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*Attorneys for Court-Appointed Conflicts Receiver Wayne Klein*

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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,  
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.

**CONFLICT RECEIVER'S MOTION TO  
APPROVE SETTLEMENT WITH  
UTAH STATE UNIVERSITY AND  
STATUS REPORT**

Civil No. 2:18-cv-00892-TC-DBP

Judge Tena Campbell  
Magistrate Judge Dustin Pead

Wayne Klein, the Court-Appointed Conflicts Receiver (“Conflicts Receiver”) of the Rust Rare Coin Defendants (“RRC”) hereby files this Motion to Approve Settlement with Utah State University and Status Report.

### **BACKGROUND**

1. On November 27, 2018, the Receivership Estate was created with the entry of the Order Appointing Receiver (the “Order”). ECF No. 54. Pursuant to the Order, the Receiver was appointed, and all of the Receivership Defendants’ assets were placed in the Receiver’s control.

2. On September 30, 2019, the Court appointed Mr. Klein as the Conflicts Receiver, “for the limited purpose of evaluating and resolving any and all claims of the Receivership regarding individuals or entities with whom [the Receiver] may have a conflict.” ECF No. 250. The Conflicts Receiver was granted the same powers as the Receiver to, among other things, investigate, prosecute, and compromise actions to recover Receivership Property. *Id.* at ¶ 41.

3. One of the four matters referred by Mr. Hafen to the Conflict Receiver relates to potential claims the Receivership Estate has against Utah State University (“University”) for a return of contributions by Gaylen and Denise Rust.

### **CLAIM AGAINST UTAH STATE UNIVERSITY**

4. The Conflicts Receiver initially believed that Galen & Denise Rust had donated \$214,181.00 to the University, which funds were used in the construction of the fine arts center at the University. The Rusts had also pledged to contribute another \$1.5 million to the University.

5. The Conflicts Receiver made demand on the University for a return of the \$214,181.00. The University, for its part, asserted a claim through the Rust Coin claims process for \$1.3 million, believed to reflect unfulfilled portions of the pledged amount.

6. The University and the Conflicts Receiver signed a series of tolling agreements to allow the University an opportunity to investigate the Receiver's claims and to explore settlement. In December 2020, the Conflicts Receiver learned that the amount that the Rusts had contributed to the University was significantly higher, \$544,804.33, and increased his demand on the University.

7. On April 19, 2021, the Conflicts Receiver decided against agreeing to further tolling agreements and filed a Notice of Claim with the state of Utah. After expiration of the statutory waiting period following the Notice of Claim, the Conflicts Receiver filed suit against the University in U.S. District Court. The case was assigned to this Court.<sup>1</sup> The University accepted service of the complaint.

8. The filing of the complaint led to a resumption of settlement negotiations between the parties. On October 7, 2021, the University and the Conflicts Receiver reached a tentative settlement agreement—subject to approval by this Court. The salient features of the agreement are:

a. The University will pay the Receivership Estate \$381,364. This amount will be paid in up to two installments, with the final payment due by December 31, 2022. This amount represents a return of 70% of the Rust family's contributions to the University.

b. The University is withdrawing its claim for \$1,300,000 against the Receivership Estate.

c. Upon approval of the agreement by the Court, the Conflicts Receiver will dismiss the lawsuit he filed against the University.

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<sup>1</sup> *Klein v. Utah State University*, Case No. 2:21-cv-00395, filed June 24, 2021.

d. Both parties release all claims against each other and will bear their own legal fees.

9. The Conflicts Receiver believes that this agreement is in the best interest of the Receivership Estate for several reasons. First, the amount to be paid to the Receivership Estate is 70% of the amount improperly transferred to the University by the Rusts. The Conflicts Receiver believes that future litigation costs required to prove his claim against the University likely would consume at least 30% of the amount being sought, so the settlement amount is a reasonable approximation of the amount that would be recovered after trial—assuming the Conflicts Receiver prevailed at trial. Second, the University has released any claim to \$1.3 million that the Rusts had pledged to the University. Third, the funds donated to the University had already been expended in building a fine arts center. It would not be equitable or in the public interest for the Conflicts Receiver to try and execute on the fine arts center or other assets of the University to recover the donations. Such a course might end up harming students to the extent the University's operations were impaired. The Receiver does not believe that risking harm to others is an appropriate remedy for victims of the RRC fraud. Fourth, the University, as a public entity, receives a significant share of its funding as appropriations from the state of Utah general fund. The University does not have a legislative appropriation to pay the full settlement amount and will have to solicit donations from others to pay the Receivership Estate or restrict expenditures that otherwise would benefit students at the University. Finally, because the donated funds were used to build a fine arts center that will be used by the public at large, there is a public benefit in the use of the funds, even though the benefit does redound directly to the benefit of the victims of the Rust Coin fraud.

10. This settlement agreement (a) has been negotiated at arm's length and in good faith by the Conflicts Receiver and the University, (b) will avoid the expense, delay, and inherent risks

of litigation, (c) will result in the collection of funds for the benefit of the Receivership Estate, and (d) has taken into account issues related to the collection of any judgment that may be obtained.

