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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.

**THIRD 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. (“RRC”), Gaylen Dean Rust, R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, “Receivership Defendants”), hereby submits this third interim fee application (this “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 April 1, 2019 through June 30, 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, identify claimants and creditors of the Receivership Estate, and identify and initiate discussions with net winners to recover funds for the benefit of all Receivership claimants.

2. The Receiver has filed his *Third Quarterly Status Report*, which includes a status report for the period of April 1, 2019 through June 30, 2019 (the “Third Status Report”).<sup>1</sup> The

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<sup>1</sup> Docket No. 232, filed July 31, 2019.

Third Status Report provides a comprehensive description of the services performed by the 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.

4. Accordingly, the Receiver respectfully requests that the Court approve the fees and expenses incurred by the Receiver and his team as set forth below and in the attached Exhibits.

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

5. 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.

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

7. 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.

8. 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.

9. Consistent with the Receiver's previous fee applications, 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 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**

10. 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 April 1, 2019 through June 30, 2019, the Receiver has billed a total of 57.20 hours for services to the Receivership Estate. The Receiver is seeking approval for the payment of fees totaling \$20,592.<sup>2</sup> *See* Exhibit A.

b. Parr Brown: From April 1, 2019 through June 30, 2019, Parr Brown has billed a total of 1,076.7 hours for legal services to the Receivership Estate. Parr Brown is seeking approval for the payment of fees and expenses totaling \$267,534, of which \$257,146 is for fees and \$10,388 is for out-of-pocket expenses. *See* Exhibit B. These amounts include a voluntary write down of \$5,177.50.

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<sup>2</sup> No out-of-pocket expenses were incurred by the Receiver during this Application Period.



During the Application Period, the Receiver continued to correspond with investors, customers, and creditors to ensure that all interested parties remained updated as to the current status of the Receivership Estate. This involved communicating with investors about the forthcoming claims process and ensuring all motions and Court orders were posted on the Receiver's website. The Receiver also worked with his legal counsel to establish and implement a summary disposition procedure to help streamline the Receivership's ongoing efforts.

To help facilitate the Receivership's asset recovery efforts, the Receiver engaged in ongoing discussions with his counsel and accountants regarding the identity of various potential "net winners" and the estimated value of these claims. The Receiver also organized a team of attorneys to assist with future recovery actions and has overseen the early stages of these negotiations.

The Receiver also continued to work with his legal counsel to recover the \$1.6 million in funds that were transferred out of the Receivership's bank account shortly after the Receiver's appointment. Furthermore, the Receiver continued to review and analyze various Receivership Assets with his counsel, brokers, accountants, and other professionals to ensure that these assets were properly analyzed, valued, and prepared for liquidation.

#### **Exhibit A-2**

#### **Disposition of Assets**

The Receiver oversaw and coordinated the negotiation and/or sale of various pieces of real property during the Application Period. These properties include Big Door, a condo in St. George, and multiple properties located in Alaska and Ohio. To facilitate these transactions, the Receiver reviewed and analyzed various offers from buyers and engaged in ongoing correspondence with his counsel and brokers to determine the best way to maximize these properties' value. The Receiver and his professionals also continued to market and respond to

offers for Huge Studios, a Victorian house in Salt Lake City, and several additional properties in Alaska.

During the Application Period, the Receiver also helped prepare and file a motion with the Court requesting authorization to liquidate the RRC inventory. Additionally, the Receiver requested and received authorization from the Court to sell his interest in The Writer's Den, LLC, a Tennessee music publishing company. Several other settlement agreements were also entered into by the Receiver during the Application Period, as set forth more fully in the Receiver's Third Status Report.

### **Exhibit B—Time Records of Parr Brown**

#### **Exhibit B**

#### **Summary by Task**

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

#### **Exhibit B-1**

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

During the Application Period, Parr Brown continued to manage and keep secure the various pieces of real and personal property within the Receivership Estate. This has involved coordinating ongoing insurance payments and assisting BRG with various tax issues associated with the Receivership Assets. Parr Brown also continued to communicate with investors, customers, vendors, and other interested parties regarding the Receivership and important case updates. This has involved posting motions and Court orders on the Receiver's website and also making updates to the Receiver's mailing matrix to ensure all interested parties receive information about the Receivership's progress.

This period, Parr Brown also drafted and severed subpoenas on several investors, metal dealers, and other related entities to help gather information about the transactions previously





worked closely with the Receiver to review and analyze these objections and is in the process of drafting a response to these claims.

Additionally, Parr Brown also negotiated the sale of various pieces of real property during the Application Period, such as Big Door, a condo in St. George, and properties in Alaska and Ohio. Parr Brown is currently in the process of closing on several of these properties and continues to market the remaining real property within the Receivership Estate. Parr Brown also worked extensively with its real estate brokers to help negotiate and respond to offers for Huge Studios. These efforts have helped maximize the value of the Receivership's real property and has generated a significant amount of income for the Receivership Estate.

Parr Brown also continues to work with BRG to ensure that the Receivership's intangible assets are being maximized for the Receivership Estate. To facilitate these dispositions, Parr Brown has engaged in extensive discussions with potential buyers regarding the sale of various ownership interests and intellectual property within the Receivership. Parr Brown has successfully reached agreements with several of these individuals and continues to negotiate additional agreements as potential buyers are identified.

#### **Exhibit B-4**

#### **Claims Administration**

Parr Brown has worked diligently during this Application Period to formulate and finalize a claims process that can be used by interested parties to file a claim against the Receivership Estate. This has involved ongoing correspondence with the Receiver and BRG to ensure that the claims process is clear and complete. Parr Brown also continues to identify and communicate with potential claimants of the Receivership Estate, including investors, business creditors, customers, and former employees about the forthcoming claims process. These efforts have involved updating the master mailing matrix and the Receivership's website

(<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.

