

Rust Rare Coin Receivership -

Example Claims Registry**

Claim Number	Claimant Name	Claimed Amount	Allowed Amount	Claim Class	Percent Recovery	Explanation of Receiver's Objections, if any
CL0001	Aimee S. Burke	\$386,000.71	\$80,200.41	4	43%	Claim inappropriately includes amounts invested by another entity. Pursuant to the Court's Order Sustaining Receiver's Objections to Certain Categories of Claims, Dkt. No. 375, such amounts must be claimed directly by the entity that invested the funds with Rust Rare Coin. That entity should consider submitting its own claim. The books and records of Receivership Defendants suggest that Claimant may have invested additional amounts. Claimant should consider reviewing and revising its claim.
CL0002	Patty and Chase McBride	\$680,000.00	\$680,000.00	4	23%	Allowed as submitted.
CL0003	Roxanne Riley	\$48,210.00	\$0.00	4	46%	Allowed as submitted.
CL0004	The Marjori Fox Family Trust	\$4,272,000.00	\$3,848,000.00	4	2%	Claim seeks to recover amounts transferred within the Ponzi scheme from another investor. Pursuant to the Court's Order Sustaining Receiver's Objections to Certain Categories of Claims, Dkt. No. 375, such intra-investor transfers are not allowed.
CL0005	John R. Sandoval	\$210,000.00	\$0.00	4	14%	Claim was received after the claim bar date set by the Court.
CL0006	Kyra Thompson	\$27,049.82	\$0.00	4	100%	Claim involves consignment items that have been returned to claimant pursuant to the Court's Order Granting Permission to Return Items to Consignors, Dkt. No. 374. With the return of claimant's consigned items, this claim has been resolved.
CL0007	Horace Q. Baldwin	\$41,500.00	\$31,942.81	4	19%	Claim does not report all of the withdrawals reflected in the books and records of Receivership Defendants. Allowed claim reflects all withdrawals.
CL0008	Virgil and Scott Jensen	\$20,000.00	\$20,000.00	4	0%	Allowed as submitted.
CL0009	Chester H. Andrews Revocable Trust	\$78,000.00	\$78,000.00	4	0%	Allowed as submitted.
CL0010	RP Perfect Prints, LLC	\$1,045,000.00	\$480,000.00	4	68%	Claim combines amounts invested by a related investor. Pursuant to the Court's Order Sustaining Receiver's Objections to Certain Categories of Claims, Dkt. No. 375, such amounts must be claimed directly by the party that invested the funds with Rust Rare Coin.

***The names, numbers, and explanations in this example registry do not correspond with claimants of the RRC Receivership. The actual claims registry will include the Receiver's analysis of all claims submitted to the Receivership.

CLAIMS REGISTRY INSTRUCTIONS

Commodity Futures Trading Commission, et al. v. Rust
Rare Coin, Inc., et al.

United States District Court for the District of Utah
Case No. 2:18-cv-892

_____, 2022

YOU HAVE RECEIVED THIS CLAIMS REGISTRY BECAUSE YOU HAVE SUBMITTED A CLAIM FOR PAYMENT FROM THE RECEIVERSHIP ESTATE. THIS CLAIMS REGISTRY MAY SEEK TO DISALLOW, EXPUNGE AND/OR MODIFY YOUR CLAIM. CLAIMANTS RECEIVING THIS CLAIMS REGISTRY SHOULD CAREFULLY REVIEW IT AND LOCATE THEIR CLAIM ON SCHEDULE 1 ATTACHED, IF YOU DISAGREE WITH THE PROPOSED TREATMENT OF YOUR CLAIM, YOU MUST FILE A RESPONSE BY THE RESPONSE DEADLINE FOLLOWING THE INSTRUCTIONS SET FORTH HEREIN. IF YOU AGREE WITH THE TREATMENT OF YOUR CLAIM, NO FURTHER ACTION IS REQUIRED.

DO NOT FILE A RESPONSE WITH THE COURT.

The following Master Claims Registry (the “Claims Registry”) is a complete list of all claims (“Claims”) for payment submitted to the court-appointed Receiver, Jonathan O. Hafen (the “Receiver”). The Claims Registry contains the name of the claimant (“Claimant”), the claim number assigned by the Receiver, the self-reported amount claimed, the allowed amount of the Claim as determined by the Receiver based on the books and records of the Receivership Defendants,¹ the classification of each claim, the percent recovery and—if applicable—an explanation of the Receiver’s determination and objections to all or part of the Claim (“Receiver’s Explanation”).

¹ The “Receivership Defendants” include Rust Rare Coin, Inc., Gaylen Dean Rust, Denise G. Rust, Joshua D. Rust, Aleesha Rust Franklin, R Legacy Racing Inc., R Legacy Entertainment LLC, R Legacy Investments LLC, Torque Entertainment LLC, The Writer’s Den LLC, Den of Music, Alrighy Den, Den What Music, and the following dba’s of R Legacy Entertainment LLC: Huge Studios, Sage and Thistle, Yourldsmusic.com, Legacy Studio, The Brick Room, Refinement Records, Big Door Entertainment, Hugesound Music International, Hugesound Music Unlimited, Sage and Thistle Collective, S&T Collective, Yourledsradio.com, Sate and Thistle Rentals, R Music Store, Sputnik, Bid Door Video, Sage and Thistle Events, Hugesound Post Production, Big Door Network, Positive Music and Downloads, Inspire My Life, Sounds of Zion Music, Musician’s Toolkit, Torque Media, Soundcheck, Big Door Booking, Huge Sound, Chance Thomas Music, Hugesound Music Worldwide, and Denise Entertainment Rust.

The Receiver's determination and any objections are based on the claim form and supporting documentation that you previously submitted, the investigation conducted by the Receiver into the Receivership Defendants' records, and various rulings made by the Court. You have an opportunity to challenge the Receiver's determination with respect to your Claim by submitting a response ("Response"). Please carefully review the prior rulings of the Court, which are included in this packet, when crafting your Response. After you have submitted a Response, the Receiver will endeavor to resolve any remaining disputes through an informal reconciliation process. If the reconciliation process fails to fully resolve all disputes between you and the Receiver regarding your Claim, you will have the opportunity to challenge the Receiver's determination before the Court.

If you do not submit a complete Response to the Receiver's determination within the allowed time, the Receiver's determination of your Claim as reflected in the Claims Registry will be deemed final and binding as to that Claim. We encourage you to seek professional legal or tax counsel before responding to the Receiver or submitting a Response.

Your Response must be completed and filed so that it is *received* by the Receiver by Midnight (M.T.), _____, 2022 (the "Bar Date").

Please read these Claims Registry Instructions in their entirety and provide all requested information.

BACKGROUND

The Receiver operates under the supervision of the Court. All significant actions of the Receiver are approved by the Court after a Motion is filed and all interested parties have an opportunity to object. Many Motions have been filed by the Receiver in this case. This process is important because it ensures that interested parties have input in the administration of the Receivership Estate and that it is administered fairly.

Since his appointment, the Receiver has identified and taken control of the receivership assets, abandoned assets that have no value, and is in the process of liquidating the remaining assets for cash. A Plan of Distribution has been submitted by the Receiver outlining how that cash will be distributed to pay allowed Claims.

A court-approved process was implemented to determine which Claims are allowed. The Claim Form that you previously submitted was the first step in that process. The Claim Form and instructions were mailed and emailed to all known Claimants. The Receiver received over six hundred Claims, which have now been reviewed. Throughout this process the Receiver has asked for the Court's input, and the Court has issued rulings to guide the Receiver's analysis of the Claims. Pursuant to those rulings and based on previously communicated standards and instructions, the Receiver has reviewed all Claims and now publishes a Claims Registry. This Claims Registry outlines which Claims will be accepted in full and which have been objected to

by the Receiver, either in whole or in part, and provides an explanation for the Receiver's treatment of each Claim.

If you, as a Claimant, dispute the Receiver's treatment of your Claim, you now have an opportunity to Respond to the Receiver's Claim determination. **You must submit a Response to the Receiver by the Bar Date in order for our Response to be considered.** Upon receipt of a Response, the Receiver will review the information in the Response and supporting documents and compare it to the records of the Receivership Defendants. The Receiver will then take one of the following actions: (i) accept the Response as adequately addressing the Receiver's concerns and accept your Claim amount as originally filed, in accordance with the Response, or (ii) contact you, as the Claimant, and attempt to resolve any remaining disagreement between you and the Receiver informally. If this informal process is unsuccessful, the Receiver will request a hearing from the Court and will submit to the Court all documents you submitted to the Receiver and all documents supporting the Receiver's analysis. You will be given prior written notice of the date and time of the hearing. At the hearing or thereafter, the Court will make a final determination regarding the treatment of your Claim, and the Claims Registry will be updated to reflect the Court's decision.

At this time, it is not possible to determine when distributions to pay Claims will be made, the amount that will be available for distribution, or the amount that will be distributed to each class of Claim.

The Receiver maintains a public website at <http://rustrarecoinreceiver.com> which contains more detailed information about the receivership and is updated regularly to report new developments. The Receiver is not able to respond to individual inquiries about the receivership or its status. You are encouraged to visit the Receiver's website for updates.

INSTRUCTIONS FOR CLAIMANTS

1. General:

- a. Review the Claims Registry and find your name and claim number.
- b. Next to every Claim there will be a "Claimed Amount" and an "Allowed Amount." If these numbers are the same, and the Receiver's explanation states "Allowed as submitted," your Claim has been fully accepted and there is no need for further action on your part. If your claim has been fully accepted but there is an explanation associated, carefully review the explanation as you may want to Respond to the Receiver's determination.

2. Submitting a Response:

- a. If the Claimed Amount and the Allowed Amount are different, it means that the Receiver has objected in whole or in part to your Claim. You will find the reason for the Receiver's determination and associated objection(s) listed in the column

labeled “Explanation of Receiver’s Claim Determination.”

- b. Carefully read the Receiver’s explanation for his treatment of your Claim.
 - c. If you would like to contest the Receiver’s determination and associated objections, you may submit a Response.
 - d. A Response consists of a fully filled out Response Form (attached hereto) and any additional documentation or supporting evidence you intend to use to support your Response.
 - e. You must include any additional documentation or evidence on which you intend to rely with your Response.
 - f. The Response must address each ground upon which the Receiver has objected to your Claim.
 - g. Fully fill out the Response Form and submit it, along with any additional supporting evidence.
 - h. You must complete and sign the Response Form and submit it to the Receiver so that it is *received* no later than **Midnight (M.T.), _____, 2022 (the “Bar Date”)**. Responses received after the Bar Date will not be considered.
3. After your Submission:
- a. After your Response has been submitted to the Receiver, the Receiver or his team will confirm receipt of your additional materials and will either (1) amend the Claims Registry and accept your original claimed amount or (2) schedule a meeting to go over the additional material and endeavor to reach a consensual resolution regarding your Claim.
 - b. If a resolution cannot be reached, the Receiver will ask the Court to schedule a hearing to make a final determination of your allowed Claim. You will receive prior written notice of any hearing. The Receiver will submit to the Court your Response and other documents related to your Claim.

Please note that materials not received by the Receiver prior to the Bar Date will not be submitted to the Court for consideration.

INSTRUCTIONS FOR SUBMITTING THE COMPLETED RESPONSE FORM:

4. Submitting the Form: The completed and signed Response Form, including additional documentation, must be submitted so that it is *received* by the Receiver on or prior to Midnight (M.T.) on the Bar Date of _____, 2022. *Do not file your Response with the Court.*
5. Method of Submission: Your Response may be submitted to the Receiver via U.S. Mail, overnight mail, or hand delivery addressed to the following: Parr Brown Gee & Loveless, Attn: Rust Rare Coin Response Form, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111; or submitted by email at: rustclaims@parrbrown.com.

6. Keep a Copy: You should retain a complete copy of your Response Form and any supporting documents sent to the Receiver, along with proof of the submission date.

POST-SUBMISSION PROCEDURES:

7. Notices: To conserve costs and speed communications, the Receiver will communicate with you about your Response and the objection reconciliation process via email. If you do not include an email address in the Response Form, the Receiver will send notices via U.S. Mail. Information about the status of the objection reconciliations process will be posted at <http://rustrarecoinreceiver.com>.
8. Procedures: Upon submission of your Response Form to the Receiver, you can expect the following:
 - a. Confirmation of Receipt: The Receiver will confirm that he has received your Response Form, including additional documentation.
 - b. Response Review: The Receiver will review your Response and determine whether your Response sufficiently addresses the Receiver's concerns, in which case the Receiver will notify you that he has accepted your Claim as originally filed.
 - c. Reconciliation Process: If, after review of your Response, the Receiver determines that a dispute remains between you and the Receiver regarding the proper treatment of your Claim, you will be notified and asked to schedule an appointment with the Receiver or his team to attempt to resolve the dispute.
 - d. Hearings: If the reconciliation process is unsuccessful, the Receiver will submit all materials relied upon by the Receiver, including your initial Claim Form and your complete Response, to the Court and request a hearing for the Court to make a final determination with respect to your Claim. Please note that only materials received by the Receiver prior to the Bar Date will be submitted to the Court and allowed as evidence in the hearing.

