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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 TURNOVER OF \$1.6  
MILLION INTERPLED INTO THE  
COURT BY ZIONS BANK**

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

Judge Tena Campbell

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Jonathan O. Hafen, the Court-Appointed Receiver (the “Receiver”) for the assets of Rust Rare Coin, Inc., Gaylen D. Rust, Denise G. Rust, and Joshua D. Rust (collectively, “Defendants”) and Aleesha Rust Franklin, R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, “Relief Defendants” and, together with Defendants, “Receivership Defendants”), respectfully moves the Court to enter an order requiring the turnover of \$1.6 million currently being held by Zions Bank to the Receiver.

### **INTRODUCTION**

The Leland S. Jacobson Trust (the “Trust”) wire transferred the \$1.6 million at issue in this Motion into Rust Rare Coin’s bank account as an investment in Gaylen Rust’s Silver Pool scheme. The Trust made the investment into the Silver Pool mid-day on November 15, 2018. This Court entered its Receivership order freezing the assets of Rust Rare Coin later that afternoon. The wire transfer from the Trust to Rust Rare Coin was completed several hours before the Receivership order went into effect. Although the Trust’s investment was one of the last investments made before the Receivership order went into effect, the Trust’s investment is no different than the investments of hundreds of other individuals who were also defrauded as a result of the Silver Pool investment scheme. Like tens of millions of dollars’ worth of other investors, the Trust is entitled to a claim against the Receivership Estate for its \$1.6 million investment.

Because there are hundreds of investors with claims and thousands of separate deposits and withdrawals into and out of the Rust Rare Coin accounts, it is important for the Court to draw a bright line as to what monies are included in and what monies are excluded from the Receivership Estate. The same clear rules must be applied to all transactions in this matter. The bright line rule applicable to funds transferred through wire transfer, which is the type of deposit

at issue in this matter, is set forth in the Uniform Commercial Code. The Uniform Commercial Codes provides that once the \$1.6 million was transferred into Rust Rare Coin’s Zions Bank account, ownership to the funds transferred from the Trust to Rust Rare Coin. Once the Receiver was appointed, all funds owned and controlled by Rust Rare Coin at that moment (which included the \$1.6 million) became part of the Receivership Estate. Fairness to all investors dictates that all monies included in the Receivership Estate be used to pay victims—regardless of whether those monies were invested two hours, two days or two years before the Receiver’s appointment. Similarly, fairness and a desire not to perpetuate the fraudulent scheme, has led the Receiver to return money—with the Court’s approval—invested into the scheme *after* his appointment.

Pursuant to the Uniform Commercial Code, because Rust Rare Coin took possession and control of the \$1.6 million prior to the imposition of the Receivership order, it became property of Rust Rare Coin and part of the Receivership Estate. As such, both the law and fairness to all investors dictate that the funds are Receivership Property and should be turned over to the Receiver.

### **FACTUAL BACKGROUND**

1. On November 27, 2018, the Court entered an order appointing Jonathan O. Hafen as receiver for the Receivership defendants. *See* Dkt. No. 54.

2. Pursuant to paragraph 18 of the Order, the Receiver is authorized to take immediate possession of all non-exempt personal property of the Receivership Defendants. *Id.* ¶ 18.

3. Paragraph 7.A of the Order defines “Receivership Property” that is part of the “Receivership Estate” as “all property interests of the Receivership Defendants, including, but

not limited to, monies, funds, . . . which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly.” *Id.* ¶ 7.A.

4. Paragraph 36 of the Order authorizes 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.

5. Paragraph 7 of the Order also authorizes the Receiver to “take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Defendants . . . .” *Id.* ¶ 7.B.

6. On November 15, 2018, at 2:50 p.m. prevailing Mountain Time, this Court entered its Order Granting Plaintiffs’ *Ex Parte* Motion for Statutory Receivership Order, Appointment of Receiver, and Other Equitable Relief (the “Receivership Order”) freezing assets of Rust Rare Coin, Inc. (“Rust Rare Coin”), its principals, and affiliates. *See* Dkt. No. 22.

