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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
SETTLEMENT WITH LANDLORD**

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”), has entered

into a Settlement Agreement and Release (the “Settlement Agreement”) with Cornerstone Title Holder LLC (“Cornerstone”), which is the landlord under a Lease Agreement, dated October 12, 2015 (the “Lease”; attached hereto as **Exhibit A**) that Zurixx entered into for its main office space located at 2750 E. Cottonwood Parkway, Suite 200, Cottonwood Heights, Utah, 84121 (the “Office Space”). A copy of the Settlement Agreement is attached hereto as **Exhibit B**. The Receiver believes that the Settlement Agreement is in the best interest of the Receivership and requests that the Court approve it.

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).

Following the entry of the PI Order, the Receiver immediately took possession of the Office Space. The Office Space consists of approximately 30,000 square feet. The Lease for the Office Space was entered on October 12, 2015, and has a term of five years and five months. The current monthly base rent is \$86,756.81, and is due on the first of every month. Shortly after his appointment, the Receiver determined that he would not operate the Zurixx business. As a result, he decided that it would not be prudent to remain in the Office Space and began making arrangements to vacate the premises. Therefore, the Receiver did not make the November or December payments, which total \$173,513.62 in base rent, and Zurixx is in default of the Lease.

Pursuant to the Lease, Cornerstone was paid and holds a security deposit in the amount of \$77,836.50. The Receiver has personal property located on the premises that consists primarily of office furniture, computers and computer-related equipment, and electronics. The Receiver believes that the sale of such personal property would yield some amount less than the amount of the security deposit Cornerstone holds.

II. Settlement Terms and Request for Approval

The Receiver and Cornerstone entered into the Settlement Agreement on November 25, 2019, which is subject to Court approval. The material terms of the Settlement Agreement include that Cornerstone has agreed to waive all of its claims against Zurixx and the Receivership Estate, including for the default of the Lease, and to return \$51,907.95 of the security deposit (approximately 67%) to the Receiver. In exchange, the Receiver has agreed to relinquish to Cornerstone “all personal property in or on the Premises including any personal property removed from the Premises by the auctioneer, if any, with the exception of any computers or computer-related equipment and electronics not affixed to the walls or ceilings, including all servers, server racks, monitors, and other computer accessories” (Settlement Agreement § 3). The Receiver will retain computers and other computer related equipment, in part, to preserve information needed by the Receiver and the parties in this case going forward. The auctioneer has removed some computer-related equipment but has not removed any other personal property from the Premises.

Finally, pursuant to the Settlement Agreement, the Receiver must vacate the premises by December 20, 2019, which he is prepared to do.

Under the circumstances, the Receiver believes that the Settlement Agreement is in the best interest of the Receivership Estate, particularly given the minimal value of the personal property at issue, the steep amount of the rent that will continue to accrue absent the Settlement Agreement, and the fact that the Receiver will obtain close to \$52,000.00 from Cornerstone. Therefore, the Receiver respectfully requests that the Court approve the Settlement Agreement as proposed.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that Court grant this motion. A proposed order is submitted herewith as **Exhibit C**.

RESPECTFULLY SUBMITTED this 19th day of December, 2019.

HOLLAND & HART LLP

/s/ Doyle S. Byers

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Cory A. Talbot

Engels J. Tejada

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Attorneys for David K. Broadbent as the Court-Appointed Monitor

INDEX OF EXHIBITS

- A - 10/12/2015 Lease Agreement.
- B - 11/25/2019 Settlement Agreement and Release.
- C - Proposed Order.

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