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

COMMODITY FUTURES TRADING
COMMISSION, et al.,

Plaintiffs,

v.

RUST RARE COIN INC., et al.,

Defendants.

**NOTICE OF DEADLINE TO SUBMIT
RESPONSE TO RECEIVER'S
OBJECTION**

TIMELY ACTION REQUIRED

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

Judge Tena Campbell

PLEASE TAKE NOTICE if you object to the Receiver's treatment of your Claim as set forth in the Claims Registry, you must complete the Response Form and follow the Claims Registry Instructions in filing your Response with the Receiver.

FOR YOUR OBJECTION RESPONSE TO BE CONSIDERED, YOU MUST SUBMIT A COMPLETED AND SIGNED RESPONSE FORM TO THE RECEIVER SO THAT IT IS *RECEIVED* BY THE RECEIVER NO LATER THAN MIDNIGHT M.T. ON _____, 2022 (THE "BAR DATE").

DO NOT FILE THE RESPONSE FORM WITH THE COURT.

PLEASE TAKE FURTHER NOTICE that submission of a Response Form is the only means for challenging the Receiver's determination as to your Claim. Unless the Court orders otherwise, your failure to submit a Response Form to the Receiver prior to the expiration of the Bar Date will result in the Receiver's determination with respect to your Claim, as set forth in the Claims Registry, being deemed final.

PLEASE TAKE FURTHER NOTICE that the completed and signed Response Form and any supporting documentation may be (a) mailed or hand delivered to the Receiver at Parr Brown Gee & Loveless, Attn: Rust Rare Coin Response Form, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111; or (b) emailed to: rustclaims@parrbrown.com.

Upon submission, the Receiver will confirm receipt of your Response Form.

RESPONSE FORM

<p style="text-align: center;">Commodity Futures Trading Commission, et al.,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">Rust Rare Coin Inc.; Gaylen Dean Rust; Denise Gunderson Rust; Joshua Daniel Rust; Aleesha Rust Franklin; R Legacy Racing Inc.; R Legacy Entertainment LLC; R Legacy Investments LLC*</p>	<p>RECEIVER USE ONLY:</p> <p>Date Form received: _____</p> <p>Claim Number: _____</p>
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STEP ONE: General Information

Claimant Name(s) *(The person or entity owed money by one of the Receivership Defendants. Claims for a company must be made by the company, not by the individual members or shareholders.):*

Contact Information:

Address: _____

Telephone Number: _____

Email: _____

Social Security Number or Federal Employer Identification Number
(If claimant is a married couple, list the social security numbers for both partners.):

Attorney Information *(If claimant is represented by an attorney.):*

Attorney Name: _____

Address: _____

Telephone Number: _____

Email: _____

STEP TWO: Response Information & Supporting Documentation

* The "Receivership Defendants" also include Torque Entertainment LLC, The Writer's Den LLC, Den of Music, Alrighty Den, Den What Music, and the following dba's of R Legacy Entertainment LLC: Huge Studios, Sage and Thistle, Yourlsdmusic.com, Legacy Studio, The Brick Room, Refinement Records, Big Door Entertainment, Hugesound Music International, Hugesound Music Unlimited, Sage and Thistle Collective, S&T Collective, Youldradio.com, Sage and Thistle Rentals, R Music Store, Sputnik, Big Door Video, Sage and Thistle Events, Hugesound Post Production, Big Door Network, Positive Music and Downloads, Inspire My Life, Sounds of Zion Music, Musician's Toolkit, Torque Media, Soundcheck, Big Door Booking, Huge Sound, Chance Thomas Music, Hugesound Music Worldwide, and Denise Entertainment Rust.

Please provide an explanation of the basis of your Response. Please be as specific as possible and attach any supporting documentation on which you intend to rely.

STEP THREE: Additional Information

If there is any additional information the Receiver needs to know, please provide an explanation here:

If any additional space is needed to respond to any of the questions above, you may attach additional sheets to this Response Form. State the Claimant's name in the upper right-hand corner of each sheet and the question(s) to which you are responding.

Signature and Verification is on the following page.

SIGNATURE & VERIFICATION

This Response Form must be signed by each person or entity submitting the Response to be valid, or by an authorized agent of the Claimant(s). *I declare under penalty of perjury that the information provided in and with this Response Form is true and correct to the best of my knowledge, information, and reasonable belief.*

Print Name: _____

Signature: _____

Title: _____

_____ Date

Print Name: _____

Signature: _____

Title: _____

_____ Date

**SUBMIT YOUR COMPLETED RESPONSE FORM TO THE RECEIVER
DO NOT FILE YOUR RESPONSE FORM WITH THE COURT**

This Form may be completed and submitted via U.S. Mail, overnight mail or hand delivery addressed to the following: Parr Brown Gee & Loveless, Attn: Response Form, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111; or submitted by email at: rustclaims@parrbrown.com.

COMPLETED RESPONSE FORM MUST BE RECEIVED BY THE RECEIVER ON OR BEFORE MIDNIGHT (M.T.), _____, 2022.

[Questions? See Attached Response Form Instructions.]

**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.

**ORDER SUSTAINING
RECEIVER'S OBJECTIONS
TO CERTAIN CATEGORIES
OF CLAIMS**

Case No. 2:18-cv-00892 Judge

Tena Campbell Magistrate Judge

Dustin B. Pead

ORDER

On November 2, 2020, Plaintiff Jonathan O. Hafen (Receiver) filed his Motion to Sustain Receiver's Objections to Certain Categories of Claims and to Approve Objection Procedure (the "Motion") (ECF No. 363). The Receiver objects to certain types of claims brought against the Receivership Estate and asks the court to sustain his objections to these claims on a categorical basis.

On November 10, 2020, the court issued an order establishing an objection procedure for the Motion and directing the Receiver to lodge all objections timely received (within 30 days) with the court. (ECF No. 366). That 30-day deadline has passed, and the Receiver has not received any objections to the classifications set forth in the Motion, although the Receiver did receive questions from two claimants.

The court accepts the Receiver's definitions of claims and the categorizations set forth in the Motion. For the reasons described in the Motion and the lack of objections, the Motion is granted.

Accordingly, the following categories of claims are denied as a matter of law:

1. Claims submitted after the claims-bar deadline of October 4, 2019.¹
2. Claims for promised "profits" or "gains" from the silver pool.
3. Claims that seek to recoup taxes, interest, penalties, and loan repayment associated with investments in the silver pool.²
4. Claims for inter-investor transfers for which no real value was exchanged.
5. Claims associated with third-party investors who invested in the silver pool through intermediaries, to the extent that these claims are not reflected in the books and records of the Receivership Defendants.³

The Receiver's Motion (ECF No. 363) is GRANTED.

Dated this 7th day of January, 2021.

BY THE COURT:

¹ The Receiver may choose, in his discretion, not to object to an untimely claim based on factual or equitable reasons.

² The court accepts the Receiver's calculation of an allowed claim as the investor's remaining principal, which equals the total principal amount invested minus the total distributions paid out. The Receiver need not evaluate the ultimate destination of funds distributed out of the silver pool.

³ Third-party investors are not barred from seeking recovery from intermediaries.

Tena Campbell

JUDGE TENA CAMPBELL

U.S. District Court Judge

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**IN THE 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.; GAYLEN DEAN
RUST; DENISE GUNDERSON RUST; and
JOSHUA DANIEL RUST,

Defendants,

and

ALEESHA RUST FRANKLIN; R LEGACY
RACING INC.; R LEGACY
ENTERTAINMENT LLC; and R LEGACY
INVESTMENTS LLC,

Relief Defendants.

**MOTION TO SUSTAIN RECEIVER’S
OBJECTIONS TO CERTAIN
CATEGORIES OF CLAIMS AND TO
APPROVE OBJECTION PROCEDURE**

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

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Jonathan O. Hafen, in his capacity as Court-appointed Receiver of the assets of Rust Rare Coin, Inc. (“RRC”), Gaylen Dean Rust (“Rust”), R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, the “Receivership Defendants”), respectfully

submits this Motion to Sustain Receiver’s Objections to Certain Categories of Claims and to Approve Objection Procedure (the “Motion”).

FACTUAL AND PROCEDURAL BACKGROUND

This case concerns one of the largest Ponzi schemes in Utah history. Over more than a decade, Receivership Defendants operated a purported silver investment scheme through which Receivership Defendants solicited hundreds of millions of dollars from investors. Although there were variations on the scheme, Rust represented to the majority of the investors that their funds would be pooled together for the purpose of buying and selling physical silver (the “Silver Pool”).¹ Investors were told that their funds would be used to purchase physical silver to be stored in secure locations. As the price of silver began to decline, Rust claimed that he would sell physical silver and use the proceeds to subsequently purchase a larger quantity of silver at a lower price. Through this process, Rust claimed to consistently increase the number of ounces of physical silver held in the Silver Pool and, consequently, to increase the value of each investor’s share of the Silver Pool.

Unfortunately, Rust’s representations to investors were false. Rust never traded physical silver in the manner he described to investors. Instead, Rust used investor funds to pay returns to other investors in a classic Ponzi scheme. Rust also diverted investor funds for his own personal use and to fund other, unrelated businesses.

Upon discovering the fraudulent scheme, Plaintiffs commenced the above-captioned action on November 13, 2018. *See* Dkt. No. 1. On November 17, 2018, the Court appointed the Receiver and directed him to identify, secure, and preserve the assets of the Receivership Estate for the ultimate benefit of the Estates creditors, including the defrauded investors.

¹ For convenience, the Receiver will refer to all variations of the scheme as the Silver Pool. Based on the Receiver’s investigation, all variants of Rust’s investment scheme were fraudulent.

Consistent with the Court’s instruction, the Receiver and his team have been working diligently to identify and secure assets of the Receivership Estate. With approval of the Court, the Receiver has liquidated the majority of the real and personal property of the Receivership Estate. The Receiver has also filed over thirty ancillary actions seeking recovery of various fraudulent transfers and is actively negotiating with third parties to resolve other potential claims belonging to the Estate. To date, the Receiver has recovered in excess of \$10 million for the benefit of the Estate and expects to recover additional sums in the coming months.

On August 19, 2019, the Court approved the Receiver’s proposed claims procedure, claims forms, and claims notice. *See* Dkt. No. 239. The Receiver set a claims-bar date of October 4, 2019 (the “Claims-Bar Date”). The Receiver mailed over 4,000 claims forms to potential claimants and published notice of the claims process as approved by the Court. *See* Dkt. Nos. 236-3; 239. In response, over 621 claims forms were submitted to the Receiver totaling in excess of \$171 million in self-reported claims for repayment.

The Receiver has been evaluating each claim on an individual basis. For each claim, the Receiver has reviewed the claim and any included supporting documentation, reviewed documents maintained by Receivership Defendants, and determined whether the claim should be allowed, either in whole or in part. As described in the Receiver’s Motion to Approve Proposed Distribution Plan, Objection Procedure, and Claim Analysis, the Receiver intends to prepare a Claims Analysis Report (the “Report”). *See* Dkt. No. 298. The Report will identify whether each claim—or part of a claim—is allowed or disallowed, any objections to a claim, and the Receiver’s determination as to the allowable claim amount. The Receiver will serve a copy of the Report on all claimants, publish the Report on the Receiver’s website, and email a copy of the Report to all persons identified on the Receiver’s master mailing matrix.

Due to the complex nature of the Receivership Defendants' Ponzi scheme, the Receiver anticipates that his analysis of individual claims may differ from a claimant's own accounting. The Receiver also recognizes that legal and factual rulings from the Court will necessarily impact whether a particular claim will be allowed, in whole or in part. The Receiver will attempt to resolve any disputes between his analysis and a claimant's accounting directly with individual claimants. In the event a dispute cannot be resolved, the Receiver will seek a ruling from the Court, utilizing the previously approved Summary Disposition Procedure. *See* Dkt. No. 165.

In an attempt to streamline the claims resolution process, the Receiver has identified certain categories of claims the Receiver believes should not be allowed as a matter of law. The Receiver objects to these claims—or portions of claims—on a categorical basis and asks the Court to sustain those objections, as described in detail below.²

ARGUMENT

Through this Motion, the Receiver asks that the Court rule on certain categorical objections to types of claims submitted in the claims process.

