

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)

Cynthia D. Love (14703) (clove@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 TO APPROVE
SETTLEMENT AGREEMENT WITH
DAVID AND DEBORAH COSTANZO**

Case No. 2:18-cv-892

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Jonathan O. Hafen, the Court-Appointed Receiver (the “Receiver”) for the assets of Rust Rare Coin Inc., Gaylen Dean Rust, R Legacy Racing Inc., R Legacy Entertainment LLC, R Legacy Investments LLC, Denise Gunderson Rust, and Joshua Daniel Rust (collectively the “Receivership Defendants”), respectfully requests authority from the Court to enter into the Settlement Agreement attached hereto as Exhibit A with David and Deborah Costanzo (the “Costanzos”).

On November 27, 2018, the Court entered an Order Appointing Receiver and Staying Litigation (the “Order”). *See* Dkt. No. 54. Pursuant to the Order, the Receiver was authorized to take control of all Receivership Property and “to sue for and collect, recover, receive and take into possession from third parties all Receivership Property.” *Id.* ¶¶ 7(B), 18. Paragraph 41 of the Order authorized the Receiver to investigate and participate in actions that are “advisable or proper to recover and/or preserve Receivership Property.” *Id.* ¶ 41. And paragraph 7(G) authorized the Receiver to take all actions “necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property.” *Id.* ¶ 7(G). Through this Motion, the Receiver respectfully requests permission to enter into a settlement agreement wherein the Costanzos agree to return to the Receivership Estate \$2,905,551, as described more fully below.

I. The Costanzos’ Investment Into Mr. Rust’s Silver Investment Scheme

In or around August 2017, the Costanzos began investing in what appeared to be a lucrative investment opportunity with Mr. Gaylen Rust. These investments were made over a period of several months, with the first investment being made on August 11, 2017. This initial investment totaled \$150,000, with \$100,000 coming from ARC 4CP LLC, one of the Costanzos companies, and \$50,000 from another company, Western States Crane Co. On January 25, 2018, the

Costanzos invested another \$400,000 from one of their other companies, Western States Equipment Co. Then, between May 9, 2018, and June 7, 2018, the Costanzos invested \$2,500,000, bringing their total investment to \$3,050,000.

II. Investigation Into Mr. Rust's Silver Investment Scheme

In the summer of 2018, the FBI began investigating Mr. Rust's investment scheme, and as part of these efforts, they approached Mr. Costanzo regarding Mr. Rust's suspected fraud. The FBI asked Mr. Costanzo if he would be willing to assist with their investigation by introducing an FBI agent to Mr. Rust and by wearing a wire during certain conversations with Mr. Rust. Mr. Costanzo agreed to assist the FBI with their investigation and subsequently engaged in several conversations with Mr. Rust that he recorded for the FBI's benefit. These conversations consisted, in part, of Mr. Costanzo informing Mr. Rust that he needed to withdraw \$1.5 million from his investment within two weeks, which Mr. Rust ultimately provided to the Costanzos.

Given the FBI's allegations against Mr. Rust, the Costanzos retained counsel and continued to investigate the legitimacy of Mr. Rust's silver investment scheme on their own. When it became clear to the Costanzos that the silver Mr. Rust claimed to have invested did not exist, the Costanzos, through their attorney, served Mr. Rust with a draft complaint detailing the Costanzos' investment into the silver investment scheme and discovery that it was Ponzi scheme. In the email transmitting the draft complaint, the Costanzos' attorney demanded that Mr. Rust execute a note and two trust deeds in favor of the Costanzos as security for their remaining \$1,550,000 investment. In response to this demand, Mr. Rust or one of the other Receivership Defendants eventually paid the Costanzos \$1 million on October 1, 2018, and an additional \$555,551 on October 3, 2018.

III. Settlement Agreement

The Receiver believes that the Costanzos discovered that Mr. Rust was engaged in a fraudulent investment scheme, or at a minimum were on inquiry notice of the scheme, before they received any payment from Mr. Rust. Hence, the Receiver believes all of the funds provided to the Costanzos are subject to claw back. The Costanzos dispute that the funds are subject to claw back.

The Receiver recognizes that if the Costanzos litigated this issue, it would cost the Receivership Estate time and money to engage in such litigation. Accordingly, the Receiver and the Costanzos have reached a Settlement Agreement wherein the Costanzos have agreed to return \$2,905,551 to the Receivership Estate (the "Settlement Agreement"). A copy of the Settlement Agreement is attached hereto as Exhibit A.

The \$2,905,551 is \$150,000 less than the total amount paid to the Costanzos by Mr. Rust. Of this \$150,000, \$130,000 will be treated as an advanced distribution from the Receivership Estate towards Costanzos' claim in the case, and the remaining \$20,000 will be a discount to the Costanzos for voluntarily returning the money without requiring the Receivership Estate to litigate and for assisting the FBI in discovering the fraud. Hence, when the Receiver begins distributing funds to the Receivership Estate's claimants, the Costanzos will be allowed a claim of \$3,035,551 (which takes into account the \$20,000 discount) and will only be entitled to distributions after *all* other investors with allowed claims have been paid 4.28% of their allowed claims, in recognition of the \$130,000 advance received by the Costanzos under the Settlement Agreement ($\$130,000/\$3,035,551$).

