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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.

**STIPULATED REQUEST FOR ORDER
REGARDING QUALIFIED TURNOVER
OF RESERVE FUNDS**

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

The Federal Trade Commission (the “FTC”), the Utah Division of Consumer Protection (the “UDCP”), and the Court-Appointed Receiver David K. Broadbent (the “Receiver”) hereby

request the Court to enter the attached proposed Stipulated Order for Qualified Turnover of Reserve Funds (the “Proposed Order”). Non-Party Synovus Bank (“Synovus”), and Non-Party Qualpay, Inc. (“Qualpay,” and collectively with Synovus, the “Acquirers”), currently hold \$45,000.00 in reserve funds associated with payment card transactions initiated by cardholders doing business with certain Defendants in this action and their related entities (the “Reserve Funds”). The FTC, the UDCP, and the Receiver claim that such Reserve Funds are property of such Defendants and must be turned over to the Receiver pursuant to the Court’s Stipulated Preliminary Injunction dated November 1, 2019 [Doc. No. 54]. The Acquirers, by contrast, claim that such Reserve Funds, as well as income therefrom, are not the property of Defendants and that, in any event, the Acquirers are entitled to use those Reserve Funds to offset consumer-initiated chargebacks based on, *inter alia*, ownership of the Reserve Funds, their contract(s) with such Defendants, their security interest(s) in the Reserve Funds, and the doctrine of recoupment. The Receiver’s counsel represents with his signature below that the Acquirers have agreed to turn over the Reserve Funds subject to the conditions set forth in the Proposed Order, and the Court’s entry of the Proposed Order. Therefore, the FTC, the UDCP, and the Receiver request that the Court enter the Proposed Order.

RESPECTFULLY SUBMITTED this 28th day of April, 2020.

HOLLAND & HART LLP

/s/ Doyle S. Byers

Doyle S. Byers

Cory A. Talbot

Engels J. Tejada

Chelsea J. Davis

Attorneys for David K. Broadbent as the Court-appointed Receiver

FEDERAL TRADE COMMISSION

/s/ Collot Guerard _____

Collot Guerard

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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.

**STIPULATED ORDER FOR QUALIFIED
TURNOVER OF RESERVE FUNDS**

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

The Federal Trade Commission (the “FTC”), the Utah Division of Consumer Protection (the “UDCP”), the Court-Appointed Receiver David K. Broadbent (the “Receiver”), Non-Party

Synovus Bank (“Synovus”), and Non-Party Qualpay, Inc. (“Qualpay,” and collectively with Synovus, the “Acquirers”), stipulate to the entry of this Stipulated Order for Qualified Turnover of Reserve Funds to facilitate the resolution of competing claims to the reserve funds referenced in Section VII of the Court’s Stipulated Preliminary Injunction (the “Preliminary Injunction”) [Doc. No. 54].

THEREFORE, IT IS ORDERED as follows:

1. The Acquirers currently hold \$45,000.00 in reserve funds associated with payment card transactions initiated by cardholders doing business with certain Defendants in this action and their related entities (the “Reserve Funds”). The FTC, the UDCP, and the Receiver claim that such Reserve Funds are property of such Defendants and must be turned over to the Receiver pursuant to the Preliminary Injunction. The Acquirers, by contrast, claim that such Reserve Funds, as well as income therefrom, are not the property of Defendants and that, in any event, the Acquirers are entitled to use those Reserve Funds to offset consumer-initiated chargebacks based on, *inter alia*, ownership of the Reserve Funds, their contract(s) with such Defendants, their security interest(s) in the Reserve Funds, and the doctrine of recoupment.

2. The FTC, the UDCP, and the Receiver have agreed to promptly negotiate with the Acquirers in good faith regarding the proper disposition of the Reserve Funds, but only after a preliminary turnover of the Reserve Funds to the Receiver. At the same time, the FTC, the UDCP, and the Receiver have agreed that such a turnover will not operate to prejudice or limit the rights, claims, or defenses of the Acquirers *vis-à-vis* the Reserve Funds, if any.

3. The Court therefore directs the Acquirers to turn over the Reserve Funds to the Receiver within twenty-one (21) days from the date of this Order. Such a turnover will not

impair, and is without prejudice to, or limitation on, the Acquirers' rights, claims, and defenses with respect to the Reserve Funds, and income therefrom, whether based on ownership of the Reserve Funds, the Acquirers' contract(s) with Defendant(s), any security interest(s) in the Reserve Funds (and any perfection of those security interest(s) that exists or existed prior to the turnover), the doctrine of recoupment, or otherwise.

4. The Receiver shall place the Reserve Funds on deposit in a separate receivership account. Unless otherwise ordered by the Court, such funds shall not be available to pay the expenses of the receivership estate. In the event that the FTC, the UDCP, and/or the Receiver seek any disbursement of Reserve Funds or income therefrom, the requesting party or parties shall give the Acquirers twenty-one (21) days advance notice of such request and an opportunity to object. Should any objection be filed with the Court, the Receiver shall not make such disbursement until the Court resolves the Acquirer(s)' objection.

SO ORDERED this ____ day of April, 2020.

BY THE COURT:

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