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Attorneys for David K. Broadbent as Court-Appointed Receiver

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, 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; CHRISTOPHER 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.

**RECEIVER'S MOTION TO APPROVE
THE SALE OF CERTAIN PERSONAL
PROPERTY, AND TO APPROVE SALE
FREE AND CLEAR OF LIENS WITH
VALID LIENS TO ATTACH TO
PROCEEDS**

Case No. 2:19-cv-00713

Pursuant to 28 U.S.C. §§ 2001 and 2004, David K. Broadbent, as receiver (the “Receiver”) for Defendants Zurixx, LLC and related entities (collectively, “Zurixx”), hereby moves the Court for an order approving the public sale of personal property by auction.

MEMORANDUM

I. Background

The Court entered the Stipulated Preliminary Injunction (Dkt. No. 54, the “PI Order”) on November 1, 2019, that, in part, appointed the Receiver. The PI Order, among other things, orders the Receiver to “Take exclusive custody, control and possession of all Assets and Documents of, or in the possession, custody, or under the control of, any Receivership Entity, wherever situated” (Section XV.B.).

Since the entry of the PI Order, the Receiver has been working to identify and secure the assets of the Receivership Estate. During the course of securing Zurixx’s leased offices and storage facilities, the Receiver has gathered various personal property items. Many of these items were used by Zurixx during its seminar events. These items include, without limitation, servers and related equipment, computers (including laptops, desktops, monitors, and other related equipment), audio-visual equipment (including speakers, receivers, microphones, multiple electronic cords (all sizes), video and recording equipment, large commercial Hitachi projectors, smart video hubs, monitors, Allen & Heath mixing boards, power boxes, head phones, converters, camera equipment, lighting, QSC equipment, and electrical accessories), and a 2006 GMC Savana G3500 Box Truck and 2014 Haulmark Enclosed Trailer that Zurixx utilized to transport equipment to events (collectively, the “Personal Property”).

Given that the Receivership Entities are no longer in operation, rather than using receivership resources to pay for the storage of the Personal Property, the Receiver deems it appropriate to liquidate the Personal Property. He seeks an order approving the liquidation of the Personal Property through public auctions as more fully described below.

II. Public Sales are Permitted by Governing Statutes

The public sale of personal property by a receiver is governed by 28 U.S.C. § 2004, which directs that the sale of any "personalty" sold under order or decree of the United States be in accordance with Section 2001 of the same title. The pertinent section of 28 U.S.C. § 2001(a) reads as follows:

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

28 U.S.C. § 2001(a).

In approving a public sale, the Court has discretion in determining the best format. The procedures outlined below satisfy the requirements of 28 U.S.C. § 2001.

III. Proposed Auctions

The Receiver has consulted with Erkelens & Olson Auctioneers ("E&O") regarding the public sale of the Personal Property. E&O has a wealth of expertise in marketing and publicly selling property, and the Receiver believes it is well-qualified to market and conduct sales of the Personal Property at issue. The public sales of the Personal Property will be conducted at E&O's facility located at 3365 West 500 South, Suite 100, Salt Lake City, Utah, 84104, which is located

in this Court's district. Subject to the Court's approval, the Receiver has agreed with E&O to pay a commission of 10% of the purchase price of the Personal Property E&O is able to sell at auction.

The Receiver would like to begin with the public sale of a portion of the Personal Property he has gathered thus far at E&O's facility, which portion is comprised primarily of audio-visual equipment used at events, as well as the truck and trailer mentioned above (the "First Sale"). The Receiver would like to liquidate these items as soon as reasonably possible, and perhaps as early as December 7, 2019. E&O holds regular auctions (almost weekly), and the Receiver will work with E&O regarding the timing of the auction to maximize the return to the Receivership Estate.

The portion of the Personal Property located at E&O's facility to be included at the First Sale does not include, among other things, items from Zurixx's Puerto Rican office or any of Zurixx's servers, laptop/desktop computers, or related equipment. It also does not include the furniture and other fixtures located at Zurixx's Cottonwood Heights office.¹ The Receiver seeks authority to auction other Personal Property as he locates, transports, and deems it appropriate to liquidate such Personal Property. Given the Receiver's duty to preserve information, he does not intend to liquidate servers and computers at this time. He will only seek to do so when he reasonably believes important information has been otherwise preserved. Having said that, there are many computers used by low level employees that the Receiver anticipates he will be able to "wipe" and sell because they do not likely contain critical information that is not available

¹ Subject to Court approval, the Receiver has agreed to transfer much of the personal property located at Zurixx's Cottonwood Height's location to the landlord as part of a settlement agreement. The Receiver anticipates filing a motion with the Court to approve such settlement very soon.

elsewhere, such as on servers or computer hard drives that have already been imaged. The Receiver requests that the Court authorize the Receiver to sell computers and servers without the need for further Court approval *only* if he is able to obtain the consent of the Plaintiffs and the individual Defendants in this case. If he is unable to obtain such consent, he will not sell servers or computers without further Court approval.

Finally, the Receiver is not aware of any existing or valid liens on the Personal Property, but in the event interested parties assert lien rights, the Receiver requests that the order authorize the sale of Personal Property to be free and clear of any liens, with valid liens to attach to proceeds from the sale. This will permit the Receiver to liquidate the Personal Property and subsequently work to resolve disputes regarding asserted lien rights through settlement or before the Court.

CONCLUSION

The Receiver requests that the Court grant this motion and enter an order authorizing the Receiver to (1) engage E&O to auction the Personal Property, (2) sell by public auction the Personal Property (except servers and computers) free and clear of any liens with valid liens to attach to proceeds at such time as the Receiver deems appropriate, and (3) sell servers and computers free and clear of liens with valid liens to attach to proceeds without the need for further Court approval *only* if the Receiver is able to obtain the consent of the Plaintiffs and individual Defendants in this case.

RESPECTFULLY SUBMITTED this 27th day of November, 2019.

HOLLAND & HART LLP

/s/ Doyle S. Byers

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