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**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.

**FOURTH 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 fourth 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 July 1, 2019 through September 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 liquidate 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 *Fourth Quarterly Status Report*, which includes a status report for the period of July 1, 2019 through September 30, 2019 (the “Fourth Status Report”).¹

¹ Docket No. 258, filed October 31, 2019.

The Fourth 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 this 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 July 1, 2019 through September 30, 2019, the Receiver has billed a total of 86.9 hours for services to the Receivership Estate. The Receiver is seeking approval for the payment of fees totaling \$31,284.² *See* Exhibit A.

b. Parr Brown: From July 1, 2019 through September 30, 2019, Parr Brown has billed a total of 1,805.7 hours for legal services to the Receivership Estate. Parr Brown is seeking approval for the payment of fees and expenses totaling \$416,014.96 of which \$396,624.50 is for fees and \$19,390.46 is for out-of-pocket expenses. *See* Exhibit B. These amounts include a voluntary write down of \$6,760.50.

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

Exhibit A-1**Administration of Receivership Estate**

During this Application Period, the Receiver assisted his accountants with various tax related issues and worked closely with his legal counsel to respond to subpoena requests from the class action styled as *Gregory, et al. v. Zions Bancorporation*, Case No. 2:19-CV-00015-PMW.

Exhibit A-2**Asset Analysis and Recovery**

The Receiver worked closely with his legal counsel to continue contacting and negotiating with various potential net winners. This required ongoing coordination with the receivership team to ensure that all RRC investors were analyzed and accounted for in BRG's net winner analyses and Parr Brown's litigation matrix. As the Receiver identified these net winners, he attempted to secure tolling agreements from as many of them as possible. To the extent these agreements were not in place before the November 15, 2019 clawback deadline, the receiver initiated formal litigation against such investors. The Receiver also continued to work towards recovering the \$1.6 million in funds that were transferred out of the Receivership's bank account shortly after the Receiver's appointment.

Exhibit A-3**Disposition of Assets**

The Receiver oversaw and coordinated the negotiation and/or sale of various real property during the Application Period. For example, over the past several months, several interested buyers have been in contact with the Receiver and his brokers to try and reach a final agreement for the sale of Huge Studios and the Victorian Property. In response to such interest, the Receiver has engaged in ongoing review and analysis of various offers, counteroffers, and other correspondence from such buyers and the Receiver's real estate brokers.

Exhibit A-4

Claims Administration

During this Application Period, the Receiver helped prepare and finalize the Receivership claims process, which allows interested parties to file a claim against the Receivership Estate for certain losses. As such, the Receiver helped draft and review the resulting claim form, bar date notice, instructions, and motion seeking approval of the claims process. The Receiver also continued to correspond with the Attorney General's Office about the Receivership's progress and its efforts surrounding the claims process.

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 this Application Period, Parr Brown continued to manage and keep secure the various real and personal property within the Receivership Estate. This 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.

Parr Brown also drafted and served subpoenas on several investors, metal dealers, and other related entities to help gather information about prior transactions involving the

Receivership Defendants. Parr Brown also worked to respond to various subpoena requests from the Zions class action and coordinated the resulting production of such documents.

Exhibit B-2

Asset Analysis & Recovery

This Application Period, Parr Brown worked closely with the Receiver's forensic accountants to review and analyze the cash and metal transactions associated with Mr. Rust's silver pool. As potential net winners of the Receivership Estate were identified, Parr Brown attempted to contact these investors to gather information about their silver investments and to try and negotiate a favorable settlement arrangement with them. These efforts involved reviewing various investor records, drafting and sending out demand letters, responding to and negotiating with investors and their legal counsel about the Receiver's claims, drafting and securing tolling agreements, and preparing complaints in anticipation of formal litigation. These efforts have been extensive given the vast amount of metal transactions at issue in this case and the substantial number of investors involved in Mr. Rust's silver pool. Parr Brown continues to coordinate with the Receiver's numismatic expert and forensic accounts to determine the most effective way to value the metal deposits and withdrawals that were made by such investors.

Parr Brown also continued its efforts to recover the \$1.6 million in funds that were transferred to a Zions' customer from RRC's bank accounts shortly after the Receiver was appointed. As set forth more fully in the Fourth Status Report, the Zions customer has objected to the Receiver's recovery of these funds and is working with Parr Brown to coordinate discovery with respect to this issue. Parr Brown also reviewed and resolved several consignment issues surrounding the RRC inventory this Application Period and obtained three appraisal reports for the Victorian property in Salt Lake City, Utah.

