

Jason A. McNeill (9711)  
[mcneill@mvmlegal.com](mailto:mcneill@mvmlegal.com)  
Eric K. Schnibbe (8463)  
[schnibbe@mvmlegal.com](mailto:schnibbe@mvmlegal.com)  
MCNEILL | VON MAACK  
175 South Main Street, Suite 1050  
Salt Lake City, Utah 84111  
Telephone: 801.823.6464

Attorneys for Non-Party Ancillary Case  
Defendants

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

**FEDERAL TRADE COMMISSION and  
UTAH DIVISION OF CONSUMER  
PROTECTION,**

**Plaintiffs,**

v.

**ZURIXX, LLC, *et al.*,**

**Defendants.**

**MOTION TO INTERVENE TO OPPOSE  
RECEIVER’S MOTION TO LIFT STAY**

**Case No.: 2:19-cv-00713-DAK-DAO**

**Judge Dale A. Kimball**

**Magistrate Judge Daphne A. Oberg**

---

Non-Parties and ancillary case defendants (collectively, “Ancillary Defendants”), through counsel MCNEILL VON MAACK, hereby submit this Motion to Intervene to Oppose Receiver’s Motion to Lift Stay, seeking intervention for the limited purpose of opposing the Motion to Lift Stay in Ancillary Cases and to Allow the Receiver to File Additional Ancillary Cases, filed on October 27, 2022 (Dkt. 423) (“Motion”).<sup>1</sup>

---

<sup>1</sup> This motion to intervene is filed on behalf of all defendants in the following five ancillary cases brought by the Receiver: *Broadbent v. Davis, et al.*, 2:20-CV-545; *Broadbent v.* (continued...)

**SPECIFIC RELIEF SOUGHT AND GROUNDS THEREFOR**

The Court should grant intervention to the Ancillary Defendants for the limited purpose of opposing the Receiver’s Motion. There are grounds to allow intervention as of right under Rule 24(a) and permissive intervention under Rule 24(b) because the Receiver’s Motion seeks to lift the stays this Court imposed in the Ancillary Cases, yet was filed only in the underlying, above-captioned, Receivership Case. *See* Fed. R. Civ. P. 24. Consequently, intervention is necessary because the Ancillary Defendants claim interests and disposing of the Receiver’s Motion may impair or impede the Ancillary Defendants’ ability to protect their interests. Further, the Ancillary Defendants’ opposition to the Receiver’s Motion necessarily shares questions of law or fact raised by the Receiver’s Motion itself, as well as any other opposition that may be filed.

**ARGUMENT**

The Court should grant limited intervention to the Ancillary Defendants for the purpose of opposing the Receiver’s Motion.

Rule 24 provides that intervention “must” be permitted on timely motion for anyone who “claims an interest relating to the ... transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). Further the Court “may permit” intervention on timely motion for anyone who “has a

---

*Freier, et al.*, 2:20-CV-546; *Broadbent v. Hrisiko, et al.*, 2:20-CV-550; *Broadbent v. Swails*, 2:20-CV-551; and *Broadbent v. Shemin, et al.*, 2:20-CV-763 (collectively, the “Ancillary Cases”).

claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B).

**1. Intervention for the Limited Purpose of Opposing the Receiver’s Motion to Lift the Stay is Timely.**

There is no question that intervention by the Ancillary Defendants is timely as to the limited purpose of responding to the Receiver’s Motion. The Motion was filed on Thursday, October 27, 2022. On Monday, October 31, non-party and ancillary case defendant Matt Davis filed an objection to the Motion, including on the grounds that a motion seeking to lift the stays entered in the Ancillary Cases should be filed in the Ancillary Cases so that the Ancillary Defendants could be permitted to respond. [10-31-2022 Objection (Dkt. 425).] Thirteen minutes later, Ancillary Defendants’ counsel received notice of the Court’s docket text order stating, in pertinent part, as follows:

The court has been informed that at least one party intends to oppose the Receiver's Motion to Lift Stay. Any party opposing the Motion to Lift Stay shall file an opposition by November 4, 2022. The Receiver may file a reply by November 10, 2022. The court will then issue a ruling as soon as practicable....

