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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, et al. Defendants.	**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO RELIEF UNDER SECTION 13(b) AND BODA** Case No.: 2:19-cv-00713-DAK-DAO Judge Dale Kimball Magistrate Judge Daphne A. Oberg

RELIEF SOUGHT AND GROUNDS FOR MOTION

Pursuant to Federal Rule of Civil Procedure 56, Defendants Zurixx, LLC, Brand Management Holdings, LLC, CAC Investment Ventures, LLC, CAC Investment Ventures, LLC (Puerto Rico) 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 (collectively, "Defendants"), by and through undersigned counsel, hereby move this Court for an order of partial summary judgment holding that the Federal Trade Commission ("FTC") is not entitled to equitable monetary relief under Section 13(b) of the FTC Act, 15 U.S.C. § 53, and that the Utah Division of Consumer Protection ("the Division") is not entitled to any monetary relief under the Utah Business Opportunity Disclosure Act ("BODA").

Plaintiffs in this case seek to recover hundreds of millions of dollars from Defendants under Section 13(b) of the FTC Act and BODA. On April 22, 2021, in a unanimous opinion, the United States Supreme Court rejected the FTC's position that it is entitled to seek monetary relief under Section 13(b) of the FTC Act. *AMG Cap. Mgmt., LLC v. Federal Trade Commission*, 141 S. Ct. 1341, 1347 (2021). In doing so, the Court clearly and unequivocally adopted the position Defendants have consistently advanced throughout this case—the FTC's claim for monetary relief under Section 13(b) is improper and unauthorized.

The Supreme Court's statutory analysis in *AMG* applies with full force to the Division's claim for monetary relief under BODA. Under BODA's express terms, only the "division director may impose an administrative fine," and penalties may not be imposed unless the party has violated a "cease and desist order." Utah Code §§ 13-15-6, 13-15-7. As discussed below,

the Division impermissibly asks this court to issue fines for alleged BODA violations and seeks civil penalties without satisfying these statutory prerequisites, *i.e.*, commencing an administrative proceeding or issuing a cease and desist order. Thus, under Utah law, the Division is not authorized to impose fines or seek civil penalties against Defendants for the same reason the FTC is precluded from seeking monetary relief under Section 13(b)—the relevant statute does not allow it.

There is no genuine dispute of material facts, and the respective statutes (Section 13(b) of the FTC Act and the BODA) do not provide for the monetary relief that Plaintiffs seek from Defendants. Accordingly, Defendants' motion should be granted.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. The FTC is seeking an equitable monetary judgment of approximately $530 million for "equitable redress and restitution for consumers and disgorgement of Defendants' ill-gotten gains" under Section 13(b) of the FTC Act for violations of Section 5 of the FTC Act under Counts I, II, III, and IV of the Second Amended Complaint (the "Complaint"). (*See* Second Amended Complaint, Dkt. 219, at pp. 37-40, 52, 53-54; Plaintiffs' Supplemental Initial Disclosures (July 23, 2020), at p. 12, submitted herewith as Exhibit A to Appendix of Evidence.)

2. In the Prayer for Relief in the Complaint, the Division states that it seeks "civil penalties for each violation of . . . the BODA." The Division did *not* plead in the Prayer for Relief that it seeks fines under the BODA. (*See* Second Amended Complaint at p. 54.)

3. The Division did not issue a cease and desist order to any of the Defendants for purported violations of the BODA prior to commencing this action. (*See* Division's Responses

to Zurixx Defendants' First Set of Requests for Admission (April 19, 2021), at p. 24, submitted herewith as Exhibit B to Appendix of Evidence.)

ARGUMENT

I. Standard for Partial Summary Judgment

Under Federal Rule of Civil Procedure 56, the court shall grant summary judgment when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[S]ummary judgment is proper if, viewing the evidence in the light most favorable to the non-moving party, there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Patel v. Hall*, 849 F.3d 970, 978 (10th Cir. 2017).

Summary judgment may be granted as to "each claim or defense – or the part of each claim or defense – on which summary judgment is sought." Fed. R. Civ. P. 56(a). Accordingly, "the plain language of Rule 56 allows a court to grant partial summary judgment on a portion of a claim[,]" including the remedy sought. *Chevron Pipe Line Co. v. Pacificorp*, 2017 WL 3913255, at *2 (D. Utah Sept. 6, 2017). Indeed, the court may "enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case." Fed R. Civ. P. 56(g). Here, it is undisputed that Plaintiffs seek equitable monetary relief under Section 13(b) of the FTC Act and fines and civil penalties under BODA. The problem is that neither the FTC nor the Division are entitled to the monetary relief they seek as a matter of law.

II. The FTC Is Not Entitled to Monetary Relief under Section 13(b).

Late last month, the Supreme Court held that the FTC lacks the statutory authority to obtain equitable monetary relief under Section 13(b). *See AMG*, 141 S. Ct. 1341. Throughout this litigation, the FTC has contended that it is entitled to recover a monetary judgment of approximately $530 million from Defendants, jointly and severally, under Section 13(b) of the FTC Act for violations of Section 5 of the FTC Act under Counts I, II, III, and IV of the Complaint. In denying Defendants' Partial Motion to Dismiss on this very issue, this Court agreed with the FTC that binding Tenth Circuit precedent permitted the FTC to seek monetary equitable relief under Section 13(b). (*See* February 26, 2020 Memorandum Decision and Order, Dkt. 112, at pp.6-12 (citing *FTC v. Freecom Comm'ns, Inc.*, 401 F.3d 1192 (10th Cir. 2005)). Overruling *Freecom*, the Supreme Court has now made clear that "§ 13(b)'s 'permanent injunction' language does not authorize the Commission directly to obtain court-ordered monetary relief." *AMG*, 141 S.Ct. at 1347. The Court should therefore grant Defendants' Motion for Partial Summary Judgment, holding as a matter of law that the FTC is statutorily prohibited from seeking any monetary relief from Defendants under Section 13(b).

III. The Division Is Not Entitled to Fines or Penalties under the BODA.

In a similar effort to obtain relief beyond that authorized by statute, the Division seeks to impose either fines or civil penalties—or both—on Defendants. (*See* Complaint.) The Court need not resolve the precise relief the Division seeks for Defendants' alleged BODA violations because the Division is not entitled to either as a matter of law.

As for fines, in the BODA, the Utah Legislature authorized "the division director," but not this court, to "impose an administrative fine of up to $2,500 for each violation of [BODA]."

Utah Code § 13-15-6(4). Courts in the Tenth Circuit look to relevant state court decisions to determine the scope of a state agency's statutory authority. *See Woodard v. Jefferson Cty.*, 18 F. App'x 706, 712-13 (10th Cir. 2001) (unpublished) ("[A]dministrative agencies are creatures of statute and their power is dependent upon authorizing statutes, therefore any exercise of authority claimed by the agency must come from within the statutes."). In Utah, when the legislature vests statutory authority in a state agency, "the powers are limited to such as are specifically mentioned." *Heber Light & Power Co. v. Utah Pub. Serv. Comm'n*, 231 P.3d 1203, 1208 (Utah 2010) (cleaned up). The statute's express identification of the "division director" as the individual authorized to impose administrative fines indicates that the Utah legislature chose not to authorize the Division to seek fines in court. Therefore, the Division is not entitled to seek fines for BODA violations from this Court.

As for penalties, under Utah Code § 13-15-7, the Division's ability to recover civil penalties is limited to cases where someone "violates any cease and desist order issued under [BODA.]" The Division, however, has admitted that it never issued a cease and desist order to any of the Defendants for BODA violations. (*See* Ex. B.) The absence of a cease and desist order forecloses the Division's claim for civil penalties under BODA in this case.

Therefore, the court should grant summary judgment in Defendants' favor as to the Division's claim for monetary relief—whether categorized as fines or civil penalties—under BODA.

CONCLUSION

Based on the foregoing, the Court should grant Defendants' Motion for Partial Summary Judgment. Specifically, the Court should enter an order stating that the FTC is not entitled to

any equitable monetary relief under Section 13(b) and that the Division is not entitled to any monetary relief under BODA.

DATED this 12th day of May, 2021.

/s/ Z. Ryan Pahnke

Z. Ryan Pahnke
RAY QUINNEY & NEBEKER P.C.

Eric G. Benson
POTTER HANDY, LLP

D. Loren Washburn
ARMSTRONG TEASDALE, LLP

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May, 2021, I caused a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO RELIEF UNDER SECTION 13(b) AND BODA** to be filed electronically with the Court, which provides notice of the electronic filing to counsel of record in this matter.

