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

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COMMODITY FUTURES TRADING  
COMMISSION, and

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

Plaintiffs,  
v.

RUST RARE COIN INC., a Utah corporation,  
and GAYLEN DEAN RUST, an individual,  
DENISE GUNDERSON RUST, an individual,  
JOSHUA DANIEL RUST, an individual

Defendants;

and

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

Relief Defendants.

**EXPEDITED MOTION TO SELL AND  
ABANDON ASSETS**

Case No. 2:18-cv-892

Judge Tena Campbell

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Jonathan O. Hafen, the Court-Appointed Receiver (the “Receiver”) for the assets of Rust Rare Coin Inc., (“RRC”) and Gaylen D. Rust (collectively, “Defendants”) and R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, “Relief Defendants” and, together with Defendants, “Receivership Defendants”), respectfully requests authority from the Court to sell certain personal property and to abandon other personal property of the Receivership Defendants, as described below.

On November 27, 2018, the Court entered an Order Appointing Receiver and Staying Litigation (the “Order”). *See* ECF No. 54. Pursuant to paragraph 18 of the Order, the Receiver was authorized to take immediate possession of all non-exempt personal property of the Receivership Defendants. *Id.* ¶ 18. Paragraph 36 of the Order authorized the Receiver to “transfer, compromise, or otherwise dispose of any nonexempt Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate.” *Id.* ¶ 36. Although technically not required to obtain further court authority, out of an abundance of caution, the Receiver respectfully requests permission to sell or abandon the identified assets, as described below.

**I. The Receiver Requests Permission to Sell the Below-Identified Assets.**

The Receiver has determined that it is appropriate and beneficial to the Receivership Estate to dispose of the nonexempt personal property described below. Out of an abundance of caution, and to ensure that any interested party is afforded proper notice, the Receiver hereby moves for permission to dispose of the below-identified assets in the manner described.

**1. Sage & Thistle Assets**

Sage & Thistle, a dba of Relief Defendant R Legacy Entertainment, was an event-planning and wedding party rental company located in Lindon, Utah. Sage & Thistle leased a

6,000 square foot warehouse containing numerous decorations and wedding rental items used by the business to decorate for large events and to store its wedding rental inventory. The assets of Sage & Thistle include tables, chairs, cutlery, linens, and similar items. The Receiver retained Erkelens & Olson Auctioneers and Appraisers (“Erkelens & Olson”)<sup>1</sup> as its professional liquidation advisors to value the assets located at the Sage & Thistle warehouse and to recommend the most advantageous way to maximize the value of those assets. Erkelens & Olson initially recommended a public auction to be held onsite. To that end, Erkelens & Olson has publicized a public auction for January 24, 2019, which would allow the Receiver sufficient time to vacate the leased space by the end of January to avoid accrual of additional rent.

The Receiver was recently approached by an independent, third-party purchaser named Steve Bryner who has made an offer to acquire the Sage & Thistle assets. After various discussions, Mr. Bryner has offered \$27,750 in exchange for the assets in the warehouse, including the company trailer, intellectual property and legal documents necessary to use the Sage & Thistle name.

The Receiver sought Erkelens & Olson’s review of this offer to determine whether this sale price would, in their professional opinion, exceed any amount the Sage & Thistle assets might generate at public auction. Erkelens & Olson has advised the Receiver that it believes the Receivership Estate would realize approximately 25% more money by pursuing this private sale than by selling the Sage & Thistle assets via public auction. Based on this recommendation, the

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<sup>1</sup> Erkelens & Olson is a well-respected Utah based auction, appraisal, and marketing company with over 43 years of professional experience. Erkelens & Olson conducts weekly auctions ranging from real estate, business liquidations, bankruptcies, government surplus, bank/credit union repos, heavy machinery, vehicles, jewelry, charity and much more. Erkelens & Olson is also a certified appraisal firm and does many appraisals for banks, credit unions, law firms, estates, personal property, and businesses.

