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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

JONATHAN O. HAFEN, in his capacity as
Court-Appointed Receiver,

Plaintiff,

vs.

STEVEN AULT and CONNIE AULT, in their
individual capacities, MAX ZIPLINE, INC., a
corporation, THE AOK FAMILY TRUST,
and ROVER FLATTS, a dba of Steven and
Connie Ault,

Defendants.

**RECEIVER’S MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

Case No. 2:18-cv-00892-TC

Judge Tena Campbell

RELIEF REQUESTED AND GROUNDS FOR RELIEF

Pursuant to the Federal Rules of Civil Procedure Rule 7(b) and DuCivR 7-1, Jonathan O. Hafen (the “Receiver”), in his capacity as Court-Appointed Receiver over the assets of Rust Rare Coin, Inc. (“RRC”), Gaylen Dean Rust, R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, the “Receivership Defendants”), respectfully submits this Motion to Enforce the Settlement Agreement the Receiver reached with Steven Ault, Connie Ault, Max Zipline, Inc., The AOK Family Trust, and Rover Flatts (collectively, the “Ault Group”).

The Ault Group invested money into the Receivership Defendants' Ponzi scheme and are "net winners" as they received back more than they invested. After the Court appointed the Receiver, the Court entered an order authorizing the Receiver to settle—without further court involvement—all clawback matters with "net winners" if within ninety percent of the claim amount, as reflected on the books and records of the Receivership Defendants. Pursuant to that order, the Receiver entered into a settlement agreement with the Ault Group for an amount within ninety percent of the amount owing. The settlement agreement expressly anticipated that this Court would retain jurisdiction to determine any breach and to enter final judgment. The Ault Group has breached the settlement agreement by failing to pay the Receiver the amount set forth therein. The Receiver now requests that the Court enter an order for the amount owing under the settlement agreement.

FACTS

1. On December 11, 2019, this Court issued an order (the "Order") granting the Receiver the authority to enter into settlement agreements belonging to the receivership estate—without further involvement by the Court—"so long as the settlement amount is within ninety percent of the claim amount as reflected in the books and records of the Receivership Defendants". [Dkt. No. 271].

2. On January 10, 2020, the Ault Group signed the Settlement Agreement with the Receiver, a true and correct copy of which is attached hereto as Exhibit A (the "Settlement Agreement").

3. The Ault Group was encouraged to consult with legal counsel before signing the Settlement Agreement.

4. Per the Settlement Agreement, the Ault Group admitted to receiving a total of \$156,839.00 more than they invested in the Ponzi scheme, and agreed to return to the Receiver \$150,000.00 (the “Settlement Payment”).

5. The Settlement Agreement gave the Ault Group 180 days (until July 8, 2020) to make the Settlement Payment.

6. As per the terms of the Settlement Agreement, the Receiver did not seek payment before the due date on July 8, 2020.

7. The day before the payment was due, the Ault Group contacted the Receiver and told him that they were unable to pay any amount under the Settlement Agreement.

8. Despite the Receiver’s demands, the Ault Group has refused to pay any amount due on the Settlement Agreement.

ARGUMENT

The Court should enforce the Settlement Agreement between the Receiver and the Ault Group because it is a binding contract, and the parties have expressly agreed that the Court will retain jurisdiction over the matter. Enforcement of a settlement agreement is proper when the settlement agreement is fully executed. This is because “[a]n agreement of compromise and settlement constitutes an executory accord” and “an executory accord constitutes a valid enforceable contract.” *Zeco Equip., LLC v. Greentown Oil Co., LLC*, No. 2:15-CV-00464-DN-BCW, 2018 WL 4936029, at *2 (D. Utah Oct. 11, 2018) (citation omitted) (citing *Mascaro v. Davis*, 741 P.2d 938, 942 (Utah 1987)) (alteration in original). The law also favors the enforcement of settlement agreements. *Id.* Furthermore, a trial court “has the power to summarily enforce a settlement agreement entered into by the litigants while the litigation is pending before it.” *Rogler v. Standard Ins. Co.*, 30 F. App’x 909, 913 (10th Cir. 2002).

I. The Court has Jurisdiction to Rule on the Motion

As a preliminary matter, the Court has jurisdiction to enforce the Settlement Agreement because it is part of the ongoing litigation against the Receivership Defendants and because the parties entered into the Settlement Agreement pursuant to the Court's Order authorizing settlements. [Dkt. No. 271]. In addition, the Court's jurisdiction is proper pursuant to 28 U.S.C. § 754, which vests the Court-appointed receiver with exclusive control and right to take possession of any property of the receivership estate. *See also* 28 U.S.C. § 1692. The Settlement Agreement concerns so-called "profits" received by the Ault Group due to their participation in the Ponzi scheme perpetrated by Receivership Defendants.

