

Sam Meziani (9821)
GOEBEL ANDERSON PC
405 South Main Street, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 441-6170
smeziani@gapclaw.com

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

FEDERAL TRADE COMMISSION *et al.*,

Plaintiffs,

vs.

ZURIXX, LLC *et al.*,

Defendants.

**PROPOSED INTERVENORS' RULE 24
MOTION TO INTERVENE**

Case No: 2:19-CV-00713-DAK-DAO

District Judge Dale A. Kimball
Magistrate Judge Daphne A. Oberg

Prospective Intervenor Students of Zurixx (“Intervenors”) hereby move for leave to intervene in the above captioned action pursuant to Federal Rule of Civil Procedure 24 (the “Motion”) in order to protect and enforce their contractual and constitutional rights. To that end, Intervenor seek to present claims for, *inter alia*, declaratory judgment and equitable relief against Plaintiff Federal Trade Commission (“the FTC”) so that they may receive the benefits and services they freely and knowingly purchased from Zurixx, LLC and other defendants (“Zurixx”).

Intervenors’ claim against the FTC for its wrongful attempt to deprive Intervenor of their rights qualifies for intervention as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2). In the alternative, Intervenor’s claim qualifies for permissive intervention pursuant to Federal Rule of Civil Procedure 24(b)(1), because it shares common questions of law and fact with the FTC’s claims against Defendants. Specifically, the Intervenor strenuously dispute FTC’s

assertion that Zurixx engages in deceptive practices such that Zurixx should be prevented from operating and providing its services to its students, including Intervenors. Accordingly, Intervenors seek leave to intervene and file the attached Complaint in Intervention (“Intervenors’ Complaint”).¹

The Intervenors have been unjustly harmed by the FTC’s actions in bringing this lawsuit against Zurixx and restraining Zurixx’s operations. Intervenors paid for access to numerous critical resources that support their businesses and investments. They have been deprived of access to that which they paid for because of the FTC’s actions. Intervenors invested in their Zurixx training in reliance on the promise of continued access to Zurixx’s Online Resource Center. Prior to the initiation of this case, Intervenors received, enjoyed, and benefited from that investment. The Online Resource Center contains forms, tutorials, information, updates, news and other content that is vital to Intervenors’ operations. Zurixx further provided lifetime rights to retake Zurixx’s advanced courses to previous attendees, which lifetime right was heavily utilized by Zurixx’s students. Zurixx’s courses were regularly updated, and previous attendees were able to access the updated content by re-taking the courses for free at any time. Different speakers conducted the courses at different times, and repeat attendees benefitted from the varied presentations of the course material. The courses also served as networking opportunities for students, and enabled students to share information and ideas with others in the industry. Zurixx also provided ongoing customer service to students. For example, Zurixx personnel were available to provide students advice and answer their questions through Zurixx’s telephonic customer support hotline, at no extra cost to

¹ A true and correct copy of Intervenors’ proposed Complaint in Intervention is attached hereto and incorporated herein as Exhibit A.

students. Intervenors do not seek or desire a refund, but instead simply seek to continue to be able to access the valuable, life-long resources that they purchased from Zurixx.

Moreover, the recent unanimous ruling by the Supreme Court in *AMG Capital Management, LLC v. Federal Trade Commission*, 141 S. Ct. 1341 (2021), removes any question that the FTC has unlawfully obtained broad “monetary” equitable relief under a misuse of Section 13(b) of the Federal Trade Commission Act (“Act”) involving seizures of assets, freeze orders, and the misuse of a receivership to liquidate corporate assets without any lawful basis to do so. The FTC’s longstanding strategy of overreach in its application of Section 13(b) denies due process not only to defendants in FTC actions, but to the very consumers that the FTC is charged with protecting. While the Supreme Court’s unanimous decision in *AMG* confirms that the Act nowhere authorizes the FTC’s “money centric” Section 13(b) claims (in this case or otherwise), the FTC has long known that its strategy is not authorized by law as confirmed in a memorandum by the FTC’s own counsel who litigated many of the FTC’s early Section 13(b) cases. *See generally* D. FitzGerald, “The Genesis of Consumer Protection Remedies under Section 13(b) of the FTC Act,” *available* *at* https://www.ftc.gov/sites/default/files/documents/public_events/FTC%2090th%20Anniversary%20Symposium/fitzgeraldremedies.pdf (last visited May 10, 2021). In this case, the FTC’s unlawful strategy has harmed Intervenors, who have—without due process to Intervenors—been deprived of services and resources for which they paid and which they have a lawful right to receive and enjoy.

