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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FEDERAL TRADE COMMISSION and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

v.

ZURIXX, LLC, *et al.*,

Defendants.

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

District Judge Dale A. Kimball

Magistrate Judge Daphne A. Oberg

**PLAINTIFF FEDERAL TRADE COMMISSION’S OPPOSITION TO DEFENDANTS’
MOTION FOR RELIEF FROM STIPULATED PRELIMINARY INJUNCTION ORDER
AND MOTION TO STAY BRIEFING**

Defendants’ pending two-part motion for relief from the stipulated preliminary injunction (“relief motion”) and to stay briefing is an anomaly for two principal reasons. First, the relief motion asserts that at some time next year—but not now—Defendants may have reason to seek relief. Defendants admit there is no cognizable basis for such relief unless and until the Supreme Court decides the *AMG* case adverse to Plaintiff FTC and substantially changes Tenth Circuit law—a result far from certain. ECF No. 198, at 2 (arguing portions of “the Injunction may be rendered unnecessary and unlawful by the United States Supreme Court”). In so doing, they

concede that the relief motion is both unripe and premature.

Second, and in further recognition of the unripe and premature nature of the relief motion, Defendants ask the Court to immediately stay briefing until after the Supreme Court rules because the merits (or lack thereof) are unknowable at present. The implication of Defendants' request is that they should be permitted to raise the prospect of relief but Plaintiff—who did not receive advance notice from Defendants about the relief or stay motions—should not be heard on the issue until next year.¹

It is difficult to draw a conclusion other than that Defendants' filing is yet another bite at the apple that attempts to color the pending motion to stay the case, which was argued before the Court and taken under advisement on October 27. Plaintiffs have fully briefed and argued that pending motion and will not try the Court's patience by revisiting the issues here.

Plaintiff respectfully submits that the proper disposition of Defendants' relief motion is straightforward. The Court should deny it because it is unripe and premature. If, at some point in the future, the Supreme Court rules in a manner consistent with Defendants' speculation, they can file a motion at an appropriate time setting forth their merits arguments.²

For these reasons, Plaintiff respectfully requests that the Court deny the Defendants' relief motion and deny the motion to stay briefing.

¹ Prior to filing this Opposition, Plaintiff's counsel consulted with defense counsel to determine if it would be possible to resolve the relief motion by Defendants voluntarily withdrawing it at this time. Defense counsel stated that Defendants would not voluntarily withdraw it.

² In reply, Defendants may contend that they were required to file the relief motion now because of time limits such as a one year time limit referenced in Rule 60(b) for some but not all Rule 60(b) motions. However, the Court has authority to revisit its preliminary injunction orders, and the stipulated preliminary injunction here contemplates potential modification. *See* ECF No. 54, at 30 (Section XXVIII Duration of the Order).

November 6, 2020

Respectfully submitted,

/s/ Thomas Harris

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FEDERAL TRADE COMMISSION

Certificate of Service

I HEREBY CERTIFY that on the 6th day of November 2020, a true and correct copy of the foregoing, Plaintiff Federal Trade Commission's Opposition to Defendants' Motion for Relief from Stipulated Preliminary Injunction Order and Motion to Stay Briefing, was served electronically by the Court's ECF System upon:

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