The Court can enter an order enforcing the Settlement Agreement because it is part of the ongoing litigation against the Receivership Defendants. In *Rogler v. Standard Insurance Co.*, the insurance company and the plaintiff reached a verbal settlement agreement. 30 F. App'x 909, 913 (10th Cir. 2002). When the plaintiff refused to sign the written agreement, the company filed a motion with the court to enforce the agreement. *Id.* at 912. Because the underlying lawsuit had not been dismissed, the court retained jurisdiction. *Id.* at 913. Noting that a district court "has the power to summarily enforce a settlement agreement entered into by the litigants while the litigation is pending before it," the court issued an order enforcing the agreement. *Id.* (citing *United States v. Hardage*, 982 F.2d 1491, 1496 (10th Cir.1993)).

Like the court in *Rogler*, this Court has jurisdiction to rule on this Motion to Enforce the Settlement Agreement because the underlying lawsuit against the Receivership Defendants is ongoing. Moreover, the Court has jurisdiction because the Settlement Agreement was entered into pursuant to the Court's Order authorizing the Receiver to enter into settlement agreements.

2. The Settlement Agreement is Enforceable Because It is a Binding Contract

A settlement agreement is enforceable if it is a valid contract. *See Zeco Equip., LLC v. Greentown Oil Co., LLC*, 2018 WL 4936029, at *1 (D. Utah Oct. 11, 2018). For example, in *Zeco Equipment*, the plaintiff sought enforcement of the settlement agreement after the defendant refused to deliver payment as agreed upon under the terms of the agreement. *Id.* at *2. The defendant argued that enforcement was not proper because the plaintiff had refused to renegotiate after defendant's breach. *Id.* But the court found that the proper inquiry was whether the agreement was a valid contract. *Id.* at *3. And because the agreement was fully executed, the court found that it was valid and granted the motion to enforce the settlement agreement. *Id.*

This Motion to enforce the Settlement Agreement is proper because the parties expressly agreed to the Court's retention of jurisdiction to not only resolve issues under the Settlement Agreement but to also "enter a final judgment in connection therewith." Specifically, in paragraph 8 of the Settlement Agreement the parties: "specifically consent[ed] to the jurisdiction and power of this Court to determine any dispute relating to this Settlement Agreement, including any claim for breach, and to the power and authority of the Court to enter a final judgment in connection therewith." *See* Settlement Agreement, Exhibit A.

Both parties negotiated and signed the Settlement Agreement. It was executed with the advice and approval of the Ault Group's attorney. In consideration for payment under the Settlement Agreement, the Receiver agreed to not pursue his claims against the Ault Group for 180 days and to reduce the payment amount from \$156,839.00 to \$150,000.00. The Receiver kept his side of the Settlement Agreement. Because the Settlement Agreement is a binding contract and the parties have consented to this Court dealing with any breach and entering a final judgment thereunder, the Receiver respectfully requests that the Court enforce the Settlement Agreement by

entering a judgment in favor of the Receiver and against the Ault Group in the agreed-upon amount of \$150,000.

DATED this 8th day of February 2022.

PARR BROWN GEE & LOVELESS

/s/ Cynthia D. Love

Cynthia D. Love

Joseph M. Covey

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that service of the above **RECEIVER’S MOTION TO ENFORCE SETTLEMENT AGREEMENT** was (1) emailed to all those on the master mailing matrix maintained by the Receiver; (2) posted on the Receiver’s website (rustrarecoinreceiver.com); and (3) electronically filed with the Clerk of the Court through the CM/ECF system on February 8, 2022, which sent notice of the electronic filing to all counsel of record, as indicated below:

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/s/ Cynthia D. Love
Cynthia D. Love

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “Settlement Agreement”), dated as of January 10, 2020 (the “Effective Date”), is entered into by and between Steven Ault, Connie Ault, Max Zipline, Inc., the AOK Family Trust and Rover Flatts (collectively, the “Aults”) 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, R Legacy Racing Inc., R Legacy Entertainment LLC, R Legacy Investments LLC, Denise Gunderson Rust, and Joshua Daniel Rust (collectively, the “Receivership Defendants”), on the other hand. The Aults and the Receiver are each referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Since at least 2008, Receivership Defendants have operated a fraudulent silver investment pool (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.

B. The Aults were investors in the Silver Pool and received a net total of \$156,839 from Receivership Defendants.

C. Rover Flatts is a fictitious entity and dba or alter ego of Steven and Connie Ault.

D. The Receiver and the Aults desire now to resolve all claims and disputes that now exist or that may exist in the future regarding payments made by any Receivership Defendant and received by the Aults and any amounts paid to any of the Receivership Defendants by the Aults.