Simply put, the FTC is wrongfully depriving Intervenors of the fruits of their investment. If successful in this litigation, the FTC will likely put Zurixx out of business or otherwise cripple its

essential operations. That will, in turn, inevitably deprive Intervenors and countless other students of their investment in, and access to, the Online Resource Center, lifetime advance course rights and customer support, among other things. Therefore, for the reasons set forth herein, Intervenors respectfully request leave to intervene as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2) or, alternatively, by permission pursuant to Federal Rule of Civil Procedure 24(b)(1).

FACTUAL BACKGROUND

The FTC brought this action against Defendants alleging, *inter alia*, that Zurixx has engaged in unfair or deceptive business practices directed at consumers. The FTC proceeded to obtain a Temporary Restraining Order (the “TRO”) (Dkt. No. 24) and Preliminary Injunction (Dkt. No. 54) against Zurixx, along with the appointment of a receiver that has decimated Zurixx’s business and consequently deprived Intervenors of access to, *inter alia*, the Online Resource Center, lifetime Zurixx advance course rights and Zurixx’s customer support.

The Intervenors categorically dispute the FTC’s claims against Zurixx and assert that: 1) they have not been harmed by Zurixx or otherwise subjected to unfair or deceptive acts or practices by Zurixx; and 2) the injunctions and related orders entered by the Court have impaired and now are on the brink of foreclosing their right to the education they purchased and their constitutional right to information provided by Zurixx, *i.e.*, Zurixx’s speech. The TRO, the Preliminary Injunction, the receiver’s actions regarding Zurixx and other events related to this case have devastated the Intervenors. One of the primary benefits of Zurixx’s educational offerings is the ongoing access to the Online Resource Center and Zurixx’s other ongoing, lifelong resources. Zurixx’s students count on—and have taken extensive advantage of—their lifelong right to access

these resources. Intervenors consider this right and benefit essential to operating their businesses and managing their real estate investments which, for many of them, involve their life savings.

Contrary to the FTC's assertions in this action, Zurixx's programs do not make misleading or deceptive statements to its students. Intervenors know, and are prepared to present evidence to the Court, that Zurixx's curriculum instructs that engaging in real estate transactions entails substantial risk and uncertainty and requires discipline, time, effort, strategy, planning and risk management—all of which Intervenors have learned from Zurixx, and which Zurixx disclosed to Intervenors from the start and throughout the education process.

Despite the enormous benefits Intervenors have received from their investment in Zurixx, the FTC has, thus far, left the Court with the impression that Zurixx deceived its students. Intervenors are prepared, and have the right, to present this Court with their evidence that the FTC has misled the Court as to the nature of Zurixx's programs and as to the opinions and experiences of the students who actually enrolled in those programs. The Preliminary Injunction, orders and the receiver's actions in this case have largely dismantled and curtailed Zurixx's operations, misinforming students and others through statements posted on Zurixx website, disrupting Zurixx's relationships with business partners by preemptively portraying Zurixx as not viable and depriving numerous Zurixx students of their lifelong rights to Zurixx's resources—benefits that those students paid for, valued and relied upon.

While Zurixx has mounted its own defense, Zurixx does not directly speak for its students, nor, as detailed in Intervenors' proposed Complaint in Intervention, does the FTC. To the contrary, the FTC's actions, and the actions of the appointed receiver, have directly impaired the rights of Intervenors—the consumers that the FTC claims to protect—to utilize the Online Resource Center,

lifetime Zurixx advance course rights and Zurixx's customer support, in successfully engaging in the real estate business. The Court has not had the opportunity to fully and meaningfully consider that perspective and instead issued the TRO and the Preliminary Injunction and appointed a receiver without the benefit of an evidentiary hearing or testimony from Zurixx's students. Having been thus far ignored by the FTC, undermined by the receiver and the Court having not had the opportunity to consider the true experiences of numerous Zurixx students, the Intervenor now seek to advocate for, and vindicate, their own rights before this Court.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 24(a) provides that “[o]n timely motion, the court *must* permit anyone to intervene who: ... (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a) (emphasis added). Thus, a movant is entitled to intervene as a matter of right when the movant demonstrates “(1) the application is timely, (2) the applicant claims an interest relating to the property or transaction which is the subject of the action, (3) the applicant's interest may be impaired or impeded, and (4) the applicant's interest is not adequately represented by existing parties.” *Elliott Indus. v. BP Am. Prod. Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005) (citing *Coalition of Ariz./N.M. Counties for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 840 (10th Cir. 1996)). Although a proposed intervenor bears the burden of establishing these four elements, “[t]he Tenth Circuit generally follows a liberal view in allowing intervention under Rule 24(a).” *Id.* (citing *Nat'l Farm Lines v. Interstate Commerce*, 564 F.2d 381, 384 (10th Cir. 1977)).

