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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.

**SEVENTH 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, R Legacy Investments LLC, Gaylen Dean Rust, Denise Gunderson Rust, Joshua Daniel Rust, and Aleesha Rust Franklin (collectively, “Receivership Defendants”), hereby submits this seventh 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 April 1, 2020 through June 30, 2020 (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 *Seventh Quarterly Status Report*, which includes a status

report for the period of April 1, 2020 through June 30, 2020 (the “Seventh Status Report”).¹ The Seventh 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.

¹ Docket No. 331, filed July 30, 2020.

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 requested *before* the Receiver and his professionals are paid. In this Fee Application, the Receiver has voluntarily written off all time related to the preparation of any fee application and has otherwise made voluntary downward adjustments to fees and expenses as appropriate.

IV. SUMMARY OF AMOUNTS REQUESTED

10. The total amounts requested for the Receiver, his professionals, the Conflict Receiver and his counsel in this Fee Application, including the relevant voluntary write downs, are summarized below:

a. Receiver: From April 1, 2020 through June 30, 2020, the Receiver billed a total of 78.1 hours for services to the Receivership Estate. The Receiver is seeking approval for the payment of fees totaling \$28,116. *See* Exhibit A.

b. Parr Brown: From April 1, 2020 through June 30, 2020, Parr Brown billed a total of 2,709 hours for legal services to the Receivership Estate. Parr Brown is seeking approval for the payment of fees and expenses totaling \$613,978.20 of which \$598,862.00 is for fees and \$15,116.20 is for out-of-pocket expenses. *See* Exhibit B. These amounts include a voluntary write down of \$10,129.00.

c. BRG From April 1, 2020 through June 30, 2020, BRG billed a total of 986.80 hours providing forensic, tax, and general accounting services to the Receivership Estate. BRG is seeking approval for the payment of fees totaling \$299,866.50. *See* Exhibit C. These amounts include a voluntary write down of \$3,071.00.

d. Conflict Receiver and counsel: From April 1, 2020 through June 30, 2020, Conflict Receiver, Wayne Klein, and his legal counsel billed a total of 38.8 hours for services to the Receivership Estate. The Conflict Receiver and his counsel are seeking approval for the payment of fees totaling \$9,784.00. *See* Exhibit D.

11. The amounts requested reflect a total of \$13,200.00 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 Exhibits described below.

14. The Receiver, Parr Brown, BRG, the Conflict Receiver and his counsel have maintained their time in records organized according to tasks, with each task record being maintained in chronological order.

15. The following Exhibits are attached hereto in support of this Fee Application:

Exhibit A—Time Records of Receiver

Exhibit A	Summary by Task
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This section of Exhibit A breaks down the total fees assessed for each of the Receiver’s tasks, which are discussed in more detail below.

Exhibit A-1	Administration of Receivership Estate
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This Application Period, the Receiver worked closely with his legal counsel to draft and file the Motion to Approve Proposed Distribution Plan (the “Motion”). *See* Dkt. No. 298. The Motion asked the Court to establish a procedure whereby interested nonparties could submit objections to the proposed distribution plan directly to the Receiver, who would then lodge those objections with the Court. *Id.* at 21–23. The Court granted the Receiver’s request and established an Objection Procedure. Dkt. No. 302. The Receiver worked with his legal counsel to collect and

categorize objections to the distribution plan pursuant to the Objection Procedure. The Receiver also continued to communicate with the Attorney General's Office to ensure they remain updated about the status of the Receivership Estate and the ongoing claims analysis process and recovery efforts. In addition, the Receiver reviewed certain tax and financial documents related to the administration of the Receivership Estate.

Exhibit A-2 Asset Analysis and Recovery

The Receiver worked closely with his legal counsel during the Application Period in negotiating favorable settlement agreements with net winners. These settlement efforts involved extensive coordination with the Receiver's counsel and required the Receiver to review the supporting documentation and settlement agreements before their execution. The Receiver continued coordinating with investors and their counsel to substantiate the various metal transactions that were associated with such investors. The Receiver also continued to work with his legal counsel in an effort to recover the \$1.6 million in funds that were transferred out of RRC'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 and personal property during the Application Period. These efforts included securing a full-price offer for the Diamond Ridge property in Homer, Alaska. The Receiver also oversaw and approved the sale of certain equipment from Huge Studios as well as the bullion and other items that were part of the Rust Rare Coin inventory. In addition, the Receiver worked with his legal counsel and industry experts to secure an offer for the sale of Musician's Toolkit, which was submitted to the Court and approved. Dkt. No. 319.

Exhibit A-4 Claims Administration

The Receiver and his legal team continued their analysis of the claim forms submitted by potential Receivership claimants. By the end of the Application Period, the Receiver and his team have reviewed over 621 claim forms. As part of the review process, the Receiver has coordinated with his attorneys and accountants to review and verify the claim amounts identified in these forms to determine whether each claim will be allowed or disallowed. At this time, the Receiver has reviewed all claims forms submitted by potential claimants.

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. Parr Brown continued 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 received information about the Receivership's progress.

Exhibit B-2 Asset Analysis & Recovery

As previously reported, after analyzing the cash and metal transactions associated with Mr. Rust's silver pool, Parr Brown was able to identify potential net winners of the Receivership Estate. In order to preserve the Receiver's right to recover funds from net winners, Parr Brown continued to work the 30 separate claw back actions filed against approximately 124 investors (the "Claw Back Defendants"). Parr Brown also continued working with the 170 potential net

winners (the “Net Winners”) with whom they executed tolling agreements in order to facilitate further discussion and negotiations regarding their transactions with the Receivership Defendants. As a result of the Court granting the Receiver’s Motion for Settlement Authority (*See* Dkt. No. 271), Parr Brown worked diligently to communicate and meet with Claw Back Defendants, Net Winners and their counsel to secure favorable settlement agreements where possible. When settlement agreements have not been reached, Parr Brown has taken those actions necessary to prepare for, and are move numerous cases forward through the litigation process. Given the vast number of Claw Back Defendants and Net Winners, these recovery efforts have required a significant amount of analysis and review. As a result of this work, Parr Brown has successfully recovered approximately \$76,000 in net proceeds during this Application Period.

In connection with the claims analysis and claw back recovery efforts, Parr Brown has begun compiling data which will be used to prepare expert reports. These reports will be critical in prosecuting potential claw back filings in the upcoming months.

Parr Brown also continued its efforts to recover the \$1.6 million in funds that were transferred to a Zions Bank customer from RRC’s bank accounts shortly after the Receiver was appointed. After unsuccessful attempts to informally resolve the case with opposing counsel, a hearing was held before the Court on June 16, 2020. The Court granted the Receiver’s motion and ordered the \$1.6 million to be returned to the RRC bank account. *See* Dkt. No. 320. Parr Brown is working with Zions Bank to pursue recovery of that amount.

Exhibit B-3

Disposition of Assets

Parr Brown continues to work closely with the Receiver to coordinate the sale of both real and personal property. This quarter, Parr Brown secured an offer to purchase the last

remaining Alaskan property: the residential home located at 65299 Diamond Ridge Road with two adjacent pieces of raw ground. After receiving previous offers that were far below market value, the Receiver received a full-price offer for the Diamond Ridge property. The Court has approved the sale, and the Receiver anticipates closing in the near term.

Last Application Period, Parr Brown received Court approval to begin liquidating the inventory that was held at RRC. *See* Dkt. No. 294. Accordingly, Parr Brown retained the services of a numismatic expert to conduct auctions of the high-value inventory items. The auctions concluded on May 31, 2020 and brought in over \$778,000 to the Receivership Estate. In addition, Parr Brown solicited bids from local and regional coin dealers to purchase the bullion items that were housed in a secured storage facility. The highest bid came from a local coin dealer who purchased all of the bullion items. As a result of these efforts, over \$600,000 was brought into the Receivership Estate.

Exhibit B-4

Claims Administration

As previously reported, 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. In response to this process, Parr Brown has received over 621 claim forms from potential creditors. During this Application Period, Parr Brown continued the process of 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. To date, Parr Brown has reviewed all claim forms submitted by potential claimants to determine whether such claims will be allowed. All claim forms submitted by investors, trade vendors and customers have been analyzed by comparing the asserted losses with data from the books and records of the Receivership Defendants. Parr Brown anticipates completing its analysis of the remaining employee-related claims next quarter.

This Application Period, Parr Brown worked with the Receiver to create a fair and equitable distribution plan. The Receiver filed a motion with the Court seeking approval of the plan which is the first step towards making an initial interim disbursement to the creditors and claimants of the Receivership Estate. *See* Dkt. No. 298. The Receiver also filed with the Court the formal and informal objections to the distribution plan and the Receiver's response to those objections. *See* Dkt. No. 325 & Dkt. No. 327.

Exhibit C—Time Records of BRG

This section breaks down the total fees assessed by BRG, which are discussed in more detail below.

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.