Exhibit B-3

Disposition of Assets

This Application Period, Parr Brown continued to coordinate with the Receiver's real estate brokers and potential buyers to negotiate a favorable purchase price for Huge Studios and the Victorian property. As a result of these efforts, the Receiver entered into a contract for the sale of the Victorian property and has now sold this property. Parr Brown and the Receiver have also made significant headway with various prospective buyers for the Huge Studios property and have entered into a purchase agreement for that property.

Parr Brown also continued to review and analyze the objections it received in response to the Receiver's Motion to Liquidate the RRC Inventory filed earlier this year. *See* Dkt. No. 168. As part of these efforts, Parr Brown has drafted a reply to these objections and intends to file this response with the Court during the next Application Period. To support the recommendations set forth by the Receiver in that reply, Parr Brown has evaluated and analyzed the documentation provided by the objecting parties and compared them to the records kept by RRC. As necessary, Parr Brown has also worked with the Receiver's numismatic expert to make sure its recommendations to the Court are in the best interest of the Receivership Estate.

Parr Brown also began drafting a motion to turnover consigned items that were being held at RRC and is currently seeking information about how to liquidate the remaining intellectual property within the Receivership Estate. Parr Brown also started examining the most effective way to liquidate the Wyndham by WorldMark timeshare interest and is corresponding with potential purchasers and brokers about the sale of that asset.

Exhibit B-4

Claims Administration

During this Application Period, Parr Brown worked with the Receiver and BRG to finalize a claims process and claim form for the Receivership Estate. After the Court granted the

Receiver's Motion Seeking Approval of the Proposed Claim Procedures, *see* Dkt. No. 239, Parr Brown coordinated publication notice of the claims process in various states and arranged to have over 4,000 hardcopies of the claim form sent out to interested parties. During this process, Parr Brown received and responded to various questions from potential claimants and implemented a tracking system to identify all claims filed against the Receivership Estate. After the claims bar date of October 4, 2019, Parr Brown began reviewing all claim forms received by the Receivership Estate to determine whether such claims should be allowed or denied.

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

BRG has assisted the Receiver with the review of documents received from various parties produced voluntarily or under subpoena in order to identify and reconcile various information and Receivership data. BRG has also coordinated with outside professionals in order to obtain access to the historical transaction and accounting information of RRC and its related entities.

Asset Identification, Preservation & Liquidation

BRG has assisted the Receiver in analyzing the books and records of the Receivership Defendants and has provided financial information and analyses related to various RRC entities and other entities of interest to the Receiver. The information and analyses provided by BRG is important to assisting the Receiver in identifying assets and in negotiating with third parties. BRG has also assisted the Receiver in connection with due diligence requests of potential buyers of Receivership assets, as well as settlement discussions with third parties.

Claims Process

BRG has assisted the Receiver in developing an efficient and effective claims process, including the claims motion filed with the Court, notification to potential claimants, and the recording and tracking of filed claims.

Cash Receipt and Disbursement Analysis

RRC and its related entities historically have used QuickBooks as their accounting software. However, during the mid to late part of 2018, RRC and R Legacy Entertainment transitioned to a new accounting platform known as Acumatica. Acumatica is a web based accounting software program. BRG has reviewed and extracted general ledger activity from both QuickBooks and Acumatica for RRC and its related entities. The data extracted to date consists of nearly 400,000 transactions spanning from 2002 through 2018. From this data, BRG has identified nearly 110,000 cash related transactions from which it has created a cash receipt and disbursement database.

BRG has continued the process of categorizing the cash transactions by transaction type (i.e. investor contributions, disbursements to investors, purchases, sales, operating expenses, etc.). Additionally, BRG continued to identify and add relevant information in order to provide the Receiver with an accurate picture of potential claims by investors and others, as well as potential claims to pursue.

In order to provide a complete picture of the Receivership Defendants' financial records, the data has been compared, validated, and in some instances supplemented by information obtained from financial institutions.

Net Winner/Claims Analysis

BRG has continued to perform extensive analysis of cash receipt and disbursement

activity, transaction support, investor files, email communications, and information received from individual investors and investor groups through questionnaire responses and claim filings. BRG then uses the information ascertained in such records to identify and determine the amount of funds invested and draws taken by each individual investor and investor group. 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 involve investments and draws using physical metals, which are then converted and credited to the investor’s account. This information is not captured in the cash receipt and disbursement activity and is only identified 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 pooled together. Sometimes investors were given their own investment account within the group, and at other times, they were simply added to another 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 various sources required to be analyzed and reviewed in order to provide the Receiver with an accurate picture and summary of each investor’s activity, this analysis has proven to be extremely complicated and time consuming to complete.

