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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
ALEESHA RUST FRANKLIN**

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, Denise Gunderson Rust, Joshua Daniel Rust, Aleesha Rust Franklin, R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, the “Receivership Defendants”), respectfully requests authority from the Court to enter into a settlement agreement with Aleesha Rust Franklin (“Franklin”), 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 and 19 of the Order, the Receiver was authorized to take immediate possession of all non-exempt personal property and real property of the Receivership Defendants, other than the personal residence and associated real property of the Rusts. *Id.* ¶ 18. Paragraph 41 of the Order authorized the Receiver to compromise claims that, in his discretion, are advisable or proper to recover Receivership Property. *Id.* ¶ 41. Through this Motion and in an abundance of caution, the Receiver respectfully requests permission to enter into a settlement agreement with Aleesha Rust Franklin (hereinafter “Franklin”), as described more fully below.

I. Background Information and Proposed Settlement Agreement

Franklin currently resides in Homer, Alaska, and has been involved in the business of selling certain health and wellness products for several years. She and her husband have also worked to maintain several commercial properties owned by R Legacy Investment in Homer. During this time, Franklin received approximately \$1 million in money and assets from the Receivership Estate to help further these business efforts and, among other things, maintain the commercial real properties now within the Receivership Estate. Because the Receiver believes that the retention of some of these funds by Franklin would be improper, he has initiated negotiations with Franklin regarding her obligation to return the value of that money and those

assets to the Receivership Estate. Franklin has cooperated with the Receiver's efforts to secure and sell the commercial properties owned by R Legacy Investment known as the Main Street Property, the Spit Property and the Sea Breeze Property. The Receiver anticipates recovering well over \$500,000 from the sale of these Alaskan properties.

The Receiver and Franklin have entered into a settlement agreement (the "Settlement Agreement"), subject to court approval, wherein Franklin has agreed to (1) convey to the Receiver title to her personal residence located at 65299 Diamond Ridge Road in Homer, Alaska (the "Diamond Ridge Property"), that she and her husband purchased from R Legacy Investment several years ago with seller financing; (2) pay the receiver \$5,000 within 10 days of the Court's Order approving the Settlement Agreement (the "Effective Date") to purchase certain equipment previously used in her business; and (3) pay the Receiver \$55,000 over the next 24 months by paying 20% of the gross sale proceeds from her ongoing business. Any remaining balance on the \$55,000 due under the Settlement Agreement will be paid to the Receiver no later than 24 months after the Effective Date, unless Franklin requests and is granted an extension. Franklin also agrees in the Settlement Agreement to release the Receiver and Receivership Estate from any and all claims that she may have against them. A copy of the Settlement Agreement is attached hereto as Exhibit A.¹

The Receiver believes that this Settlement Agreement is in the best interest of the Receivership Estate in light of Franklin's efforts to maintain property of the Receivership Estate and her limited financial ability to return the full value of funds received by her. In addition to the \$60,000 monetary payments set forth above, the Diamond Ridge Property to be conveyed to

¹ The Receiver understands that Franklin is working to finalize a Consent Order with the governmental plaintiffs in this action, but the approval of this Settlement Agreement is not contingent upon or subject to any agreement between Franklin and Plaintiffs.

the Receiver under the Settlement Agreement is valued at approximately \$350,000 to \$400,000. Furthermore, the Diamond Ridge Property includes a driveway that runs directly through an adjoining property that is currently owned by the Receivership Estate and worth approximately \$50,000. By entering into the Settlement Agreement, the Receiver effectively resolves all issues regarding this easement and will almost certainly be able to obtain a much higher sale price for the adjoining property than the Receiver otherwise could with the easement. Thus, based on the representations and other financial documentation received from Franklin regarding her financial circumstances, the Receiver believes that the Settlement Agreement with Franklin for over \$400,000 of value is in the best interest of the Receivership Estate.

Accordingly, the Receiver respectfully requests that the Court approve the Settlement Agreement with Franklin. A proposed Order is attached hereto.

DATED this 14th day of June, 2019.