The scale and complexity of Rust's Ponzi scheme created a web of financial transactions and relationships with Galen Rust at the center. Investors were encouraged to use their silver accounts like a bank account, directing Rust to pay for utility bills or for large purchases.³ Many investors would also "transfer" silver ounces between themselves in exchange for assets in the real world. Due to the fraudulent nature of the Silver Pool, there were no actual silver ounces to "transfer" and such trades were merely on paper, with no actual value exchanged. Galen Rust's

² The Receiver recognizes that there will likely be other objections to the Receiver's analysis that will require a fact-intensive inquiry and, perhaps, the weighing of competing evidence. For the purposes of this Motion, the Receiver is asking the Court to evaluate objections that are solely legal in nature.

³ For a detailed description of the Silver Pool investment scheme and the extensive interaction between Gaylen Rust and investors, *see* Declaration of Jonathan Hafen and accompanying exhibits filed in *Hafen v. Oberhansly*, Civil No. 2:19-cv-00627, Dkt. No. 19-2.

mass deception and intimate involvement in investors' financial lives created accounting problems in many contexts and has presented unique challenges in evaluating claims for repayment.

An additional layer of complexity involves the degree to which certain investors acted as intermediaries for friends and family. Because Rust promoted the Silver Pool as an exclusive opportunity offered only to those people he knew personally, many claimants did not invest directly into the Silver Pool. Rather, these third-party claimants invested through an existing investor. As a fictitious example, John was an investor in the Silver Pool. John's brother, Bob, wanted to invest in the Silver Pool but lacked the personal connection to Rust. Bob gave his money to John, who deposited the money in his own bank account and subsequently wrote a check or wired the money to Rust. As a result, the records of RRC reflect that the investment came from John's account, not Bob's. John may have acted as intermediary for several friends and family and may have pooled their investments into a single check or wire to RRC. These intermediary relationships have presented significant challenges to the Receiver's claims analysis process.

The Receiver recognizes that all of the claimants' losses are felt intensely and ultimately can be traced back to Rust's deception. However, the Receiver also recognizes that not all of the harms caused by Receivership Defendants will be able to be redressed through the claims process. The administrative burden associated with tracing all third-party transactions through intermediaries or crediting "transfers" between investors would be nearly impossible and would threaten to drain the Receivership Estate of resources. Other losses are simply not the types of losses that can be remedied through the Receivership. Detailed below are several categories of claims that the Receiver requests be categorically denied.

I. Claims Submitted After the Claims-Bar Date

Pursuant to the Court’s order approving the Receiver’s claims procedures, the Receiver established a Claims-Bar Date of October 4, 2019. The claims form packet that was mailed to potential claimants and posted to the Receiver’s website contained a separate “Notice of Deadline to Submit Claim Form Against Receivership Estate,” which expressly stated that “failure to submit a Claim Form to the Receiver prior to the expiration of the Bar Date will result in your claim being denied and you will be forever barred from asserting your claim against the Receivership Estate or any property of the Receivership Estate.” *See* Dkt. No. 236-2. In addition, the Receiver published notice of the claims process and the Claims-Bar Date in several local and national newspapers. *See* Dkt. No. 236-3. Thus, potential claimants had express notice of the Claims-Bar Date and the importance of submitting a timely claim.

Despite this express notice, a handful of claims forms were submitted to the Receiver after the Claims-Bar Date. To the extent that the Receiver objects to a claim as untimely, the Receiver requests that the claim be disallowed as time barred.⁴

II. Claims for Promised “Profits” or “Gains” from the Silver Pool

A Ponzi scheme is “an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments.” *Jobin v. McKay*, 84 F.3d 1330, 1332 n.1 (10th Cir. 1996). The *sine qua non* of a Ponzi scheme is that returns are not generated through any legitimate business activity, but rather “returns to earlier investors were paid by funds from later investors.”⁵ *S.E.C.*

⁴ There may be factual or equitable reasons why the Receiver may choose, in his discretion, not to object to a claim as untimely.

⁵ Other factors indicative of a Ponzi scheme include promises of substantial and consistent returns with little or no risk, representations that the scheme is secret, exclusive, or highly complex, and returns paid for at least some time to generate the illusion of success and to attract new investors to the scheme. *Management Solutions*, 2013 WL 4501088, at *19.

v. Management Solutions, Inc., No. 2:11-cv-1165-BSJ, 2013 WL 4501088, at *19 (D. Utah Aug. 22, 2013). It is well established that an innocent investor in a Ponzi scheme is not entitled to returns in excess of their initial principal investment amount. *See Miller v. Wulf*, 84 F. Supp. 3d 1266, 1274 (D. Utah 2015); *see also Donell v. Kowell*, 533 F.3d 762, 777 (9th Cir. 2008) (noting that amounts returned to innocent investors in excess of the initial principal investment merely “keep the fraud going by giving the false impression that the scheme is a profitable, legitimate business”).

Here, there is no dispute that the Silver Pool operated as a classic Ponzi scheme. The Receiver has discovered no evidence that Receivership Defendants traded silver in the manner represented to investors. There were no significant stores of silver in Receivership Defendants’ possession, despite representations made to investors that tens of millions of dollars’ worth of physical silver were securing their investment. To perpetuate his scheme, Rust provided regular statements to investors purporting to show increases in the value of the investor’s share of the Silver Pool.

Relying on these fraudulent statements, some claimants have sought to recover the fictitious “gains” in their investment reported by Rust. Because these “gains” or “profits” were merely on paper and did not reflect any actual increase in value based on legitimate silver trading activity, it is the Receiver’s position that claims must be limited to the total of the investor’s principal investment amount, less any distributions (the “Remaining Principal”). The Receiver requests that any claims for amounts in excess of an investor’s Remaining Principal be denied.

III. Claims for Taxes, Interest, Penalties, and Loan Repayment

In promoting the Silver Pool, Rust aggressively pushed investors to cash out or borrow from their 401(k) and other retirement accounts, to cash out their life insurance policies, and to

mortgage their homes or take out home equity credit lines to fund their principal investment in the Silver Pool. In these transactions, many investors paid taxes and penalties for withdrawing funds from their retirement accounts. Others paid interest on loans used to fund their principal investment. Some claimants have asserted that disbursements from the Silver Pool were used to pay back these loans and have argued that distributions used to pay such loans should not be included in the calculation of the investor's Remaining Principal amount. Although the Receiver recognizes that these types of taxes, penalties, and interest charges are expenses incurred by some investors as a result of Rust's deception, courts have ruled that these sorts of taxes and penalties cannot be recovered from the Receivership Estate.

First, claims for fees associated with money management such as taxes, penalties, loan fees, or interest payments are difficult to limit and define. *Donell v. Kowell*, 533 F.3d 762, 779 (9th Cir. 2008). Second, the complex tracing and questions of proof required to consider investor offsets for taxes, penalties, loan fees, and interest payments would impose an enormous administrative burden on the Receivership Estate, requiring extensive investigation into each investor's individual finances that would range far beyond the books and records of the Receivership Defendants. *Id.* Third, it would be inequitable to prioritize some investors over others simply because those investors used the funds they received to make debt payments or to pay taxes. *Id.*

For these reasons the Receiver requests that the Court categorically disallow claims to the extent they seek to recoup taxes, fees, penalties, or interest charges. The Receiver also requests that the Court not require the Receiver to evaluate the ultimate destination of funds distributed out of the Silver Pool. Rather, the proper calculation of an allowed claim is the investor's Remaining Principal (i.e., [total principal amount invested]-[total distributions paid out]).

IV. Claims for Inter-investor Transfers

As described above, Rust was intimately involved in the financial lives of investors. Rust promoted the Silver Pool as a traditional bank account and promised complete and free access to all invested funds in the Silver Pool. At times investors would make purchases for goods or services between themselves and request that ounces of silver be “transferred” to pay for those real-world goods and services. For instance, one investor sold a motorcycle to a second investor. In exchange for the title to the motorcycle, the buyer requested that \$4,000.00 worth of silver ounces be “transferred” from his account to the seller’s Silver Pool account. *See* Claim # CL0182, attached as Exhibit A. Another investor completed the staining of a cabin for a fellow investor and was credited \$14,000.00 worth of silver ounces as payment. *See* Claim # CL0184, attached as Exhibit B.

Although these “transfers” between investors were reflected on the fraudulent statements prepared by Rust, no actual value was exchanged. There was, in fact, no silver to be exchanged. Some claimants have sought to count these “transfer” amounts as additional contributions for which the claimants should be entitled to repayment. But no additional corresponding value was added to the Silver Pool as a result of these transactions. Instead, Rust simply noted the transfer on the investors’ statements. Unfortunately, to the extent these claimants wish to recover amounts they expected to receive in exchange for real-world goods and services, they will need to recover such amounts directly from the counterparty and not from the Receivership Estate. The Receiver requests that all such inter-investor transfers for which no real value was exchanged should be disregarded when calculating an investor’s Remaining Principal.

V. Claims Associated with Third-Party Investors

As described above, many investors acted as intermediaries on behalf of friends and family. Unfortunately, the books and records of the Receivership Defendants only reflect the investments and disbursements made from and to the intermediary investor and do not reflect the investment activity of the third parties. However, many of the third-party investors have sought to recoup the amounts they invested through intermediaries.

Although the Receiver recognizes the very real harms suffered by these third-party investors, these are not harms that can be remedied through the Receivership Estate. It would impose enormous administrative burdens on the Estate to evaluate these third-party transactions that are not reflected in the books and records of the Receivership Defendants. The Receiver's forensic accountants would essentially be forced to conduct the same type of analysis of the intermediaries' financial records as they have already conducted of the Receivership Defendants'.

The Receiver respectfully requests that the claims of third-party investors be denied to the extent such claims are not reflected in the books and records of the Receivership Defendants. The Receiver proposes to calculate the intermediary's allowed claim amount by relying on the books and records of the Receivership Defendants, which would not take into account any contributions from or disbursements to third-party investors. The Receiver notes that third-party investors will not be barred from seeking to recover any losses sustained through the intermediary.

OBJECTION PROCEDURE

Consistent with the Summary Disposition Procedure established by the Court, the Receiver will provide notice of this Motion to all potential claimants for whom the Receiver has

contact information and will post it on the Receiver's website (rustrarecoinreceiver.com). See Dkt. No. 165. Any objection to this Motion **must be sent directly to the Receiver within 30 days** of service of the Motion. An objecting party will not be a party to the overall proceeding, will not intervene in the case, and will not file any documents directly with the Court unless otherwise authorized to do so by the Court.

If an objecting party specifically requests discovery in their objection, the parties will have an additional 30 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 14 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 close of discovery (if specifically requested), the Receiver will then file the objections with the Court and schedule a hearing on the matter. 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.

CONCLUSION

As described above, the Receiver requests that the Court rule on certain categorical objections to types of claims submitted in the claims process. The Receiver hopes to streamline the claims resolution process by resolving these categorical objections now.

DATED this 2nd day of November 2020.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Cynthia D. Love

Joseph M.R. Covey
Cynthia D. Love

Attorneys for the Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 2, 2020, a true and correct copy of the foregoing was (1) electronically filed with the Clerk of the Court through the CM/ECF system, 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.

/s/ Cynthia D. Love

Cynthia D. Love

**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, GAYLEN DEAN RUST, an
individual, DENISE GUNDERSON RUST, an
individual, and 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.

**ORDER AND MEMORANDUM
DECISION OVERRULING
OBJECTIONS AND GRANTING
RECEIVER'S MOTION TO APPROVE
DISTRIBUTION PLAN**

Case No. 2:18-cv-00892

Judge Tena Campbell

In November 2018, the Commodity Futures Trading Commission (CFTC) and the State of Utah brought this action against Defendants Rust Rare Coin, Inc., Gaylen Dean Rust, Denise Gunderson Rust, and Joshua Daniel Rust (collectively, "Rust Rare Coin"), accusing them of operating a major Ponzi scheme. (ECF No. 1.) Through a series of preliminary injunctions, the

court froze all of the assets of Rust Rare Coin. (See ECF Nos. 22, 53, 54, 59, 69, 77.) The court also appointed Jonathan Hafen as Receiver for the Rust Rare Coin estate and instructed him to liquidate its assets. (ECF No. 54.)

The Receiver has now filed a motion to approve his proposed distribution plan to compensate the victims of the Rust Rare Coin fraud. (ECF No. 298.) The court has received fourteen objections to this proposal. (ECF No. 325). Having reviewed each objection and having considered the arguments made by the objectors at three separate hearings held on August 17 and 18, the court now overrules the objections and grants the Receiver’s motion.