/s/ Z. Ryan Pahnke

1566234

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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, et al. Defendants.	**APPENDIX OF EVIDENCE SUPPORTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO RELIEF UNDER SECTION 13(b) AND BODA** Case No.: 2:19-cv-00713-DAK-DAO Judge Dale Kimball Magistrate Judge Daphne A. Oberg

As required by DUCivR 56-1(b)(5), Defendants submit this Appendix of Evidence with the evidence offered in support of their motion for partial summary judgment as to relief under section 13(b) and BODA.

Exhibit #	Description
A.	2020 0723 Plaintiffs' Supplemental Initial Disclosures Under FRCP 26(a)(1)
B.	2021 0419 Plaintiff Utah Division of Consumer Protections' Responses to Zurixx Defendants' First Set of Requests for Admissions

DATED this 12th day of May, 2021.

/s/ Z. Ryan Pahnke
Z. Ryan Pahnke
RAY QUINNEY & NEBEKER P.C.

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EXHIBIT A

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

FEDERAL TRADE COMMISSION, and UTAH DIVISION OF CONSUMER PROTECTION, Plaintiffs, vs. ZURIXX, LLC, et al. Defendants.	**Case Number: 2:19-cv-00713-DAK-DAO**

PLAINTIFFS' SUPPLEMENTAL INITIAL DISCLOSURES UNDER FRCP 26(a)(1)

Pursuant to Federal Rule of Civil Procedure 26(a)(1) and the Scheduling Order entered by the Court on June 22, 2020 (ECF No. 151), Plaintiffs Federal Trade Commission ("FTC") and Utah Division of Consumer Protection ("Division") make the following Supplemental Initial Disclosures. Plaintiffs expressly reserve the right to clarify, revise, or correct any or all of the following at any time. Pursuant to Federal Rule of Civil Procedure 26(e), Plaintiffs will supplement these disclosures as necessary.

I. DISCLOSURES PURSUANT TO FRCP 26(a)(1)(A)(i)

Plaintiffs are aware of numerous individuals likely to have discoverable information that Plaintiffs may use to support their claims against Defendants. Plaintiffs are engaged in discovery to obtain additional information concerning the identities of individuals with information that may support Plaintiffs' claims. Accordingly, Plaintiffs make the following disclosures based upon information reasonably available to them at this time and will amend the disclosures upon discovery of additional information. Individuals likely to have discoverable information are identified below:

A. Consumers

Consumers who have attended Zurixx's free events and 3-day workshops, or who have purchased Zurixx's advanced packages and coaching or mentoring sessions are each likely to have discoverable information that Plaintiffs may use to support their claims, including without limitation information about Zurixx's deceptive earnings claims and other misrepresentations, the failure of the company's flipping strategies to produce thousands of dollars in income while requiring little time or effort to execute, the unavailability of 100% funding for customers' real estate deals, the undisclosed terms of the company's refund policy, and the failure of the Defendants to provide consumers with required BODA disclosures.

1. *Consumer Declarants*

These consumers include without limitation the following individuals who submitted declarations in support of Plaintiffs' TRO Motion:

Jessica Anderson
11533 213th St.
Lakewood, California 90715
(562) 882-4334

Cassandra Birocco
8 Milton St.
Johnston, Rhode Island 02919
(401) 480-0088

Kelly Campbell
1207 Shadow Hills Dr
Wylie, Texas 75098
(972) 675-0743

DeAnn Dutton
432 E Idaho St, Suite C-239
Kalispell, Montana 59901
(406) 431-4612

William Eberhard
2587 University Blvd
Cleveland, Ohio
(216) 513-1300

David Elliott
17383 Sunset Blvd A230
Pacific Palisades, California 90272
(818) 514-2599

Kathleen Ertmer
7185 Jacquis Rd.
Winneconne, Wisconsin 54986
(920) 420-4360

Christopher Fenrich
11510 Tupelo Street
Reno, Nevada 89506
(775) 225-9672

Corina Ferrer
10115 Wystone Ave
Northridge, California 91324
(818) 300-8095

Richard John
5345 Chenin Blanc Place
Vallejo, California 94590
(707) 643-3714

Kathy Johnson
339 Pardner Lane
Taylorsville, Kentucky 40071
(502) 773-0446

Thomas Kimura
PO Box 1111
Medford, Oregon 97501
(541) 646-2406

Karl Arthur King
4283 Bay Rd.
Blaine, Washington 98230.
(360) 303-1176

Tzachi Litov
3831 145th Ave SE
Bellevue, Washington 98006

Laurie Majewski
2330 Brookeridge dr.
Toledo, Ohio 43613
(419) 304-6619

Norma Martinez
1707 S. 8th Ave
Yakima, Washington 98902
(509) 728-7644

Catherine Murry
3833 Sirah Ct.
St. Charles, Missouri 63304
(636) 541-2438

Jerry Douglas Purcell
175 Golf Club Dr.
Key West, Florida 33040
(720) 363-7066

Susan Rowe
340 E Fray St.
Englewood, Florida 34223
(941) 681-1006

John T Sakevich
6 Arlene Dr
Monroe, New Jersey 08831
(718) 757-2918

Tony To
921 52nd St SE
Everett, Washington 98203
(253) 655-7192

Audra Turner
PO Box 230653
Portland, Oregon 97281
(503) 781-6521

Carolyn Vilela
79 W 19th St.
Huntington Station, New York 11746
(516) 810-3477

Andrew Ziebro
4512 Fulton Rd
Cleveland, Ohio 44144
(440) 541-2692

2. *Additional Consumers Whose Complaints Are Within Plaintiffs' Possession*

Additional consumers who may have discoverable information have submitted complaints to Plaintiffs FTC and Division in various forms. Many of these complaints against Zurixx are stored in the FTC's Consumer Sentinel database. Consumer Sentinel is the FTC's central consumer complaint database. It includes consumer complaints mailed to the FTC, entered on the FTC's web site (www.ftc.gov), and telephoned to the FTC (877-FTC-Help). The Consumer Sentinel database also includes complaints forwarded by or entered directly into the database by a number of other law enforcement authorities such as state attorneys general, and consumer protection organizations around the world, such as Better Business Bureaus.

3. *Consumers Identified in Zurixx's Customer Service Database*

In addition to the consumers listed above, numerous other consumers who are likely to have discoverable information are identified in Zurixx's customer service database, including without limitation the interfaces known as the "Sugar database." Plaintiffs have obtained access to this database from the Receiver.

B. Defendants and Entities Related to Defendants

Each individual Defendant is likely to have discoverable information that Plaintiffs may use to support their claims, including without limitation information about the individual and corporate Defendants' business operations, Defendants' policies and procedures, the relationships among Defendants, Defendants' finances, each individual Defendant's control and knowledge of the corporate Defendants' business operations, and Defendants' interactions with law enforcement and regulatory authorities. Corporations, limited liability companies, partnerships, and other entities owned or controlled by, or formerly owned or controlled by Defendants, and current and former officers, owners, managers, trustees, or beneficiaries of such entities are also likely to have discoverable information that Plaintiffs may use to support their claims.

C. Defendants' Officers, Employees, Independent Contractors, Consultants, Business Partners, Experts, and Outside Vendors

Employees of Defendants and entities controlled by Defendants, Defendants' independent contractors, consultants, business partners, experts, and outside vendors are likely to have information that Plaintiffs may use to support their claims, including without limitation information about the individual and corporate Defendants' business operations, Defendants' policies and procedures, the relationships among Defendants, Defendants' finances, each individual Defendant's control and knowledge of the corporate Defendants' business operations, and Defendants' interactions with law enforcement and regulatory authorities. These individuals and entities, and their contact information known to Plaintiffs, include without limitation those listed in James Carlson's Affidavit, which is Attachment A.

In addition, Plaintiffs are aware that Defendants did business with the following companies and individuals that are not listed in Attachment A.

