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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,  
DENISE GUNDERSON RUST, an individual,  
JOSHUA DANIEL RUST, an individual,

Defendants;

and

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 TO ALLOW SUMMARY  
DISPOSITION PROCEDURE**

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

Judge Tena Campbell

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Jonathan O. Hafen, the Court-Appointed Receiver (the “Receiver”) for the assets of Rust Rare Coin, Inc., Gaylen D. Rust, Denise G. Rust, and Joshua D. Rust (collectively, “Defendants”) and Aleesha Rust Franklin, R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, “Relief Defendants” and, together with Defendants, “Receivership Defendants”), respectfully moves the Court to enter an order authorizing the summary disposition procedure outlined below to resolve disputes over certain Receivership Property.

### **ARGUMENT**

On November 27, 2018, the Court entered an order appointing Jonathan O. Hafen as receiver for the Receivership defendants. *See* ECF No. 54. Pursuant to paragraph 18 of the Order, the Receiver was authorized to take immediate possession of all non-exempt personal property of the Receivership Defendants. *Id.* ¶ 18. Paragraph 36 of the Order authorized the Receiver to “transfer, compromise, or otherwise dispose of any nonexempt Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate.” *Id.* ¶ 36. Paragraph 7 of the Order also authorized the receiver to “sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto.” *Id.* ¶ 7.B.

As part of the Receiver’s efforts to collect and recover all Receivership Property, the Receiver has identified property over which there are or may be disputed claims of ownership. To preserve judicial economy and minimize the fees and expenses of the Receiver and his counsel in resolving these claims, the Receiver asks the Court to enter an order establishing the summary disposition procedure outlined below. This procedure will not be used by the Receiver to resolve traditional “clawback actions” from “net winners,” as those actions will be resolved by

ancillary proceedings. Moreover, the Receiver will file a separate procedures motion to address the filing and administration of claims by investors and other creditors against the estate.

**PROPOSED SUMMARY DISPOSITION PROCEDURE**

The Receiver proposes that the following summary disposition procedure be approved:

- Receiver will file a substantive motion seeking a ruling on ownership interests in certain Receivership Property. The Receiver will serve the motion on all parties claiming an interest in the property. The Receiver will also post the motion on the Receiver's website (rustrarecoinreceiver.com).
- Any objection to the motion shall be sent directly to the Receiver within thirty days of service. The objecting party will not be a party to the overall proceeding, will not intervene in the case on account of its filing, and will not file any pleadings or other documents directly with the Court unless otherwise authorized by the Court.
- If the party objecting to the motion specifically requests discovery in its objection, the parties, including the Receiver, will have an additional thirty days to complete discovery. Discovery will be conducted pursuant to the Federal Rules of Civil Procedure, except that written discovery must be responded to within fourteen days. Either side may seek relief from the Court if the requested discovery is unduly burdensome or not proportional to the issues being determined.
- Following the filing of the objection or the close of discovery (if specifically requested), the Receiver will file the objections with the Court and schedule a hearing. If an evidentiary hearing is needed, the Receiver will schedule additional deadlines regarding disclosure of witnesses and exhibits as needed.
- The Receiver may file a reply to any objection five days before the hearing.

This Court has previously recognized both the appropriateness and expediency of using a summary disposition procedure. *SEC v. Merrill Scott & Assocs., Ltd.*, 2006 WL 3813300, \*4 (D. Utah Dec. 26, 2006) (“It is appropriate for the court to use summary proceedings when establishing a relief plan.”). The Court “has broad powers and wide discretion to determine relief in an equity receivership.” *Id.* (quoting *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103 (2d. Cir. 1972). A summary disposition proceeding “reduces the time necessary to settle disputes, decreases litigation costs, and prevents further dissipation of receivership assets.” *Id.* (citation omitted).

The Receiver anticipates that this summary disposition procedure will be necessary for at least the following three substantive motions that the Receiver will file: (1) motion for turnover related to \$1.6 million currently being held by Zions Bank, which Zions has sought to interplead with the Court (*see* Dkt. #141); (2) a motion to liquidate certain inventory of Rust Rare Coin, Inc.; and (3) a motion regarding the disposition of \$132,467.66 worth of proceeds set aside from the sale of the Ohio real property (*see* Dkt. #82).<sup>1</sup>

### **CONCLUSION**

The summary disposition procedure outlined above will allow the Receiver to expeditiously resolve certain disputes over Receivership Property without having to file an ancillary proceeding, while still preserving the due process rights of an entity claiming an interest in such property to conduct discovery, file a memorandum with the Court, and present argument to the Court at a hearing—all without intervening in the case. Based upon the

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<sup>1</sup> If the Receiver identifies additional matters that should be resolved through this summary disposition procedure, the Receiver reserves the right to move the Court for the application of the summary disposition procedure to those matters.

foregoing, the Receiver requests that the Court approve the summary disposition procedure as outlined above.

DATED this 16th day of April, 2019.

**PARR BROWN GEE & LOVELESS**

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **MOTION TO ALLOW SUMMARY DISPOSITION PROCEEDING** was (i) electronically filed with the Clerk of the Court through the CM/ECF system on April 16th, 2019, which sent notice of the electronic filing to all counsel of record; (ii) posted on the Receiver's website (rustrarecoinreceiver.com); and (iii) emailed to all investors and creditors on the master mailing matrix maintained by the Receiver.

/s/ Joseph M. R. Covey