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

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FEDERAL TRADE COMMISSION, and UTAH  
DIVISION OF CONSUMER PROTECTION,

Plaintiffs,

vs.

ZURIXX, LLC, et al.

Defendants.

**DEFENDANTS' MOTION FOR RELIEF  
FROM STIPULATED PRELIMINARY  
INJUNCTION ORDER AND MOTION  
TO STAY BRIEFING**

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

Judge Dale Kimball

Magistrate Judge Daphne A. Oberg

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Pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, and by and through undersigned counsel, Defendants Zurixx, LLC, Brand Management Holdings, LLC, CAC Investment Ventures, LLC, Carlson Development Group, LLC, Carlson Development Group, LLC (Puerto Rico), CJ Seminar Holdings, LLC, Dorado Marketing and Management, LLC, Zurixx Financial, LLC, Zurixx Financial, LLC (Puerto Rico), Christopher A. Cannon, James M. Carlson, and Jeffrey D. Spangler (hereinafter, collectively “Zurixx” or “Defendants”) hereby submit this Motion for Relief from the Stipulated Preliminary Injunction order and respectfully request that this Court relieve Defendants from all obligations and restrictions imposed upon them by the Stipulated Preliminary Injunction (Doc. 54) entered by this Court on November 1, 2019 (the “Injunction”) on the basis that the Injunction may be rendered unnecessary and unlawful by the United States Supreme Court in the decision pending in the *AMG Capital Management* case.

### **ARGUMENT**

“Rule 60(b)(6) allows federal courts to relieve a party from judgment for any reason . . . ‘that justifies relief.’” *Johnson v. Spencer*, 950 F.3d 680, 700 (10th Cir. 2020) (citing Fed. R. Civ. P. 60(b)(6)). Rule 60(b)(6) is a “grand reservoir of equitable power to do justice in a particular case . . . [and] should be liberally construed when substantial justice will thus be served . . . .” *Id.* at 700-01 (internal quotations and citations omitted).

In this case, the FTC seeks to recover over \$500 million dollars in monetary relief against Defendants pursuant to Section 13(b) of the FTC Act. Although there are other federal and state law claims, the Section 13(b) relief requested by the FTC constitutes the vast majority of the

monetary relief Plaintiffs seek against Defendants.<sup>1</sup> However, the Injunction itself is based primarily on Section 13(b), and was entered prior to the First Amended Complaint being filed. *See* Injunction at 3.

The Supreme Court will soon decide whether the FTC is entitled to monetary relief (such as restitution or disgorgement) through Section 13(b) in *AMG Capital Management, LLC v. FTC*, No. 18-1501 (cert. granted July 9, 2020).<sup>2</sup> Indeed, the Seventh Circuit held in *Credit Bureau Center*, 937 F.3d 764 (7th Cir. 2019) that the FTC was not entitled to monetary relief pursuant to Section 13(b). Since granting cert in *AMG Capital Management*, the Third Circuit also reversed a \$448 million disgorgement award and held that “district courts lack the power to do so under Section 13(b).” *FTC v. AbbVie Inc.*, --- F. 3d ---, 2020 WL 5807873, at \*32 (3rd Cir. Sept. 30, 2020). Because of the split among circuits that has developed on the issue of the propriety of monetary relief pursuant to Section 13(b), the Supreme Court’s ruling in *AMG Capital Management* will resolve the question of the FTC’s entitlement to the relief requested in this action and the basis for the Injunction. Ultimately, if the Supreme Court affirms the Seventh Circuit’s decision in *Credit Bureau Center*, 937 F.3d 764 (7th Cir. 2019), the FTC’s request for monetary relief in this case will be dramatically curtailed, if not eliminated altogether, meaning that the Injunction which requires the preservation of assets for the “possibility of meaningful monetary relief” pursuant to Section 13(b) may be rendered moot.

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<sup>1</sup> In the First Amended Complaint, the FTC added additional claims unrelated to Section 13(b). Importantly, these new claims were added after the issuance of the Injunction discussed herein.

<sup>2</sup> The Supreme Court consolidated *AMG Capital* with *FTC v. Credit Bureau Center, LLC*, No. 19-825 (cert. granted July 9, 2020). Accordingly, any reference to *AMG Capital Management* refers to both cases.

Numerous provisions throughout the Injunction are intended to preserve Defendants assets, which includes, among other things, the appointment of a receiver to preserve and manage assets, an order freezing the Corporate Defendants' assets, and an order requiring that each Individual Defendant obtain Court approval to spend or disburse more than \$50,000 of their own individual assets during the pendency of this action. *See generally*, Injunction. The Injunction's asset preservation provisions are designed to "preserve the Court's ability to preserve the possibility of meaningful monetary relief" pursuant to Section 13(b). *See* September 30, 2019 Motion for Ex Parte Temporary Restraining Order (Doc. 4) (the "TRO and PI Motion") at 39; *see also* Injunction. Without the authority to obtain monetary relief pursuant to Section 13(b), the FTC's authority and stated basis for holding Defendants' assets pursuant to the Injunction would be eliminated. Also, the Court's basis for entering the Injunction pursuant to Section 13(b) would no longer be consistent with binding precedent.

At the time the Injunction was entered, Defendants acknowledged that the FTC could be entitled to the relief it sought under Section 13(b), provided that it adequately proved up its claims. Thus, an agreement to the Injunction (and provisions therein requiring the preservation of assets) was consistent with the then-current state of the law. However, the possible outcomes of *AMG Capital Management* call into question the scope of monetary relief under Section 13(b) that the FTC would be entitled to if it were eventually successful on the merits of its claims. Without the ability to obtain monetary relief pursuant to Section 13(b), the asset preservation provisions throughout the Injunction will be rendered largely unnecessary. "Substantial justice" will be achieved through a dismissal of the Injunction, or at least through a substantial modification of the Injunction. *See Johnson v. Spencer*, 950 F.3d at 700-701.

As *AMG Capital Management* is pending before the Supreme Court, Defendants request that this Court stay full briefing on this Rule 60(b)(6) Motion until a decision from the Supreme Court in *AMG Capital Management* is issued. The Supreme Court will consider *AMG Capital Management* during this current term, and will most likely issue its ruling no later than the last day of the term on June 28, 2021. Therefore, good cause exists to stay the briefing on the issues raised herein until further guidance is given from the Supreme Court.

DATED this 30th day of October, 2020.

/s/ Z. Ryan Pahnke

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 30th day of October, 2020, I caused a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR RELIEF FROM STIPULATED PRELIMINARY INJUNCTION ORDER AND MOTION TO STAY BRIEFING** 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* \_\_\_\_\_

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