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*Attorneys for Receiver Jonathan O. Hafen*

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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.

**FIFTH 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 fifth 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”); the Receiver’s accountants, Berkeley Research Group (“BRG”); and the Conflict Receiver, Wayne Klein, and his counsel, Manning Curtis Bradshaw & Bednar, for the period of October 1, 2019 through December 31, 2019 (the “Application Period”).<sup>1</sup> 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 *Fifth Quarterly Status Report*, which includes a status report for the period of October 1, 2019 through December 31, 2019 (the “Fifth Status Report”).<sup>2</sup>

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<sup>1</sup> Three time entries from the Conflict Receiver’s invoice are from months prior to this quarter.

<sup>2</sup> Docket No. 287, filed January 30, 2020.

The Fifth 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, his team, and the Conflict Receiver and his counsel 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, 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 October 1, 2019 through December 31, 2019, the Receiver has billed a total of 102.4 hours for services to the Receivership Estate. The Receiver is seeking approval for the payment of fees totaling \$36,864.<sup>3</sup> *See* Exhibit A.

b. Parr Brown: From October 1, 2019 through December 31, 2019, Parr Brown has billed a total of 2,390.2 hours for legal services to the Receivership Estate. Parr Brown is seeking approval for the payment of fees and expenses totaling \$570,203.64 of which

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<sup>3</sup> No out-of-pocket expenses were incurred by the Receiver during this Application Period.

\$545,416.50 is for fees and \$24,787.14 is for out-of-pocket expenses. *See* Exhibit B. These amounts include a voluntary write down of \$5,089.00.

c. BRG: From October 1, 2019 through December 31, 2019, BRG has billed a total of 1,117.7 hours providing forensic, tax, and general accounting services to the Receivership Estate. BRG is seeking approval for the payment of fees and expenses totaling \$277,999.29, of which \$276,668 is for fees and \$1,331.29 is for out-of-pocket expenses. *See* Exhibit C. These amounts include a voluntary write down of \$3,794.00.

d. Conflict Receiver: From October 1, 2019 through December 31, 2019, Conflict Receiver, Wayne Klein, and his legal counsel billed a total of 17.9 hours for services to the Receivership Estate. The Conflict Receiver and his counsel are seeking approval for the payment of fees and expenses totaling \$5,561, of which \$5,161 is for fees and \$400 is for out-of-pocket expenses. *See* Exhibit D. These amounts include a voluntary write down of \$25.00.

11. The amounts requested reflect a total of \$8,908 in voluntary reductions by the respective professionals in an exercise of their billing judgment.

12. The Receivership Estate has sufficient funds to pay all amounts requested. However, as set forth above, the Receiver and his professionals will not take any fees or be reimbursed for any expenses from the Receivership Estate until *after* the Receiver recovers at least three times the total amount of the fees requested in this and all previous fee applications.

## V. SUMMARY OF EXHIBITS

13. Professional services have been recorded contemporaneously with services being rendered and these services, as well as the expenses incurred, are detailed in the attached three Exhibits described below.





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 and filing the Receiver's Reappointment Order in various federal districts to ensure that the Receiver has continued control over such Receivership assets, *see* Dkt. No. 251, 253, and also coordinating ongoing insurance payments to ensure that such assets remain properly protected. 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 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 continued to work closely with the Receiver's forensic accountants to review and analyze the cash and metal transactions associated with Mr. Rust's silver pool. As a result of these efforts, Parr Brown was able to identify the potential net winners of the Receivership Estate prior to the November 15, 2019 filing deadline. To ensure the Receiver's right to recover these funds was preserved after this deadline, the Receiver filed 30 separate claw back actions against approximately 124 different investors. To minimize the costs of litigation associated with the Receiver's recovery efforts, Parr Brown also executed tolling agreements with over 170 potential net winners to facilitate further discussion and negotiations with such investors regarding their transactions with the Receivership Defendants. This has involved ongoing correspondence with investors and their counsel to gather information about the investor's silver transactions and to try and negotiate favorable settlement arrangements with



them. Moreover, given the vast number of investors and metal transactions involved in Mr. Rust's silver pool, these recovery efforts have required a significant amount of analysis and review. As a result of this work, Parr Brown has successfully recovered approximately \$226,400 in net proceeds from investors during this Application Period.

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. While Parr Brown has engaged in settlement negotiations with this investor, the Receiver has requested an evidentiary hearing in the coming quarter during which the Court may resolve this matter.