The Receiver believes it is in the best interest of the Receivership to settle this matter pursuant to the terms of the Settlement Agreement. Therefore, the Receiver respectfully requests that the Court approve the Settlement Agreement as proposed.

A proposed order granting this motion is submitted herewith.

DATED this 16th day of May, 2019.

PARR BROWN GEE & LOVELESS

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

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION TO APPROVE SETTLEMENT AGREEMENT WITH DAVID AND DEBORAH COSTANZO** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on May 16, 2019, 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/ Joseph M.R. Covey
Joseph M.R. Covey

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “Settlement Agreement”), dated as of May, 15, 2019, is entered into by and between David Costanzo and Deborah Costanzo (the “Costanzos”) on the one hand, and Jonathan O. Hafen, solely in his capacity as Court-Appointed Receiver (the “Receiver”) for the assets of Rust Rare Coin Inc., Gaylen Dean Rust, R Legacy Racing Inc., R Legacy Entertainment LLC, R Legacy Investments LLC, Denise Gunderson Rust, and Joshua Daniel Rust (collectively, the “Receivership Defendants”), on the other hand. The Costanzos and the Receiver are each referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. In or around August 2017, the Costanzos began investing in Gaylen Dean Rust’s (“Mr. Rust”) silver investment scheme. Over the course of several months, the Costanzos made various payments to Mr. Rust and ultimately invested a total of \$3,050,000.

B. In the summer of 2018, the FBI began investigating Mr. Rust’s silver investment scheme and approached Mr. Costanzo about assisting with these efforts. Mr. Costanzo agreed to help and subsequently engaged in multiple conversations with Mr. Rust that he recorded for the FBI’s benefit. These conversations consisted of Mr. Costanzo demanding that Mr. Rust immediately return \$1.5 million for the Costanzos, which Mr. Rust ultimately provided.

C. Given the FBI’s allegations against Mr. Rust, the Costanzos began investigating the legitimacy of Mr. Rust’s silver investment scheme on their own. When it became clear that the silver Mr. Rust claimed to invest did not exist, the Costanzos, through their attorney, served Mr. Rust with a draft complaint detailing their investment into Mr. Rust’s investment scheme and alleging that it was a Ponzi scheme. The Costanzos also demanded that Mr. Rust return their remaining \$1,550,000 investment, which he did in October 2018.

D. The Costanzos have received \$3,055,551 from Mr. Rust, which includes the entirety of their silver investment. The Receiver alleges that because the Costanzos were at least on inquiry notice that Mr. Rust was engaged in a fraudulent investment scheme, all of the funds paid to them are subject to claw back by the Receiver. The Costanzos dispute these allegations.

E. The Receiver and the Costanzos desire now to resolve all potential claims and disputes which now exist or which may exist in the future regarding payments made by any of the Receivership Defendants to the Costanzos.

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and upon and subject to the terms and the conditions hereinafter set forth, the Parties do hereby agree as follows:

AGREEMENT

1. **Court Approval.** This Settlement Agreement is conditioned on and subject to approval by the Court in the lawsuit styled *Commodity Futures Trading Commission, et al. v. Rust Rare Coin Inc., et al.* No. 2:19-cv-892 (D. Utah Nov. 27, 2018) (the “Lawsuit”). The Receiver shall, within fifteen (15) days of the last Party’s execution of this Settlement Agreement, draft and file a Motion with the Court seeking such approval. The “Effective Date” of this Settlement Agreement shall be the date on which the Court in the Lawsuit enters an order approving this Settlement

Agreement.