PARR BROWN GEE & LOVELESS

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

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION TO APPROVE SETTLEMENT AGREEMENT WITH ALEESHA RUST FRANKLIN** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on June 14, 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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/s/ Joseph M.R. Covey

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “Settlement Agreement”) is made and entered into May 30, 2019 by and between Aleesha Franklin (“Franklin”) and Jonathan O. Hafen, Esq. as Receiver for Rust Rare Coins, Inc. and related entities and parties (“Receiver”). Each of the foregoing is sometimes referred to herein as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Receiver was appointed by the Court to take charge of all assets in the possession of Rust Rare Coin, Inc. and related entities and persons on November 27, 2018;

WHEREAS, Aleesha Franklin has been named as a relief defendant by the Commodity Futures Trading Commission and the State of Utah Division of Securities (together, the “Plaintiffs”) in the case styled Commodity Futures Trading Commission, et al. v. Rust Rare Coin, Inc., et al., Case No. 2:18-CV-00892 (D. Utah) (the “Lawsuit”);

WHEREAS, the Receiver contends that Franklin improperly received money and assets belonging to the Receivership Estate and further contends that Franklin has an obligation to return the value of that money and those assets to the Receivership Estate; and

WHEREAS, the Parties desire to enter into this Settlement Agreement upon the terms and conditions set forth below:

TERMS

1. **Settlement Consideration:**

1.1 **Transfer of the Property.** Upon entry of an order by the Court approving this Settlement Agreement (the “Effective Date”), Franklin agrees to convey to the Receiver by Statutory Warranty Deed title to the property currently held in the name of Franklin and her

husband Camarron J. Franklin, known as Tract 1, Surreal Subdivision, according to the official plat thereof, filed under Plat Number 82-6, Records of the Homer Recording District, Third Judicial District, State of Alaska, with a street address of 65299 Diamond Ridge Road in Homer, Alaska (the "Property"). The Statutory Warranty Deed shall be in the form as set forth in Exhibit C attached hereto. Franklin represents and warrants that she and her husband hold title to the Property and they have not pledged, liened or otherwise encumbered the Property, other than the Trust Deed (defined below) held by the Receiver through R Legacy Investments, LLC. Franklin shall convey the Property to the Receiver in full satisfaction of the Promissory Note dated October 25, 2017 in the original principal amount of four hundred thousand dollars (\$400,000) (the "Promissory Note"), and secured by that certain Deed of Trust of even date and recorded on November 1, 2017 as Entry No. 2017-003629-0 (the "Trust Deed").

Neither Franklin nor her husband shall have any further obligations for the payment of any taxes or other property-related assessments that arise after the Property is conveyed to the Receiver. In taking title to the Property, the Receiver does not assume any obligations related to the Property that arose prior to transfer, but will pay taxes and other Property specific obligations that arise after the transfer. Franklin and her husband know and understand that the Receiver intends to sell the Property, and they do hereby disclaim any interest in any proceeds or other rights or benefits resulting from the sale of that Property to a third-party.

1.2 Payment for Ongoing Sales. Franklin has requested that the Receiver allow her to sell the product identified in Exhibit A hereto, with an agreement that she will pay the Receiver \$55,000 for such product. Franklin shall continue to market and sell the product and shall pay for this product within twenty-four (24) months of the Effective Date by remitting to the Receiver a monthly statement of sales of the product along with twenty percent (20%) of

the gross receipts derived from those sales. Such monthly statement shall be provided to the Receiver by the fifteenth (15th) day of the month for the prior month's sales. Franklin shall provide the Receiver with a statement each month, even if no sales occur during the prior month. Franklin shall pay any and all unpaid portion of the \$55,000 to the Receiver exactly 24 months after the Effective Date, even if total sales of the product are insufficient to pay the entire \$55,000. The Receiver may, in his sole discretion, extend the repayment period. If Franklin requires an extension of the payment period she shall notify the Receiver of this fact no later than 90 days before the expiration of the payment period. The Receiver shall grant or deny Franklin's request within 14 days of that notification. In the event the Receiver denies Franklin's request, Franklin may petition the Court for an extension but must file her petition within 14 days after the Receiver's denial. In no event shall Franklin be allowed to seek an extension of the payment period after the expiration of the 24-month payment period.

