

**SEALED**

**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,

JAMES M. CARLSON, individually and as  
an officer of ZURIXX, LLC, and

JEFFREY D. SPANGLER, individually and  
as an officer of ZURIXX, LLC

Defendants.

Case Number :

**FILED UNDER SEAL  
PURSUANT TO COURT ORDER  
(DOCKET NO. \_\_\_\_\_)**

***EX PARTE* TEMPORARY  
RESTRAINING ORDER WITH ASSET  
PRESERVATION, APPOINTMENT OF  
A TEMPORARY MONITOR OVER  
CORPORATE DEFENDANTS, AND  
OTHER EQUITABLE RELIEF, AND  
ORDER TO SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE**

Plaintiffs, the Federal Trade Commission ("FTC") and the Utah Division of Consumer Protection ("Division"), have filed their Complaint for Permanent Injunction and Other Equitable Relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §

53(b), the Consumer Review Fairness Act (“CRFA”), 15 U.S.C. § 45b, the Utah Consumer Sales Practices Act (“UCSPA”), Utah Code § 13-11-1 *et seq.*, and the Business Opportunity Disclosure Act (“BODA”), Utah Code § 13-15-1 *et seq.*, and have moved, pursuant to Fed. R. Civ. P. 65(b), for a temporary restraining order that includes asset preservation, appointment of a temporary monitor over Defendants Zurixx, LLC, Carlson Development Group, LLC, CJ Seminar Holdings, LLC, and Zurixx Financial, LLC (“Corporate Defendants”), other equitable relief, and an order to show cause why a preliminary injunction should not issue against all Defendants.

#### FINDINGS OF FACT

The Court, having considered Plaintiffs’ Complaint, *ex parte* Motion for a Temporary Restraining Order, declarations, exhibits, and the memorandum of points and authorities filed in support thereof, and being otherwise advised, finds that:

A. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe that it will have jurisdiction over all parties hereto and that venue in this district is proper.

B. In numerous instances, Defendants, in marketing and selling real estate-related investing products and services (“Defendants’ Products”), have falsely represented that by purchasing Defendants’ Products, consumers will likely earn thousands of dollars in profit, spend little time and effort to earn thousands of dollars in profit, have access to 100% funding for their real estate investments, or learn all they need to know to make thousands of dollars in profit through real estate investing at the 3-day workshop. Additionally, Defendants have failed to disclose, or to disclose adequately, to consumers material aspects of their refund policy.

Defendants also use form agreements that bar or restrict impermissibly the ability of consumers

who purchase Defendants' Products from engaging in reviews, performance assessments, and similar analyses of Defendants and Defendants' Products:

C. Defendants, in marketing and selling Defendants' Products, for a price exceeding \$500, and for the purpose of enabling purchasers to start a business, have represented that Defendants' Products would enable purchasers to generate income exceeding the price paid for the products. Defendants have been operating in Utah since at least 2013, but have never filed the information and documents required to be filed annually with the Division under BODA. BODA requires them to file a complete statement of oral, written, or visual representations that would be made to prospective purchasers about specific levels of potential sales, income, gross and net profits, or any other representations that would have suggested the same.

D. Defendants' earnings representations were not followed, as required by BODA, by a warning to purchasers that: Defendants could not guarantee earnings or ranges of earning; identifying the number of purchasers who had earned an amount in excess of the amount of their payment; and clarifying what percentage of total purchasers had earned an amount in excess of the amount of their payment. In addition to depriving the Division of information about Defendants and their operations, Defendants likewise have not provided this information to purchasers in a single disclosure statement or prospectus, accompanied by a mandatory cover sheet, at least ten business days prior to the purchase.

E. There is good cause to believe that Defendants have engaged in and are likely to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Consumer Review Fairness Act, 15 U.S.C. §§ 45b, the UCSPA, Utah Code § 13-11-1 *et seq.*,

and BODA, Utah Code § 13-15-1 *et seq.*, and that the FTC and the Division are likely to prevail on the merits of this action.