2. **Transfer of Funds.** In full satisfaction of all claims the Receiver may have now or in the future against the Costanzos related to the payments they received from Mr. Rust or any of the other Receivership Defendants, the Costanzos shall pay the Receiver \$2,905,551 (the "Settlement Payment"), deliverable no later than 5 business days after the full execution of this Settlement Agreement. The Receiver shall hold the Settlement Payment and not disburse the same until the Effective Date.
3. **Full and Complete Release.** Except for the Costanzos' allowed claim as expressly set forth in Section 4 below, on the Effective Date, each of the Parties hereby agrees to voluntarily release and forever discharge, on their own behalf and on behalf of their successors and assigns, the other Party and their entities or individuals associated with or related to them currently or any time in the past or future, from any and all claims, causes of action, demands, obligations, indebtedness, damages, costs, expenses, attorneys' fees, and liabilities of any kind or character whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, arising prior to the Effective Date (the "Release").
4. **Retained Funds.** As consideration for the Settlement Payment set forth in Section 2 above, the Costanzos shall retain \$150,000 of the \$3,055,551 Mr. Rust paid to them. However, \$130,000 of that \$150,000 shall be treated as an advanced distribution from the Receivership Estate in the Lawsuit. The Costanzos are hereby entitled to an allowed, general, unsecured claim of \$3,035,551 against the Receivership Estate. However, the Costanzos will not receive any distribution on their allowed claim until all other allowed investor claimants have been paid 4.28% of their claims. In other words, the Costanzos will only begin to participate in distributions from the Receivership Estate after other allowed investor claimants have been paid 4.28% of their allowed claim amount.
5. **No Assignment of Receiver's Claims.** The Receiver represents and warrants that it has not assigned to any other person or entity any claim it now has or may have in the future regarding payments made by Mr. Rust to the Costanzos.
6. **Opportunity for Consultation with Counsel.** Each Party signed this Settlement Agreement after investigating the facts, reviewing the Settlement Agreement, discussing it with counsel, and approving its form and contents.
7. **Neutral Interpretation.** This Settlement Agreement is the product of joint negotiations. If there is ever any dispute over any term or provision of this Settlement Agreement, any ambiguity is not to be interpreted more strongly in favor of either Party.
8. **Mutual Representations and Warranties.** Each Party represents and warrants to the other as follows:
 - a. The person executing this Settlement Agreement has the full legal right, power and authority to do so. This Settlement Agreement creates valid and binding obligations enforceable against each Party in accordance with its terms.
 - b. Except as expressly stated in this Settlement Agreement, neither Party has made any statement or representation to the other Party regarding the facts relied upon by them in entering into this Settlement Agreement, and no Party hereto has relied upon any statement, representation, or promise of any other person or entity in executing this Settlement Agreement except as expressly stated in this Settlement Agreement.


9. **Entire Agreement.** This Settlement Agreement embodies the entire understanding and agreement of the Parties with respect to the subject matter hereof. Any and all prior correspondence, conversation, or memoranda are merged herein and replaced hereby. This Settlement Agreement may not be modified or amended, except in a writing signed by all Parties.
10. **No Unnamed Third Party Beneficiaries.** There are not unnamed third party beneficiaries to this Settlement Agreement.
11. **Severability.** If any part, term, or provision of this Settlement Agreement is held by a court of competent jurisdiction to be invalid, illegal, unenforceable or otherwise in conflict with law, this Settlement Agreement shall be construed and enforced as if it did not contain the particular part, term, or provisions held to be invalid.
12. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, all of which when attached together shall constitute a single, complete Settlement Agreement. It is further agreed that none of the provisions contained herein shall be deemed to have any effect upon any party, until this Settlement Agreement has been duly executed by all of the Parties.
13. **Further Cooperation.** Except as otherwise provided herein, the Parties hereto shall execute, acknowledge, and deliver or cause to be executed, acknowledged, or delivered in a timely manner all such further instruments and documents as may be reasonably necessary or reasonably desirable to effectuate the terms and provisions of this Settlement Agreement.
14. **Enforceability; Interpretation.** The validity, enforcement, interpretation, and performance of this Settlement Agreement shall be governed by Utah law without regard to any conflicts or choice of laws principles, and all parties consent to the exclusive jurisdiction of the State or Federal courts located in Salt Lake County, Utah, for the adjudication of any matters that arise from or relate in any way to this Settlement Agreement.

IN WITNESS WHEREOF, this Settlement Agreement has been executed as of the date set forth above.



JONATHAN Q. HAFEN

In his capacity as Court-Appointed Receiver for the Receivership Defendants in *Commodity Futures Trading Commission v. Rust Rare Coin, Inc.*, No. 2:19-cv-892 (D. Utah Nov. 27, 2018)

 5/15/19

DAVID COSTANZO, individually

 5/15/19

DEBORAH COSTANZO, individually

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

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Relief Defendants.

**ORDER GRANTING MOTION TO
APPROVE SETTLEMENT
AGREEMENT WITH DAVID AND
DEBORAH COSTANZO**

Case No. 2:18-cv-892

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Before the Court is a Motion to Approve Settlement Agreement (the “Motion”) with David and Deborah Costanzo (the “Costanzos”), submitted by Jonathan O. Hafen in his capacity as the Court-Appointed Receiver (the “Receiver”) for Rust Rare Coin Inc., Gaylen Dean Rust, R Legacy Racing Inc., R Legacy Entertainment LLC, R Legacy Investments LLC, Denise Gunderson Rust, and Joshua Daniel Rust (collectively, “Defendants”).

Based on the Motion and for good cause appearing,

IT IS HEARBY ORDERED that:

1. The Motion is GRANTED; and
2. The Settlement Agreement attached as Exhibit A to the Motion is approved.

DATED this ____ day of _____, 2019.

Honorable Dustin B. Pead
United States Magistrate Judge