
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FEDERAL TRADE COMMISSION and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

v.

ZURIXX, LLC, *et al.*

Defendants.

**STIPULATED ORDER FOR TAKING
DEPOSITIONS BY REMOTE MEANS**

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

District Judge Dale A. Kimball

Magistrate Judge Daphne A. Oberg

Before the court is the parties' Stipulated Motion for Taking Depositions by Remote Means (Doc. No. 275). Pursuant to Rules 1, 29 and 30(b)(4) of the Federal Rules of Civil Procedure, Plaintiffs Federal Trade Commission and Utah Division of Consumer Protection (collectively "Plaintiffs") and 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 ("Zurixx Defendants") and JSS Investment Ventures, LLC, JSS Trust, Gerald D. Spangler, and Relief Defendant Stephenie J. Spangler ("JSS Defendants") (collectively "Defendants") (Plaintiffs and Defendants, collectively, "Parties") have met, conferred, and stipulated to the following deposition protocol for any depositions to take place by remote means of party witnesses in this litigation. In addition, the Parties stipulate that this deposition protocol shall govern the procedures for any non-party depositions taken by remote means in this litigation to

the extent the non-party does not object to the provisions herein. The Parties submit that, given the ongoing COVID-19 pandemic, good cause exists for entry of this Order under the following terms. Having reviewed the Stipulated Motion, and for good cause appearing, the Court GRANTS the Parties' Stipulated Motion and enters the following Order.

I. GENERAL PRINCIPLES AND DURATION OF THIS ORDER

A. This Order is intended to allow the Parties to continue deposition discovery in light of the ongoing COVID-19 pandemic.

B. The Court and counsel recognize that the COVID-19 pandemic requires the Parties to be flexible in undertaking deposition discovery in this litigation. The Parties are encouraged to take steps that will enable deponents, the Parties, their counsel, and other personnel, including court reporters and videographers, to complete depositions in a manner that appropriately accounts for personal health care needs.

C. This Order shall govern all depositions taken by Remote Means of any witnesses of any of the Parties. "Remote Means" shall mean procedures for taking depositions that comply with local, state and federal guidance, regulations, and orders concerning social distancing and public health, including by (a) telephone, or (b) video-conferencing platforms that allow for the deponent, the deponent's counsel, Plaintiffs' counsel, Defendants' counsel, the court reporter, and videographer to participate in the deposition without attending the deposition in-person.

D. In addition, this Order shall be provided to any non-party witness or such non-party witness's counsel concurrently with the service of any subpoena that requests that a non-party deposition be taken by Remote Means to determine whether said non-party agrees to the provisions of this Order. In the case of any non-party witness that has been subpoenaed prior to

the entry of this Order, this Order shall be provided to such non-party witness promptly upon the entry of this Order.

E. Unless otherwise stated, this Order is not intended to alter, expand, or limit the applicable Federal Rules of Civil Procedure, Federal Rules of Evidence, and/or court orders.

II. PROCEDURES FOR TAKING DEPOSITIONS BY REMOTE MEANS

A. Pursuant to Fed. R. Civ. P. 29(a) and Fed. R. Civ. P. 30(b)(4), counsel for the party requesting a deposition in this case (“Deposing Counsel”) may notice the deposition to occur by Remote Means.

B. Pursuant to Fed. R. Civ. P. 30(f)(2), counsel shall be responsible for ensuring that any exhibits that they wish to mark and use at the deposition can be shown to the witness in a manner that enables the witness to review the exhibits during the course of the deposition.

Counsel may choose either of the following means for marking and using deposition exhibits:

(a) emailing or sending via FedEx, U.S. Postal Service, or UPS exhibits to the deponent, the deponent’s counsel, Plaintiffs’ counsel, Defendants’ counsel, and the court reporter in advance of the deposition; or (b) using a platform that enables counsel to display the entirety of any exhibits electronically to the deponent, the deponent’s counsel, Plaintiffs’ counsel, Defendants’ counsel, and the court reporter.

C. As used in Fed. R. Civ. P. 28(a)(1)(A), the “place of examination” is the location of the deponent. A court reporter may administer an oath concerning a deposition via Remote Means.

D. Deposing Counsel and the deponent’s counsel shall meet, confer, and cooperate to ensure that the deponent has technology sufficient to attend the deposition via Remote Means.

Any party may object to a deposition occurring by Remote Means if the deponent is unable to secure technology that is sufficient.

E. Deposing Counsel is responsible for ensuring that the Remote Means utilized for a deposition allows for the court reporter to accurately record the deponent's testimony. Either Deposing Counsel or the deponent's counsel may elect to have a technical specialist attend a deposition taken by Remote Means to ensure that technical issues are resolved in a timely manner.

F. Should technical issues materially interfere with the Parties' ability to take any deposition pursuant to this Order on the scheduled date and such technical issues cannot be remedied in a timely manner, the deponent's counsel, Plaintiffs' counsel, and Defendants' counsel shall meet, confer, and reasonably cooperate with one another regarding the rescheduling of the deposition.

G. In addition to recording deposition testimony by stenographic means, the deposing party may record the deposition by video in such manner as would be admissible in court.

H. All objections to the use and admissibility of the transcript or video of a deposition taken pursuant to this Order based on the fact that the deposition was taken by Remote Means are deemed waived except as otherwise provided herein.

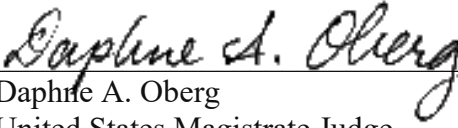
I. The Parties agree not to oppose reasonable accommodations to allow conferences during breaks, as well as communications between co-counsel during the deposition.

J. All persons attending depositions taken pursuant to this Order shall ensure that they can do so in a space that is relatively free from distractions that would inhibit the course of the deposition.

K. Notwithstanding the foregoing, nothing in this Order prohibits any witness, party, or non-party, or any counsel for any witness, party or non-party, from objecting to specific depositions occurring by Remote Means including, but not limited to, on the grounds that having counsel physically separate from the witness would constitute a violation of the witness's, the party's or the non-party's due process rights. Such objections shall be raised promptly after receipt of the deposition notice. In the case of a non-party witness that has been subpoenaed prior to the entry of this Order, such objections shall be raised promptly after receipt of this Order. In the event that one or more such objections are raised, the witness, Parties, or the non-party, through their respective counsel, shall meet and confer in a good faith effort to resolve the objection(s) before seeking relief before this Court, in the case of a party, or, in the case of a non-party, before the court where compliance is required pursuant to Fed. R. Civ. P. 45(d).

DATED this 18th day of June, 2021.

BY THE COURT:



Daphne A. Oberg
United States Magistrate Judge