[10-31-2022 Order (Dkt. 426).] This motion to intervene is being filed within the November 4, 2022 deadline set by the Court and is accompanied by the Ancillary Defendants’ substantive opposition to the Receiver’s Motion. Consequently, the opposition may be duly considered by the Court before issuing a ruling and intervention is, therefore, timely.

Indeed, this motion to intervene is being filed only out of an abundance of caution in that the Ancillary Defendants are not “parties” to this underlying Receivership Case. The Court’s Order appears to welcome any oppositions, but set the deadline for oppositions in terms of “[a]ny party opposing” the Motion. [*Id.* (emphasis added).] Hence, intervention is sought merely to

ensure there is no technicality that would preclude the Court from considering the Ancillary Defendants' opposition.

**2. The Remaining Grounds for Intervention Have Been Met.**

The Court should allow intervention by the Ancillary Defendants both as a matter of right and permissively.

The Receiver's Motion seeks an order by this Court that would lift the stay in ancillary cases "to allow those pending cases to move forward." [Dkt. 423 at 1.] That stay was imposed through the Court's Memorandum Decision and Order, entered November 8, 2021, in this underlying Receivership Case as Dkt. 333 ("Mem. Dec."). The Mem. Dec. provided that "the following ancillary receivership actions are STAYED and ADMINISTRATIVELY CLOSED and all pending motions in those cases are denied without prejudice," describing thirteen case numbers. The Mem. Dec. was also filed by the Court in those individual ancillary cases, including the five cases brought against the Ancillary Defendants: *Broadbent v. Davis, et al.*, 2:20-CV-545 (Dkt. 35); *Broadbent v. Freier, et al.*, 2:20-CV-546 (Dkt. 40); *Broadbent v. Hrisiko, et al.*, 2:20-CV-550 (Dkt. 39); *Broadbent v. Swails*, 2:20-CV-551 (Dkt. 38); and *Broadbent v. Shemin, et al.*, 2:20-CV-763 (Dkt. 18).

The Ancillary Defendants are entitled to intervention because a ruling on the Motion in this underlying Receivership Case will "as a practical matter impair or impede the [Ancillary Defendants'] ability to protect [their] interest[s]." Fed. R. Civ. P. 24(a)(2). If the stay is lifted, it will impose the burden to recommence defending against the Receiver's Ancillary Cases and require the Ancillary Defendants to incur substantial attorney fees to do so. At the same time, it appears no actual party to the Receivership Case – i.e., the FTC, State of Utah, or Zurixx

Defendants – will even respond to the Motion because they reached a settlement in late 2021. [See 12-15-2021 Stipulation of All Parties to Stay Case for 60 Days to Consider Settlement Agreement (Dkt. 349).]

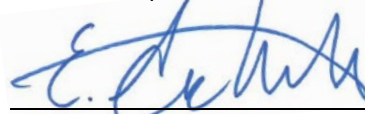
Alternatively, permissive intervention should be granted. The Ancillary Defendants’ opposition to the Receiver’s Motion necessarily shares questions of law or fact raised by the Receiver’s Motion itself, as well as any other opposition that may be filed.

**CONCLUSION**

Based on the foregoing, the Ancillary Defendants respectfully request that the Court order their intervention for the limited purpose of opposing the Receiver’s Motion.

DATED this 4<sup>th</sup> day of November, 2022.

**MCNEILL | VON MAACK**



---

Jason A. McNeill

Eric K. Schnibbe

*Attorneys for Non-Party Ancillary Case Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that I am employed by the law firm of MCNEILL VON MAACK, 175 South Main Street, Suite 1050, Salt Lake City, Utah 84111, and that pursuant to Rule 5(b), Federal Rules of Civil Procedure, a true and correct copy of the foregoing **MOTION TO INTERVENE TO OPPOSE RECEIVER'S MOTION TO LIFT STAY** was delivered to counsel of record this 4<sup>th</sup> day of November 2022, by filing of the same through the Court's CM/ECF System.

/s/ Camille Coley