

MATTHEW C. BARNECK [5249]
RICHARDS BRANDT MILLER NELSON
*Attorneys for Colette H. Taylor, individually, and
Colette H. Taylor as Successor Trustee of the Taylor
Medical, Inc. Profit Sharing Plan Trust*
111 East Broadway, Suite 400
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Email: Matthew-Barneck@rbmn.com
Telephone: (801) 531-2000
Fax No. (801) 532-5506

IN THE UNITED STATES DISTRICT COURT

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,
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.

**OBJECTION TO MOTION
FOR PONZI DETERMINATION
IN *HAFEN V. TAYLOR, ET AL.***

Case No. 2:18-cv-0892-TC-DBP

Judge Tena Campbell
Chief Magistrate Judge Dustin B. Pead

Defendants Colette H. Taylor, individually and as Successor Trustee of the Taylor Medical, Inc. Profit Sharing Plan Trust (the “**Taylors**”), through their undersigned counsel of record, serve this Objection to Ponzi Determination in *Hafen v. Taylor, et al.*

Pursuant to the Court’s Order Establishing Ponzi Objection Procedure (the “**Order**”), entered March 30, 2022 in the main receivership proceeding, Case No. 2:18-cv-00892-TC-DBP (Doc. 451), the Taylors serve this Objection within the time allowed by the Order. Pursuant to the Order, the Taylors understand that the Receiver will ultimately file this Objection with the Court and a hearing will be held.

OBJECTION

This Objection addresses the manner in which a Ponzi determination would be used in *Hafen v. Taylor, et al.*, Case No. 2:19-cv-0896-TC. It also addresses the need for questions of Utah law to be certified to and decided by the Utah Supreme Court.

A. Questions Should be Certified to Utah Supreme Court.

Several issues of Utah law relating to the requested Ponzi determination should be certified to the Utah Supreme Court before any such determination is made. Motions to Certify have been filed in at least three ancillary cases: *Hafen, Receiver v. Percell, et al.*, Case No. 2:19-cv-00899-TC-DBP; *Hafen, Receiver v. Muir, et al.*, Case No. 2:19-cv-00913-TC-DAO; and *Hafen, Receiver v. Larsen, et al.*, Case No. 2:21-cv-00743-TC. The Taylors may file a similar motion in *Hafen v. Taylor, et al.*

There are numerous published opinions in the Tenth Circuit and elsewhere addressing a variety of legal issues in Ponzi scheme cases, including the so-called “**Ponzi Presumption**” that eliminates the Receiver’s burden of proof in a case connected to a Ponzi scheme. *See, e.g., S.E.C.*

v. Management Solutions, et al., No. 2:11-cv-1165, 2013 WL 4501088 (D. Utah Aug. 22, 2013) (unpublished) and cases cited therein. Such federal decisions in Utah often cite or rely upon the Uniform Voidable Transactions Act, UTAH CODE ANN. §§25-6-101, *et seq.* (the “UVTA” fka the “Uniform Fraudulent Transfers Act”). However, neither the Utah Supreme Court nor the Utah Court of Appeals have adopted or endorsed the Ponzi Presumption or other related Ponzi principles addressed in these federal cases. Because some of them are controlling principles of state law in *Hafen v. Taylor, et al.* and other clawback cases, authoritative answers to certified questions should come from the Utah Supreme Court, which has constitutional responsibility to interpret Utah law. *Nielson, et al. v. Harley-Davidson Motor Co. Group, LLC, et al.*, 426 F. Supp.3d 1197, 1205 (D. Utah 2019).

Accordingly, the Taylors urge the Court to first hear and decide any Motions to Certify currently filed or to be filed by a date certain in any clawback cases ancillary to this proceeding and issue an order pursuant to UTAH R. APP. P. 41 certifying those questions to the Utah Supreme Court.

B. No Express or Implied Finding of Wrongdoing by Taylors.

The Receiver seeks a Ponzi determination so that the accompanying Ponzi Presumption may be applied in the numerous clawback cases he has filed, including *Hafen v. Taylor*. However, if the Court makes a finding that Rust Rare Coin, Inc. (“RRC”) conducted a Ponzi scheme, it does *not* mean that a clawback defendant whom the Receiver has now chosen to sue knew about or was involved in any wrongdoing. If the Court makes a Ponzi determination, it should take steps to ensure the effect of that determination is applied fairly in *Hafen v. Taylor*. There should be no

express or implied indication that the Taylors had knowledge of or participated in the alleged Ponzi scheme.

To the extent applicable here,¹ Tenth Circuit case law describes the Ponzi Presumption and its limits. “[B]ecause Ponzi schemes are insolvent by definition, we presume that transfers from such entities involve actual intent to defraud.” *Klein, et al. v. Cornelius, et al.*, 786 F.3d 1310, 1320 (10th Cir. 2015). However, the presumption of knowledge or fraudulent intent applies only to the debtor who operates a Ponzi scheme. *Georgelas, et al., v. Desert Hill Ventures, Inc., et al.*, 510 F. Supp.3d. 1061, 1069 (D. Utah 2021) (“once it is established that *a debtor* acted as a Ponzi scheme, all transfers *by that entity* are presumed fraudulent” (emphasis added).) The case law authorizes no such presumption, or even an inference or implication, regarding the transferee, *i.e.* the clawback defendant.

Settled case law holds that if a Ponzi Presumption is established, the transferee is permitted to establish “a statutory defense from liability.” *Georgelas*, 510 F. Supp. 3d at 1069 (*quoting Management Solutions*, 2013 WL 4501088, at *6). Under the UVTA, a transferee has the right to show the transfer was received “in good faith and for a reasonably equivalent value given the debtor” UTAH CODE ANN. §25-6-304(1); *see also Georgelas*, 510 F. Supp.3d at 1069 (*citing the previous Uniform Fraudulent Transfers Act*).² In *Cornelius*, for example, the Tenth Circuit

¹ These federal cases are cited only to the extent they remain applicable after all Motions to Certify have been heard and all certified questions have been decided by the Utah Supreme Court.

² Because the *Georgelas* cases were filed in 2016, before the UVTA was adopted in May 2017, “the UFTA governs.” *Georgelas*, 510 F. Supp.3d at 1064 n.1.

acknowledged that Mr. Cornelius, a clawback defendant, “was unaware of the fraud” *Cornelius*, 786 F.3d at 1313.

If the Receiver has evidence suggesting the Taylors knew or should have known about RRC’s wrongdoing,³ the Court may consider it in rebuttal to the Taylors’ evidence of good faith offered pursuant to Section 25-6-3-4(1). The Ponzi Presumption should not carry with it a latent or patent suggestion that the Taylors are guilty by association simply because they purchased metals from and sold metals to RRC. If the Court makes a Ponzi determination, it should make clear that the ruling carries no implication that the Taylors had any knowledge of wrongdoing. Indeed, at the time of trial it would be appropriate to give a preliminary jury instruction that no such presumption, inference, or implication is appropriate.

C. Precise Date When Alleged Ponzi Scheme Began.

The Receiver should be required to prove the precise date when the alleged Ponzi scheme began. Presumably, he relies upon the testimony of D. Ray Strong at Berkley Research Group, LLC. Mr. Strong’s Declaration dated September 23, 2020 states: “G. Rust and RRC operated a Ponzi scheme since at least the fiscal year 2008 and continuing through November 15, 2018.” (Strong Decl., ¶15.) In a footnote, the Declaration states: “RRC reported financial activity for income tax purposes on a fiscal year basis beginning from October 1 through September 30 (“FY”).” (Strong Decl., ¶15 n.12.)

Although the Declaration is unclear, it appears Mr. Strong reached his Ponzi scheme conclusion only after reviewing data from the entire FY2008. If so, a Ponzi scheme did not exist until after the completion of FY2008, *i.e.* beginning on October 1, 2009. If the Receiver contends

³ So far, the Receiver has disclosed no such evidence.

a Ponzi scheme existed at some earlier point in time, he should be required to prove the precise date when it began. It is not sufficient to simply assert that it began sometime during FY 2008.

Specifically, the precise beginning date is necessary to assign the appropriate value given to RRC in accordance with UTAH CODE ANN. §25-6-304 in the various transactions at issue. “[T]o the extent a transfer is avoidable in an action by a creditor under Subsection 25-6-303(1)(a), ... the creditor may recover judgment *for the value of the asset transferred, as adjusted under Subsection (3)*, or the amount necessary to satisfy the creditor’s claim, whichever is less” UTAH CODE ANN. §25-6-304(2)(a) (emphasis added). If a Ponzi scheme began on a certain date, the value given to the debtor in each transaction should be “adjusted” to include verifiable market appreciation of the metals in question up until that date.

For these reasons the precise date a Ponzi scheme began is important and the Receiver should be required to prove it.

D. Discovery.

The Taylors do not request discovery before submitting this Objection, but note that discovery is not complete in the *Hafen v. Taylor* clawback action.

CONCLUSION

For these reasons, the Taylors submit this Objection to the Receiver’s Motion for Ponzi Determination.

DATED this 28th day of April, 2022.

RICHARDS BRANDT MILLER NELSON

/s/ Matthew C. Barneck

Matthew C. Barneck

*Attorneys for Colette H. Taylor, individually,
and Colette H. Taylor as Successor Trustee
of the Taylor Medical, Inc. Profit Sharing
Plan Trust*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **OBJECTION TO PONZI DETERMINATION IN *HAFEN V. TAYLOR, ET AL.*** was served by email upon the Receiver's counsel as required in the Order Establishing Ponzi Objection Procedure entered March 30, 2022 (Doc. 451).

/s/ Matthew C. Barneck _____

G:\EDS\DOCS\20875\0002\1DB8272.DOCX

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for GRETCHEN A. HOWELL
and LESLIE M. HOWELL

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

IN RE:

RUST RARE COIN INC., et al.

Plaintiff,

**HOWELLS' OBJECTION TO THE
RECEIVER'S "SUMMARY
DISPOSITION PROCEDURE" FOR A
PONZI DETERMINATION
[ORAL ARGUMENT REQUESTED]**

Case No. 2:18-cv-00892

Honorable Tena Campbell

GRETCHEN HOWELL (“**Gretchen**”) and LESLIE M. HOWELL (“**Les**”) (collectively, the “**Howells**”), through counsel, hereby object to the *Motion for Ponzi Determination and to Establish and Objection Procedure*, filed March 15, 2022 (the “**Procedure Motion**”) by Jonathan O. Hafen in his capacity as Receiver (the “**Receiver**”) for the assets of Rust Rare Coin, Inc. (“**RRC**”), Gaylen D. Rust (“**Rust**”) and others. This objection challenges the “summary disposition procedure” itself. The Howells separately (in a contemporaneously submitted objection and memorandum) object to and oppose the Receiver’s request for a “Ponzi Determination”.

In further objection and opposition to the “summary disposition procedure” proposed in the Procedure Motion, the Howells respectfully state as follows.

I. INTRODUCTION AND RELIEF SOUGHT

The Howells are defendants in Hafen v. Howell, Case No. 2:19-cv-00813 (the “**Howell Transfer Lawsuit**”), which the Procedure Motion refers to as an “ancillary action.” The Howell Transfer Lawsuit has been pending since 2019. Except only trial itself and the related deadlines for pretrial disclosures under Rule 26(a)(3), all deadlines in the Howell Transfer Lawsuit have passed. Fact discovery is complete and the deadline for fact-related disclosures has passed. (The Receiver is bound by his disclosures in the Howell Transfer Lawsuit and is limited to the evidence that was disclosed prior to the fact discovery cutoff.) Expert discovery complete, and the deadline for expert disclosures has passed. (The Receiver is bound by his expert disclosures in the Howell Transfer Lawsuit, and is limited to the opinions and grounds disclosed.)

Defending against the Receiver’s claims in the Howell Transfer Lawsuit has been a huge burden on the Howells. Defending the Howell Transfer Lawsuit has required an immense economic sacrifice (to pay the necessary legal fees and expenses), has imposed a huge psychological burden and has resulted in a massive forfeiture of their own time.

The Procedure Motion should be denied, and the Court should not impose the proposed “summary disposition procedure” upon the Howells. First, it denies the Howells their constitutional right to a jury trial. Further, it violates due process as well as the rules of procedures and this Court’s own orders entered in the Howell Transfer Lawsuit. Not only is the “summary disposition procedure” fundamentally unfair (at least as to the Howells and under these circumstances), but it would deny the Howells the protections afforded by the Federal Rules of Civil Procedure, the Federal Rules of Evidence and the Local Rules of this Court. Specifically, it is clear that the Receiver intends to offer and rely upon “evidence” that is not admissible in the Howell Transfer Lawsuit.

Accordingly, the Receiver’s request to impose a “summary disposition procedure” and to make it binding on the Howells should be denied.

II. BACKGROUND

The collapse of RRC has devastated Les and Gretchen – both financially and psychologically. Neither of them is better off. Further, Gretchen was, and is, unequivocally a “loser”. Her contributions into RRC clearly exceeded the distributions she received.

Gretchen met Les in 1998, and they married in 1999. Gretchen and Les lived in Wellington, Utah for 16 years. Les worked for what is now PacifiCorp for over 35 years as a power plant operator, and Gretchen worked for the State of Utah as an assistant caseworker. They lived modestly, if not frugally, and had little to no debt. Although Gretchen and Les both contributed to household expenses, they maintained separate bank accounts and kept their finances largely separate.

