

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

PARR BROWN GEE & LOVELESS, P.C.

101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532-7750

Attorneys for Jonathan O. Hafen as Receiver

**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,
GAYLEN DEAN RUST, an individual,
DENISE GUNDERSON RUST, an individual,
and 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 HEARING TO
CONFIRM PRIVATE SALE OF HUGE
STUDIOS**

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

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Jonathan O. Hafen, the Court-Appointed Receiver, hereby submits this Motion for Hearing to Confirm Private Sale of Huge Studios (this “Motion”).

INTRODUCTION

The Receiver is the owner of certain real property located at 352 South 500 East, Salt Lake City, Salt Lake County, Utah 84102 (the “Property”) which was formerly operated as a music production studio known as Huge Studios. The Receiver has entered into a Real Estate Purchase Agreement for the sale of the Property (the “Purchase Agreement”) with Widewaters Property Development Company, Inc. (the “Buyer”) for a sale price of \$3,025,000, subject to Court approval. A copy of the Purchase Agreement is attached hereto as Exhibit A. The Receiver asks this Court for an order setting a hearing at which the Court may consider and confirm the sale. The Receiver has met all of the statutory requirements under 28 U.S.C. § 2001 to sell the Property. Specifically, the Receiver has secured three independent appraisers to value the Property, the sale price exceeds two-thirds of the appraised value, and the Receiver has published notice of the sale at least 10 days in advance of the sale’s confirmation. Moreover, the Receiver also requests that the Court affirm its prior Order authorizing the Receiver to pay the agreed upon outstanding amount owed to Keystone Real Estate Lending Fund, L.P. (“Keystone”) from the net sale proceeds of the Property. *See* Order Granting Motion for Hearing to Confirm Private Sale of Victorian Property (“Order Confirming Sale of Victorian Property”), Dkt. No. 264.

MEMORANDUM

This Court’s November 27, 2018 Order Appointing Receiver and Staying Litigation, Dkt. No. 54 (the “Order”), authorizes and directs the Receiver to take control of Defendants’ assets and provides: “Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28. U.S.C. § 2001 and 2004, the Receiver will be

authorized to sell, and transfer clear title to, all real property to the Receivership Estates.” Order, Dkt. No. 54, at 15 ¶ 38. The Order also contemplates that the Receiver would employ professionals to assist him in discharging his duties, including financial and business advisers as well as real estate agents:

To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers

Order, Dkt. No. 54 at 5 ¶ 8(F).

The Receiver requests that this Court confirm the proposed sale of the Property as required by 28 U.S.C. § 2001. Section 2001(b) authorizes a court to order the sale of real property at a private sale if the court finds that the sale is in the best interest of the estate after considering the evaluation of three court-appointed appraisers (the sale may not be less than two-thirds of the appraised value); the terms of the sale are published in a newspaper of general circulation at least 10 days before confirmation; and notice of the hearing is published to all interested parties.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. §§ 2001(b).

To comply with his duties under the Order and 28 U.S.C. § 2001, the Receiver filed a motion seeking this Court’s approval to engage three independent appraisers to value the Property, which this Court granted. Dkt. No. 147. These appraisals are attached hereto as Exhibits B, C, and D. As reflected in these exhibits, appraiser Paul W. Throndsen of Appraisal Group, LLC valued the Property at \$3,600,000; John M. Blaser of Colliers International valued the Property at \$4,000,000; and Matthew Limpert of Van Drimmelen & Associates Inc. valued the Property at \$3,450,000. The contemplated sale price of \$3,025,000 greatly exceeds two-thirds of the average appraised price (\$2,455,555.31), thus satisfying the sale price requirement of 28 U.S.C. § 2001(b).

On Monday, December 19, 2019, the Receiver published notice of the sale’s terms in *The Salt Lake Tribune* and *Deseret News*, which are both newspapers of general circulation throughout Utah (the “Notice”). Proof of publication and a copy of the Notice is attached hereto as Exhibit E. The Notice identifies the Property, lists the sale price, and invites any higher or better offers. Ten days have expired since the Receiver first published the notice, and the Receiver has not received any offer to purchase the Property for an amount above the sale price.

Once the Court sets a hearing date, the Receiver will ensure that all interested parties receive notice of the hearing by publishing this Motion on the Receiver’s website (rustrarecoinreceiver.com) and by emailing the hearing date to all those listed on the Receiver’s master mailing matrix.

The Receiver also requests authorization to pay some of the Property’s net sale proceeds to Keystone—a hard money lender—to satisfy the agreed-upon amount due under its secured lien against the Property. *See Order Confirming Sale of Victorian Property*, Dkt. No. 264 (authorizing “any outstanding amounts owed to Keystone to be paid from the sale of the Huge Studios

property”). This payment will be made directly to Keystone at closing and will fully satisfy Keystone’s secured claim.