1.3 Payment for Existing Equipment. Franklin agrees pay to the Receiver \$5,000 for the property set forth on Exhibit B within 10 days of the Effective Date. Failure to do so shall be a default under this Settlement Agreement and, at the election of the Receiver, shall allow the Receiver to either nullify the terms of this Settlement Agreement or declare a default, acceleration and seek immediate recovery from Franklin of all payments due under this Settlement Agreement and transfer of the Property to the Receiver.

3. Release of Claims. Upon completion of Franklins' payment obligations, Franklin, on the one hand, and the Receiver, on the other hand, each release, acquit and forever discharge each other and their employees, principals and all other persons for whose conduct they are or may be held responsible, from any and all claims, causes of action, suits, debts, obligations, injuries, costs, damages and liabilities of every kind and nature that now exist, whether known or

unknowns, whether previously asserted and whether disclosed or undisclosed (collectively, the “Claims”). This release of claims includes any Claims Franklin may have had or currently has against the Receiver, the Receivership Estate, or any property related to the Receivership Estate-- including but not limited to those properties in Alaska that were owned, controlled, managed or operated by Franklin and/or her husband.

4. Attorney’s Fees and Costs. If an action is commenced to enforce the terms of this Settlement Agreement or to recover damages for its breach, the prevailing Party shall be entitled to recover his or its reasonable attorney’s fees and costs incurred therein.

5. No Admission of Liability or Wrongdoing. The Parties agree this Settlement Agreement constitutes a resolution of disputed claims, and that nothing contained herein, including the waiver of claims or the mutual negotiation of this Settlement Agreement, shall be construed as an admission of liability or non-liability by any Party, and that no past or present wrongdoing by any Party shall be implied by this settlement.

6. No Assignment. With regard to the Claims that are released herein, each Party represents and warrants to the other that it has not assigned, transferred, or conveyed, whether by contract, subrogation or operation of law, any Claim or cause of action it may have or Claim to have against the other Party, and that no third party has asserted or has a right to assert any lien or claim of any nature against the amounts paid in connection with this Settlement Agreement.

7. Knowing and Voluntary Settlement. The Parties declare that they have read and understand the terms of this Settlement Agreement, that they have had the opportunity to confer with counsel throughout the negotiation and execution of this Settlement Agreement, and that they have executed this Settlement Agreement voluntarily and without being unduly pressured or

influenced by any statement or representation made by the other Party or any person acting on behalf of the other Party.

8. Neutral Interpretation of Settlement Agreement. The Parties declare that this Settlement Agreement has been fully and fairly negotiated between them, and that this Settlement Agreement shall not be interpreted or construed for or against either Party on account of who prepared or drafted the Settlement Agreement, but rather should be interpreted and construed as though mutually prepared and drafted by both Parties.

9. Authorization. Each signatory to this Settlement Agreement warrants that he/she/it is duly authorized by his respective corporate or other entity to enter into this Settlement Agreement, that each corporate or other entity is in good standing and has the legal ability to enter into this Settlement Agreement, and that this Settlement Agreement has been duly approved by each Party hereto. Each signatory to this Settlement Agreement further represents and warrants that he/she/it has the legal right and authority to grant the specific rights as set forth above.

10. Integration and Modifications. Except as otherwise provided herein, this Settlement Agreement (including the Recitals hereof), and any other documents executed in connection herewith, contain the entire understanding of the Parties hereto with respect to the subject matter contained herein, and supersedes all prior and contemporaneous agreements, understandings, and negotiations. The Parties have not made and make no other enforceable representations, warranties, promises or agreements which are not set forth in this Settlement Agreement. No modification or alteration of this Settlement Agreement shall be deemed effective unless in writing and signed by the Parties.

11. Severance. Except as otherwise stated herein, any provision of this Settlement Agreement that is deemed to be illegal and/or unenforceable shall be severed from this Settlement Agreement, without affecting the validity or enforceability of the remainder of the Settlement Agreement.