7. Shortly after the Receivership Order was entered, at about 3:15 p.m., agents of the Utah Division of Securities (the “Serving Agents”) served a copy of the Receivership Order on Zions Bank through one of its officers in its legal department (the “Legal Officer”). *See* Dkt. 112, at ¶ 2.

8. In accordance with the instruction given, Zions Bank restricted the Rust Rare Coin accounts to prohibit all outgoing and incoming funds. These restrictions were effective as of approximately 3:40 p.m., on November 15, 2018. *See* Dkt. 112, at ¶ 6.

9. The Trust has a depositary relationship at Zions Bank. *See* Dkt. 112, at ¶ 7.

10. Prior to entry of the Receivership Order, Leland Jacobson, as Trustee of the Trust, instructed Zions Bank to wire transfer \$1.6 million from its account to Rust Rare Coin’s account,

which transfer occurred at 12:38 p.m. *See* EMP Wire Out Data, attached hereto as Exhibit A; *See* Dkt. 112, at ¶ 8.

11. The direction of Leland Jacobson to wire transfer \$1.6 million was verified by four employees of Zions Bank in the branch and in the wire department of Zions Bank, utilizing a confidential protocol with verified personally identifiable numbers. *See* Dkt. 112, at ¶ 9.

12. The \$1.6 million was received and reflected in Rust Rare Coin's account just minutes later at 12:44 p.m. Zions Bank refused to allow transfers out of Rust Rare Coin's account earlier that day until the account balance was sufficient to cover the transfers. After receipt of the \$1.6 million in the Rust Rare Coin account, Rust Rare Coin transferred monies out of its account to third parties later that afternoon. *See* Dkt. 112, at ¶ 10.

13. Shortly after 9:00 a.m. the next morning, on November 16, 2018, Leland Jacobson informed a Zions Bank branch employee that he was told by a friend that Rust Rare Coin had been closed under suspicion of operating a Ponzi scheme, provided a news link and stated he would like to recover the \$1.6 million which he caused to be wired the prior day. *See* Dkt. 112, at ¶ 13.

14. For whatever reason, the Zions Bank wire department caused the \$1.6 million to be returned to the account of the Trust. *See* Dkt. 112, at ¶ 14.

15. After consulting with legal counsel, Zions Bank immediately froze the \$1.6 million transferred into the Trust's account, where it remains today subject to a legal hold.

16. On February 12, 2019, Zions Bank moved to intervene into the case for the sole purpose of filing an Interpleader Motion with the Court. *See* Dkt. No. 112.

17. On March 12, 2019, the Court granted Zions Bank's motion to intervene. *See* Dkt. No. 140.

18. On March 13, 2019, Zions Bank filed the Receivership Interpleader Motion. *See* Dkt. No. 141.

19. On April 16, 2019, the Receiver filed his Response to Zions Bank’s Receivership Interpleader Motion. *See* Dkt. No. 156.

### **ARGUMENT**

#### **I. The \$1.6 Million Constitutes Property of the Receivership Estate and Should be Turned Over to the Receiver.**

Zions Bank interpleaded the \$1.6 million with the Court, requesting that the Court determine who is entitled to the funds. The central question for the Court is: who owned the \$1.6 million at the time the Receivership Order was entered? If the \$1.6 million was property of Rust Rare Coin upon entry of the Receivership Order, it was property of the Receivership Estate and the Receiver is authorized to take possession of such property and “to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto.” *See* Dkt. 54 at ¶¶ 7.B, 18. If ownership of the \$1.6 million still remained with the Trust when the Receivership Order was entered, then the Trust should be entitled to it.

The Uniform Commercial Code (“UCC”) governs ownership of funds transferred through a wire transfer. This law is set forth in Utah Code Ann. § 70A-4a-101, *et seq.* Under the UCC, a wire transfer is complete and title to the wired funds passes upon “acceptance” by the beneficiary bank of the payment order. *See* Utah Code Ann. § 70A-4a-104(1) (“A funds transfer is completed by acceptance by the beneficiary’s bank of a payment order for the benefit of the beneficiary of the originator’s payment order.”); *United States v. BCCI Holdings (Luxembourg) S.A.*, 956 F. Supp. 5, 11 (D.D.C. 1997) (noting that ownership of the funds passes from the originator to the beneficiary’s bank upon completion of funds transfer); *Shawmut Worcester*

*County Bank v. First Am. Bank & Trust*, 731 F. Supp. 57, 60 (D.Mass.1990) (holding the completion of a wire transfer extinguishes the originator's ownership interest in the funds).

