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**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
SHAWN OLSEN**

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, R Legacy Racing Inc., R Legacy Entertainment LLC, R Legacy Investments LLC, Denise Gunderson Rust, and Joshua Daniel Rust (collectively the “Receivership Defendants”), respectfully requests authority from the Court to enter into a Settlement Agreements with Shawn Olsen (“Olsen”), attached hereto as Exhibit A.

On November 27, 2018, the Court entered an Order Appointing Receiver and Staying Litigation (the “Order”). *See* Dkt. No. 54. Pursuant to the Order, the Receiver was authorized to take control of all Receivership Property and “to sue for and collect, recover, receive and take into possession from third parties all Receivership Property.” *Id.* ¶¶ 7(B), 18. Paragraph 41 of the Order authorized the Receiver to investigate and participate in actions that are “advisable or proper to recover and/or preserve Receivership Property.” *Id.* ¶ 41. And paragraph 7(G) authorized the Receiver to take all actions “necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property.” *Id.* ¶ 7(G). Through this Motion, the Receiver respectfully requests permission to enter into a settlement agreement wherein Olsen agrees to return to the Receivership Estate \$80,000, as described more fully below.

I. Olsen’s Investment in Gaylen Rust’s Silver Pool Scheme

In or around March 2011, Olsen began investing in the silver investment pool operated by Gaylen Rust (the “Silver Pool”). Olsen did not invest directly into the Silver Pool. Instead, his investments were made through Bonneville Capital, LLC (“Bonneville”), of which Olsen was a member. In total, Olsen invested \$139,500.00 into Bonneville, which was then invested into the

Silver Pool.¹

Between October 2017 and October 2018, Olsen received \$227,131.86 in disbursements from Bonneville that originated from the Silver Pool. The difference between the amounts invested by Olsen and the amounts he received is \$87,631.86.

II. Settlement Agreement

In the context of a Ponzi scheme, all transfers made by the Ponzi entity are presumptively fraudulent. *Wing v. Dockstader*, 482 F. App'x 361, 363 (10th Cir. 2012) (“The mere existence of a Ponzi scheme is sufficient to establish actual intent to defraud.” (internal citations omitted)). The recipient of funds from a Ponzi scheme has the burden of showing that he took those funds in good faith and for reasonably equivalent value. *See Klein v. King & King & Jones, P.C.*, No. 2:12-CV-00051, 2013 WL 4498831, at *2 (D. Utah Aug. 19, 2013); *see also* UTAH CODE § 25-6-304(1). Under well-established case law in the context of a Ponzi scheme, an investor does not give value for any returns received beyond the amount of the investor’s principal investment. *Miller v. Wulf*, 84 F. Supp. 3d 1266, 1274 (D. Utah 2015) (“It is well established that an investor in a Ponzi scheme does not exchange reasonably equivalent value for payments which exceed the investor’s investments.”). Thus, in the context of a Ponzi scheme, amounts in excess of an investor’s principal investments (i.e., investment “profits”) are not received in exchange for reasonably equivalent value and are subject to claw back.

Here, Olsen received \$87,631.86 in excess of his principal investment, which represents the amount the Receiver believes Olsen owes to the Receivership Estate. However, the Receiver

¹ During the time in which Bonneville invested into the Silver Pool, its membership changed. Relevant to this matter, Bonneville had six members that made deposits and took disbursements related to the Silver Pool investment. At this time, the Receiver continues to pursue settlement discussions with the other members of Bonneville.

recognizes that if Olsen litigated this issue, it would cost the Receivership Estate time and money to engage in such litigation. Accordingly, the Receiver and Olsen have reached a Settlement Agreement wherein Olsen has agreed to return \$80,000 to the Receivership Estate (the “Settlement Agreement”). A copy of the Settlement Agreement is attached hereto as Exhibit A.

The Receiver believes it is in the best interest of the Receivership to settle this matter pursuant to the terms of the Settlement Agreement, which will minimize litigation expenses incurred by the Receivership Estate. Therefore, the Receiver respectfully requests that the Court approve the Settlement Agreement as proposed.

A proposed order granting this motion is submitted herewith.

