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**IN THE 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.

**SECOND INTERIM FEE  
APPLICATION**

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

Judge Tena Campbell

Magistrate Judge Dustin Pead

Jonathan O. Hafen, the Court-Appointed Receiver over the assets of the following Defendants and Relief Defendants: Rust Rare Coin Inc., Gaylen Dean Rust, R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, “Receivership Defendants”), hereby submits this second interim fee application (the “Fee Application”), seeking approval by the Court for the fees and expenses incurred by the Receiver, the Receiver’s counsel Parr Brown Gee & Loveless (“Parr Brown”), and the Receiver’s accountants Berkeley Research Group (“BRG”), for the period of January 1, 2019 through March 31, 2019 (the “Application Period”). The Receiver seeks authorization to pay all allowed fees and expenses from the Receivership Estate once the Receiver has recovered an amount equal to three times the fees requested in this Fee Application and allowed in prior applications. In support hereof, the Receiver states as follows:

**I. RELEVANT BACKGROUND**

1. On November 27, 2018, the Court entered an *Order Appointing Receiver and Staying Litigation* (the “Appointment Order”). *See* Dkt. No. 54. Accordingly, the Receiver has worked in concert with his counsel, Parr Brown, and his accountants, BRG, to identify, secure, and dispose of various Receivership Assets, including real and personal property, and has continued to identify claimants and creditors of the Receivership Estate.

2. The Receiver has filed his *Second Quarterly Status Report*, which includes a status report for the period of January 1, 2019 through March 31, 2019 (the “Second Status Report”).<sup>1</sup> The Second Status Report provides a comprehensive description of the services performed by the

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<sup>1</sup> Docket No. 160, filed April 30, 2019.

Receiver and his professionals during the Application Period and is incorporated herein by reference.

## **II. REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES**

3. The Appointment Order provides, in the relevant part:

57. Subject to Paragraph 59 immediately below, the Receiver is authorized to solicit persons and entities (“Retained Personnel”) to assist him in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

58. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates. The Receiver and Retained Personnel shall not be compensated or reimbursed by, or otherwise entitled to, any funds from the Court, the CFTC, or the State of Utah. Such compensation shall require the prior review by Plaintiffs and approval of the Court.

## **III. FEES AND EXPENSES REQUESTED ARE ACTUAL, NECESSARY AND REASONABLE FOR THE SERVICES RENDERED**

4. During the Application Period, the Receiver and his professionals have provided actual and necessary services for the Receivership Estate as summarized below and detailed in the Exhibits attached hereto. The Exhibits also detail the out-of-pocket expenses incurred by the professionals in rendering services to the Receivership Estate.

5. Parr Brown and BRG have submitted their invoices to the Receiver on a monthly basis, and the Receiver has reviewed and approved the invoices.

6. This Fee Application complies with the billing instructions set forth in the Appointment Order. The Receiver submitted this Fee Application to the Utah Division of Securities and CFTC prior to filing it with the Court, and both have informed the Receiver that they have no objection to the payment of the fees and reimbursement of the expenses outlined herein.

7. The Receiver believes that the fees and expenses are reasonable. The Receiver also believes that the services rendered and the expenses advanced have been beneficial to the Receivership Estate.

8. Consistent with the Receiver's First Interim Fee Application, the Receiver and his professionals have continued to write off time and delay payment to assure that the Receivership Estate will receive an amount at least three times in excess of any fees and costs requested *before* the Receiver and his professionals are paid. In this Fee Application, the Receiver has written off half of all of his time entries related to travel, has written off all time related to the preparation of any fee application, and has otherwise made downward adjustments to fees and expenses as appropriate.

#### **IV. SUMMARY OF AMOUNTS REQUESTED**

9. The total amounts requested for the Receiver and his professionals in this Fee Application, including the relevant voluntary write downs, are summarized below:

a. Receiver: From January 1, 2019 through March 31, 2019, the Receiver has billed a total of 201.10 hours for receivership services to the Estate. The Receiver is seeking approval for the payment of fees and expenses totaling \$69,532.49, of which \$67,032 in fees and \$2,500.49 in out-of-pocket expenses. These amounts include a voluntary write down of \$5,364. *See Exhibit A.*

b. Parr Brown: From January 1, 2019 through March 31, 2019, Parr Brown has billed a total of 1,540.40 hours for legal services to the Receivership Estate. Parr Brown is seeking approval for the payment of fees and expenses totaling \$371,218.53, of which \$362,218 in fees and \$9,000.53 in out-of-pocket expenses. *See Exhibit B.* These amounts include a voluntary write down of \$11,041.50.