Alternatively, even if the Court is not persuaded that the Zurixx students are entitled to intervene as a matter of right, permissive intervention is allowed where the movant “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). “In exercising this discretion, ‘the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.’” *Union Pac. R.R. Co. v. Utah State Tax Comm’n*, 2020 U.S. Dist. LEXIS 172914, *11, 2020 WL 5634142 (quoting Fed. R. Civ. P. 24(b)(3)).

ARGUMENT

Intervenors satisfy both the criteria to intervene as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2), and those for permissive intervention under Rule 24(b)(1)(B). One way or the other, the Court should not remain blind to the interests of the very students whose rights are not only not being represented by the FTC, but are actively being undermined. The Court should grant the Motion and permit the Intervenors to assert their rights through the filing of the proposed Complaint in Intervention.

I. Intervenors Have Standing to Intervene in This Action

As a threshold matter, Intervenors have standing to intervene in this action under Article III of the United States Constitution. As this Court has noted, an intervenor as of right must demonstrate Article III standing when they seek particular relief. *See Fed. Trade Comm’n v. Nudge LLC*, No. 2:19-cv-00867-DBB-DAO, 2020 WL 6881846, at *3 (D. Utah Nov. 23, 2020) (Oberg, J.) (quoting *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017); *Safe Sts. Alliance v. Hickenlooper*, 859 F.3d 865, 912 (10th Cir. 2017)). “Article III standing requires a litigant to show: (1) an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural

or hypothetical; (2) the injury is fairly traceable to the challenged conduct; and (3) the injury can likely be redressed by a favorable decision.” *Id.* (quoting *Kane Cnty. v. United States*, 928 F.3d 877, 888 (10th Cir. 2019)).

Intervenors here have Article III standing. As set forth in the attached proposed Complaint, Intervenors have suffered an injury in fact that is concrete and particularized, and actual and imminent. Specifically, by the FTC and UDCP’s actions and the Court’s entry of the preliminary injunction in this action, Intervenors have been deprived of access to the Zurixx Online Resource Center and Zurixx’s other resources available for students on an ongoing basis—resources for which Intervenors have paid and have an interest in accessing and utilizing for their personal benefit and business development. Intervenors’ interest also satisfies the second element of Article III standing, in that the injury to their rights and is *directly* traceable to the FTC and UDCP’s conduct in bringing this action and obtaining the preliminary injunction. Finally, Intervenors’ injury can be redressed by a favorable decision, as access to the bought-and-paid-for resources can be restored by setting aside the injunction or requiring the receiver to provide access to the resources.

Accordingly, Intervenors have Article III standing to pursue intervention and participation in this action.

II. Federal Rule of Civil Procedure 24(a)(2) Grants Intervenors the Right to Intervene in this Action

As noted above, there are four elements prerequisite to intervention as of right under Federal Rule of Civil Procedure 24(a)(2): timeliness, protectable interest, practical impairment, and inadequate representation. Intervenors satisfy each of these elements.

A. Intervenors' Motion is Timely

“The timeliness of a motion to intervene is assessed in light of all the circumstances, including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances.” *Elliott Indus.*, 407 F.3d at 1103 (quoting *Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001)). “The analysis is contextual; absolute measures of timeliness should be ignored.” *Utah Ass'n of Ctys.*, 255 F.3d at 1250 (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)) (additional citation omitted). “The requirement of timeliness is not a tool of retribution to punish the tardy would-be intervenor, but rather a guard against prejudicing the original parties by the failure to apply sooner. Federal courts should allow intervention where no one would be hurt and greater justice could be attained.” *Id.* (quoting *Sierra Club*, 18 F.3d at 1205) (secondary quotation and additional citation omitted).

Intervenors have not delayed in seeking the right to intervene.. Instead, Intervenors acted expeditiously after their rights were adversely affected by developments in this case. Intervenors organized themselves as reasonably promptly and quickly as possible given the great number of Zurixx students and their geographic spread to participate in the proceedings in this Court before further harm is done to their rights and interests.

In this case, the stage of these proceedings is at a crucial inflection point where Intervenors have an urgent need and a right to be heard. There have already been numerous motions and applications brought before the Court, and decisions by the Court, including the TRO and the Preliminary Injunction, and the FTC's filing of a Second Amended Complaint on February 12, 2021 (Dkt. No. 219), which have negatively affected the rights of Zurixx's students, all without

Intervenors' interests and perspective being adequately represented by the parties or considered by the Court. Critical events, including discovery, consideration of dispositive motions and a trial, are scheduled to occur in the near future, and the Intervenors' direct participation in these proceedings is essential to a full and fair resolution.