DATED this 22nd day of November, 2019.

PARR BROWN GEE & LOVELESS

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court through the CM/ECF system on November 22, 2019, which sent notice of the electronic filing to all counsel of record.

/s/ Cynthia D. Love
Cynthia D. Love

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “*Settlement Agreement*”), dated as of November 19, 2019, is entered into by and between Shawn Olsen (“*Olsen*”) on the one hand, and Jonathan O. Hafen, solely in his capacity as Court-Appointed Receiver (the “*Receiver*”) for the assets of Rust Rare Coin Inc., Gaylen Dean Rust, R Legacy Racing Inc., R Legacy Entertainment LLC, R Legacy Investments LLC, Denise Gunderson Rust, and Joshua Daniel Rust (collectively, the “*Receivership Defendants*”), on the other hand. Olsen and the Receiver are each referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The Receiver alleges that since at least 2008, Receivership Defendants have operated a fraudulent silver investment pool (the “*Silver Pool*”) in the manner of a classic Ponzi scheme through which investors were told that their funds would be used to purchase and trade physical silver. Instead, Receivership Defendants used funds from new investors to pay exorbitant returns to existing investors and to fund Receivership Defendants’ other business ventures.

B. Through Bonneville Capital LLC (“*Bonneville*”), Olsen was an investor in the Silver Pool. Olsen contributed \$139,500 to the Receivership Defendants and received a total of \$227,131.86 in return for his investment.

C. The Receiver alleges that Olsen and the other Bonneville members were at least on inquiry notice that Receivership Defendants were engaged in a fraudulent investment scheme. Olsen denies these allegations.

D. The Receiver and Olsen desire now to resolve all claims and disputes that now exist or that may exist in the future regarding payments made by any Receivership Defendant and ultimately received by Olsen.

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and upon and subject to the terms and the conditions hereinafter set forth, the Parties do hereby agree as follows:

AGREEMENT

1. **Court Approval.** This Settlement Agreement is conditioned on and subject to approval by the Court in the lawsuit styled *Commodity Futures Trading Commission, et al. v. Rust Rare Coin Inc., et al.* No. 2:19-cv-892 (D. Utah Nov. 27, 2018) (the “*Lawsuit*”). The Receiver shall, within fifteen (15) days of the last Party’s execution of this Settlement Agreement, draft and file a Motion with the Court seeking such approval. The “Effective Date” of this Settlement Agreement shall be the date on which the Court in the Lawsuit enters an order approving this Settlement Agreement.
2. **Olsen’s Representations and Warranties.** Olsen hereby represents and warrants to the best of his knowledge as follows:
 - a. Olsen invested a total of approximately \$139,500.00 into Bonneville for the purpose of investing those funds in the Silver Pool and received a total of approximately

\$227,131.86 in distributions from Bonneville, which were attributable to payments from the Silver Pool and ultimately sourced from Receivership Defendants. The difference between Olsen's investment and his withdrawals is \$87,631.86.