“Acceptance” occurs when, *inter alia*, the bank [Zions] pays the beneficiary [Rust Rare Coin] as stated in section 70A-4a-405(1) or (2). *See* Utah Code Ann. § 70A-4a-209. Payment to Rust Rare Coin, as the beneficiary of the receiving bank, occurs under section 70A-4a-405(1) when (a) the beneficiary [Rust Rare Coin] is notified of the right to withdraw the credit, (b) the bank [Zions Bank] lawfully applies the credit to a debt of the beneficiary [Rust Rare Coin], or (c) funds with respect to the order [\$1.6 million] are otherwise made available to the beneficiary [Rust Rare Coin] by the bank [Zions]. Utah Code Ann. § 70A-4a-405(1); *First Sec. Bank of New Mexico, N.A. v. Pan American Bank*, 215 F.3d 1147, 1155 (10th Cir. 2000) (citing New Mexico version of UCC). In *First Sec. Bank of New Mexico*, the Tenth Circuit reviewed the UCC and held payment occurs under section 4a-405 of the UCC when a beneficiary's account is credited, and the funds are immediately made available to the beneficiary. 215 F.3d at 1159.

Based upon the facts of this case, the wire transfer from the Trust to Rust Rare Coin was complete, and Rust Rare Coin obtained title to the \$1.6 million, *prior* to entry of the Receivership Order. The wire transfer was initiated by Jacobson, as Trustee of the Trust, at 12:38 p.m. Zions Bank processed the wire and deposited the funds into Rust Rare Coin's account six minutes later, at 12:44 p.m. Zions Bank made the funds immediately available to Rust Rare Coin, as evidenced by the fact that Rust Rare Coin transferred some of the deposited money out of its account to other accounts before the Receivership Order was put in place. As such, “acceptance” of the \$1.6 million occurred, and ownership of those monies passed to Rust Rare Coin under 70A-4a-405(1), when Zions Bank made the funds available to Rust Rare Coin and allowed the funds to be applied to debt of Rust Rare Coin.

Payment of the \$1.6 million into Rust Rare Coin's account at 12:44 p.m. completed the wire transfer and extinguished any property interest the Trust had in the funds. *See United States v. BCCI Holdings (Luxembourg) S.A.*, 956 F. Supp. at 11; *Shawmut Worcester County Bank*, 731 F. Supp. at 60. Because transfer of the wired funds was completed *before* the Receivership Order was entered, the Trust's ownership was extinguished and Rust Rare Coin owned the \$1.6 million at the time of the Receivership Order. As such, the Trust—like so many other investors—is a creditor of the Receivership Estate with the right to assert a claim for payment, but it has no special right to or interest in the \$1.6 million.

## **II. Response Deadline and Objection Procedures.**

The Receiver recognizes there may be objections to the turnover of the \$1.6 million by the Trust. Therefore, consistent with the Court's *Order Granting Motion to Allow Summary Disposition Procedure*, Dkt. No. 165 ("Procedures Order"), the Receiver will provide notice of this Motion to all potential claimants for whom the Receiver has contact information, including the Trust, and will post it on the Receiver's website ([rustrarecoinreceiver.com](http://rustrarecoinreceiver.com)). *See also* Motion to Allow Summary Disposition Procedure, Dkt. No. 155. Pursuant to the Procedures Order, any objection to this Motion **must be sent directly to the Receiver within 30 days of service of this Motion**. The objecting party will not be a party to the overall proceeding, will not intervene in the case, and will not file any pleadings or other documents directly with the Court unless otherwise authorized by the Court; however, discovery documents such as certificates of service and notices of deposition may be filed with the Court without prior Court approval. If an objecting party specifically requests discovery in their objection, the parties will have an additional 30 days to complete discovery. Discovery will be conducted pursuant to the Federal Rules of Civil Procedure, except that written discovery must be responded to within 14 days.

