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

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.

**RECIEVER'S REPLY TO
OBJECTIONS REGARDING THE
SALE OF RUST RARE COIN INC.
INVENTORY AND REQUEST FOR
HEARING**

Case No. 2:18-cv-892

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Jonathan O. Hafen, the Court-Appointed Receiver (the “Receiver”) for the assets of Rust Rare Coin, Inc. (“RRC”), 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 requests that the Court authorize the Receiver to move forward with the liquidation of the RRC inventory as set forth in more detail below.

On November 27, 2018, the Court entered an Order Appointing Receiver and Staying Litigation (the “Order”). *See* Dkt. 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.

On May 1, 2019, following a motion by the Receiver, the Court established a Summary Disposition Procedure through which nonparties could object to the Receiver’s proposed course of action with respect to property of the Receivership Estate. *See* Dkt. 165. Pursuant to the Summary Disposition Procedure, the Receiver is required to file a motion seeking a ruling from the Court with respect to certain Receivership Property and to provide notice to interested parties. *Id.* ¶ 3(a). On May 9, 2019, the Receiver filed a *Motion for Permission to Liquidate and Abandon Inventory of Rust Rare Coin, Inc.* (“Motion to Liquidate” or “Motion”), seeking permission to liquidate the coins, bullion, and other inventory remaining at RRC. *See* Dkt. No. 168. The Receiver provided notice to all interested parties through his mailing matrix and by posting the Motion on his website.

In response to the Motion, the Receiver received several formal objections to the sale of the RRC inventory (“Formal Objections”). However, prior to filing the Motion to Liquidate, the Receiver had also received several inquiries from other nonparties who expressed an ownership interest in certain RRC property (“Informal Objections”), but who did not formally object to the Motion. Although the Informal Objections did not comply with the Summary Disposition Procedure, the Receiver has gathered and reviewed these additional communications to ensure that he and the Court consider the legitimacy of these Informal Objections before the RRC inventory is sold.

Through this Reply, and consistent with the Summary Disposition Procedure, the Receiver hereby files the Formal and Informal Objections with the Court and respectfully requests that the Court set a hearing to (1) rule on the Objections received by the Receiver in opposition to the sale of the RRC inventory and (2) grant the Receiver permission to move forward with the liquidation of the RRC inventory based on such rulings.

I. Receiver’s Analysis of Objections

After reviewing both the Formal and Informal Objections, the Receiver determined that the Objections generally related to four distinct categories of RRC inventory: (1) inventory that was remitted to RRC as an investment in the fraudulent silver trading scheme operated by Receivership Defendants; (2) inventory that was sold to RRC prior to the Receivership, but for which the seller did not receive payment; (3) inventory that was stored at RRC for appraisal purposes or under a consignment arrangement; (4) inventory that had been purchased and paid for by a customer prior to the Receivership, but was never delivered by RRC; and (5) inventory related to Bary Jones’ consignment items and asserted liens. Each of these categories will be discussed in greater detail below.

1. *Inventory for Investment Purposes*

The Receiver received Objections from four nonparties who claim to hold an ownership interest in RRC assets that appear to have been an investment in the fraudulent silver investment pool (the “Silver Investment Scheme”) operated by Receivership Defendants. The specific facts surrounding each of these objections are as follows:

Cathy Johnson. Ms. Johnson did not submit a formal objection to the Receiver’s Motion but did contact the Receiver informally. Ms. Johnson claims to have purchased silver from Rust Rare Coin in March 2012 and further claims that this silver was being stored by Gaylen Rust for the past several years. Ms. Johnson now requests to know the location of this silver. *See* Declaration of Jonathan O. Hafen (hereafter “Hafen Decl.”), attached hereto as Exhibit A, ¶ 6.

Ms. Johnson appears in the records of RRC as an investor in the Silver Investment Scheme. Ms. Johnson submitted a claim form through the Receiver’s recently completed claims process in which she identifies herself as an investor beginning in 2012. *See* Hafen Decl. ¶ 7 & Ex. 1. Ms. Johnson received investor statements purportedly showing the returns generated from her initial investment, and correspondence reveals Ms. Johnson understood her silver was supposedly being traded by Gaylen Rust. Hafen Decl. ¶¶ 8-9 & Ex. 2.