I. Legal Standard

“In general, this Court has broad authority to craft remedies for violations of the federal securities laws. . . . The Court has the authority to approve any [distribution] plan provided it is fair and reasonable.” S.E.C. v. Byers, 637 F. Supp. 2d 166, 174 (S.D.N.Y. 2009) (internal quotation omitted) (collecting cases); S.E.C. v. Vescor Capital Corp., 599 F.3d 1189, 1194 (10th Cir. 2010) (“It is generally recognized that the district court has broad powers and wide discretion to determine . . . relief in an equity receivership.”) (internal quotations omitted).

In crafting a distribution plan, courts frequently favor a pro rata distribution of funds and disfavor attempts to trace losses to individual investors. See S.E.C. v. Quan, 870 F.3d 754, 762 (8th Cir. 2017) (“Courts have ‘routinely endorsed’ the pro rata distribution of assets to investors as the most fair and equitable approach in fraud cases.”) (collecting cases); S.E.C. v. Credit Bancorp, Ltd., 290 F.3d 80, 88 (2d Cir. 2002) (“[T]he use of a pro rata distribution has been deemed especially appropriate for fraud victims of a Ponzi scheme.”). The type of pro rata distribution method that is “most commonly used (and judicially approved) for apportioning

receivership assets” is known as the “rising tide” method. S.E.C. v. Huber, 702 F.3d 903, 906 (10th Cir. 2012).

II. Proposed Distribution Plan

The Receiver’s plan is made up of two key components: the use of a class system to categorize and rank the types of claims received and a distribution method based on the rising tide principles.

A. Classes

First, the Receiver proposes dividing the potential claims into six distinct classes, with claims in lower classes receiving no distributions until the claims in higher classes have been fully satisfied.¹ The six classes are:

1. Administrative costs of the Receiver and the Rust Rare Coin estate;
2. Tax liabilities;
3. Secured creditors (to be paid out of the proceeds of their collateral);
4. Unsecured creditors and defrauded investors;
5. Non-recognized trade creditor claims; and
6. Insider or subordinated claims.

As a practical matter, the Receiver believes the first, second, and third classes will be paid in full, the fourth class will be paid in part, and the fifth and sixth classes will receive no payments.

¹ Under this court’s earlier orders, all claims were to be filed with the Receiver by October 4, 2019. (ECF No. 239.) The Receiver represents that it has received 605 claims seeking a total of approximately \$168 million. At present, the Receivership estate has only approximately \$10 million to distribute. The Receiver is still evaluating these claims to determine which should be allowed and which should be denied. Once the Receiver completes this work, claimants will have an opportunity to object to the Receiver’s conclusions regarding the validity of each claim. This order addresses only the distribution procedures in general, not the validity of any particular claim that will ultimately be paid out using these procedures.

B. Rising Tide Distribution

Second, the Receiver proposes distributing assets using the rising tide method. This is essentially a pro rata distribution that takes into consideration not only how much a person invested with Rust Rare Coin, but also what percentage of their investment was returned to them before the Receiver was appointed.

The Receiver uses the following hypothetical to explain the calculations:

Investor	Adjusted Investor Claim	Pre-Receivership Recovery	Percentage Return
A	\$100,000	\$0.00	0%
B	\$200,000	\$40,000.00	20%
C	\$100,000	\$80,000.00	80%

Under this scenario, Investor A would be the first to receive a distribution, as their percentage return is 0%. Investor B will not receive a distribution unless and until Investor A has received a 20% percentage return or, in this illustration, distributions of \$20,000.00. In the event Investor A receives \$20,000.00 in distributions and there remain additional funds to distribute, Investor B will begin receiving distributions with Investor A proportionate to their Allowed Claims. Based on the above illustration, in the event there is an additional \$6,000.00 to distribute, Investor A would receive \$2,000.00, and Investor B would receive \$4,000.00 (an additional 2% return to each Investor). Investors A and B will continue to receive distributions to the exclusion of Investor C until Investors A and B have both received an 80% percentage return. In the event Investors A and B receive distributions sufficient for both to receive an 80% percentage return and there remain additional funds to distribute, Investor C will begin receiving distributions with Investors A and B proportionate to their Allowed Claims.

(Mot. at 7 (ECF No. 298).) Using this method, the Receiver estimates that about 75% of claimants would receive at least some type of distribution.

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III. Objections

A. Class-based Objections

1. Class Four Objections

The Receiver's proposed Class Four combines claims from unsecured creditors and defrauded investors. Unsecured creditors include, for example, individuals who sold items to Rust Rare Coin but never received payments; employees of Rust Rare Coin who never received their last paychecks or other benefits; and vendors who provided services to Rust Rare Coin but were never paid. Meanwhile, the defrauded investors category includes all those who invested in the Rust Rare Coin silver pool.

Daxson Hale (who objects on behalf of himself as well as Jared Clark Gay and J. Scott Rakozy) (see ECF No. 325-7) and Sara McCormick (see ECF No. 325-6) are unsecured creditors who argue that their claims should be placed in a class above the defrauded investors. They maintain that investments are inherently risky and that the investors should have known that there was a possibility that they would lose their investments. Employees and vendors, by contrast, simply entered normal, non-risky contracts with what appeared to be a typical business. Because of this difference in risk, the unsecured creditors contend that their claims should take priority over the investors' claims.

Alice Jones (who objects on behalf of herself and Jennifer Jones Clawson, Bryan Douglas Jones, Lindsay Erin Jones, and Courtney Jones Nielsen) (see ECF No. 325-8), Gloria Bowman (who objects on behalf of herself and Phyllis Bowman, David Bowman, Katherine Bowman, Sarah Bowman, Jeannette Dieman, and various affiliated trusts and LLCs) (see ECF No. 325-9), and Kathleen Barlow (see ECF No. 325-10) are all defrauded investors who argue that their

investments should receive priority above the claims of unsecured creditors.² In response to the arguments above, these objectors point out that unsecured creditors do assume risks when they engage in business. If they did not want to take on such risks, they should have insisted on receiving some type of security interest to protect themselves, which would have allowed them to become secured creditors. The investors take the position that absent such security, these creditors should not get special treatment.

The investors also assert that it is standard for investor claims to take priority over the claims of unsecured creditors. For support, they cite two cases, C.F.T.C. v. Capitalstreet Fin., LLC, Case No. 3:09-cv-387-RJC-DCK, 2010 WL 2572349 (W.D.N.C. June 18, 2010), and S.E.C. v. HKW Trading, LLC, Case No. 8:050-cv-1076 T-24-TBM, 2009 WL 2499146 (M.D. Fla. Aug. 14, 2009). In both cases, the court approved distribution plans that prioritized defrauded investors above general creditors.

The court is not inclined to change the Receiver's plan based on these cases. Neither case includes any legal analysis or explanation regarding the relationship between investors and creditors. Instead, it appears that in each instance, the receivers in those cases proposed plans that prioritized investors over creditors, for unknown reasons, and the court accepted those plans because no one objected.³ Neither case explains what a court should do when a receiver proposes treating the two groups the same and both groups object to that proposal.

² After initially filing three separate objections, these same objectors filed a joint consolidated objection responding to some of the arguments the Receiver made in response to their initial objections. (See ECF No. 325-11.)

³ At the hearing, the Receiver speculated that the treatment of general creditors in other cases may simply reflect the fact that most of the time, the unsecured creditors, if any, are not entirely innocent. Unlike most Ponzi schemes, this case involved several legitimate enterprises that employed real employees and engaged in real business with customers and vendors. In most Ponzi schemes, by contrast, legitimate contracts are rare and the few employees involved are often complicit in the fraud to one degree or another, which lessens the need to protect their interests in the distribution plan.

Ultimately, the court agrees with the Receiver's view that equity is best served by treating the unsecured creditors and defrauded investors as being part of the same class. On the one hand, it is true that the unsecured creditors were, in some sense, less blameworthy than the defrauded investors. They did not engage in risky behavior like the investors did.⁴ On the other hand, the only reason any funds are available to pay the unsecured creditors is because of the unlawful investments Rust Rare Coin obtained. If Rust Rare Coin had simply been a normal enterprise that had gone out of business, the unsecured creditors likely would have had no recovery at all. A recovery is possible here because this was a Ponzi scheme and the Receiver was empowered to claw back distributions made to earlier investors. Accordingly, in some sense, the defrauded investors are subsidizing the recovery of the unsecured creditors.⁵

Additionally, the Receiver notes that if the unsecured creditors were placed in a class below the investors, none of the unsecured creditors would receive any recovery. The Receiver's goal is to ensure that as many victims as possible receive at least some compensation for their losses and this goal is best accomplished by treating unsecured creditors and defrauded investors as part of the same class.

Weighing all of these factors—the relative innocence of the unsecured creditors, the fact that the recovery is built on funds contributed by defrauded investors, and the need to help as

⁴ To be sure, as Ms. Bowman persuasively argued at the hearing, the investors only took on the normal risks associated with any investment, not the risk of being defrauded. Still, it cannot be denied that precious metal investments are necessarily riskier than, for example, government-backed bonds or federally insured bank accounts.

⁵ Mr. Hale persuasively pointed out at the hearing that the Receiver's administrative costs and fees are also in some sense being paid for by the defrauded investors. The difference, of course, is that the unsecured creditors—though not engaging in the same risky behavior as the investors—still took on the normal risks that accompany any contract entered into in a free market system. Simply put, contracts are sometimes broken and damages are sometimes unavailable. That risk-taking is reason enough to treat the unsecured creditors like the investors rather than like the court-appointed Receiver.

many victims as possible—the court agrees with the Receiver that these groups should be treated the same. Accordingly, all of the above objections are overruled.

2. Thomas Judd Williams (ECF No. 325-5)⁶

Mr. Williams believes that a new class should be added to the distribution plan (to take priority above all others, except the administrative costs) for individuals who had a warehouse or bailee relationship with Rust Rare Coin. Mr. Williams alleges that he paid \$30,000 to Rust Rare Coin for the purpose of having Rust Rare Coin purchase silver for him and then store it on his behalf. Mr. Williams maintains that this purchase and storage agreement was never meant to be part of the silver pool scheme operated by Rust Rare Coin.

The court has already ordered the Receiver to distribute all goods that were being held by Rust Rare Coin on a consignment, appraisal, warehousing, or similar basis at the time of the Receiver's appointment. (See ECF Nos. 294, 306.) The Receiver represents that he has no record of any silver being purchased or stored on Mr. Williams's behalf. "It appears that [Rust Rare Coin] merely accepted Mr. Williams' payment and either never ordered his goods or ordered his goods and subsequently liquidated them to make payments to other investors." (Reply at 10 (ECF No. 327).) Because there are no goods to return to Mr. Williams, the Receiver recommends that Mr. Williams's claim be treated the same as other victims of Rust Rare Coin's fraud, even if Mr. Williams did not intend to participate in the silver pool.

Even assuming Rust Rare Coin at some point purchased silver for Mr. Williams, the court would nevertheless conclude that he is not entitled to a higher priority than other victims.⁷ Mr.

⁶ Mr. Williams's objection was filed by his attorney, Frank Reed Bennett. He is the only objector represented by counsel, although Peter Guyon, whose objection is addressed below, is also an attorney and is representing himself.

⁷ Although it is not clear whether Rust Rare Coin ever actually purchased silver on Mr. Williams's behalf, Mr. Williams's argument is stronger if the court assumes that, at some point, there was actual silver that he could have

Williams’s situation is analogous to the facts of Lindsey v. Ipock, 732 F.2d 619 (8th Cir. 1984), which is the end result of one of the cases Mr. Williams cited at the hearing, Missouri v. U.S. Bankruptcy Court, 647 F.2d 768 (8th Cir. 1981).⁸ In that case, certain debtors declared bankruptcy and the bankruptcy trustee took control of several grain silos. The trustee sought to sell the grain but several groups moved to stay the sales on the ground that the bankruptcy court lacked jurisdiction over the grain. They argued that the grain had not belonged to the debtors at the time the bankruptcy petition was filed and so was beyond the reach of the trustee.

During an initial appeal, the Eighth Circuit concluded that the bankruptcy did have jurisdiction because of the debtors’ possession of the grain but the court was skeptical that the debtors had ever actually owned the grain. Missouri, 647 F.2d at 774. The Eighth Circuit noted that, on the preliminary record available, it appeared more likely that the grain was simply being warehoused for others, who were the rightful owners of the goods. Id. at 778. The Eighth Circuit warned that the trustee could not sell the grain until the bankruptcy court had “particularly examine[d] its authority to order the sale if title documents indicate that the estate possesses no substantial ownership rights to the grain and that any bona fide dispute over the property exists only between third parties.” Id.