Les began investing in RRC in October 2008. Over time, Les invested a principal amount aggregating \$1,222,003.77 with RRC. In the course of making his investments, Les cashed out his retirement savings (incurring substantial tax liabilities) and poured all of his liquid assets and disposable funds into RRC. Les even sold RRC heirloom silverware, rings and jewelry, and then contributed the resulting proceeds to his RRC account.

Gretchen invested separately with RRC, contributing a total of \$96,450.00, including funds she obtained by borrowing against and/or cashing out her 401(k)-retirement savings. Meanwhile, she took and received distributions of only \$22,000. In short, Gretchen put into RRC over \$74,000 more than she got out. She unequivocally is a “net loser.”

Believing that his retirement savings held by RRC were safe and secure, Les took early retirement from PacifiCorp in May of 2013, leaving behind over 35 years of hard-won seniority. Les forfeited an average of \$100,000 per year of wages that he would have earned if he had not retired early – a loss of approximately \$900,000 to date.

With some of his earliest distributions from RRC (which at that time were substantially less than the value that he had given to RRC), Les purchased property in a somewhat remote area near Kingman, Arizona which he titled in his name and Gretchen’s, as joint tenants. (The

distributions directly traceable to the purchase of the property on which Les and Gretchen's home is constructed unequivocally are not avoidable.) Most of the subsequent distributions taken by Les were used to pay legitimate debts due to third parties, including debts due to contractors, materialmen and suppliers.

In 2015, Les moved to Arizona. Les personally worked full time on constructing improvements on the Kingman, Arizona property, investing approximately six thousand hours of his time (over 3+ years) performing skilled and unskilled construction services – literally contributing his blood and sweat to the value of the property.

Gretchen resigned from her position with the State of Utah (which she had held for 16 years) in 2015 and joined Les in Arizona. Because Les expected, and Gretchen intended, to pay her own share of the household expenses, Gretchen immediately obtained new employment working for Mohave County, Arizona. Gretchen and Les continued to live a modest life, and did not live lavishly.

When RRC was seized, Gretchen and Les's home in Kingman, Arizona was unfinished (and still is), and neither Les nor Gretchen had any meaningful savings. In short, Les put all of his eggs into the same basket (RRC), and did not diversify his investments.¹ Gretchen similarly was left bereft. Les is 63+ years old and, as a result, his employment options are limited. Gretchen is currently employed by Mohave County and makes only approximately \$20 per hour. Les and Gretchen have been living month to month, just scraping by, since November 2018.

III. PROCEDURAL HISTORY – THE HOWELL TRANSFER LAWSUIT

1. On October 24, 2019, the Receiver commenced the Howell Transfer Lawsuit by filing a Complaint [Docket No. 2, 2:19-cv-813] (the “**Complaint**”) naming the Howells as

¹ Les had invested \$1,107,752.54 with RRC by April 1, 2013. If those funds had been invested conservatively in the S&P 500 in 2013, they would have grown to over \$4,251,259.16 today. See <https://www.officialdata.org/us/stocks/s-p-500/2013?amount=1107752.04&endYear=2022>. If the additional \$114,251.73 Les invested in 2014 and 2015 are included, Les would be sitting on a stock portfolio worth \$4,550,000 today. See <https://www.officialdata.org/us/stocks/s-p-500/2015?amount=114251.73&endYear=2022>.

defendants. The Complaint purports to assert claims to avoid “fraudulent transfers” pursuant to the Utah Uniform Voidable Transactions Act. Specifically, the Complaint alleges:

- a. that “Receivership Defendants operated the Silver Pool as a Ponzi scheme,” [Complaint ¶ 40];
- b. that, “[b]ecause Receivership Defendants operated the Silver Pool as a Ponzi scheme, as a matter of law, the transfers to Defendants were made with the intent to hinder, delay, or defraud creditors,” [Complaint ¶ 42]; and
- c. that RRC “did not receive reasonably equivalent value in exchange for the transfers,” [see Complaint ¶ 43].”

2. In response to the Complaint, the Howells filed their *Answer and Jury Demand* on November 26, 2019 [Docket No. 7, 2:19-cv-813] (the “**Answer**” or the “**Jury Demand**”). Specifically, the Howells “demand[ed] a trial by jury of all claims and defenses that are triable to a jury.”

3. Thereafter, the Howell Transfer Lawsuit proceeded to the point where the case is trial ready.

4. The Receiver served “initial disclosures” pursuant to Rule 26(a)(1) on February 17, 2020, and supplemented the disclosure on February 27, 2020 (the “**Fact Evidence Disclosures**”). The Receiver did not thereafter supplement his mandatory Rule 26(a)(1) disclosures.

5. In reliance upon the allegations of the Complaint and the Receiver’s Fact Evidence Disclosures, the Howells invested substantial time, money and effort in pursuing discovery narrowly tailored to the claims against them and the scope of potential evidence covered by the Fact Disclosures. Without limitation:

- a. the Howells served written discovery on the Receiver, including requests for admission, interrogatories and requests for production, including (without limitation)

i. a contention interrogatory regarding the Receiver’s “contention that Receivership Entities were operating as a Ponzi scheme” (the “**Ponzi Contention Interrogatory**”),

ii. a contention interrogatory regarding the Receiver’s “contention that the Receivership Entities transferred money to defendants with the actual intent to hinder, delay, or defraud creditors” (the “**Actual Intent Contention Interrogatory**”),

iii. a number of related contention interrogatories regarding the Receiver’s assertions, and

iv. Rule 34 requests for production regarding all documents and electronically stored information relevant to the contentions;

b. the Howells subpoenaed documents from various third parties, including ZB, N.A. d/b/a Zions, US Bank, Mountain America Federal Credit Union, Bank of America, Gaylen D. Rust, Joshua Rust;

c. the Howells deposed Gaylen D. Rust on June 23, 2021;

d. the Howells deposed the Receiver, Jonathan O. Hafen, on June 24, 2021;

e. the Howells deposed D. Ray Strong on July 14, 2021.

6. During his deposition in the Howell Transfer Lawsuit, Gaylen D. Rust refused to answer any of the questions that the Howells posed to him – invoking his fifth amendment right against self-incrimination.² Accordingly, the Receiver cannot now offer any of Rust’s statements against the Howells – either as direct evidence or, indirectly, disguised as part of the evidence and information that Receiver’s experts “relied” upon in forming their opinions.

² See Gaylen Rust Deposition, June 23, 2021, 7:15–10:9 (Mr. Rust invoking the Fifth Amendment and declining to answer approximately 150 questions posed to him).

7. During his deposition in the Howell Transfer Lawsuit, Jonathan D. Hafen's testimony demonstrates that he is not a competent fact witness because he does not have personal knowledge of any of the events, circumstances or facts.³

8. Similarly, during his deposition in the Howell Transfer Lawsuit, D. Ray Strong's testimony demonstrates that he is not a competent fact witness because he does not have personal knowledge of any of the events, circumstances or facts.⁴

9. The discovery schedule and case management deadlines were extended at least five times in the Howell Transfer Lawsuit. Under the [Fifth] *Amended Scheduling Order*, entered April 27, 2021 [Docket No. 36, 2:19-cv-813], the deadline to complete fact discovery was June 20, 2021, the deadline for expert disclosures was August 2, 2021. The deadline for motions for summary judgment was November 30, 2021.

10. The Receiver timely served expert disclosures (the "**Expert Evidence Disclosures**").

11. The Howells subsequently (and timely) filed motions to exclude the Receiver's proposed expert testimony.

³ See Deposition of Jonathan O. Hafen, June 24, 2021 ("**Hafen Depo.**"), 10:17–11:14 (stating that Hafen's knowledge of Receivership Defendants and statements Receivership Defendants made to investors based upon "interviews with various victims of the Ponzi scheme, the investigation by BRG, work done by my legal counsel, representations made by third parties with whom we interacted."), 8:4-23 (stating that Hafen had no involvement in the Receivership Defendants until after November 2018 and all conclusions are based upon information learned after November 2018), 6:6–7:7 (stating Hafen's conclusions regarding the Receivership Defendants' financial and business operations are based upon what his accountants and attorneys told him), 12:15–13:16 (stating that all of Hafen's conclusions with respect to the fact that the Receivership Defendants operated a Ponzi scheme in a case against another investor were based upon "interviews with various victims of the Ponzi scheme, the investigation by BRG, work done by my legal counsel, representations made by third parties with whom we interacted.").

⁴ See Deposition of D. Ray Strong, July 14, 2021, 8:1–9:10 (stating that Strong had no direct involvement in the Receivership Defendants accounting until after November 2018 and no control over bookkeeping entries prior to November 2018), 24:26-9-16 (stating that Strong does not know whether Receivership Defendants held precious metals that matched statements received by investors), 27:20–30:5 (stating that Strong is unable determine the amount of cash, inventory, silver bullion, gold bullion or other precious metals at a given point in time), 31:18-25 (stating that Strong does not know whether pre-silver pool statements received by investors were accurate), 33:25–35:15 & 53:11–54:24 (explaining that the accounting records were incomplete and Strong did not have access to bank statements prior to 2010); *passim* (stating that Strong had to reconstruct the accounting records and the Receivership Defendants used paper records and multiple accounting programs, which contained incomplete and inaccurate information, including QuickBooks, Rust Rare Coin Microsoft Dynamics RMS point-of-sale system and Acumatica software).

12. Each of the Receiver and the Howells filed cross-motions for summary judgment prior to expiration of the deadline for dispositive motions.

13. Excepting only trial and deadlines for pretrial disclosures, all deadlines in the Howell Transfer Lawsuit have passed.

14. Accordingly, the fact evidence that the Receiver may offer against the Howells is limited to the Fact Evidence Disclosures. The Receiver may not offer evidence that was not timely disclosed including, for example, Rust's guilty plea and his statements relating to his guilty plea. The Receiver's ability to offer evidence at trial also is constrained by the deposition testimony taken in the Howell Transfer Lawsuit (including (a) the deposition of Rust in which he refused to answer any of the Howell's questions, and (b) the depositions of Hafen and Strong demonstrating that they are not competent fact witnesses), and is further constrained by the Receiver's responses to written discovery, including the Receiver's answers to the Howells' contention interrogatories.

15. The Howell Transfer Lawsuit has been stayed in substantial part. But the Howells never stipulated or consented to the "summary disposition procedure" that the Receiver proposes in the Procedure Motion. Indeed, the *Amended Stipulated Motion to Stay Action (in Substantial Part), to Vacate Trial Dates and to Suspend Trial-Related Deadlines* filed April 8, 2022 [Docket No. 70, 2:19-cv-813] (the "**Stay Stipulation**") expressly states:

The Howells do not stipulate or consent that a determination that Rust Rare Coin, Inc. was a Ponzi scheme should be made in the Receivership Proceeding, and do not stipulate that such a determination in the Receivership Proceeding should be binding upon the Howells in this civil action. Indeed, the Howells have advised the Receiver (and now advise the Court) that they intend to object to and oppose the Receiver's proposed procedure.

16. Notice of the Stay Stipulation was not filed in the Howell Transfer Lawsuit, and the Receiver's professionals neglected to advise the Howells' counsel that the Procedure Motion already had been filed when they entered into the Stay Stipulation.

17. On March 30, 2022, the Court entered in the instant case its *Order Establishing Ponzi Objection Procedure* [Docket No. 451] (the “**March 31 Order**”) which, in relevant part, provides: “Any interested party wishing to object to the Receiver’s Motion shall submit such objection in writing directly to the Receiver within thirty days of entry of this Order.”

18. This Objection is submitted in compliance with the March 31 Order.

IV. ARGUMENT

A. **The Howells Have a Constitutional Right to a Jury Trial – Including Regarding Whether RRC and Rust Operated a Ponzi Scheme.**

The Howells have demanded, and are entitled to, a jury trial in connection with the Receiver’s claims against them, and their defenses. Without limitation, this includes the Receiver’s allegations: that “Receivership Defendants operated the Silver Pool as a Ponzi scheme,” [Complaint ¶ 40]; and that, “[b]ecause Receivership Defendants operated the Silver Pool as a Ponzi scheme, as a matter of law, the transfers to Defendants were made with the intent to hinder, delay, or defraud creditors,” [Complaint ¶ 42].

The Seventh Amendment to the United States Constitution provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

U.S. Const. amend. VII.

In the seminal case of *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), the United States Supreme Court established a two-part test for determining whether a claim is a legal claim triable as of right to a jury under the Seventh Amendment: (1) whether the action brought would have been an action at law or equity at common law; and (2) whether the remedy sought is legal or equitable in nature. *See id.* at 42. If application of this test reveals that a claim is a legal claim, such a finding “carries with it the Seventh Amendment’s guarantee of a jury trial.” *Busch-Provo, Ltd. v. Sloan (In re Larsen)*, 172 B.R. 988, 991 (D. Utah 1993) (Jenkins, L.).

The first factor of the Granfinanciera test is essentially “an historical analysis that inquires whether the party would be entitled to a jury trial at common law in eighteenth century England.” Concept Clubs, 154 B.R. at 587. Accordingly, consideration of the first factor requires the court to examine the underlying issues of the case.

In the Howell Transfer Lawsuit, the Receiver is suing the Howells to obtain a money judgment on account of their receipt of allegedly fraudulent transfers. This claim is legal (as opposed to equitable) in nature, and gives the Howells the right to a jury trial.

The United States Supreme Court’s decision in Schoenthal v. Irving Trust Co., 287 U.S. 92 (1932) is a case in point. The Schoenthal court held:

The preferences sued for were money payments of ascertained and definite amounts. The bill discloses no facts that call for an accounting or other equitable relief. It is clear that there may be had at law a remedy “as practical and efficient to the ends of justice and its prompt administration, as the remedy in equity.” The contention that § 267 prohibits the maintenance of this suit in equity is sustained in principle by numerous decisions of this Court. And, upon the very question here presented, the weight of judicial opinion in the lower federal courts and in the state courts is that suits such as this cannot be sustained in equity.