F. As demonstrated by the declarations of consumers, investigator declarations, transcripts of undercover recordings, public records, a report by the Plaintiffs' expert Teo Nicolais, and additional evidence contained in the volumes of exhibits filed by Plaintiffs in support of their *ex parte* Motion for Temporary Restraining Order, Plaintiffs have established a likelihood of success in showing that Defendants have: (1) made false or unsubstantiated earnings claims regarding the products they market and sell to consumers; (2) misrepresented that little time and effort is required to earn thousands of dollars in profit using their system, that consumers will have access to 100% funding for their real estate investments regardless of their credit history, and that consumers who attend Defendants' 3-day workshop will learn all they need to know about real estate investing; (3) failed to disclose, or disclose adequately, material terms of their refund policy; (4) used form contract provisions that restrict impermissibly consumers' ability to review and share information about Defendants and Defendants' Products; (5) failed to annually file information with the Division required to be filed under BODA; and (6) failed to provide a disclosure statement or prospectus to any prospective purchaser at least ten business days prior to a purchase, as required by BODA.

G. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of the FTC Act, CRFA, UCSPA, and BODA unless Defendants are restrained and enjoined by order of this Court.

H. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers – including monetary restitution,

rescission, disgorgement, or refunds – will occur from the sale, transfer, destruction, or other disposition or concealment by Defendants of assets or records, unless Defendants are immediately restrained and enjoined by order of this Court; and that, in accordance, with Fed. R. Civ. P. 65(b), the interests of justice require that this Order be granted without prior notice to Defendants. Thus, there is good cause for relieving the Plaintiffs of the duty to provide Defendants with prior notice of Plaintiffs' *ex parte* Motion for a Temporary Restraining Order.

I. Good cause exists for appointing a temporary monitor over the Corporate Defendants, preserving Corporate Defendants' assets, permitting Plaintiffs and the temporary monitor immediate access to the Defendants' business premises and records, and permitting Plaintiffs and the temporary monitor to engage in expedited discovery.

J. Weighing the equities and considering Plaintiffs' likelihood of ultimate success on the merits, a temporary restraining order with asset preservation, the appointment of a temporary monitor, immediate access to business premises and records, limited expedited discovery, and other equitable relief is in the public interest.

K. This Court has authority to issue this Order pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Federal Rule of Civil Procedure 65, the All Writs Act, 28 U.S.C. § 1651, Utah Code §§ 13-11-17(1)(b); 13-11-2(4); 13-15-3(1); and 13-2-5(3).

L. No security is required of any agency of the United States for issuance of a temporary restraining order. Fed. R. Civ. P. 65(c).

#### **DEFINITIONS**

A. "Asset" means any legal or equitable interest in, right to, or claim to, any property, wherever located and by whomever held.

B. **“Corporate Defendants”** means Zurixx, LLC, Carlson Development Group, LLC, CJ Seminar Holdings, LLC, and Zurixx Financial, LLC, and each of their subsidiaries, affiliates, successors, and assigns.

C. **“Covered Communication”** means a written, oral, or pictorial review, performance assessment, or other similar analysis of goods or services, including conduct related to the goods or services.

D. **“Defendants”** means Corporate Defendants and Individual Defendants, individually, collectively, or in any combination.

E. **“Defendants Products”** means any real estate-related investing products and services marketed and sold by any Defendant.

F. **“Document”** is synonymous in meaning and equal in scope to the usage of “document” and “electronically stored information” in Federal Rule of Civil Procedure 34(a), Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, sound and video recordings, images, Internet sites, web pages, websites, electronic correspondence, including e-mail and instant messages, contracts, accounting data, advertisements, FTP Logs, Server Access Logs, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, customer or sales databases and any other electronically stored information, including Documents located on remote servers or cloud computing systems, and other data or data compilations from which information can be obtained directly or, if necessary, after translation into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

G. “**Earnings Claim**” means any representation, specific or general, about income, revenues, financial gains, percentage gains, profit, net profit, gross profit, or return on investment.

H. “**Electronic Data Host**” means any Person in the business of storing, hosting, or otherwise maintaining electronically stored information. This includes, but is not limited to, any entity hosting a website or server, and any entity providing “cloud based” electronic storage.

I. “**Individual Defendants**” means Cristopher A. Cannon, James M. Carlson, Jeffrey D. Spangler, individually, collectively, or in any combination.

J. “**Monitor**” means the temporary monitor appointed in Section X of this Order and any deputy monitors that shall be named by the temporary monitor.

K. “**Monitored Entities**” means Corporate Defendants and any other entity that has conducted any business related to the marketing or sale of Defendants’ Products, including receipt of Assets derived from any activity that is subject of the Complaint in this matter, and that the Monitor determines is controlled or owned by any Defendant.