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

During the Application Period, BRG assisted the Receiver with identifying, securing, and preserving electronic data and hardcopy documents stored at the various facilities impacted by the Appointment Order. BRG continued to work with various government agencies, including the FBI and Utah Division of Securities (“UDOS”), to obtain copies of the 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 other key personnel.

BRG continued to assist the Receiver in reviewing and analyzing data and documents previously collected from various 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.

Additionally, BRG has met and had follow-up discussions with various employees that have knowledge and understanding about the business operations, assets, and financial and accounting records of the Receivership Defendants. BRG also worked with these individuals to gain access to such records. Furthermore, BRG has been involved in the review and retrieval of

historical emails from RRC's email server and has coordinated with IT personnel to gain access to this information.

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

BRG continued to analyze the books and records of various Receivership entities this Application Period. These efforts involved providing the Receiver and his legal counsel with financial information about certain Receivership entities and ownership interests held by the Receivership Defendants. 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 by potential buyers and settlement discussions with third parties.

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

BRG continued to perform extensive analysis of cash receipt and disbursement activity, transaction support, investor files, email communications, and other information received from investors through questionnaire responses. BRG also reviewed various records regarding investors and investor groups to identify and determine the amount of funds invested and distributed to each of these individuals and/or investor groups. One of the complicating factors in this analysis is the quantity of transactions that are "non-cash" in nature. In its analysis, BRG has identified many non-cash transactions that occurred between RRC and investors that involved investments and draws consisting of physical metals, which were then converted and credited to the investor's account. This information is not captured in the cash receipt and disbursement activity and is only identifiable through additional supporting information such as RRC receipts, email communications, investor statements, and RRC investor files.

Another issue encountered in this process is the commingled nature of the investments and how they were recorded in RRC's records. Investors were typically combined into certain

investor groups with their investments being pooled together. Sometimes investors were given their own investment account within the group and sometimes they were added to an already-existing investment account. BRG has identified many instances in which an investor would pay their investments to a group leader who would then deposit the investment under his or her own name rather than the name of the actual investor.

Due to the nature of these transactions and the issues set forth above, various information and records must be analyzed and reviewed in order to provide the Receiver with an accurate summary of each investor's activity, and this analysis has proven to be much more complicated and time consuming to complete than expected. Notwithstanding these difficulties, BRG's analysis has been critical in assisting the Receiver to identify potential claims to pursue as well as potential claims by investors. BRG has developed and provided these analyses to the Receiver to be used in discussions with potential net winners. BRG has also been involved in assisting the Receiver with investor responses and providing him with supporting documentation as necessary.

### **Tax Compliance & Analysis**

During this Application Period, BRG has worked closely with the Receiver and other professionals to ensure that the Receivership's tax issues have been timely identified and resolved. BRG has met with the Receiver and other professionals on multiple occasions to inform the Receiver of specific tax issues which arise in Ponzi Scheme cases and tax compliance requirements that must be adhered to in a Receivership.

This period, BRG also met with Denise Rust to discuss the information required to prepare Gaylen and Denise Rust's 2018 individual income tax returns. In addition, BRG reviewed, analyzed, and responded as appropriate to correspondence received from federal and

state taxing authorities. BRG also performed tax research related to the various tax issues that have arisen during the administration of the Receivership Estate.

In an effort to acquire as much financial insight as possible, BRG also met with Travis Fenton, the tax accountant previously involved with the Receivership Defendants, to discuss the accounting and tax work he performed before the Receiver's appointment. BRG also analyzed the debtor's financial data in order to identify reliable financial information required to prepare income tax returns for the Receivership entities. BRG also determined the proper methods of accounting for silver and other precious metals which were acquired and sold on behalf of third parties. Furthermore, BRG began preparing the September 30, 2018 income tax returns for RRC, including preparation of the required supporting workpaper documentation and depreciation schedules. BRG also addressed various real and personal property tax issues.

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

16. The Receiver has previously filed two interim fee applications,<sup>3</sup> both of which were approved by the Court. *See* Dkt. No. 153, 203.

17. This is the Third Interim Fee Application of the Receiver and his professionals.

18. 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 the Receiver and his professional's final fee applications.

19. 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

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<sup>3</sup> The Receiver's First Interim Fee Application was filed on February 22, 2019. *See* Dkt. No. 120. The Receiver's Second Interim Fee Application was filed on May 24, 2019. *See* Dkt. No. 187.

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.

20. Pursuant to Paragraph 62 of the Appointment Order, *see* Dkt. No. 54, 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.

21. The Receiver respectfully requests that the Court enter an Order (i) approving, on an interim basis, the Receiver's fees in the amount of \$20,592; Parr Brown's fees in the amount of \$257,146 and out-of-pocket expenses of \$10,388, and BRG's fees in the amount of \$318,326.50 and out-of-pocket expenses of \$3,856.16; 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 in this Fee Application and prior applications.

22. 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.

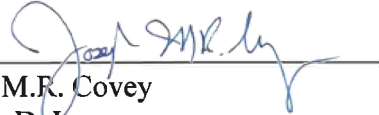
DATED this 4th day of September, 2019.

**RECEIVER**



Jonathan O. Hafen, Receiver

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



Joseph M.R. Covey

Cynthia D. Love

Sarah M. Humphrey

*Attorneys for Receiver Jonathan O. Hafen*

**BERKELEY RESEARCH GROUP**



Ray Strong

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **THIRD INTERIM FEE APPLICATION** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on September 4, 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

Joseph M.R. Covey