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 the conditions hereinafter set forth, the Parties do hereby agree as follows:

AGREEMENT

1. **Court Approval.** Intentionally Omitted.
2. **Transfer of Funds.** Except as expressly limited in Section 4 below, in full satisfaction of all claims the Receiver may have now or in the future against the Aults related to the payments received from any Receivership Defendant, the Aults shall pay the Receiver \$150,000.00 (the “Settlement Payment”), deliverable no later than 180 calendar days after the Effective Date of this Settlement Agreement.
3. **The Aults’ Releases.** To the maximum extent permitted by law, the Aults, on behalf of themselves, their related entities, and their successors, assigns, attorneys, and representatives (the “Ault Releasing Parties”) hereby release, acquit, and 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 (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 Settlement Agreement are excepted from this release.


4. **Receiver Release.** Upon receipt of the Settlement Payment, the Receiver and its predecessors, successors, assignors, and assignees (the "Receiver Releasing Parties") hereby release, acquit, and 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 Ault Releasing Parties and their respective successors, assignors, and assignees, except for any claims to enforce rights, obligations, and duties arising out of this Settlement Agreement.
5. **Attorney Fees.** Each Party shall bear its own attorney's fees and costs in connection with this matter.
6. **Non-Assignment.** Each Party represents and warrants to all of the other Parties and each of them, that it has not assigned or transferred any of the claims or interests addressed in this Settlement Agreement. Each Party agrees to defend and indemnify all of the other Parties and each of them against any claim based upon, arising out of, or arising in connection with any such alleged or actual assignment or transfer.
7. **Opportunity for Consultation 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 Settlement Agreement and the effect of this Settlement Agreement on any rights or purported rights previously held by either of the Parties.
8. **Jurisdiction.** The Parties specifically consent to the jurisdiction and power of the Court to determine any dispute relating to this Settlement Agreement, including any claim for breach, and to the power and authority of the Court to enter a final judgment in connection therewith.
9. **Neutral Interpretation.** This Settlement Agreement is the product of joint negotiations. If there is ever any dispute over any term or provision of this Settlement Agreement, any ambiguity is not to be interpreted more strongly in favor of either Party.
10. **Amendment.** This Settlement Agreement may not be modified except as mutually agreed to in a writing signed by all the Parties.
11. **Non-waiver.** No waiver, forfeiture or forbearance of or concerning any provision of this Settlement 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.
12. **Mutual Representations and Warranties.** Each Party represents and warrants to the other as follows:
 - a. The person executing this Settlement Agreement has the full legal right, power and authority to do so. This Settlement Agreement creates valid and binding obligations enforceable against each Party in accordance with its terms.
 - b. Except as expressly stated in this Settlement Agreement, neither Party has made any statement or representation to the other Party regarding the facts relied upon by them in entering into this Settlement Agreement, and no Party hereto has relied upon any statement, representation, or promise of any other person or entity in executing this Settlement Agreement except as expressly stated in this Settlement Agreement.

13. **Entire Agreement.** This Settlement 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 Settlement 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 Settlement Agreement in reliance on any promise, representation, or warranty other than those contained in this Settlement Agreement.
14. **No Unnamed Third-Party Beneficiaries.** There are not unnamed third-party beneficiaries to this Settlement Agreement.
15. **Severability.** If any part, term, or provision of this Settlement Agreement is held by a court of competent jurisdiction to be invalid, illegal, unenforceable or otherwise in conflict with law, this Settlement Agreement shall be construed and enforced as if it did not contain the particular part, term, or provisions held to be invalid.
16. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, all of which when attached together shall constitute a single, complete Settlement Agreement. It is further agreed that none of the provisions contained herein shall be deemed to have any effect upon any party, until this Settlement Agreement has been duly executed by all of the Parties.
17. **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 Settlement Agreement.
18. **Enforceability; Interpretation.** The validity, enforcement, interpretation, and performance of this Settlement 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 Settlement Agreement.
19. **Recitals.** The Recitals set forth above are incorporated herein as an integral part of this Settlement Agreement

IN WITNESS WHEREOF, this Settlement 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. 2:19-cv-892 (D. Utah Nov. 27, 2018)



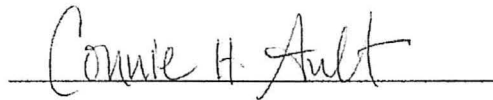
STEVEN AULT

Individually and on behalf of Rover Flatts



CONNIE AULT

Individually and on behalf of Rover Flatts



MAX ZIPLINE, INC.

By Connie H. Ault, Secretary Treasurer /
By Connie H. Ault, Secretary Treasurer/Director Director

AOK FAMILY TRUST

By Connie H. Ault, Trustee
By Connie H. Ault, Trustee