Id. at 95 (emphasis added) (citations omitted). The high court later confirmed this ruling in Katchen v. Landy, 382 U.S. 323 (1966), when it held that the defendant would have been “entitled to a jury trial on the issue of preference if he presented no claim in the bankruptcy proceeding and awaited a federal plenary action by the trustee.” Id. at 326.

The rule announced in Schoenthal and Katchen was confirmed and extended by the Granfinanciera court. Whereas the two earlier cases had involved claims to recover “preferential” transfers, the later case involved a claim to avoid “fraudulent” transfers and to recovery money judgment thereon.

Granfinanciera is directly on point. The Chapter 11 Trustee for Chase & Sanborn Corporation brought a fraudulent transfer suit, pursuant to section 548 of the Bankruptcy Code, against Granfinanciera, S.A. and Medex, Ltda., and the case was referred to the Bankruptcy

Court for the Southern District of Florida. The Bankruptcy Court denied the defendants' request for a trial by jury, and following a bench trial, entered judgment for the plaintiff. That judgment was affirmed by both the District Court and the Court of Appeals for the Eleventh Circuit. The Supreme Court reversed, holding that the defendants were entitled to a trial by jury, as guaranteed by the Seventh Amendment.

Tracing the historical evolution of fraudulent transfer suits from the late 18th century forward, the Court found that the trustee's "fraudulent conveyance action plainly seeks relief traditionally provided by law courts or on the law side of courts having both legal and equitable dockets." 492 U.S. at 49. Indeed, prior to enactment of the Bankruptcy Act of 1978, "fraudulent conveyance and preference actions brought by a trustee in bankruptcy were deemed separate, plenary suits to which the Seventh Amendment applied." *Id.* at 50. The Court thus found that regardless of the label, the defendant was entitled to a trial by jury. The high court ultimately held that even an act of Congress "cannot divest petitioners of their Seventh Amendment right to a trial by jury." Granfinanciera, 492 U. S. at 59-60.

The second factor announced in Granfinanciera requires the court to "examine the remedy sought and determine whether it is legal or equitable." Concept Clubs, 154 B.R. at 587. The Supreme Court stated that, "where an action is simply for the recovery of possession of specific real or personal property, or for the recovery of a money judgment, the action is one at law." Pernell v. Southall Realty, 416 U.S. 363, 370 (1974).

In the Howell Transfer Lawsuit, plaintiff seeks recovery of a money judgment against the Howells. The Receiver is seeking a "Ponzi Determination" in this case for the purpose of establishing his burdens of proof and persuasion in the Howell Transfer Lawsuit. As in Pernell, these remedies arise in an action at law, not at equity.

B. The “Summary Disposition Procedure” Is Unfair and Prejudicial Because It Permits the Receiver to End Run the Important Procedural Protections Due to the Howells in the Howell Transfer Lawsuit.

The Rules of Procedure impose important disclosure requirements and procedural protections for litigants. “[T]he deposition-discovery portions of the Federal Rules of Civil Procedure are designed to enable the parties to discover the true facts and to compel their disclosure wherever they may be found.” Hickman v. Taylor, 329 U.S. 495, 506 (1947).

The Supreme Court has explained:

The pre-trial deposition-discovery mechanism established by Rules 26 to 37 is one of the most significant innovations of the Federal Rules of Civil Procedure. Under the prior federal practice, the pre-trial functions of notice-giving issue-formulation and fact-revelation were performed primarily and inadequately by the pleadings. Inquiry into the issues and the facts before trial was narrowly confined and was often cumbersome in method. The new rules, however, restrict the pleadings to the task of general notice-giving and invest the deposition-discovery process with a vital role in the preparation for trial. The various instruments of discovery now serve (1) as a device, along with the pre-trial hearing under Rule 16, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts, or information as to the existence or whereabouts of facts, relative to those issues. Thus civil trials in the federal courts no longer need be carried on in the dark. The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial.

Id. at 500–01.

In the Howell Transfer Lawsuit, the Howells relied upon the Receiver’s disclosures in tailoring discovery and preparing for trial (and to respond to anticipated dispositive motions). Similarly, the Howells relied upon the Receiver’s responses to written discovery, including several contention interrogatories that are directly relevant to the “Ponzi determination.” “[C]ontention interrogatories are permissible under the Federal Rules and allowed by courts. Indeed, the ‘general view is that contention interrogatories are a perfectly permissible form of discovery, to which a response ordinarily would be required.’ ” EC Source Servs. v. Burndy LLC, No. 2:16-CV-122 JNP, 2018 WL 3625330, at *2 (D. Utah July 30, 2018)⁵

⁵ See also Uinta Oil Ref. Co. v. Cont’l Oil Co., 226 F. Supp. 495, 505 (D. Utah 1964) (“Responses must be full, complete, and without evasion.... [S]pecific inquiry can[] include present claims and contentions as a part of discovery, for these are not the type of work product excluded from

The Receiver now is limited and constrained to the evidence – fact witnesses, documents and expert opinions – that were disclosed and available to the parties in the Howell Transfer Lawsuit. Indeed, Rule 37(c) provides: “If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), *the party is not allowed to use that information or witness* to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c) (emphasis added). See also Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co., 170 F.3d 985, 993 (10th Cir. 1999) (discussing prejudice to the party against whom undisclosed evidence will be offered).

The Receiver should not now be able to “end run” the limitations on evidence that derive from the procedural events, disclosures and discovery that occurred in the Howell Transfer Lawsuit. Similarly, to the extent the Procedure Motion requests summary disposition by motion, it should not be permitted as against the Howells because it was filed long after the dispositive motion cutoff in the Howell Transfer Lawsuit. Indeed, the Howells already have incurred great expense to respond to the Receiver’s motion for summary judgment filed in the Howell Transfer Lawsuit.

discovery. And the factual bases of claims and contentions may be reasonably explored.”); Frederick v. Hartford Underwriters Ins. Co., 683 F.3d 1242, 1247, 2012 WL 2443100 (10th Cir. 2012) (permitting the use of contention interrogatories to establish an amount in controversy); Oklahoma v. Tyson Foods, Inc., 262 F.R.D. 617, 630, 2009 WL 3682757 (N.D. Okla. 2009) (“Rule 33 expressly permits contention interrogatories that delve into opinion work product ‘because it asks for an opinion or contention that relates to fact or the application of law to fact.’ ”) (quoting Fed. R. Civ. P. 33(a)(2)); Lucero v. Valdez, 240 F.R.D. 591, 594, 2007 WL 737918 (D.N.M. 2007) (“Interrogatories may ask for the material or principal facts that support a party's contentions, and contention interrogatories that do not encompass every allegation, or a significant number of allegations, made by a party are proper.”); Johnson v. Kraft Foods N. Am., Inc., 236 F.R.D. 535, 544, 2006 WL 1675942 (D. Kan. 2006) (noting that contention interrogatories “may be used to narrow and define the issues for trial”); Smash Tech., LLC v. Smash Sols., LLC, 335 F.R.D. 438, 448 (D. Utah 2020) (“it is well settled that contention interrogatories that seek non-privileged information are permissible and warrant a response”); English v. Wash. Metro. Area Transit Auth., 323 F.R.D. 1, 19 (D.D.C. 2017); and Steven S. Gensler, Lumen N. Mulligan, Rule 33 Fed. R. Of Civil Pro., Rules and Commentary (February 2020 update)); In re Brca1-& Brca2-based Hereditary Cancer Test Patent Litig., 2014 WL 12600708, at *1 (D. Utah Nov. 19, 2014) (noting the value of contention interrogatories); Christison v. Biogen Idec, 2014 WL 3749191, at *3 (D. Utah July 29, 2014) (ordering the plaintiff to answer defendant's contention interrogatories); IOSTAR Corp. v. Stuart, 2008 WL 1924209, at *2 (D. Utah Apr. 25, 2008) (stating that contention interrogatories are fairly common in complex cases).

The Howells have incurred substantial expense to litigate the Howell Transfer Lawsuit to the point where it is trial ready – including engaging in discovery, opposing the Receiver’s motion for summary judgment, and moving to exclude the Receiver’s “expert opinion” evidence. The Receiver has had his “bite at the apple.” He should not be given another.

V. CONCLUSION

The Receiver’s Motion should be denied for all of the foregoing reasons. The Receiver has not presented admissible evidence in this action to establish that RRC was operating a Ponzi scheme and that the distributions to the Howells were part of it. Even if he had, the Receiver is not entitled to judgment against Gretchen, because she is a net loser. Finally, the Receiver’s Motion should be denied as against Les because disputed issues of material facts exist.

WHEREFORE, the Howells respectfully pray that the Court will DENY the Receiver’s Motion, and that it will grant such other and further relief as is just and equitable.

DATED this 29th day of April 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
Attorneys for GRETCHEN A. HOWELL
and LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April 2022, I “submit[ted] ... in writing directly to the Receiver” the foregoing **HOWELLS’ OBJECTION TO THE RECEIVER’S “SUMMARY DISPOSITION PROCEDURE” FOR A PONZI DETERMINATION** by emailing it to the Receiver and his attorneys of record, as follows:

Jonathan O. Hafen
Joseph M.R. Covey
Cynthia D. Love
Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 South 200 East, Suite 700
SALT LAKE CITY, UT 84111

E-mail: jhafen@parrbrown.com
jcovey@parrbrown.com
clove@parrbrown.com
mball@parrbrown.com

/s/ Matthew M. Boley _____

Joseph M.R. Covey (7492) (jcovvey@parrbrown.com)
Matthew J. Ball (9414) (mball@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532-7750

Attorneys for Jonathan O. Hafen, Receiver

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

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

Plaintiff,

v.

GRETCHEN A. HOWELL, an individual;
and LESLIE M. HOWELL, an individual,

Defendants.

COMPLAINT

(Ancillary Suit – General Order 19-001)

Case No. _____

Judge Tena Campbell

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”), hereby alleges, avers, and complains of defendants Gretchen Howell and Leslie Howell (collectively, the “Defendants”) as follows:

INTRODUCTION

1. The Receivership Defendants have been operating a classic Ponzi scheme since at least 2008 by soliciting funds from investors in violation of federal commodities and securities laws and using the funds obtained to pay bogus returns to earlier investors.

2. In the course of the Ponzi scheme, the Receivership Defendants made numerous material misrepresentations and omissions, misappropriated investor and other funds, and committed fraud as a commodity pool operator.

3. On November 13, 2018, the Commodity Futures Trading Commission (“CFTC”) and the Utah Division of Securities (“DOS”) filed a Complaint against the Receivership Defendants in the United States District Court for the District of Utah, Civil No. 2:18-cv-00892-TC-DBP (the “CFTC Action”).¹

4. The CFTC and DOS allege that the Receivership Defendants fraudulently solicited over \$200 million from investors who they tricked into believing that the Receivership Defendants were pooling their investments for the purposes of trading physical silver (the “Silver Pool”).

5. The CFTC and DOS further allege that there was, in fact, no Silver Pool. Instead, the Receivership Defendants operated a massive Ponzi scheme whereby they used money from new investors to pay fraudulent returns to earlier investors.

6. On November 15, 2018, the Receiver was appointed by this Court to identify, collect, and preserve the assets of the Receivership Estate for the benefit of the estate’s creditors, including the hundreds of defrauded investors.

¹ The CFTC and DOS filed an amended complaint in the CFTC Action on December 6, 2018.

7. The instant action is brought by the Receiver as part of his continuing duty to: (1) recapture and return investor funds that were sent to the Receivership Defendants and then diverted in the course of their Ponzi scheme, and (2) avoid fraudulent transfers of property belonging to the Receivership Defendants.

PARTIES, JURISDICTION, AND VENUE

8. Jonathan O. Hafen was appointed November 15, 2018, as receiver for the assets of the Receivership Defendants in the CFTC Action.

9. Gretchen Howell is an individual recipient of funds from the Ponzi scheme. Gretchen Howell is married to Leslie Howell.

10. Leslie Howell is an individual recipient of funds from the Ponzi scheme. Leslie Howell is married to Gretchen Howell.

11. Upon information and belief, Defendants reside in the State of Arizona.

12. This Court has jurisdiction over the subject matter of this action because it is ancillary to the CFTC Action and the appointment of the Receiver by this Court.

13. Defendants have sufficient minimum contacts with Utah that personal jurisdiction is appropriate in this Court. Personal jurisdiction is also proper pursuant to 28 U.S.C. §§ 754, 1692.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 754.

THE RECEIVER, STANDING, AND STATUS OF CFTC ACTION

15. On November 15, 2018, in the CFTC Action, this Court entered an Order Granting Plaintiffs' Ex Parte Motion for Statutory Restraining Order, Appointment of Receiver, and Other Equitable Relief, appointing Mr. Hafen as Temporary Receiver.

16. On November 27, 2018, this Court entered an Order Appointing Receiver and Staying Litigation (the “Appointment Order”), appointing Mr. Hafen as permanent Receiver.

17. Pursuant to the Appointment Order, the Receiver was to take control of all property of the Receivership Estate, wherever located.

18. The Receiver was further authorized to initiate suit to recover any and all property of the Receivership Estate in the possession of third parties.