### **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. As a result of these efforts, Parr Brown secured an offer to purchase Huge Studios for \$3,025,000, which this Court ultimately reviewed and approved. *See* Dkt. No. 278. Parr Brown anticipates the closing of this property next quarter. Additionally, Parr Brown coordinated with the Receiver's real estate broker in Homer, Alaska to secure the sale of the Main Street property to a third-party buyer for \$220,000, subject to Court approval.

Parr Brown has also been working to liquidate the music and sound equipment being stored at Huge Studios. As a result of these efforts, Parr Brown has recovered approximately \$156,674 in proceeds from the sale of such equipment. Because a relatively significant number of items still remain at Huge Studios, Parr Brown worked with the Receiver to retain the services of a sales agent, Michael Greene, to facilitate the sale of the remaining equipment. Parr Brown hopes to recover at least \$75,000 for the remaining equipment.

Parr Brown also finalized its review and analysis of the objections it received in response to the Receiver's Motion to Liquidate the RRC Inventory filed earlier last year. *See* Dkt. No. 168. Accordingly, Parr Brown filed a reply to these objections, and the Court has set a hearing date of February 25, 2020 to determine all matters related to the sale of the RRC inventory.

**Exhibit B-4**

**Claims Administration**

Last application period, Parr Brown arranged to have over 4,000 hardcopies of the Court-approved claim form sent out to all potential creditors of the Receivership Estate. The deadline for submitting all claim forms was October 4, 2019. In response to this process, Parr Brown has received over 605 claim forms from potential creditors. As such, during this Application Period, Parr Brown made significant headway reviewing and verifying the various claim forms submitted to the Receivership Estate. This involved ongoing correspondence with both the Receiver and his accountants at BRG. At this point, Parr Brown has reviewed most of the submitted claims forms and has nearly completed its analysis of all investor claims.

This Application Period, the Receiver also continued to research and review the best method by which to distribute the Receivership's net proceeds to allowed creditors of the Estate. The Receiver has drafted and intends to file a motion to approve this proposed distribution plan in the coming weeks.

**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 and his counsel with the review of documents received from various parties produced voluntarily or under subpoena in order to identify and reconcile

the information and 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 and his counsel in analyzing the books and records of the Receivership Estate and providing financial information and analyses related to various RRC entities and interests. 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 continued to assist the Receiver and his counsel in developing an efficient and effective claims process, including the claims motion filed with the Court, notification to potential claimants, as well as the recording, tracking and reconciliation 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, as well as 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 has continued to identify and add relevant information in order to provide the Receiver with an accurate picture of potential investor and creditor claims and potential claims to pursue.

Furthermore, 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 various 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 through questionnaire responses and claim filings. This information has allowed BRG 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 documentation such as RRC receipts, email communications, investor statements, and investor files.

An additional 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 investor groups with their investments being pooled together. Sometimes investors were given their own investment account within the group and sometimes they were simply added to

another previously 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 that must be analyzed to provide the Receiver with an accurate picture and summary of each investor's activity, this analysis has proven to be a complex and time-intensive process.

Notwithstanding the difficulties noted above, BRG's analysis has been critical in assisting the Receiver to identify potential claw backs and potential claims by investors. BRG has developed and provided these analyses to the Receiver and his counsel to be used in discussions, negotiations and potential recoveries. BRG has also been involved in assisting the Receiver and his counsel with responding to document requests from investors and their counsel. Additionally, BRG has assisted the Receiver in communications, including attending various meetings, with investors and their counsel to obtain additional information and support regarding their investments. Furthermore, BRG has coordinated various meetings and discussions with Gaylen Rust to obtain clarification and additional insight on investor account activity.

### **Ponzi Analysis**

BRG has continued to assist the Receiver in analyzing and evaluating various aspects of the alleged Rust Ponzi scheme, including the duration, size, and various identifying factors consistent with Ponzi activity in an effort to seek a "Ponzi" presumption from the Court. The work performed has included, but is not limited to, 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, discussions with RRC employees, sales and purchase orders, investor statements, RRC receipts, investor questionnaires, filed claims, and the

company's email, electronic files, and hardcopy of existing 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 in order to prepare final income tax returns for RRC and 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 after appointment of the Receiver.

BRG analyzed 2018 financial information and valuation schedules of RRC, the Receivership, and Gaylen and Denise Rust. BRG also 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 Receivership entity and the 2018 federal and state income tax returns for such entities. Additionally, BRG reviewed previously prepared income tax returns in order to gather relevant information needed in the preparation of the RRC Receivership income tax returns. The completed returns were reviewed in order to ensure completeness and accuracy. Corrections and updates were made as was necessary. BRG caused the finalized income tax returns to be electronically filed with the proper taxing authorities.

