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Attorneys for Jonathan O. Hafen, Receiver

**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.

**MOTION TO APPROVE
SETTLEMENT AGREEMENT WITH
CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS**

Case No. 2:18-cv-892

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Jonathan O. Hafen, the Court-Appointed Receiver (the “**Receiver**”) for the assets of Rust Rare Coin Inc., Gaylen Dean Rust, Denise Gunderson Rust, Joshua Daniel Rust, Aleesha Rust Franklin, R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, the “**Receivership Defendants**”), respectfully requests authority from the Court to enter into a settlement agreement with Corporation of the President of the Church of Jesus Christ of Latter-Day Saints (the “**Church**”).

On November 27, 2018, the Court entered an Order Appointing Receiver and Staying Litigation (the “**Order**”). *See* Dkt. 54. Pursuant to paragraph 18 and 19 of the Order, the Receiver was authorized to take immediate possession of all non-exempt personal property and real property of the Receivership Defendants. *See id.* ¶ 18. Paragraph 7(G) authorized the Receiver to take all actions “necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property.” *Id.* ¶ 7(G). The Receiver alleges that since at least 2008, the Receivership Defendants have operated a fraudulent silver pool investment (the “**Silver Pool**”) as a classic Ponzi scheme through which investors were told that their funds would be used to purchase and trade physical silver. Receivership Defendants then used investor funds to both pay exorbitant returns to early investors and to fund Receivership Defendants’ other business ventures and charitable donations. Some of those charitable donations were made to the Church and the Receiver now seeks the return of those funds. Through this Motion the Receiver respectfully requests permission to enter into a settlement agreement with the Church.

I. BACKGROUND INFORMATION

The Receivership Defendants and certain of the investors in the Silver Pool Ponzi scheme were members of the Church. During the period of time in which the Silver Pool operated,

Receivership Defendants made numerous transfers of funds to the Church. The Receiver has diligently investigated these transfers and, with the cooperation of the Church, determined that the vast majority of them were wholly legitimate. The bulk of the transfers to the Church related to Rust Rare Coin, Inc. acting as a merchant and liquidating metals and coins brought to the Church through in-kind donations.

The Receiver identified a subset of the transfers to the Church that originated from the Silver Pool. In particular, the Receivership Defendants paid tithing and other charitable donations directly from the Silver Pool to the Church on behalf of Silver Pool investors. There is no indication that the Church was aware of Receivership Defendants' fraudulent activities or the original source of the charitable donations that the Church accepted. Nevertheless, charitable donations are, by definition, not made in exchange for reasonably equivalent value. *See In re C.F. Foods, L.P.*, 280 B.R. 103, 111 (E.D. Pa. 2002). Consequently, such transfers are subject to avoidance. *Id.*; *see also Scholes v. Lehmann*, 56 F.3d 750, 759 (7th Cir. 1995) ("If one thing is clear, it is that a gift to a charity (to anyone, for that matter) is not in exchange for full in the sense of commensurate consideration. Otherwise it would not be a gift, but an exchange.").

In addition to transfers made on behalf of Silver Pool investors, the Receivership Defendants also gave charitable donations to the Church on their own behalf, with personal contributions from the Rusts totaling \$209,728.61 and donations made from Defendants business's, Rust Rare Coin ("**RRC**") and R Legacy Entertainment ("**RLE**"), totaling \$13,320.00.

The Receiver and the Church have mutually agreed upon terms for the return of charitable donations associated with the Silver Pool scheme. Through this Motion, the Receiver respectfully requests permission to enter into a settlement agreement with the Church, as described more fully below.

II. PROPOSED SETTLEMENT AGREEMENT

The Church and the Receiver have negotiated a settlement wherein the Church has agreed to repay the receivership estate a total of \$2,399,935.17 on the following terms: (1) one hundred percent of donations made on behalf of Receivership Defendants will be returned to the receivership estate, (2) donations made from the Silver Pool and associated with investors will be returned, (3) by signing the proposed settlement agreement the Church admits to no wrongdoing, and (4) the proposed settlement resolves all existing and future claims between the Receiver and the Church with respect to charitable donations given by Receivership Defendants and any other Silver Pool investor to the Church. A copy of the Settlement Agreement detailing the above-mentioned provisions is attached hereto as Exhibit 1.