c. BRG: From January 1, 2019 through March 31, 2019, BRG has billed a total of 1,082.60 hours providing forensic, tax, and general accounting services to the Receivership Estate. BRG is seeking approval for payment of total fees and expenses of \$292,120.62, of which \$284,972.50 if for fees and \$7,148.12 if for out-of-pocket expenses. *See* Exhibit C. These amounts include a voluntary write down of \$3,330.00.

10. The amounts requested reflect a total of \$19,735.50 of voluntary reductions by the respective professionals in an exercise of their billing judgment.

11. The Receivership Estate has sufficient funds to pay all amounts requested; however, the Receiver and his professionals will not take any fees or be reimbursed for any expenses from the Receivership Estate until *after* the Receiver recovers at least three times the total amount of the fees requested.

## V. SUMMARY OF EXHIBITS

12. Professional services have been recorded contemporaneously with services being rendered and these services, as well as the expenses incurred, are detailed in the attached three Exhibits described below.

13. The Receiver, Parr Brown, and BRG have maintained their time in records organized according to tasks, with each task record being maintained in chronological order.

14. The following three Exhibits are attached hereto in support of this Fee Application:

### Exhibit A—Time Records of Receiver

#### **Exhibit A**

#### **Summary by Task**

This section of Exhibit A breaks down the total fees assessed for each of the Receiver's tasks, which are discussed in more detail below.

#### **Exhibit A-1**

#### **Administration of Receivership Estate**





engaged in various negotiations regarding the sale of certain intellectual property and other intangible rights to third parties.

Additionally, Parr Brown initiated the sale of various real property, such as Big Door, Huge Studios, a condo in St. George, and several Alaskan properties. Parr Brown engaged real estate brokers for each of these properties and retained several appraisers, as required under the Appointment Order, to value these properties. Several of these properties are currently under contract or have received offers that the Receiver is currently analyzing. Parr Brown continues to work with BRG and the Receiver's real estate brokers to ensure the Receivership's real and personal property are generating maximum value for the Receivership Estate.

**Exhibit B-4 Business Operations**

Parr Brown worked to wind up the Receivership Defendants' remaining business operations and associated payroll issues.

**Exhibit B-5 Claims Administration**

Parr Brown continued to identify and communicate with potential claimants of the Receivership Estate, including investors, business creditors, customers, and former employees. These efforts have involved updating the master mailing matrix and the Receivership's Webpage (<https://rustrarecoinreceiver.com>), which are both used to keep potential creditors apprised of the Receivership's progress.

**Exhibit C—Time Records of BRG**

This section breaks down the total fees assessed by BRG, which are discussed in more detail below.

**General Accounting & Operational Issues**

BRG performed an analysis of the historical accounting activity for each of the entities



controlled by the Receiver. This assisted the Receiver in determining whether to continue operating the businesses or move toward liquidation. BRG also had discussions with former employees regarding operational and tax related issues for the various Receivership entities.

#### **Data/Documentation Preservation & Analysis**

BRG assisted the Receiver with identifying, securing, and preserving electronic data and hard copy documentation stored at the various facilities impacted by the Appointment Order. BRG worked with various government agencies, including the FBI and Utah Division of Securities (“UDOS”) to obtain copies of electronic data and documentation secured and gathered by these agencies. BRG also assisted the Receiver in coordinating the forensic imaging of various servers and personal computers of RRC and key personnel.

BRG assisted the Receiver in reviewing and analyzing data and documentation located at various office and storage locations in order to identify financial, bank, asset and investor records. These records have been and will be critical in assisting the Receiver with identifying assets, determining the identity of investors, determining investors with claims and the amounts of those claims, and determining whether the Receivership Estate has claims that would be beneficial to pursue. Furthermore, BRG has been involved in the review and retrieval of historical emails from RRC’s email server, as well as coordinating with IT personnel to gain access to this information.

