coaching or mentoring program.

RESPONSE TO PARAGRAPH 84: Defendants admit the allegations contained in Paragraph 84 of the Complaint.

85. Contrary to Zurixx's representations, consumers who purchase one-on-one coaching or the mentoring program are not likely to make thousands of dollars in profit.

RESPONSE TO PARAGRAPH 85: Defendants deny the allegations contained in Paragraph 85 of the Complaint.

86. In numerous instances, consumers not only fail to earn back the tens of thousands of dollars they spent on Zurixx's various products, but also are left to pay off the loans that they obtained from retirement programs to pay for Zurixx's products or deal with crushing credit card debt. In some instances, consumers have had to file for bankruptcy because of such debt.

RESPONSE TO PARAGRAPH 86: Defendants deny the allegations contained in Paragraph 86 of the Complaint.

Form Settlement Provisions That Prohibit Consumers From Pursuing Or Filing Complaints With Regulators And Other Entities

87. Some dissatisfied Zurixx consumers seek refunds of the monies they paid to Zurixx. In many instances, persistent consumers may succeed in getting a partial refund, but

often only if they sign Zurixx's standard form agreement, which prohibits them from filing a complaint about Zurixx or its products with regulators, including the FTC and state Attorneys General, or communicating with others about Zurixx or their settlement. The form agreement also prohibits consumers from posting reviews regarding Zurixx or its products in written publications and on the internet.

RESPONSE TO PARAGRAPH 87: Defendants admit the allegations in the first sentence of Paragraph 87 of the Complaint. The allegations contained in the remainder of Paragraph 87 of the Complaint refer to documents and those documents speak for themselves. To the extent a response is required, Defendants deny the allegations contained in the remainder of Paragraph 87 of the Complaint.

88. The agreement that Zurixx requires consumers to sign in exchange for a partial or full refund commonly includes the following language:

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

RESPONSE TO PARAGRAPH 88: The allegations contained in Paragraph 88 of the Complaint refer to documents and those documents speak for themselves. To the extent a response is required, Defendants deny the allegations contained in Paragraph 88 of the Complaint.

89. The agreements contain standardized terms that are or were imposed on consumers without a meaningful opportunity for them to negotiate the standardized terms.

RESPONSE TO PARAGRAPH 89: Defendants deny the allegations contained in Paragraph 89 of the Complaint.

90. Agreements executed by Zurixx and consumers that included the language quoted in Paragraph 88 have been in effect since December 14, 2017.

RESPONSE TO PARAGRAPH 90: The allegations contained in Paragraph 90 of the Complaint refer to documents and those documents speak for themselves. To the extent a response is required, Defendants deny the allegations contained in Paragraph 90 of the Complaint.

91. Zurixx has taken steps to enforce the agreement provision quoted in Paragraph 88. For example, it has sued consumers who have complained to the Better Business Bureau regarding its practices or have spoken to other consumers about their settlements. Some consumers have been reluctant to speak with regulators, including the FTC and the Division, about their experience with Zurixx because of the prohibition in their agreements.

RESPONSE TO PARAGRAPH 91: Given the vague nature of the allegations in the first sentence of Paragraph 91 of the Complaint, Defendants lack sufficient information to either admit or deny the allegations and therefore deny them. In response to the second sentence of Paragraph 91 of the Complaint, Defendants state that the allegations therein refer to documents and those documents speak for themselves. To the extent a response is required, Defendants deny the allegations contained in the second sentence of Paragraph 91 of the Complaint. Defendants lack sufficient information to either admit or deny the allegations in the third sentence of Paragraph 91 of the Complaint and therefore deny them.

92. Based on the facts and violations of law alleged in this Complaint, the FTC and the Division have reason to believe that Zurixx is violating or is about to violate laws enforced by the Commission and the Division.

RESPONSE TO PARAGRAPH 92: Defendants deny the allegations contained in Paragraph 92 of the Complaint.

VIOLATIONS OF THE FTC ACT

93. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

RESPONSE TO PARAGRAPH 93: Defendants admit that the allegation contained in Paragraph 93 of the Complaint is an accurate recitation of part of the referenced statute. To the extent that any further responsive pleading is required, Defendants deny the allegation.

94. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

RESPONSE TO PARAGRAPH 94: Paragraph 94 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Defendants lack sufficient information to either admit or deny the allegation and therefore deny it.

95. As set forth below, Defendants have engaged in violations of Section 5(a) of the FTC Act in connection with the marketing and sale of their real estate investment products or services.

RESPONSE TO PARAGRAPH 95: Defendants deny the allegations contained in Paragraph 95 of the Complaint

**COUNT I – MISREPRESENTATIONS REGARDING EARNINGS
(By Plaintiff Federal Trade Commission)**

96. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of Zurixx's real estate investing products or services, Defendants have represented, directly or indirectly, expressly or by implication, that consumers who purchase Zurixx's products or services are likely to earn thousands of dollars in profit.

RESPONSE TO PARAGRAPH 96: Defendants deny the allegations contained in Paragraph 96 of the Complaint.

97. The representations set forth in Paragraph 96 of this Complaint are false or were not substantiated at the time the representations were made.

RESPONSE TO PARAGRAPH 97: Defendants deny the allegations contained in Paragraph 97 of the Complaint.

98. Therefore, Defendants' representations as set forth in Paragraph 96 of this Complaint constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

RESPONSE TO PARAGRAPH 98: Defendants deny the allegations contained in Paragraph 98 of the Complaint.

**COUNT II – OTHER MISREPRESENTATIONS REGARDING ZURIXX'S PRODUCTS
OR SERVICES
(By Plaintiff Federal Trade Commission)**

99. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of Zurixx's real estate investing products or services, Defendants have represented, directly or indirectly, expressly or by implication, that by purchasing Zurixx's products or services consumers will:

- A. Receive 100% funding to do real estate deals regardless of their credit;
- B. Spend little time and effort to make thousands of dollars in profit through real estate investing; and/or
- C. Learn everything they need to know at the 3-day workshop to make thousands of dollars in profit through real estate investing.

RESPONSE TO PARAGRAPH 99: Defendants deny the allegations contained in Paragraph 99 of the Complaint.

100. The representations set forth in Paragraph 99 are false or were not substantiated at the time the representations were made.

RESPONSE TO PARAGRAPH 100: Defendants deny the allegations contained in Paragraph 100 of the Complaint.

101. Therefore, Defendants' representations as set forth in Paragraph 99 of this Complaint constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

RESPONSE TO PARAGRAPH 101: Defendants deny the allegations contained in Paragraph 101 of the Complaint.

**COUNT III – FAILURE TO DISCLOSE MATERIAL ASPECTS OF REFUND POLICY
(By Plaintiff Federal Trade Commission)**

102. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of Zurixx's real estate investing products or services, Defendants have represented, directly or indirectly, expressly or by implication, that Zurixx will provide refunds to consumers who fail to make a minimum of three times the cost of the 3-day workshop within six months.

RESPONSE TO PARAGRAPH 102: Defendants deny the allegations contained in Paragraph 102 of the Complaint.

103. In numerous instances in which Defendants have made the representation set forth in Paragraph 102, Zurixx has failed to disclose, or to disclose adequately, to consumers material aspects of Zurixx's refund policy, including one or both of the following requirements:

- A. To obtain a refund of the cost of the 3-day workshop, consumers who fail to make a minimum of three times the amount of the workshop must make more than 25 offers within the time period and make 15 offers under the "guidance of the resource line help desk associates" if, in the first ten offers, the consumer has not made three times the purchase price of the workshop; and
- B. Consumers must sign a form settlement provision that prohibits them from filing a complaint, or posting reviews, about Zurixx or its products with regulators or other entities in order to obtain even a partial refund.

RESPONSE TO PARAGRAPH 103: Defendants deny the allegations contained in Paragraph 103 of the Complaint.

104. In light of the representations set forth in Paragraph 102 above, Defendants' failure to disclose or to disclose adequately the material information set forth in Paragraph 103 of this Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

RESPONSE TO PARAGRAPH 104: Defendants deny the allegations contained in Paragraph 104 of the Complaint.

