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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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FEDERAL TRADE COMMISSION and  
UTAH DIVISION OF CONSUMER  
PROTECTION,

Plaintiffs,

v.  
ZURIXX, LLC, *et al.*

Defendants.

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

District Judge Dale A. Kimball

Magistrate Judge Daphne A. Oberg

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**PLAINTIFF FTC'S NON-OPPOSITION TO DEFENDANTS'  
MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

FTC's Non-Opposition to Defendants'  
Motions for Partial Summary Judgment

Plaintiff Federal Trade Commission (“FTC”) does not oppose the Defendants’ Motions for Partial Summary Judgment<sup>1</sup> to the extent they each request an order stating that the FTC is not entitled at this time to equitable monetary relief under Section 13(b) of the FTC Act for Counts I-IV of the Second Amended Complaint (“SAC”) [ECF 219].<sup>2</sup>

## I. PROCEDURAL BACKGROUND.

Plaintiffs, the FTC and the Utah Division of Consumer Protection (“Division”), commenced this action on September 30, 2019, when they filed a Complaint and a Motion for *Ex Parte* Temporary Restraining Order (“TRO”), supported by voluminous compelling evidence, alleging that Zurixx, LLC, along with the company’s three principals and related entities,<sup>3</sup> violated federal and state law by marketing real estate investing products and services using false and unsubstantiated earnings claims and other material misrepresentations [ECF Nos.1, 4, 12-1 through 12-94].

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<sup>1</sup> The Zurixx 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; Christopher A. Cannon, James M. Carlson, and Jeffrey D. Spangler) filed a Motion for Partial Summary Judgment on Section 13(b) grounds [ECF No. 245]. The JSS Defendants (JSS Investment Ventures, JSS Trust, Gerald D. Spangler, and Stephenie Spangler) filed a similar Motion incorporating by reference the arguments set forth in the Zurixx Defendants’ Motion [ECF No. 257]. The FTC’s Non-Opposition responds to both Motions.

<sup>2</sup> The Defendants also moved for partial summary judgment on monetary relief for claims brought by the Utah Division of Consumer Protection under the Utah Business Opportunity Disclosure Act. The Division is filing a separate response to address those arguments.

<sup>3</sup> The original Complaint named seven Defendants: Zurixx, LLC; Carlson Development Group, LLC-Utah; CJ Seminar Holdings, LLC-Utah; Zurixx Financial LLC-Utah; Christopher Cannon; James Carlson; and Jeffrey Spangler.

After an *ex parte* hearing, the Court issued a TRO with conduct prohibitions, an asset preservation provision on the Corporate Defendants, and appointment of a monitor [ECF No. 24]. A preliminary injunction hearing was set for November 4, 2019. Confronted with additional evidence of law violations as well as evidence that they were violating the TRO conduct provisions, the Zurixx Defendants named in the original Complaint stipulated to a preliminary injunction that bans them from making certain claims, freezes the Corporate Defendants' assets and appoints a Receiver over them, and preserves the Individual Defendants' assets (ECF 54).

On May 12, 2020, Plaintiffs filed a First Amended Complaint [ECF No. 134] that added additional counts and Defendants.<sup>4</sup> Specifically, the FTC added Count IV alleging misrepresentations by Zurixx telemarketers in the sale of coaching packages in violation of Section 5 of the FTC Act and Count VI alleging that these same misrepresentations violated the Telemarketing Sales Rule, 16.C.F.R. §310.3(a)(2)(iii) and (a)(4).<sup>5</sup> The SAC [ECF No. 219], filed February 12, 2021, named two additional Defendants: CAC Investment Ventures, LLC-Puerto Rico and Stephenie J. Spangler, added as a Relief Defendant.

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<sup>4</sup> The FAC added as Defendants: Brand Management Holdings, LLC; CAC Investment Ventures, LLC-Puerto Rico; Carlson Development Group, LLC-Puerto Rico; Dorado Marketing and Management, LLC f/k/a Zurixx, LLC-Puerto Rico; JSS Investment Ventures, LLC; the JSS Trust; Zurixx Financial, LLC-Puerto Rico; and Gerald D. Spangler as trustee for the JSS Trust.

<sup>5</sup> The Division joined in Count VI. The FAC also included two new counts pled only by the Division: Count X alleging misrepresentations in the sale of coaching packages in violation of the Utah Consumer Sales Practices Act, and Count XIII regarding misrepresentations in the sale by Zurixx telemarketers of coaching packages in violation of the Utah Telephone Fraud Prevention Act, Utah Code §13-26-1 *et seq.*

## II. THE MONETARY REMEDIES SOUGHT BY THE FTC.

Counts I-IV of the SAC seek equitable monetary relief for violations of Section 5 of the FTC Act. The request for this relief is based on Section 13(b) of the FTC Act, 15 U.S.C. §53(b). The SAC alleges that Zurixx took more than \$530 million from consumers through deceptive sale of real estate products and services [SAC, ¶ 51]. These claims are the subject of the Defendants' Motions for Partial Summary Judgment.