Receiver seeks permission to sell the Sage & Thistle assets via private sale to Mr. Steve Bryner for an amount of not less than \$27,750. If the Receiver is unable to close a transaction with Mr. Bryner on or before the public auction date set for January 24, 2019, the Receiver seeks permission to sell the assets of Sage & Thistle through public auction on such date.

## **2. Big Door Assets**

Big Door, a dba of Relief Defendant R Legacy Entertainment, was a video production company located in Provo, Utah. The Receiver retained Erkelens & Olson to inventory the assets located at Big Door and recommend the most advantageous way to maximize recovery. Big Door's inventory includes video equipment, cameras, lenses, lights, video production equipment, business furniture and computers. Erkelens & Olson has determined that a public auction would generate the highest return for the Receivership Estate. To that end, the Receiver seeks Court approval to authorize Erkelens & Olson to market and sell the Big Door assets at a public sale to be held on February 23, 2019 at Erkelens & Olson's auction house in Salt Lake City. Erkelens & Olson will advertise the sale on its website, send out "email blasts" to its broad client base, and undertake other strategic marketing efforts to maximize the value at auction.

Among the assets located at Big Door is a 2016 Ford Transit 350 with an outstanding loan balance of approximately \$27,000. The Receiver has had the Transit formally appraised and has been informed that the estimate of its value ranges from approximately \$26,000 to \$30,000. Based on this valuation, the Receiver also seeks permission to sell the vehicle at public auction.

## **3. Racehorses**

The Receiver has identified approximately 100 racehorses belonging to Relief Defendant R Legacy Racing located in New Mexico, Kentucky, and Florida. The bulk of the racehorses are located in New Mexico, with only three horses located in Kentucky and one in Florida. The

Receiver has been evaluating the best way to maximize the value of the racehorses, but the Receivership Estate faces immediate and ongoing costs associated with feeding, boarding, and—for some horses—training the racehorses. The monthly costs required to simply maintain the racehorses are over \$60,000. In light of the extremely high carrying costs, it is imperative that the Receiver sell the racehorses as quickly as possible.

As the Receiver has investigated the best way to sell the racehorses while maximizing value to the estate, he has learned that the sale of the racehorses poses unique challenges. The majority of the New Mexico racehorses are not in active training for racing and are primarily part of a breeding program at Huntercreek Farms, LLC. A key factor complicating the sale of the New Mexico racehorses is that many of those in the breeding program are currently pregnant mares that have not been issued breeders' certificates, a requirement for sales through traditional channels. Unfortunately, the cost of obtaining the certificates is very expensive and will cost the Receivership Estate \$47,800. Additional complicating factors include (1) the primary selling season for racehorses is in the fall, which would require the Receivership Estate to carry the high costs of maintaining the racehorses for several more months, and (2) the best traditional sales channels are physically located in Kentucky, which would require the Receivership Estate to incur significant costs associated with transporting New Mexico racehorses to Kentucky. In light of the high costs associated with traditional sales channels, the Receiver has explored other options for selling the New Mexico racehorses.

The Receiver has determined that an online auction will be the most effective means of selling the majority of the New Mexico racehorses, while minimizing out-of-pocket costs. The Receiver has received a proposal from Flashpoint Bloodstock, LLC ("Flashpoint"), an experienced online auctioneer that has successfully liquidated thoroughbred horses in previous

asset forfeiture cases for the U.S. Department of Justice and the U.S. Marshal Service. Flashpoint proposes to promote and conduct an online auction of the New Mexico racehorses to be held in February. The Receiver is confident that the online auction process will maximize the value of the racehorses for the Receivership Estate, while minimizing out-of-pocket costs.

In order to obtain the breeders' certificates to be able to sell the pregnant mares in New Mexico, the Receiver proposes to pay Huntercreek Farms using proceeds generated by the online auction. Specifically, the Receiver proposes to arrange with Huntercreek Farms an agreement under which Huntercreek Farms will agree to provide the necessary breeders' certificates prior to the online auction, and, in exchange, the Receiver will direct the auction company to deliver to Huntercreek Farms the first \$50,000 or other agreed upon amount of sale proceeds that would be owed to the Receiver. The direct payment from the sale proceeds to Huntercreek Farms will cover only part of the over \$100,000 incurred by Huntercreek Farms to maintain the horses since the time the Receiver was appointed. The Receiver seeks permission to implement this proposal.

