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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' REPLY  
MEMORANDUM IN SUPPORT OF  
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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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 Reply Memorandum in Support of the Motion for Relief from the Stipulated Preliminary Injunction Order (the “Motion”)<sup>1</sup>.

### **ARGUMENT**

The FTC argues that Defendants’ Motion is premature or not “ripe” for decision – however, “[a] motion under Rule 60(b) must be made within a reasonable time . . . .” Fed. R. Civ. P. 60(c). Further, “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)). Here, it is probable that there will be a drastic change in the law that formed the basis for the Court’s entry of the Stipulated Preliminary Injunction (the “Injunction”). Further, relief under Rule 60(b)(6) is not obviated by the Court’s inherent power to “revisit its preliminary injunction orders” as the FTC argues. *See* FTC Opp. Memo, Doc. 202, at 2. Ultimately, Defendants’ Motion focuses on the legal basis for the Injunction, and denial of the Motion prior to full briefing on the issue in response to the Supreme Court’s decision in the *AMG Capital Management* cases would not serve justice – the goal of Rule 60(b)(6). *Johnson*, 950 F.3d at 700-01 (Rule 60(b)(6) is a “grand reservoir of equitable power to do justice in a

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<sup>1</sup> The Federal Trade Commission (“FTC”) and Utah Division of Consumer Protection (“UDCP”) each filed separate memoranda in opposition to Defendants’ Motion. Defendants file a single reply memorandum in support of the Motion and address the arguments made by Plaintiffs in their respective opposition memoranda.

particular case . . . [and] should be liberally construed when substantial justice will thus be served . . . .”)

The UDCP, on the other hand, used its opposition to reargue its position on Defendants’ pending Motion to Stay, which is currently under advisement with this Court, rather than respond to Defendants’ grounds for the Motion. Specifically, the UDCP argues, contrary to the language of the Injunction, that its claims serve as a basis for the asset preservation provisions of the Injunction and thus the *AMG Capital Management* case would not change the theory of the UDCP’s recovery against Defendants. *See* generally, UDCP Opp. Memo, Doc. 203. However, the UDCP’s claims *did not* (and still do not) serve as a basis for the Injunction.

Indeed, the Injunction is based, in addition to the FTC’s Section 13(b) claim, on Utah Code Ann. § 13-11-17(1)(b) (providing the UDCP with authority to “enjoin . . . a supplier who has violated, is violating, or is otherwise likely to violate this chapter”); Utah Code Ann. § 13-11-2(4) (providing that the “state regulation of consumer sales practices” should not be inconsistent with the “policies of the Federal Trade Commission Act”); Utah Code Ann. § 13-15-3(1) (providing that the UDCP should administer and enforce the Business Opportunity Disclosure Act); and Utah Code Ann. § 13-2-5(3) (providing that the director of the UDCP has the authority to take administrative and judicial action against “persons in violation of the division rules and the laws administered and enforced by it”). *See* Injunction, Doc. 54, at 3, Finding D. None of the provisions of Utah law the Court relied upon in entering the Injunction provide the UDCP the authority to “freeze” or otherwise manage Defendants’ assets in anticipation of potential consumer redress, nor has the UDCP provided the Court with authority to do so in its opposition memorandum. The Court’s authority to issue the Injunction is **not**

based on Utah Code Ann. §§ 13-11-17(1)(d), 13-15-6(4), or 13-5-5, the civil money penalty statutes cited by the UDCP. The Injunction is also **not** based on the Utah Statutes providing for possible consumer redress. Rather, the asset related portions of the Injunction are based on the financial relief currently available to the FTC under Section 13(b) of the FTC Act. The UDCP's presumption that it will fully recover against Defendants' on its claims, despite the significant number of Defendants' students who were happy and successful, is misplaced and is not a basis for denying the relief sought in the Motion.

For these reasons, Defendants request that the Court stay its consideration of the Motion and allow Defendants the opportunity to fully brief its Motion when 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 20th day of November, 2020.

/s/ Z. Ryan Pahnke

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of November, 2020, I caused a true and correct copy of the foregoing **DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF 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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