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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 RECEIVER'S SETTLEMENT AGREEMENT WITH KARA BRIMLEY** 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 the Court's approval of his settlement agreement with Kara Brimley ("Brimley"), as described below.

I. Background Information.

On November 27, 2018, the Court entered an Order Appointing Receiver and Staying Litigation (the "Order"). *See* ECF No. 54. The Order authorized the Receiver to take immediate possession of all non-exempt personal property and real property of the Receivership Defendants, other than the personal residence and associated real property of the Rusts. *See id.*, ¶¶ 18-19. The Order also authorized the Receiver to compromise receivership claims that, in his discretion, are advisable or proper to recover Receivership Property. *See id.*, ¶ 41.

Brimley invested in one or more of the Receivership Defendants and received disbursements in excess of her investments. On April 14, 2021, the Court granted Judgment in favor of the Receiver against Brimley in the amount of $53,850. [*See* Judgment in a Civil Case, attached hereto as Exhibit A.] After obtaining judgment, the Receiver, pursuant to the authority granted by the Order, negotiated a Settlement Agreement (the "Agreement") with Brimley. A copy of the Agreement is attached hereto as Exhibit B. By this Motion, and consistent with the Order, the Receiver respectfully requests the Court's approval of the Agreement with Brimley, which approval is a necessary predicate to the Agreement's effectiveness.

II. Proposed Settlement Agreement.

The Receiver and Brimley have entered into the Agreement, subject to court approval, wherein Brimley has agreed to pay $20,000 (the "Settlement Amount") in settlement of the

Receiver's claims against her. [*See* Agreement, Exhibit B.]

Brimley has cooperated with the Receiver's counsel and has provided a Verified Financial Statement (the "Statement"), which Brimley filled out under the name "Kara Brinkerhoff," the name the Receiver understands Brimley assumed after her divorce. The Statement has been filed concurrently with a motion to file under seal and is attached hereto as Exhibit C, along with backup documentation including tax returns and bank statements. Counsel for the Receiver has reviewed and verified the backup information provided by Brimley.

The Receiver believes that the Agreement is in the best interest of the Receivership Estate in light of the value of Brimley's assets and her likely inability to pay significantly more than the Settlement Amount. The Receiver understands, in fact, that Brimley had to borrow some or all of the funds to pay the Settlement Amount. The Receiver believes any attempt to recover more than the Settlement Amount through garnishing wages or seizing assets would not be cost effective. Thus, based on the representations and other financial documentation received from Brimley regarding her financial circumstances, the Receiver believes that the Agreement with Brimley is in the best interest of the Receivership Estate.

Accordingly, the Receiver respectfully requests that the Court approve the Agreement. A proposed Order has been attached as Exhibit D.

Dated this 9th day of August, 2022.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Cynthia D. Love

Joseph M.R. Covey
Cynthia D. Love
Attorneys for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **MOTION TO APPROVE RECEIVER'S SETTLEMENT AGREEMENT WITH KARA BRIMLEY** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on August 9th, 2022, 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 as follows:

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Shaun L. Peck Peck Hadfield Baxter & Moore 399 North Main Street, Suite 300 Logan, Utah 84321 (435)787-9700 speck@peckbaxter.com	

/s/ *Cynthia D. Love*

Exhibit A

AO 450 (Rev.5/85) Judgment in a Civil Case

United States District Court

District of Utah

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

Plaintiff,

v.

KARA BRIMLEY, an individual,

Defendant.

JUDGMENT IN A CIVIL CASE

Case Number: 2:19-cv-00875-TC

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiff Jonathan O. Hafen against Defendant Kara Brimley in the amount of $53,850.

April 14, 2021

Date

BY THE COURT:

Tena Campbell

U.S. District Court Judge Tena Campbell

Exhibit B

#

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "**Settlement Agreement**"), dated as of July 13, 2022 (the "**Execution Date**"), is entered into by and between Kara Brimley ("**Brimley**") 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. Brimley 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. Brimley invested monies with the Receivership Defendants and received net disbursements above her investment in the amount of $53,850.00.

C. On April 14, 2021, in Civil Case Number 2:19-cv-00875-TC, the United States District Court, District of Utah entered Judgment (the "**Judgment**") against Brimley in the amount of $53,850.00.