VIOLATION OF THE CONSUMER REVIEW FAIRNESS ACT

105. The Consumer Review Fairness Act of 2016 ("CRFA") Pub. L. No. 114-258, 15 U.S.C. § 45b, was enacted on December 14, 2016. As of March 14, 2017, Section 2(b) of the CRFA renders void, and Section 2(c) of the CRFA prohibits the offering of, provisions in form contracts that: prohibit or restrict individual consumers' ability to communicate reviews, performance assessments, and similar analyses about a seller's goods, services, or conduct; or that impose a penalty or fee against individual consumers who engage in such communications. 15 U.S.C. §§ 45b(a)(2), 45b(b)(1), and 45b(c).

RESPONSE TO PARAGRAPH 105: Paragraph 105 of the Complaint purports to characterize the statutes and regulations referenced therein. To the extent a response is required, Defendants deny the characterizations contained in Paragraph 105.

106. The CRFA defines a "form contract" as a contract, other than an employer-employee or independent contractor contract, with "standardized terms" - "used by a person in the course of selling or leasing the person's goods or services" and "imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms." 15 U.S.C. § 45b(a)(3).

RESPONSE TO PARAGRAPH 106: Defendants admit that Paragraph 106 of the Complaint accurately characterizes portions of the cited statute. To the extent that any further responsive pleading is required, Defendants deny the allegations contained in Paragraph 106 of the Complaint.

107. The Commission is authorized to enforce Section 2(c) of the CRFA in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all

applicable terms and provisions of the FTC Act, 15 U.S.C. §§ 41-58, were incorporated into and made a part of the CRFA. 15 U.S.C. § 45b(2)(A). The Commission's enforcement authority under the CRFA applies to contracts in effect on or after December 14, 2017. 15 U.S.C. § 45b(i)(2).

RESPONSE TO PARAGRAPH 107: The allegations in Paragraph 107 purport to offer a legal conclusion to which no response is required. To the extent any further responsive pleading is required, Defendants deny the allegations in Paragraph 107 of the Complaint.

108. Pursuant to Section 2(d)(1) of the CRFA, 15 U.S.C. § 45b(d)(1), a violation of Section 2(c) of the CRFA constitutes a violation of a rule promulgated under Section 18(a)(1)(B) of the FTC Act, 15 U.S.C. § 57a(1)(B), and therefore constitutes an unfair or deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

RESPONSE TO PARAGRAPH 108: The allegations in Paragraph 108 purport to offer a legal conclusion to which no response is required. To the extent any further responsive pleading is required, Defendants deny the allegations in Paragraph 108 of the Complaint.

**COUNTY IV – CRFA VIOLATION
(By Plaintiff Federal Trade Commission)**

109. In numerous instances, since March 14, 2017, Defendants have offered, in the course of selling Zurixx's real estate investing products or services, form contracts that contain provisions that prohibit or restrict the ability of consumers purchasing Zurixx's products or services from engaging in reviews, performance assessments, and similar analyses of Zurixx's goods, services, or conduct.

RESPONSE TO PARAGRAPH 109: Defendants deny the allegations contained in Paragraph 109 of the Complaint.

110. Therefore, the acts and practices set forth in Paragraph 109 of this Complaint, violate the CRFA.

RESPONSE TO PARAGRAPH 110: Defendants deny the allegations contained in Paragraph 110 of the Complaint.

VIOLATIONS OF THE UCSPA

111. The UCSPA prohibits suppliers from committing deceptive and unconscionable acts or practices in connection with a consumer transaction, whether the act occurs before, during, or after the transaction. Utah Code §§ 13-11-4(1); 13-11-5(1).

RESPONSE TO PARAGRAPH 111: Paragraph 111 of the Complaint purports to characterize provisions of the UCSPA. To the extent that any further response is required, Defendants deny the characterizations in Paragraph 111.

112. Defendants engage in "consumer transaction[s]" by marketing and selling to "person[s]" products and services that are primarily for personal, family, or household purposes, or for purposes that relate to a business opportunity. Utah Code §§ 13-11-3(2), (5).

RESPONSE TO PARAGRAPH 112: Defendants deny the allegations contained in Paragraph 112 of the Complaint.