Adam Wells. Mr. Wells did not submit a formal objection to the Motion. His correspondence with the Receiver is below and has been treated as an Informal Objection:

I am one of the victims of the Silver Bullion investment scheme and submitted my information yesterday. In addition to the Bullion investment scheme, I had given Denise Rust a check on 9/10/2018 for a Silver Eagle investment in the amount of \$240,000. That were not yet delivered. This was a separate transaction then the Bullion and did not show up on the September report provided by Rust. As of 9/20/18 I was told Rust was still waiting for the Silver Eagles to be processed. My check # was 1003 and I have a receipt provided by Denise Rust. Please let me know if I need to provide additional information or let me know if this will be wrapped in with the Bullion investment.

Mr. Wells appears in the records of RRC as an investor in the Silver Investment Scheme, and his Objection appears to concede that his \$240,000 was an investment in the scheme. The receipt provided by Rust Rare Coin reflected that the \$240,000 was “for Silver Account.” Hafen Decl. ¶ 10 & Ex. 3.

Faith Macomber. Ms. Macomber filed a Formal Objection to the Motion, which is attached hereto as Exhibit B. Ms. Macomber alleges that she sent certain coins, currency, and bullion to Gaylen Rust and RRC during 2016 and 2017. Ms. Macomber asserts that some of these items are now listed as property to be sold by the Receiver in Exhibit C of his Motion. *See* Dkt. No. 168. As a result, Ms. Macomber seeks to have those items returned to her.

Ms. Macomber appears in the records of RRC as an investor in the Silver Investment Scheme. Ms. Macomber received investor statements from Gaylen Rust showing investment of “coins.” Hafen Decl. ¶ 13 & Ex. 6. Correspondence discovered in the records of RRC makes clear that Ms. Macomber sent the coins listed in her Objection to RRC for appraisal and, once appraised, the value of the coins was credited to Ms. Macomber’s account in the Silver Investment Scheme. Hafen Decl. ¶ 12 & Ex. 5. Further, the claim form submitted by Ms. Macomber to the Receiver identifies such items as investments into the Silver Investment Scheme. Hafen Decl. ¶ 11 & Ex. 4.

Russell Lugli. Mr. Lugli filed a Formal Objection to the sale of the RRC inventory, which is attached hereto as Exhibit C. Mr. Lugli alleges that he sent approximately \$110,000 in coins, currency, and bullion to Gaylen Rust and RRC to be held for his benefit. Mr. Lugli seeks to have those items returned to him.

Mr. Lugli appears in the records of RRC as an investor in the Silver Investment Scheme.

Mr. Lugli received investor statements from Gaylen Rust reflecting investments in both wire transfers and physical metals. *See, e.g.*, Hafen Decl. ¶ 14 & Ex. 7 (example investor statement showing deposit of a “collection” into Mr. Lugli’s investment account). Further, the claim form submitted by Mr. Lugli to the Receiver identifies Mr. Lugli as an investor and specifically indicates that Mr. Lugli invested in the Silver Investment Scheme using cash, wire transfers, and coins. Hafen Decl. ¶ 15 & Ex. 8. Moreover, Mr. Lugli provided no additional details about the nature of the coins he claims belong to him. Without supporting detail or documentation, the Receiver is unable to determine which coins, if any, in the RRC inventory originated with Mr. Lugli.

Based on the Receiver’s review of these Objections, the assets at issue were delivered to RRC as investments into the Silver Investment Scheme. Each of these nonparties were investors in the Silver Investment Scheme at the time they delivered such assets to RRC and/or the Rusts. The information available to the Receiver indicates that these assets were intended—and treated—as investments in the Silver Investment Scheme. And all available evidence suggests that the nonparties intended to transfer title of the assets to RRC as part of their investment in the Silver Investment Scheme. Accordingly, it is the Receiver’s position that the identified assets—to the extent they were in the RRC inventory at the time of the Receivership—are properly within the Receivership Estate and may be liquidated for the benefit of all claimants.

Each of these investors has the opportunity to make a claim for repayment of the full value they invested through the claims process, where their claims will be evaluated on the same basis as the other investors. Moreover, these investors have provided no basis for why they should be treated differently than other investors in the Silver Investment Scheme. Allowing these investors to reclaim some of their deposits—merely because those deposits were in the

form of physical metals, coins, and other items—would unfairly privilege these investors over other investors in the scheme. None of these investors assert a lien in any of the items deposited. Allowing these investors to recover physical coins or metals they used to invest in the Silver Investment Scheme would inequitably improve their recovery compared to other investors in the scheme.

Accordingly, the Receiver respectfully requests that the Court decline to treat these investors differently than the rest of the investors, deny these Objections, and allow the Receiver to move forward with the liquidation of the RRC inventory. *See Broadbent v. Advantage Software, Inc.*, 415 F. App'x 73, 78 (10th Cir. 2011) (“It is generally recognized that the district court has broad powers and wide discretion to determine relief in an equity receivership.” (citing *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010))).

2. *Inventory Sold to RRC*

The Receiver received six objections that concerned items which were sold to RRC shortly before the Receiver was appointed. These claims generally consist of the following factual scenario: Before the Receivership began, customers brought items to RRC, sold those items to the shop, and received a check as payment. Before these checks were cashed, however, the Receivership went into effect, RRC’s bank accounts were frozen, and the customers were never able to obtain payment for their items. The specific facts surrounding each of these objections are as follows:

Tamara Stastny. Ms. Stastny sold a variety of coins to RRC on or about October 23, 2018, and received a check from RRC for \$2,186.18. Following the asset freeze, the check bounced, and Ms. Stastny did not receive payment for the coins she sold. In support of her Objection, Ms. Stastny provided a copy of a purchase order from RRC and a check for \$2,186.18

dated October 23, 2018. Hafen Decl. ¶ 16 & Ex. 9.

Sergio Payan. Mr. Payan sold a variety of coins to RRC on or about November 15, 2018. In exchange for the coins, Mr. Payan received \$6,000 in cash and a check for \$5,565. After the asset freeze went into effect, the check from RRC bounced. Hafen Decl. ¶ 17 & Ex. 10.

Sara McCormick. Ms. McCormick took a large bag of coins to RRC to sell on or about November 7, 2018. In exchange for the coins, Ms. McCormick received four equal checks of \$1,164.63.¹ Three of the four checks bounced after the Receivership's accounts were frozen. Hafen Decl. ¶ 18 & Ex. 11.

Nancy Anderson. Ms. Anderson sold seven gold coins to RRC on or about November 15, 2018. RRC issued a check for \$8,554.70 to Ms. Anderson, but it bounced after the asset freeze went into effect. Hafen Decl. ¶ 19 & Ex. 12.

Elizabeth Blanton. The Receiver received an Informal Objection from Ms. Blanton indicating she sold various coins to RRC. However, Ms. Blanton provided no supporting documentation for her objection, and the Receiver is unable to substantiate Ms. Blanton's Objection.

Sharyn Heiner. Ms. Heiner, on behalf of the David E. Gumbrecht Trust (the "Trust"), previously filed a Motion to Intervene in this matter.² *See* Dkt. No. 115. According to that motion, the Trust sold a variety of coins to RRC on or about November 5, 2018. In exchange for those coins, RRC issued a check for \$150,751.53 to the Trust, but it bounced after the asset freeze went into effect. Accordingly, the Trust requested that the Receiver either pay for the coins or return them to the Trust. *Id.*

¹ The Receiver understands that the proceeds from the sale of these coins were to be divided among four siblings.

² Although Ms. Heiner did not file a Formal Objection to the Motion, the Receiver addresses her Objection here out of an abundance of caution.

The Receiver respectfully requests that the Court deny these Objections. Customers who sold items to RRC, but who did not receive payment for those items, are entitled to file a claim for the full unpaid amount during the claims process, but are not entitled to have such items returned to them. Title to such goods passed to RRC at the time of sale, and these customers are general unsecured creditors of the Receivership Estate. Under Utah law, “[u]nless otherwise explicitly agreed, title passes to the buyer [RRC] at the time and place at which the seller completes his performance with reference to the physical delivery of the goods.” UTAH CODE § 70A-2-401. Here, each of the above nonparties delivered their goods to RRC, and RRC tendered payment in the form of a check. Upon delivery of the goods to RRC, title passed, and the sold goods are properly assets of the Receivership Estate. Accordingly, the Receiver respectfully requests that the Court deny the Objections set forth in this Section and allow the Receiver to move forward with the liquidation of such property.

*3. Inventory Being Stored Under a Consignment Arrangement or
for Appraisal Purposes*

In his Motion, the Receiver identified certain individuals with whom RRC may have had a consignment arrangement and certain items that were received by RRC solely for appraisal purposes. *See* Dkt. No. 168, Exs. A & B. Since that time, the Receiver has received Objections identifying additional individuals who claim their items are either subject to a consignment arrangement or were received by RRC solely for appraisal purposes. It is the Receiver’s position that if the objecting customer can adequately demonstrate that the RRC items at issue were, in fact, consigned to or only being appraised by RRC, the items do not belong to RRC and thus are not properly within the Receivership Estate. Accordingly, the Objection should be granted and the items returned to the customer. The specific facts and supporting documentation for each of

these objections are as follows:

Richard Adams. Mr. Adams claims he submitted a 1923 \$2 Canadian banknote to RRC so that it could be sent to PCGS for grading. When the Receivership began, the banknote was at PCGS and scheduled to be returned to RRC on January 10, 2019. The Receiver confirmed PCGS had the specified banknote and requested that it be delivered to the Receiver. The note is now in the Receiver's possession. To support his Objection, Mr. Adams provided a copy of a receipt from RRC specifically identifying the banknote and a copy of the PMG grading request submitted by RRC. Hafen Decl. ¶ 20 & Ex. 13. Therefore, it is the Receiver's position that this note was at RRC solely for grading purposes and thus not part of the Receivership Estate. Accordingly, the Receiver requests that the Court grant this part of Mr. Adams' Objection and authorize the Receiver to return the banknote to Mr. Adams.

Mr. Adams also alleges that he is the owner of a Belgian 5 franc silver coin from the 1830s that was "destined for the store's ebay auction." However, Mr. Adams has provided no documentation supporting this portion of his Objection. As such, the Receiver cannot identify the particular coin or otherwise substantiate this part of the Objection. Therefore, the Receiver recommends that this part of Mr. Adams' Objection be denied.

Mark Griffin. Mr. Griffin did not submit a Formal Objection to the Receiver's Motion, but the Receiver did receive an Informal Objection through his website. Mr. Griffin claims that RRC submitted his banknote to Paper Money Guaranty ("PMG") for grading services on November 14, 2018. A copy of his correspondence with the Receiver is below:

1899 \$2 Silver Certificate

FR 254/ Serial #H206802
Invoice/Order #8057025

My note was submitted to PMG by RRC for grading services 11-14-18 and was received back by your office in January 2019.

This note is currently in the Receiver's possession. As support for his claim, Mr. Griffin has provided a copy of his receipt from RRC specifically identifying the banknote and a copy of the PMG grading request submitted by RRC. Hafen Decl. ¶ 21 & Ex. 14. Therefore, it is the Receiver's position that this coin was at RRC solely for grading purposes and thus not part of the Receivership Estate. Accordingly, the Receiver requests that the Court grant this Objection and authorize the Receiver to return this banknote to Mr. Griffin.

Steve Allen. Mr. Allen claims that, shortly before the Receivership began, he submitted four diamonds to RRC for the purpose of having the diamonds appraised. The Motion sought permission to return those diamonds to Mr. Allen. *See* Motion, Dkt. 168, at 3, Ex. B. The Receiver received no objections to his proposed course of action with respect to the diamonds and respectfully requests permission to return the diamonds to Mr. Allen.

In addition, Mr. Allen claims that he submitted several coins to RRC for the sole purpose of having RRC conduct an appraisal of their value. As support for his claim, Mr. Allen provided the Receiver with a RRC receipt indicating that "1 group [of] American coin[s]" and "1 group [of] foreign coin[s]" were received by RRC on October 23, 2018. Hafen Decl. ¶ 22 & Ex. 15. While the receipt itself does not specifically indicate which coins were being received for appraisal purposes, Mr. Allen also provided the Receiver with a copy of the appraisal report performed by RRC for the coins (the

“Worksheet”). *Id.* On the Worksheet, each of Mr. Allen’s items are identified, described, and given an approximate value. The Receiver also confirmed with the RRC employee that appraised Mr. Allen’s items that they were received by RRC for appraisal purposes.

After receiving Mr. Allen’s Objection, the Receiver analyzed the inventory of coins in his possession. Unfortunately, Mr. Allen’s coins were not originally identified as appraisal items and were inadvertently commingled with the larger RRC inventory. Using the Worksheet, and in consultation with his numismatic expert, the Receiver was able to locate the vast majority of Mr. Allen’s coins. Eight of the coins listed on the Worksheet were not described with sufficient detail to identify those specific coins with certainty. As such, the Receiver commissioned his numismatic expert, Ian Russell, to review the RRC inventory and locate eight coins that are substantially identical in description and value to the eight coins. Though the Receiver cannot guarantee that these eight coins are the *exact* coins that Mr. Allen delivered to RRC, they are the coins in the Receiver’s possession most likely to belong to Mr. Allen. Mr. Allen has agreed to this approach.

Therefore, the Receiver requests that the Court grant this objection and authorize the Receiver to return such items on the Worksheet to Mr. Allen.

Geof Facer. Mr. Facer did not submit a Formal Objection to the Motion. However, Mr. Facer met with members of the Receiver’s staff and indicated that RRC was holding a set of 1849 \$5 experimental pieces on his behalf under a consignment agreement. Hafen Decl. ¶ 23 & Ex. 16. Correspondence located in the records of RRC supports Mr. Facer’s claim to the experimental pieces. *Id.* Accordingly, the Receiver requests that the Court grant this objection and authorize the Receiver to return the experimental pieces to Mr. Facer.

4. *Purchased Inventory*

The last category of objections involves inventory that was paid for by customers prior to the Receiver's appointment, but was never delivered. These objections and the relevant legal analyses are as follows:

Phil Fiore. Mr. Fiore purchased a 964.4 oz. Silver Bar ("Bar") from RRC on or about November 14, 2018. Mr. Fiore tendered \$13,733.06 by check to pay for the Bar. RRC required Mr. Fiore to wait for the check to clear before he was allowed to take possession of the Bar. Before Mr. Fiore was able to take possession, the Receivership went into effect.

As support for his claim, Mr. Fiore provided a copy of the RRC Work Order that identifies the Bar and its purchase price, the check for \$13,733.06 made out to RRC, and a Fidelity Account Record demonstrating that the check was, in fact, cashed by RRC on or about November 15, 2018. *See* Hafen Decl. ¶ 24 & Ex. 17.

According to the Utah Uniform Commercial Code, which applies to the sale of goods, title passes at the time and place of contracting if the goods are identified, no documents of title are to be delivered, and the parties have not expressly agreed otherwise. *See* UTAH CODE § 70A-2-401(3). It is the Receiver's position that each of these elements are satisfied and that title to the Bar passed to the customer at the time of purchase. Because this customer has demonstrated that he purchased and paid for a specifically identifiable good, it is the Receiver's position that the Bar belongs to the customer, not RRC, and that the Bar should be removed from the Receiver's inventory list and returned to the customer. Accordingly, the Receiver requests that the Court grant this objection and authorize the Receiver to return the Bar to Mr. Fiore.

Bradley Burrows. Mr. Burrows purchased \$9,983.38 worth of gold and silver from RRC on or about November 14, 2018. At the time of sale, Mr. Burrows identified the specific coins he

wanted to purchase, and those coins were subsequently isolated and set aside from the other RRC inventory (the “Gold and Silver Items”). Mr. Burrows then tendered a check to RRC for the full \$9,983.38 purchase price. RRC would not allow Mr. Burrows to take possession of the Gold and Silver Items until the check cleared, which occurred shortly thereafter. Mr. Burrows was never able to retrieve his items from RRC due to the Receiver’s appointment.

As support for his claim, Mr. Burrows has provided the RRC Work Order that identifies the Gold and Silver Items and their purchase price, the check for \$9,983.38 made out to RRC, and an America First Credit Union Account Record demonstrating that the check was, in fact, cashed by RRC on or about November 15, 2018. *See* Hafen Decl. ¶ 25 & Ex. 18. Because Mr. Burrows has demonstrated that he purchased and paid for specifically identifiable goods, as required by the Utah Uniform Commercial Code, it is the Receiver’s position that title to the Gold and Silver Items passed to the customer at the time of purchase. *See* UTAH CODE § 70A-2-401(3). As a result, these items belong to the customer, not RRC, and should be removed from the Receiver’s inventory list. Accordingly, the Receiver requests that the Court grant this objection and authorize the Receiver to return the Gold and Silver Items to Mr. Burrows.

Andrew and Tally Johnson. On or about November 14, 2018, the Johnsons purchased seventy-eight Gold Maple 1 oz. coins from RRC for \$96,938.40. At the time of sale, however, these coins were not among RRC’s inventory. The Johnsons wired \$96,938.40 to RRC as payment for these coins on or about November 14, 2018. Later that same day, RRC placed an order for 80 “Canadian Gold Maple Leaf 1 oz (random)” coins from A-Mark Precious Metals, Inc. (“A-Mark”) and sent a \$98,536 wire transfer to A-Mark as payment. *See* Hafen Decl. ¶ 26 & Ex. 19. The Johnsons now claim that RRC must identify and provide seventy-eight Gold Maple coins to them. As support for this claim, the Johnsons have filed a Motion to Intervene in this

case, *see* Dkt. No. 139, which includes a copy of the RRC Quote identifying the goods to be ordered by RRC, RRC's wiring instruction, and a Wells Fargo Account Record showing the Johnson's requested fund transfer to RRC. For purposes of this Reply, the Receiver has opted to construe the Johnsons' Motion to Intervene as an Informal Objection.

It is the Receiver's position that the Johnsons' Informal Objection should be denied. Critically, the Johnsons did not purchase specifically identifiable goods from RRC and, as a result, title to the goods never transferred to the Johnsons. Under the Utah Uniform Commercial Code, "[g]oods must be both existing and identified before any interest in them can pass." *See* UTAH CODE § 70A-2-105(2) (emphasis added); *see also id.* § 70A-2-401 ("Title to goods cannot pass under a contract for sale prior to their identification to the contract."). If the goods do not meet both of these requirements, they are "future" goods, *id.* § 70A-2-105(2), and unless the parties explicitly agree otherwise, identification of future goods occurs when they "are shipped, marked or otherwise designated by the seller as goods to which the contract refers." *Id.* § 70A-2-501(1)(b); *see also id.* § 70A-2-105(2) ("A purported present sale of future goods or of any interest therein operates as a contract to sell."). It is only upon identification that the buyer obtains a special property interest in the goods, *see id.* § 70A-2-501(1), which gives the buyer the right to recover the goods from the seller, *id.* § 70A-2-502(2).

Here, it is undisputed that the seventy-eight coins claimed by the Johnsons were neither existing nor identified in RRC's inventory. RRC's November 14, 2018 order was for eighty Gold Maple coins, not for seventy-eight. And none of the eighty Gold Maple coins were specifically identifiable; each was a generic gold coin that was available to purchase in bulk and was specifically identified as "random" in the A-Mark purchase order. As a result, it is impossible to know which of these coins, if any, were going to be used to fulfil the Johnsons' order.

Furthermore, the records surrounding RRC's November 14, 2018 order do not indicate that the order was related to or for the Johnsons. Accordingly, the coins purchased by the Johnsons were never identified as set forth under Utah law, and title to these items could not have passed to them. The Receiver requests that the Court deny this objection and authorize the Receiver to move forward with the liquidation.³

Clint Davis. On October 26, 2018, Mr. Davis agreed to purchase a 1799 Draped Silver Dollar (the "Silver Dollar") from RRC for \$1,900. After Mr. Davis made a \$380 down payment, the Silver Dollar was put on layaway pending receipt of the full purchase price. However, the Receivership began shortly thereafter and thus prevented Mr. Davis from making additional payments on the coin. Mr. Davis now requests that he be allowed to pay the Silver Dollar's remaining balance and finalize his purchase of the coin from the Receiver. A copy of this customer's correspondence with the Receiver is below:

On 10/26/2018 I purchased a 1799 Draped Bust Silver Dollar from Rust Rare Coin, for \$1,900 dollars. I put the item on law-a-way with a payment of \$380 dollars. The item is now on the inventory list. Since I'm already a part owner of this coin, and having special meaning to me, I would hope to make a financial agreement to finish purchasing this item without it going to auction. I have the invoice.

As evidence of this \$380 down payment, the customer provided a copy of the RRC Work Order specifically identifying the coin, its sale price, the \$380 cash down payment made by Mr. Davis, and the \$1,520 outstanding balance due on the coin. Hafen Decl. ¶ 26 & Ex. 20. Furthermore, to confirm that the coin's contemplated sale price of \$1,900 is reasonable, the Receiver asked his numismatic expert to estimate the coin's value at auction. Based on this information, the Receiver is confident that \$1,900 is well within the contemplated range for such

³ As noted above, however, the Johnsons are still entitled to file a claim in the claims process against the Receivership Estate for any allowable losses they sustained as a result of this transaction.

an item at auction. Moreover, by pursuing the sale privately, the Receiver avoids any auction fees that may be associated with the item's sale. Accordingly, the Receiver asks that the Court authorize the Receiver to finalize the sale of the Silver Dollar to Mr. Davis. If Mr. Davis is unable or unwilling to pay the remaining balance for coin within fifteen (15) days of the Court's approval, the Receiver requests that he be authorized to liquidate the coin at auction.

5. *Bary Jones' Consignment Items and Liens*

In his original Motion, the Receiver identified Bary Jones as one of the parties with whom RRC had an alleged consignment arrangement. After the Motion was filed, Mr. Jones identified two items on the RRC inventory that he claims should have been included in his list of consigned items: (1) a Dec 6, 1866 Great Salt Lake City Corp 25 Cents Note 6544 and (2) an August 1, 1890 Tenth Ward Cooperative Mercantile Inst. 1 share Stock Cert #313. Hafen Decl. ¶ 28. These items are also identified on a list of consigned items provided by Mr. Jones as GJ9272 and GJ666, respectively. *Id.* As with the rest of Mr. Jones' consigned items, the Receiver will pull these items out of the RRC inventory and hold them until the remaining issues with Mr. Jones are resolved.

Mr. Jones also asserts a security interest in the inventory of RRC in the amount of \$132,467.03, through which Mr. Jones purported to secure his interest in the Silver Investment Scheme. Rather than delay the sale of the RRC inventory while the Receiver and Mr. Jones resolve outstanding issues related to Mr. Jones' involvement in the Silver Investment Scheme, the Receiver proposes that Mr. Jones be granted a lien against the proceeds of the sale of the RRC inventory in the same priority and amount as Mr. Jones' existing liens. Mr. Jones has agreed to this approach.

II. Conclusion

For the reasons set forth above, the Receiver respectfully requests that the Court set a hearing at which the Court will do the following:

- (1) Deny the objections received by Cathy Johnson, Adam Wells, Faith Macomber, and Russell Lugli. The assets at issue in these objections were investments in Gaylen Rust's Silver Investment Scheme. The proper route for these investors to recover is through the claims process.
- (2) Deny the objections received by Tamara Stastny, Sergio Payan, Sara McCormick, Nancy Anderson, Elizabeth Blanton, and Sharyn Heiner. The assets at issue in these objections were sold to RRC before the Receiver was appointed, and title to such property passed to RRC at that time. These customers may file a claim against the Receivership Estate through the claims process.
- (3) Grant the objections received by Richard Adams, Mark Griffin, Steve Allen, and Geof Facer. These customers provided adequate documentation to support their claim that these assets did not belong to RRC but were instead being held for grading or appraisal purposes.
- (4) Grant the objections received by Phil Fiore and Bradley Burrows. The specifically identified assets at issue in these objections were purchased and paid for prior to the Receiver's appointment, and title passed at that time.
- (5) Deny the objection received by the Johnsons. The assets at issue in that objection were not specifically identified at the time of purchase, and title never passed to the Johnsons. The Johnsons may file a claim for payment

- against the Receivership Estate through the claims process.
- (6) Grant the objection received by Clint Davis and authorize the Receiver to finalize the sale of the 1799 Draped Silver Dollar to Mr. Davis. If Mr. Davis does not complete the purchase within fifteen (15) days of the Court's order, authorize the Receiver to liquidate the coin at auction.
- (7) Grant the objection received from Bary Jones. The Receiver will hold the two additional items identified by Mr. Jones as being part of his consignment items until other outstanding issues related to Mr. Jones' involvement with the Silver Investment Scheme are resolved. Mr. Jones will also be granted a lien in the proceeds of the sale of the RRC assets in the same amount and priority as Mr. Jones' existing lien.

DATED this 17th day of January 2020.

PARR BROWN GEE & LOVELESS

/s/ Cynthia D. Love
Joseph M.R. Covey
Cynthia D. Love
Sarah M. Humphrey
Attorneys for Receiver

IT IS HEREBY CERTIFIED that service of the above **RECIEVER'S REPLY TO OBJECTIONS REGARDING THE SALE OF RUST RARE COIN INC. INVENTORY** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on January 17, 2020, which sent notice of the electronic filing to all counsel of record; (2) posted on the Receiver's website (rustrarecoinreceiver.com); and (3) emailed to all those on the master mailing matrix maintained by the Receiver.

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/s/ Cynthia D. Love _____