19. Since entry of the Appointment Order, preliminary injunctions have entered as to all Receivership Defendants.

THE FRAUDULENT PONZI SCHEME

20. For over thirty years, Gaylen Dean Rust (“Rust”) owned and operated RRC, a specialty coin shop in Salt Lake City, Utah, dealing in rare coins, precious metals, and other memorabilia.

21. From at least 2008, Rust also operated a massive Ponzi scheme through which he and others defrauded over 430 individuals out of over \$200 million.

22. The Receivership Defendants promoted the Silver Pool as an exclusive investment opportunity through which individual investors both contributed money and recruited their friends and family to invest as word spread about the investment returns Receivership Defendants were purportedly generating.

23. Receivership Defendants told investors and prospective investors that they were using the money contributed to the Silver Pool to purchase and store physical silver for investment.

24. Receivership Defendants claimed to use funds contributed to the Silver Pool to purchase physical silver, which was then stored at Brinks storage facilities in Salt Lake City, Utah and Los Angeles, California.

25. Receivership Defendants claimed that they generated profits for investors by selling physical silver held in the Silver Pool when market prices began to decline and, after such a decline, they used the profits from the sale to purchase a larger quantity of silver at a lower price.

26. Through this process, Receivership Defendants claimed they were able to consistently increase the number of ounces of silver held in the Silver Pool and, consequently, increase the value of each investor's share of the Silver Pool.

27. Receivership Defendants further represented that only fifty percent of the silver held in the Silver Pool was traded at any given time, meaning that there was always at least fifty percent of the silver physically held at Brinks facilities.

28. Receivership Defendants told investors that they were able to consistently sell silver at higher prices and purchase silver back at lower prices because they had advance knowledge of when market prices would decline. Specifically, Rust claimed that he received information from an analyst at a large global bank when the bank and other large market participants planned to sell large quantities of physical silver, thereby driving down prices.

29. Receivership Defendants told investors that they could generate high rates of return for the Silver Pool, often representing that they were able to generate consistent returns of twenty to twenty-five percent. Receivership Defendants told some investors that they had consistently generated returns as high as forty percent between 2013 and 2018.

30. Receivership Defendants represented that they had approximately \$80 million in physical silver stored at Brinks facilities in Utah and California.

31. But Receivership Defendants' representations were false. Receivership Defendants never traded silver in the manner they described to Silver Pool investors.

32. Receivership Defendants did not store significant quantities of silver at any Brinks facility.

33. Instead, Receivership Defendants misappropriated funds invested in the Silver Pool to make payments to other investors in the Silver Pool in the manner of a Ponzi scheme. Specifically, after receiving a new deposit into the Silver Pool, Receivership Defendants made payments to other investors from the same bank account without ever transferring funds to or from a trading account or otherwise purchasing silver or other precious metals.

34. Additionally, Receivership Defendants transferred money contributed by Silver Pool investors to other entities owned by Rust, including but not limited to R Legacy Entertainment, R Legacy Racing, and R Legacy Investments.

35. None of these other entities owned any trading or similar accounts used to buy or sell silver or other precious metals and none had a legitimate right to funds sourced from Silver Pool investors.

DEFENDANTS' INVESTMENT IN THE SILVER POOL

36. Starting in or around October 2008 and continuing on various occasions into 2015, Defendants made investments into the Silver Pool totaling almost \$1 million.

37. Commencing in or about 2013, Defendants received various distributions from Silver Pool accounts totaling approximately \$4.2 million.

38. Receivership Defendants transferred money to Defendants with the actual intent to hinder, delay, or defraud creditors.

FIRST CLAIM FOR RELIEF
(Fraudulent Transfer)

39. The Receiver hereby incorporates the foregoing paragraphs of this Complaint herein by this reference.

40. Receivership Defendants operated the Silver Pool as a Ponzi scheme.

41. Defendants received payments totaling approximately \$4.2 million from Receivership Defendants.

42. Because Receivership Defendants operated the Silver Pool as a Ponzi scheme, as a matter of law, the transfers to Defendants were made with the intent to hinder, delay, or defraud creditors.

43. In addition, the transfers to Defendants were made at a time when Receivership Defendants were insolvent, and Receivership Defendants did not receive reasonably equivalent value in exchange for the transfers.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)

44. The Receiver hereby incorporates the foregoing paragraphs of this Complaint herein by this reference.

45. Receivership Defendants conferred a benefit upon Defendants when Defendants received payments from the Silver Pool.

46. Defendants know and understand the benefit they received.

47. It would be unjust, under the circumstances, to allow Defendants to retain payments from the Silver Pool in excess of their individual contributions.

WHEREFORE, the Receiver prays as follows:

- A. That the Receiver be awarded damages against Defendant in an amount to be determined at trial, plus prejudgment and post judgment interest, costs and attorney fees;
- B. For such other relief as the Court may allow.

DATED this 24th day of October, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Matthew J. Ball

Joseph M.R. Covey
Matthew J. Ball
Attorneys for the Receiver

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail:mboley@ck.law
pjohanson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">ANSWER</p> <p style="text-align: center;">AND</p> <p style="text-align: center;">JURY DEMAND</p> <p style="text-align: center;">Case No. 2:19-cv-00813</p> <p style="text-align: center;">Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Pursuant to Federal Rules of Civil Procedure 8(b), 8(c) and 12, defendants Gretchen A. Howell (“**Mrs. Howell**”) and Leslie M. Howell (“**Mr. Howell**”) (collectively, the “**Howells**” or the “**Defendants**”), through counsel, respond to the *Complaint*, dated October 24, 2019 (the “**Complaint**”), filed by plaintiff Jonathan O. Hafen, in his capacity as the Court-appointed Receiver (the “**Receiver**” or the “**Plaintiff**”), as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted against the Defendants (both and/or each of them) and should, therefore, be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

SECOND DEFENSE

In response to the individually numbered paragraphs of the Complaint, Defendants admits, deny and aver as follows:

INTRODUCTION

1. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 1 of the Complaint and, therefore, deny them.

2. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 2 of the Complaint and, therefore, deny them.

3. The Defendants admit the allegations of ¶ 3 of the Complaint, upon information and belief.

4. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 4 of the Complaint and, therefore, deny them. In any event, the fact that certain allegations were asserted in the CFTC Action is not relevant to this action.

5. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 5 of the Complaint and, therefore, deny them. In any event, the fact that certain allegations were asserted in the CFTC Action is not relevant to this action.

6. In response to the allegations of ¶ 6 of the Complaint, Defendants admit that the Receiver was appointed. Defendants deny all remaining allegations of ¶ 6 of the Complaint.

7. In response to the allegations of ¶ 7 of the Complaint, Defendants admit that the Receiver has brought this action. Defendants deny all remaining allegations of ¶ 7 of the Complaint.

PARTIES, JURISDICTION, AND VENUE

8. In response to the allegations of ¶ 8 of the Complaint, the Defendants admit the Receiver was appointed. Defendants deny all remaining allegations of ¶ 8 of the Complaint.

9. In response to the allegations of ¶ 9 of the Complaint, Defendants admit that Mrs. Howell is married to Mr. Howell. Defendants deny all remaining allegations of ¶ 9 of the Complaint.

10. In response to the allegations of ¶ 10 of the Complaint, Defendants admit that Mr. Howell married to Mrs. Howell. Defendants deny all remaining allegations of ¶ 10 of the Complaint.

11. The Defendants admit the allegations of ¶ 11 of the Complaint.

12. This paragraph of the Complaint states legal conclusions to which no response is required. To the extent ¶ 12 of the Complaint contains any factual averments, the Defendants deny them.

13. This paragraph of the Complaint states legal conclusions to which no response is required. To the extent ¶ 13 of the Complaint contains any factual averments, the Defendants deny them.

14. This paragraph of the Complaint states legal conclusions to which no response is required. To the extent ¶ 14 of the Complaint contains any factual averment, the Defendants deny them.

THE RECEIVER, STANDING, AND STATUS OF CFTC ACTION

15. The Defendants admit the allegations of ¶ 15 of the Complaint, upon information and belief.

16. The Defendants admit the allegations of ¶ 16 of the Complaint, upon information and belief.

17. In response to the allegations of ¶ 17 of the Complaint, Defendants admit that the order appointing the Receiver speaks for itself, and that its interpretation is a question of law. Defendants deny all remaining allegations of ¶ 17 of the Complaint.

18. In response to the allegations of ¶ 18 of the Complaint, Defendants admit that the order appointing the Receiver speaks for itself, and that its interpretation is a question of law. Defendants deny all remaining allegations of ¶ 18 of the Complaint.

19. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 19 of the Complaint and, therefore, deny them.

THE FRAUDULENT PONZI SCHEME

20. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 20 of the Complaint and, therefore, deny them.

21. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 21 of the Complaint and, therefore, deny them.

22. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 22 of the Complaint and, therefore, deny them.

23. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 23 of the Complaint and, therefore, deny them.

24. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 24 of the Complaint and, therefore, deny them.

25. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 25 of the Complaint and, therefore, deny them.

26. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 26 of the Complaint and, therefore, deny them.

27. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 27 of the Complaint and, therefore, deny them.

28. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 28 of the Complaint and, therefore, deny them.

29. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 29 of the Complaint and, therefore, deny them.

30. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 30 of the Complaint and, therefore, deny them.

31. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 31 of the Complaint and, therefore, deny them.

32. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 32 of the Complaint and, therefore, deny them.

33. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 33 of the Complaint and, therefore, deny them.

34. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 34 of the Complaint and, therefore, deny them.

35. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 35 of the Complaint and, therefore, deny them.

DEFENDANTS' INVESTMENT IN THE SILVER POOL

36. The Defendants deny the allegations of ¶ 36 of the Complaint. Defendants did not jointly invest. Investments by Mr. Rust were separate from investments by Mrs. Rust. Upon information and belief, the respective investments made by Mr. Rust and Mrs. Rust were not in the “Silver Pool” as referenced in the Complaint. Upon information and belief, Defendants affirmatively aver that the respective, separate investments by Mr. Rust and Mrs. Rust were in separate accounts (different that the “Silver Pool”) and were not commingled.

37. The Defendants deny the allegations of ¶ 37 of the Complaint. Defendants did not jointly invest. Investments by Mr. Rust were separate from investments by Mrs. Rust. Distributions to Mr. Rust were made to him alone and received by him alone, and not made to or received by Mrs. Rust. Likewise, distributions to Mrs. Rust were made to her alone and received by her alone, and not made to or received by Mr. Rust. Upon information and belief, Defendants affirmatively aver that any money received by Mr. Rust or Mrs. Rust originated from separate accounts (different that the “Silver Pool”) and was not commingled.

38. The Defendants deny the averments contained in ¶ 38 of the Complaint, upon information and belief.

FIRST CLAIM FOR RELIEF
(Fraudulent Transfer)

39. In response to the allegations of ¶ 39 of the Complaint, the Defendants restate and incorporate herein by reference each and every admission, denial, averment and other response to the other numbered paragraphs of the Complaint.

40. The Defendants deny the allegations of ¶ 40 of the Complaint.

41. The Defendants deny the allegations of ¶ 41 of the Complaint. Defendants did not jointly invest. Investments by Mr. Rust were separate from investments by Mrs. Rust. Distributions to Mr. Rust were made to him alone and received by him alone, and not made to or received by Mrs. Rust. Likewise, distributions to Mrs. Rust were made to her alone and received by her alone, and not made to or received by Mr. Rust.

42. The Defendants deny the allegations of ¶ 42 of the Complaint.

43. The Defendants deny the allegations of ¶ 43 of the Complaint.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)

44. In response to the allegations of ¶ 44 of the Complaint, the Defendants restate and incorporate herein by reference each and every admission, denial, averment and other response to the other numbered paragraphs of the Complaint.

45. The Defendants deny the allegations of ¶ 45 of the Complaint.

46. The Defendants deny the allegations of ¶ 46 of the Complaint.

47. The Defendants deny the allegations of ¶ 47 of the Complaint.

Except to the extent expressly admitted above, Defendants deny any and all allegations, factual averments, legal assertions, requests for judgment, and prayers for relief set forth in the Complaint.

THIRD DEFENSE

The Defendants assert the defenses of license, accord and satisfaction, estoppel, laches, waiver, release, payment, statute of frauds, and/or failure of consideration.

FOURTH DEFENSE

The Plaintiff's claims against the Defendants are barred to the extent their claims are inconsistent with the provisions, terms, disclaimers, waivers, releases, or limitations of any contracts or agreements entered into by or for the benefit of the Plaintiff or its predecessors.

FIFTH DEFENSE

The Plaintiff's claims fail to the extent that they are barred by any applicable statute of limitations or statute of repose including, without limitation, (A) Utah Code Ann. §§ 25-6-10(1), 25-6-10(2), 25-6-305(1), 25-6-305(2), 78B-2-305(2), 78B-2-305(3), 78B-2-307(1)(a), 78B-2-307(2), 78B-2-307(3) and/or (B) A.R.S. §§ 12-541(5), 12-542(5), 12-543(1), 12-543(3), 12-542, 12-550, 44-1009(1), 44-1009(2).

SIXTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent Plaintiff's claims are barred by waiver, estoppel, laches, *in pari delicto*, or unclean hands. Without limitation, under the circumstances, Plaintiff's delay in filing its claims against Defendants was not reasonable, and Defendants have suffered (or will suffer) material prejudice as a consequence of the delay.

SEVENTH DEFENSE

The alleged transfers to Mr. Howell and Mrs. Howell, respectively, are not avoidable to the extent he or she (as the case may be) (a) took in good faith, (b) gave value, and/or (c) was a subsequent transferee.

