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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; BRAND MANAGEMENT HOLDINGS, LLC, a Delaware limited liability company; CAC INVESTMENT VENTURES, LLC, a Puerto Rico limited liability company; CARLSON DEVELOPMENT GROUP UTAH, a Utah limited liability company; CARLSON DEVELOPMENT GROUP PUERTO RICO, a Puerto Rico limited liability company; CJ SEMINAR HOLDINGS, LLC, a Utah limited liability company; DORADO MARKETING AND MANAGEMENT, LLC, f/k/a Zurixx, LLC, a Puerto Rico limited liability company; JSS INVESTMENT VENTURES, LLC, a Utah limited liability company; JSS TRUST, individually and as an owner of JSS INVESTMENT VENTURES, LLC; ZURIXX FINANCIAL UTAH, a Utah limited liability company; ZURIXX

**STIPULATED REQUEST FOR ORDER
REGARDING QUALIFIED TURNOVER
OF RESERVE FUNDS (PRIORITY
PAYMENT SYSTEMS)**

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

FINANCIAL PUERTO RICO, a Puerto Rico 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; JEFFREY D. SPANGLER, individually and as an officer of ZURIXX, LLC; and GERALD D. SPANGLER, a trustee for the JSS TRUST,

Defendants.

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 proposed Stipulated Order for Qualified Turnover of Reserve Funds (the “Proposed Order”) attached hereto as Exhibit A. Non-Party Priority Payment Systems LLC (“Priority Payment Systems,” and collectively with its acquiring bank, the “Acquirers”), currently hold \$293,748.80 in reserve funds associated with payment card transactions initiated by cardholders doing business with Richardson Law Group (the “Reserve Funds”). The FTC, the UDCP, and the Receiver claim that such Reserve Funds are property of 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.

Moreover, the account at issue was opened by RLG, which is not a named Defendant in this action. Nevertheless, the FTC, the UDCP, and the Receiver contend that the account was in

fact used to process transactions associated with one or more Defendants.¹ In order to address the Acquirers concerns that RLG may have an interest in the Reserve Funds, the Proposed Order provides that, upon its entry by the Court, the Receiver will provide notice of the Proposed Order to RLG or its representative, and RLG will have 45 days after service of the Proposed Order to file a claim with the Court to assert any claims it may have. If it does not do so within that timeframe, it will be barred from making any further claims to the Reserve Funds or in this case, or against Acquirers, based on the disposition of the Reserve Funds.

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 14th day of May, 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

¹ For context, the principal of RLG was Eric Richardson (now deceased), who was a law school colleague of James Carlson. In his deposition, Mr. Carlson testified that Mr. Richardson opened merchant processing accounts for Zurixx's use in the name of RLG. (See excerpt from Deposition of James Carlson dated October 29, 2019, attached hereto as Exhibit B.)

FEDERAL TRADE COMMISSION

/s/ Collot Guerard

Collot Guerard

Joshua Doan

Miry Kim

Attorneys for Plaintiff Federal Trade Commission

UTAH ATTORNEY GENERAL'S OFFICE

/s/ Robert G. Wing

Robert G. Wing

Douglas Devore

Kevin McLean

Attorneys for Plaintiff Utah Division of Consumer Protection

INDEX OF EXHIBITS

- A - Proposed Stipulated Order for Qualified Turnover of Reserve Funds.
- B - Excerpt from Deposition of James Carlson, dated October 29, 2019.

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EXHIBIT “A”

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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; BRAND MANAGEMENT HOLDINGS, LLC, a Delaware limited liability company; CAC INVESTMENT VENTURES, LLC, a Puerto Rico limited liability company; CARLSON DEVELOPMENT GROUP UTAH, a Utah limited liability company; CARLSON DEVELOPMENT GROUP PUERTO RICO, a Puerto Rico limited liability company; CJ SEMINAR HOLDINGS, LLC, a Utah limited liability company; DORADO MARKETING AND MANAGEMENT, LLC, f/k/a Zurixx, LLC, a Puerto Rico limited liability company; JSS INVESTMENT VENTURES, LLC, a Utah limited liability company; JSS TRUST, individually and as an

**STIPULATED ORDER FOR QUALIFIED
TURNOVER OF RESERVE FUNDS
(PRIORITY PAYMENT SYSTEMS)**

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

owner of JSS INVESTMENT VENTURES, LLC; ZURIXX FINANCIAL UTAH, a Utah limited liability company; ZURIXX FINANCIAL PUERTO RICO, a Puerto Rico 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; JEFFREY D. SPANGLER, individually and as an officer of ZURIXX, LLC; and GERALD D. SPANGLER, a trustee for the JSS TRUST,

Defendants.