The Receiver believes that this Settlement Agreement is in the best interest of the Receivership Estate in light of the cooperative and detailed investigation conducted by the Receiver and the Church into the nature of the transfers from Receivership Defendants to the Church. The Receiver further believes that any attempt to recover more than the Settlement Amount through litigation would not be cost effective and would simply result in unjustified delay in recovery of funds. Thus, based on the representations and accounting provided by the Church, the Receiver believes that the proposed Settlement Agreement is in the best interest of the receivership estate. Accordingly, the Receiver respectfully requests that the Court approve the Settlement Agreement with the Church. A proposed Order is attached hereto.

DATED December 31st, 2020.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Joseph M.R. Covey

Joseph M.R. Covey

Cynthia D. Love

Attorneys for Jonathan O. Hafen, Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION TO APPROVE SETTLEMENT AGREEMENT WITH CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on December 31, 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
Joseph M.R. Covey

EXHIBIT 1

(Settlement Agreement)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "**Agreement**"), dated as of December ____, 2020, is entered into by and between Corporation of the President of the Church of Jesus Christ of Latter-day Saints (the "**Church**") and all of its' past, present and future officers, agents, representatives, employees and affiliated entities on the one hand, and Jonathan O. Hafen, solely in his capacity as Court-Appointed Receiver (the "**Receiver**") for the assets of Rust Rare Coin Inc., Gaylen Dean Rust ("**Gaylen**"), R Legacy Racing Inc., R Legacy Entertainment LLC, R Legacy Investments LLC, Denise Gunderson Rust ("**Denise**"), and Joshua Daniel Rust ("**Josh**" or collectively, the "**Receivership Defendants**"), on the other hand. Each of the Receivership Defendants and The Receiver are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. On November 15, 2018, the United States District Court for the District of Utah (the "**Court**") appointed the Receiver in *Commodity Futures Trading Commission v. Rust Rare Coin, Inc.*, No. 2:18-cv-892 (D. Utah Nov. 27, 2018) as Receiver for the assets of Gaylen Rust ("**Gaylen**"), Denise Rust ("**Denise**"), Josh Rust ("**Josh**") and others, with the power to dispose of any of their nonexempt assets.

B. The Receiver alleges that since at least 2008, the Receivership Defendants have operated a fraudulent silver pool investment (the "**Silver Pool**") in the manner of a classic Ponzi scheme through which investors were told that their funds would be used to purchase and trade physical silver. Instead, Receivership Defendants used funds from new investors to pay exorbitant returns to existing investors and to fund Receivership Defendants' other business ventures and various charitable donations.

C. The named Receivership Defendants and many of the investors in the Silver Pool were members of The Church of Jesus Christ of Latter-day Saints and as such gave charitable donations to the Church. Many of those donations can be traced back to funds donated to the Church from the Silver Pool. The Church has agreed to return \$2,399,935.17 of those charitable donations to the receivership estate.

D. Personal contributions from Receivership Defendants Gaylen, Denise and Josh Rust to the Church during the Silver Pool scheme totaled \$209,728.61. Contributions made from Rust Rare Coin ("**RRC**") and R Legacy Entertainment ("**RLE**") to the Church during this same period totaled \$13,320.00. The Church has agreed to return all personal contributions made by the Rusts and all contributions made by RRC and RLE during the Silver Pool period to the Receiver. These donations are included in the Settlement Payment defined below.

E. The Receiver and the Church desire to resolve all claims and disputes that now exist or that may exist in the future regarding any transfer or donation made to the Church by any Receivership Defendant, any Silver Pool investor, and any Church member in any way by, through or related to the Silver Pool Ponzi scheme, and any claims the Church may have against the Receiver or the receivership estate.