Either side may seek relief from the Court if the requested discovery is unduly burdensome or not proportional to the issues being determined.

Pursuant to the Court's Procedures Order, following the filing of the objection or close of discovery (if specifically requested), the Receiver will then file the objections with the Court and schedule a hearing on the matter. If an evidentiary hearing is needed, the Receiver will schedule additional deadlines regarding disclosure of witnesses and exhibits as needed. The Receiver may file a reply to any objection five days before the hearing.

### **CONCLUSION**

For the reasons set forth above, the Receiver respectfully requests the Court order the \$1.6 million being held by Zions Bank be turned over to the Receiver.

DATED this 16th day of July, 2019.

**PARR BROWN GEE & LOVELESS**

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## CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION FOR TURNOVER OF \$1.6 MILLION INTERPLED INTO THE COURT BY ZIONS BANK TO THE ESTATE** was (i) electronically filed with the Clerk of the Court through the CM/ECF system on July 16, 2019, which sent notice of the electronic filing to all counsel of record; (ii) posted on the Receiver's website (rustrarecoinreceiver.com); (iii) emailed to all investors and creditors on the master mailing matrix maintained by the Receiver; and (iv) emailed to counsel for The Leland S. Jacobson Trust.

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SENDER PARTY NOT ON FILE  
SENDER'S ID D/0980578363

TRN REF #: 20181115-00006592

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\*\*\*\* MESSAGE ENVELOPE \*\*\*\* ( Bank : 001 )

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EXT:

RPT# AMT:1,600,000.00 CUR:USD TRDR#  
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\*DBT D/0980578363 CDT \*A/124000054 ADV:FED  
DEBIT VAL: 18/11/15 CREDIT VAL: 18/11/15  
THE LELAND S JACOBSON TRUST ZIONS BANCORPORATION, NA DBA ZIONS  
5904 W 11140 N SALT LAKE CITY, UT  
HIGHLAND UT 84003-9482  
USA COUNTRY OF RESIDENCY: US  
BNF:/979037496 CHG: BK?N  
RUST RARE COIN INC  
  
BNF MAILING COUNTRY: US  
ORIG TO BNF INFO:  
LELAND JACOBSON TRUST SILVER FUND

\*\*\*\* CREDIT PAYMENT MESSAGE TEXT \*\*\*\*

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Subtype Code: 00 (Regular transfer)  
  
{2000} Amount: \$1,600,000.00  
  
{3100} Sending Bank:  
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Short name: ZIONS SLC  
ABA lookup (AUX): ZIONS BANCORPORATION, NA DBA ZIONS  
SALT LAKE CITY, UT  
  
{3320} Sender Reference: 2018111500006592  
  
{3400} Receiving Bank:  
ABA number: 124000054  
Short name: ZIONS BANCORP  
ABA lookup (AUX): ZIONS BANCORPORATION, NA DBA ZIONS  
SALT LAKE CITY, UT  
  
{3600} Business Function Code: CTP (Customer transfer plus)  
  
{4200} Beneficiary:  
RUST RARE COIN INC  
  
{5000} Originator:  
THE LELAND S JACOBSON TRUST  
5904 W 11140 N  
HIGHLAND UT 84003-9482  
USA

{6000} Originator to Beneficiary Info: LELAND JACOBSON TRUST SILVER FUND

## MESSAGE HISTORY SEQUENCE

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  *SYS_MEMO          *AUTOTRIEVE, After--->  | |
  *SYS_MEMO          *AUTOTRIEVE VLD V name & address - DBT Acct. D
/0980578363
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  Memo: DBT
  *GL__INQ_CDT
  CDT_INPROC_Q
  Memo: *CDT_INPROC
  *DBT_AUT
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  CALLBACKQ          DEQ
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INITIATE IMM 12:39
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/844413(OFAC),JMA/844414(OFAC)
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  RTE: /
  DST: FED////////
  *CDT
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  FLASHSND          ABA: 124000054 FED REF: 2018111500006592
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  FEDOUT1            SEQ #: 2301 15-NOV-2018 12:44:24.83
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12:44