113. Defendants are "suppliers" because they regularly solicit, engage in, or enforce consumer transactions, whether or not they deal directly with consumers. Utah Code § 13-11-3(6).

RESPONSE TO PARAGRAPH 113: Defendants deny the allegations contained in Paragraph 113 of the Complaint.

114. As set forth below, Defendants have violated the UCSPA by engaging in deceptive and unconscionable acts and practices in connection with the marketing and sale of their real estate investment related products and services.

RESPONSE TO PARAGRAPH 114: Defendants deny the allegations contained in Paragraph 114 of the Complaint.

**COUNT V – DECEPTIVE ACTS OR PRACTICES (EARNINGS CLAIMS)
(By Plaintiff Utah Division of Consumer Protection)**

115. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of Zurixx's real estate investment products or services, Defendants have represented, directly or indirectly, expressly or by implication, that consumers who purchase Zurixx's products or services are likely to earn thousands of dollars in profit.

RESPONSE TO PARAGRAPH 115: Defendants deny the allegations contained in Paragraph 115 of the Complaint.

116. The representations as set forth in Paragraph 115 are false or were not substantiated at the time the representations were made.

RESPONSE TO PARAGRAPH 116: Defendants deny the allegations contained in Paragraph 116 of the Complaint.

117. Therefore, Defendants' representations as set forth in Paragraph 115 of this Complaint constitute a deceptive act or practice in violation of the UCSPA, Utah Code§ 13-11-4(1).

RESPONSE TO PARAGRAPH 117: Defendants deny the allegations contained in Paragraph 117 of the Complaint.

**COUNT VI – DECEPTIVE ACTS OR PRACTICES (PRODUCTS AND SERVICES PROVIDED)
(By Plaintiff Utah Division of Consumer Protection)**

118. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of Zurixx's real estate investing products or services, Defendants have represented, directly or indirectly, expressly or by implication, that by purchasing Zurixx's products or services, consumers will:

- A. Receive 100% funding to do real estate deals regardless of their credit;
- B. Spend little time and effort to make thousands of dollars in profit through real estate investing; and/or
- C. Learn everything they need to know at the 3-day workshop to make thousands of dollars in profit through real estate investing.

RESPONSE TO PARAGRAPH 118: Defendants deny that Paragraph 118 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 118.

119. The representations set forth in Paragraph 118 are false or were not substantiated at the time the representations were made.

RESPONSE TO PARAGRAPH 119: Defendants deny the allegations contained in Paragraph 119 of the Complaint.

120. Therefore, Defendants' representations as set forth in Paragraph 118 of this Complaint constitute a deceptive act or practice in violation of USCPA § 13-11-4(1).

RESPONSE TO PARAGRAPH 120: Defendants deny the allegation contained in Paragraph 120 of the Complaint.

**COUNT VII – FAILURE TO DISCLOSE MATERIAL ASPECTS OF REFUND POLICY
(By Plaintiff Utah Division of Consumer Protection)**

121. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of its real estate investing products or services, Defendants have represented, directly or indirectly, expressly or by implication, that it will provide refunds to consumers who fail to make a minimum of three times the cost of the 3-day workshop within six months.

RESPONSE TO PARAGRAPH 121: Defendants deny that Paragraph 121 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 121.

122. In numerous instances in which Defendants have made the representations set forth in Paragraph 121, Defendants have failed to disclose, or to disclose adequately, to consumers material aspects of Zurixx's refund policy, including one or both of the following requirements:

- A. To obtain a refund of the cost of the 3-day workshop, consumers who fail to make a minimum of three times the amount of the workshop must make more than 25 offers within the time period and make 15 offers under the "guidance of the resource line help desk associates" if, in the first ten offers, the consumer has not made three times the purchase price of the workshop; and
- B. Consumers must sign a form settlement provision that prohibits them from filing a complaint, or posting reviews, about Zurixx or its products with regulators or other entities in order to obtain even a partial refund.

RESPONSE TO PARAGRAPH 122: Defendants deny that Paragraph 122 of the Complaint accurately or completely characterizes what was said and presented to students and therefore deny the allegations contained in Paragraph 122.