D. The Receiver has determined that Brimley has demonstrated a financial inability to repay the entire Judgment amount, based on financial information provided by Brimley.

E. The Parties desire now to resolve all potential claims and disputes which now exist, or which may exist in the future regarding the Judgment against Brimley.

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; Best Efforts**. This Settlement Agreement is conditioned on and subject to the Court's entry of an order in the underlying action approving this Settlement Agreement. The Receiver shall, within fifteen (21) days of the last Party's execution of this Settlement Agreement, draft and file a Motion with the Court seeking such approval. The Parties each agree to use their best efforts to secure Court approval of this Settlement Agreement in accordance with applicable law. 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. In the event the Court denies the motion to approve this Settlement Agreement, the agreement shall be void and of no effect.

2. **Settlement Payment.** In full satisfaction of all claims the Receiver may have now or in the future against Brimley related to the payments she received from Mr. Rust or any of the other Receivership Defendants, Brimley shall pay the Receiver Twenty Thousand Dollars ($20,000) within 10 days (the "**Settlement Payment**") of the execution of this Settlement Agreement. Payment shall be sent to:

#

#

Jonathan Hafen as Receiver for Rust Rare Coin
Parr Brown Gee & Loveless, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111

This payment will be in full satisfaction of all claims the Receiver may have now or in the future against Brimley related to the Judgment. If the Receiver is unable to obtain court approval of the Settlement Agreement, the Settlement Payment will be refunded promptly by the Receiver to Brimley.

3. **Brimley's Release.** To the maximum extent permitted by law, and except as provided below, Brimley, on behalf of herself and her successors, assigns, attorneys, and representatives (the "**Brimley Releasing Parties**"), hereby releases, acquits, discharges, and agrees to hold harmless the Receiver, the Receivership, the Receivership Defendants, and the receivership estate, their affiliates, predecessors, successors, assignors, and assignees (the "**Rust Releasees**") from any and all claims, liabilities, damages, charges, demands, grievances, lawsuits, suits, and causes of action of any kind or nature whatsoever, whether direct or indirect, liquidated or unliquidated, known or unknown, currently accrued or which may hereafter accrue (hereinafter, "**Claim**"), which the Brimley Releasing Parties had, have, or may claim to have against the Rust Releasees, relating to the Silver Pool and/or any investment by Brimley therein. Brimley, on behalf of herself and the Brimley Releasing Parties, further covenants and agrees that she 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. Any claims to enforce rights, obligations, and duties arising out of this Settlement Agreement are excepted from this release.

4. **Receiver Release.** To the maximum extent permitted by law, and in consideration of the receipt of the Settlement Payment, on the Effective Date, the Receiver and its predecessors, successors, assignors, and assignees (the "**Receiver Releasing Parties**") hereby release, acquit, discharge, and agree to hold harmless the Brimley Releasing Parties from all Claims which the Receiver Releasing Parties had, have, or may claim to have against the Brimley Releasing Parties related to the Silver Pool or anything dealing with Rust Rare Coin, Inc. or Gaylen Rust, and/or any investment distribution therefrom. The receiver Releasing Parties further covenant and agree that they will refrain and forbear from commencing, instituting, prosecuting, or continuing, and lawsuit, action, claim, right, demand, cause of action, suit or other proceeding against the Brimley Releasing Parties. Any claims to enforce rights, obligations, and duties arising out of this Settlement Agreement are excepted from this release.

5. **Attorney Fees**. Each Party shall bear his or her own attorney's fees and costs in connection with the Settlement Agreement through the Effective Date, including negotiation, documentation, execution, delivery, and performance of this Settlement Agreement. Notwithstanding the preceding sentence, should any action, suit or proceeding be commenced by any Party to this Settlement 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 including any appeal.

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. **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.

9. **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.

10. **Entire Agreement.** This Settlement Agreement embodies the entire understanding and agreement of the Parties with respect to the subject matter hereof. Any and all prior correspondence, conversation, or memoranda are merged herein and replaced hereby. This Settlement Agreement may not be modified or amended, except in a writing signed by all Parties.

11. **No Unnamed Third-Party Beneficiaries**. There are not unnamed third-party beneficiaries to this Settlement Agreement.