L. “**Person**” means any natural person or any entity, corporation, partnership, or association of persons.

M. “**Review-Limiting Contract Term**” means a standardized contract term that: prohibits or restricts the ability of a person who is a party to the contract to engage in a Covered Communication; imposes a penalty or fee against a person who is a party to the contract for engaging in a Covered Communication; or transfers, or requires a person who is a party to the contract to transfer, to any other person any intellectual property rights in a Covered

Communication, with the exception of a non-exclusive license to lawfully use a Covered Communication about a Defendant's goods or services.

**ORDER**

**I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS THEREFORE ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or offering for sale of any goods or services, are temporarily restrained and enjoined from:

A. Making any Earnings Claim, unless the Earnings Claim is truthful and not misleading, and, at the time such claim is made, Defendants: (1) have a reasonable basis for the claim; (2) have in their possession written materials that substantiate the claim; and (3) make the written substantiation available upon request to the consumer, potential purchaser or investor, the Monitor, and Plaintiffs;

B. Misrepresenting or assisting others in misrepresenting, expressly or by implication, that:

1. Consumers who purchase any of Defendants' Products will receive 100% funding to do real estate deals regardless of their credit;
2. Defendants' Products allow consumers to make thousands of dollars in profit through real estate investing with little time and effort;
3. Consumers will learn everything they need to know at Defendants' 3-day workshops to make thousands of dollars in profit through real estate investing;

C. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics;

D. Failing to disclose, or disclose adequately, to consumers material aspects of Defendants' refund policy; and

E. Offering Defendants' Products for sale without complying with BODA, including filing required information annually with the Division, providing a disclosure statement or prospectus to any prospective purchaser at least 10 business days prior to a purchase, and providing the required warning to purchasers following an earnings representation that: Defendants cannot guarantee earnings or ranges of earning; identifying the number of purchasers who had earned an amount in excess of the amount of their payment; and clarifying what percentage of total purchasers had earned an amount in excess of the amount of their payment.

**II. INJUNCTION AGAINST SUPPRESSING COVERED COMMUNICATIONS THROUGH CONTRACT TERMS**

**IT IS THEREFORE ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or offering for sale of any goods or services, are temporarily restrained and enjoined from offering, attempting to enforce, or asserting the validity of, any Review-Limiting Contract Term.

Provided, however, that nothing in this Section shall: require a Defendant to publish or host the content of any person; affect any other legal duty of a party to a contract; or affect any cause of action arising from the breach of such duty.

**III. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby temporarily restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing, the name, address, birth date, telephone number, email address, credit card number, bank account number, Social Security number, or other financial or identifying information of any person that any Defendant obtained in connection with the practices charged in the Complaint or Defendants' Products; and

B. Benefitting from or using the name, address, birth date, telephone number, email address, credit card number, bank account number, Social Security number, or other financial or identifying information of any person that any Defendant obtained in connection with the practices charged in the Complaint or Defendants' Products.

Provided, however, that Defendants may disclose such identifying information to a law enforcement agency, to their attorneys as required for their defense, as required by any law, regulation, or court order, or in any filings, pleadings or discovery in this action in the manner required by the Federal Rules of Civil Procedure and by any protective order in the case.

**IV. PRESERVATION OF RECORDS AND ASSETS**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby temporarily restrained and enjoined from:

A. Destroying, erasing, falsifying, writing over, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly any business record, including a record from a personal account used for business purposes, including Documents that relate to: (1) Defendants' Products, business practices, marketing, Assets, or finances of any Defendant; (2) the real estate investment-related business practices or finances of entities directly or indirectly under the control of any Defendant; or

B. Disbursing, spending, liquidating, or assigning any Corporate Defendant's Assets in the amount of \$25,000 or greater, in any manner, directly or indirectly, without the Monitor's advance approval.

1. Each Corporate Defendant may make the following payments without Monitor approval for the following purposes, and only for those obligations due during the pendency of this Order, as long as the total amount spent is less than \$25,000;
2. Payments of reasonable and customary expenses to fulfill contractual obligations to third parties other than the Individual Defendants;
3. Payments to fulfill federal, state, and local tax obligations;

4. Payments to employees that are reasonable and customary – other than the directors, owners, officers, or Individual Defendants – as required under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, or other state laws; and

C. Failing to create and maintain Documents that, in reasonable detail, accurately, fairly, and completely reflect Corporate Defendants' revenues, disbursements, transactions, and use of Corporate Defendants' Assets.