Count VI seeks monetary remedies under a section of the FTC Act different from Section 13(b). Section 19 of the FTC Act, 15 U.S.C. § 57b, empowers the Court to grant relief "as the court finds necessary to redress injury to consumers" resulting from violations of trade regulation rules, such as the TSR (Count VI), or violations of statutes the FTC enforces, such as the Consumer Review Fairness Act, 15 U.S.C. § 45b, (Count V). Evidence before the Court, originating from Zurixx's own records, shows that Zurixx took more than \$136 million from consumers via telesales, of which more than \$68 million was made within the applicable three-year statute of limitations period – October 2016-October 2019.<sup>6</sup> The evidence shows that Zurixx used false and unsubstantiated earnings and related claims in its telesales. Accordingly, the Zurixx Defendants' (other than the Relief Defendant) potential liability for their TSR violations exceeds \$68 million.

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<sup>6</sup> Declarations of the Receiver's Accountant, Gil A. Miller at ECF 182-1 Ex. A, ¶3 (Zurixx telemarketers sold more than \$136 million in coaching sessions and other real estate-related products); ECF 261-20, ¶ 3 (Zurixx telemarketers sold more than \$68.2 million in coaching sessions and other real estate related products between October 2016 and October 2019).

Count XIV seeks disgorgement from Relief Defendant Stephenie Spangler of the funds and assets that she holds in constructive trust for the benefit of Defendants' customers.

### III. THE REMEDIES THE FTC SEEKS AFTER AMG.<sup>7</sup>

On April 22, 2021, the United States Supreme Court in *AMG Capital Management, LLC, et al. v. Federal Trade Commission*, 141 S. Ct. 1341, 1347 (2021), held that Section 13(b) of the FTC Act does not authorize a court to award equitable monetary relief. Prior to that decision, the availability of equitable monetary relief under Section 13(b) was well established in the Tenth Circuit. *See, e.g., FTC v. Freecom Communications, Inc.*, 401 F.3d 1192 (10th Cir. 2005); *FTC v. LoanPointe, LLC*, 525 F. App'x 696, 699 (10th Cir. 2013). Thus, the FTC, at present, lacks statutory authority to request, and the Court lacks statutory authority to order, equitable monetary relief under Section 13(b) against Defendants. For this reason, the FTC does not oppose the Defendants' Motions for Partial Summary Judgment to the extent they request an order that the FTC is not entitled at this time to equitable monetary relief under Section 13(b) of the FTC Act for Counts I-IV of the SAC.

The *AMG* decision has no bearing on the Defendants' liability for violations of the FTC Act (other than monetary relief under Section 13(b)), the TSR, and the CRFA, or whether injunctive relief is warranted. Nor does it affect the Court's authority to grant monetary relief against Defendants under Section 19 of the FTC Act under Count VI (TSR violations). Nor does it affect the Court's authority to order Relief Defendant Stephenie Spangler, the wife of

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<sup>7</sup> The FTC explained more fully the effect of *AMG* in its Brief filed on May 28, 2021 [ECF No. 258].

Defendant Jeff Spangler and the sole beneficiary of Corporate Defendant JSS Trust, to disgorge funds and assets obtained through Defendants' deceptive and unlawful acts or practices.

The FTC reserves its right to seek leave to reassert its claim for monetary relief under Section 13(b) or any other provision of the FTC Act should there be another change in the law during the pendency of this case.<sup>8</sup>

Respectfully submitted this 9<sup>th</sup> day of June, 2021.

/s/ Collot Guerard

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(Each appearing per DUCivR 83-1.1(d)(1))

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<sup>8</sup> The Supreme Court recognized in *AMG* that Congress can “grant [the FTC] further remedial authority,” thereby restoring the FTC’s ability to obtain equitable monetary relief. 141 S. Ct. at 1352. Congress is currently considering such legislation. *See* Consumer Protection and Recovery Act, H.R. 2668, 117th Cong. (2021), available at <https://docs.house.gov/meetings/IF/IF17/20210427/112501/BILLS-1172668ih.pdf>. The bill, as drafted, would apply “to any action or proceeding that is pending on, or commenced on or after, the date of [its] enactment.” *Id.* § 2(c).

**Certificate of Service**

I HEREBY CERTIFY that on June 9, 2021, a true and correct copy of the foregoing document was served on counsel for all parties via electronic filing with the Court's ECF service.

/s/ Collot Guerard

Collot Guerard