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Attorneys for Receiver Jonathan O. Hafen

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,

vs.

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.

TENTH 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 tenth 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 January 1, 2021 through March 31, 2021 (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 *Tenth Quarterly Status Report*, which includes a status report for the period of January 1, 2021 through March 31, 2021 (the "Tenth Status Report").[1]

[1] Docket No. 409 filed April 29, 2021.

The Tenth 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 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 January 1, 2021 through March 31, 2021, the Receiver billed a total of 57.6 hours for services to the Receivership Estate. The Receiver is seeking approval for the payment of fees totaling $20,736. *See* Exhibit A.

b. Parr Brown: From January 1, 2021 through March 31, 2021, Parr Brown billed a total of 1,993.1 hours for legal services to the Receivership Estate. Parr Brown is

seeking approval for the payment of fees and expenses totaling $462,311.26 of which $459,545.00 is for fees and $2,766.26 is for out-of-pocket expenses. *See* Exhibit B. These amounts include a voluntary write down of $7,343.00.

c. BRG: From January 1, 2021 through March 31, 2021, BRG billed a total of 193.10 hours providing forensic, tax, and general accounting services to the Receivership Estate. BRG is seeking approval for the payment of fees and expenses totaling $61,897.57 of which $61,894.00 is for fees and $3.57 is for out-of-pocket expenses. *See* Exhibit C. These amounts include a voluntary write down of $1,300.00.

d. Conflict Receiver and counsel: From January 1, 2021 through March 31, 2021, Conflict Receiver, Wayne Klein, and his legal counsel billed a total of 32.2 hours for services to the Receivership Estate. The Conflict Receiver and his counsel are seeking approval for the payment of fees and expenses totaling $9,673.85 of which $9,591.00 is for fees and $82.85 is for expenses. *See* Exhibit D.

11. The amounts requested reflect a total of $8,443.00 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

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

The Receiver 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 various metal transactions that were associated with such investors.

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. The Receiver worked with his legal counsel and

industry experts to begin the process of selling the properties formerly held by Denise Rust. The Receiver also worked with local counsel to try and sell Angler's Roost.

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 and 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 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. Parr Brown continues to work closely with the Receiver to finalize agreements and negotiate with investors and creditors to increase the number of settlement agreements. Currently, there are over 22 settlement agreements in varying phases of final approval. These agreements attempt to get the largest return of funds while minimizing administrative burden to the Receivership Estate.

This Application Period, Parr Brown worked closely with the Receiver to procure a settlement agreement with the Church of Jesus Christ of Latter-Day Saints (the "Church"). The Receivership Defendants and certain of the investors in the silver pool Ponzi scheme (the "Silver Pool") were members of the Church. During the period of time in which the Silver Pool operated, Receivership Defendants and many investors made numerous transfers of funds to the Church that originated from the Silver Pool. By definition, charitable donations are not made in exchange for reasonably equivalent value and are thus subject to avoidance. Pursuant to the terms of the settlement agreement, the Church agreed to return nearly $2.4 million dollars to the Receivership Estate. (*See* Dkt. No. 376).

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. As reported, Parr Brown entered into a settlement agreement with Denise Rust pursuant to which Ms. Rust transferred her interest in certain real property to the Receiver. This Application Period, Parr Brown submitted a motion to the Court to appoint appraisers for the property to help the Receiver ascertain the value of the property. Parr Brown

also engaged the services of a real estate broker who will be assisting the Receiver to market and sell the property.

Parr Brown continues to look for ways to recoup the millions of dollars that Gaylen Rust invested in various companies and projects. This Application Period, Parr Brown worked closely with the Receiver to procure an offer to purchase Angler's Roost.

Exhibit B-4 Claims Administration

1. 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 623 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 involves 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 or subject to objection. 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.

Exhibit C—Time Records of BRG

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

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 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 these offers.

BRG, at the request of the Receiver, has also prepared an expert report containing its analysis, opinions, and conclusions regarding the alleged Rust Ponzi scheme activities, including extensive exhibits and appendices in connection with clawback litigations currently being pursued by the Receiver. In addition to the expert report, BRG has prepared declarations and supporting schedules containing its analysis and findings of investor activity related to clawback litigation.

Tax Compliance, Analysis & Preparation

BRG analyzed 2020 cash transactions to identify information returns required to be prepared and filed. BRG prepared the 2020 Form(s) 1099 and 1096. The completed returns were reviewed to ensure completeness and accuracy. Corrections and updates were made as was

necessary. BRG caused that the finalized income tax returns were filed with the proper taxing authorities.

BRG analyzed motions to be submitted to the courts regarding recovery of net winner funds through amended returns and provided comments to the Receiver and his counsel. BRG also performed tax research regarding federal estate tax rates applicable to 2017 and guidelines related to the preparation of amending Form 706.

BRG analyzed transactions for the period of January 1, 2020 through September 30, 2020 in order to identify taxable receipts, deductible expenditures, and other reportable activity for the preparation of the 2020 income tax returns.

BRG reviewed correspondence received from taxing authorities and prepared responses as was required.

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.

During 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 continued to work towards a resolution of these recovery matters and to correspond with investors and their legal counsel regarding the same. In addition, the Conflict Receiver worked closely with his counsel to brief and prepare for a hearing in the Zions Bank matter where the Court ordered Zions Bank to return $1.6 million dollars to the Receivership Estate. (*See* Dkt. No. 407).

VI. PRIOR REQUESTS AND INTERIM NATURE OF REQUEST

16. The Receiver has previously filed nine interim fee applications,[2] all of which were approved by the Court. *See* Dkt. Nos. 153, 203, 247, 275, 293, 339, 367 382 and 413.

17. This is the Tenth 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

[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. The Receiver's Seventh Interim Fee Application was filed on November 13, 2020. *See* Dkt. No. 367. The Receiver's Eighth Interim Fee Application was filed on January 15, 2021. See Dkt. No. 382. The Receiver's Ninth Interim Fee Application was filed on May 27, 2021. See Dkt. No. 413.

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 $20,736.00; Parr Brown's fees in the amount of $459,545.00 and out-of-pocket expenses of $2,766.26; BRG's fees in the amount of $61,894 and out-of-pocket expenses of $3.57; and the Conflict Receiver and his counsel's fees in the amount of $9,591.00 and out-of-pocked expenses of $82.85; 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 7th day of July 2021.

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 **TENTH INTERIM FEE APPLICATION** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on July 7, 2021, 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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