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*Attorneys for Johnathan O. Hafen as Receiver for the Rust Rare Coin Receivership*

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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.

**MOTION FOR HEARING TO  
APPROVE PRIVATE SALE OF  
RECEIVERSHIP PROPERTY**

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

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Jonathan O. Hafen, the Court-Appointed Receiver, hereby submits this Motion for a Hearing to Confirm Private Sale of Receivership Property (this “Motion”).

### **INTRODUCTION**

The Receiver is the owner of a property located 1121 Sea Breeze Court, in Homer, Alaska, 99603 (the “Property”). The Receiver entered into a Purchase and Sale Agreement (the “First Agreement”) for the sale of the Property with Jonathon Young and Elizabeth Young (the “First Buyers”). The First Agreement is attached hereto as Exhibit A. The First Agreement contemplates a sale price of \$320,000. After entering into the First Agreement, the Receiver received a competing offer for the Property from Victoria and Clark Winne (the “Second Buyers”) in the amount of \$425,000. Because of the significant increase in purchase price and the statutory requirement in 28 U.S.C. § 2001 that the court “shall not” confirm a sale if there exists a competing offer of more than 10% above the existing offer, the Receiver entered into a second Purchase and Sale Agreement with the Second Buyer for \$425,000 (the “Second Agreement”). The Second Agreement is attached hereto as Exhibit B. The Receiver asks the Court for an order setting a hearing at which the Court will consider and approve the sale of the Property. Because the Second Agreement is more than 10% higher than the First Agreement, the Receiver asks that the Court disapprove of the First Agreement, approve the Second Agreement, and approve the First Agreement as a backup offer to the Second Agreement—in the event the Second Agreement fails to close and the First Buyers are willing to be backup buyers. The Receiver has met all the statutory requirements under 28 U.S.C. § 2001 to sell the Property, and therefore requests that the Court authorize the sale of the Property.

### **MEMORANDUM**

This Court’s November 27, 2018 Order Appointing Receiver and Staying Litigation, Dkt.

No. 54 (the “Order”), authorizes and directs the Receiver to take control of Defendants’ assets and provides: “Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28. U.S.C. § 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property to the Receivership Estates.” (Order, Dkt. No. 54, at 15 ¶ 38). The Order also contemplates that the Receiver would employ professionals to assist him in discharging his duties, including financial and business advisers as well as real estate agents:

To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;

(Order, Dkt. No. 54 at 5 ¶ 8(F)).

The Receiver requests that his Court confirm the proposed sale of the Property as required by 28 U.S.C. §§ 2001, *et seq.* Section 2001(b) authorizes a court to order the sale of real property at a private sale if it finds that the sale is in the best interest of the estate after considering the evaluation of three court-appointed appraisers (the sale may not be less than two-thirds of the appraised value) and after providing notice of the sale at least ten (10) days before the hearing confirming the same.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed

by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. §§ 2001(b).

The Receiver previously requested, and the Court previously approved, the retention of three professional and disinterested appraisers to provide appraisals to assist the Court and the Receiver in evaluating the reasonableness of a private sale. *See* Dkt. No. 109. These appraisals are attached hereto as Exhibits C, D, and E. As reflected in these exhibits, appraiser Barbara Bulluomini of Reliant LLC, 9330 Vanguard Dr. #201, Anchorage, Alaska 99507, (907) 929-2226, appraised the Property at \$390,000; Lydia Larson of Rikrland Valuation Services, LLC, P.O. Box 989, Kenai, Alaska 99611, (907) 335-5000, appraised the Property at \$152,000; and Brett DeMeter, Alpenglow Appraisals, P.O. Box 933, Soldotna, Alaska 99669, (907) 690-3536, appraised the Property at \$300,000. The average sale price of the three appraisals is \$280,666. The contemplated sale price in the First Agreement of \$320,000 and the contemplated sale price of the Second Agreement of \$425,000 exceed the two-thirds of the average appraised price, thus satisfying the appraised value required by 28 U.S.C. §§ 2001(b).

On Tuesday, May 21, 2019, the Receiver published a “Notice of Real Property Sale” (the “Notice”) in the Homer News, a newspaper of general circulation in the Kenai Peninsula, Alaska—where the Property is located. The Notice is attached hereto as Exhibit F. The Notice identifies the Property, lists the sales price from the First Agreement, and invites any higher or better offers. The end of the ten day period for the Notice was May 31, 2019. The Receiver has not received any offer to purchase the Property for an amount above the sales price contemplated by the Second Agreement.

## CONCLUSION

Based upon the foregoing, the Receiver believes he has satisfied all of the requirements of 28 U.S.C. § 2001 by obtaining valuations from three disinterested appraisers, publishing notice of the sale, and selling the Property at a price of more than two-thirds the appraised value. Therefore, the Receiver respectfully requests that the Court set a hearing at which the Court will disapprove the First Agreement, approve the Second Agreement, and approve the First Agreement as a backup offer to the Second Agreement if the Second Agreement fails to close.

DATED this 4th day of June, 2019.

**PARR BROWN GEE & LOVELESS**

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