#### **Asset Identification, Preservation & Liquidation**

BRG analyzed the books and records of various Receivership entities and provided the Receiver with financial information and analyses related to these entities. This information assisted the Receiver with identifying assets and negotiating their sale with various third parties. BRG also assisted the Receiver in connection with due diligence requests of potential buyers of

receivership assets, as well as settlement discussions with third parties.

#### **Net Winner/Claims Analysis**

BRG performed extensive analysis of cash receipt and disbursement activity, transaction support, investor files, and email communications for various individual investors and investor groups in order to identify and determine the amount of funds invested and draws taken by each investor. This analysis is critical in assisting the Receiver to identify potential claims by investors, as well as potential claims to pursue. BRG developed and provided these analyses to the Receiver to be used in discussions, negotiations and potential recoveries.

#### **Tax Compliance & Analysis**

BRG worked closely with the Receiver and other professionals to ensure that the Receivership's tax issues were timely identified and resolved. BRG met with the Receiver and other professionals on multiple occasions to inform the Receiver of specific tax issues that often arise in a Ponzi Scheme as well as tax compliance requirements that must be adhered to in a Receivership. BRG prepared various required tax filings for the Receivership Estate, and BRG requested tax account transcript reports for RRC, other Receivership entities, and Gaylen and Denise Rust.

BRG also prepared required Utah sales and use tax returns and various IRS Form(s) 1099 that were required to properly report 2018 activity of the Estate. BRG requested time extensions to prepare and file income tax returns for the various Receivership entities and for Gaylen and Denise Rust. In addition, BRG read, analyzed, and responded to tax related correspondence received from the IRS and state taxing authorities.

#### **VI. PRIOR REQUESTS AND INTERIM NATURE OF REQUEST**

15. The Receiver filed its First Interim Fee Application on March 8, 2019 [Dkt. No. 136], seeking approval of the following fees and expenses: fees to the Receiver of \$43,992; fees to Parr Brown of \$288,971.50 and expense reimbursement of \$23,618.61; and fees to BRG of \$87,421.28 and expenses reimbursement of \$273.53. The Court entered an Order on April 8, 2019 approving the First Fee Application. *See* Dkt. No. 153.

16. This is the Second Interim Fee Application of the Receiver and his professionals. To date, the Receiver has not paid himself, Parr Brown or BRG.

17. The Receiver and his professionals understand that the authorization and payment of fees and expenses is interim in nature. All fees and expenses allowed on an interim basis will be subject to final review at the close of the case and the discharge of the Receiver when the Receiver files a final accounting and final fee application.

18. For the reasons set forth above and as supported by the Exhibits attached hereto, the Receiver respectfully submits that the fees and expenses requested herein are for actual services that were necessary for and beneficial to the administration of the Receivership Estate. The Receiver has made every attempt to contain the administrative expenses of this Receivership Estate, and the Receiver submits that given the work that has been performed as reflected in the attached time entries, the fees and expenses that have been incurred are reasonable.

19. Pursuant to Paragraph 62 of the Appointment Order [Dkt. No. 52], the Receiver represents and avers that this Fee Application complies with the terms of the Billing Instructions agreed to by the Receiver, the fees and expenses included therein were incurred in the best interests of the Receivership Estate, and the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

20. The Receiver respectfully requests that the Court enter an Order (i) approving, on an interim basis, the Receiver's fees in the amount of \$67,032 and out-of-pocket expenses of \$2,500.49; Parr Brown's fees in the amount of \$362,218 and out-of-pocket expenses of \$9,000.53, and BRG's fees in the amount of \$284,972.50 and out-of-pocket expenses of \$7,148.12; and (ii) authorizing the Receiver to pay these fees and reimburse the expenses from the Receivership Estate once the Receiver has recovered into the Estate at least three times the amount of fees requested.

21. A proposed Order is attached hereto as Exhibit D.


The Receiver, Jonathan O. Hafen, Parr Brown, and BRG verify under penalty of perjury that the foregoing is true and correct.

DATED this 24 day of May, 2019.

**RECEIVER**

  
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Jonathan O. Hafen, Receiver

**PARR BROWN GEE & LOVELESS, P.C.**

  
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Cynthia D. Love  
Stephen C. Mouritsen  
*Attorneys for receiver Jonathan O. Hafen*

**BERKELEY RESEARCH GROUP**

  
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Ray Strong

## CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **SECOND INTERIM FEE APPLICATION** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on May 24, 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.

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