Further, no party will be prejudiced by Intervenors' participation in this case. "The prejudice prong of the timeliness inquiry 'measures prejudice caused by the intervenors' delay-not by the intervention itself.'" *Utah Ass'n of Ctys.*, 255 F.3d at 1251 (quoting *Ruiz v. Estelle*, 161 F.3d 814, 828 (5th Cir. 1998)). Significantly, other parties were very recently added by the FTC through the filing of the FTC's Second Amended Complaint on February 12, 2021 (Dkt. No. 219). The FTC can hardly take issue with the Intervenors being permitted to intervene in this action immediately thereafter. The case is still in the discovery phase. No other party can credibly complain of unfair prejudice under such circumstances.

Moreover, even considering "prejudice" in the colloquial sense, the FTC has represented to the Court that it has brought this action and sought the TRO and Preliminary Injunction to protect consumers. The FTC therefore cannot be unfairly prejudiced by this Court considering the direct perspective of those very consumers regarding Zurixx's conduct, as well as the effect of these proceedings on those consumers. Likewise, Zurixx would not be prejudiced by Intervenors' involvement in this case, as Intervenors strenuously oppose the relief sought by the FTC against Zurixx, albeit for independent reasons and based on interests of their own. Once Intervenors became aware of this action and the impact of it on their education and livelihood became apparent, Intervenors organized themselves and now promptly seek leave to intervene and present their case directly to this Court. Accordingly, Intervenors' Motion is timely.

B. Intervenor has a protectable interest and would suffer practical impairment of that interest

A proposed intervenor has a protectable interest sufficient for intervention if “[the] interest in the proceedings [is] direct, substantial, and legally protectable.” *Coal. of Ariz./New Mexico Ctys. for Stable Econ. Growth v. DOI*, 100 F.3d 837, 840 (10th Cir. 1996) (quoting *Vermejo Park Corp. v. Kaiser Coal Corp.*, 998 F.2d 783, 791 (10th Cir. 1993)) (secondary quotation omitted). “Whether an applicant has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination,’ and ‘the interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Coal. of Ariz./New Mexico Ctys. for Stable Econ. Growth v. DOI*, 100 F.3d 837, 841 (10th Cir. 1996) (quoting *Security Ins. Co. v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995) and *Nuesse v. Camp*, 128 U.S. App. D.C. 172, 385 F.2d 694, 700 (1967), respectively) (additional citations omitted).

The question of whether proposed Intervenor has a protectable interest is intertwined with the third element of the mandatory intervention analysis: whether the proposed intervenors would suffer a practical impairment of their interests. “[T]he question of impairment is not separate from the question of existence of an interest.” *Utah Ass'n of Ctys.*, 255 F.3d at 1253 (quoting *Natural Res. Def. Council v. United States Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978)). “To satisfy this element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. This burden is minimal.” *Id.* (quoting *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999)) (secondary quotation omitted). “Moreover, ‘the Rule refers to impairment as a practical matter. Thus, the court

is not limited to consequences of a strictly legal nature.” *Id.* (quoting *Natural Res. Def. Council*, 578 F.2d at 1345) (secondary quotation omitted).

Intervenors indisputably have a protectable interest that would be impaired if they are not permitted to intervene. Intervenors have paid for certain rights and benefits from Zurixx, including, among other things, access to the Online Resource Center as well as Zurixx’s other ongoing resources available for students. Intervenors have a protectable interest in those resources for which they paid and which interest would suffer, and indeed already has suffered, devastating impairment as a result of this litigation and the orders obtained by the FTC. Moreover, the receiver in this action has not established any procedure by which Intervenors can regain access to the resources for which they paid, which further supports granting this motion to intervene. *See Fed. Trade Comm’n v. Nudge LLC*, 2020 WL 6881846, at *4–5 (noting that the absence of a claim resolution procedure supported intervention because the intervenors had no other means of enforcing their rights). Intervenors have been unconstitutionally deprived of their rights and will suffer permanent and irreparable injury if the FTC succeeds in expanding the devastating impact of this litigation by permanently shuttering Zurixx.

Accordingly, Intervenors satisfy the second and third elements for intervention as of right: protectable contractual and constitutional interest and practical impairment.