**V. DUTIES OF ASSET HOLDERS OF CORPORATE DEFENDANTS' ASSETS**

**IT IS FURTHER ORDERED** that any financial or brokerage institution, Electronic Data Host, credit card processor, payment processor, merchant bank, acquiring bank, independent sales organization, third party processor, payment gateway, insurance company, business entity, or Person who receives actual notice of this Order (by service or otherwise) that:

- (a) has held, controlled, or maintained custody, through an account or otherwise, of any Document on behalf of any Corporate Defendant or any Asset that has been: owned or controlled, directly or indirectly, by any Corporate Defendant; held, in part or in whole, for the benefit of any Corporate Defendant; in the actual or constructive possession of any Corporate Defendant; or owned or controlled by, in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed or controlled by any Corporate Defendant;
- (b) has held, controlled, or maintained custody, through an account or otherwise, of any Document or Asset associated with credits, debits, or charges made on behalf of any

Corporate Defendant, including reserve funds held by payment processors, credit card processors, merchant banks, acquiring banks, independent sales organizations, third party processors, payment gateways, insurance companies, or other entities; or

(c) has extended credit to any Corporate Defendant, including through a credit card account, shall:

A. Provide Plaintiffs' counsel and the Monitor, within three (3) business days of receiving a copy of this Order, a sworn statement setting forth, for each Asset or account covered by this Section:

1. The identification number of each such account or Asset;
2. The balance of each such account, or a description of the nature and value of each such Asset as of the close of business on the day on which this Order is served, and; if the account or other Asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the Person to whom such account or other Asset was remitted;
3. The identification of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any Corporate Defendant, or is otherwise subject to access by any Corporate Defendant; and

B. Upon the request of Plaintiffs' counsel or the Monitor, promptly provide Plaintiffs' counsel and the Monitor with copies of all records or other Documents pertaining to each account or Asset covered by this Section, including originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and

from the accounts, including wire transfers and wire transfer instructions, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and all logs and records pertaining to safe deposit boxes, commercial mail boxes, and storage facilities.

## VI. FINANCIAL DISCLOSURES

**IT IS FURTHER ORDERED** that each Defendant, within three (3) business days of service of this Order upon them, shall prepare and deliver to Plaintiffs' counsel and the Monitor:

- A. Completed financial statements on the forms attached to this Order as **Attachment A** (Financial Statement of Individual Defendant) for each Individual Defendant, and **Attachment B** (Financial Statement of Corporate Defendant) for each Corporate Defendant; and
- B. Completed **Attachment C** (IRS Form 4506, Request for Copy of a Tax Return) for each Corporate Defendant.

## VII. FOREIGN ASSET ACCOUNTING

**IT IS FURTHER ORDERED** that within three (3) business days following the service of this Order, each Defendant shall:

- A. Provide Plaintiffs' counsel and the Monitor with a full accounting, verified under oath and accurate as of the date of this Order, of all Assets, Documents, and accounts outside of the United States which are: (1) titled in the name, individually or jointly, of any Defendant; (2) held by any Person for the benefit of any Defendant or for the benefit of any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed, or controlled by any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

B. Take all steps necessary to provide Plaintiffs' counsel and the Monitor with access to all Documents and records relating to the Corporate Defendants that may be held by third parties located outside of the territorial United States of America, including signing the Consent to Release of Financial Records appended to this Order as **Attachment D**;

#### **VIII. CREDIT REPORTS**

**IT IS FURTHER ORDERED** that Plaintiffs' counsel and the Monitor may obtain credit reports concerning any Corporate Defendant pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to Plaintiffs' counsel.

#### **IX. REPORT OF NEW BUSINESS ACTIVITY**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby temporarily restrained and enjoined from creating, operating, or exercising any control over any business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing Plaintiffs' counsel and the Monitor with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

**X. APPOINTMENT OF TEMPORARY MONITOR**

**IT IS FURTHER ORDERED** that David Broadbent is appointed as temporary monitor for the Monitored Entities and any of their affiliates, subsidiaries, successors, and assigns, wherever located. The Monitor shall be solely the agent of this Court in acting as Monitor under this Order. The Monitor shall be accountable directly to this Court.