EIGHTH DEFENSE

The alleged transfers to Mr. Howell and Mrs. Howell, respectively, are not avoidable to the extent the transferor was not, at the time of the transfer, a debtor of Plaintiff.

NINTH DEFENSE

To the extent the evidence may so establish, the Plaintiff lacks standing to assert some or all of the claims contained in the Complaint and/or are not the real party in interest with respect to such claims.

TENTH DEFENSE

To the extent the evidence may so establish, the Plaintiff's claims are barred by the failure to join one or more indispensable parties.

ELEVENTH DEFENSE

To the extent the evidence may so establish, the Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

TWELFTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent the Plaintiff's claims are barred pursuant to the terms of the Plaintiff's (or his predecessors) agreements, acknowledgments, representations, warranties, statements, acts, omissions, conduct and/or consents (both oral and written, both express and implied).

THIRTEENTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent that the Plaintiff's claims are barred by setoff, recoupment, payment, release and/or accord and satisfaction.

FOURTEENTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, based upon fraud, mistake, duress, breach of the duty of good faith and fair dealing, undue influence, procedural unconscionability, substantive unconscionability, public policy, illegality and/or other legal or equitable grounds.

FIFTEENTH DEFENSE

The claims for equitable relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff has an adequate remedy at law.

SIXTEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff's claims are barred by the statute of frauds, including Utah Code Ann. § 25-5-4(1)(b) and A.R.S. § 44-101(2).

SEVENTEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff's claims are barred by lack of or absence of injury or actual, realized damages.

EIGHTEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent a recovery by the Plaintiff would result in the unjust enrichment of, and a windfall to, the Plaintiff.

NINETEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff's injuries, if any, were caused by the actions and/or omissions of persons other than the Defendants (including by the Plaintiff or his predecessors), and were not caused by the Defendants.

TWENTIETH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, because Plaintiff has failed to plead certain required allegations with particularity as required by applicable statute or rule of civil procedure. Without limitation, Plaintiff has failed to plead fraud and special damages, if any, with particularity, as required by Federal Rules of Civil Procedure 9(b) and 9(g). Answering Defendant reserves the right to file a motion requesting dismissal of the fraud claims, fraud allegations and/or special damages based upon failure to plead with particularity as well as failure to state a claim.

TWENTY-FIRST DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent that Plaintiff's claims are, or become, barred by election of remedies.

TWENTY-SECOND DEFENSE

The Defendants incorporates by reference any and all additional defenses asserted by other defendants, crossclaim defendants, third-party defendants and/or counterclaim defendants.

TWENTY-SECOND DEFENSE

The Defendants reserves the right to assert additional defenses to the extent that such defenses become known as a result of discovery or otherwise.

TWENTY-THIRD DEFENSE

The Defendants reserve their right to prosecute any or all of the defenses described above as counterclaims.

PRAYER FOR RELIEF

WHEREFORE, the Defendants prays for relief as follows:

- A. that Plaintiff has and take nothing by its Complaint herein;
- B. that the Complaint be dismissed as against the Defendants, no cause of action;
- C. that the Defendants be awarded their costs, attorneys' fees and expenses to the extent permitted by applicable law; and
- D. for such other and further relief the court deems just and equitable.

JURY DEMAND

The Defendants, through counsel, hereby demands a trial by jury of all claims and defenses that are triable to a jury.

DATED this 26th day of November 2019.

COHNE KINGHORN, P.C.

/s/ Patrick E. Johnson

Matthew M. Boley
Patrick E. Johnson
Attorneys for defendant GRETCHEN A.
HOWELL and defendant LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on this the this 26th day of November 2019, I filed the foregoing ANSWER with the Clerk of the Court using the electronic filing system, which will send notice of electronic filing to parties of record.

/s/ Patrick E. Johnson

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail:mboley@ck.law
pjohanson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">ANSWER</p> <p style="text-align: center;">AND</p> <p style="text-align: center;">JURY DEMAND</p> <p style="text-align: center;">Case No. 2:19-cv-00813</p> <p style="text-align: center;">Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Pursuant to Federal Rules of Civil Procedure 8(b), 8(c) and 12, defendants Gretchen A. Howell (“**Mrs. Howell**”) and Leslie M. Howell (“**Mr. Howell**”) (collectively, the “**Howells**” or the “**Defendants**”), through counsel, respond to the *Complaint*, dated October 24, 2019 (the “**Complaint**”), filed by plaintiff Jonathan O. Hafen, in his capacity as the Court-appointed Receiver (the “**Receiver**” or the “**Plaintiff**”), as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted against the Defendants (both and/or each of them) and should, therefore, be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

SECOND DEFENSE

In response to the individually numbered paragraphs of the Complaint, Defendants admits, deny and aver as follows:

INTRODUCTION

1. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 1 of the Complaint and, therefore, deny them.

2. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 2 of the Complaint and, therefore, deny them.

3. The Defendants admit the allegations of ¶ 3 of the Complaint, upon information and belief.

4. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 4 of the Complaint and, therefore, deny them. In any event, the fact that certain allegations were asserted in the CFTC Action is not relevant to this action.

5. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 5 of the Complaint and, therefore, deny them. In any event, the fact that certain allegations were asserted in the CFTC Action is not relevant to this action.

6. In response to the allegations of ¶ 6 of the Complaint, Defendants admit that the Receiver was appointed. Defendants deny all remaining allegations of ¶ 6 of the Complaint.

7. In response to the allegations of ¶ 7 of the Complaint, Defendants admit that the Receiver has brought this action. Defendants deny all remaining allegations of ¶ 7 of the Complaint.

PARTIES, JURISDICTION, AND VENUE

8. In response to the allegations of ¶ 8 of the Complaint, the Defendants admit the Receiver was appointed. Defendants deny all remaining allegations of ¶ 8 of the Complaint.

9. In response to the allegations of ¶ 9 of the Complaint, Defendants admit that Mrs. Howell is married to Mr. Howell. Defendants deny all remaining allegations of ¶ 9 of the Complaint.

10. In response to the allegations of ¶ 10 of the Complaint, Defendants admit that Mr. Howell married to Mrs. Howell. Defendants deny all remaining allegations of ¶ 10 of the Complaint.

11. The Defendants admit the allegations of ¶ 11 of the Complaint.

12. This paragraph of the Complaint states legal conclusions to which no response is required. To the extent ¶ 12 of the Complaint contains any factual averments, the Defendants deny them.

13. This paragraph of the Complaint states legal conclusions to which no response is required. To the extent ¶ 13 of the Complaint contains any factual averments, the Defendants deny them.

14. This paragraph of the Complaint states legal conclusions to which no response is required. To the extent ¶ 14 of the Complaint contains any factual averment, the Defendants deny them.

THE RECEIVER, STANDING, AND STATUS OF CFTC ACTION

15. The Defendants admit the allegations of ¶ 15 of the Complaint, upon information and belief.

16. The Defendants admit the allegations of ¶ 16 of the Complaint, upon information and belief.

17. In response to the allegations of ¶ 17 of the Complaint, Defendants admit that the order appointing the Receiver speaks for itself, and that its interpretation is a question of law. Defendants deny all remaining allegations of ¶ 17 of the Complaint.

18. In response to the allegations of ¶ 18 of the Complaint, Defendants admit that the order appointing the Receiver speaks for itself, and that its interpretation is a question of law. Defendants deny all remaining allegations of ¶ 18 of the Complaint.

19. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 19 of the Complaint and, therefore, deny them.

THE FRAUDULENT PONZI SCHEME

20. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 20 of the Complaint and, therefore, deny them.

21. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 21 of the Complaint and, therefore, deny them.

22. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 22 of the Complaint and, therefore, deny them.

23. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 23 of the Complaint and, therefore, deny them.

24. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 24 of the Complaint and, therefore, deny them.

25. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 25 of the Complaint and, therefore, deny them.

26. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 26 of the Complaint and, therefore, deny them.

27. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 27 of the Complaint and, therefore, deny them.

28. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 28 of the Complaint and, therefore, deny them.

29. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 29 of the Complaint and, therefore, deny them.

30. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 30 of the Complaint and, therefore, deny them.

31. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 31 of the Complaint and, therefore, deny them.

32. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 32 of the Complaint and, therefore, deny them.

33. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 33 of the Complaint and, therefore, deny them.

34. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 34 of the Complaint and, therefore, deny them.

35. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 35 of the Complaint and, therefore, deny them.

DEFENDANTS' INVESTMENT IN THE SILVER POOL

36. The Defendants deny the allegations of ¶ 36 of the Complaint. Defendants did not jointly invest. Investments by Mr. Rust were separate from investments by Mrs. Rust. Upon information and belief, the respective investments made by Mr. Rust and Mrs. Rust were not in the “Silver Pool” as referenced in the Complaint. Upon information and belief, Defendants affirmatively aver that the respective, separate investments by Mr. Rust and Mrs. Rust were in separate accounts (different that the “Silver Pool”) and were not commingled.

37. The Defendants deny the allegations of ¶ 37 of the Complaint. Defendants did not jointly invest. Investments by Mr. Rust were separate from investments by Mrs. Rust. Distributions to Mr. Rust were made to him alone and received by him alone, and not made to or received by Mrs. Rust. Likewise, distributions to Mrs. Rust were made to her alone and received by her alone, and not made to or received by Mr. Rust. Upon information and belief, Defendants affirmatively aver that any money received by Mr. Rust or Mrs. Rust originated from separate accounts (different that the “Silver Pool”) and was not commingled.

38. The Defendants deny the averments contained in ¶ 38 of the Complaint, upon information and belief.

FIRST CLAIM FOR RELIEF
(Fraudulent Transfer)

39. In response to the allegations of ¶ 39 of the Complaint, the Defendants restate and incorporate herein by reference each and every admission, denial, averment and other response to the other numbered paragraphs of the Complaint.

40. The Defendants deny the allegations of ¶ 40 of the Complaint.

41. The Defendants deny the allegations of ¶ 41 of the Complaint. Defendants did not jointly invest. Investments by Mr. Rust were separate from investments by Mrs. Rust. Distributions to Mr. Rust were made to him alone and received by him alone, and not made to or received by Mrs. Rust. Likewise, distributions to Mrs. Rust were made to her alone and received by her alone, and not made to or received by Mr. Rust.

42. The Defendants deny the allegations of ¶ 42 of the Complaint.

43. The Defendants deny the allegations of ¶ 43 of the Complaint.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)

44. In response to the allegations of ¶ 44 of the Complaint, the Defendants restate and incorporate herein by reference each and every admission, denial, averment and other response to the other numbered paragraphs of the Complaint.

45. The Defendants deny the allegations of ¶ 45 of the Complaint.

46. The Defendants deny the allegations of ¶ 46 of the Complaint.

47. The Defendants deny the allegations of ¶ 47 of the Complaint.

Except to the extent expressly admitted above, Defendants deny any and all allegations, factual averments, legal assertions, requests for judgment, and prayers for relief set forth in the Complaint.

THIRD DEFENSE

The Defendants assert the defenses of license, accord and satisfaction, estoppel, laches, waiver, release, payment, statute of frauds, and/or failure of consideration.

FOURTH DEFENSE

The Plaintiff's claims against the Defendants are barred to the extent their claims are inconsistent with the provisions, terms, disclaimers, waivers, releases, or limitations of any contracts or agreements entered into by or for the benefit of the Plaintiff or its predecessors.

FIFTH DEFENSE

The Plaintiff's claims fail to the extent that they are barred by any applicable statute of limitations or statute of repose including, without limitation, (A) Utah Code Ann. §§ 25-6-10(1), 25-6-10(2), 25-6-305(1), 25-6-305(2), 78B-2-305(2), 78B-2-305(3), 78B-2-307(1)(a), 78B-2-307(2), 78B-2-307(3) and/or (B) A.R.S. §§ 12-541(5), 12-542(5), 12-543(1), 12-543(3), 12-542, 12-550, 44-1009(1), 44-1009(2).

SIXTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent Plaintiff's claims are barred by waiver, estoppel, laches, *in pari delicto*, or unclean hands. Without limitation, under the circumstances, Plaintiff's delay in filing its claims against Defendants was not reasonable, and Defendants have suffered (or will suffer) material prejudice as a consequence of the delay.

SEVENTH DEFENSE

The alleged transfers to Mr. Howell and Mrs. Howell, respectively, are not avoidable to the extent he or she (as the case may be) (a) took in good faith, (b) gave value, and/or (c) was a subsequent transferee.

EIGHTH DEFENSE

The alleged transfers to Mr. Howell and Mrs. Howell, respectively, are not avoidable to the extent the transferor was not, at the time of the transfer, a debtor of Plaintiff.

NINTH DEFENSE

To the extent the evidence may so establish, the Plaintiff lacks standing to assert some or all of the claims contained in the Complaint and/or are not the real party in interest with respect to such claims.

TENTH DEFENSE

To the extent the evidence may so establish, the Plaintiff's claims are barred by the failure to join one or more indispensable parties.

ELEVENTH DEFENSE

To the extent the evidence may so establish, the Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

TWELFTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent the Plaintiff's claims are barred pursuant to the terms of the Plaintiff's (or his predecessors) agreements, acknowledgments, representations, warranties, statements, acts, omissions, conduct and/or consents (both oral and written, both express and implied).

THIRTEENTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent that the Plaintiff's claims are barred by setoff, recoupment, payment, release and/or accord and satisfaction.

FOURTEENTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, based upon fraud, mistake, duress, breach of the duty of good faith and fair dealing, undue influence, procedural unconscionability, substantive unconscionability, public policy, illegality and/or other legal or equitable grounds.

