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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,  
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 MAIN  
STREET PROPERTY IN HOMER,  
ALASKA**

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 Main Street Property in Homer, Alaska (this “Motion”).

### **INTRODUCTION**

The Receiver is the owner of certain real property located at 3657 and 3637 Main Street, Homer, Alaska 99603 (the “Property”). The Receiver has entered into a Non-Residential Purchase and Sale Agreement for the sale of the Property (the “Purchase Agreement”) with Jason Davis (the “Buyer”) for a sale price of \$220,000, 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.

### **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. 137. These appraisals are attached hereto as Exhibits B, C, and D. As reflected in these exhibits, appraiser Barbara J. Bulluomini of Reliant LLC valued the Property at \$325,000; Lydia W. Larson of Rikrland Valuation Services, LLC valued the Property

at \$295,500; and Clint Lentfer of Alaska Appraisal Consulting Group, LLC valued the Property at \$315,000. The contemplated sale price of \$220,000 exceeds two-thirds of the average appraised price of \$207,886.81, thus satisfying the sale price required by 28 U.S.C. § 2001(b).

Even though the sale price is below the appraised values, the Receiver believes the price reflects the Property's market value because: (i) it has been actively marketed by a capable, local broker for over six months, (ii) several offers have been received and the offer presented to the Court is the highest offer, and (iii) there is a problem with the Property's foundation that does not seem to be adequately addressed in the appraisals that is negatively impacting the value of the Property.

On Thursday, January 9, 2020, the Receiver published notice of the sale's terms (the "Notice") in the *Homer News*, a newspaper of general circulation throughout Homer, Alaska and the Kenai Peninsula generally, which is where the Property is located. 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 at least 10% 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](http://rustrarecoinreceiver.com)) and by emailing the hearing date to all those listed on the Receiver's master mailing matrix.

### **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 23rd day of January 2020.

**PARR BROWN GEE & LOVELESS**

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **MOTION FOR HEARING TO CONFIRM PRIVATE SALE OF MAIN STREET PROPERTY IN HOMER, ALASKA** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on January 23, 2020, 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* \_\_\_\_\_