**XI. DUTIES AND AUTHORITY OF THE TEMPORARY MONITOR**

**IT IS FURTHER ORDERED** that the Monitor shall have the following duties and authority:

A. Monitor the Monitored Entities' compliance with this Order by identifying and reviewing their marketing materials, live events, recordings of live events, telephone calls (both live and recorded), call logs, call detail records, reports, or other Documents that reflect Monitored Entities' marketing, advertising, promotion, distribution, offer for sale, sale or fulfillment of their real estate investing products;

B. Identify and review the Monitored Entities' records and financial transactions, including bank records, as they relate to the practices charged in the Complaint or Defendants' Products and ensure that all such related documents are preserved;

C. Identify and inventory all Assets of the Monitored Entities, including but not limited to:

1. Conducting an accounting of the Monitored Entities' Assets; and
2. Opening and inventorying any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Monitored Entity, either individually or jointly, or subject to access by any Monitored Entity;

D. Review and authorize, any Monitored Entities' request to:

1. Incur reasonable charges or cash advances on any credit or bank card issued in the name, individually or jointly, of any Monitored Entity or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Monitored Entity or of which any Monitored Entity is an Officer, Director, Member, or Manager, including but not limited to corporate bank cards or corporate credit card accounts for which any Defendant is, or was on the date that this Order was signed, an authorized signor;
2. Make reasonable payments to fulfill contractual obligations to third parties other than the Individual Defendants;
3. Make payments to fulfill federal, state, and local tax obligations; and
4. Make reasonable and customary payments to the Monitored Entities' employees – other than the directors, owners, officers, or the Individual Defendants – as required under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, or other state laws; pursuant to Section IV;

Provided, however, that this Section does not prohibit any Corporate Defendant from making any payments authorized by Section IV.B.

E. Maintain accurate records of all receipts and expenditures of the Monitored Entities;

F. Maintain accurate records of all receipts and expenditures incurred as Monitor;

G. The Monitor shall have immediate, unfettered access to all information or Documents the Monitor deems necessary to carry out the Monitor's duties pursuant to this Order, to the same extent as the Monitored Entities, themselves, are allowed by right, contract, or practice including, but not limited to:

1. Access to all Documents pertaining to the Monitored Entities' business activities and finances related to the practices charged in the Complaint or Defendants' Products wherever located and in whomever's custody or control;
2. Access to all property or premises in possession of, owned by, or under the control of the Monitored Entities related to the practices charged in the Complaint or Defendants' Products, wherever located;
3. The right to interview any current or former employee, independent contractor, principal, owner, manager or member of the Monitored Entities, including Individual Defendants, to obtain and copy pertinent information including, but not limited to, the name, home address, Social Security number, job description, company history, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee;
4. The right to interview any Monitored Entity's current or former officer, manager, independent contractor, subcontractor, financial institution, vendor, telecommunications provider, agent, service bureau, or other

entity involved in the provision of any services from, to, or on behalf of the Monitored Entities, including Individual Defendants;

5. Access to all Documents of any officer, manager, independent contractor, employee, or agent of any Monitored Entity pertaining to the Monitored Entities' business activities and finances related to the practices charged in the Complaint or Defendants' Products;
6. The right to copy or image all Documents that the Monitor deems necessary to carry out the Monitor's duties pursuant to this Order, including any documents in the custody, or control of Individual Defendants; and
7. The right to issue subpoenas to obtain Documents and records pertaining to the Monitored Entities, and conduct discovery in this action that the Monitor deems necessary to carry out the Monitor's duties pursuant to this Order; and

H. The Monitor is authorized to choose, engage, and employ attorneys, investigators, accountants, appraisers, and other independent contractors and technical specialists, as the Monitor deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order. The Monitor is also authorized to obtain the assistance of the U.S. Marshal's office and other federal, state, and local law enforcement officers as the Monitor deems necessary to fulfill the duties set forth in this Section. If requested by the Monitor, the United States Marshal shall provide, and state or local law enforcement may provide, appropriate

and necessary assistance to the Monitor to implement this Order and is authorized to use any necessary and reasonable force to do so.

**XII. REPORTING BY THE MONITOR**

**IT IS FURTHER ORDERED** that, prior to the preliminary injunction show cause hearing set by Section XXII of this Order, the Monitor is directed to report to this Court on the Monitor's findings, including:

- A. The Monitored Entities' compliance with this Order;
- B. An accounting of the Monitored Entities' financial transactions as they relate to the practices charged in the Complaint or Defendants' Products;
- C. A description of the Monitored Entities' corporate structures including all parents, subsidiaries (whether wholly or partially owned), divisions (whether incorporated or not), affiliates, branches, charters, joint ventures, partnerships, franchises, operations under assumed names, and all ownership interests of the Monitored Entities.