Association for Talent Development

BDO USA, LLP
1302 Avenida Juan Ponce de León
Santurce, Puerto Rico 00907
330 North Wabash Avenue
Chicago, Illinois 60611

Carla Jean Reyes, as Trustee of the Sofia Reyes Descendants Trust

Chuckanut Bay Investments, LLC
2321 Rosecrans Ave Ste 3225
El Segundo, California 90245-4982

Economics Partners LLC
1999 Broadway, Suite 3250
Denver, Colorado 80202

Equimine

Lani M. Pollock
217 42nd St
Manhattan Beach, Calfornia 90266

Richardson Law Group, PC
2321 Rosecrans Ave Ste 3225
El Segundo, California 90245-4982

Peczuh Printing
355 East 100 South
Price, Utah 84501

Social Revenue Marketing
167 Calle 25 De Julio
Guanica, Puerto Rico 00653

Sofia Reyes Descendants Trust

The Receiver in this matter may also have contact information for the foregoing individuals and entities.

D. Defendants' Accountant(s)

Defendants' accountants are likely to have discoverable information that Plaintiffs may use to support their claims, including without limitation information about the Defendants' business operations, Defendants' policies and procedures, the relationships among Defendants, Defendants' finances, individual Defendants' control and knowledge of the corporate Defendants' business operations, and Defendants' interactions with law enforcement and regulatory authorities. Plaintiffs are currently aware of the following accountants that provided services to the Defendants:

Squire & Company, PC
Dwayne Asay
1329 South 800 East
Orem, UT 84097

LLM&D
Luis Lomba
165 Ponce de Leon Ave
2nd Floor
San Juan Puerto Rico, PR 00917-1233

E. Financial Institutions, Entities Holding Assets and Entities with Possible Knowledge Regarding Assets

Financial institutions used by Defendants, and other entities or individuals holding assets of Defendants or records of assets held by Defendants, such as those identified below, are likely to have discoverable information that Plaintiffs may use to support their claims, including without limitation information about the financial operations of the corporate Defendants, the assets and liabilities of the Defendants, the financial relationship between the corporate Defendants and each individual Defendant, and the individual Defendants' control and knowledge of the corporate defendants' activities. The identities and contact information of such financial institutions and other asset holders and their employees and agents are in the possession of the Defendants.

F. Defendants' Attorneys

Defendants' attorneys and their employees and agents are likely to have discoverable information that Plaintiffs' may use to support their claims, including without limitation information about the Defendants' business operations, Defendants' policies and procedures, the relationships among Defendants, Defendants' finances, each individual Defendant's control and knowledge of the corporate Defendants' business operations, and Defendants' interactions with law enforcement and regulatory authorities. Such attorneys include without limitation those listed in James Carlson's Affidavit, which is Attachment A.

G. Individual Defendants' Relatives, and Spouses

During their investigation and after litigation commenced, Plaintiffs became aware of a number of business associates of one or more of the individual Defendants. These business associates may have discoverable information. Plaintiffs are providing contact information where they have it. However, Defendants are in a better position to know the contact information for their business associates because they either did business with them or are related to them. Attachment A contains contact information for various individuals and entities, some which are Defendants' business associates.

In addition, Defendants' spouses or companions (Leah Gonzalez and Stephenie Spangler), ex-spouses (Mary Cates Carlson and Jennifer Cannon) and relatives (e.g., Hunter Cannon, Eric Carlson, Niclas Carlson, Rylee O'Laughlin, Lacie Spangler) may have discoverable information.

H. Plaintiffs' Staffs

Plaintiffs' investigators and other staff have discoverable information that Plaintiffs may use to support their claims, including without limitation information about the Defendants' business operations, Defendants' policies and procedures, the relationships among Defendants, Defendants' finances, individual Defendants' control and knowledge of the corporate Defendants' business operations, and Defendants' interactions with law enforcement and regulatory authorities.

Current and former FTC investigators Christine Barker, Yasser Dandashly, Diana Shiller, Kelle Slaughter, and Darren Wright, and paralegals Maria Bazan and Amber Howe, have investigated Defendants and their business practices. Communications with these individuals should be made via FTC counsel.

Current and former Utah DCP investigators, including without limitation Michael Pitts, Nate Kanbe, Adam Watson, Glen Minson, Blake Young, Robert Porter, Holt Terburg, Steve Petersen, and Spencer Heward, and commerce analysts Leigh Veillette and Daniel Larsen, have investigated Defendants and their business practices. Furthermore, Utah DCP licensors, including without limitation Marcia Corak, have reviewed Defendants' telemarketing applications. Communications with these individuals should be made via Division counsel.

I. Non-Consumer Declarant

Plaintiffs' expert, whose contact information is listed below, also has discoverable information that Plaintiffs may use to support their claims:

Teo Nicolais, President
Nicolais, LLC
7675 West 14th Avenue, Suite 204
Lakewood, Colorado 80214

In addition to serving as an expert, Mr. Nicolais attended one of Defendants' 3-day workshops, and he has personal knowledge of, among other things, representations made by Defendants' personnel during that workshop.

II. DISCLOSURES PURSUANT TO FRCP 26(a)(1)(A)(ii)

Plaintiffs have documents and data compilations ("documents") in their possession, custody, or control that they may use to support their claims against Defendants. These documents include without limitation the following:

A. Consumer Declarations and Complaints

As discussed in Section I.A above, both before and after September 30, 2019, Plaintiffs FTC and Division have received complaints from consumers regarding Defendants' business practices. Plaintiffs have obtained declarations from some of those consumers, and they filed those declarations in support of their Motion for *Ex Parte* Temporary Restraining Order.

B. Documents Obtained Through the October 2019 Immediate Access

During the October 2019 immediate access, the FTC obtained hard-copy documents and electronically stored information from the Defendants' business premises in Cottonwood Heights, Utah. These hard-copy documents and electronically stored information are in the FTC's possession, and they are also available from the Court-appointed Receiver.

The hard-copy documents in the FTC's possession include without limitation those taken from the offices and cubicles of Shane Andrus, Carter Brown, Cristopher Cannon, James Carlson, Denise Easter, Brett Ehlers, Jeremy Hymas, Janis Kershaw, Matt Magistro, Balaji Mudliar, Sean Mangold, Jeffrey Spangler, Ann Rebentisch, and Andrew Way. Other hard-copy documents were copied from the desk of the receptionist and from file drawers in the middle of the Executive Suite.

The electronically stored information in the FTC's possession includes without limitation documents from the following custodians, drives, and folders: 4TB Seagate, Shane Andrus, Cristopher Cannon, James Carlson, jamesmichaelcarlson@gmail.com, Denise Easter, Janis Kershaw, Jeffrey Spangler, Targeted Emails, Targeted Shares, and Uriel Canterero.

The FTC also obtained, as a result of the immediate access, copies of certain of Defendants' telesales and coaching recordings.

B. Documents Produced by Defendants Pursuant to the TRO or Stipulated Preliminary Injunction

Defendants produced financial statements and various income tax returns. In light of privacy concerns, Plaintiffs will not provide any individual Defendant's financial statements and tax returns to other parties without written authorization.

C. Documents Produced by Non-Parties

The FTC has been receiving documents in response to third-party subpoenas served during the course of this litigation. These third parties include without limitation the following:

Christina Anstead and Tarek El Moussa;

Electronic Retailing Self-Regulation Program;
Equimine;
Mina Hawk;
Hilary Farr Entertainment Inc.;
Karen Laine;
Property Farm & Doug Hopkins;
David Seymour;
Peter Souhleris; and
Squire & Company.

The FTC also has received documents or responses from non-parties that were produced in response to the TRO or Stipulated Preliminary Injunction. Finally, the FTC received and has in its possession documents that were produced voluntarily by certain non-parties, including without limitation the following:

American Express;
Banco Popular;
Bank of America;
Brinker Capital;
Commercial Bank of California;
Chesapeake Bank;
Complete Merchant Solutions, LLC;
Electronic Merchant Systems;
Equity Trust Company;
Fidelity Investments;
First Bank;
JP Morgan;
Lincoln Financial Group;
MassMutual;
Merrick Bank;
Mountain America Credit Union;
PayPal;
PaySafe;
QualPay, Inc;
Total System Services, LLC;
UBS Financial Services, Inc.;
Wells Fargo Bank, NA;
Whittenburg Wealth Partners; and
Zions Bank.

D. Documents Provided by the Receiver

The FTC received certain of the Defendants' documents and/or data from the Receiver, including without limitation tax and financial documents, certain of corporate Defendants' organizational documents, and access to Defendants' PBX, which contains recordings of certain of Defendants' telesales and coaching calls. The FTC also recently obtained, through the Receiver, the contents of server containing emails from a number of Zurixx email accounts.