C. Intervenors’ interests are not adequately represented by the parties

Finally, Intervenors are entitled to intervene in this action as a matter of right because their interests are not adequately represented by the parties. “Although an applicant for intervention as of right bears the burden of showing inadequate representation, that burden is the minimal one of showing that representation may be inadequate.” *Utah Ass’n of Ctys.*, 255 F.3d 1246, 1254 (10th

Cir. 2001) (quoting *Sanguine, Ltd. v. United States Dep't of Interior*, 736 F.2d 1416, 1419 (10th Cir. 1984)) (secondary quotation omitted). Here, neither the FTC nor Zurixx adequately represents Intervenors' interests.

The FTC is plainly not representing Intervenors' interests as it is actively working against the interests of Intervenors—the very consumers it purports to seek to protect. As detailed above, the FTC has failed to provide this Court with the perspective and experience of Zurixx's students and misrepresented the position of Intervenors. Therefore, Intervenors are compelled to present the Court with that evidence for themselves.

Although Intervenors generally support Zurixx in this action, Zurixx does not itself adequately represent Intervenors' interests. While Zurixx and Intervenors may be aligned as to the outcome of this litigation that they seek—the continuation of Zurixx's educational programs—they have independent interests and reasons for doing so. Intervenors seek the unhindered continuation of Zurixx's enterprise so that they can access the resources which they previously purchased including, but not limited to, the Online Resource Center, lifetime Zurixx advance course rights and Zurixx's customer support, irrespective of any business or profit interest of Zurixx. Further, with due respect to counsel for Zurixx, Zurixx's representation of Intervenors' interests has been shown already to be inadequate because, for example, Zurixx stipulated to the extension of the TRO and entry of the Preliminary Injunction and took other actions that were detrimental to Intervenors' interests, thereby depriving Intervenors of their rights and ability to access and use the Online Resource Center and the other benefits for which they have paid. Zurixx therefore has inadequately represented Intervenors' interests and Intervenors must be afforded the opportunity to present their case to the Court for themselves.

The final element of intervention as a matter of right is therefore satisfied. Accordingly, the Court should grant the Motion and allow Intervenors to intervene in this action pursuant to Federal Rule of Civil Procedure 24(a)(2).

III. Alternatively, the Court Should Permit Intervenors to Intervene Pursuant to Federal Rule of Civil Procedure 24(b)

In the event that the Court does not grant Intervenors' Motion pursuant to Federal Rule of Civil Procedure 24(a)(2), it should nevertheless permit Intervenors to intervene pursuant to Rule 24(b). In the case of permissive intervention, a movant need only demonstrate timeliness and that they have claims or defenses that share a common question of law or fact with the main action. *See, e.g., Union Pac. R.R. Co.*, 2020 U.S. Dist. LEXIS 172914, *11, 2020 WL 5634142; Fed. R. Civ. P. 24(b)(3)). Here, Intervenors' Motion is timely for the reasons discussed in Argument section I.A, above. Further, Intervenors' claim against the FTC as set forth in the proposed Complaint in Intervention plainly shares common questions of law and fact with the FTC's claims against Zurixx—namely, whether Zurixx has engaged in unfair or deceptive conduct that warrants relief that would effectively shut down Zurixx's operations and deny Intervenors and numerous other Zurixx students access to, *inter alia*, the Online Resource Center, lifetime Zurixx advance course rights and Zurixx's customer support. Intervenors' claims are based on the reality that Zurixx has not deceived or misled its students, that the students have received, and wish to continue to receive, exactly what they expected and paid for, and that Zurixx should be able to continue operating without the FTC's intrusion and hindrance. These rights, which are highly valued by the Intervenors, and countless other Zurixx students, are based on fundamental contractual and Constitutional principles, and are at the heart of these proceedings.

As such, even if Intervenors did not qualify for intervention as of right under Federal Rule of Civil Procedure 24(a)(2) (which they do), the Court should permit them to intervene pursuant to Rule 24(b).

CONCLUSION

For the reasons discussed above, the Court should grant the Motion, allow Intervenors to intervene, deem the attached Complaint in Intervention by Zurixx's students against the FTC to be filed as of the granting of the Motion and enter an order in the form proposed.

DATED: May 11, 2021

GOEBEL ANDERSON PC

/s/ Sam Meziani

Sam Meziani

and

Maurice R. Mitts

MITTS LAW, LLC

(Pro hac vice application forthcoming)

EXHIBIT A

Sam Meziani (9821)
GOEBEL ANDERSON PC
405 South Main Street, Ste. 200
Salt Lake City, Utah 84111
Telephone: (801) 441-6170
smeziani@gapclaw.com

**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.

BRIAN BANKS, BYRON W. ALDRINK,
POLAR PRUTASERANEE, JOSHUA
JACKSON, ANNELISE AGEE, AND
JEANNE RIETZKE, ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,

Intervenor-Plaintiffs,

v.