**XIII. PROVISION OF INFORMATION TO MONITOR**

**IT IS FURTHER ORDERED** that Defendants shall provide to the Monitor, immediately upon request, without need of any subpoena or further order, the following:

- A. A list of all Assets and accounts of the Monitored Entities, including Assets of the Monitored Entities that are held in any name other than the name of a Monitored Entity, or by any Person other than a Monitored Entity;
- B. A list of all Assets and Documents belonging to other Persons whose interests are under the direction, custody, or control, or in the possession, of the Monitored Entities;

C. A list of all locations where Documents of the Monitored Entities are located, and the means to access such Documents within five (5) hours of the Monitor's request;

D. Access to all Documents of the Monitored Entities including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title Documents and other papers that relate to the practices charged in the Complaint or Defendants' Products;

E. Access to all computers, electronic devices, mobile devices, and machines (onsite or remotely) and any cloud account (including specific method to access account), electronic file in any medium, or other data in whatever form used to conduct the business of the Monitored Entities;

F. Copies of all keys, codes, user names and passwords necessary to gain or to secure access to any Assets or Documents of the Monitored Entities including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property; and

G. A list of all agents, employees, independent contractors, officers, attorneys, servants, and those Persons in active concert and participation with the Monitored Entities, or who have been associated or done business with the Monitored Entities since January 1, 2013.

#### **XIV. COOPERATION WITH THE MONITOR**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, all other Persons in active concert or participation with any of them, and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the

Monitor. This cooperation and assistance shall include, but is not limited to, providing information to the Monitor that the Monitor deems necessary to exercise the authority and discharge the responsibilities of the Monitor under this Order; providing any keys, codes, user names, and passwords required to access any computers, electronic devices, mobile devices, and machines (onsite or remotely) and any cloud account (including specific method to access account) or electronic file in any medium; informing the Monitor of all Persons who owe money to any Monitored Entity; transferring funds at the Monitor's direction; and producing Documents related to the Assets and sales and refunds of the Monitored Entities.

**XV. NON-INTERFERENCE WITH THE MONITOR**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order; and any other Person served with a copy of this Order, are hereby restrained and enjoined from directly or indirectly:

- A. Interfering with the Monitor's efforts to inventory or review the Assets or Documents of the Monitored Entities;
- B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any Documents of the Monitored Entities;
- C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Monitored Entities except as provided in Section IV;

D. Refusing to cooperate with the Monitor or the Monitor's duly authorized agents in the exercise of their duties or authority under any order of this Court; and

E. Failing to provide any assistance or information requested by the Monitor in connection with the performance of the Monitor's duties under this Order.

**XVI. COMPENSATION OF MONITOR**

**IT IS FURTHER ORDERED** that the Monitor and all personnel hired by the Monitor, as herein authorized, including counsel to the Monitor and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the Assets now held by, in the possession or control of, or which may be received by, the Monitored Entities. The Monitor shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of entry of this Order. The Monitor shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

**XVII. IMMEDIATE ACCESS TO BUSINESS PREMISES AND RECORDS**

**IT IS FURTHER ORDERED** that:

A. To ensure the preservation of Assets and evidence relevant to this action, Plaintiffs and the Monitor, and their representatives, agents, contractors, and assistants, shall have immediate access to the business premises, records, and storage facilities, owned, controlled, or used by the Monitored Entities. Such locations include, but are not limited to, 2750 East Cottonwood Parkway, Suite 200, Cottonwood Heights, Utah 84121, and any offsite location or commercial mailbox used by the Monitored Entities;

B. Plaintiffs and the Monitor, and their representatives, agents, contractors, and assistants, are authorized to remove Documents from the Monitored Entities' premises in order that they may be inspected, inventoried, and copied. Plaintiffs shall return any removed materials to the Monitor within five (5) business days of completing inventorying and copying, or such time as is agreed upon by Plaintiffs and the Monitor;

C. Plaintiffs' and the Monitor's access to the Monitored Entities' Documents pursuant to this Section shall not provide grounds for any Defendant to object to any subsequent request for Documents or other discovery served by Plaintiffs or the Monitor;

D. Plaintiffs and the Monitor, and their representatives, agents, contractors, and assistants, are authorized to obtain the assistance of federal, state, and local law enforcement officers as they deem necessary to effect service and to implement peacefully the provisions of this Order;