3. **Information Provided by Bonneville.** The Parties agree that Bonneville has provided financial information reflecting that the members of Bonneville contributed funds to and received funds from the Silver Pool substantially in amounts reflected in Exhibit A, attached hereto.
4. **Transfer of Funds.** Except as expressly limited in Section 5 below, in full satisfaction of all claims the Receiver may have now or in the future against Olsen related to the payments he received from any Receivership Defendant, Olsen shall pay the Receiver \$80,000 (the "**Settlement Payment**"), deliverable no later than 30 business days after the Effective Date of this Settlement Agreement.
5. **Olsen Release.** To the maximum extent permitted by law, Olsen, on behalf of himself and his successors, assigns, attorneys, and representatives (the "**Olsen Releasing Parties**") hereby release, acquit, and discharge, and covenant and agree that they will refrain and forbear from commencing, instituting, prosecuting, or continuing, any lawsuit, action, claim, right, demand, cause of action, suit or other proceeding (including filing any further claim) against the Receiver, the Receivership Defendants, and the receivership estate, their affiliates, predecessors, successors, assignors, and assignees. Any claims to enforce rights, obligations, and duties arising out of this Settlement Agreement are excepted from this release.
6. **Receiver Release.** On the condition that (1) the representations and warranties in Section 2 above are true and accurate and (2) that, with respect to Olsen, the contributions to and withdrawals from Bonneville reflected in Exhibit A are substantially accurate, on the Effective Date, the Receiver and its predecessors, successors, assignors, and assignees (the "**Receiver Releasing Parties**") hereby release, acquit, and discharge, and covenant and agree that they will refrain and forbear from commencing, instituting, prosecuting, or continuing, any lawsuit, action, claim, right, demand, cause of action, suit or other proceeding against the Olsen Releasing Parties and their respective successors, assignors, and assignees, except for any claims to enforce rights, obligations, and duties arising out of this Settlement Agreement.
7. **Tolling.** Commencing at 12:01 a.m. Utah time on the date of this Settlement Agreement and continuing until the Receiver resolves all claims with respect to Bonneville and its members, the Parties hereby agree to toll the running of any applicable statute of limitations (the "**Tolling Period**"). The Parties acknowledge that each Party is relying on the tolling effect of this Section. None of the time elapsed during the Tolling Period shall be included in the computation of any statutes of limitation or other time limitations, whether statutory, equitable, contractual, or otherwise, applicable to any claims and any defenses thereto. Nothing in this Settlement Agreement shall have the effect of (a) reviving any claim, defense, action, or other proceeding of any Party that was barred or had expired, or that expires or otherwise becomes barred after the Tolling Period ends, or (b) invalidating or minimizing the impact of any other time-based defense such as laches, estoppel, etc., that would apply as of the commencement of the Tolling Period.
8. **Attorney Fees.** Each Party shall bear its own attorney's fees and costs in connection with the Lawsuit through the Effective Date, including the negotiation, documentation, execution, delivery, and performance of this Settlement Agreement. Notwithstanding the preceding sentence, should any action, suit or proceeding be commenced by any Party to this Settlement Agreement to enforce any provision hereof, the prevailing Party shall be entitled to recover reasonable attorneys' fees, all

costs (whether denominated as such in 28 U.S.C. § 1920), and expert expenses incurred in said action, suit or proceeding, including any appeal.

9. **Non-Assignment**. Each Party represents and warrants to all of the other Parties and each of them, that it has not assigned or transferred any of the claims or interests addressed in this Settlement Agreement. Each Party agrees to defend and indemnify all of the other Parties and each of them against any claim based upon, arising out of, or arising in connection with any such alleged or actual assignment or transfer.
10. **Opportunity for Consultation with Counsel**. The Parties represent and warrant that they have each been given adequate time and notice of their right to retain and consult an attorney regarding their rights and obligations under this Settlement Agreement and the effect of this Settlement Agreement on any rights or purported rights previously held by either of the Parties. **To the extent Olsen does not elect to retain and consult with an attorney, he hereby expressly acknowledges that he has done so willing, having been previously informed by the Receiver and his counsel of his right and ability to retain legal counsel, including without limitation in connection with this Settlement Agreement.**
11. **Jurisdiction**. The Parties specifically consent to the jurisdiction and power of the Court to determine any dispute relating to this Settlement Agreement, including any claim for breach, and to the power and authority of the Court to enter a final judgment in connection therewith.
12. **Neutral Interpretation**. This Settlement Agreement is the product of joint negotiations. If there is ever any dispute over any term or provision of this Settlement Agreement, any ambiguity is not to be interpreted more strongly in favor of either Party.
13. **Amendment**. This Settlement Agreement may not be modified except as mutually agreed to in a writing signed by all the Parties.
14. **Non-waiver**. No waiver, forfeiture or forbearance of or concerning any provision of this Settlement Agreement shall be deemed or shall constitute a waiver, forfeiture or forbearance of or concerning any of the other provisions hereof, or a continuing waiver, forfeiture or forbearance.
15. **Mutual Representations and Warranties**. Each Party represents and warrants to the other as follows:
 - a. The person executing this Settlement Agreement has the full legal right, power and authority to do so. This Settlement Agreement creates valid and binding obligations enforceable against each Party in accordance with its terms.
 - b. Except as expressly stated in this Settlement Agreement, neither Party has made any statement or representation to the other Party regarding the facts relied upon by them in entering into this Settlement Agreement, and no Party hereto has relied upon any statement, representation, or promise of any other person or entity in executing this Settlement Agreement except as expressly stated in this Settlement Agreement.
16. **Entire Agreement**. This Settlement Agreement contains the entire agreement and understanding among the Parties concerning the matters set forth herein and supersedes all prior or contemporaneous stipulations, negotiations, representations, understandings, and discussions among the Parties or their respective counsel with respect to the subject matter of this Settlement