FEDERAL TRADE COMMISSION and
UTAH DIVISION OF CONSUMER
PROTECTION,

Intervenor-Defendants.

**INTERVENORS' CLASS ACTION
COMPLAINT FOR DECLARATORY
JUDGMENT**

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

District Judge Dale A. Kimball
Magistrate Judge Daphne A. Oberg

Intervenors Byron W. Aldrink, Polar Prutaseranee, Joshua Jackson, Annelise Agee, and Jeanne Rietzke, together with the additional individuals named on Exhibit A hereto (collectively, "Intervenors"), on behalf of themselves and all others similarly situated, bring this Complaint in

Intervention on their own behalf and as representatives for the class of students of Zurixx, LLC (“Zurixx”) against Defendants Federal Trade Commission (“FTC”) and the Utah Division of Consumer Protection (“UDCP”), seeking, *inter alia*, a declaration that Intervenor’s contractual agreements with Zurixx are legally valid, binding, and enforceable, and that Intervenor are constitutionally entitled to, and will continue to receive, the benefits and services from Zurixx for which they have paid and to which they are entitled without interference from the FTC or the UDCP.

The Parties

1. Intervenor Byron W. Aldrink is an adult individual and citizen of Michigan, residing at 607 S. Putnam Street, Williamston, Michigan 48895.
2. Intervenor Polar Prutaseranee is an adult individual and citizen of California, residing at 18874 Fowler Avenue, Santa Ana, California 92705.
3. Intervenor Joshua Jackson is an adult individual and citizen of Idaho, residing at 318 Oaktrail Drive, Rexburg, ID 83440.
4. Intervenor Annelise Agee is an adult individual and citizen of Ohio, residing at 1145 Cranford Avenue, Lakewood, Ohio 44107.
5. Intervenor Jeanne Rietzke is an adult individual and citizen of North Carolina, residing at is 219 Club Court, Wilmington, North Carolina 28412.
6. Defendant FTC is, upon information and belief, an agency of the United States government headquartered at 600 Pennsylvania Avenue NW, Washington, DC 20580.
7. Defendant UDCP is, upon information and belief, an agency of the State of Utah government headquartered at 160 East 300 South, Salt Lake City, UT 84114.

Jurisdiction and Venue

8. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 702.

9. This Court is empowered to decide the claim set forth herein pursuant to 28 U.S.C. § 2201.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2), as Intervenors' claims herein arise from the FTC and UDCP bringing an action against Zurixx in this Court and seeking relief from this Court which has interfered with Intervenors' receipt of the benefits of their contractual relationships with Zurixx.¹

Factual Background

11. On or about September 30, 2019, the FTC and UDCP initiated this action against Zurixx.

12. In this action, the FTC and UDCP have falsely claimed that Zurixx engages or has engaged in false and deceptive marketing practices, including misrepresenting the results a Zurixx education can generate for its students.

13. In this action, the FTC and UDCP applied for, and obtained, a Preliminary Injunction which greatly restricts Zurixx's activities and operations, which directly affects Zurixx's students, including Intervenors.

14. The FTC and UDCP also applied for, and obtained, the appointment of a Special Monitor, and then a Receiver, over Zurixx.

15. The Receiver has effectively terminated Zurixx's operations.

16. As noted above, each of the Intervenors is a student and customer of Zurixx.

17. Each of the Intervenors has utilized Zurixx's seminars, courses, and services and benefitted from Zurixx's advice and education regarding the real estate industry.

¹ For purposes of this Complaint, "Zurixx" refers to any or all of the corporate defendants in this action with whom Intervenors have contractual agreements for Zurixx's services.

18. In Intervenors' experience, Zurixx has been an honest and professional educator and service provider in the area of education regarding generating income through purchasing, renovating and reselling properties.

19. None of the Intervenors—nor, upon information and belief, any of Zurixx's thousands of other students, past and present—experienced any deception on the part of Zurixx in connection with Zurixx's advertising or marketing of its courses, nor in any promises by Zurixx of specific results that would be achieved from the application of Zurixx's strategies or methodologies.

20. The FTC and UDCP have alleged in this action that Zurixx has attempted to deceptively lure customers with "get rich quick" promises.

21. The FTC and UDCP's allegations in this action are false.

22. Each of the Intervenors in this action is an intelligent, competent adult capable of evaluating sales and marketing materials and presentations, determining for themselves the value of products or services being offered, and making purchasing and enrollment decisions accordingly.

