

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Cynthia D. Love (14703) (clove@parrbrown.com)
Claire M. McGuire (17678) (cmcguire@parrbrown.com)

PARR BROWN GEE & LOVELESS, P.C.

101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532-7750

Attorneys for Court-Appointed Receiver Jonathan O. Hafen

**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.

**MOTION SEEKING APPROVAL FOR
RECEIVER TO ASSIST IN
DISTRIBUTION OF CLASS ACTION
SETTLEMENT**

Case No. 2:18-cv-00892

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Jonathan O. Hafen, the Court-Appointed Receiver (the “Receiver”) for the assets of Rust Rare Coin, Inc. (“RRC”), Gaylen D. Rust, Denise G. Rust, and Joshua D. Rust (collectively, “Defendants”) and Aleesha Rust Franklin, R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, “Relief Defendants” and, together with Defendants, “Receivership Defendants”), respectfully requests that the Court approve the Receiver providing assistance in the distribution of class action settlement funds in *Gregory v. Zions Bancorporation*, Civ. No. 2:19-cv-00015-HCN-DBP, currently pending before Judge Nielson (the “Class Action”).

BACKGROUND

1. On November 13, 2018, the above-captioned case was commenced against the Receivership Defendants,¹ and in conjunction therewith, the Court entered an Order Appointing Receiver and Staying Litigation (the “Receivership Order”).²

2. On August 8, 2019, this Court granted the Receiver’s Motion Seeking Approval of the Proposed Claim Procedures, Claim Deadline, and Claim Forms (the “Claims Motion”).³ As contemplated in the Claims Motion, the Receiver established a claims process through which individuals and entities who believed they were owed money from any Receivership Defendant could make a claim for payment.⁴ The Receiver established a claim submission deadline of October 4, 2019, for all claims. Through the claims process, the Receiver received over 618 claims (the “Claims”) seeking recovery from the Receivership Estate.

3. After an initial review of all Claims, the Receiver and his team submitted to the Court a Motion to Sustain Receiver’s Objections to Certain Categories of Claims and to Approve

¹ See Dkt. No. 1.

² Dkt. No. 54.

³ Dkt. No. 239.

⁴ See generally Dkt. 236.

Objection Procedure⁵ (the “Omnibus Objection Motion”). The Omnibus Objection Motion served to outline various categories of objections that the Receiver identified as an issue in multiple Claims. Such categories included, *e.g.*, those Claims submitted after the Claims-Bar Date; Claims for promised profits or gains from the Silver Pool; Claims submitted for taxes, interest, and penalties incurred by Claimants related to certain investments into the Silver Pool; and Claims for third-party and intra-investor transfers. The Court sustained the Receiver’s objections to these categories of claims in an Order⁶ upon which the Receiver relied in his determinations with respect to individual Claims.

4. The Receiver and his team have thoroughly reviewed the books and records of the Receivership Defendants in conjunction with the Claim Forms and evidence provided by Claimants. Working with the Receiver’s forensic accountants, the Receiver and his team have reviewed each Claim, compared the Claim and supporting documents to the books and records of the Receivership Defendants, and determined which Claims—or portions of Claims—should be allowed.

5. Anticipating that some Claimants may wish to dispute the Receiver’s treatment of their Claim, the Receiver recently filed a Motion Seeking Approval of Claims Objection Resolution Procedures and Bar Date⁷ (the “Claims Resolution Motion”). Through this motion, the Receiver seeks to establish a process through which Claimants will have an opportunity to challenge the Receiver’s treatment of their claim and through which any such disputes may be resolved, either informally or through their presentation to the Court.⁸

6. At the end of the Claims resolution process, the Receiver intends to reach a final

⁵ Dkt. No. 363.

⁶ See Dkt. No. 375, “Order Sustaining Receiver’s Objections to Certain Categories of Claims.”

⁷ Dkt. No. 453.

⁸ *Id.*

resolution as to the amount of each allowed, valid claim. Such resolution may result from either a consensual process between the Claimant and the Receiver or a determination of the Court.

Gregory v. Zions Bancorporation

7. Shortly after this action was initiated and the Receiver appointed, a group of investors in the silver trading scheme operated by Receivership Defendants filed two complaints (now consolidated) on behalf of a putative class of investors against Zions Bancorporation, N.A. (“Zions Bank”)⁹

8. The parties to the Class Action have recently informed the Receiver that they have reached an agreement in principle to settle the Class Action. The draft settlement agreement – which has not yet been filed with the *Gregory* court – anticipates that Zions Bank will pay a sum certain into an escrow account established by Class Action plaintiffs’ counsel after final approval of the agreement by the *Gregory* court, and after the members of the settlement class have had the opportunity to opt-out or to object to the agreement.

