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*Attorneys for Johnathan O. Hafen as Receiver for the Rust Rare Coin Receivership*

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

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COMMODITY FUTURES TRADING  
COMMISSION, and

STATE OF UTAH DIVISION OF  
SECURITIES, through Attorney General  
Sean D. Reyes

Plaintiffs,  
v.

RUST RARE COIN INC., a Utah corporation,  
and GAYLEN DEAN RUST, an individual,

Defendants;

and

DENISE GUNDERSON RUST, an individual,  
JOSHUA DANIEL RUST, an individual,  
ALEESHA RUST FRANKLIN, an individual,  
R LEGACY RACING INC, a Utah  
corporation, R LEGACY ENTERTAINMENT  
LLC, a Utah limited liability company, and R  
LEGACY INVESTMENTS LLC, a Utah  
limited liability company.

Relief Defendants.

**MOTION FOR EXPEDITED HEARING  
TO CONFIRM PRIVATE SALE OF  
RECEIVERSHIP PROPERTIES AND  
TO APPOINT APPRAISERS**

Civil No. 2:18-cv-00892-TC

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Jonathan O. Hafen, the Court-Appointed Receiver, hereby submits this Motion to Confirm Private Sale of Receivership Properties and to Appoint Appraisers.

### **INTRODUCTION**

The Receiver is the owner of real property located at 5154 Mayham Rd. Northeast, Carrollton, Ohio 44615 (the “Property”). Prior to the appointment of the Receiver, Gaylen and Denise Rust hired an independent real estate agent who marketed and then entered into an arms-length Real Estate Purchase Agreement (the “Agreement”) for the sale of the Property. A copy of the Agreement is attached hereto as Exhibit A. The Receiver is now the seller of the Property to Craig J. Henry and Leann F. Henry (the “Buyers”). The Agreement contemplates a sale price of \$475,000. The Receiver asks this Court for an order setting a hearing at which this Court may consider and confirm the sale. The Receiver also requests that the order confirm the appointment of the appraisers as required by 28 U.S.C. § 2001 to assist the Court and the Receiver in evaluating the sale.

### **MEMORANDUM**

This Court’s November 27, 2018 Order Appointing Receiver and Staying Litigation, Dkt. No. 54 (the “Order”), authorizes and directs the Receiver to take control of Defendants’ assets and provides: “Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28. U.S.C. § 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property to the Receivership Estates.” (Order, Dkt. No. 54, at 15 ¶ 38). The Order also contemplates that the Receiver would employ professionals to assist him in discharging his duties, including financial and business advisers as well as real estate agents:

To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;

(Order, Dkt. No. 54 at 5 ¶ 8(F)). Consistent with these provisions, the Receiver has reviewed, approved, and modified as necessary the contract that existed prior to the appointment of the Receiver for the private sale of the Property.

The Receiver has also reviewed the liens against the Property and has discovered that one of the liens in the amount of \$132,467.66, relates to a Mortgage dated April 30, 2014 and recorded on May 13, 2014 as Instrument No. 201400002774 (the “Investor Lien”), by Johnson Stoksbury, LLC, GLJ Legacy Trust u/a/d 12/28/2018 and JBLM Enterprises, LLC (together, the “Lien Parties”). The Lien Parties are controlled by Bary G. Jones, who is a consignor to and investor in the Rust investment scheme. The Receiver is analyzing the Investor Lien to determine whether it is a valid lien, but does not want to delay the sale of the Property while he completes his investigation. In order to avoid any delay in closing the sale of the Property, and running the risk of losing the existing buyer, the Receiver requests that upon entry of an order approving the sale and transferring the Property to the new buyer, the Investor Lien automatically transfer to the sale proceeds in the amount of the Investor Lien (\$132,467.66). These sale proceeds will be held in a segregated account until the Receiver and the Lien Parties reach agreement on the disposition of such sale proceeds, or the Court so determines.

The Receiver requests that his Court confirm the proposed sale of the Property as required by 28 U.S.C. §§ 2001, *et seq.* Section 2001(b) authorizes a court to order the sale of real property at a private sale if it finds that the sale is in the best interest of the estate after considering the evaluation of three court appointed appraisers (the sale may not be less than two-thirds of the

appraised value) and after providing notice of the hearing at least ten (10) days before the hearing confirming the same.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. §§ 2001(b).

The Receiver has requested three professional and disinterested appraisers to provide an appraisal to assist the Court and the Receiver in evaluating the reasonableness of the private sale. These appraisers include Patricia Miller, 2030 Glenmont Drive NW, Canton Ohio 44708, (330) 418-0203 (who was appointed as an appraiser for the sale by the Buyers' financial institution, Greenville National Bank, prior to the appointment of the receiver), as well as Richard Hull and James Liotti of Appraisal Comp Valuations, 1610 Vassar Ave NW, Canton, Ohio 44703, (330) 417-6745, and Charles G. Snyder, 120 East High Avenue, New Philadelphia, Ohio 44663, (330) 343-6213. To comply with the requirements of Section 2001(b), the Receiver requests that this Court confirm the appointment of these three appraisers. In the event that any of these appraisers is unable to perform the appraisal for any reason, the Receiver shall appoint an additional professional and disinterested appraiser and identify the same for the Court.

The Receiver shall publish notice of the hearing and the terms of the sale in a newspaper

of general circulation in Carroll County, Ohio, at least ten (10) days prior to the hearing.

**CONCLUSION**

Based upon the foregoing, the Receiver requests that this Court grant his motion by ordering an expedited hearing to confirm the proposed private sale and confirming the appointment of the three appraisers.

DATED this 14th day of January, 2019.

**PARR BROWN GEE & LOVELESS**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of January, 2019, a true and correct copy of  
**MOTION FOR EXPEDITED HEARING TO CONFIRM PRIVATE SALE OF  
RECEIVERSHIP PROPERTIES AND TO APPOINT APPRAISERS** was served via the  
Court's CM/ECF electronic filing system on the following:

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