23. The Intervenors have experienced firsthand Zurixx's training *and* Zurixx's disclosure of the risks associated with the real estate market.

24. Zurixx never promised the Intervenors or, upon information and belief, any other Zurixx students that they would "get rich quick" from real estate investment.

25. To the contrary, while the concept of purchasing a property, renovating, and reselling it for a profit is simple, it is not easy; time and effort is required to develop the skills necessary to effectively and profitably engage in this form of business.

26. The time and effort required to redevelop and resell properties successfully was fully disclosed and is consistently reinforced by Zurixx in all of its programs.

27. The time and effort required to redevelop and resell properties successfully is also what makes Zurixx's lifetime commitment to its students so valuable, as continued training is necessary to develop and maintain the skills necessary to become successful.

28. Among the benefits each of the Intervenor paid for, expected, and has been receiving from Zurixx is consistent, ongoing training and support, and lifelong access to Zurixx's in-person and online courses and training materials for supplemental or "refresher" training. Until the FTC and UDCP's interference with this education, Zurixx's students not only received continuing access to this education, but received it at no additional cost beyond their initial enrollment fee.

29. As noted above, each of the Intervenor has taken advantage of—and desires to continue taking advantage of—supplemental or "refresher" training from Zurixx after completing their initial courses.

30. Upon information and belief, there are numerous similar examples of Zurixx students taking advantage of this benefit of Zurixx's services.

31. Since the filing of this action by the FTC and UDCP, Intervenor and thousands of other Zurixx students have been deprived of the benefits of their status as students of Zurixx and pursuant to their contractual agreements with Zurixx.

32. The FTC and UDCP's actions in bringing this action and seeking and obtaining restraints on Zurixx's operations has deprived Intervenor and their fellow students of the opportunity to continue taking and benefiting from Zurixx's classes and invaluable education.

33. The FTC and UDCP's actions in bringing this action and seeking and obtaining restraints on Zurixx's operations infringe upon Intervenor's rights, including, *inter alia*, their right to free association and/or assembly under the First Amendment of the United States Constitution, and their right to contract.

34. As a result of the FTC and UDCP's actions, Intervenors and thousands of other Zurixx students are being, and will continue to be, deprived of the benefits of their relationship and association with Zurixx.

Class Allegations

35. This action is brought as a putative class actions pursuant to Rule 23 of the Federal Rules of Civil Procedure.

36. Upon information and belief, tens of thousands of Zurixx students have been, are being, and will be harmed by the FTC and UDCP's actions against Zurixx by having their rights and privileges to receive the educational services which they purchased from Zurixx interfered with, if not outright blocked, by the FTC and UDCP.

37. Specifically, but not exclusively, the receivership obtained by the FTC and UDCP has effectively terminated Zurixx's operations and deprived Intervenors and other students of Zurixx of access to Zurixx's services and education.

38. The proposed class in this action is composed of those thousands of Zurixx students whose rights are being impinged by the FTC and UDCP. Attached hereto as Exhibit A is a list of Zurixx students who have already engaged the undersigned counsel to intervene in this lawsuit and to have party status in order to protect their rights as customers and students of Zurixx, as well as their constitutional rights to Zurixx's curriculum and the free exchanges of information and ideas.

39. The proposed class is so numerous that joinder of each individual Zurixx student to this action would be impracticable.

40. The questions of law and/or fact brought before the Court in this action are common to Intervenors and all members of the proposed class, and Intervenors' claims are typical of the claims of the class.

41. Specifically, Intervenor seeks from the Court a declaration that Zurixx's students are entitled to continue receiving the benefits of their contracts and relations with Zurixx free from interference by the FTC and UDCP.

42. The claims of the Intervenor and the class involve common question of law and/or fact as to whether all parties' respective contracts and agreements with Zurixx are valid and enforceable, and whether Intervenor and the proposed class are therefore entitled to receive the benefits of their contracts with and relations to Zurixx.

43. Intervenor will adequately protect and represent the interests of all members of the proposed class and will vigorously pursue a judgment for the benefit of all members of the proposed class.

44. The FTC and UDCP have acted in a manner that applies generally to the entire proposed class, such that appropriate injunctive and/or declaratory relief is necessary regarding the class as a whole.

45. Specifically, the FTC and UDCP's actions against Zurixx threaten all Zurixx students (i.e., Intervenor and all other members of the proposed class) equally and in the same manner, in that the FTC and UDCP are attempting to interfere with or block all Zurixx students from receiving the ongoing education and benefits for which all Zurixx students have paid and which all Zurixx students have a right to receive.

