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*Attorneys for David K. Broadbent as Court-Appointed Receiver*

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

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FEDERAL TRADE COMMISSION, and  
UTAH DIVISION OF CONSUMER  
PROTECTION,

Plaintiffs,

vs.

ZURIXX, LLC, a Utah limited liability  
company, *et al.*,

Defendants.

**REPLY MEMORANDUM IN  
SUPPORT OF MOTION TO LIFT  
STAY IN ANCILLARY CASES AND  
TO ALLOW THE RECEIVER TO  
FILE ADDITIONAL ANCILLARY  
CASES**

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

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The Receiver submits this Reply Memorandum in Support of his Motion to Lift Stay in Ancillary Cases and to Allow the Receiver to File Additional Ancillary Cases (the “Motion”) [ECF 423].<sup>1</sup>

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<sup>1</sup> Unless otherwise noted, defined terms are from the Receiver’s initial Motion.

## **INTRODUCTION**

None of the objections filed in response to the Motion offer any cogent opposition. First, the Ancillary Parties argue the underlying merits of the ancillary cases, which they are free to do in those cases once the Court lifts the stay, but those arguments are irrelevant to the Motion. Second, under no circumstances will the Receiver be able to recover an amount sufficient to satisfy the current judgment in favor of the FTC and the Utah Division of Consumer Protection from the parties against whom that judgment was entered. Thus, the Receiver must move forward with the ancillary cases at this time in an effort to do so and to liquidate the assets of the receivership estate. Third, the Receiver must be able to file claims against additional ancillary parties, including those for whom tolling agreements will soon expire. Finally, the Ancillary Parties have provided no justification for a bellwether case, and this Motion is not the proper vehicle to request such relief now.

## **RELEVANT PROCEDURAL FACTS**

The following Ancillary Parties filed the following responsive documents:

1. Matt Davis [ECF 425] filed an objection to the Motion; Matt Davis and David Freier, Marc Hrisiko, Claude Alan Swails, and Robert Dale Shemin (the “Davis Ancillary Defendants”) later filed a memorandum in opposition to the Motion [ECF 432];
2. Michael Grow and Daniel Altamirano filed an objection [ECF 428] and a Memorandum in Opposition to the Motion [ECF 430]; and

3. Christopher Young filed a Memorandum Opposing the Motion (the “Young Opposition”) [ECF 429].<sup>2</sup>

### ARGUMENT

The various Ancillary Parties’ objections and memoranda in opposition incorporated the same arguments put forth in the Young Opposition, and the Receiver will address them together.

#### **I. THE ANCILLARY PARTIES’ OBJECTIONS BASED ON THE MERITS OF THEIR DEFENSES SHOULD BE ADDRESSED AFTER THE COURT LIFTS THE STAY, NOT BEFORE.**

The Ancillary Parties argue the merits of their cases, asserting that the FTC parties’ settlement bars further proceedings in the ancillary cases because the underlying judgment amount was set based on a stipulated settlement rather than on any finding of fact relating to damages. Essentially, the Ancillary Parties assert that the Receiver has not established damages. (Young Opp’n at 4-5.) There may be questions relating to damages, but those questions should be resolved in the ancillary cases, not in response to the Motion. The Court should lift the stay on the ancillary cases in part so that the parties can address such questions and proceed forward.

The Ancillary Parties seem to say that the Court should not lift the stay because there are questions about the amount of the damages, while the Receiver is arguing that the Court must lift the stay to answer the question about the amount of the damages. The Ancillary Parties claim without any authority that the settlement “bars the reopening of the Ancillary Cases under the equitable, rational, and plain language of the Court’s [November 8, 2021 Memorandum Decision and Order].” (*Id.* at 6.) But as the Receiver pointed out in his Motion, the concerns the Court laid

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<sup>2</sup> The Davis Ancillary Defendants [ECF 431] and Christopher Young [ECF 433] also filed Motions to Intervene to Oppose the Motion, which the Receiver does not oppose.

out in its order have been resolved. The Court should lift the stay in these ancillary cases and allow the parties the opportunity to litigate the merits of their claims and defenses.

**II. THE RECEIVER MUST BE ALLOWED TO PROCEED WITH EXISTING AND NEW CLAIMS.**

As the Receiver noted in his Motion, under no circumstance will the Receiver be able to recover an amount sufficient to satisfy the judgment. Thus, it is now necessary to proceed forward to prove damages among the Ancillary Parties. The Davis Ancillary Defendants' suggestion that the Court simply allow the Receiver to file new ancillary cases "for preservation purposes," which are then stayed immediately [ECF 432 at 6], is inadequate where the Receiver holds insufficient assets to satisfy the judgment. Moreover, the Receiver's obligation is to liquidate the assets of the receivership estate, which includes the claims he has. Allowing such claims to be filed but stayed in perpetuity does nothing to liquidate them. Whether he prevails, loses, or settles the claims he has, the Receiver needs the opportunity to reach a conclusion on the claims so the receivership estate may be fully liquidated and the Receiver can make distributions to creditors and to the FTC for further distribution to consumers.

Further, the Ancillary Parties argue that the Receiver is somehow attempting a double recovery. (*Id.* at 7.) Nothing could be further from the truth. As the Receiver detailed in his Motion, there are inadequate assets in the Receivership to cover the existing judgment even if the Receiver were able to maximize the recovery on the claims. Thus, it has become necessary to pursue recovery from the Ancillary Parties. There can be no double recovery when there are inadequate assets to begin with.

Finally, the Ancillary Parties fail to address the Receiver's need to file cases against additional parties—including those for whom tolling agreements may soon be expiring. The

Receiver must be able to file such claims, or he will forfeit the opportunities entirely. Endlessly tolling or staying those claims brings no resolution either.

**III. THE REQUEST FOR A BELLWETHER CASE IS NOT AN APPROPRIATE RESPONSE TO THIS MOTION.**

The Ancillary Parties argue that if the Court is inclined to lift the stay, it should limit the proceedings to a single “bellwether” case. (*Id.* at 8.) The Ancillary Parties fail to offer any authority for their request. They make no showing of similarities and common issues between the claims that would warrant such an approach. Moreover, even if there are common factual and legal issues between the existing filed ancillary cases that may justify a bellwether case, many of the tolled claims are factually and legally distinct, and a bellwether case would not be helpful in resolving those claims. Limiting the proceedings to a single case could result in forfeited opportunities, waived statutes of limitations, expired tolling agreements, wasted resources, and depleted financial reserves. It makes more sense to lift the stay and allow the Receiver to litigate the cases and negotiate settlements as appropriate. Regardless, an objection and opposition to the Motion is not the appropriate vehicle to request such relief. The Ancillary Parties are free to request such relief if the Court lifts the stay, after which the parties can have a more fulsome opportunity to address the merits of such a request.

**CONCLUSION**

The Receiver requests that the Court lift the stay imposed by the Order and the ASPI, allow the filed ancillary cases to resume, and allow the Receiver to file additional ancillary cases in order to move forward with liquidating those claims.

RESPECTFULLY SUBMITTED this 10th day of November, 2022.

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