Some of the New Mexico racehorses are part of an active training program with Bart Hone Racing, Inc. Mr. Hone has proposed that he be allowed to sell four of the racehorses in his possession immediately to generate sufficient funds to continue training the remainder of the racehorses.<sup>2</sup> The sale of these four racehorses will generate approximately \$4,000. Mr. Hone has then proposed to bring three of the other racehorses to races in January/February 2019, where he intends to race the horses and offer them for sale. Mr. Hone has agreed to facilitate the sale of these racehorses for a 15% commission and has indicated that offering the racehorses for sale at a race event will generate the most value. Finally, Mr. Hone proposes to enter the remainder of the fifteen racehorses in "test" events, wherein he will be able to assess their value. Mr. Hone

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<sup>2</sup> According to Mr. Hone, ceasing the racehorses' training will significantly degrade their value.

would then sell those horses at the same 15% commission. The Receiver seeks permission to implement Mr. Hone's suggestion. To the extent Mr. Hone is unable to sell any of the racehorses in his training program, the Receiver proposes to include those horses in the online auction through Flashpoint.

Additionally, the current caretakers of the racehorses have incurred post-receivership expenses related to care, boarding, and feeding the horses in their care. Some of the caretakers have expressed an interest in purchasing certain of the racehorses in exchange for releasing their administrative claims for post-receivership expenses against the Receivership Estate, with the remainder of the horses' value paid in cash to the Receivership Estate. To the extent the Receiver elects to enter into any such arrangements with the current caretakers, the Receiver will obtain independent third-party appraisals of the horses' value to ensure that the Receivership Estate receives compensation for the horses—either in cash or through the release of administrative claims—equal or greater than that value.

Finally, to the extent any of the racehorses cannot be sold through the online auction or otherwise,<sup>3</sup> the Receiver proposes to re-home the racehorses through either university or non-profit shelters. Although such a re-homing process will not generate funds for the Receivership Estate, it will allow the Receiver to avoid the high monthly costs associated with boarding, care, and feeding horses with little to no market value.

Consistent with the above, the Receiver seeks permission to liquidate the racehorses as quickly as possible, using all reasonable efforts to maximize the return to the Receivership Estate while minimizing out-of-pocket costs.

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<sup>3</sup> A minority of the horses are older mares that have been retired from the breeding program, which may decrease the likelihood that they will sell.

**4. 2016 Honda CR-V**

Denise and Gaylen Rust own a 2016 Honda CR-V, with an outstanding loan balance of approximately \$24,000. The Receiver has had the CR-V formally appraised and has been informed that the high estimate of its value is approximately \$23,000. However, a more realistic value at auction will be closer to \$20,000.

Because the outstanding loan balance on the CR-V is higher than reasonable estimates of its value, and because Utah law requires that an operating vehicle be insured, the Receiver seeks permission to formally abandon the vehicle in order to avoid paying insurance on something that has no equity for the Estate.

**CONCLUSION**

The Receiver respectfully requests that the Court consider this Motion prior to January 24, 2019, which is the scheduled date to sell the Sage & Thistle assets.

DATED this 17th day of January, 2019.

**PARR BROWN GEE & LOVELESS**

/s/ Joseph M.R. Covey  
Joseph M.R. Covey  
Cynthia Love  
*Proposed Attorneys for Receiver*



IT IS HEREBY CERTIFIED that service of the above **MOTION FOR ADDITIONAL AUTHORITY** was electronically filed with the Clerk of the Court through the CM/ECF system on January 17, 2019, which sent notice of the electronic filing to all counsel of record.

/s/ Joseph M.R. Covey  
Joseph M.R. Covey