123. In light of the representations set forth in Paragraph 121 above, Defendants' failure to disclose or to disclose adequately the material information set forth in Paragraph 122 of this Complaint constitutes a deceptive act or practice in violation of USCPA § 13-11-4(1).

RESPONSE TO PARAGRAPH 123: Defendants deny the allegations contained in Paragraph 123 of the Complaint.

VIOLATIONS OF THE BODA

124. The BODA requires sellers of "assisted marketing plans" to annually file certain information with the Division. Utah Code§ 13-15-4.

RESPONSE TO PARAGRAPH 124: Paragraph 124 of the Complaint purports to characterize provisions of the BODA. To the extent a response is required, Defendants deny the allegations contained in Paragraph 124.

125. The BODA also requires sellers of assisted marketing plans to provide to prospective purchasers of the assisted marketing plans written disclosures in a single disclosure statement or prospectus at least ten days prior to execution of a purchase agreement or payment by the purchaser. Utah Code §§ 13-15-4; 13-15-5.

RESPONSE TO PARAGRAPH 125: Paragraph 125 of the Complaint purports to characterize provisions of the BODA. To the extent a response is required, Defendants deny the allegations contained in Paragraph 125.

126. The BODA defines a "seller" as "a person who sells or offers to sell an assisted marketing plan." Utah Code § 13-15-2(8).

RESPONSE TO PARAGRAPH 126: Paragraph 126 of the Complaint purports to characterize provisions of the BODA. To the extent a response is required, Defendants deny the allegations contained in Paragraph 126.

127. The BODA defines "assisted marketing plans" as "any products, equipment, supplies, or services that are sold to the purchaser upon payment of an initial consideration of \$500 or more for the purpose of enabling the purchaser to start a business," in which the seller represents, among other things, that "the seller will provide the purchaser with a guarantee that the purchaser will receive income from the assisted marketing plan that exceeds the price paid for the assisted marketing plan." Utah Code § 13-15-2(1)(a)(iv).

RESPONSE TO PARAGRAPH 127: Paragraph 127 of the Complaint purports to characterize provisions of the BODA. To the extent a response is required, Defendants deny the allegations contained in Paragraph 127.

128. As set forth below, Defendants have violated the BODA by failing to file required information with the Division, and by failing to provide required disclosures to prospective purchasers of Defendants' assisted marketing plans.

RESPONSE TO PARAGRAPH 128: Defendants deny the allegations contained in Paragraph 128 of the Complaint.

**COUNT VIII – FAILURE TO FILE REQUIRED INFORMATION WITH THE
DIVISION
(By Plaintiff Utah Division of Consumer Protection)**

129. In numerous instances, since at least July 2013, Defendants have offered and sold assisted marketing plans under a variety of fictitious names.

RESPONSE TO PARAGRAPH 129: Defendants deny the allegations contained in Paragraph 129 of the Complaint.

130. Since at least July 2013, Defendants have failed to file with the Division the information required by Utah Code§ 13-15-4 with respect to any of the assisted marketing plans Defendants offered and sold.

RESPONSE TO PARAGRAPH 130: Defendants deny the allegations contained in Paragraph 130 of the Complaint.

131. Therefore, the acts and practices set forth in Paragraphs 129-130 violate the BODA.

RESPONSE TO PARAGRAPH 131: Defendants deny the allegations contained in Paragraph 131 of the Complaint.

**COUNT IX – FAILURE TO PROVIDE REQUIRED DISCLOSURES TO
PROSPECTIVE PURCHASERS
(By Plaintiff Utah Division of Consumer Protection)**

132. In numerous instances, since at least July 2013, Defendants have offered and sold assisted marketing plans to consumers.

RESPONSE TO PARAGRAPH 132: Defendants deny the allegations contained in Paragraph 132 of the Complaint.

133. Since at least July 2013, Defendants have not provided any of the required disclosures to prospective purchasers of its assisted marketing plans in a single disclosure statement or prospectus at least ten business days prior to the execution of a consumer's agreement to purchase one of Defendants' plans, or ten business days prior to payment by the consumer of any consideration in exchange for the assisted marketing plan. Utah Code §§ 13-15-4; 13-15-5.

RESPONSE TO PARAGRAPH 133: Defendants deny the allegations contained in Paragraph 133 of the Complaint.