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 Priority Payment Systems LLC (“Priority Payment Systems,” and collectively with its acquiring bank, 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 \$293,748.80 in reserve funds (the “Reserve Funds”) associated with payment card transactions initiated by cardholders doing business with Richardson Law Group (“RLG”). The FTC, the UDCP, and the Receiver claim that such Reserve Funds are property of 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.

5. The account at issue was opened by RLG, which is not a named Defendant in this action. Nevertheless, the FTC, the UDCP, and the Receiver contend that the account was in fact used to process transactions associated with one or more Defendants. In order to address the Acquirers concerns that RLG may have an interest in the Reserve Funds, upon the entry of this Order, the Receiver shall provide notice of the same to RLG or its representative. Such service may be made by mail or email at the last known address of RLG or its representative, as well as by service on RLG's registered agent. RLG or its representative shall have 45 days after service of this Order to file a claim with the Court to assert any claims it may have to the Reserve Funds. If it does not file a claim within 45 days of service, it shall be deemed to have waived any and all claims or rights to the Reserve Funds and shall be barred and estopped from making any further claims to the Reserve Funds or in this case, or against Acquirers, based on the disposition of the Reserve Funds hereunder.

SO ORDERED this ____ day of May, 2020.

BY THE COURT:

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

EXHIBIT “B”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL TRADE COMMISSION,)
and UTAH DIVISION OF)
CONSUMER PROTECTION,)
) Case No.
Plaintiffs,) 2:19-CV-713-DAK-EJF
)
vs.) Deposition of:
)
ZURIXX, LLC, et al.,) JAMES CARLSON
)
Defendants.) Judge Evelyn J. Furse

October 29, 2019 - 9:18 a.m.

Location: Holland & Hart LLP
222 South Main Street
Suite 2200
Salt Lake City, Utah 84101

Reporter: Marsha Beuchert, CSR, RPR
Notary Public in and for the State of Utah

1 Q. He's deceased now?

2 A. Yes, sir.

3 Q. What role did Eric Richardson play in the
4 organization of your company?

5 A. He decided not to be an investor.

6 Q. So he helped form it but decided not to
7 invest?

8 A. No, he decided not to invest. He was
9 originally going to be part of it and decided not to
10 be.

11 Q. But that's who you were talking about if
12 you told Mr. Williams that it was you and two law
13 school friends, right?

14 A. That's correct, sir.

15 Q. Was the company that you were referring to
16 in 2012, was it Zurixx, LLC Utah or Zurixx Financial,
17 LLC Utah?

18 A. I am not certain.

19 Q. The Puerto Rico entities were formed after
20 the Utah entities, right?

21 A. That's correct.

22 Q. So it was either Zurixx Financial, LLC Utah
23 or Zurixx, LLC Utah, right?

24 A. Correct.

25 Q. Mr. Richardson later played a role in

1 Zurixx, LLC operations, did he not?

2 A. He was an advisor to the company and did
3 play a role, yes.

4 Q. What role did he play beyond advising the
5 company?

6 A. He was an advisor to the company, and also
7 we had looked to open up a branch office in
8 California, and utilize his office and him as that
9 branch office.

10 Q. Manhattan Beach?

11 A. I believe the office was in El Segundo.

12 Q. He's also opened merchant processing
13 accounts for Zurixx's use, correct?

14 A. That's correct, in that regard.

15 Q. When did he open those merchant processing
16 accounts for Zurixx?

17 A. I don't recall.

18 Q. Can you give me an approximate date?

19 A. I can't recall.

20 Q. What are the names on those merchant
21 processing accounts?

22 A. I believe that it's Chuckanutt Bay,
23 C-h-u-c-k-a-n-u-t-t, and the other, it would be
24 Richardson Law Group.

25 Q. Okay. Where did Mr. Richardson open

1 merchant processing accounts for Zurixx?

2 A. Out of California.

3 Q. At what banks --

4 A. I don't know.

5 Q. -- or credit card companies?

6 A. I don't know.

7 Q. Who would know the answer to that?

8 A. Matt Magistro.

9 Q. I guess we will be seeing him tomorrow,
10 then.

11 Why did you need Eric Richardson to open
12 merchant processing accounts for Zurixx?

13 A. We wanted a presence in California. We
14 also at that point in time needed to get an
15 additional credit card account with American Express.

16 Q. So he opened a merchant processing account
17 for you at American Express, to the best of your
18 recollection?

19 A. Yes, sir.

20 Q. Why didn't you and Zurixx just open it
21 yourselves?

22 A. We had one that opened up at the time that
23 had been suspended due to client relations concerns,
24 not due to risk concerns.

25 Q. What does that mean, "client relations