In addition to the documents noted above, the Receiver may have other documents, including without limitation recordings of events that took place after the TRO was entered; those documents, however, are not in the FTC's possession, custody, or control.

E. Documents in the Possession of the Division

The Division also has in its possession documents obtained or created during the course of its investigation, including without limitation audio recordings, images and photographs, notes, materials, captures of web pages, electronic correspondence, telephone scripts, spreadsheets, and contracts. These documents further include documents obtained or created following the Court's issuance of the TRO (e.g., audio recordings, notes, and materials from Defendants' events in Las Vegas, Nevada, and San Mateo, California, which occurred during the week of October 7, 2019).

III. DISCLOSURES PURSUANT TO FRCP 26(a)(1)(A)(iii)

Plaintiffs seek equitable redress and restitution for consumers and disgorgement of Defendants' ill-gotten gains. Such redress, restitution and disgorgement will be based on the total amount consumers have paid Zurixx for real estate products and services, less any refunds and chargebacks Zurixx already provided to consumers with respect to those products and services. At this early point in the litigation, Plaintiffs estimate the total amount of unreimbursed consumer injury to be approximately $530 million.

In addition, the Division seeks civil penalties in an amount to be determined by the Court after further development of the record of the Defendant's violations of the Utah Consumer Sales Practices Act and the Business Opportunity Disclosure Act, and costs.

Plaintiffs also seek relief, including without limitation damages, for Defendants' violations of the Telemarketing Sales Rule. The proper measure(s) and amount(s) of such damages, will be determined by the Court after further development of the record of Defendants' TSR violations.

July 23, 2020.

/s/ *Joshua Doan*
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CERTIFICATE OF SERVICE

I hereby certify that I have, on July 23, 2020, caused the Plaintiffs' Supplemental Initial Disclosures to be served by email on the following:

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

FEDERAL TRADE COMMISSION, and UTAH DIVISION OF CONSUMER PROTECTION, Plaintiffs, vs. ZURIXX, LLC, a Utah limited liability company, CARLSON DEVELOPMENT GROUP, LLC, a Utah limited liability company, CJ SEMINAR HOLDINGS, LLC, a Utah limited liability company, ZURIXX FINANCIAL, LLC, a Utah limited liability company, CRISTOPHER A. CANNON, individually and as an officer of ZURIXX, LLC,	**PLAINTIFF UTAH DIVISION OF CONSUMER PROTECTION'S RESPONSES TO ZURIXX DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSIONS** Case Number: 2:19-cv-00713-DAK Judge Dale Kimball Magistrate Judge Evelyn Furse

JAMES M. CARLSON, individually and as an officer of ZURIXX, LLC, and JEFFREY D. SPANGLER, individually and as an officer of ZURIXX, LLC Defendants.	

Pursuant to Federal Rules of Civil Procedure 26 and 36, Plaintiff Utah Division of Consumer Protection, submits its Objections and Responses to the Zurixx Defendants'[1] First Set of Requests for Admission (the "Requests") to the Utah Division of Consumer Protection ("Division").

GENERAL OBJECTIONS

1. The Division objects to the Requests to the extent they request information protected by the attorney-client privilege, the work product doctrine, the common interest privilege, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, or any other applicable privilege of law. The Division objects to the Requests to the extent they request information classified as private, controlled, or protected pursuant to Utah Code 63G-2-302 through -305, which is privileged from discovery absent the court order required by Utah Code 63G-2-207(2)(a). The Division does not intend to waive any of the privileges asserted in this

[1] The "Zurixx Defendants" are Defendants Zurixx, LLC, Brand Management Holdings, LLC, CAC Investment Ventures, LLC (Utah), CAC Investment Ventures, LLC (Puerto Rico), Carlson Development Group, LLC (Utah), Carlson Development Group, LLC (Puerto Rico), CJ Seminar Holdings, LLC, Dorado Marketing and Management, LLC, Zurixx Financial, LLC (Utah), Zurixx Financial, LLC (Puerto Rico), Cristopher A. Cannon, James M. Carlson, and Jeffrey D. Spangler. In this document, the Zurixx Defendants are sometimes referred to as simply "Defendants."

objection by any inadvertent reference to, or production of, protected documents or information that may occur, and reserves the right to seek the return of any such material inadvertently produced to Defendants. The documents and information for which the Division asserts these privileges include but are not limited to: (a) communications between Plaintiffs; (b) communications between the Division and any law enforcement agency; (c) drafts of pleadings; (d) internal documents circulated among Plaintiffs; and (e) other notes and documents prepared for or in anticipation of litigation by Plaintiffs.

2. The Division objects to the Requests to the extent they seek information that is not relevant to any party's claims or defenses and proportional to the needs of the case, impose undue burden and expense, or are otherwise beyond the scope of allowable discovery under Rule 26(b) of the Federal Rules of Civil Procedure.

3. The Division objects to the Requests to the extent they are vague and ambiguous.

4. The Division objects to the Requests to the extent that they seek to require the Division to admit any request based on information that is not within the Division's possession, custody, or control.

5. The Division's Responses and Objections should not be construed to limit the Division's basis for any relief sought from Defendants in this action.

6. The Division's responses are based on the investigation and discovery to date. Discovery is ongoing, that the Defendants as well as third parties are still producing documents, and that the Defendants have improperly delayed producing documents in this case. Further, the Division recently has been granted access to documents and other materials in the custody and control of the Court-appointed Receiver. As of the date of these Responses, the Division has not

reviewed these materials in their entirety. Accordingly, the Division expressly reserves its right to supplement, revise, modify, or otherwise change or amend its Responses based on new facts obtained though further discovery.

7. In providing these Responses, the Division does not waive, but rather preserves all objections, including: (1) any objections to the competency, relevance, materiality, privilege, authenticity, or admissibility of evidence or other information referenced herein; and (2) the right to object on any ground to the use of information produced herein at any hearing or trial.

8. Each of the above-listed General Objections is incorporated by reference to each specific answer and objections set forth below. The specific responses and objections set forth below are made without waiving any of the above-listed General Objections.

RESPONSES TO REQUESTS FOR ADMISSION

REQUEST NO. 1

Admit that Defendants provided refunds to certain students.

REQUEST FOR ADMISSION NO. 1 RESPONSE**:** The Division objects to the Request because it seeks an admission regarding financial transactions involving other parties to this litigation and non-parties, rather than the Division. The Division also objects to the Request as vague and ambiguous, including without limitation in its (a) use of the phrase "certain students" without specifying which customers are encompassed within the Request; (b) failure to distinguish between full and partial refunds; (c) failure to distinguish among the various products and services Defendants sold; (d) failure to distinguish between funds Defendants voluntarily returned to customers and those they returned only after a governmental entity or the BBB

intervened in a customer's behalf; and (e) failure to specify whether "refunds" include chargebacks. The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. Subject to and without waiving the foregoing objections, the Division admits that Defendants provided partial refunds to a limited number of consumers. Consumers who received refunds, however, received those refunds under extremely limited circumstances and only after complying with onerous requirements. Not all consumers who received refunds received all of the money that they had paid to Defendants.

REQUEST NO. 2

Admit that Defendants provided refunds to certain students pursuant to Defendants' money-back guarantees.

REQUEST FOR ADMISSION NO. 2 RESPONSE**:** The Division objects to the Request because it seeks an admission regarding financial transactions involving other parties to this litigation and non-parties, rather than the Division. The Division also objects to the Request as vague and ambiguous, including without limitation in its (a) use of the phrase "certain students" without specifying which customers are encompassed within the Request; (b) failure to distinguish between full and partial refunds; (c) failure to distinguish among the various products and services Defendants sold; (d) failure to distinguish between funds Defendants voluntarily returned to customers and those they returned only after a governmental entity or the BBB intervened in a customer's behalf; (e) failure to specify whether "refunds" include chargebacks; and (f) use of the phrase "money-back guarantees," since, for example, Defendants claimed to have money-back guarantees that covered more than one circumstance. The Division objects to

Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. Subject to and without waiving the foregoing objections, the Division states that the information the Division knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient response to Plaintiffs' Interrogatory No. 5.

REQUEST NO. 3

Admit that Defendants provided refunds to certain students without those students having to sign any settlement agreement.