This is the part of the case that Mr. Williams emphasized at the hearing in order to prove that he is entitled to the return of silver held by Rust Rare Coin. He argues that, similar to Missouri, Rust Rare Coin merely possessed, rather than owned, the silver, and the Receiver

claimed. In order to give Mr. Williams the benefit of Rust Rare Coin’s unclear records, the court will presume that (at least at some point), Rust Rare Coin did purchase silver for Mr. Williams.

⁸ Mr. Williams’s attorney, Mr. Bennett, referred to this case at the hearing as “In re Cox Cotton Co.” That was the name of the underlying bankruptcy but not the name of the decision by the Eighth Circuit to which Mr. Bennett was actually citing.

accordingly lacked authority to sell it.⁹ But Mr. Williams ignores what happened after Missouri. Notwithstanding the Eighth Circuit’s skepticism, both the bankruptcy court and the district court concluded that the trustee did have the right to sell the grain and authorized him to do so. Lindsey, 732 F.2d at 622. Rather than appeal that order, certain individuals who claimed an ownership interest in the grain broke into the silos and stole 31,000 bushels of soybeans that they claimed was their property. Id. They were held in contempt of court for interfering with the sale and, after appealing that contempt order, argued that the bankruptcy court never should have authorized the sale of the grain due to the lack of true ownership. But the Eighth Circuit rejected this argument, holding that the individuals could not challenge the sale order in the collateral contempt appeal because they had failed to appeal the original order.¹⁰ Id.

Here, similarly, the court already held a proceeding to determine whether the Receiver could sell all of the silver in its possession. Mr. Williams did not object as part of that motion and the court authorized the Receiver to liquidate all Rust Rare Coin inventory. (ECF No. 294.) Accordingly, even assuming there had at some point been silver that Mr. Williams could have claimed, the court has already ordered the sale of such silver. As in Lindsey, it is now too late for Mr. Williams to argue that he is entitled to the actual goods.

For those reasons, Mr. Williams will be receiving a monetary distribution rather than a distribution of goods, like all other investors and unsecured creditors. The only remaining question is whether that distribution should take priority over the other claims. The court

⁹ Part of the court’s holding in Missouri turned on certain provisions of the Uniform Commercial Code that cover fungible goods like grain. See Missouri, 647 F.2d at 775 n.13. The same provisions have been adopted by Utah. See Utah Code § 70A-7a-207. Although the issue was not briefed, the court will assume for purposes of this analysis that the silver pieces purchased by Mr. Williams were similarly fungible.

¹⁰ The Eighth Circuit also briefly stated that, in any event, it believed the district court’s “extensive analysis” regarding the legality of the sale order was correct. Lindsey, 732 F.2d at 622.

concludes it should not. In making this determination, the court has reviewed Basin Elec. Power Co-op v. ANR Western Coal Dev. Co., 105 F.3d 417 (8th Cir. 1997), which is the other case cited by Mr. Williams at the hearing. The court has also reviewed Utah Code §§ 70A-7a-207 and 70A-7a-403, which Mr. Williams also asked the court to consider. While these sources discuss an individual's right to certain goods when there is a warehouse relationship, none of them address what to do when the goods no longer exist. Absent any other authority, and mindful of its broad discretion to craft fair and reasonable distributions in Ponzi scheme cases, the court concludes Mr. Williams should be treated the same as unsecured creditors. That is the category that his claim most resembles and for the same reasons that the unsecured creditors are not being placed in a class above the defrauded investors, the court concludes Mr. Williams should be included in Class Four as well.

For the foregoing reasons, Mr. Williams's objection is overruled.

B. Rising Tide Objections

1. Alan Lambert (ECF No. 325-1)

Although Mr. Lambert initially filed an objection, counsel for the Receiver represented at the hearing that Mr. Lambert had agreed to withdraw that objection. Accordingly, the court does not address this objection.

2. Wayne Hall (ECF No. 325-2)

Mr. Hall objects on the ground that "it makes no sense to me how someone who's net loss was \$10,000 could potentially get a distribution, while someone who's net loss was \$1,000,000 could potentially get nothing."

The court recognizes that there are large disparities in the amounts that different individuals invested and that this presents a particular problem for creating an equitable

distribution. While there is no simple answer, the court ultimately agrees with the Receiver that the best way to handle the different investment amounts is to focus on the percentage of recovery, rather than the raw numbers. In other words, what matters is not whether someone invested \$10,000 or \$1,000,000, but what percentage of their investment they have already recovered. Relying on percentages means that, in some cases, Mr. Hall's concern will come true: a person who invested \$1 million and has already gotten some of that money back may receive nothing, while a person who invested \$10,000 and has not yet gotten any money back will receive a distribution. But the inverse is also true. If someone invested \$1 million and has not yet gotten any of it back, that investor will receive a distribution before someone who invested \$10,000 and has already gotten half of it back. Although imperfect, the court agrees with the Receiver that this is the best possible option.

Accordingly, Mr. Hall's objection is overruled.

3. Adam Wells (ECF No. 325-3)

Mr. Wells argues that each claim should be evaluated individually, rather than be paid out as part of a formula.

At least to some extent, each claim will be reviewed individually. The Receiver is taking each claim and comparing it to bank and transfer records to determine whether it is legitimate. If the Receiver rejects any claims, the individual claimants will be able to challenge that decision before this court. After receiving this explanation from the Receiver's counsel during the hearing, Mr. Wells agreed that the process was fair and acknowledged that any concerns he had about how his specific investment amount was calculated could be addressed at a later time.

Accordingly, in light of the conversation that occurred at the hearing, Mr. Wells' objection is overruled.

4. Catherine and Jim Binsacca (ECF No. 325-4)

The Binsaccas' objection details all of the negative consequences they have suffered as a result of their investment in the silver pool. Certainly, these consequences bring home the gravity of Rust Rare Coin's fraud. But the fact that the Binsaccas were innocent victims has no bearing on the merits of the proposed distribution plan. After all, except in those situations where the Receiver may affirmatively allege that an investor acted in bad faith, the court will be treating each investor as an innocent victim. Because of the number of individuals involved in the scheme and the wide variety of different circumstances the investors face, the court cannot instruct the Receiver to engage in an individualized assessment of each investor to determine who has the most sympathetic case. The court must treat the investors the same or else be guilty of arbitrariness.

The Binsaccas also argue that the partial distributions that they were given before the Receiver was appointed should not limit the size of their claim now because that money was used to pay taxes. But the court cannot order the Receiver to exempt the Binsaccas from the requirement that their claim be adjusted based on distributions they have already obtained. There are no articulable lines that can be drawn regarding when to count pre-Receivership disbursements and when to disregard them. Money disbursed by Rust Rare Coin to its investors could have gone toward taxes, interest payments on loans, house payments, car payments, college tuition, other investments, a vacation, or it could have simply been left in a savings account. There is no way for the court or the Receiver to determine which of these disbursements should be ignored and which should be counted when calculating the size of each investor's claim. The court is tasked with creating a "fair and reasonable" distribution plan (see S.E.C. v. Byers, 637 F. Supp. 2d at 174), and an arbitrary rule that counts some pre-Receivership

distributions against the amount of a claim, while disregarding other disbursements, would not meet that standard. Counting all disbursements, as the Receiver proposes, is the fairest solution.

For these reasons, the Binsacca objection is also overruled.

C. Mr. Guyon Objection (ECF No. 325-12)

Finally, Peter Guyon, who is a licensed attorney and claims to have represented Rust Rare Coin and various members of the Rust family for the last forty years, has filed an objection that challenges many different aspects of the lawsuit as a whole. Mr. Guyon argues, for example, that there was no Ponzi scheme or securities fraud; that if there was a Ponzi scheme, he was not part of it; that this court lacks jurisdiction over the matter since any fraud or embezzlement would be state law violations, not federal law violations; that certain questions surrounding the definition of a Ponzi scheme should be certified to the Utah Supreme Court; and that this case (assuming it is properly in federal court) should be before a bankruptcy judge rather than this court.

First, the court has already concluded that it has jurisdiction over this case. (See ECF No. 22.) For the sake of completeness, it repeats those findings here.

There are two statutory bases for federal subject-matter jurisdiction: diversity jurisdiction under 28 U.S.C. § 1332 and federal-question jurisdiction under 28 U.S.C. § 1331. Federal-question jurisdiction exists for all claims “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. “A case arises under federal law if its well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” Morris, 39 F.3d at 1111.

Nicodemus v. Union Pac. Corp., 318 F.3d 1231, 1235 (10th Cir. 2003).

Here, the complaint alleged that Rust Rare Coin violated federal securities laws (see Compl. ¶¶ 8, 21-78, 86-91), which creates federal-question jurisdiction. The court also has

supplemental jurisdiction over the related violations of Utah securities laws (see Compl. ¶¶ 92-108), because those claims are commingled with the alleged federal law violations. See 28 U.S.C. § 1367. Accordingly, to the extent Mr. Guyon's objection challenges the court's jurisdiction over this matter, it is overruled.

Second, the court concludes Mr. Guyon is not the proper person to challenge the existence of the Ponzi scheme as a whole. It is true, as he claims, that this court has so far made only preliminary findings regarding the existence of a Ponzi scheme. That is because, at least for now, the court is not inclined to make any final findings until the related criminal matter is resolved. Once it has been resolved, it will be up to the Plaintiffs (the CFTC and the State of Utah) and the Defendants (Rust Rare Coin, Gaylen Rust, Denise Rust, and Josh Rust) to either stipulate to certain findings or to fully litigate this action through to a final judgment. In other words, the issue of the Ponzi scheme is ultimately between the Plaintiffs and the Defendants, not Mr. Guyon.

On the other hand, Mr. Guyon is certainly entitled to argue that he personally was never part of the Ponzi scheme. But objecting to the Receiver's motion is not the proper forum for doing so.

Mr. Guyon's involvement in the Ponzi scheme may be relevant in one of two ways. First, if he was simply a victim of the Ponzi scheme (either as a defrauded investor or as an unsecured creditor), then he must file a claim with the Receiver in order to obtain a partial recovery through the distribution process. If, as Mr. Guyon appeared to state at the hearing, he does not view himself as a victim of the scheme, then he can simply decline to file a claim and will receive no distribution. In that case, he would have no particular interest in how the distribution procedure works.

Alternatively, Mr. Guyon may actually be a net beneficiary from the Ponzi scheme, meaning he received more in distributions than he invested. If so, the Receiver may file an ancillary action against Mr. Guyon to claw back some of the pre-Receivership distributions that Mr. Guyon received.¹¹ If the Receiver files such an action, then Mr. Guyon can raise his argument that he was not part of the Ponzi scheme in that case. Either way, his objection is not proper at this time.

Next, Mr. Guyon objects to the court's order appointing the Receiver, arguing that the order deprived him of his right to obtain a recovery from Rust Rare Coin through other means. In particular, Mr. Guyon objects to that part of the court's order that prohibited anyone, including creditors, from filing a bankruptcy petition. (See ECF No. 22 at ¶ 35(a).) Mr. Guyon argues that had this matter gone to bankruptcy, a creditors committee could have been created to oversee the operation of the Rust Rare Coin businesses. That way, Rust Rare Coin could have continued to make a profit even while the investigation was ongoing. Instead, the Receiver elected to liquidate all of the Rust Rare Coin businesses, which Mr. Guyon believes has limited the size of the recovery available to the victims of Rust Rare Coin.

Mr. Guyon misrepresents the breadth of the court's order. The court ordered that no bankruptcy petition be filed "except by leave of the court." (*Id.* at ¶ 35.) Mr. Guyon or any of the other creditors could have moved to intervene in the suit and filed a motion for permission to move this matter to the bankruptcy court instead. They elected not to do so. Mr. Guyon cannot now complain about the choices the Receiver has made to liquidate the estate when he never

¹¹ The Receiver's counsel represented during the hearing that the Receiver had not yet decided whether to pursue an ancillary action against Mr. Guyon.

moved earlier to have the distribution of the estate overseen by a different judge or a different venue.

Finally, Mr. Guyon asks the court to certify three questions to the Utah Supreme Court. Each of these questions involves what presumptions or standards of proof apply to determining whether a Ponzi scheme exists. Again, to the extent these questions are related to proving that there was no Ponzi scheme at all in this case, these issues should be raised by the Plaintiffs or the Defendants, not Mr. Guyon. If, on the other hand, these questions are related to proving that Mr. Guyon personally was not a victim of the Ponzi scheme, then he may raise the issue in an ancillary suit if such a suit is filed against him.¹²

For all of the above reasons, Mr. Guyon's objection is overruled.