46. Additionally, and/or in the alternative, the questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the instant controversy.

Count I – Declaratory Judgment

47. Intervenor hereby incorporate the foregoing allegations of this Complaint as if set forth fully herein.

48. Section 702 of Title 5, United States Code, provides, in relevant part: “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action ... is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States”

49. The Declaratory Judgment Act provides, in relevant part: “In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

50. By bringing this action and interfering with Zurixx’s operations, the FTC and UDCP, acting under color of governmental authority, have deprived Intervenors, and all of Zurixx’s other students, of the benefits to which they are entitled by virtue of their contracts and relationships with Zurixx.

51. The FTC and UDCP’s acts have violated Intervenors’ Constitutional and other rights, including their right to freely associate and/or assemble (with Zurixx, its instructors, and their fellow students) and their right to contract and to receive the benefits of their contracts with Zurixx.

52. In essence, the FTC and UDCP in this action seek to invalidate Intervenors’ and other Zurixx students’ contracts with Zurixx, depriving them of their benefits without either due process or compensation.

53. Intervenors seek a declaration of their rights as to their contractual relations with Zurixx—specifically, that their contracts are valid, binding, and enforceable, and that they are

entitled to receive the benefits thereof—specifically including, but not limited to, the right to receive continuing supplemental and “refresher” training from Zurixx.

54. In furtherance of the relief sought herein, Intervenor request that the Court enjoin the FTC and UDCP from taking any act which would interfere with or deprive Intervenor of the benefits of their contracts and relations with Zurixx and/or otherwise infringe upon Intervenor’s Constitutional and other rights.

WHEREFORE, Intervenor Brian Banks, Byron W. Aldrink, Polar Prutaseranee, Joshua Jackson, Annelise Agee, and Jeanne Rietzke, together with the additional individuals named on Exhibit A hereto, for themselves and others similarly situated, respectfully request that this Honorable Court enter judgment in their favor and against Defendants Federal Trade Commission and Utah Division of Consumer Protection: (1) declaring that Intervenor’s contracts with Zurixx are valid, binding, and enforceable; (2) enjoining the Federal Trade Commission and Utah Division of Consumer Protection from taking any acts which would infringe upon Intervenor’s rights, including, *inter alia*, their rights to receive the benefits of their contracts with Zurixx; and (3) awarding such other legal and equitable relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this ____ day of May, 2021.

GOEBEL ANDERSON PC

/s/ _____
Sam Meziani

and

Maurice R. Mitts
MITTS LAW, LLC
(*pro hac vice* motion forthcoming)

Attorneys for Intervenor

EXHIBIT A

EXHIBIT A

Frank Morabito	Tim/Pam Tichenor	Brian Banks
Philip Wist	Byron W. Aldrink	Polar Prutaseranee
Laiken Beckley	Brian Close	Timothy Strickland
Gerald Clemson	Stormy Munkirs	Bill Durfee
Grace Durfee	Anthony Mota	Jennho Goh
Meredith Louden	Debby Kay	Jill Winters
Gregory Jackson	Teresa Wall	Steve Pest
Carol Labbe	Rob Beene	Cathleen O'Connor
Albert Valdez	Dale Rhoades	Brenda Felsing
Joshua Jackson	Kaitlyn Phillips	Annelise Agee
Rebecca Wynn	David Rothschild	Eric Wynn
Jeanne Rietzke	Jamye T. Dollinger	Jacob West
Don Link	Bonnie Brown	Oneyda Gallardo

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

FEDERAL TRADE COMMISSION *et al.*,

Plaintiffs,

vs.

ZURIXX, LLC *et al.*,

Defendants.

**ORDER GRANTING PROPOSED
INTERVENORS' RULE 24 MOTION TO
INTERVENE**

Case No: 2:19-CV-00713-DAK-DAO

District Judge Dale A. Kimball
Magistrate Judge Daphne A. Oberg

ORDER

Before the Court is the Proposed Intervenor's Motion to Intervene, requesting that students of Defendant Zurixx, LLC be granted leave to intervene in the above-captioned action pursuant to Federal Rule of Civil Procedure 24, with accompanying Class Action Complaint in Intervention for Declaratory Judgment ("Intervenor's Complaint"). Having considered the Motion, and all submissions and arguments in support of and in opposition to the Motion, it is hereby **ORDERED** that the Motion is **GRANTED**.

It is accordingly **FURTHER ORDERED** that Intervenor's Complaint is hereby deemed accepted and filed as of the date of this Order.

DATED this ____ day of May, 2021.

BY THE COURT:
