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Attorney for Denise Rust

**IN THE UNITED STATES DISTRICT  
COURT 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,

vs.

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.

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**REQUEST FOR STATUS CONFERENCE  
RE: CLARIFICATION OF  
ASSET FREEZE ORDER**

**Case No. 2:18-cv-892**

**Judge Tena Campbell**

This Court directed Defendant Denise Gunderson Rust to submit a motion discussing why the assets she identifies should be exempted from the freeze. (ECF #347.) In compliance with that order, by and through undersigned Counsel, Denise Rust submits the following motion and accompanying declaration from Denise Rust.

**Point 1**

**AT THE TIME THE ASSEST FREEZE WAS ORDERED DENISE RUST WAS A RELIEF DEFENDANT AND AS SUCH ANY OF HER PROPERTY NOT ACQUIRED WITH PROCEEDS OF THE DEFENDANTS' FRAUDULENT SCHEME SHOULD NOT BE SUBJECT TO THE FREEZE ORDER.**

On November 13, 2018 plaintiffs filed their complaint. The complaint identified Denise Rust as a relief defendant. (ECF #1) Also, on November 13,2018 Plaintiffs filed their MOTION for Temporary Restraining Order, MOTION for Expedited Discovery, MOTION for Preliminary Injunction and Memorandum in Support. This motion also identified Denise Rust as a relief Defendant. (ECF #4) On November 15, 2018 the Court issued an order Granting Plaintiffs' MOTION for Temporary Restraining Order (ECF # 22). The order issued by the court identified Denise Rust as a relief defendant. It was not until December 6, 2018 that Plaintiffs amended their complaint and converted Denise Rust from a relief defendant to an actual defendant (ECF #56). No additional freeze order was sought by the receiver

Where the CFTC and the State of Utah believes that a party is wrongfully in possession of the proceeds of a Security or Commodity Exchange Act Violation, it may bring an action in federal district court seeking an order requiring that party to relinquish those funds. Such parties are referred to as relief defendants. Relief defendants are nominal defendants who, although not themselves accused of wrongdoing, are alleged to have nonetheless received ill-gotten gains.

The federal securities and commodity exchange laws do not expressly provide the federal or state government with the authority to seek and obtain such relief from a nonculpable third party.

Instead, the government seeks, and federal district courts grant, such relief under the general power of federal district courts to provide equitable relief. Disgorgement of unjustly retained wealth — the relief sought against nominal or relief defendants — is a long-standing remedy within a court's equity powers. *See SEC v. Texas Gulf Sulphur Co.*, 446 F.2d 1301, 1307 (2d Cir. 1971).

Under this equitable theory of recovery, the government treats the bad actor and nonculpable third-party recipient the same — i.e., there is no meaningful difference — for the purpose of disgorgement. *See SEC v. Cross Fin. Servs.*, 908 F. Supp. 718, 726 (C.D. Cal. 1995) Indeed, a court may order the very same relief — disgorgement of all of the fraudulent proceeds — against a person not accused of wrongdoing. *See SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998) **However, courts cannot order relief defendants to return funds where those defendants can show they have a legitimate claim to the funds.** *See CFTC v. Walsh*, 618 F.3d 218, 226 (2d Cir. 2010). *See Also SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir.1998); accord *Janvey v. Adams*, 588 F.3d 831, 834 & 835 n. 2 (5th Cir.2009); *SEC v. Ross*, 504 F.3d 1130, 1144 (9th Cir.2007); *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 191–92 (4th Cir.2002); *SEC v. Cherif*, 933 F.2d at 414 n. 11. Equitable relief is only available where the Government can prove both that assets were illegally obtained and that the nonculpable party has no independent interest or claim to the funds. *Cherif*, 933 F.2d at 414 n. 11.