At the hearing, Mr. Guyon noted that he had requested certain discovery from the Receiver and that the Receiver and Mr. Guyon had agreed to delay resolving their discovery dispute until after this order was issued. Copies of Mr. Guyon's request for production of documents and request for admissions were attached to his objection. (See Ex. 4 to ECF No. 325-12.) The court makes no findings regarding the appropriateness of these requests. To the extent Mr. Guyon still seeks discovery, he and the Receiver's counsel should meet and confer regarding what, if any, discovery is appropriate in light of this order. In the event of any dispute, discovery motions will be heard by Chief Magistrate Judge Dustin Pead.

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¹² This is not to say that the court would necessarily agree to certify the questions if they were raised in an ancillary suit, merely that the issue could be fully briefed and reviewed at that time.

ORDER

All of the objections received in response to the Receiver's motion to approve the proposed distribution plan are OVERRULED. The motion to approve the distribution plan (ECF No. 298) is GRANTED.

DATED this 20th day of August, 2020.

BY THE COURT

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

Judge Tena Campbell
United States District Court

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Attorneys for Jonathan O. Hafen as Receiver

**IN THE 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,
GAYLEN DEAN RUST, an individual,
DENISE GUNDERSON RUST, an individual,
and 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 APPROVE PROPOSED
DISTRIBUTION PLAN, OBJECTION
PROCEDURE, AND CLAIM ANALYSIS**

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

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Jonathan O. Hafen, the Court-Appointed Receiver over the assets of Rust Rare Coin, Inc. (“RRC”), Gaylen Dean Rust, R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, the “Receivership Defendants”), hereby submits this Motion to Approve Proposed Distribution Plan, Objection Procedure, and Claim Analysis (this “Motion”).

FACTUAL BACKGROUND

This case concerns one of the biggest Ponzi schemes in Utah history, involving several hundred investors who lost in excess of \$100 million to a fraud perpetrated by Gaylen Dean Rust (“Rust”). During all relevant times, Rust owned and operated RRC, a specialty coin shop in Salt Lake City, Utah, dealing in rare coins, precious metals, and other memorabilia. From at least 2008, however, Rust also operated a massive Ponzi scheme in which he fraudulently solicited hundreds of millions of dollars from investors by claiming that their investments would be pooled together for the purpose of trading physical silver (the “Silver Pool”). Rust told investors and prospective investors that he was using the money contributed to the Silver Pool to purchase and store physical silver for investment. In other words, the Silver Pool purported to generate profits for investors by selling physical silver held in the Silver Pool when market prices began to decline and, after such a decline, Rust used the profits from the sale to purchase a larger quantity of silver at a lower price. Through this process, Rust claimed he was able to consistently increase the number of ounces of silver held in the Silver Pool and, consequently, increase the value of each investor’s share of the Silver Pool.

But these representations were false. Rust never traded silver in the manner he described to Silver Pool investors. Instead, Rust misappropriated funds invested in the Silver Pool to make payments to other investors in the manner of a Ponzi scheme. Specifically, after receiving a new deposit into the Silver Pool, Rust made payments to other investors from the same bank account

without ever transferring funds to or from a trading account or otherwise purchasing silver or other precious metals.

Additionally, Rust transferred money contributed by Silver Pool investors to other entities owned by Rust, including but not limited to R Legacy Entertainment, R Legacy Racing, and R Legacy Investments. None of these other entities owned any trading or similar accounts used to buy or sell silver or other precious metals and none had a legitimate right to funds sourced from Silver Pool investors.

As a result of this fraudulent scheme, the Commodity Futures Trading Commission (“CFTC”) and Utah Division of Securities (“DOS”) commenced the above-captioned action against Rust and the Receivership Defendants on November 13, 2018. *See* Dkt. No. 1. And on November 27, 2018, this Court entered an order (the “Receivership Order”) confirming the appointment of Jonathan O. Hafen as Receiver and authorizing him to identify, collect, and preserve the assets of the Receivership Estate for the benefit of the Estate’s creditors, including the hundreds of defrauded investors.

THE RECEIVER’S WORK

Since the Receiver’s appointment, the Receiver and his team have been diligently working to complete the various tasks assigned to the Receiver by the Court, including asset identification and recovery. As part of these efforts, the Receiver has liquidated a majority of the real and personal property within the Receivership Estate, and the Receiver intends to liquidate the remainder of the Estate’s assets within the coming months. The Receiver also has filed numerous ancillary lawsuits against defendants seeking to recover fraudulent transfers made to them by Rust. He also has coordinated the execution of over 170 tolling agreements with such potential defendants. Through these processes, the Receiver is working to recover these

additional funds through either formal litigation or through settlement negotiations with investors and their counsel. To this point, the Receiver has successfully recovered approximately \$10 million for the benefit of the Receivership Estate, and he expects to recover additional funds as the receivership continues forward with its claw back efforts.

The Receiver also recently obtained approval from this Court to initiate a claims process and to set a bar date for all claim form submissions in this matter. *See* Dkt. No. 239. Pursuant to that Order, the Receiver sent out over 4,000 claim forms to potential claimants, published notice of the claims process, and set a bar date of October 4, 2019. In response, over 605 claim forms were submitted to the Receiver with a total self-reported claim amount of approximately \$168 million. To determine whether such claims will be allowed, the Receiver and his team are currently reviewing and verifying the submitted claim forms by comparing the asserted losses with data from the books and records of the Receivership Defendants. Once this process is complete, the Receiver will designate each claim as either an allowed or disallowed claim. If the Receiver objects to a claim, notice of the objection will be given to the claimant and filed with the Court, after which the Court will determine if the claim will be allowed. The Receiver anticipates that the preliminary analysis of such claims will be completed by the end of this quarter.

DISTRIBUTION PLAN

Because it is clear from the facts of this case that the Receivership Defendants were operating a massive Ponzi scheme, the Receiver proposes the following distribution plan (“Distribution Plan” or “Plan”), which provides for the disbursement of net proceeds from the Receivership Estate to Claimants (defined below) using the “rising tide” method of distribution. The Receiver believes that, in his professional judgment, this Plan is in the best interest of the

Receivership Estate, provides the most equitable distribution to Claimants, and complies with applicable law. The funds available for distribution under the Plan will be generated and distributed from the Receivership Defendant's cash accounts, from the liquidation of the Receivership Estate, and from the proceeds of ancillary actions brought by the Receiver. Furthermore, the Receiver has consulted with both the Commodity Futures Trading Commission ("CFTC") and the Utah Division of Securities ("UDOS") to obtain their perspective and input on the Plan prior to filing it with the Court.

ARTICLE 1 – DEFINITIONS

When used in this Distribution Plan (or this corresponding Motion, which is incorporated herein by reference), the capitalized terms identified below and their plural forms have the following meanings:

“Allowed Claim” means a Claim presented by a Claim Form that is either (i) not objected to by the Receiver, (ii) allowed by agreement with the Receiver or (iii) allowed by a separate Order of the Court. An Allowed Claim is a necessary condition to the receipt of a Distribution.

“Approved Claim Amount” means the amount the Receiver agrees is owed to a Claimant based on an Allowed Claim. The Approved Claim Amount is *not the amount the Claimant will, in fact, receive in Distributions from the Receivership Estate*. Rather, it is the amount that the Claimant is entitled to receive from the Receivership Estate if a full recovery is made to all creditors.

“Claim” means any alleged right to a Distribution, regardless of whether or not such right to payment is reduced to judgment, liquidated, unliquidated, fixed or contingent, asserted or unasserted, matured, disputed, undisputed, legal, secured or unsecured.

“Claims Bar Date” means October 4, 2019, pursuant to the Order issued by the Court on August 19, 2019. *See* Dkt. No. 239.

“Claimant” means the holder of an Allowed Claim.

“Class” means a category of Claims as set forth in the Plan. As Claims are validated by the Receiver, he reserves the right to move Claims from one Class to another.

“Court” means the United States District Court for the District of Utah, before which this action is pending.

“Distribution” means any payment by the Receiver on an Allowed Claim in accordance with the procedures outlined in this Distribution Plan.

“Person” means an individual, corporation, partnership, limited liability company, trust, association, retirement or pension plan, or other entity.

“Receivership Assets” means all assets of the Receivership Defendants that have or will be collected by the Receiver.

“Receivership Estate” or **“Estate”** means all of the property interests of the Receivership Defendants, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly.

ARTICLE 2 – DISTRIBUTION APPROACH

Under this Plan, the Receiver proposes employing the “rising tide” distribution method. The rising tide approach seeks, where possible, to achieve an equal total percentage recovery for all Claimants, regardless of whether the recovery came before or after the commencement of the

receivership. In other words, available funds are first distributed on a pro rata basis to Claimants who were paid little or nothing from the Ponzi enterprise, and then, as those Claimants “catch up” to Claimants who received pre-receivership distributions, additional funds are distributed to Claimants who have the next lowest percentage return to date.

For example, the following illustration assumes there are only three investors:

Investor	Adjusted Investor Claim	Pre-Receivership Recovery	Percentage Return
A	\$100,000.00	\$0.00	0%
B	\$200,000.00	\$40,000.00	20%
C	\$100,000.00	\$80,000.00	80%

Under this scenario, Investor A would be the first to receive a distribution, as their percentage return is 0%. Investor B will not receive a distribution unless and until Investor A has received a 20% percentage return or, in this illustration, distributions of \$20,000.00. In the event Investor A receives \$20,000.00 in distributions and there remain additional funds to distribute, Investor B will begin receiving distributions with Investor A proportionate to their Allowed Claims. Based on the above illustration, in the event there is an additional \$6,000.00 to distribute, Investor A would receive \$2,000.00, and Investor B would receive \$4,000.00 (an additional 2% return to each Investor). Investors A and B will continue to receive distributions to the exclusion of Investor C until Investors A and B have both received an 80% percentage return. In the event Investors A and B receive distributions sufficient for both to receive an 80% percentage return and there remain additional funds to distribute, Investor C will begin receiving distributions with Investors A and B proportionate to their Allowed Claims.

The Receiver will make Distributions to each Class of Claimants using the rising tide

approach until all of the Receivership Assets have been distributed. By employing this approach, the Receiver seeks to provide the same proportional recovery to all victims who invested or got caught in the scheme, regardless of whether those funds were received prior to or after the collapse of the scheme. As set forth in more detail below,¹ the Receiver submits that the rising tide method is the most equitable method of calculating distribution amounts in this case.

ARTICLE 3 – PRIORITY TREATMENT OF CLAIMS

The priority of each Claim will be determined according to its classification, as indicated below in decreasing order of priority:

- (1) Administrative claims of the Estate;
- (2) Government tax liabilities of the Estate;
- (3) Secured creditors, to be paid of out the proceeds of their collateral;
- (4) Unsecured creditors and defrauded investors;
- (5) Non-Recognized Trade Creditor Claims; and
- (6) Insider/Subordinated Claims.

Each classification and its corresponding priority status is described in greater detail below.

Class 1: Administrative Claims. Class 1 Claims are Claims for the actual and necessary expenses of administering the Receivership Estate, including fees and expenses paid in connection with marshaling, preserving, and distributing Receivership Assets, fees and expenses paid in accordance with the Receivership Order or other Court orders, tax obligations that are incurred from activities undertaken subsequent to the appointment of the Receiver (not tax obligations that merely become due subsequent to the appointment of the Receiver), and fees and

¹ See Legal Analysis below, at 15.

expenses of the Receiver and his experts, consultants, accountants, and attorneys. All Class 1 Claims are subject to analysis by the Receiver, and a Distribution will only be made to a Class 1 Claimant after the Receiver determines, in his sole professional judgment, that the total amount claimed is equal to the actual value provided by such Claimant and received by the Estate.

The Receiver will not know the full amount of Class 1 Claims until the conclusion of this case. Accordingly, the Receiver will, in the exercise of his discretion, retain a sum as a reserve to fund the cost of securing and liquidating additional Receivership Assets and to meet all future Administrative Claims. The Receiver may reserve additional amounts from funds later obtained for the Receivership Estate, but will endeavor to reserve no more for Administrative Claims than he reasonably believes to be necessary to cover such Claims. All current and future Class 1 Claims shall be paid in full from funds held in the receivership bank accounts pursuant to the procedures set forth in the Receivership Order and shall be accorded priority over all other Claims. Any amount left in reserve at the conclusion of this case shall be distributed to Claimants pursuant to the terms of this Plan.

Class 2: Government Tax Claims. This claim category includes all Allowed Claims for tax or other liabilities owed to a local, state, federal, or foreign governmental body. All Class 2 Claims shall have priority over Class 3, 4, 5 and 6 Claims and must be paid in full before a Distribution will be made to a lower Class.