12. Enforcement. This Settlement Agreement is entered into under, and shall be governed and construed in accordance with, the laws of the State of Utah. Any lawsuit arising from this Settlement Agreement shall be brought in the courts of the State of Utah.

13. Counterparts. This Settlement Agreement may be signed in counterparts and by facsimile or electronic portable document format (pdf) transmission, each of which, when executed and delivered to the other Party, shall be deemed to be an original.

14. Court Approval Necessary: The parties understand and acknowledge that this Settlement Agreement is subject to approval of the Court handling the Lawsuit and that the Settlement Agreement will not be effective until the Court gives such approval.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below, effective as of the date set forth above.

DATED the 30th day of May, 2019.

ALEESHA FRANKLIN, individually

PARR BROWN GEE & LOVELESS, PC

By _____
Jonathan O. Hafen, Esq.
In his capacity as Court Appointed Receiver

CONSENT AND APPROVAL ONLY AS TO PARAGRAPH 1.1

CAMARRON J. FRANKLIN, individually

EXHIBIT A

1. Fermented Herbs
2. Dried Herbs / Teas
3. Heart Water Essences
4. Glass Bottles
5. Essential Oils
6. Crystals
7. Supplements
8. Kalia Products
9. Labels, stickers, boxes

EXHIBIT B

Harvest Right Freeze Dryers

Dry pumps for freeze dryers

Office furniture, including desk, sitting chairs, sofa, side table, end tables,
bar stools, rugs, storage shelves, display wooden tables, wall decor

Kegarators

Yoga Materials

Kitchen equipment

Forget Me Not signage

EXHIBIT C

[Special Warranty Deed]

File for Record at Request of:
First American Title Insurance Company

AFTER RECORDING MAIL TO:

Name: **Parr Brown Gee & Loveless, Attn: Jonathan Hafen**

Address: **101 South 200 East, Suite 700**
Salt Lake City, UT 84111

File No.: **0222-3255172 (KG)**

STATUTORY WARRANTY DEED

THE GRANTOR, **Camarron J. Franklin and Aleesha R. Franklin, husband and wife**, whose mailing address is _____, _____, for and in consideration of **TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION**, in hand paid, conveys and warrants to **R Legacy Investments, LLC limited liability company**, residing at **c/o Parr Brown Gee & Loveless, Attn: Jonathan Hafen, 101 South 200 East, Suite 700, Salt Lake City, UT 84111**, the following described real estate, situated in the **Homer** Recording District, **Third** Judicial District, State of **Alaska**:

Tract 1, SURREAL SUBDIVISION, according to the official plat thereof, filed under Plat Number 82-6, Records of the Homer Recording District, Third Judicial District, State of Alaska.

SUBJECT TO reservations, exceptions, easements, covenants, conditions and restrictions of record, if any.

Dated: _____, 20____.

Camarron J. Franklin

Aleesha R. Franklin

0222-3255172 (KG)

Statutory Warranty Deed-continued

June 13, 2019

STATE OF _____)
) SS.
Judicial District)

THIS IS TO CERTIFY that on this _____ **day of June, 2019**, before me the undersigned Notary Public, personally appeared **Camarron J. Franklin and Aleesha R. Franklin**, known to me and to me known to be the individual(s) described in and who executed the foregoing instrument and he/she/they acknowledged to me that he/she/they signed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

Notary Public in and for _____
My commission expires _____

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Cynthia D. Love (14703) (clove@parrbrown.com)
Sarah M. Humphrey (16847) (shumphrey@parrbrown.com)

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

**IN THE 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.

**ORDER GRANTING MOTION TO
APPROVE SETTLEMENT
AGREEMENT WITH ALEESHA RUST
FRANKLIN**

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

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

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

Based thereon, and for good cause showing,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED;
2. The Receiver is authorized to enter into the Settlement Agreement attached as Exhibit A to the Motion.

DATED this ___th day of June, 2019.

Honorable Dustin B. Pead
United States Magistrate Judge