FIFTEENTH DEFENSE

The claims for equitable relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff has an adequate remedy at law.

SIXTEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff's claims are barred by the statute of frauds, including Utah Code Ann. § 25-5-4(1)(b) and A.R.S. § 44-101(2).

SEVENTEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff's claims are barred by lack of or absence of injury or actual, realized damages.

EIGHTEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent a recovery by the Plaintiff would result in the unjust enrichment of, and a windfall to, the Plaintiff.

NINETEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff's injuries, if any, were caused by the actions and/or omissions of persons other than the Defendants (including by the Plaintiff or his predecessors), and were not caused by the Defendants.

TWENTIETH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, because Plaintiff has failed to plead certain required allegations with particularity as required by applicable statute or rule of civil procedure. Without limitation, Plaintiff has failed to plead fraud and special damages, if any, with particularity, as required by Federal Rules of Civil Procedure 9(b) and 9(g). Answering Defendant reserves the right to file a motion requesting dismissal of the fraud claims, fraud allegations and/or special damages based upon failure to plead with particularity as well as failure to state a claim.

TWENTY-FIRST DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent that Plaintiff's claims are, or become, barred by election of remedies.

TWENTY-SECOND DEFENSE

The Defendants incorporates by reference any and all additional defenses asserted by other defendants, crossclaim defendants, third-party defendants and/or counterclaim defendants.

TWENTY-SECOND DEFENSE

The Defendants reserves the right to assert additional defenses to the extent that such defenses become known as a result of discovery or otherwise.

TWENTY-THIRD DEFENSE

The Defendants reserve their right to prosecute any or all of the defenses described above as counterclaims.

PRAYER FOR RELIEF

WHEREFORE, the Defendants prays for relief as follows:

- A. that Plaintiff has and take nothing by its Complaint herein;
- B. that the Complaint be dismissed as against the Defendants, no cause of action;
- C. that the Defendants be awarded their costs, attorneys’ fees and expenses to the extent permitted by applicable law; and
- D. for such other and further relief the court deems just and equitable.

JURY DEMAND

The Defendants, through counsel, hereby demands a trial by jury of all claims and defenses that are triable to a jury.

DATED this 26th day of November 2019.

COHNE KINGHORN, P.C.

/s/ Patrick E. Johnson

 Matthew M. Boley
 Patrick E. Johnson
Attorneys for defendant GRETCHEN A.
 HOWELL and defendant LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on this the this 26th day of November 2019, I filed the foregoing ANSWER with the Clerk of the Court using the electronic filing system, which will send notice of electronic filing to parties of record.

/s/ Patrick E. Johnson

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>GRETCHEN A. HOWELL, an individual; and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">AMENDED SCHEDULING ORDER</p> <p>Case No. 2:19-cv-00813-TC</p> <p>District Judge Tena Campbell</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------

Pursuant to the Stipulation and Joint Motion to Amend Scheduling Order (ECF No. 35) submitted by the parties herein pursuant to Rule 16(b)(4) of the *Federal Rules of Civil Procedure* and DUCivR 16-1(e), the Amended Scheduling Order entered herein on or about February 23, 2021 (ECF No. 34) is hereby amended as follows:

Event	Deadline
Close of fact discovery	June 30, 2021
Disclosure of experts (by party bearing burden of proof)	August 2, 2021
Disclosure of rebuttal experts (by party not bearing burden of proof)	August 16, 2021
Production of expert reports (by party bearing burden of proof)	August 31, 2021
Production of rebuttal expert reports (by party not bearing burden of proof)	September 30, 2021
Last day for expert discovery	October 29, 2021
Deadline for filing dispositive or potentially dispositive motions	November 30, 2021
Deadline for filing partial or complete motions to exclude expert testimony	January 3, 2022
Plaintiff's Rule 26(a)(3) pretrial disclosures	January 28, 2022

Defendants' Rule 26(a)(3) pretrial disclosures	February 11, 2022
Special attorney's conference and settlement conference	February 25, 2022
Final pretrial conference	1:00 pm, March 11, 2022
Two-day jury trial	8:30 am, April 7-8, 2022

All other deadlines established by and provisions of the Court's prior Scheduling Order shall remain in effect.

ENTERED this 27th day of April, 2021.

UNITED STATES DISTRICT COURT



Honorable Tena Campbell

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p>HOWELLS' RESPONSE OPPOSING RECEIVER'S MOTION FOR SUMMARY JUDGMENT [ORAL ARGUMENT REQUESTED]</p> <p style="text-align: center;">Case No. 2:19-cv-00813 Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Defendants GRETCHEN HOWELL (“**Gretchen**”) and LESLIE M. HOWELL (“**Les**”) (collectively, the “**Howells**”), through counsel, submit this response opposing *Receiver’s Motion for Summary Judgment*, filed November 30, 2021 [Docket No. 37] (the “**Receiver’s Motion**”).

In considering the Receiver’s Motion, the Court should review and consider the points and authorities in *Defendant Gretchen Howell’s Motion for Summary Judgment* [Docket No. 40] (“**Gretchen’s Motion**”) and *Defendant Leslie Howell’s Motion for Partial Summary Judgment* [Docket No. 41] (“**Les’ Motion**”), which are responsive to portions of the Receiver’s Motion.

I. INTRODUCTION AND RELIEF SOUGHT

The Receiver’s Motion should be denied. The Receiver has failed to present *admissible* evidence sufficient to satisfy his burden of proof to establish the existence of a Ponzi scheme. Further, genuine issues of material fact preclude summary judgment against the Howells

regarding both the value they each, respectively, delivered to Rust Rare Coin, Inc. (including all other receivership entities “**RRC**”) and Gaylen Rust (“**Rust**”) as well as the amount of the distributions that each of Gretchen and Les, respectively, received.

The Receiver’s Report could not come into evidence at trial, and the Receiver could not testify at trial – whether as a fact witness or as an expert. The Receiver is not a competent fact witness. He has no personal knowledge of any of the events, circumstances or transactions. His testimony is at best hearsay, and sometime double- and triple-hearsay. He may have supervised a number of individuals who investigated facts (a/k/a conducted discovery), and he may even have participated directly in that discovery to some extent. But that does not make him a competent fact witness. And neither his appointment as Receiver, nor any other specialized knowledge or training, make him an “expert” that is qualified to testify in this case.

In any event, the Receiver is not actually providing expert testimony. Rather, he is merely telling the Court what conclusions of law and inferences of fact it should draw based upon his (or his teams) subjective interpretation data and information that is neither admissible in this action nor part of the summary judgment record. In short, the Receiver’s “opinions” are nothing more than a closing argument made by counsel – and here without any admissible evidence in the record from which to argue.

Further, material disputes exist as to the material facts regarding the aggregate value that each of Gretchen and Les, respectively, delivered to RRC, as well as the amount of the distributions that each of them received from RRC.

Finally, the Receiver inappropriately attempts to conflate Gretchen and Les, as if Gretchen has no separate identity or legal existence from her husband. Contrary to the Receiver’s Motion, the undisputed facts demonstrate that Gretchen was a “loser” when it comes to her investments into and distributions from RRC. The Receiver’s claims against Gretchen must be dismissed with prejudice.

II. BACKGROUND

The collapse of RRC has devastated Les and Gretchen – both financially and psychologically. Neither of them is better off. Further, Gretchen was, and is, unequivocally a “loser”. Her contributions into RRC clearly exceeded the distributions she received.

Gretchen met Les in 1998, and they married in 1999. Gretchen and Les lived in Wellington, Utah for 16 years. Les worked for what is now PacifiCorp for over 35 years as a power plant operator, and Gretchen worked for the State of Utah as an assistant caseworker. They lived modestly, if not frugally, and had little to no debt. Although Gretchen and Les both contributed to household expenses, they maintained separate bank accounts and kept their finances largely separate.

Les began investing in RRC in October 2008, investing \$225,000 of his own cash with the understanding that his money was purchasing gold bullion. Later in the same year, Les made two more investments that totaled \$145,000.00. Les continued to invest – all of his cash and other valuables (including coins, bullion and jewelry) – until he had invested a principal amount aggregating \$1,222,003.77. In the course of making his investments, Les cashed out his retirement savings (incurring substantial tax liabilities) and poured all of his liquid assets and disposable funds into RRC. Les even sold RRC heirloom silverware, rings and jewelry, and then contributed the resulting proceeds to his RRC account.

In February 2009, Gretchen made her first investment with RRC. Gretchen delivered \$5,000.00 of her own cash to RRC to invest in silver. Over time, Gretchen invested a total of \$96,450.00, including funds she obtained by borrowing against and/or cashing out her 401(k)-retirement savings. Meanwhile, she took and received distributions of only \$22,000. In short, Gretchen put into RRC over \$74,000 more than she got out. She unequivocally is a “net loser.”

Rust separately accounted for Les’s and Gretchen’s separate investments, and similarly accounted for the distributions to Les separately from distributions to Gretchen.

Believing that his retirement savings held by RRC were safe and secure, Les took early retirement from PacifiCorp in May of 2013, leaving behind over 35 years of hard-won seniority. Les forfeited an average of \$100,000 per year of wages that he would have earned if he had not retired early – a loss of approximately \$900,000 to date.

With some of his earliest distributions from RRC (which at that time were substantially less than the value that he had given to RRC), Les purchased property in a somewhat remote area near Kingman, Arizona which he titled in his name and Gretchen's, as joint tenants. (The distributions directly traceable to the purchase of the property on which Les and Gretchen's home is constructed unequivocally are not avoidable.) Most of the subsequent distributions taken by Les were used to pay legitimate debts due to third parties, including debts due to contractors, materialmen and suppliers.

In 2015, Les moved to Arizona. Les personally worked full time on constructing improvements on the Kingman, Arizona property, investing approximately six thousand hours of his time (over 3+ years) performing skilled and unskilled construction services – literally contributing his blood and sweat to the value of the property.

Gretchen resigned from her position with the State of Utah (which she had held for 16 years) in 2015 and joined Les in Arizona. Because Les expected, and Gretchen intended, to pay her own share of the household expenses, Gretchen immediately obtained new employment working for Mohave County, Arizona.

Gretchen and Les continued to live a modest life, and did not live lavishly. When RRC was seized, Gretchen and Les's home in Kingman, Arizona was unfinished (and still is), and neither Les nor Gretchen had any meaningful savings. In short, Les put all of his eggs into the same basket (RRC), and did not diversify his investments.¹ Gretchen similarly was left bereft.

¹ Les had invested \$1,107,752.54 with RRC by April 1, 2013. If those funds had been invested conservatively in the S&P 500 in 2013, they would have grown to over \$4,251,259.16 today. See <https://www.officialdata.org/us/stocks/s-p-500/2013?amount=1107752.04&endYear=2022>. If the additional \$114,251.73 Les invested in 2014 and 2015 are included, Les would be sitting on a stock

Les is 63 years old and, as a result, his employment options are limited. Gretchen is currently employed by Mohave County and makes only approximately \$20 per hour. Les and Gretchen have been living month to month, just scraping by, since November 2018.

III. RESPONSE TO RECEIVER’S STATEMENT OF UNDISPUTED FACTS

The Howells respond to the “undisputed material facts” described in the Receiver’s Motion as follows. The Howells’ responses are supported by (A) the *Declaration of Gretchen Howell in Support of Motions for Summary Judgment* (“**Gretchen Decl.**”);² (B) the *Declaration of Leslie M. Howell in Support of Motions for Summary Judgment* (“**Les Decl.**”);³ (C) the *Supplemental Declaration of Leslie M. Howell in Opposition to the Receiver’s Motion for Summary Judgment* (“**Les Suppl. Decl.**”);⁴ (D) the transcript of the Deposition of Jonathan O. Hafen, June 24, 2021 (“**Hafen Depo.**”), and Exhibit 1 to the deposition;⁵ (E) the transcript of the Deposition of D. Ray Strong, July 14, 2021 (“**Strong Depo.**”), and Exhibits A through E to the deposition;⁶ (F) the transcript of the Gaylen Rust Deposition, June 23, 2021 (“**Rust Depo.**”), and Exhibits 1 and 2 to the deposition;⁷ (G) the change pages to the transcript of the deposition of Les;⁸ and (H) the change pages to the transcript of the deposition of Gretchen.⁹

1. The Receivership Defendants solicited funds from investors by representing that they would use such funds to trade physical silver, thereby generating returns for investors. [Hafen Report, at pp. 12-13, and Exhibit A thereto, ¶ 98.]

portfolio worth \$4,550,000 today. See <https://www.officialdata.org/us/stocks/s-p-500/2015?amount=114251.73&endYear=2022>.

² The Gretchen Decl. is submitted as Exhibit A to the *Appendix of Evidence* filed November 30, 2021 [Docket No. 43] (the “**Prior Appendix**”)

³ The Les Decl. is submitted as Exhibit B to the Prior Appendix.

⁴ The Les Suppl. Decl. is submitted as Exhibit C to the concurrently filed *Supplemental Appendix of Evidence in Opposition to Receiver’s Motion for Summary Judgment* (“Supplemental Appendix”).

⁵ The Hafen Depo. is submitted as Exhibit D to the concurrently filed Supplemental Appendix.

⁶ The Strong Depo. is submitted as Exhibit E to the concurrently filed Supplemental Appendix.

⁷ The Rust Depo. is submitted as Exhibit F to the concurrently filed Supplemental Appendix.

⁸ When the Receiver submitted the transcript of Les’s deposition in support of the Receiver’s Motion, the change pages were not included. The official change pages to Les’s deposition are submitted as Exhibit G to the concurrently filed Supplemental Appendix.