REQUEST FOR ADMISSION NO. 3 RESPONSE**:** The Division objects to the Request because it seeks an admission regarding financial transactions involving other parties to this litigation and non-parties, and not the Division. The Division also objects to the Request as vague and ambiguous, including without limitation in its (a) use of the phrase "certain students" without specifying which customers are encompassed within the Request; (b) failure to distinguish between full and partial refunds; (c) failure to distinguish among the various products and services Defendants sold; (d) failure to distinguish between funds Defendants voluntarily returned to customers and those they returned only after a governmental entity or the BBB intervened in a customer's behalf; and (e) failure to specify whether "refunds" include chargebacks. The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. Subject to and without waiving the foregoing objections, the Division admits that in at least one instance Defendants returned a customer's payment for the 3-day Workshop without requiring the customer to sign a settlement agreement, and that in at least three instances a customer

reported that Defendants returned a portion of the customer's payment for an advanced package and/or coaching services but did not report being required to sign a settlement agreement.

REQUEST NO. 4

Admit that Defendants provided a refund to every student who submitted, and complied with the qualifications for, Defendants' money-back guarantees.

REQUEST FOR ADMISSION NO. 4 RESPONSE**:** The Division objects to the Request because it seeks an admission regarding financial transactions involving other parties to this litigation and non-parties, rather than the Division. The Division also objects to the Request as vague and ambiguous, including without limitation in its (a) use of the phrase "certain students" without specifying which customers are encompassed within the Request; (b) failure to distinguish between full and partial refunds; (c) failure to distinguish among the various products and services Defendants sold; (d) failure to distinguish between funds Defendants voluntarily returned to customers and those they returned only after a governmental entity or the BBB intervened in a customer's behalf; (e) failure to specify whether "refunds" include chargebacks; and (f) use of the phrase "money back guarantees," since, for example, Defendants claimed to have money-back guarantees that covered more than one circumstance. The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. Subject to and without waiving its objections, the Division responds: Deny. Numerous consumers have complained to the Division that they requested refunds and were denied those refunds. In fact, Defendants sued some consumers who requested refunds.

REQUEST NO. 5

Admit that Defendants provided refunds to certain students past those customers' contractual rescission periods.

REQUEST FOR ADMISSION NO. 5 RESPONSE**:** The Division objects to the Request because it seeks an admission regarding financial transactions involving other parties to this litigation and non-parties rather than the Division. The Division also objects to the Request as vague and ambiguous, including without limitation in its (a) use of the phrase "certain students" without specifying which customers are encompassed within the Request; (b) failure to distinguish between full and partial refunds; (c) failure to distinguish among the various products and services Defendants sold; (d) failure to distinguish between funds Defendants voluntarily returned to customers and those they returned only after a governmental entity or the BBB intervened in a customer's behalf; (e) failure to specify whether "refunds" include chargebacks; and (f) use of the phrase "contractual rescission periods." The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. Subject to and without waiving the foregoing objections, the Division states that the information it knows or can readily obtain at this time is insufficient to enable it to admit or deny whether Defendants provided refunds to certain consumers past those customers' contractual rescission periods. In addition, the Defendants did not provide disclosure information as required by the Utah Business Opportunity Act. Under those circumstances, consumers are entitled to rescission under BODA outside of any contractual rescission period. Utah Code Ann. § 13-15-6(2).

REQUEST NO. 6

Admit that Defendants used disclaimers in certain of their advertising and marketing

materials.

REQUEST FOR ADMISSION NO. 6 RESPONSE**:** The Division objects to the Request as vague and ambiguous in its reference to "certain of" Defendants' advertising and marketing materials without specifying which materials are encompassed within the Request, and as vague, ambiguous, and misleading in its use of the term "disclaimer." Subject to and without waiving the foregoing objections, the Division admits that Defendants used statements purporting to be disclaimers in some of their advertising and marketing materials. The Division states, however, that the disclaimers did not address misrepresentations as to core aspects of their training program, including for instance limited access to funding. These disclaimers, which were used randomly and not in all contexts in which the Defendants made earnings claims, do not exculpate the Defendants' violations of federal and Utah law and failed to correct or cure the Defendants' implied and explicit earnings representations, and representations regarding the likelihood that Defendants' customers would earn thousands of dollars in profit from investing in real estate, the time and effort required to achieve such profits, the availability of funding for Defendants' customers' real estate deals regardless of customers' personal creditworthiness, and Defendants' refund policies. Consumers who attended Defendants' training took away the net impression that they would earn significant income as a result of the Defendants' trainings. Defendants' disclaimers are inadequate to address the blatant earnings and other misrepresentations made by Defendants.

REQUEST NO. 7

Admit that Defendants used disclaimers during certain of their Free Events.

REQUEST FOR ADMISSION NO. 7 RESPONSE**:** The Division objects to the Request

as vague and ambiguous in its reference to "certain of" Defendants' Free Events without specifying which Free Events are encompassed within the Request, and as vague, ambiguous, and misleading in its use of the term "disclaimer." Subject to and without waiving the foregoing objections, the Division admits that Defendants used what purported to be disclaimers during some of their Free Events. The Division states, however, that the Defendants' disclaimers did not address misrepresentations as to core aspects of their training program, including without limitation those regarding the likelihood that Defendants' customers would earn thousands of dollars in profit from investing in real estate, the time and effort required to achieve such profits, the availability of funding for Defendants' customers' real estate deals regardless of customers' personal creditworthiness, Defendants' refund policies, and that customers who attended Defendants' 3-day Workshop would learn all they needed to know to successfully complete real estate transactions. The "disclaimers" do not exculpate the Defendants' violations of Utah and federal law. Also, the "disclaimers" did not cure or correct the Defendants' earnings representations because consumers who attended the Defendants' trainings took away the net impression that they would earn significant income as a result of the Defendants' seminars.

REQUEST NO. 8

Admit that Defendants used disclaimers during certain of their 3-day Workshops.

REQUEST FOR ADMISSION NO. 8 RESPONSE**:** The Division objects to the Request as vague and ambiguous in its reference to "certain of" Defendants' 3-day Workshops without specifying which 3-day Workshops are encompassed within the Request, and as vague, ambiguous, and misleading in its use of the term "disclaimer." Subject to and without waiving the foregoing objections, the Division

admits that Defendants used what purported to be disclaimers during some of their 3-day Workshops. The Division denies that any disclaimer Defendants provided at any of their 3-day Workshops was sufficient to cure or correct Defendants' misrepresentations and inadequate disclosures, including without limitation those regarding the likelihood that Defendants' customers' would earn thousands of dollars in profit from investing in real estate, the time and effort required to achieve such profits, the availability of funding for Defendants' customers' real estate deals regardless of customers' personal creditworthiness, Defendants' refund policies, and that Defendants' advanced packages would increase the likelihood that customers would become successful real estate investors. The disclaimers did not address misrepresentations as to core aspects of their training program, including for instance limited access to funding, and do not exculpate the Defendants' violations of federal and Utah law; and did not cure or correct the Defendants' earnings representations because consumers who attended the Defendants' trainings took away the net impression that they would earn significant income as a result of the Defendants' seminars.

REQUEST NO. 9

Admit that Defendants used disclaimers during certain of their Telemarketing calls.

REQUEST FOR ADMISSION NO. 9 RESPONSE: The Division objects to the Request as vague and ambiguous in its reference to "certain of" Defendants' Telemarketing calls without specifying which Telemarketing calls are encompassed within the Request, and as vague, ambiguous, and misleading in its use of the term "disclaimer." Subject to and without waiving

the foregoing objections, the Division admits that Defendants marketed coaching and other services through telephone calls and during some of those calls used what purported to be disclaimers. The Division denies that any disclaimer Defendants provided in their Telemarketing calls was sufficient to cure or correct Defendants' misrepresentations and inadequate disclosures, including without limitation those regarding the likelihood that Defendants' customers who purchased coaching services would earn thousands of dollars in profit from investing in real estate, earn substantially more than those who did not purchase coaching, earn money more quickly than those who did not purchase coaching, and earn more than they paid for coaching services, as well as that Defendants' coaching services were offered only to a select and qualified subset of Defendants' customers. The Defendants' disclaimers did not address misrepresentations as to core aspects of their training program, including for instance limited access to funding, and do not exculpate the Defendants' violations of federal and Utah law; and did not cure or correct the Defendants' earnings representations because consumers who attended the Defendants' trainings took away the net impression that they would earn significant income as a result of the Defendants' seminars.