E. If any Documents, computers, or electronic storage devices containing information related to the business practices or finances of the Monitored Entities are at a location other than that listed above, including personal residence(s) of any Individual Defendant, then, immediately upon receiving notice of this Order, Individual Defendants and Monitored Entities shall produce to the Monitor all such Documents, computers, and electronic storage devices, along with any codes or passwords needed for access. In order to prevent the destruction of computer data, upon service of this Order, any such computers or electronic storage devices shall be powered down in the normal course of the operating system used on such devices and shall not be powered up or used until produced for copying and inspection; and

F. If any communications or records of any Monitored Entity are stored with an Electronic Data Host, such Entity shall, immediately upon receiving notice of this Order, provide the Monitor with the username, passwords, and any other login credential needed to access the communications and records, and shall not attempt to access, or cause a third-party to attempt to access, the communications or records.

**XVIII. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each affiliate, telemarketer, marketer, sales entity, successor, assign, member, officer, director, employee, agent, independent contractor, client, attorney, spouse, subsidiary, division, and representative of any Defendant, and shall, within ten (10) days from the date of entry of this Order, provide Plaintiffs and the Monitor with a sworn statement that this provision of the Order has been satisfied, which statement shall include the names, physical addresses, phone numbers, and email addresses of each such Person who received a copy of the Order. Furthermore, Defendants shall not take any action that would encourage officers, agents, members, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns, or other Persons or entities in active concert or participation with them to disregard this Order or believe that they are not bound by its provisions.

**XIX. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that, notwithstanding the provisions of the Fed. R. Civ. P. 26(d) and (f) and 30(a)(2)(A)(iii), and pursuant to Fed. R. Civ. P. 30(a), 34, and 45, Plaintiffs and the Monitor are granted leave, at any time after service of this Order, to conduct limited expedited discovery for the purpose of discovering: (1) the nature, location, status, and extent of

Defendants' Assets; (2) the nature, location, and extent of Corporate Defendants' business transactions and operations; (3) Documents reflecting Corporate Defendants' business transactions and operations; (4) control of the Corporate Defendants; (5) information related to Individual Defendants' role in Corporate Defendants' business transactions and operations; and (6) compliance with this Order. The limited expedited discovery set forth in this Section shall proceed as follows:

A. Plaintiffs and the Monitor may take the deposition of parties and non-parties. Forty-eight (48) hours' notice shall be sufficient notice for such depositions. The limitations and conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the Federal Rules of Civil Procedure regarding subsequent depositions of an individual or corporation shall not apply to depositions taken pursuant to this Section. Any such deposition taken pursuant to this Section shall not be counted towards the deposition limit set forth in Rules 30(a)(2)(A) and 31(a)(2)(A), and depositions may be taken by telephone or other remote electronic means;

B. Plaintiffs and the Monitor may serve upon parties requests for production of Documents or inspection that require production or inspection within five (5) calendar days of service, provided, however, that three (3) calendar days of notice shall be deemed sufficient for the production of any such Documents that are maintained or stored only in an electronic format;

C. Plaintiffs and the Monitor may serve upon parties interrogatories that require response within five (5) calendar days after service of the interrogatories. Any interrogatories served pursuant to this Section shall be not counted toward the interrogatory limit set forth in Rule 33(a)(1);

D. Plaintiffs and the Monitor may serve subpoenas upon non-parties that direct production or inspection within five calendar (5) days of service;

E. Service of discovery upon any Defendant or non-party taken pursuant to this Section, shall be sufficient if made by email, or by personal or overnight delivery;

F. Any expedited discovery taken pursuant to this Section is in addition to, and is not subject to, the limits on discovery set forth in the Federal Rules of Civil Procedure and the Local Rules of this Court. The expedited discovery permitted by this Section does not require a meeting or conference of the parties, pursuant to Rules 26(d) & (f) of the Federal Rules of Civil Procedure; and

G. The Parties are exempted from making initial disclosures under Fed. R. Civ. P. 26(a)(1) until further order of this Court.