### **Tax Valuation**

Pursuant to the Receiver's request, BRG has performed a valuation of RRC and the Receivership assets in connection with establishing 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.

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. 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.

### **Exhibit D—Time Records of Conflict Receiver and His Counsel**

This section breaks down the total fees assessed by the Conflict Receiver and his counsel, which are discussed in more detail below.

After the Conflict Receiver coordinated with the Receiver and his counsel to draft and file the Motion to Appoint Conflicts Receiver with the Court, *see* Dkt. No. 244, the Conflict Receiver began preparing and executing tolling agreements with potential net winners to limit the number of necessary filings. The Conflict Receiver and his counsel have also engaged in correspondence with potential claw back defendants and have drafted and filed ancillary litigation with the Court regarding potential net winner claims. The Conflict Receiver continues

to work towards a resolution of these recovery matters and correspond with investors and their legal counsel regarding the same.

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

16. The Receiver has previously filed four interim fee applications,<sup>4</sup> all of which were approved by the Court. *See* Dkt. Nos. 153, 203, 247, 275.

17. This is the Fifth 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 file 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 limit 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,

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<sup>4</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. The Receiver's Third Interim Fee Application was filed on September 4, 2019. *See* Dkt. No. 241. The Receiver's Fourth Interim Fee Application was filed on December 31, 2019. *See* Dkt. No. 274.



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 \$36,864; Parr Brown's fees in the amount of \$545,416.50 and out-of-pocket expenses of \$24,787.14; BRG's fees in the amount of \$276,668 and out-of-pocket expenses of \$1,331.29; and the Conflict Receiver and his counsel's fees in the amount of \$5,161 and out-of-pocket expenses of \$400; 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 E.

The Receiver, Parr Brown, BRG, and the Conflict Receiver and his counsel verify under penalty of perjury that the foregoing is true and correct.

DATED this 9th day of March 2020.

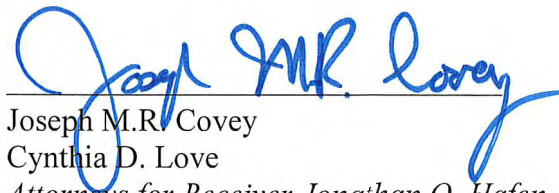
**RECEIVER**



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Jonathan O. Hafen, Receiver

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



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Joseph M.R. Covey

Cynthia D. Love

*Attorneys for Receiver Jonathan O. Hafen*

**BERKELEY RESEARCH GROUP**

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Ray Strong

**CONFLICT RECEIVER**

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Wayne Klein, Conflict Receiver

**MANNING CURTIS BRADSHAW & BEDNAR**

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David. C. Castleberry

*Attorney for Conflict Receiver Wayne Klein*

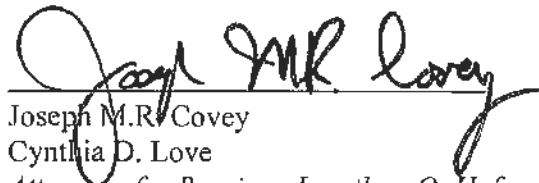
DATED this 9th day of March 2020.

**RECEIVER**



Jonathan O. Hafen, Receiver

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



Joseph M.R. Covey

Cynthia D. Love

*Attorneys for Receiver Jonathan O. Hafen*

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**CONFLICT RECEIVER**

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Wayne Klein, Conflict Receiver

**MANNING CURTIS BRADSHAW & BEDNAR**

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David C. Castleberry


*Attorney for Conflict Receiver Wayne Klein*

DATED this 9th day of March 2020.

**RECEIVER**

  
Jonathan O. Hafen, Receiver

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

  
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Wayne Klein, Conflict Receiver

**MANNING CURTIS BRADSHAW & BEDNAR**


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David C. Castleberry  
*Attorney for Conflict Receiver Wayne Klein*

DATED this 9th day of March 2020.

**RECEIVER**

  
Jonathan O. Hafen, Receiver

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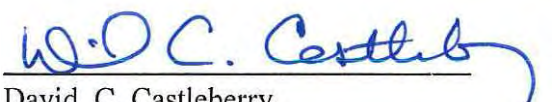
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Ray Strong

**CONFLICT RECEIVER**

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Wayne Klein, Conflict Receiver

**MANNING CURTIS BRADSHAW & BEDNAR**

  
David C. Castleberry  
*Attorney for Conflict Receiver Wayne Klein*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **FIFTH INTERIM FEE APPLICATION** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on March 10th, 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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<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

Joseph M.R. Covey