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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; *et al.*, Defendants.	**RESPONSE TO MOTION FOR RECONSIDERATION AND IN COMPLIANCE WITH THE COURT'S ORDER** Case No. 2:19-cv-00713-DAK-DAO Judge Dale A. Kimball Magistrate Judge Daphne A. Oberg

David K. Broadbent, the Court-appointed receiver (the "Receiver"), responds to the Motion for Reconsideration and in Compliance with the Court's Order [ECF 173] (the "Motion") submitted by David Efrón and Efron Dorado, S.E. ("Efron Dorado") as follows:

MEMORANDUM

The Motion does not provide any basis for the Court to reconsider its Memorandum Decision and Order [ECF 166] (the "Order"). Mr. Efrón and Efron Dorado point to no new evidence and offer arguments they made, or could have made, in their Opposition to Motion for

Contempt and Request for Sanctions against Receiver's Attorneys [ECF 156]. Beyond that, the Motion does not appear to seek relief that is inconsistent with the Court's Order. The Court should deny the Motion accordingly.

I. There is no basis to reconsider the Order.

A motion for reconsideration is appropriate where (1) there is an intervening change in controlling law; (2) new evidence becomes available; or (3) there is a need to correct clear error or to prevent manifest injustice. *See Brunmark Corp. v. Samson Resources Corp.*, 57 F.3d 941, 948 (10th Cir. 1995); *see also, e.g.*, *Servants of the Paracletes v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) ("[A] motion for reconsideration" is an "inappropriate vehicle to reargue an issue previously addressed by the court when the motion merely advances new arguments, or supporting facts which were available at the time of the original motion. Absent extraordinary circumstances, . . . the basis for the second motion must not have been available at the time the first motion was filed."). Here, the Motion does not point to an intervening change in controlling law, cite new evidence, or present a need to correct clear error or to prevent manifest injustice. The Motion should be denied accordingly.

II. None of Mr. Efrón and Efron Dorado's arguments warrant reconsideration of the Order.

Beyond that, it is not clear what relief Mr. Efrón and Efron Dorado seek. The Motion incorrectly asserts that the Receiver is unconstitutionally taking the property of Mr. Efrón and Efron Dorado and incorrectly suggests that the relief granted in the Order – *i.e.*, "allow[ing] the Receiver and his representatives access to the office to recover and remove Zurixx's assets," (Order at 4) – is not authorized by the Federal Trade Commission Act (the "FTC Act"). (*See* Mot. at 1 ¶ 1 & 3 ¶ 13.) However, the Motion concludes by stating, "All it takes is for the

receiver's local counsel to indicate on what day or days his people will be able to remove the used furniture and equipment. We will gladly again grant them access in compliance with this court's order." (*Id*. at 4 ¶ 14.) Since that is encompassed in the Order, the Receiver does not object to it, and there is no reason for the Court reconsider its prior decision. The Court should, therefore, deny the Motion.

Nevertheless, three issues warrant responses:

First, there is no "unconstitutional taking." (Mot. at 1 ¶ 1.) Mr. Efrón and Efron Dorado claim that the Zurixx property located in the Puerto Rico Office belongs to the landlord pursuant to the lease agreement. However, as the Receiver pointed out in greater detail in Section II of the Reply in Support of Receiver's Motion for Order Holding Efron Dorado, S.E. and David Efrón in Contempt of Court [ECF 161], once the Receiver was appointed, the Court took exclusive jurisdiction over the Zurixx assets, and any contingencies created by the lease agreement were prohibited from occurring under the Injunction. *See, e.g.*, *SEC v. Champion-Cain*, 2019 WL 6834661, at *7 (S.D. Cal. Dec. 13, 2019) ("Once the district court appointed an equity receiver, there [can] be no breach of the contract by the debtor" because any contingency created by the contract is "prohibited from occurring by order of the court."). Indeed, the Court already considered this argument and concluded, "Once the Receiver was appointed, the Court took exclusive jurisdiction over Zurixx's assets and any contingencies created by the lease agreement were prohibited under the injunction. There is no basis for Efron Dorado's position that the lease agreement trumps the receivership's interests." (Order at 3.) Mr. Efrón and Efron Dorado offer no reason to reconsider that conclusion.

Second, Mr. Efrón and Efron Dorado point to the ongoing litigation before the Supreme Court regarding the scope of relief available under the FTC Act. (Mot. at 3 ¶ 14.) In doing so, however, they concede that the FTC Act "authorizes . . . injunctions." (*Id*.) Since the Order enforces the terms of the Stipulated Preliminary Injunction [ECF 54], the referenced Supreme Court litigation is irrelevant to the issues Mr. Efrón and Efron Dorado raise in their Motion.

Third, and finally, the Court should not consider the Motion insofar as it purports to have been submitted *pro se* by Efron Dorado. While Mr. Efrón appears to be a licensed attorney practicing in Puerto Rico, he has not sought to appear as counsel for Efron Dorado. As recently noted by the Tenth Circuit in this matter, under a "long-standing" rule of practice, Efron Dorado "must cause an attorney licensed to practice in this court to enter an appearance on its behalf before proceeding here." (*See* Order [ECF 180] at 3-4 (citing *Tal v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2006)).)

CONCLUSION

For these reasons, the Receiver requests that the Court deny the Motion.

RESPECTFULLY SUBMITTED this 3rd day of September, 2020.

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