CONCLUSION

Based on the foregoing, the Receiver believes that he has satisfied all of the requirements of 28 U.S.C. § 2001. Accordingly, the Receiver respectfully requests that the Court set a hearing at which the Court will grant this Motion. A proposed Order is attached hereto.

DATED this 31st day of December 2019.

PARR BROWN GEE & LOVELESS

/s/ Joseph M.R. Covey
Joseph M.R. Covey
101 South 200 East, Suite 700
Salt Lake City, UT 84111
(801) 532-7840
jcovey@parrbrown.com
Attorney for Receiver Jonathan O. Hafen

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION FOR HEARING TO CONFIRM PRIVATE SALE OF HUGE STUDIOS** 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.

Kristen R. Angelos UTAH FEDERAL DEFENDER OFFICE 46 W BROADWAY STE 110 SALT LAKE CITY, UT 84101 (801)524-4010 kris_angelos@fd.org	Walter F. Bugden BUGDEN & ISAACSON LLC 445 E 200 S STE 150 SALT LAKE CITY, UT 84111 (801)467-1700 wally@bilaw.net
Jennifer Juniper Chapin COMMODITY FUTURES TRADING COMMISSION 4900 MAIN ST STE 500 KANSAS CITY, MO 64112 (816)960-7746 jchapin@cftc.gov	P. Matthew Cox SNOW CHRISTENSEN & MARTINEAU 10 EXCHANGE PLACE 11TH FL PO BOX 45000 SALT LAKE CITY, UT 84145-5000 (801)521-9000 pmc@scmlaw.com
Andrew G. Deiss DEISS LAW PC 10 W 100 S STE 425 SALT LAKE CITY, UT 84101 (801)433-0226 adeiss@deisslaw.com	Sean N. Egan SOUTH TEMPLE TOWER STE 1505 136 E SOUTH TEMPLE SALT LAKE CITY, UT 84111-1139 (801)363-5181 (801)363-5184 (fax) seannegan@sneganlaw.com
Paula Woodland Faerber UTAH ATTORNEY GENERALS OFFICE 160 E 300 S 5TH FLOOR SALT LAKE CITY, UT 84114 (801)366-0248 pfaerber@agutah.gov	Jacob L. Foncesbeck SMITH WASHBURN LLP 8 E BROADWAY STE 320 SALT LAKE CITY, UT 84111 (801)584-1800 jfonnesbeck@smithwashburn.com
Robert K. Hunt UTAH FEDERAL DEFENDER OFFICE 46 W BROADWAY SUITE 110 SALT LAKE CITY, UTAH 84101 (801)524-4010 robert_hunt@fd.org	Jennifer R. Korb UTAH ATTORNEY GENERAL'S OFFICE 160 E 300 S 5TH FL SALT LAKE CITY, UT 84114 (801)366-0310 jkorb@agutah.gov

<p>Thomas M. Melton UTAH ATTORNEY GENERAL'S OFFICE 160 E 300 S STE 500 SALT LAKE CITY, UT 84111 (801)366-0320 tmelton@agutah.gov</p>	<p>Corey Drew Riley DEISS LAW PC 10 W 100 S STE 425 SALT LAKE CITY, UT 84101 (801)433-0226 criley@deisslaw.com</p>
<p>John Robinson, Jr. DEISS LAW PC 10 W 100 S STE 425 SALT LAKE CITY, UT 84101 (801)433-0226 jrobinson@deisslaw.com</p>	<p>Thomas L. Simek COMMODITY FUTURES TRADING COMMISSION 4900 MAIN ST STE 500 KANSAS CITY, MO 64112 (816)960-7760 tsimek@cftc.gov</p>
<p>Jessica Stengel 46 W BROADWAY STE 110 SALT LAKE CITY, UT 84101 (801)524-4010 jessica_stengel@fd.org</p>	<p>Richard A. Van Wagoner SNOW CHRISTENSEN & MARTINEAU 10 EXCHANGE PLACE 11TH FL PO BOX 45000 SALT LAKE CITY, UT 84145-5000 (801)521-9000 rvanwagoner@scmlaw.com</p>
<p>D. Loren Washburn SMITH WASHBURN LLP 8 E BROADWAY STE 320 SALT LAKE CITY, UT 84111 (801)584-1800 lwashburn@smithwashburn.com</p>	<p>Steven T. Waterman DORSEY & WHITNEY LLP 111 S MAIN ST 21ST FL SALT LAKE CITY, UT 84111-2176 (801)933-7360 waterman.steven@dorsey.com</p>
<p>Brenda E. Weinberg DEISS LAW PC 10 W 100 S STE 425 SALT LAKE CITY, UT 84101 (801)933-226 bweinberg@deisslaw.com</p>	<p>Robert G. Wing UTAH ATTORNEY GENERAL'S OFFICE (160-5-140872) 160 E 300 S 5TH FLOOR PO BOX 140872 SALT LAKE CITY, UT 84114-0872 (801)599-6891 rwing@agutah.gov</p>

/s/ Joseph M.R. Covey _____