REQUEST NO. 10

Admit that Defendants used disclaimers during certain of their Telemarketing compliance calls.

REQUEST FOR ADMISSION NO. 10 RESPONSE**:** The Division objects to the Request as vague and ambiguous in its reference to "certain of" Defendants' Telemarketing compliance calls without specifying which Telemarketing compliance calls are encompassed within the Request, and as vague, ambiguous, and misleading in its use of the term "disclaimer." The

Division also objects to the Request's use of "compliance calls" as misleading because any disclaimer or disclosure that Defendants provided during such post-sale telephone calls was legally deficient. Subject to and without waiving the foregoing objections, the Division admits that Defendants marketed coaching and other services using telephone calls, made post-sale telephone calls, and during some of those post-sale calls used what purported to be disclaimers. The Division denies that any disclaimer Defendants provided in their post-sale or other Telemarketing calls was sufficient to cure or correct Defendants' misrepresentations and inadequate disclosures, including without limitation those regarding the likelihood that Defendants' customers who purchased coaching services would earn thousands of dollars in profit from investing in real estate, earn substantially more that those who did not purchase coaching, earn money more quickly than those who did not purchase coaching, and earn more than they paid for coaching services, as well as that Defendants' coaching services were offered only to a select and qualified subset of Defendants' customers.. The disclaimers did not address misrepresentations as to core aspects of their training program, including for instance limited access to funding, and do not exculpate the Defendants' violations of federal and Utah law; and did not cure or correct the Defendants' earnings representations because consumers who attended the Defendants' trainings took away the net impression that they would earn significant income as a result of the Defendants' seminars.

REQUEST NO. 11

Admit that Defendants used disclaimers in certain of their contracts with students.

REQUEST FOR ADMISSION NO. 11 RESPONSE**:** The Division objects to the Request as vague and ambiguous in its reference to "certain of" Defendants' contracts without

specifying which contracts are encompassed within the Request, and as vague, ambiguous, and misleading in its use of the term "disclaimer." The Division also objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. Subject to and without waiving the foregoing objections, the Division admits that Defendants used what purported to be disclaimers in some of their contracts with customers. The Division denies that any disclaimer Defendants provided in any of their advertising and marketing materials was sufficient to cure or correct Defendants' misrepresentations and inadequate disclosures, including without limitation those regarding the likelihood that Defendants' customers would earn thousands of dollars in profit from investing in real estate, the time and effort required to achieve such profits, the availability of funding for Defendants' customers' real estate deals regardless of customers' personal creditworthiness, and Defendants' refund policies. The Defendants' disclaimers did not address misrepresentations as to core aspects of their training program, including for instance limited access to funding and do not exculpate the Defendants' violations of federal and Utah law; and did not cure or correct the Defendants' earnings representations because consumers who attended the Defendants' trainings took away the net impression that they would earn significant income as a result of the Defendants' seminars.

REQUEST NO. 12

Admit that some of Defendants' students made money using Defendants' products and services.

REQUEST FOR ADMISSION NO. 12 RESPONSE**:** The Division also objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort

to mischaracterize their training program as educational. The Division objects to the Request as vague and ambiguous in its (a) use of the phrase "some of" Defendants students without specifying which customers are encompassed within the Request; (b) failure to specify whether "made money" means earned money in excess of the thousands or tens of thousands of dollars the customer spent on Defendants' products and services; and (c) failure to distinguish among the various products and services Defendants sold. Subject to and without waiving the foregoing objections, the Division admits that at his October 2019 deposition, Jeffrey Spangler testified that his daughter Rylee completed at least one fix-and-flip transaction (on which her profit was less than 20 percent of the property's after-repair value) after attending Defendants' training (without having to pay to attend) and obtaining funding for the transaction from Mr. Spangler and a friend. Zurixx records report that very few consumers who paid for Defendants' goods and services netted more from their real estate transactions than what they paid the Defendants. In a similar scheme, survey respondents responded that only 4.6% of survey respondents reported they netted more from their real estate transactions than what they paid the seminar company.

Subject to the foregoing, the Division states that as to paying customers not related to any Defendant, the information the Division knows or can readily obtain at this time is insufficient to enable it to admit or deny whether any of the consumers who may have netted more from real estate transactions than what they spent on Defendants' programs actually did so using, or as a result of, the Defendants' purported funding, purported personal coaching or mentoring services, or publicly available software that the Defendants licensed and resold to customers. Contrary to its obligations under BODA and the Utah Consumer Sales Practices Act, Defendants did not maintain records that would substantiate its claims that consumers would make money.

REQUEST NO. 13

Admit that some of Defendants' students made money on real estate transactions after attending one of Defendants' Free Events.

REQUEST FOR ADMISSION NO. 13 RESPONSE**:** The Division objects to the Request as vague and ambiguous in its (a) use of the phrase "some of" Defendants' students without specifying which customers are encompassed within the Request; (b) failure to specify whether "made money" means earned money in excess of the thousands or tens of thousands of dollars the customer spent on Defendants' products and services; (c) failure to distinguish between those who received funding for wholesale flips or fix-and-flips from those who received funding to purchase rental properties from Defendants' affiliates, such as Return on Rentals; and (d) failure to distinguish between those who attended a Free Event without purchasing any of Defendants' products and services and those who made a purchase. The Division also objects to the Request because the Request asks if consumers made money after attending a free event, which leaves the Request vague and ambiguous in that it does not request information related to the Defendants' products and services. Therefore, it is possible that consumers made money on real estate transactions using means or strategies other than those described at Defendants' Free Events. The Division also objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational.

Subject to and without waiving the foregoing objections, the Division admits that at his October 2019 deposition, Jeffrey Spangler testified that his daughter Rylee completed at least one fix-and-flip transaction (on which her profit was less than 20 percent of the property's after-repair value) after attending Defendants' training (without having to pay to attend) and obtaining

funding for the transaction from Mr. Spangler and a friend. As to paying customers not related to any Defendant, the Division states that after a reasonable inquiry, the information it knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient responses to Plaintiffs' Interrogatory Nos. 1, 3, 4, 6, 7, 9, and 10, as well as the October 2019 deposition testimony of Zurixx's CEO and President that they could not say what percentage of Zurixx's customers earned money investing in real estate, and that the company did not track such data. The Division further states that the information it knows or can readily obtain at this time is insufficient to enable it to admit or deny whether any of the consumers who made money on real estate transactions after attending one of the Defendants' free events actually made money in the transaction using, or as a result of, the information presented at the free event, or Defendants' purported funding, purported personal coaching or mentoring services, or publicly available software that the Defendants licensed and resold to customers.

REQUEST NO. 14

Admit that some of Defendants' students made money on real estate transactions after attending one of Defendants' 3-Day Workshops.

REQUEST FOR ADMISSION NO. 14 RESPONSE**:** The Division objects to the Request as vague and ambiguous in its (a) use of the phrase "some of" Defendants' students without specifying which customers are encompassed within the Request; (b) failure to specify whether "made money" means earned money in excess of the thousands or tens of thousands of dollars the customer spent on Defendants' products and services; (c) failure to distinguish between those who received funding for wholesale flips or fix-and-flips from those who received

funding to purchase rental properties from Defendants' affiliates, such as Return on Rentals; and (d) failure to distinguish between those who attended a 3-day Workshop without purchasing any of Defendants' advance packages or coaching services and those who made such purchases. The Division also objects to the Request because the Request asks if consumers made money after attending a 3-Day Workshop, which is vague and ambiguous in that it does not request information related to the Defendants' products and services. Therefore, it is possible that consumers made money on real estate transactions using means or strategies other than those described at Defendants' 3-day workshops. The Division also objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational.

Subject to and without waiving the foregoing objections, the Division admits that at his October 2019 deposition, Jeffrey Spangler testified that his daughter Rylee completed at least one fix-and-flip transaction (on which her profit was less than 20 percent of the property's after-repair value) after attending Defendants' training (without having to pay to attend) and obtaining funding for the transaction from Mr. Spangler and a friend. As to paying customers not related to any Defendant, the Division states that after a reasonable inquiry, the information it knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient responses to Plaintiffs' Interrogatory Nos. 1, 3, 4, 6, 7, 9, and 10, as well as the October 2019 deposition testimony of Zurixx's CEO and President that they could not say what percentage of Zurixx's customers earned money investing in real estate, and that the company did not track such data

The Division further states that the information it knows or can readily obtain at this time

is insufficient to enable it to admit or deny whether any of the consumers who may have attended Defendants' 3-day workshops had done so using, or as a result of, the Defendants' purported funding, purported personal coaching or mentoring services, or publicly available software that the Defendants licensed and resold to customers.