**XX. SERVICE OF THIS ORDER**

**IT IS FURTHER ORDERED** that copies of this Order as well as the *Ex Parte* Motion for Temporary Restraining Order, and all other pleadings, Documents, and exhibits filed contemporaneously with that Motion (other than the Complaint and summons), may be served by any means, including facsimile transmission, electronic mail or other electronic messaging, personal or overnight delivery, U.S. Mail or FedEx, by agents and employees of Plaintiffs, by any law enforcement agency, or by private process server, upon any Defendant or any Person (including any financial institution) that may have possession, custody or control of any Asset or Document of any Corporate Defendant, or that may be subject to any provision of this Order pursuant to Rule 65(d)(2) of the Federal Rules of Civil Procedure. For purposes of this Section,

service upon any branch, subsidiary, affiliate, or office of any entity shall effect service upon the entire entity.

**XXI. CORRESPONDENCE AND SERVICE ON PLAINTIFFS**

**IT IS FURTHER ORDERED** that, for the purpose of this Order, all correspondence and service of pleadings on Plaintiffs shall be addressed to:

Collot Guerard  
Josh Doan  
Miry Kim  
FEDERAL TRADE COMMISSION  
600 Pennsylvania Ave., N.W., CC-8528  
Washington, DC 20580  
cguerard@ftc.gov  
jdoan@ftc.gov  
mkim@ftc.gov

Thomas M. Melton  
Robert G. Wing  
Kevin Mclean  
Assistant Attorneys General  
Attorneys for Plaintiff Utah Division of Consumer Protection  
UTAH ATTORNEY GENERAL'S OFFICE  
160 East 300 South, Fifth Floor  
Salt Lake City, Utah 84114  
tmelton@agutah.gov  
rwing@agutah.gov  
kmclean@agutah.gov

**XXII. PRELIMINARY INJUNCTION HEARING**

**IT IS FURTHER ORDERED** that, pursuant to Fed. R. Civ. P. 65(b), Defendants shall appear before this Court on the 15<sup>th</sup> day of October, 2019, at 10:00<sup>am</sup>, to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against Defendants, enjoining the violations of the law alleged in

the Complaint, continuing the preservation of Corporate Defendants' Assets, continuing the appointment of the Monitor, and imposing such additional relief as may be appropriate.

**XXIII. BRIEFS AND AFFIDAVITS CONCERNING PRELIMINARY INJUNCTION**

**IT IS FURTHER ORDERED** that:

A. Defendants shall file with the Court and serve on Plaintiffs' counsel any answering pleadings, affidavits, motions, expert reports or declarations, or legal memoranda no later than four (4) calendar days prior to the order to show cause hearing set by Section XXII of this Order. Plaintiffs may file responsive or supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on counsel for Defendants no later than one (1) calendar day prior to the order to show cause hearing.

Provided that such affidavits, pleadings, motions, expert reports, declarations, legal memoranda, or oppositions must be served by personal or overnight delivery, or by email, and be received by the other party or parties no later than 5:00 p.m. Mountain Time on the appropriate dates set forth in this Section; and

B. An evidentiary hearing on Plaintiffs' request for a preliminary injunction is not necessary unless Defendants demonstrate that they have, and intend to introduce, evidence that raises a genuine and material factual issue. The question of whether this Court should enter a preliminary injunction shall be resolved on the pleadings, declarations, exhibits, and memoranda filed by, and oral argument of, the parties. Live testimony shall be heard only on further order of this Court. Any motion to permit such testimony shall be filed with the Court and served on counsel for the other parties at least five (5) calendar days prior to the order to show cause hearing. Such motion shall set forth the name, address, and telephone number of each proposed

witness, a detailed summary or affidavit revealing the substance of each proposed witness's expected testimony, and an explanation of why the taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in response to another party's timely motion to present live testimony shall be filed with this Court and served on the other parties at least three (3) calendar days prior to the order to show cause hearing.

Provided, however, that service shall be performed by personal or overnight delivery, or by email, and Documents shall be delivered so that they shall be received by the other parties no later than 5:00 p.m. Mountain Time on the appropriate dates provided in this Section.

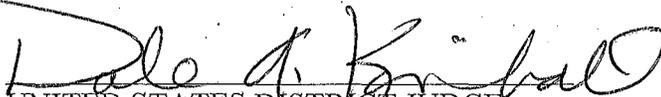
**XXIV. DURATION OF THE ORDER**

**IT IS FURTHER ORDERED** that this Order shall expire fourteen (14) days from the date of entry noted below, unless within such time, the Order is extended for an additional period pursuant to Fed. R. Civ. P. 65(b)(2).

**XXV. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this 15<sup>th</sup> day of October, 2019, at 2:30 p.m.

  
UNITED STATES DISTRICT JUDGE