134. Therefore, the acts and practices set forth in Paragraphs 132-133 violate the BODA.

RESPONSE TO PARAGRAPH 134: Defendants deny the allegations contained in Paragraph 134 of the Complaint.

CONSUMER INJURY

135. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act, the CRFA, the UCSPA and the BODA. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

RESPONSE TO PARAGRAPH 135: Defendants deny the allegations contained in Paragraph 135 of the Complaint.

COURT'S POWER TO GRANT RELIEF

136. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

RESPONSE TO PARAGRAPH 136: Defendants deny the allegations contained in Paragraph 136 of the Complaint.

137. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the CRFA, including the rescission or reformation of contracts, and the refund of monies paid, the disgorgement of ill-gotten monies, and prejudgment interest.

RESPONSE TO PARAGRAPH 137: Paragraph 137 purports to characterize the statutes and regulations referenced therein. To the extent a response is required, Defendants deny the allegations contained in Paragraph 137 of the Complaint.

138. The UCSPA authorizes this Court to enter a declaratory judgment that Defendants' acts or practices violate the UCSPA, to enjoin, in accordance with the principles of equity, any person who has violated, is violating, or is otherwise likely to violate the UCSPA, to award damages or relief on behalf of consumers for Defendants' violations of the UCSPA, to award a fine against Defendants for violations of the UCSPA in an amount determined by the

Court, and to award the Division reasonable attorney's fees, court costs, and costs of investigation. Utah Code §§ 13-11-17(1)(a)-(d); 13-11-17.5.

RESPONSE TO PARAGRAPH 138: Paragraph 138 purports to characterize the statutes referenced therein. To the extent a response is required, Defendants deny the allegations contained in Paragraph 138 of the Complaint.

139. The BODA authorizes this Court, in addition to any other relief granted by the Court, to grant judgment and injunctive relief in favor of the Division, and to award the Division reasonable attorney's fees, costs of court, and investigative fees for Defendants' violations of the BODA. Utah Code § 13-15-6(3).

RESPONSE TO PARAGRAPH 139: Defendants deny the allegations contained in Paragraph 139 of the Complaint.

PRAYER FOR RELIEF

140. The allegations set forth on pages 35-36 of the Complaint entitled Prayer for Relief are requests for relief and, as such, require no response. However, to the extent a response is required, Defendants deny that Plaintiffs are entitled to any relief from Defendants whatsoever, and ask that the Plaintiffs' Complaint be dismissed in its entirety.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

THIRD DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

FOURTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

FIFTH DEFENSE

This Court lacks subject matter jurisdiction to hear this action.

SIXTH DEFENSE

Any consumer injury resulting from the activities alleged in the Complaint was legally and proximately caused by other persons, entities, or forces over which Defendants exerted no control and for which they had no responsibility.

SEVENTH DEFENSE

Plaintiffs lack authority to seek disgorgement from Defendants.

EIGHTH DEFENSE

To the extent the FTC is entitled to seek disgorgement from Defendants, the FTC's claim for disgorgement is subject to and barred by the five-year statute of limitations set forth in 28 U.S.C. § 2462.

NINTH DEFENSE

Defendants acted in good faith in reliance of FTC guidance for conducting a real estate education training, inasmuch as guidelines could be ascertained, and complied therewith.

TENTH DEFENSE

The Division is barred from seeking disgorgement, civil penalties, and fines from Defendants for alleged violations of the UCSPA and BODA based on allegedly wrongful

conduct that occurred since July 2013. These remedies constitute a “penalty” under Utah law, and the on-year limitations period for actions “upon a statute . . . for a forfeiture or penalty to the state” set forth in Utah Code § 78B-2-302(3) applies to requests for such relief based on challenged conduct that occurred on or before May 8, 2017.

ELEVENTH DEFENSE

The FTC is not entitled to obtain equitable monetary relief from Defendants for alleged violations of the FTC Act brought pursuant to 15 U.S.C. § 53(b).

TWELFTH DEFENSE

The FTC is not entitled to obtain relief from Defendants for alleged violations of the FTC Act brought pursuant to 15 U.S.C. § 53(b) because the FTC cannot demonstrate that it has a reason to believe that the Defendants are violating or are about to violate the FTC Act.