Notwithstanding the difficulties noted above, BRG’s analysis has been critical in assisting the Receiver to identify potential claw backs to pursue, as well as potential claims by

investors. BRG has developed and provided these analyses to the Receiver to be used in discussions, negotiations and potential recoveries. BRG has also been involved in assisting the Receiver with responding to investor's and their counsel's requests for documentation. Furthermore, BRG has assisted the Receiver in his communications with investors and their counsel to obtain additional information and support regarding their investments.

Ponzi Analysis

BRG has assisted the Receiver in analyzing and evaluating various aspects of the alleged Rust Ponzi scheme, including the duration and size of the alleged scheme and the various indicators and factors that support the Ponzi analysis. The work performed has included, but is not limited to, discussions with RRC employees and detailed investigation and analysis of RRC's bank account activity, various "point-of-sale" systems and data, QuickBooks accounting records, tax returns and accountant work papers, sales and purchase orders, investor statements, RRC receipts, investor questionnaires, filed claims, and RRC's emails, electronic files, and hard copy documentation. The analysis is ongoing given the volume of data and information being analyzed.

Tax Compliance, Analysis & Preparation

BRG has worked closely with the Receiver and other professionals in order to secure information, including asset valuation information, needed to prepare final income tax returns for RRC related entities under the Receiver's control. BRG has met with the Receiver and other professionals on multiple occasions to inform the Receiver of specific tax issues which arise in a Ponzi Scheme case, as well as tax compliance requirements that must be adhered to in a Receivership.

BRG has read and analyzed correspondence received from federal and state taxing

authorities. BRG has responded, as appropriate, to tax correspondence. BRG met with and corresponded with the Receiver and various other professionals regarding resolution of outstanding tax issues. BRG performed tax research related to various income tax and other tax issues that arose during administration of the Receivership Estate.

BRG analyzed 2018 financial information of Writers Den, LLC, Torque Entertainment, R Legacy Entertainment, R Legacy Investments, R Legacy Racing, and Rhythm & Pace and prepared supporting work papers to be used in the preparation of the 2018 income tax returns. Included with the work paper preparation, BRG prepared detailed depreciation schedules for each applicable entity. BRG also prepared the 2018 federal and state income tax returns for the aforementioned entities. The completed returns were reviewed in order to ensure completeness and accuracy. Corrections and updates were made as was necessary, and BRG ensured the finalized income tax returns were electronically filed with the proper taxing authorities.

Tax Valuation

Pursuant to the Receiver's request, BRG performed a valuation of RRC based on the assets within the Receivership (the "Receivership Assets") to establish the tax basis of assets that were transferred from the various RRC debtor entities (the "Debtor Entities") to the Receivership as of November 15, 2018, the date the receivership order was entered (the "Receivership Entry Date"). The Receivership Entry Date represents the valuation date.

Given that BRG was preparing tax returns for both the Receivership as well as the Debtor Entities, it was necessary to identify in which Debtor Entity each asset existed prior to the creation of the Receivership on November 15, 2018. BRG worked closely with the Receiver, his professionals, and others to identify the Receivership Assets, confirm in which Debtor Entity they resided prior to the creation of the Receivership, and assess the fair market value of the

Receivership Assets. BRG's value assessment also involved analyzing 2018 financial information of Writers Den, LLC, Torque Entertainment, R Legacy Entertainment, R Legacy Investments, R Legacy Racing, and Rhythm & Pace.

VI. PRIOR REQUESTS AND INTERIM NATURE OF REQUEST

16. The Receiver has previously filed three interim fee applications,³ all of which were approved by the Court. *See* Dkt. No. 153, 203, 247.

17. This is the Fourth 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 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,

³ 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. The Receiver's Third Interim Fee Application was filed on September 4, 2019. *See* Dkt. No. 241.

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 \$31,284; Parr Brown's fees in the amount of \$396,624.50 and out-of-pocket expenses of \$19,390.46; and BRG's fees in the amount of \$412,586.50 and out-of-pocket expenses of \$81.48; and (ii) authorizing the Receiver to pay these fees and reimburse the expenses from the Receivership Estate once the Receiver has recovered for 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.

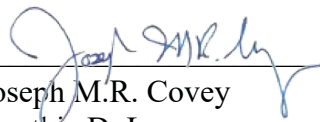
DATED this 31st day of December 2019.

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 **FOURTH INTERIM FEE APPLICATION** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on December 31, 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