⁹ When the Receiver submitted the transcript of Gretchen’s deposition in support of the Receiver’s Motion, the change pages were not included. The official change pages to Gretchen’s deposition are submitted as Exhibit H to the concurrently filed Supplemental Appendix.

OBJECTION & RESPONSE: DISPUTED. The content or substance of the evidence submitted by the Receiver is not admissible.¹⁰ Specifically, the Receiver does not have personal knowledge of any of the events, circumstances or facts.¹¹ Neither does D. Ray Strong.¹² Further, to the extent his Receiver’s Report or Exhibit A thereto refers to excerpts from interviews of third-party witnesses, the excerpts are likewise inadmissible. At best, the statements are hearsay and no hearsay exception applies that would permit the hearsay statement to be offered as evidence at trial against the Howells. By way of example, the Receiver’s or Mr. Strong’s reference to alleged “admissions” by Gaylen Rust are not admissible at trial. Especially because when the Howells deposed Gaylen Rust in this action, he invoked the Fifth Amendment and refused to answer any questions.¹³ Where the Receiver has failed to come forward with admissible evidence, the Howells

¹⁰ The Court of Appeals for the Tenth Circuit has explained:

At the summary judgment stage, evidence need not be submitted “in a form that would be admissible at trial.” Nonetheless, “the content or substance of the evidence must be admissible.” Thus, for example, at summary judgment courts should disregard inadmissible hearsay statements *contained* in affidavits, as those statements could not be presented at trial in any form.... Rule 56(e) of the Federal Rules of Civil Procedure... requires that “[s]upporting and opposing affidavits shall be made on personal knowledge,” [and] Rule 602 of the Federal Rules of Evidence, ... requires that testifying witnesses “ha[ve] personal knowledge of the matter.” Under the personal knowledge standard, an affidavit is inadmissible if “ ‘the witness could not have actually perceived or observed that which he testifies to.’ ”

Argo v. Blue Cross & Blue Shield of Kansas, Inc., 452 F.3d 1193, 1199-1200 (10th Cir. 2006) (citations omitted).

¹¹ See Deposition of Jonathan O. Hafen, June 24, 2021 (“**Hafen Depo.**”), 10:17–11:14 (stating that Hafen’s knowledge of Receivership Defendants and statements Receivership Defendants made to investors based upon “interviews with various victims of the Ponzi scheme, the investigation by BRG, work done by my legal counsel, representations made by third parties with whom we interacted.”), 8:4-23 (stating that Hafen had no involvement in the Receivership Defendants until after November 2018 and all conclusions are based upon information learned after November 2018), 6:6–7:7 (stating Hafen’s conclusions regarding the Receivership Defendants’ financial and business operations are based upon what his accountants and attorneys told him), 12:15–13:16 (stating that all of Hafen’s conclusions with respect to the fact that the Receivership Defendants operated a Ponzi scheme in a case against another investor were based upon “interviews with various victims of the Ponzi scheme, the investigation by BRG, work done by my legal counsel, representations made by third parties with whom we interacted.”).

¹² See Deposition of D. Ray Strong, July 14, 2021, 8:1–9:10 (stating that Strong had no direct involvement in the Receivership Defendants accounting until after November 2018 and no control over bookkeeping entries prior to November 2018), 24:26:9-16 (stating that Strong does not know whether Receivership Defendants held precious metals that matched statements received by investors), 27:20–30:5 (stating that Strong is unable determine the amount of cash, inventory, silver bullion, gold bullion or other precious metals at a given point in time), 31:18-25 (stating that Strong does not know whether pre-silver pool statements received by investors were accurate), 33:25–35:15 & 53:11–54:24 (explaining that the accounting records were incomplete and Strong did not have access to bank statements prior to 2010); *passim* (stating that Strong had to reconstruct the accounting records and the Receivership Defendants used paper records and multiple accounting programs, which contained incomplete and inaccurate information, including QuickBooks, Rust Rare Coin Microsoft Dynamics RMS point-of-sale system and Acumatica software).

¹³ See Gaylen Rust Deposition, June 23, 2021, 7:15–10:9 (Mr. Rust invoking the Fifth Amendment and declining to answer approximately 150 questions posed to him).

are not required to come forward with admissible evidence to demonstrate the existence of a genuine issue for trial.¹⁴

2. Specifically, the Receivership Defendants represented that one-half of invested funds would be used to purchase physical silver, which would be stored at Brink’s facilities. According to the Receivership Defendants’ representations, the remaining one-half of the invested funds would be used to buy and sell physical silver on the commodities market, thereby increasing the investor’s silver holdings over time and generating returns on the investment. [Hafen Report, at p. 12, and Exhibit A thereto, ¶¶ 20, 98; Deposition of Leslie M. Howell (“L. Howell Depo.”), 22:12-23:8.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.¹⁵ Additionally, the statement is not consistent with the cited deposition testimony of Les.

3. In reality, investor funds were not used to purchase physical silver. [Hafen Report, at pp. 13-14, and Exhibit A thereto, ¶ 22.]

¹⁴ When the moving party also bears the burden of proof at trial, a more stringent summary judgment standard applies. Thus, if the moving party bears the burden of proof, to obtain summary judgment, it cannot force the nonmoving party to come forward with “specific facts showing there [is] a genuine issue for trial” merely by pointing to parts of the record that it believes illustrate the absence of a genuine issue of material fact. Instead, the moving party must establish, as a matter of law, all essential elements of the issue before the nonmoving party can be obligated to bring forward any specific facts alleged to rebut the movant's case.

Murphey v. Mid-Century Ins. Co., No. 13-2598-JAR-JPO, 2014 WL 2619073, at *2 (D. Kan. June 12, 2014).

¹⁵ Hafen Depo. 10:17–11:7. When asked about an almost identical statement made in a declaration submitted in support of summary judgment in another claw back action (*Hafen v. Oberhansly, et al.*, 2:19-cv-627), the following exchange occurred:

17 Q. Paragraph 18, "Receivership defendants raised
18 funds from investors by claiming that they would use those
19 funds to purchase and sell physical silver."
20 I guess the simple question is, how do you know
21 this? What information do you have available to you to make
22 this determination, or make this statement?
23 A. Well, interviews with various victims of the
24 Ponzi scheme, the investigation by BRG, work done by my legal
25 counsel, representations made by third parties with whom we
1 interacted. That's the basis of that conclusion.
2 Q. Would that apply to the remainder of this
3 paragraph?
4 A. Could you show -- Patrick, could you show me
5 the rest of 18, please?
6 Yes, that does apply to the entire
7 Paragraph 18.

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.¹⁶

4. Rust expressly admitted that new investor funds were used to pay returns to existing investors and to fund other businesses that were unrelated to the Silver Pool. [Strong Report, at pp. 13-15.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1 and footnotes 14 and 15. Additionally, the alleged admissions of a non-party, Rust, are not admissible against the Howells. Further, when the Howells deposed Rust in this action, he invoked the Fifth Amendment and refused to testify. Accordingly, no statements, admissions or sworn testimony from Rust is admissible in this action.

5. Although the Receivership Defendants represented that they managed over \$80 million of physical silver and that approximately one-half of that amount was stored at Brink’s locations in Salt Lake City and Los Angeles, there is no evidence that the Receivership Defendants ever stored significant amounts of physical silver at Brink’s or any other facility. [*Id.*, at pp. 9-10, 48.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

6. Rust expressly admitted that there was no significant amount of silver stored at Brinks at the time of the Receiver’s appointment. [Hafen Report, at p. 13, and Exhibit A thereto, ¶ 99.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their responses to Alleged “Fact” Statement Nos. 1 and 4.¹⁷

7. There is no evidence that the Receivership Defendants ever traded significant amounts of physical silver on a regular basis in the manner represented to investors. [Hafen Report, at p. 13, and Exhibit A thereto, ¶ 99.]

¹⁶ Hafen Depo. 11:9–11:15. When asked about an almost identical statement made in a declaration submitted in support of summary judgment in another claw back action (*Hafen v. Oberhansly, et al.*, 2:19-cv-627), the following exchange occurred:

9 [] Does the response to
10 Paragraph 18 -- and by response, I mean, you know, your
11 statement with respect to how you formed the conclusion or
12 made the statement Paragraph 18 in referring back to the
13 investigation the BRG did, the interviews and whatnot, would
14 that response apply to Paragraph 19 as well?
15 A. Yes.

¹⁷ Hafen Depo. 12:3-14 (stating that counsel for Hafen investigated silver holdings at Brinks facility and not Hafen).

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.¹⁸

8. Since 2008, the Receivership Defendants raised at least \$225 million from investors and paid out at least \$175 million to investors. [Strong Report, at pp. 6-7.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

9. Even as early as tax year 2008 (“TY2008”), the net operating income obtained through the Receivership Defendants’ limited business operations was insufficient to make payments to investors:

- a. The total net operating income of RRC—Rust’s only profit-generating business— in TY2008 was at best \$259,154.
- b. During TY2008, the Receivership Defendants took in at least \$3.2 million in payments from investors.
- c. During TY2008, the Receivership Defendants made payments to investors in excess of \$1.6 million.
- d. During TY2008, the Receivership Defendants also made payments to other RRC-affiliated businesses in excess of \$1.5 million.
- e. From at least TY2008, the income generated from operations of the Receivership Defendants was grossly insufficient to finance the substantial payments promised to investors. New funds contributed by unsuspecting investors provided the only funding source large enough to facilitate these payments.

[Strong Report, at pp. 6, 23-24.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

10. The payments made to investors since 2008 could only have been sourced from funds raised from other investors; there was no other source of funds from which these payments could have been made. [*Id.*, at p. 76.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

11. From 2008 through the appointment of the Receiver in 2018, the Receivership Defendants continued to take in ever-increasing funds from investors and to pay out exorbitant returns. Between January 1, 2018, and November 15, 2018, the Receivership Defendants paid more than \$37 million to investors. [*Id.*, Exhibit 25, p. EX194 (summarizing amounts raised from and paid to investors on a year-by-year basis).]

¹⁸ Hafen Depo. 12:15-13-16 (acknowledging that statements made in a declaration submitted in support of summary judgment in another claw back action (*Hafen v. Oberhansly, et al.*, 2:19-cv-627), which have been repeated almost verbatim here were based up “interviews with various victims of the Ponzi scheme, the investigation by BRG, work done by my legal counsel, representations made by third parties with whom we interacted” and, thus, not personal knowledge.

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

12. The Receivership Defendants represented that the Silver Pool was “risk free,” “no risk,” or “virtually risk free” because the investment was backed by physical silver, which would always have value. [Hafen Report, at p. 6, and Exhibit A thereto, ¶ 125.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1 and footnote 17.

13. The Receivership Defendants guaranteed “no loss of principle [sic]” invested. [Strong Report, Exhibit 8, p. EX104.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

14. The Receivership Defendants represented that the Silver Pool paid an average return of 20-25%. [*Id.*, at p. 44.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

15. The Receivership Defendants represented that returns between 2012 and 2017 exceeded 40%. [*Id.*, Exhibit 35, pp. EX235-36.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

16. The Receivership Defendants represented that the lowest return on the Silver Pool investment during a thirty-year period was 12%. [Strong Report, at p. 44.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

17. Investor statements provided by the Receivership Defendants reflected that every silver trade was profitable and that the Receivership Defendants had never lost money on a trade. [*Id.*, at p. 7.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement Nos. 1 and 4.

18. The Receivership Defendants promoted the Silver Pool as an exclusive program offered only to those investors Rust knew personally. [*Id.*, at pp. 58-59.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

19. The Receivership Defendants falsely claimed to have a trading relationship with HSBC, one of the world’s largest banks, and to employ a proprietary trading algorithm that allowed

the Receivership Defendants to beat the market. [Hafen Report, at p. 21, and Exhibit A thereto, ¶¶ 122, 129-30.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1 and footnote 17.

20. The Receivership Defendants paid exorbitant returns to investors for years, creating the false impression that profits were being earned and thereby attracting new investors to the scheme and convincing existing investors to increase their investment. [Strong Report, at p. 7.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

21. Investors have likely suffered in excess of \$100 million in net principal losses. [*Id.*, at p. 77.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

22. Between February 6, 2009, and December 14, 2015, Gretchen Howell invested \$96,450.00 into the Silver Pool. [Howell Resp., at pp. 6-7, and HOWELL 00182-00191, 00195 (summary of the Howells’ investments and returns); L. Howell Depo., 34:14-25; Shaw Decl., ¶ 17.]

OBJECTION & RESPONSE: DISPUTED in part. Gretchen made investments with her own cash, and gave value, to RRC on the following days in the following amounts:

02/06/2009	\$5,000.00
10/15/2010	\$22,000.00
11/12/2014	\$27,000.00
12/14/2015	\$42,450.00
TOTAL	\$96,450.00

Gretchen Decl. ¶ 7. While Gretchen intended and understood that she was investing in silver, she did not understand or refer to her investment as “the Silver Pool.”