THIRTEENTH DEFENSE

The actions of the FTC deprived Defendants of the procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

FOURTEENTH DEFENSE

The actions of the Division deprived Defendants of the procedural due process guaranteed by the Fourteenth Amendment to the U.S. Constitution and Section 7 of the Utah Declaration of Rights.

FIFTEENTH DEFENSE

The filing requirements of the BODA, Utah Code § 13-15-4, compel speech in violation of the First Amendment to the U.S. Constitution.

SIXTEENTH DEFENSE

The disclosure requirements of the BODA, Utah Code § 13-15-5, compel speech in violation of the First Amendment to the U.S. Constitution.

SEVENTEENTH DEFENSE

Any actions taken against Defendants by the FTC under its present structure are invalid because the FTC's structure contravenes Article II of the U.S. Constitution. Article II requires that Executive principle officers exercising law-enforcement power be removable at will by the President. Although the FTC clearly exercises law-enforcement power, and its Commissioners are clearly principal officers, the FTC's Commissioners are shielded from at-will removal.

EIGHTEENTH DEFENSE

The Division's attempt to enforce Utah law extraterritorially by imposing Utah's UCSPA and BODA upon alleged conduct that occurred in the states other than Utah is unconstitutional because it violates Defendants' substantive due process rights under the Fourteenth Amendment to the U.S. Constitution and Section 7 of the Utah Declaration of Rights.

NINETEENTH DEFENSE

The Division's attempt to enforce Utah law extraterritorially by imposing Utah's UCSPA and BODA upon alleged conduct that occurred in states other than Utah is unconstitutional because it violates the constitutional sovereignty interests of other states.

TWENTIETH DEFENSE

The Division's attempt to enforce Utah law extraterritorially by imposing Utah's UCSPA and BODA upon alleged conduct that occurred in states other than Utah is unconstitutional because it violates the constitutional principle of comity.

TWENTY-FIRST DEFENSE

The Division's BODA claims are barred for failure to satisfy statutory conditions precedent prior to filing suit.

TWENTY-SECOND DEFENSE

The Plaintiffs' claims violate Defendants' right to communicate truthful commercial speech guaranteed by the First Amendment to the United States Constitution.

TWENTY-THIRD DEFENSE

The requested relief, if granted, would not be in the public interest.

TWENTY-FOURTH DEFENSE

Plaintiffs' monetary relief, if any, is barred, in whole or in part, because the relief sought is not reasonably or proportionally related to the alleged actionable conduct or the value of assets frozen pursuant to the Court's orders in this case.

TWENTY-FIFTH DEFENSE

Plaintiffs' monetary relief, if any, is subject to offset by the benefits received by students, costs associated with the education provided and other business expenses, and/or refunds paid to students. Moreover, any monetary relief awarded to the Plaintiffs' should be reduced by amounts paid by Defendants in taxes.

TWENTY-SIXTH DEFENSE

Plaintiffs' monetary relief, if any, is subject to offset by the damages caused to Defendants by the *Ex Parte* TRO and Stipulated Preliminary Injunction entered in this case.

Defendants assert that they may have further and additional Affirmative Defenses to the Complaint that are not yet known, but may become known through further discovery.

Defendants assert each and every defense as may be ascertained through future discovery.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Defendants hereby demand a trial by jury on all counts and issues so triable.

DATED this 11th day of March, 2020.

Respectfully Submitted,

By: /s/ Z. Ryan Pahnke
Eric G. Benson (No. 10414)
Z. Ryan Pahnke (No. 11146)
RAY QUINNEY & NEBEKER P.C.

Leonard L. Gordon (*pro hac vice*)
Stephen R. Freeland (*pro hac vice*)
Mary M. Gardner (*pro hac vice*)
Elliot Kelly (*pro hac vice*)
Michael A. Munoz (*pro hac vice*)
VENABLE LLP
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March, 2020, I caused a true and correct copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF** to be filed electronically with the Court, which will send notice of electronic filing to counsel of record in this matter.

/s/ Z. Ryan Pahnke _____