Class 3: Secured Creditor Claims. This claim category includes the Allowed Claims of all secured creditors of the Receivership Estate. Class 3 Claims, however, will be paid solely from the proceeds of the collateral held by the Estate in which the secured Claimant holds an interest. Any deficiency amount sought by a secured creditor in excess of the proceeds it receives from such collateral will be treated as a Class 6 subordinated Claim. Class 3 Claims shall be paid

upon sale of the Receivership Asset(s) securing such Class 3 Claims from the proceeds of such sale. And except as set forth above, all Class 3 Claims shall have priority over Class 4, 5 and 6 Claims and must be paid in full before a Distribution will be made to a lower Class.

Class 4: Investors and Unsecured Creditors. This claim category includes the Allowed Claims of (i) a Person that deposited or invested money, metals, securities or other financial instruments with one or more Receivership Defendant; or (ii) an employee, customer, vendor, independent contractor, trade creditor, retained professional, or other general unsecured creditor for fees, reimbursable expenses, goods, or services provided to one or more Receivership Defendant before the Receivership Defendant became subject to the Receivership Order. For the avoidance of doubt, Class 4 Claims include all Claims that have not been assigned to another Class under this Plan. All Class 4 Claims shall have priority over all Class 5 and 6 Claims and must be paid in full before a Distribution will be made to a lower Class. The Receiver believes that he will be able to make pro-rata Distributions to Class 4 Claimants but will be unable to pay such Claims in full.

Class 5: Non-Recognized Trade Creditor Claims. Notwithstanding Class 4 above, this claim category includes all Claims submitted by trade creditors whose Claim is against Gaylen Dean Rust or Denise Gunderson Rust in their personal capacity. All Class 5 Claims shall have priority over all Class 6 Claims and must be paid in full before a Distribution will be made to a lower Class. The Receiver believes that no Distributions will be made to Class 5 Claimants.

Class 6: Insider/Subordinated Claims. This claim category includes all Claims determined by the Receiver to be subordinate in priority of payment to Classes 1 through 5, as compelled by the equities of the case and the actions of the relevant Claimant. Class 6 Claims include, but are not limited to, Claimants who the Receiver determines were substantially

involved in furthering the illegitimate Silver Pool. All Class 6 Claims will be paid after all other Classes are paid in full. The Receiver believes that no Distributions will be made to Class 6 Claimants.

The Receiver may divide a Claim and classify it into more than one Class. The Receiver may also divide a Claim, treating part of the Claim as an Allowed Claim and treating the balance as a disallowed Claim.

ARTICLE 4 – MAKING DISTRIBUTIONS

As the Receiver validates Claims and receivership funds become available, the Receiver will begin distributing funds on an interim basis to Claimants in accordance with the priority classifications set forth above. The interim Distributions will be calculated using the “rising tide” distribution method described above in Article II, and the Receiver will seek Court approval prior to making any such Distributions.

1. **Payment Method.** Distributions under the Plan will be made by sending a check in the name of the Claimant to the address identified in said Claimant’s Claim Form or to the address specified by any change of address notices received by the Receiver before the funds are distributed.² Claimants are required to advise the Receiver, in writing, of any change of address or party in interest.

2. **Duty to Provide Information.** In the event the Receiver requires information or forms from a Claimant in relation to making a Distribution (such as tax forms), the Receiver may condition any payment upon receiving such information or forms from the Claimant. A Claimant’s failure to provide any such information or forms to the Receiver within 30 days after

² See Claim Form, at 9 (“Distributions, if any, will be made to the claimant identified above at the address listed.”) (emphasis omitted).

the Receiver's written request for such information will be treated as a forfeiture of that Claimant's Allowed Claim.

3. **Interest on Claims.** Interest shall not accrue or be paid on any Claim, and no holder of an Allowed Claim shall be entitled to any interest accruing on any Claim.

4. **No De Minimis Distributions.** The Receiver is not required to make a Distribution to a Claimant if the total amount to be paid to the Claimant is less than \$50.00. The Receiver has determined that the cost involved in making a Distribution in amounts less than \$50.00 would not be cost effective. Any holder of an Allowed Claim that does not receive a Distribution, including an interim Distribution, solely because of this provision will have such payment reserved until that Claimant would receive a Distribution amount of \$50.00 or more.

5. **Rounding.** Notwithstanding any other provision to the contrary, the Receiver will round all payments under this Plan to the nearest whole dollar (up or down).

6. **Unclaimed Distributions.** Except as otherwise provided herein, any Person who fails to claim any Distribution within 90 days from any payment date shall forfeit all rights to such payment, and the funds at issue will revert back to the Receivership Estate.

7. **Undeliverable Distributions.** The Receiver is under no affirmative obligation to attempt to locate a Claimant. Accordingly, if any Distribution is returned to the Receiver as undeliverable and no appropriate forwarding address is received by the Receiver within 90 days after the attempted Distribution, the Receiver will treat the Distribution as forfeited by that Claimant, and the funds at issue will revert back to the Receivership Estate.

8. **Final Distribution.** When the Receiver determines that further efforts to liquidate the Receivership Estate are not required or would not be economical, the Receiver will, after receiving authorization from the Court, make a final Distribution. In the event that any payment

subject to this final Distribution is unclaimed, undeliverable, or forfeited by any Claimant, the Receiver will donate such funds to a non-denominational charity (to be determined at a later date) if the total amount of such funds does not exceed \$10,000. If more than \$10,000 remain after this final Distribution, the Receiver will seek Court approval to determine whether to redistribute such funds to Claimants or to donate the remaining funds to charity in accordance with this provision.

ARTICLE 5 – MISCELLANEOUS

1. **Court Approval.** The provisions of this Plan, upon confirmation of the Court, shall be binding upon all creditors of and parties in interest to the Receivership Estate.
2. **Right to Modify.** This Plan may be modified both before and after the Court approves this Plan, on such notice and hearing as this Court deems appropriate.
3. **Payment Effects Release.** If an Allowed Claim, or any portion thereof, is paid by the Receiver pursuant to this Plan, then any and all claims, demands, rights, and causes of action of any nature whatsoever, whether arising at law or in equity, known or unknown, asserted or unasserted, for all damages (whether actual or punitive, known or unknown, latent or patent, foreseen or unforeseen, direct or indirect or consequential, matured or unmatured, and accrued or not accrued), debts, putative interest, and liabilities of whatever nature that are or could be asserted by the Claimant or any other person against the Receiver or his agents, the Receivership Estate, the CFTC, UDOS, any Receivership Defendant, or any Receivership Assets, are hereby forever discharged, released, extinguished, and satisfied.

Neither the Receiver nor any Person acting at his direction shall have any liability in any respect for having paid or otherwise satisfied an Allowed Claim, nor for any other action taken in good faith under or relating to this Plan or arising out of the processing of any Claim, including,

but not limited to, any act or omission in connection with or arising out of the administration of Claims or this Plan or the Receivership Estate. In the event of any Claim being made against the Receiver for such matters—whether or not willful misconduct is alleged—the Receiver shall be entitled to a defense by counsel of his choice, payable as any other professional expense herein, and the provisions of the Receivership Order shall otherwise apply.

4. **Waiver.** The Receiver, his agents, attorneys, accountants, and employees, shall be held harmless for any damages or liability that may arise through the discharge of their duties under the Plan, in accordance with the Receivership Order issued by the Court on November 27, 2018. *See* Dkt. No. 54.

5. **Reserve.** The Receiver is expressly authorized to pay Claims according to the terms of this Plan without regard for the possibility that a Claim may, with good cause, be submitted to the Receiver after the Claims Bar Date. The Court will not expect the Receiver to have accrued Receivership Assets to guard against this possibility. For the purpose of making interim Distributions, the Receiver shall establish, in his discretion and without further order of this Court, reserves for all Claims that are still in dispute at the time of a Distribution.

ARTICLE 6 – RETENTION OF JURISDICTION

This Court has had jurisdiction over this matter since its commencement on November 13, 2018 and shall continue to retain exclusive jurisdiction over the Receiver, the Receivership Estate, and all Receivership Assets going forward. No action taken by or against the Receiver with regard to any pending matter in any other court shall be deemed to have terminated, limited, reduced, waived, or relinquished this Court’s exclusive jurisdiction.

Moreover, this Plan and the Order approving this Plan are not, and are not intended to be, either a final adjudication of this matter or a termination, limitation, reduction waiver or

relinquishment of this Court's exclusive jurisdiction with regard to all Receivership Assets and all matters in controversy in this case. Instead, this Court shall continue to have and retain exclusive jurisdiction over all matters existing or arising in this receivership or related in any way thereto, including, but not limited to, all matters relating to approving or denying Claims, making Distributions, locating, recovering, and settling claims, and liquidating Receivership Assets.

LEGAL ANALYSIS

It is well established that a district court has broad discretion in determining relief in an equity receivership. *S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010) (noting that a court has “broad powers and wide discretion” to determine relief in an equity receivership); *S.E.C. v. Credit Bancorp, Ltd.*, 290 F.3d 80, 91 (2d Cir. 2002) (finding that the district court's approval of a plan of distribution was “within the Court's equitable discretion”); *S.E.C. v. Infinity Group Co.*, 226 Fed. App'x 217, 218 (3d Cir. 2007) (“District Courts have wide equitable discretion in fashioning distribution plans in receivership proceedings”); *S.E.C. v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (stating that the district court enjoys “broad discretionary power” in shaping equity decrees); *S.E.C. v. Elliott*, 953 F.2d 1560, 1566-67 (11th Cir. 1992) (“The district court has broad powers and wide discretion to determine relief in an equity receivership.”); *S.E.C. v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991) (stating that the trial court is vested with “broad discretionary power . . . to craft an equitable decree”); *S.E.C. v. Hardy*, 803 F.2d 1034, 1037-39 (9th Cir. 1986) (“[I]t is a recognized principle of law that the district court has broad power and wide discretion to determine the appropriate relief in an equity receivership.”) (citations omitted).

Pursuant to these broad discretionary powers, courts tasked with overseeing the administration of a receivership for a Ponzi scheme may authorize any distribution protocol for receivership assets that is “fair and reasonable” in the overseeing court’s opinion. *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 332 (7th Cir. 2010); *S.E.C. v. Byers*, 637 F. Supp. 2d 166, 174 (S.D.N.Y. 2009) (citing *Wang*, 944 F.2d at 81) (“The Court has the authority to approve any plan provided it is ‘fair and reasonable.’”); *S.E.C. v. Enter. Trust Co.*, 2008 WL 4534154, at *3, 2008 U.S. Dist. LEXIS 79731, at *10 (N.D. Ill. Oct. 7, 2008) (“There are no hard rules governing a district court’s decisions in matters like these. The standard is whether a distribution is equitable and fair in the eyes of a reasonable judge.”). And unlike a case arising under title 11 of the United States Code, there is no statutory mandate that prescribes how the assets recovered in a receivership should be distributed. Thus, it is well within this Court’s discretion to approve a distribution plan that utilizes a pro rata approach—such as the one presented by the Receiver in this matter—rather than one which attempts to trace a claimant’s investment into a fraudulent scheme. *See, e.g., S.E.C. v. Quan*, 870 F.3d 754, 762 (8th Cir. 2017) (“Courts have ‘routinely endorsed’ the pro rata distribution of assets to investors as the most fair and equitable approach in fraud cases.”); *United States v. Durham*, 86 F.3d 70, 73 (5th Cir.1996) (affirming district court’s approval of pro rata distribution plan even though the majority of funds were traceable to specific claimants); *Credit Bancorp, Ltd.*, 290 F.3d at 89 (noting that the use of pro rata distributions “has been deemed especially appropriate for fraud victims of a ‘Ponzi scheme’” because whether a customer’s assets are traceable is “a result of the merely fortuitous fact that the defrauders spent the money of the other victims first.” (quoting *Durham*, 86 F.3d at 72)); *Elliott*, 953 F.2d at 1569 (holding that a district court did not abuse its discretion by disallowing tracing

where “certain investors would recoup 100% of their investment while others would receive substantially less”).³

A. Distribution Methodology

As set forth above, the Receiver proposes using the rising tide method to distribute funds to receivership Claimants. “Rising tide appears to be the method most commonly used (and judicially approved) for apportioning receivership assets.” *S.E.C. v. Huber*, 702 F.3d 903, 906 (7th Cir. 2012). “The basic goal [of the rising tide allocation] is to equalize recovery for victims regardless of whether the recovery comes before or after the commencement of the [receivership].” See Michael L. Martinez, *The Ebb of Rising-Tide Distributions in Ponzi Scheme Bankruptcies*, 35 AM. BANKR. INST. J. 16 (June 2016). Accordingly, a “rising tide” allocation “result[s] in a pro rata distribution of available assets to victims.” *Id.*; see also *S.E.C. v. Par.*, 2010 WL 5394736, at *3 (D.S.C. Feb. 10, 2010) (discussing “pro rata payments based on the Rising Tide calculation”).