11. “In evaluating proposed settlements in equity receiverships . . . the Court should inquire whether the action to be taken is ‘in the best interest of the receivership.’” *SEC v. Am. Pension Servs., Inc.*, No. 214CV00309RJSDBP, 2015 WL 12860498, at \*10 (D. Utah Dec. 23, 2015) (quoting *SEC v. Capital Consultants, LLC*, No. Civ. 00-1290-KI, 2002 WL 31470399 (D. Ore. March 8, 2002)).

12. Based on the above factors, the Receiver believes that the agreement is in the best interest of the Receivership Estate.

13. The CFTC has informed the Conflicts Receiver that it does not object to the settlement. The Utah Division of Securities has indicated it approves the proposed settlement.

#### **STATUS REPORT**

14. The Conflicts Receiver takes this opportunity to provide a brief status report to the Court regarding the matters referred to him for resolution. The Receiver referred four matters to the Conflicts Receiver for investigation and potential recovery: Utah State University, Edward D. Jones & Co., Derald Tilley and the Tilley Trust, and Zions Bank.

15. In the Edward D. Jones & Co. matter, the Conflicts Receiver was attempting to discover which brokerage client received funds that RRC transferred to the brokerage firm. For a frustratingly long time, Edward Jones kept insisting that it could not find that the funds were transferred to it and later claimed that it could not determine into what client account the funds were transferred. The Conflicts Receiver filed suit against Edward Jones and through compulsory discovery eventually identified the particular clients into whose accounts the funds were transferred. When this client information was eventually disclosed, the Conflicts Receiver

dismissed the lawsuit against Edward Jones. Because the clients were persons already being sued by the Receiver himself (where no conflicts existed), the Conflicts Receiver turned over to the Receiver information about the recipients of these funds and concluded his investigation of this matter.

16. In the Tilley Trust matter, the Conflicts Receiver investigated numerous and significant transfers to Mr. Tilley and a trust he controlled ("Tilley"). The investigation focused on the purposes of the payments to Tilley, to determine whether they were investment payments and profits that would need to be returned to the Receivership Estate. After obtaining and reviewing extensive documents retrieved from a storage facility, the Conflicts Receiver concluded that all payments to Tilley were the result of Tilley selling "physical" coins that it owned—that were stored at RRC. In other words, Tilley gave full value to RRC (in the form of coins) in exchange for payments it received. With this conclusion, there were no grounds to seek recovery from Tilley and the Receiver notified Tilley that he had closed his investigation.

17. There have been two significant areas of inquiry regarding Zions Bank. The first addressed whether Zions Bank was complicit or aided and abetted the RRC fraud. In lieu of conducting his own investigation, the Conflicts Receiver tracked the progress of a private class action lawsuit against Zions Bank. The Conflicts Receiver's rationale was that class counsel had the resources and motivation to discover and prove any complicity by Zions Bank. All but one of the class claims have since been dismissed. Accordingly, the Conflicts Receiver has determined not to conduct a separate investigation into the viability of these dismissed claims. One class claim remains. The Conflicts Receiver has a tolling agreement in place with Zions Bank, by which the Conflicts Receiver is waiting for the resolution of the remaining class claim. That tolling agreement expires on December 20, 2021. In the event the remaining class claim is not resolved

before the tolling agreement expires, the Conflicts Receiver expects to seek renewal of the tolling agreement, to avoid conducting his own investigation of the class claim.

18. The second Zions Bank issue related to \$1.6 million that the Leland Jacobsen Trust wired to RRC's bank account at Zions Bank on the same day the Court imposed an asset freeze. During the pendency of litigation between the Receiver and Jacobsen, that sought to determine the ownership of those funds, Zions Bank affirmed to the Court and the Receiver that it was safeguarding those funds. After the Court ruled that the funds were, in fact, Receivership assets, Zions Bank discovered that its internal hold on those funds had expired and that Jacobsen had withdrawn the funds. The Receiver asked the Conflicts Receiver to take responsibility for determining what action should be taken to recover that \$1.6 million. The Conflicts Receiver filed a motion for an order to show cause against Zions Bank (ECF No. 379), which the Court granted after briefing and oral argument. ECF No. 407. Zions Bank has paid the \$1.6 million to the Receiver. Accordingly, this matter is closed.

19. In sum, if the Court approves the settlement with the University, the only matter still being handled by the Conflicts Receiver is monitoring the single class claim remaining against Zions Bank.

20. In all of these matters, the Conflicts Receiver has attempted to be diligent in fulfilling the Court's charge "to make every effort to minimize costs to the Receivership Estate and to avoid duplication of efforts." ECF No. 250 ¶ 9. With the funds recovered from Zions Bank and the settlement with the University, the Conflicts Receiver and his counsel have recovered close to \$2 million with very modest fee requests, reflecting minimal duplication of efforts.

### **CONCLUSION**

The Conflicts Receiver believes the agreement with the University is beneficial to the

Receivership Estate and is an appropriate balancing of the competing interests of innocent victims who lost so much in the RRC fraud and the recipient of donations that had already spent the donated funds in promoting a public benefit. The Conflicts Receiver asks the Court to approve the terms of the settlement agreement.

DATED this 14th day of October 2021.

/s/ David C. Castleberry

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*Attorneys for Court-Appointed*

*Conflicts Receiver Wayne Klein*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing was electronically filed with the Clerk of the Court through the CM/ECF system on October 14, 2021, which sent notice of the electronic filing to all counsel of record.

/s/ David C. Castleberry