12. **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.

13. **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.

14. **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.

15. **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.

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)

Kara Brimley

Kara Brimley

4871-1527-4508, v. 4

Exhibit C

SCHEDULE 1: List all life insurance policies

TYPE OF LIFE INSURANCE POLICY	FACE AMOUNT OF POLICY	BENEFICIARY UNDER POLICY	CASH SURRENDER VALUE OF POLICY
[redacted]			

Give details of any contingent liability as endorser or guarantor, or on suits or judgments pending. (If necessary use separate sheet)

[redacted]

Have you ever filed any petition under the Bankruptcy Code?	Date, Case Name, Court Location
Have your Income Tax Returns ever been questioned by the Internal Revenue Service?	If so, most recent year

SCHEDULE 2: Describe all bonds, mutual funds and listed or unlisted stocks (Attach Additional Schedules if Necessary)

No. of Shares or Par Value	DESCRIPTION	ISSUED IN NAME OF	Joint Tenancy, Tenancy in Common, Community Property	MARKET VALUE
LISTED:				
[redacted]				
			TOTAL LISTED	[redacted]
UNLISTED:	[redacted]			
[redacted]				
			TOTAL UNLISTED	[redacted]

Are any of the above listed securities pledged to secure a debt? If so, indicate.

SCHEDULE 3: Describe each residence, building, land or other real estate you (or you company) own or have an interest in

Location or Description of Property	Title in Name of	Date Acq'd	Joint Tenancy, Tenants in Common, Community Property	Cost when Acquired	Present Value	Trust Deeds, Mortgages or Other Liens		
						Unpaid Balance	Monthly Payment	Held By
[redacted]								
					TOTALS			

SCHEDULE 4: Describe all Trust Deed or Mortgages you (or your company) own

Name of Payer	Legal Description, Street Address, & Type of Improvements	Unpaid Balance	Joint Tenancy, Tenants in Common, Community Property	Terms	1st or 2nd Lien	Value of Property
[redacted]						
TOTALS	[redacted]					

SCHEDULE 5: Describe all accounts and notes receivable and payable

ASSET OR LIABILITY	DESCRIPTION		AMOUNT
ACCOUNTS AND NOTES RECEIVABLE	List name of obligor on account or note receivable owing to you, type of instrument, and date of instrument		
[redacted]			
NOTES PAYABLE TO BANKS	Include name of bank, type of instrument and relevant dates		
[redacted]			
OTHER NOTES AND ACCOUNTS PAYABLE	Sales Contracts and Security Agreements. Include parties, type of instrument and relevant dates		
[redacted]			
	Loans on Life Insurance Policies. Include company name, type of policy and relevant dates		
[redacted]			
OTHER LIABILITIES	Itemize other liabilities	[redacted]	

SCHEDULE 6: Describe all ownership interests in other entities

OWNERSHIP INTERESTS IN OTHER ENTITIES	List any ownership interests in any LLC, corporation, partnership or joint venture	NAME OF ENTITY AND PERCENTAGE OWNERSHIP	ESTIMATED VALUE OF OWNERSHIP INTEREST
[redacted]			

SCHEDULE 7: List value of other personal property you (or your company) owns or has an interest in

TYPE OF PROPERTY	TOTAL ESTIMATED VALUE
Security deposits with public utilities, telephone companies, landlords, and others.	[redacted]
Household goods and furnishings, including audio, video, electronics and computer equipment.	
Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	
Wearing apparel.	
Furs and jewelry	
Firearms and sports, photographic, and other hobby equipment.	
Annuities. Itemize and name each issuer.	
Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.	
Interests in partnerships or joint ventures.	
Government and corporate bonds and other negotiable and non-negotiable instruments.	
Other liquidated debts owing debtor including tax refunds. Give particulars.	
Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the Individual or spouse.	
Contingent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	
Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims you hold, and right to setoff claims. Give estimated value of each.	
Patents, copyrights, and other intellectual property.	
Licenses, franchises, and other general intangibles.	
Boats, motor homes, ATVs and other recreational vehicles and accessories.	
Aircraft and accessories.	
Office equipment, furnishings, and supplies	
Machinery, fixtures, equipment and supplies used in business.	
Inventory.	
Animals.	
Crops - growing or harvested.	
Farming equipment and implements.	
Farm supplies, chemicals, and feed.	
Other personal property of any kind not already listed.	
TOTAL (list on first page)	