F. By entering into this Settlement Agreement, the Church admits no fault or wrongdoing with respect to the Silver Pool or the Church's acceptance of any charitable donation.

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and upon and subject to the terms and conditions hereinafter set forth, the Parties do hereby agree as follows:

AGREEMENT

1. **Court Approval.** This Settlement Agreement is conditioned on and subject to approval by the United States District Court for the District of Utah (the "**Court**") in the lawsuit styled *Commodity Futures Trading Commission, et al. v. Rust Rare Coin Inc., et al.* No. 2:19-cv-892 (D. Utah Nov. 27, 2018) (the "**Lawsuit**"). The Receiver shall, within ten (10) days of the last Party's execution of this Settlement Agreement, draft and file a Motion with the Court seeking such approval. The "**Effective Date**" of this Settlement Agreement shall be the date on which the Court in the Lawsuit enters an order approving this Settlement Agreement.
2. **Transfer of Funds.** Within two (2) business days of the Church receiving notice of the entry of an order by the Court approving this Agreement, the Church shall pay the Receiver \$2,399,935.17 (the "**Settlement Payment**") in immediately available funds.
3. **The Church Release.** Effective upon entry of an order by the Court approving this Agreement, and to the maximum extent permitted by law, the Church, on behalf of itself and its predecessors, successors, assigns, attorneys, representatives, all of its past, present and future officers, agents, representatives, employees and affiliated entities (collectively, the "**Church Releasing Parties**") hereby release, acquit, discharge, covenant and agree that they waive and will refrain and forbear from commencing, instituting, prosecuting, or continuing, any lawsuit, action, claim, right, demand, cause of action, suit or other proceeding (including filing any further claim) against the Receiver, the Receivership Defendants, and the receivership estate, their affiliates, predecessors, successors, assignors, and assignees. Any claims to enforce rights, obligations, and duties arising out of this Agreement are excepted from this release.
4. **Receiver Release.** Effective upon the Receiver's receipt of the full Settlement Payment, and to the maximum extent permitted by law, the Receiver and its predecessors, successors, assignors, and assignees (the "**Receiver Releasing Parties**") release, acquit, discharge, and covenant and agree that they will refrain and forbear from commencing, instituting, prosecuting, or continuing, any lawsuit, action, claim, right, demand, cause of action, suit or other proceeding against the Church Releasing Parties and their respective successors, assignors, and assignees, except for any claims to enforce rights, obligations, and duties arising out of this Agreement. The Receiver further agrees to release and not pursue or seek recovery of or offset for any transfers made by any of the Receivership Defendants, RRC and RLE and any of their affiliates individually or for and on behalf of

a third party to the Church.

5. **Information Provided by the Church.** The Church represents that it has provided the Receiver with available information regarding charitable contributions it received from 2008 to 2018 from the Receivership Defendants, RRC and RLE.
6. **Attorney Fees.** Each Party shall bear its own attorneys' fees and costs in connection with the claims underlying this Agreement and the Lawsuit through the Effective Date, including the negotiation, documentations, execution, delivery, and performance of this Agreement. Notwithstanding the preceding sentence, should any action, suit or proceeding be commenced by any Party to this Agreement to enforce any provision hereof, the prevailing Party shall be entitled to recover reasonable attorneys' fees, all costs (whether denominated as such in 28 U.S.C. § 1920), and expert expenses incurred in said action, suit or proceeding, after the Effective Date, including any appeal.
7. **Non-Assignment.** Each Party represents and warrants to all the other Parties and each of them, that it has not assigned or transferred any of the claims or interests addressed in this Agreement.
8. **Opportunity to Consult with Counsel.** The Parties represent and warrant that they have each been given adequate time and notice of their right to retain and consult an attorney regarding their rights and obligations under this Agreement and the effect of this Agreement on any rights or purported rights previously held by either of the Parties.
9. **Jurisdiction.** The Parties specifically consent to the jurisdiction and power of the Court to determine any dispute relating to this Agreement, including any claim for breach, and to the power and authority of the Court to enter a final judgment in connection therewith.
10. **Neutral Interpretation.** This Agreement is the product of joint negotiations. If there is ever any dispute over any term or provision of this Agreement, any ambiguity is not to be interpreted more strongly in favor of either Party.
11. **Amendment.** This Agreement may not be modified except as mutually agreed to in a writing signed by all Parties.
12. **Non-waiver.** No waiver, forfeiture, or forbearance of or concerning any provision of this Agreement shall be deemed or shall constitute a waiver, forfeiture, or forbearance of or concerning any of the other provisions hereof, or a continuing waiver, forfeiture or forbearance.
13. **Mutual Representations and Warranties.** Each Party represents and warrants to the other as follows:
 - a. Each person executing this Agreement on behalf of the Party has the full legal right, power, and authority to do so. This Agreement creates valid and binding obligations enforceable against each Party in accordance with its terms.

