

HOLLAND & HART LLP
Doyle S. Byers, #11440
Cory A. Talbot, #11477
Engels J. Tejeda, #11427
Chelsea J. Davis, #16436
222 S. Main Street, Suite 2200
Salt Lake City, UT 84101
Telephone: (801) 799-5800
Facsimile: (801) 799-5700

Attorneys for David K. Broadbent as Court-Appointed Receiver

**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.

**MOTION TO APPROVE DISMISSAL
OF STATE COURT LITIGATION
(ZURIXX, LLC. V. JEANNIE KELLER)**

Case Number 2:19-cv-00713

Judge Dale A. Kimball
Magistrate Judge Evelyn J. Furse

David K. Broadbent, the Court-appointed receiver (the “Receiver”), requests that the Court approve the dismissal of pending litigation filed pre-receivership by Zurixx, LLC (“Zurixx”) against Jeannie Keller in *Zurixx, LLC v. Jeannie Keller*, Case No. 190900238 (3rd Dist. Ct. Utah) (the “Keller Litigation”).

MOTION

A. Zurixx and Keller resolved prior litigation by a confidential settlement agreement.

Keller was a Zurixx customer. Unhappy with her experience, Keller complained to the Utah Better Business Bureau about Zurixx in May 2018 and filed a complaint against Zurixx with the Utah Department of Commerce, Division of Consumer Protection in June 2018. In response, Zurixx sued Keller a few weeks later in *Zurixx, LLC v. Jeannie Keller*, Case No. 180904588 (3rd Dist. Ct. Utah), alleging defamation/libel and defamation/libel *per se*. Zurixx and Keller settled that lawsuit, with Zurixx agreeing to make a payment to Keller, and Keller agreeing, among other things, to certain confidentiality requirements.

B. Zurixx filed the Keller Litigation, claiming that Keller breached the parties’ confidential settlement agreement.

Zurixx alleged that Keller breached the confidentiality provisions of the parties’ settlement agreement by disclosing the fact and amount of the settlement to a third party who then used this information in connection with her own claim against Zurixx. Based on those allegations, Zurixx filed the Keller Litigation, seeking an injunction directing Keller to refrain from further violations of the confidentiality provision and claiming damages. Keller answered the complaint, denying that she violated the confidentiality provision of the settlement agreement. The parties are currently conducting discovery in the Keller Litigation.

C. The Receiver requests approval to dismiss the Keller Litigation.

The parties provided the Receiver with the filings and discovery materials in the Keller Litigation, and counsel for the Receiver has spoken with counsel for the parties. Having reviewed that information, the Receiver does not believe it is in the best interests of the receivership estate to continue the litigation. The case is fact-intensive, and, accordingly, the likelihood of a successful dispositive motion is low. In addition, the amount at issue is low, approximately \$50,000, and there appear to be issues with collecting on a judgment in the event the litigation resulted in a victory for Zurixx. That being the case, the Receiver believes the best course is to dismiss the Keller Litigation. Counsel for Keller has indicated that she will agree to a dismissal with prejudice with the parties to bear their own fees and costs.

CONCLUSION

For these reasons, the Receiver requests that the Court issue an order lifting the stay of litigation on the Keller Litigation, (*see* Stipulated Prelim. Inj. (ECF No. 54) § XX at 24-25), for the limited purpose of permitting the parties in that Litigation to file a stipulation to dismiss the matter with prejudice with the parties to bear their own fees and costs.

The Receiver is submitting a proposed order with this motion.

RESPECTFULLY SUBMITTED this 24th day of January, 2020.

HOLLAND & HART LLP

/s/ Cory A. Talbot

Doyle S. Byers

Cory A. Talbot

Engels J. Tejada

Chelsea J. Davis

Attorneys for David K. Broadbent as Court-Appointed Receiver

13929621_v1

Doyle S. Byers, #11440
Cory A. Talbot, #11477
Engels J. Tejada, #11427
Chelsea J. Davis, #16436
HOLLAND & HART LLP
222 S. Main Street, Suite 2200
Salt Lake City, Utah 84101
Telephone: (801) 799-5800
Facsimile: (801) 799-5700

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.

**ORDER GRANTING MOTION TO
APPROVE DISMISSAL OF STATE
COURT LITIGATION**

Case No. 2:19-cv-00713

Judge Dale A. Kimball
Magistrate Judge Evelyn J. Furse

Having considered the Motion to Approve Dismissal of State Court Litigation (the
“Motion”), and good cause appearing, the Court GRANTS the Motion. Accordingly, the stay of

litigation on the lawsuit *Zurixx, LLC v. Jeannie Keller*, Case No. 190900238 (3rd Dist. Ct. Utah) (the “Keller Litigation”), pursuant to the Stipulated Preliminary Injunction in this case, (*see* ECF No. 54 § XX at 24-25), is lifted for the limited purpose of permitting the parties in the Keller Litigation to file a stipulation to dismiss the matter with prejudice with the parties to bear their own fees and costs.

DATED this ____ day of January, 2020.

BY THE COURT:

Honorable Dale A. Kimball
U.S. District Court Judge