Although the “net loss” method (sometimes referred to as “net investment” method) of distribution is also a favored method of pro rata distribution, see *Huber*, 702 F.3d at 905-06 (7th Cir. 2012), this methodology ignores how much the entity in receivership distributed to the creditor in the past and, instead, focuses solely on the amount of the creditor’s net loss on the date the receivership commences.⁴ See, e.g., *Par.*, 2010 WL 5394736, at *7. “A closer examination of [the net loss] proposal reveals that it suffers from serious flaws and produces

³ Not only does the Receiver believe that a pro rata approach is more equitable and appropriate in this case than employing the use of tracing, the vast majority of investor payments in this matter are not traceable to any specified investor.

⁴ Assuming, of course, that the creditor is not a “winner” and has not received more than the creditor invested.

inequitable results because it ignores the illegal activities of the defendants, including the fact that the money paid to those investors during the course of the scheme came from other victims of the fraud.” *Id.* (internal citations and alterations omitted); *U.S. Commodity Futures Trading Comm’n v. Lake Shore Asset Mgmt. Ltd.*, 2010 WL 960362, at *10 (N.D. Ill. Mar. 15, 2010) (noting that “a straight pro rata distribution of the available funds, irrespective of any pre-receivership payments received by investors, would be inequitable because it unfairly elevates investors who received pre-receivership payments over those who did not”).

While courts have sometimes found the “net loss” method attractive in cases where a large number of creditors would receive nothing under the rising tide method,⁵ the Receiver’s preliminary analysis of the Claim Forms submitted in this matter shows that at least 75% of all Claimants will receive a Distribution under the rising tide approach. Moreover, the vast majority of investors who submitted a Claim Form in this matter never received *any* pre-receivership distributions from Receivership Defendants. This is due, in part, because Rust engaged in a massive fundraising effort in the final years of the Silver Pool in order to fund payment requests from earlier investors. Given this push to increase the number of investors and available Silver Pool funds during the final years of the investment scheme, the Receiver believes that it would be inequitable to allow early investors who have already recouped a significant portion of their investment to recover on the same basis as later investors who have recovered nothing from the

⁵ See, e.g., *S.E.C. v. Byers*, 637 F. Supp. 2d 166, 182 (S.D.N.Y. 2009) (affirming use of the net investment method where 45% of investors would receive no distribution under the rising tide method); *U.S. Commodity Futures Trading Comm’n v. Barki, LLC*, 2009 WL 3839389, at *2 (W.D.N.C. Nov. 12, 2009) (finding the net investment method most equitable where 55% of investors would receive no distribution under the rising tide method); *but see, Lake Shore Asset Mgmt. Ltd.*, 2010 WL 960362, at *10 (“The fact that certain investors may not receive a distribution under the ‘Rising Tide’ method is . . . not germane.”).

Receivership Defendants to date.

Therefore, the Receiver submits that the rising tide method is the most equitable method of calculating distribution amounts in this case. It strikes a reasonable balance between those Claimants who invested early and have thus received a pre-receivership withdrawal and those investors who invested near the end of the scheme and are likely to have received no withdrawals. The rising tide method gives more value to those Claimants who have received little to nothing to date while giving less to those who have already recovered a substantial percentage. It is for these reasons that the rising tide method is the “most commonly used (and judicially approved) for apportioning receivership assets.” *Huber*, 702 F.3d at 906.

B. Pooling Receivership Assets

For purposes of distribution in an equity receivership, courts may ignore the separate identity of entities that are part of “a unified scheme to defraud.” *S.E.C. v. Sunwest Mgmt., Inc.*, 2009 WL 3245879 (D. Or. Oct. 2, 2009) (receivership entities considered “unitary enterprise” for distribution purposes due to extensive commingling of funds); *S.E.C. v. AmeriFirst Funding, Inc.*, 2008 WL 919546, at *4 (“a pooled distribution is equitable when the separate legal entities were involved in a unified scheme to defraud”); *see also S.E.C. v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (affirming plan adopted by district court pooling assets of entities for distribution); *U.S. v. Durham*, 86 F.3d 70, 71-73 (5th Cir. 1996) (same). Here, the funds used by Receivership Defendants—such as RRC, R Legacy Entertainment, R Legacy Investments, and R Legacy Racing—were sourced almost exclusively from Silver Pool investors. Indeed, the books and records of the Receivership Defendants show that Rust commingled funds between all of these entities and that he used investor funds to support the various business operations. As such, the Court is authorized to treat these various receivership entities “as one substantively

pooled estate for the purposes of distribution” under the Plan. *Sec. & Exch. Comm'n v. Detroit Mem'l Partners, LLC*, 2016 WL 6595942, at *6 (N.D. Ga. Nov. 8, 2016) (quoting *S.E.C. v. Founding Partners Capital Mgmt.*, 2014 WL 2993780, at *6 (M.D. Fla. July 3, 2014)).

Accordingly, the Receiver proposes distributing funds under the Plan from a single pool of Receivership Assets.

C. Claim Priority & Classification

Under the Plan, the Receiver proposes classifying different Claims into different priority Classes based on the equities and factual circumstances surrounding each Claim. When deciding what claims should be recognized and in what amounts, “the fundamental principle which emerges from case law is that any distribution should be done equitably and fairly, with similarly situated investors or customers treated alike.” *Sec. & Exch. Comm'n v. Homeland Commc'ns Corp.*, 2010 WL 2035326, at *2 (S.D. Fla. May 24, 2010) (quoting *S.E.C. v. Credit Bancorp. Ltd.*, 2000 WL 1752979, at *13 (S.D.N.Y. Nov. 29, 2000)). Because the Receiver’s analysis of the Claim Forms submitted in this matter show that non-investor Claimants constitute a small portion (likely less than 5%) of the total unsecured Claims against the Receivership Estate, the Receiver believes that grouping investors with general unsecured creditors is in the best interest of the Receivership Estate. Indeed, if general unsecured creditors—such as customers, employees, and trade creditors—were classified below investors, they would effectively be deprived of *any* recovery in this matter given the limited amount of expected returns that will be made to Claimants. Moreover, although the total dollar amount of Claims made by general unsecured creditors is small in comparison to investors, 131 of the Claimants in this matter (or 21% of Claims) consist of non-investor Claims. And unlike the Silver Pool investors, these customers, employees, and trade creditors did not believe they were taking on any of the risks

inherent in an “investment” by simply doing business with the Receivership Defendants. In light of the above facts and the broad discretion of this Court, the general unsecured creditors of the Receivership Estate should receive more than a 0% return under the Plan. Thus, these creditors should be given the same priority of payment as Silver Pool investors.

The Receiver also proposes subordinating certain Claims under the Plan based on the factual circumstances and equities of each Claim. A court’s power to approve a Receiver’s decision on claim determinations and priority is well-settled. *See S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). And this power includes the exercise of the court’s equitable powers to subordinate claims. *See, e.g., S.E.C. v. Ariz. Fuels Corp.*, 739 F.2d 455, 459 (9th Cir. 1984) (“Receivership courts have the general power to use summary procedures in allowing, disallowing, or subordinating the claims of creditors.”); *In re Westgate Cal. Corp.*, 642 F.2d 1174, 1177 (9th Cir. 1981) (“Subordination is an equitable power and is therefore governed by equitable principles.”). Subordination of a claim is particularly appropriate where there has been misconduct by the claimant or participation in the fraudulent scheme. *Durham*, 86 F.3d at 73 (“Sitting in equity, the district court is a ‘court of conscience.’”) (quoting *Wilson v. Wall*, 73 U.S. 83 (1867)). Accordingly, the Receiver believes it is in the best interest of the Receivership Estate to subordinate certain Claims if, in the Receiver’s professional judgment, those Claims are not supported in equity.

OBJECTION PROCEDURE

Because the Receiver recognizes that there may be objections to the Receiver’s proposed Distribution Plan, the Receiver requests that the Court apply the Summary Disposition Procedure previously approved of by the Court to this Motion and all objections related thereto. *See* Dkt. No. 165. This will allow the Receiver to expeditiously resolve all disputes related to the Plan

while still preserving the due process rights of any Person claiming an interest in such Distributions.

Once the Receiver files this Motion with the Court, the Receiver will serve a copy of the Motion (which includes the Distribution Plan) via first class U.S. Mail, postage prepaid, on all creditors who submitted a Claim Form to the Receiver.⁶ The Receiver will also email a copy of the Motion to all Persons identified on the Receiver's master mailing matrix and post the Report on the Receiver's website at <http://rustrarecoinreceiver.com>.

As set forth in the Court's *Order Granting Motion to Allow Summary Disposition Procedure*, any objection to the Receiver's proposed Distribution Plan **must be sent directly to the Receiver** within 30 days of service of this Motion. *Id.* at 2. The objecting party will not be a party to the overall proceeding, will not intervene in the case, and will not file any pleadings or other documents directly with the Court unless otherwise authorized by the Court.⁷ *Id.* at 2–3.

If an objecting party specifically requests discovery in their objection, the parties will have an additional 30 days to complete discovery. *Id.* at 3. Discovery will be conducted pursuant to the *Federal Rules of Civil Procedure*, except that written discovery must be responded to within 14 days. *Id.* Either side may seek relief from the Court if the requested discovery is unduly burdensome or not proportional to the issues being determined. *Id.*

Following the filing of the objection or close of discovery (if specifically requested), the Receiver will then file the objections with the Court and schedule a hearing on the matter. *Id.* If

⁶ The Receiver will use the address provided by the creditor in their Claim Form for service of this Motion. *See* Claim Form Instruction, Dkt. No. 236, Ex. A, at 3 (“Notices and communications from the Receiver will be sent to the address provided. *You have a continuing obligation to keep the Receiver informed of your current contact information.*”).

⁷ However, discovery documents such as certificates of service and notices of deposition may be filed with the Court without prior Court approval.

an evidentiary hearing is needed, the Receiver will schedule additional deadlines regarding disclosure of witnesses and exhibits as needed. *Id.* The Receiver may file a reply to any objection five days before the hearing. *Id.*

CLAIMS ANALYSIS

Once the Receiver has reviewed and analyzed all of the Claims Forms submitted in this matter, the Receiver will prepare a Claims Analysis Report (“Report”). The Report will identify, among other things, whether each Claim submitted (or any portion thereof) is allowed or disallowed in full or in part, the Receiver’s proposed classification of each Claim, and the Approved Claim Amount. Prior to filing the Report with the Court, the Receiver will serve a copy of the Report via first class U.S. Mail, postage prepaid, on all creditors who submitted a Claim Form to the Receiver. The Receiver will also email the Report to all Persons identified on the Receiver’s master mailing matrix and post the Report on the Receiver’s website at <http://rustrarecoinreceiver.com>.

Prior to filing the Report, the Receiver will seek to resolve Claim disputes by engaging in negotiations with Claimants and filing, where appropriate, formal Claim objections. Because the Receiver recognizes he will likely need to file objections to certain Claims and there will likely be objections to the Report and the Receiver’s related Claims analysis, the Receiver also requests that the Court authorize the Receiver to employ the Summary Disposition Procedure to resolve all objections related to the Claims and the Report. *See* Dkt. No. 165.

CONCLUSION

The Receiver respectfully requests that the Court approve the proposed and foregoing Distribution Plan and adopt the Summary Disposition Procedure for all objections related to the Plan and forthcoming Claim objections and Report. A proposed Order is attached hereto.

DATED this 23rd day of April 2020.

PARR BROWN GEE & LOVELESS

/s/ Cynthia D. Love

Joseph M.R. Covey

Cynthia D. Love

Attorneys for Receiver Jonathan O. Hafen

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION TO APPROVE PROPOSED DISTRIBUTION PLAN, OBJECTION PROCEDURE, AND CLAIM ANALYSIS** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on April 23, 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 Receiver's master mailing matrix.

/s/ Cynthia D. Love _____

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

COMMODITY FUTURES TRADING
COMMISSION, et al.,

Plaintiffs,

v.

RUST RARE COIN INC., et al.,

Defendants.

**ORDER GRANTING APPROVAL OF
CLAIMS OBJECTION RESOLUTION
PROCEDURES AND CLAIMS BAR
DATE**

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

Judge Tena Campbell

Before the Court is the Receiver's *Motion Seeking Approval of Claims Objection Resolution Procedures and Claims Bar Date* (the "Motion"). Based on the Motion, its attached Exhibits, applicable law, the record in this case, and for good cause appearing,

IT IS HEREBY ORDERED that:

- (1) The Motion is GRANTED;
- (2) The form and content of each of the proposed forms attached to the Motion as Exhibits are APPROVED; and
- (3) The method of notice as described in the Motion is APPROVED.

DATED this __ day of April 2022.

BY THE COURT:

Tena Campbell
U.S. District Court Judge