Contrary to its obligations under BODA and the Utah Consumer Sales Practices Act, Defendants did not maintain records that would substantiate its claims that consumers would make money.

REQUEST NO. 15

Admit that some of Defendants' students made money on real estate transactions and have attributed that success to Defendants educational products and services.

REQUEST FOR ADMISSION NO. 15 RESPONSE**:** The Division also objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. The Division objects to the Request as vague and ambiguous in its (a) use of the phrase "some of" Defendants' students without specifying which customers are encompassed within the Request; (b) failure to specify whether "made money" means earned money in excess of the thousands or tens of thousands of dollars the customer spent on Defendants' products and services; and (c) failure to distinguish between those who received funding for wholesale flips or fix-and-flips from those who received funding to purchase rental properties from Defendants' affiliates, such as Return on Rentals. Subject to and without waiving the foregoing objections, the Division admits that Defendants' marketing relied upon testimonials from individuals who purported to have been Defendants' customers and purported to have profited from investing in real estate. Zurixx records reflect that very few

consumers who paid for Defendants' goods and services netted more from their real estate transactions than what they paid the Defendants. In a similar scheme, survey respondents responded that only 4.6% of survey respondents reported they netted more from their real estate transactions than what they paid the seminar company. Otherwise, that after a reasonable inquiry, the information the Division knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient responses to Plaintiffs' Interrogatory Nos. 1, 3, 4, 6, 7, 9, and 10, as well as the October 2019 deposition testimony of Zurixx's CEO and President that they could not say what percentage of Zurixx's customers earned money investing in real estate, and that the company did not track such data.

REQUEST NO. 16

Admit that some of Defendants' students received funding for real estate deals from Defendants.

REQUEST FOR ADMISSION NO. 16 RESPONSE**:** The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. The Division also objects to the Request because it seeks an admission about financial transactions involving other parties to this litigation and non-parties rather than the Division. The Division also objects to the Request as vague and ambiguous in its (a) use of the phrase "some of" Defendants' students without specifying which customers are encompassed within the Request, and (b) failure to distinguish between those who received funding for wholesale flips or fix-and-flips and those who received funding to purchase rental properties from Defendants' affiliates, such as Return on Rentals. The Division further objects to the Request as misleading in that it fails to distinguish between

Defendants' customers who (a) received the 100% funding Defendants claimed their customers would receive and those who received a lesser amount, and (b) received funding without regard to personal creditworthiness, as Defendants promised, and those whose personal creditworthiness was considered. Subject to and without waiving the foregoing objections, the Division admits that at his October 2019 deposition, Jeffrey Spangler testified that his daughter Rylee obtained funding from Mr. Spangler and a fried to invest in real estate after attending Defendants' training (without having to pay to attend). As to paying customers not related to any Defendant, the Division states that after a reasonable inquiry, the information it knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient response to Plaintiffs' Interrogatory No. 2. Subject to and without waiving the foregoing objections, the FTC admits that Defendants' marketing relied upon testimonials from individuals who purported to have been Defendants' customers and purported to have profited from investing in real estate, but otherwise states that after a reasonable inquiry, the information it knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient responses to Plaintiffs' Interrogatory Nos. 1, 3, 4, 6, 7, 9, and 10, as well as the October 2019 deposition testimony of Zurixx's CEO and President that they could not say what percentage of Zurixx's customers earned money investing in real estate, and that the company did not track such data.

REQUEST NO. 17

Admit that some of Defendants' students received funding for real estate deals from persons and entities to whom Defendants referred customers.

REQUEST FOR ADMISSION NO. 17 RESPONSE**:** The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. The Division also objects to the Request as vague and ambiguous in its (a) use of the phrase "some of" Defendants' students without specifying which customers are encompassed within the Request, and (b) failure to distinguish between those who received funding for wholesale flips or fix-and-flips from those who received funding to purchase rental properties from Defendants' affiliates, such as Return on Rentals. The Division also objects to the Request as misleading in that it fails to distinguish between Defendants' customers who (a) received the 100% funding Defendants claimed their customers would receive and those who received a lesser amount, and (b) received funding without regard to personal creditworthiness, as Defendants promised, and those whose personal creditworthiness was considered. Subject to and without waiving the foregoing objections, the Division states that after a reasonable inquiry, the information it knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient response to Plaintiffs' Interrogatory No. 2.

REQUEST NO. 18

Admit that the Division never provided Defendants with any cease and desist order or other written notice that Defendants' products or services constituted an "assisted marketing plan" under the Utah Business Opportunity Disclosure Act ("BODA").

REQUEST FOR ADMISSION NO. 18 RESPONSE**:** Admit in part. The Division admits that it never served a "cease and desist order" on Defendants but further states that the issuance of a cease and desist order is not required to commence an enforcement action pursuant

to Utah Business Opportunity Disclosure Act. The Division denies that the Division did not give the Defendants' written notice that their products or services constituted an "assisted marketing plan." The Division further states that notwithstanding that it gave the Defendants written notice that their products and services constituted an assisted marketing plan, there is no statutory requirement for the Division to provide such a written notice.

REQUEST NO. 19

Admit that the Division never provided Defendants with any cease and desist order or other written notice that Defendants were a "seller" under the Utah Business Opportunity Disclosure Act ("BODA").

REQUEST FOR ADMISSION NO. 19 RESPONSE**:** Admit in part. The Division admits that it never served a "cease and desist order" on Defendants but further states that the issuance of a cease and desist order is not required to commence an enforcement action pursuant to Utah Business Opportunity Disclosure Act. The Division denies that the Division did not give the Defendants' written notice that the Defendants were a "seller under the Utah Business Opportunity Disclosure Act." The Division further states that notwithstanding that it gave the Defendants written notice that they were a seller, there is no statutory requirement for the Division to provide such a written notice.

REQUEST NO. 20

Admit that the Division never provided Defendants with any cease and desist order or other written notice that Defendants were required to provide any information to consumers under the Utah Business Opportunity Disclosure Act ("BODA").

REQUEST FOR ADMISSION NO. 20 RESPONSE**:** Admit in part. The Division admits that it never served a "cease and desist order" on Defendants but the Division further states that the issuance of a cease and desist order is not required to commence an enforcement action pursuant to Utah Business Opportunity Disclosure Act. The Division denies that the Division did not give the Defendants written notice that the Defendants were required to provide any information to consumers under the Utah Business Opportunity Act. The Division further states that notwithstanding that it gave the Defendants written notice that the Defendants were required to provide any information to consumers under the Utah Business Opportunity Disclosure Act, there is no statutory requirement for the Division to provide such a written notice.

BODA provides statutory notice to all sellers of non-exempt assisted marketing plans that they are required to provide information to consumers.

REQUEST NO. 21

Admit that the Division never provided Defendants with any cease and desist order or other written notice that Defendants were required to file any information with the Division pursuant to the Utah Business Opportunity Disclosure Act ("BODA").

REQUEST FOR ADMISSION NO. 21 RESPONSE**:** Admit in part. The Division admits that it never served a "cease and desist order" on Defendants but the Division further states that the issuance of a cease and desist order is not required to commence an enforcement action pursuant to Utah Business Opportunity Disclosure Act. The Division denies that the Division did not give the Defendants written notice that the Defendants were required to file any information with the Division pursuant to Utah Business Opportunity Act. The Division further

states that notwithstanding that it gave the Defendants written notice that Defendants were required to file any information with the Division pursuant to the Utah Business Opportunity Disclosure Act, there is no statutory requirement for the Division to provide such a written notice. BODA provides statutory notice to all sellers of non-exempt assisted marketing plans that they are required to provide information to consumers.

REQUEST NO. 22

Admit that certain Zurixx students received 100% funding of certain real estate transactions.