In connection with its Ponzi analysis, as well as its ongoing analysis of investor activity in connection with net winners and claimants, 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.) to identify and add relevant information in order to provide the Receiver with an accurate picture of cash receipt and disbursement activity.

Additionally, in order to provide a complete picture of RRC's, RLE's, RLR's and RLI's 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 assist the Receiver and his team in reviewing and analyzing filed claims to verify accuracy and reconcile differences between the amounts reported by investors and the data identified in RRC and bank records, as well as the recording and tracking of filed claims.

BRG has continued to perform extensive analysis of cash receipt and disbursement activity, transaction support, investor files, email communications, as well as information received from individual investors through questionnaire responses, claim filings, and document requests for various investors and investor groups in order to identify and determine the amount of funds invested and draws taken by each individual / 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.

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 certain 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 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/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 much more complicated and time consuming to complete.

Notwithstanding the difficulties noted above, BRG's analysis has been critical in assisting the Receiver to identify and verify potential claw backs to pursue, as well as potential claims by investors. BRG has developed and provided these analyses to the Receiver for various investors to be used in discussions, negotiations and potential recoveries. BRG has also been involved in assisting the Receiver to respond to investors and their counsel in providing requested documents and support for its analyses. Additionally, BRG has assisted the Receiver in communications, including attending various meetings and calls, with investors and their counsel to obtain additional information and support regarding investment activity. Furthermore, BRG has coordinated various meetings and discussions with Gaylen Rust to obtain clarification and additional insight regarding investor account activity. Finally, BRG has worked with the Receiver to analyze and review proposed settlement offers from investors to determine the appropriateness and accuracy of such offers and to provide guidance and recommendations in relation to said offers.

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 identified

indicators/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 the Rust Rare Coin’s bank account activity, various “Point-of-Sale” systems and data, QuickBooks accounting records, tax returns and accountant work papers, discussions with Rust Rare Coin employees, sales and purchase orders, investor statements, Rust Rare Coin receipts, investor questionnaire/filed claims, and the company’s email, electronic files, and hard copy existing documentation. The analyses performed have been utilized in the preparation of an extensive declaration that includes thousands of pages of supporting exhibits and appendices to help the Court addressing BRG’s Ponzi scheme conclusions.

Tax Compliance, Analysis & Preparation

BRG analyzed historical tax records in order to secure information requested by the receiver's office as well as for various investors. BRG also researched tax files and other records regarding previously prepared Form 1099 in order to resolve investor inquiries.

BRG reviewed historical federal tax liabilities for Rust Rare Coin, Inc. as well as the Rust’s personal tax liabilities in order to determine whether recent changes to net operating loss carrybacks would be available to the receivership.

BRG prepared an initial draft of the 2019 supporting work papers to be used in the preparation of the 2019 receivership income tax returns. BRG also analyzed cash transactions for the period of January through December 2019 and prepared cash database work papers.

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.

This Application Period, the Conflict Receiver and his counsel continued their correspondence and review of documentation related to various claw back defendants. The Conflict Receiver continues to work towards a resolution of these recovery matters and to correspond with investors and their legal counsel regarding the same.

VI. PRIOR REQUESTS AND INTERIM NATURE OF REQUEST

16. The Receiver has previously filed six interim fee applications,² all of which were approved by the Court. *See* Dkt. Nos. 153, 203, 247, 275, 293, 339.

17. This is the Seventh 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.

² 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. The Receiver's Fifth Interim Fee Application was filed on March 10, 2020. *See* Dkt. No. 292. The Receiver's Sixth Interim Fee Application was filed on August 7, 2020. *See* Dkt. No. 333.

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, 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 \$28,116; Parr Brown's fees in the amount of \$598,862.00 and out-of-pocket expenses of \$15,116.20; BRG's fees in the amount of \$299,866.50; and the Conflict Receiver and his counsel's fees in the amount of \$9,784.00; 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 13th day of November, 2020.

RECEIVER

/s/ Jonathan O. Hafen
Jonathan O. Hafen, Receiver

PARR BROWN GEE & LOVELESS, P.C.

/s/ Joseph M.R. Covey
Joseph M.R. Covey
Cynthia D. Love
Attorneys for Receiver Jonathan O. Hafen

BERKELEY RESEARCH GROUP

/s/ Ray Strong
Ray Strong

CONFLICT RECEIVER

/s/ Wayne Klein
Wayne Klein, Conflict Receiver

MANNING CURTIS BRADSHAW & BEDNAR

/s/ David C. Castleberry
David C. Castleberry
Attorney for Conflict Receiver Wayne Klein

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **SEVENTH INTERIM FEE APPLICATION** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on November 13th, 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

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