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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,

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.

**TWELFTH 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 twelfth 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 July 1, 2021 through September 30, 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 *Twelfth Quarterly Status Report*, which includes a status report for the period of July 1, 2021, through September 30, 2021 (the “Twelfth Status

Report”).¹ The Twelfth 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, BRG and the Conflict Receiver have submitted their invoices to the Receiver, and the Receiver has reviewed and approved the invoices.

¹ Docket No. 433 filed October 29, 2021.

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 July 1, 2021, through September 30, 2021, the Receiver billed a total of 62.3 hours for services to the Receivership Estate. The Receiver is seeking approval for the payment of fees totaling \$22,428. *See* Exhibit A.

b. Parr Brown: From July 1, 2021, through September 30, 2021, Parr Brown

billed a total of 1,010.9 hours for legal services to the Receivership Estate. Parr Brown is seeking approval for the payment of fees and expenses totaling \$267,999.65 of which \$262,818 is for fees and \$5,181.65 is for out-of-pocket expenses. *See* Exhibit B. These amounts include a voluntary write down of \$8,065.

c. BRG: From July 1, 2021, through September 30, 2021, BRG billed a total of 256.10 hours providing forensic, tax, and general accounting services to the Receivership Estate. BRG is seeking approval for the payment of fees and expenses totaling \$85,231. *See* Exhibit C. These amounts include a voluntary write down of \$975.00.

d. Conflict Receiver and counsel: From July 1, 2021, through September 30, 2021, Conflict Receiver, Wayne Klein, and his legal counsel billed a total of 12.1 hours for services to the Receivership Estate. The Conflict Receiver and his counsel are seeking approval for the payment of fees and expenses totaling \$4,054.10 of which \$3,744.50 is for fees and \$309.60 is for expenses. *See* Exhibit D.

11. The amounts requested reflect a total of \$9,040 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

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.

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 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. BRG has worked with the Receiver and his counsel 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 has also assisted in mediation proceedings in connection with settlement negotiations between the Receiver and clawback defendants.

Finally, BRG has prepared and updated an expert report, declarations and supporting schedules containing its analyses and findings of the alleged Rust Ponzi scheme and investor related activity in connection with the various clawback litigations. Additionally, in connection with the clawback litigations, BRG has reviewed opposing expert reports, prepared for and

attended depositions of clawback defendants, as well as prepared for and attended deposition of its own experts by opposing counsel.

Tax Compliance, Analysis & Preparation

BRG analyzed numerous 2020 precious metal transactions and other specific transactions to determine the proper tax characterization for the preparation of the 2020 income tax returns of the Receivership. BRG revised supporting work papers and the 2020 Receivership federal and state income tax returns to incorporate findings of the aforementioned analysis. The revised returns were reviewed for completeness and accuracy. Corrections and revisions were made 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 claw back defendants, including the claim that the Receivership has against Utah State University (the “University”). The Conflicts Receiver initially believed that Galen and Denise Rust had donated \$214,181.00 to the University, which funds were used for the construction of the fine arts center at the University. Through additional review, the Conflicts Receiver learned that the amount that the Rusts had contributed to the University was significantly higher, \$544,804.33. 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 filing of the complaint led to settlement negotiations between the parties. Through the settlement discussions, the Conflict Receiver and his counsel have reached an agreement with the University which will be submitted to the Court for approval

early next quarter.

VI. PRIOR REQUESTS AND INTERIM NATURE OF REQUEST

16. The Receiver has previously filed eleven interim fee applications,² all of which were approved by the Court. *See* Dkt. Nos. 153, 203, 247, 275, 293, 339, 367, 382, 413, 416 and 428.

17. This is the Twelfth 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

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 Receiver's Tenth Interim Fee Application was filed on July 6, 2021. *See* Dkt. No. 416. The Receiver's Eleventh Interim Fee Application was filed on October 5, 2021. *See* Dkt. No. 428.

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 \$22,428; Parr Brown's fees in the amount of \$262,818 and out-of-pocket expenses of \$5,181.65; BRG's fees in the amount of \$85,231; and the Conflict Receiver and his counsel's fees in the amount of \$3,744.50 and out-of-pocket expenses of \$309.60; 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 December, 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 **TWELFTH INTERIM FEE APPLICATION** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on December 13, 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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