REQUEST FOR ADMISSION NO. 22 RESPONSE**:** The Division objects to this Request because the Request provides no parameters on the nature, amount, or source of "100% funding" putatively received by Zurixx students. The Division also objects to the Request as vague and ambiguous in its (a) reference to "certain" students without specifying which customers are encompassed within the Request; (b) reference to "certain" real estate transactions without specifying which transactions are encompassed within the Request and whether said transactions relate in any way to Defendants' products or services; (c) failure to distinguish between those who received funding for wholesale flips or fix-and-flips and those who received funding to purchase rental properties from Defendants' affiliates, such as Return on Rentals; and (d) failure to specify any time frame. The Division further objects to the Request as misleading in that it fails to distinguish between Defendants' customers who received funding without regard to personal creditworthiness, as Defendants promised, and those whose personal creditworthiness was considered. Subject to and without waiving the foregoing objections, the Division states that after a reasonable inquiry, the information it knows or can readily obtain is

insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient response to Plaintiffs' Interrogatory No. 2.

REQUEST NO. 23

Admit that certain Zurixx students used money other than their own to fund certain real estate transactions.

REQUEST FOR ADMISSION NO. 23 RESPONSE**:** The Division objects to this Request because the Request provides no parameters on the nature, amount, or source of "money other than their own to fund certain real estate transactions" putatively used by Zurixx consumers. The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. The Division objects to the Request as vague and ambiguous in its (a) reference to "certain" students without specifying which customers are encompassed within the Request; (b) reference to "certain" real estate transactions without specifying which transactions are encompassed within the Request and whether said transactions relate in any way to Defendants' products or services; (c) failure to distinguish between those who received funding for wholesale flips or fix-and-flips and those who received funding to purchase rental properties from Defendants' affiliates, such as Return on Rentals, and (d) failure to specify any time frame. The Division also objects to the Request as misleading in that it fails to distinguish between Defendants' customers who (a) received the 100% funding Defendants claimed their customers would receive and those who received a lesser amount, and (b) received funding without regard to personal creditworthiness, as Defendants promised, and those whose personal creditworthiness was considered. Subject to and without waiving the foregoing objections, the Division admits that at

his October 2019 deposition, Jeffrey Spangler testified that his daughter Rylee obtained funding from Mr. Spangler and a friend to invest in real estate after attending Defendants' training (without having to pay to attend). As to paying customers not related to any Defendant, the Division states that after a reasonable inquiry, the information it knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient response to Plaintiffs' Interrogatory No. 2.

Evidence obtained by the Division reflects that many of Defendants' consumers used money from credit cards arranged for an entity or entities affiliated with Zurixx. Despite misrepresentations that borrowing on a credit card constitutes "other people's money" consumers were obligated to repay the funds, together with interest. Borrowers had to repay the funds with their own money.

REQUEST NO. 24

Admit that certain Zurixx students obtained money from sources identified by Zurixx to fund certain of those students' real estate transactions.

REQUEST FOR ADMISSION NO. 24 RESPONSE**:** The Division objects to the Request as vague and ambiguous in its (a) reference to "certain" students without specifying which customers are encompassed within the Request; (b) reference to "certain" real estate transactions without specifying which transactions are encompassed within the Request or whether said transactions have any relation to Defendants' products or services; (c) failure to distinguish between those who received funding for wholesale flips or fix-and-flips and those who received funding to purchase rental properties from Defendants' affiliates, such as Return on Rentals; and (d) failure to specify any time period. The

Division also objects to the Request as misleading in that it fails to distinguish between Defendants' customers who (a) received the 100% funding Defendants claimed their customers would receive and those who received a lesser amount, and (b) received funding without regard to personal creditworthiness, as Defendants promised, and those whose personal creditworthiness was considered. The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational.

Subject to and without waiving the foregoing objections, the Division admits that at his October 2019 deposition, Jeffrey Spangler testified that his daughter Rylee obtained funding from Mr. Spangler and a friend to invest in real estate after attending Defendants' training (without having to pay to attend). As to paying customers not related to any Defendant, the Division states that after a reasonable inquiry, the information it knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient response to Plaintiffs' Interrogatory No. 2.

Evidence obtained by the Division reflects that many of Defendants' consumers used money from credit cards arranged for an entity or entities affiliated with Zurixx. Despite misrepresentations that borrowing on a credit card constitutes "other people's money" consumers were obligated to repay the funds, together with interest. Borrowers had to repay the funds with their own money.

REQUEST NO. 25

Admit that certain of Defendants' students who completed the 3-day Workshop but did

not purchase any further products or services from Defendants completed profitable real estate transactions.

REQUEST FOR ADMISSION NO.25 RESPONSE: The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. The Division also objects to the Request as vague and ambiguous in its (a) use of the phrase "certain of" Defendants' students without specifying which customers are encompassed within the Request; (b) failure to specify whether "profitable" means that the customer earned money in excess of the thousands of dollars the customer spent on Defendants' 3-day Workshop; (c) failure to distinguish between those who earned a profit through wholesale flips or fix-and-flips and those who earned a profit by purchasing rental properties from Defendants' affiliates, such as Return on Rentals; and (d) failure to specify any time period. For example, the Request as written may include "profitable real estate transactions" completed by consumers prior to attending any of Defendants' seminars or workshops. Further the Division objects to this Request because there is no limitation contained in the Request as to whether the "profitable real estate transactions" relate to products or services provided by Defendants.

Subject to and without waiving the foregoing objections, the Division states that after a reasonable inquiry, the information it knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient responses to Plaintiffs' Interrogatory Nos. 1, 3, 4, 6, 7, 9, and 10, as well as the October 2019 deposition testimony of Zurixx's CEO and President that they could not say what

percentage of Zurixx's customers earned money investing in real estate, and that the company did not track such data.

REQUEST NO. 26

Admit that some of Defendants' students have made thousands of dollars in profit through real estate investing.

REQUEST FOR ADMISSION NO. 26 RESPONSE**:** The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. The Division also objects to the Request as vague and ambiguous in its (a) use of the phrase "some of" Defendants' students without specifying which customers are encompassed within the Request; (b) failure to specify whether "profit" means that the customer earned money in excess of the thousands or tens of thousands of dollars the customer spent on Defendants' products and services; (c) failure to distinguish between those who earned a profit through wholesale flips or fix-and-flips and those who earned a profit by purchasing purchase rental properties from Defendants' affiliates, such as Return on Rentals; and (d) failure to specify any time period. For example, the Request as written may include "profitable real estate transactions" completed by consumers prior to attending any of Defendants' seminars or workshops. Subject to and without waiving the foregoing objections, the Division states that after a reasonable inquiry, the information it knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient responses to Plaintiffs' Interrogatory Nos. 1, 3, 4, 6, 7, 9, and 10, as well as the October 2019 deposition testimony of Zurixx's CEO and President that they could not say what percentage of Zurixx's customers earned money investing in real estate, and that the company

did not track such data.

REQUEST NO. 27

Admit that some of Defendants' students who purchased Defendants' Real Estate Coaching Programs have made thousands of dollars in profit through real estate investing.

REQUEST FOR ADMISSION NO. 27 RESPONSE**:** The Division objects to Defendants' mischaracterization of the consumers whom they solicited as "students" in an effort to mischaracterize their training program as educational. The Division also objects to the Request as vague and ambiguous in its (a) use of the phrase "some of" Defendants' students without specifying which customers are encompassed within the Request; (b) failure to specify whether "profit" means that the customer earned money in excess of the thousands or tens of thousands of dollars the customer spent on Defendants' products and services; (c) failure to distinguish between those who earned a profit through wholesale flips or fix-and-flips and those who earned a profit by purchasing purchase rental properties from Defendants' affiliates, such as Return on Rentals; and (d) failure to specify any time period. For example, the Request as written may include "real estate investing" completed by consumers prior to attending any of Defendants' seminars or workshops. Subject to and without waiving the foregoing objections, the Division states that after a reasonable inquiry, the information it knows or can readily obtain is insufficient to allow it to admit or deny the Request, especially in light of Zurixx, LLC's deficient responses to Plaintiffs' Interrogatory Nos. 1, 3, 4, 6, 7, 9, and 10, as well as the October 2019 deposition testimony of Zurixx's CEO and President that they could not say what percentage of Zurixx's customers earned money investing in real estate, and that the company did not track such data.

DATED April 19, 2021.

/s/ Robert G. Wing
Robert G. Wing
Thomas M. Melton
Joni Ostler
Kevin McLean
Assistant Attorneys General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 19, 2021, a true and correct copy of the foregoing, **PLAINTIFF UTAH DIVISION OF CONSUMER PROTECTION'S RESPONSES TO ZURIXX DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSIONS** was served by electronic mail upon:

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