- b. Except as expressly stated in this Agreement, neither Party has made any statement or representation to the other Party regarding the facts relied upon by them in entering into this Agreement, and no Party hereto has relied upon any statement, representation, or promise of any other person or entity in executing this Agreement except as expressly stated in this Agreement.
14. **Entire Agreement.** This Agreement contains the entire agreement and understanding among the Parties concerning the matters set forth herein and supersedes all prior or contemporaneous stipulations, negotiations, representations, understandings, and discussions among the Parties or their respective counsel with respect to the subject matter of this Agreement. No other representations, covenants, undertakings, or other earlier or contemporaneous agreements respecting these matters may be deemed in any way to exist or bind any of the Parties. The Parties acknowledge that they have not executed this Agreement in reliance on any promise, representation, or warranty other than those contained in this Agreement.
15. **No Unnamed Third-Party Beneficiaries.** There are not unnamed third-party beneficiaries to this Agreement.
16. **Severability.** If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or otherwise in conflict with the law, this Agreement shall be construed and enforced as if it did not contain that particular part, term, or provisions held to be invalid.
17. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which when attached together shall constitute a single, complete Agreement. It is further agreed that none of the provisions contained herein shall be deemed to have any effect upon any party, until this Agreement has been duly executed by all Parties and approved by the Court.
18. **Further Cooperation.** Except as otherwise provided herein, the parties hereto shall execute, acknowledge, and deliver or cause to be executed, acknowledged, or delivered in a timely manner all such further instruments and documents as may be reasonably necessary or reasonably desirable to effectuate the terms and provisions of this Agreement.
19. **Enforceability and Interpretation.** The validity, enforcement, interpretation, and performance of this Agreement shall be governed by Utah law without regard to any conflicts or choice of laws principles, and all parties consent to the exclusive jurisdiction of the State or Federal courts located in Salt Lake County, Utah, for the adjudication of any matters that arise from or relate in any way to this Agreement.
20. **Recitals.** The Recitals set forth above are true, accurate and complete, and are incorporated herein as an integral part of the Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth above.



JONATHAN O. HAFEN

In his capacity as Court-Appointed Receiver for the
Receivership Defendants in *Commodity Futures
Trading Commission v. Rust Rare Coin, Inc.*, No.
2:18-cv-892 (D. Utah Nov. 27, 2018)

CORPORATION OF THE PRESIDENT OF THE
CHURCH OF JESUS CHRIST OF LATTER-DAY
SAINTS,

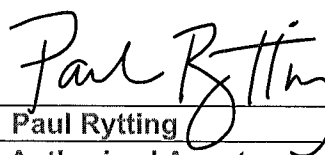
By: _____
Its: _____

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth above.

JONATHAN O. HAFEN

In his capacity as Court-Appointed Receiver for the Receivership Defendants in *Commodity Futures Trading Commission v. Rust Rare Coin, Inc.*, No. 2:18-cv-892 (D. Utah Nov. 27, 2018)

CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS,



By: Paul Rytting

Its: Authorized Agent