Agreement. No other representations, covenants, undertakings, or other earlier or contemporaneous agreements respecting these matters may be deemed in any way to exist or bind any of the Parties. The Parties acknowledge that they have not executed this Settlement Agreement in reliance on any promise, representation, or warranty other than those contained in this Settlement Agreement.

17. **No Unnamed Third-Party Beneficiaries.** There are not unnamed third-party beneficiaries to this Settlement Agreement.
18. **Severability.** If any part, term, or provision of this Settlement Agreement is held by a court of competent jurisdiction to be invalid, illegal, unenforceable or otherwise in conflict with law, this Settlement Agreement shall be construed and enforced as if it did not contain the particular part, term, or provisions held to be invalid.
19. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, all of which when attached together shall constitute a single, complete Settlement Agreement. It is further agreed that none of the provisions contained herein shall be deemed to have any effect upon any party, until this Settlement Agreement has been duly executed by all of the Parties.
20. **Further Cooperation.** Except as otherwise provided herein, the Parties hereto shall execute, acknowledge, and deliver or cause to be executed, acknowledged, or delivered in a timely manner all such further instruments and documents as may be reasonably necessary or reasonably desirable to effectuate the terms and provisions of this Settlement Agreement.
21. **Enforceability; Interpretation.** The validity, enforcement, interpretation, and performance of this Settlement Agreement shall be governed by Utah law without regard to any conflicts or choice of laws principles, and all parties consent to the exclusive jurisdiction of the State or Federal courts located in Salt Lake County, Utah, for the adjudication of any matters that arise from or relate in any way to this Settlement Agreement.
22. **Recitals.** The Recitals set forth above are incorporated herein as an integral part of this Settlement Agreement

IN WITNESS WHEREOF, this Settlement Agreement has been executed as of the date set forth above.



JONATHAN O. HAFEN

In his capacity as Court-Appointed Receiver for the Receivership Defendants in *Commodity Futures Trading Commission v. Rust Rare Coin, Inc.*, No. 2:19-cv-892 (D. Utah Nov. 27, 2018)



SHAWN OLSEN, individually

EXHIBIT A

Member	Total Contributions	Total Withdrawals	Net
Brandon Parke	\$489,250.00	(\$2,138,961.80)	(\$1,649,711.80)
Neyka Parke Trust	\$138,000.00	(\$75,000)*	\$63,000*
Shawn Olsen	\$139,500.00	(\$227,131.86)	(\$87,631.86)
Darren Nelson	\$884,080.00	(\$2,362,000.00)	(\$1,477,920.00)
Brandon Larsen	\$80,000	(\$144,716.52)	(\$64,716.52)
John Bitner	\$0	(\$23189.82)	(\$23,189.82)

*The total withdrawals and net amounts shown for Neyka Parke Trust do not reflect an additional \$89,400.00 in payments made to Bonneville that were ultimately paid to Hugh and Neyka Parke.

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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
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Sean D. Reyes

Plaintiffs,
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RUST RARE COIN INC., a Utah corporation,
and GAYLEN DEAN RUST, an individual,
DENISE GUNDERSON RUST, an individual,
JOSHUA DANIEL RUST, an individual

Defendants;

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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 SHAWN OLSEN**

Case No. 2:18-cv-892

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

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

Based on the Motion and for good cause appearing,

IT IS HEARBY ORDERED that:

1. The Motion is GRANTED; and
2. The Settlement Agreement attached as Exhibit A to the Motion is approved.

DATED this ____ day of _____, 2019.

Honorable Dustin B. Pead
United States Magistrate Judge