In this case the CFTC and the State of Utah allege that the Defendants' fraud scheme started in 2008. *See Plaintiffs' Ex Parte Motion For Statutory Restraining Order, Expedited Discovery, Preliminary Injunction, And Other Equitable Relief.* (ECF 4.) Accordingly, under the freeze order that identified Denise Rust as a relief defendant any property acquired by her prior to 2008 should not be subject to disgorgement and consequently not subject to the freeze order. According to the sworn declaration of Denise Rust (attached as Exhibit #1) the listed items, with a few exceptions were all obtained prior to 2008. The piano was acquired in 1985 and paid for by teaching piano lessons. An

antique music cabinet was acquired in 1986, a rocking chair was acquired in 1960 as a gift from her parents, her dining room table and 12 chairs were acquired in 1986, a washer and dryer were wedding presents from her husband's parents, a cedar chest was a Christmas present from her grandparents when she was 16-years-old, a music box was a present from her parents, two leather chairs were purchased in 1995, and a night stand was a gift from her parents on her 16<sup>th</sup> birthday.<sup>1</sup> Additionally, all the jewelry sold by Denise Rust was obtained prior to 2008.

**Point 2**

**UNDER UTAH CODE 78B-5-506 DENISE RUST'S PROPERTY IS EXEMPT FROM THE FREEZE ORDER.**

Beyond the fact that Denise Rust's property is not subject to disgorgement and consequently not subject to the freeze order because it was not acquired with proceeds derived from fraud; it is also exempt because it falls within the exemptions provided by Utah law. Part 5 of Chapter 5 of Title 78B contains Utah's Exemption Act. This act defines and establishes what property is protected from subjection to a judicial process to collect an unsecured debt. Utah Code 78B-5-506(1)(d) provides:

- (1) An individual is entitled to exemption of the following property up to an aggregate value of items in each subsection of \$1,000:
  - (a) sofas, chairs, and related furnishings reasonably necessary for one household;
  - (b) dining and kitchen tables and chairs reasonably necessary for one household;
  - (c) animals, books, and musical instruments, if reasonably held for the personal use of the individual or the individual's dependents; and
  - (d) heirlooms or other items of particular sentimental value to the individual.

§78B-5-505(1)(a)(viii)(A)(I-VI) provides that an individual is entitled to exemption for their washer and dryer; refrigerator; freezer; stove; microwave; and sewing machine. §78B-5-505(1)(a)(viii)(E) provides that an individual is entitled to exemption for their beds and bedding. The property listed in Exhibit #1 all falls into these categories.

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<sup>1</sup> These are just an illustrative example of the property that Denise Rust seeks to keep. For a full listing please see Exhibit 1 to this motion.

**Point 3**

**PERMITTING THE RENTAL OF THE FARMHOUSE**

Denise Rust also requests this court offer guidance on permitting Denis's daughter, Aleesha Franklin, and her family to rent the farmhouse on the property. The farmhouse was rented until recently for \$800 per month. The tenants moved out at the end of September 2020. The farmhouse sits empty. Ms. Franklin and her family formerly resided in Alaska. That home was taken by the receiver. Franklin and her family moved to Utah. They have been residing in Denise Rust's basement. Permitting Ms. Franklin to rent the property would provide rental income for the receiver.

**CONCLUSION**

At the time the freeze order in this case was granted, Denise Rust was a relief defendant. That order has not been amended. As such, the freeze order can only apply to property that Denise Rust obtained with the ill-gotten gains of the Defendants' alleged fraud scheme. Because all the property that Denise Rust seeks to keep, or has disposed of, was obtained decades prior to the alleged fraud scheme, the court should find that the property listed in Exhibit #1 is not subject to the freeze order. Further, the Court should find that the property listed in Exhibit #1 is exempt property under Utah Codes 78B-5-505 and 506.

DATED this 14th day of October, 2020.

BUGDEN & ISAACSON, L.L.C.

By: /s/ Walter F. Bugden, Jr.  
WALTER F. BUGDEN JR.  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the above **REQUEST FOR STATUS CONFERENCE RE: CLARIFICATION OF ASSET FREEZE ORDER** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on October 19, 2020, which sent notice of the electronic filing to all counsel of record, (2) posted on the Receiver's website (rustrarecoinreceiver.com), and (3) email to all those on the Receiver's master mailing matrix.

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