TRANSFERS BY YOU (OR YOUR COMPANY)

(Attach Additional Schedules if Necessary)

List all gift given within the past forty-eight (48) months. (List property given, approximate value thereof in terms of cost of acquisition, date of gift and identity of recipient). This includes not only outright conveyances of assets but also releases or waivers of any valuable claims or contract rights which were owned or held against other parties.	[redacted]	
List all conveyances or transfers of real or personal property within the past forty-eight (48) months. (List property transferred, approximate value thereof in terms of cost of acquisition, property or money received for such transfer (if any), date of transfer and identity of recipient). This includes not only outright conveyances of assets but also releases or waivers of any valuable claims or contract rights owned or held against other parties		
List all payments to trade creditors, outside the ordinary course of business, during the past twelve (12) months. (Identify creditor and list amount and date of payment)		
List all payments to banks, financial institutions or other holders of notes, bonds or funded indebtedness, over the last twelve (12) months, except for: (i) payments to creditors whose claims were, at the time of payment, fully secured by valid and perfected security interests in assets having a value at least as great as the amount of the indebtedness. (List all payments and dates).		
List all real or personal property held by others for your or your company's benefit. (List property held, approximate value thereof in terms of cost of acquisition, date of acquisition and identify of holder).		
List all beneficial interests held in any realty trust, or other trust, conveyed within the past forty-eight (48) months. (List all such		

transactions, including date of transfer, nature and value of beneficial interest transferred, to whom transferred, consideration for the transfer, and reason for the transfer).	[redacted]
List all general partnerships or limited partnerships in which you have held or currently hold an ownership interest at any time within the past forty-eight (48) months that has made any transfer of property during such time. (List all such transactions, including date of transfer, nature and value of property transferred, to whom transferred, consideration for the transfer, and reason for the transfer).	
List all corporations and other legal entity in which you have held a five percent (5%) or greater ownership interest in at any time within the past forty-eight (48) months that has made any transfer of property outside of the ordinary course of business during such time. (List all such property transferred, to whom transferred, consideration for the transfer, and reason for the transfer).	
List all other material facts and assets not otherwise listed above relating to your (or your company's) financial condition. (List all such assets, including their approximate value.)	

I hereby swear that this Receiver's Verified Financial Statement is true, complete and correct in all respects, it properly and fairly presents my (or my company's) financial condition, it accurately describes and includes all of my (or my company's) material assets and liabilities (including, without limitation, contingent liabilities), and it accurately and completely describes all material transfers I (or my company) has made over the prescribed time period.

Pursuant to Utah Code Ann. § 78B-5-705, I hereby declare under penalty of perjury and under criminal penalty of the state of Utah that I have carefully read the foregoing information, including any instructions thereto, and that, to the best of my knowledge and belief, the foregoing information is true, accurate, and complete. Furthermore, any financial information attached hereto is likewise certified as true, accurate and complete to the best of my knowledge and belief and is hereby incorporated into the foregoing information by this reference.

DATE SIGNED	SIGNATURE
November 12, 2021	K Bindschadler

Exhibit D

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Cynthia D. Love (14703) (clove@parrbrown.com)
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Attorneys for Court-Appointed Receiver Jonathan O. Hafen

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.	**ORDER GRANTING MOTION TO APPROVE RECEIVER'S SETTLEMENT AGREEMENT WITH KARA BRIMLEY** Case No. 2:18-cv-892 Judge Tena Campbell Magistrate Judge Dustin B. Pead

Before the Court is a Motion to Approve Receiver's Settlement Agreement with Kara Brimley (the "Motion"), submitted by Jonathan O. Hafen in his capacity as the Court-Appointed Receiver (the "Receiver") for 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.

Based on the Motion and for good cause appearing,

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED; and

2. The Settlement Agreement attached to the Motion as Exhibit B is approved.

DATED this _____ day of _____, 2022.

UNITED STATES DISTRICT COURT

_____
Honorable Tena Campbell
United States District Judge