9. Once the settlement payment and any interest earned thereon (the “Settlement Fund”) is available for distribution, the settlement agreement anticipates that the Fund (minus court-approved administrative costs, attorneys’ fees, and service awards) will be distributed to eligible class members according to a settlement distribution plan to be submitted to and approved by the *Gregory* court.¹⁰

⁹ See Complaint in *Gregory v. Zions Bancorporation*, Civ. No. 2:19-cv-00015-HCN-DBP, ECF No. 2 (D. Utah Jan. 8, 2019); and *Springer, et al. vs. Zions Bancorporation*, No. 2:19-cv-00035-BCW (D. Utah [date]). The two suits have been consolidated under *Gregory v. Zions Bancorporation*, Civ. No. 2:19-cv-00015-HCN-DBP.

¹⁰ The Receiver has previously disclosed to this Court the Receiver’s prior representation of Zions Bank in connection with unrelated matters. See Motion to Appoint Conflicts Receiver, Dkt. No. 244 at 3. Because Zions Bank will not have a role in the distribution of the Settlement Fund once paid and because the Receiver does not currently represent Zions Bank, the Receiver does not perceive its role in the distribution of such funds to present a conflict. In an abundance of caution, the parties in the Class Action have waived any potential conflicts arising from the Receiver’s performance of its duties described herein.

10. The Receiver has already expended significant time and resources to review each Claim submitted by each potential Claimant and to develop a distribution methodology and an objections process based on its extensive knowledge of the losses, if any, of various investors in the silver trading scheme. In order to develop a settlement distribution plan for the Settlement Fund, all of that effort would need to be duplicated (and the expense therefor subtracted from the Settlement Fund) if the parties in the Class Action were to select a different agent to do so. Moreover, the parties in the Class Action wish to adopt a consistent distribution methodology in the instant case and the Class Action, in order to reduce if not eliminate discrepancies between distributions made in the two matters. In order to (1) streamline the Class Action Settlement Fund distribution process, (2) reduce the costs associated with that distribution and increase the funds available for distribution to eligible settlement class members, and (3) increase the consistency of methodology and results applicable to distributions of fund in this action and the Class Action, the parties to the Class Action have requested that the Receiver's mandate by this Court be expanded to include assistance in executing the distribution of the Class Action settlement to members of the settlement class.

RELIEF REQUESTED

Through this Motion, the Receiver seeks the Court's approval for the Receiver to assist in the distribution of the Class Action settlement.¹¹ As the Receiver has previously reported to the Court, the process of examining the books and records of the Receivership Defendants to determine which individuals and entities would be entitled to a valid claim for payment and the proper amount of each claim has been long and involved. The Court has provided extensive

¹¹ The Receiver and the parties to the Class Action recognize that any assistance by the Receiver will also need to be approved by Judge Nielson in the Class Action.

guidance to the Receiver as to the proper evaluation of each Claim.¹² In addition, the Receiver intends to initiate a process through which a final determination with respect to a Claimant's total losses will be reached as to each Claim, either through consensual agreement between the Receiver and the Claimant or through a determination by the Court.¹³ At the conclusion of this process, the Receiver intends to create a database that will track distributions and effectively automate the process of payment of Claims.

The Receiver believes that assisting with the distribution of the Class Action settlement will result in significant cost savings to the class members—many or all of whom are also Claimants in this matter—and will result in greater returns to defrauded investors. The Receiver's assistance will work to streamline the distribution of the Class Action settlement and avoid the necessity for the parties to the Class Action to engage in the same Claims analysis process the Receiver has already conducted.

To that end, the Receiver proposes—after consultation with counsel for the Class Action parties—to use the analysis he has already conducted and the final Claim amounts as determined through the proposed Claims resolution process to conduct an additional distribution of the Class Action settlement to Claimants. The amounts of each Claim will already be determined, and the Receiver will simply disburse the funds in accordance with the distribution plan approved by Judge Nielson in the Class Action. The Receiver anticipates that this will result in minimal additional costs to the Receivership Estate and that Claimants—who are also class members—will benefit from the fact that the Claims analysis process will not need to be repeated in the Class Action. As such, the Receiver requests that it be allowed to do the following vis-à-vis the claimants in the Class Action:

¹² See, e.g., Dkt. No. 375, “Order Sustaining Receiver’s Objections to Certain Categories of Claims.”

¹³ See Claims Resolution Motion.

- a. Receive any claim forms from Class Action settlement class members who did not previously submit timely, valid Claim Forms in connection with this action;
- b. Apply the Receiver's existing Claims analysis methodology (or relevant modifications thereto) as approved by this Court and as implemented through the proposed Claim Resolution Motion to determine the amount, if any, of each Class Action settlement class member's recognized loss;
- c. Issue and mail payments to Class Action settlement class members from the Class Action Settlement Fund consistent with the final Claims determinations reached through the Claims resolution process established by this Court and the settlement distribution plan approved by the *Gregory* court;
- d. Perform such other and further actions as are necessary and appropriate to assist in the distribution of the Class Action Settlement Fund.

DATED this 20th day of June 2022.

PARR BROWN GEE & LOVELESS

/s/ Cynthia D. Love
Joseph M.R. Covey
Cynthia D. Love
Claire M. McGuire

Attorneys for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 20, 2022, 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