23. Between October 3, 2008, and June 2, 2015, Leslie Howell invested \$1,218,446.04 into the Silver Pool. [*Id.*; L. Howell Depo., 98:1-11 and Exh. 19; Shaw Decl., ¶ 12.³]

OBJECTION & RESPONSE: DISPUTED. Les made investments with his own cash and valuables, and gave value, to RRC on the following days in the following amounts:

10/3/2008	\$225,000.00
11/11/2008	\$95,000.00
12/5/2008	\$50,000.00
5/28/2010	\$32,634.00
4/23/2012	\$156,573.84
4/23/2012	\$82,723.38

4/23/2012	\$15,251.73
4/24/2012	\$122,440.26
4/24/2012	\$2,897.28
4/24/2012	\$8,000.00
10/27/2012	\$152,275.76
3/20/2013	\$10,000.00
3/29/2013	\$1,886.15
4/1/2013	\$99,985.26
4/1/2013	\$68,336.11
10/21/2014	\$27,000.00
11/11/2014	\$10,000.00
6/2/2015	\$62,000.00
TOTAL	\$1,222,003.77

Les Decl. ¶ 7; Les Suppl. Decl. ¶ 7.

24. The Howells’ combined investments into the Silver Pool totaled \$1,314,896.04. [Id.]

OBJECTION & RESPONSE: DISPUTED. Objection, the cited materials do not support the Receiver’s incorrect assertion that the Howells made “combined investments”. The Howells never made “combined” investments. Gretchen’s investments are, and always were, completely separate and independent from Les’s investments. Gretchen and Les were married in 1999. Gretchen Decl. ¶ 3; Les Decl. ¶ 3. Gretchen and Les came into their marriage with separate assets. Although Gretchen and Les both contributed to household expenses, they kept their finances largely separate. Gretchen Decl. ¶ 4; Les Decl. ¶ 4. From the beginning of their marriage, Gretchen and Les have maintained separate bank accounts. Gretchen Decl. ¶ 5; Les Decl. ¶ 5. Except when Les or Gretchen, respectively, contributed to pay monthly household expenses, Gretchen’s cash and earnings were deposited into different and separate accounts from the accounts in which Les’s cash and earnings were deposited and held. Gretchen Decl. ¶ 6; Les Decl. ¶ 6. Gretchen made investments with her own cash, and gave value, to RRC in the aggregate amount of \$96,450. Gretchen Decl. ¶ 7. Les made investments with his own cash and valuables, and gave value, to RRC in the aggregate amount of \$1,222,003.77. Les Decl. ¶ 7. If Gretchen’s and Les’s total investments are aggregated, the combined total is \$1,318,453.77.

25. From September 2013 through July 2018, Gretchen Howell received disbursements from the Receivership Defendants totaling \$22,000.00, such that she paid \$74,450.00 more to the Receivership Defendants than she received from them. [Howell Resp., at pp. 8-9, and HOWELL 00182-00191, 00195; Deposition of Gretchen A. Howell (“G. Howell Depo.”), 24:17-22; Shaw Decl., ¶¶ 18-19.]

RESPONSE: ADMITTED. CORRECT.

26. From May 2013 through November 2018, Leslie Howell received disbursements from the Receivership Defendants totaling \$4,511,000.00. [Howell Resp., at pp. 8-9, and

HOWELL 00182-00191, 00195; L. Howell Depo., 99:6-100:7 and Exh. 20 & 21; Shaw Decl., ¶ 13.]

OBJECTION & RESPONSE: DISPUTED. Les received payments in the form of checks, wires and one metal transaction (gold sets) from RRC totaling \$4,522,830.85. Les Suppl. Decl. ¶ 12. The Howells also object to the Shaw Decl. as cited by the Receiver. Mr. Shaw's opinions are incorrect and unreliable. Presently, the Howell's intend to file a motion to exclude Shaw from testifying as an expert.

27. The Howells' combined disbursements totaled \$4,533,000.00. [*Id.*]

OBJECTION & RESPONSE: DISPUTED. Objection, the cited materials do not support the Receiver's incorrect assertion that the Howells received "combined disbursements". The Howells never made "combined" investments, and they did not receive combined disbursements. Gretchen's investments are, and always were, completely separate and independent from Les's investments. The Howell's incorporate by reference their response to Fact Nos. 22-26. In addition, the Howell's provide the following additional evidence. Gretchen did not receive payments or transfers from RRC aside from the \$22,000 specified above. Gretchen Decl. ¶ 9. Gretchen gave more money (or value) to RRC than she received from RRC. Gretchen Decl. ¶ 10. Payments from RRC to Gretchen were deposited into Gretchen's separate bank account. Gretchen Decl. ¶ 11; Les Decl. ¶ 12. Payments from RRC to Les were deposited into Les's separate bank account. Gretchen Decl. ¶ 12; Les Decl. ¶ 11. Aside from instances where Les provided or contributed funds to pay monthly household expenses, the cash in Les's separate bank account(s), including any funds Les received from RRC, were not transferred to Gretchen. Gretchen Decl. ¶ 13; Les Decl. ¶ 13. Les alone (not Gretchen) determined and decided how funds in his bank account would be spent. Gretchen Decl. ¶ 14; Les Decl. ¶ 14.

28. In all, the Howells collectively received \$3,218,103.96 in excess of the contributions they made to the Silver Pool. [Howell Resp., at pp. 6-9, and HOWELL 00182-00191, 00195; Shaw Decl., ¶ 20.]

OBJECTION & RESPONSE: DISPUTED. Objection, the cited materials do not support the Receiver's incorrect assertion that the Howells received funds collectively. The Howell's incorporate by reference their response to Fact Nos. 22-27.

29. The Howells used the money they received from the Receivership Defendants to buy 92 acres of real property in Kingman, Arizona, and build a home thereon. *See* L. Howell Depo., 5:17-13:1; G. Howell Depo., 4:17-25.

OBJECTION & RESPONSE: DISPUTED. Objection, the cited materials do not support the Receiver's incorrect statement of fact. Both Les and Gretchen testified that Les used his separate funds to purchase the real property, and that Les used his separate funds to pay debts to contractors and suppliers. Les gave value to RRC for the transfers he received from RRC in the amount of at least \$1,222,003.77, plus ten percent statutory interest from the dates of his contributions and investments. Les Decl. ¶ 20; Les Suppl. Decl. ¶ 4. The real property on which Les and Gretchen's home is located was purchased with funds Les received before his total distributions from RRC exceeded \$1,222,003.77. Les Suppl. Decl. ¶ 8.

30. The Howells hold title to their Kingman property as joint tenants and have both lived in their Kingman home since January 1, 2018. *See* L. Howell Depo., 7:2-20, 12:11-19; G. Howell Depo., 24:6-8.

OBJECTION & RESPONSE: ADMITTED. CORRECT.

31. The Howells spent between three and four million dollars to construct their home in Kingman. *See* L. Howell Depo., 9:24-11:11.

OBJECTION & RESPONSE: DISPUTED. Objection, the cited materials do not support the Receiver’s incorrect statement of fact. The Howell’s incorporate by reference their responses to Fact Nos. 29 and 30.

IV. STATEMENT OF ADDITIONAL MATERIAL FACTS

1. Gretchen and Les were married in 1999. Gretchen Decl. ¶ 3; Les Decl. ¶ 3.

2. Gretchen and Les came into their marriage with separate assets. Although Gretchen and Les both contributed to household expenses, they kept their finances largely separate. Gretchen Decl. ¶ 4; Les Decl. ¶ 4.

3. From the beginning of their marriage, Gretchen and Les have maintained separate bank accounts. Gretchen Decl. ¶ 5; Les Decl. ¶ 5.

4. Except when Les or Gretchen, respectively, contributed to pay monthly household expenses, Gretchen’s cash and earnings were deposited into different and separate accounts from the accounts in which Les’s cash and earnings were deposited and held. Gretchen Decl. ¶ 6; Les Decl. ¶ 6.

5. Les made investments with his own cash, and gave value, to RRC on the following days in the following amounts:

10/3/2008	\$225,000.00
11/11/2008	\$95,000.00
12/5/2008	\$50,000.00
5/28/2010	\$32,634.00
4/23/2012	\$156,573.84
4/23/2012	\$82,723.38
4/23/2012	\$15,251.73
4/24/2012	\$122,440.26
4/24/2012	\$2,897.28
4/24/2012	\$8,000.00

10/27/2012	\$152,275.76
3/20/2013	\$10,000.00
3/29/2013	\$1,886.15
4/1/2013	\$99,985.26
4/1/2013	\$68,336.11
10/21/2014	\$27,000.00
11/11/2014	\$10,000.00
6/2/2015	\$62,000.00
TOTAL	\$1,222,003.77

Les Suppl Decl. ¶ 4.

6. Accordingly, Les gave value to RRC for the transfers he received from RRC in the amount of at least \$1,222,003.77, plus ten percent statutory interest from the dates of his contributions. Les Suppl Decl. ¶ 4.

7. Les had invested \$1,107,752.54 with RRC by April 1, 2013. If those funds had been invested conservatively in the S&P 500 in 2013, they would have grown to over \$4,251,259.16 today. See <https://www.officialdata.org/us/stocks/s-p-500/2013?amount=1107752.04&endYear=2022>. Les Suppl Decl. ¶ 5.

8. Les invested an additional \$114,251.73 with RRC in 2014 and 2015. If those funds had been invested conservatively in the S&P 500 in 2015, and added to the other funds similarly invested as described in the foregoing paragraph, Les would be sitting on a stock portfolio worth \$4,550,000 today. See <https://www.officialdata.org/us/stocks/s-p-500/2015?amount=114251.73&endYear=2022>. Les Suppl Decl. ¶ 6.

9. Believing that his retirement savings held by RRC were safe and secure, Les took early retirement from PacifiCorp in May of 2013, leaving behind over 35 years of hard-won seniority. Les forfeited an average of \$100,000 per year of wages that he would have earned if he had not retired early – a loss of approximately \$900,000 to date. Les Suppl Decl. ¶ 7.

10. With some of the earliest distributions Les received from RRC, Les purchased property in a somewhat remote area near Kingman, Arizona which he titled in his name and Gretchen’s, as joint tenants. The aggregate distributions that Les had received from RRC at the

time he purchased the real property were substantially less than the \$1,222,003.77 in value that he had given to RRC. Accordingly, the distributions directly traceable to the purchase of the property on which Les and Gretchen's home is constructed were in satisfaction of an antecedent debt that RRC owed Les, and for reasonably equivalent value. Les Suppl Decl. ¶ 8.

11. Most of the subsequent distributions that Les received from RRC were used to pay legitimate debts Les owed to third parties, including debts due to contractors, materialmen and suppliers. Les Suppl Decl. ¶ 9.

12. In 2015, Les moved to Arizona. Les personally worked full time on constructing improvements on the Kingman, Arizona property, investing approximately six thousand hours of his time (over 3+ years) performing skilled and unskilled construction services – literally contributing his blood and sweat to the value of the property. Les Suppl Decl. ¶ 10.

13. When RRC was seized, Gretchen and Les's home in Kingman, Arizona was unfinished (and still is), and neither Les nor Gretchen had any meaningful savings. Les Suppl Decl. ¶ 11.

14. Assuming arguendo that RRC was a Ponzi scheme,¹⁹ Les was not aware and had no reason to know that it was a Ponzi scheme. Les Decl. ¶ 15.

15. Assuming arguendo that RRC and Rust committed fraud, or made transfers (including transfers to Les) with actual intent to hinder, delay and defraud creditors,²⁰ Les was not aware and had no reason to know of RRC's fraud, or that any transfers to him may be fraudulent. Les Decl. ¶ 16.

16. To the extent the payments received by Les from RRC were derived from money RRC received from other investors, Les was not aware and had no reason to know that the payments were derived from other investors. Les Decl. ¶ 17.

¹⁹ Les does not stipulate or concede that RRC or Rust operated a Ponzi scheme. Plaintiff holds the burdens of proof and persuasion as to that matter.

²⁰ Les does not stipulate or concede that any of the transfers to her were made with actual intent to hinder, delay or defraud, or that they are otherwise voidable. Plaintiff holds the burdens of proof and persuasion as to those matters.

17. Les accepted the payments from RRC without knowledge of their voidability or potential voidability. Les Decl. ¶ 18.

18. Les is a good faith transferee with respect to all transfers that he received from RRC. Les Decl. ¶ 19.

19. Les gave value to RRC for the transfers he received from RRC – both individually and in the aggregate – in the amount of at least \$1,222,003.77, plus ten percent statutory interest from the dates of his respective contributions and investments. Les Decl. ¶ 20.

20. Gretchen gave more money (or value) to RRC than she received from RRC. Gretchen Decl. ¶ 10.

21. Payments from RRC to Gretchen were deposited into Gretchen’s separate bank account. Gretchen Decl. ¶ 11; Les Decl. ¶ 12.

22. Payments from RRC to Les were deposited into Les’s separate bank account. Gretchen Decl. ¶ 12; Les Decl. ¶ 11.

23. Aside from instances where Les provided or contributed funds to pay monthly household expenses, the cash in Les’s separate bank account(s), including any funds Les received from RRC, were not transferred to Gretchen. Gretchen Decl. ¶ 13; Les Decl. ¶ 13.

24. Les alone (not Gretchen) determined and decided how funds in his bank account would be spent. Gretchen Decl. ¶ 14; Les Decl. ¶ 14.

25. Assuming arguendo that RRC was a Ponzi scheme,²¹ Gretchen was not aware and had no reason to know that it was a Ponzi scheme. Gretchen Decl. ¶ 15.

26. Assuming arguendo that RRC and Rust committed fraud, or made transfers (including transfers to Gretchen) with actual intent to hinder, delay and defraud creditors,²²

²¹ Gretchen does not stipulate or concede that RRC or Rust operated a Ponzi scheme. Plaintiff holds the burdens of proof and persuasion as to that matter.

²² Gretchen does not stipulate or concede that any of the transfers to her were made with actual intent to hinder, delay or defraud, or that they are otherwise voidable. Plaintiff holds the burdens of proof and persuasion as to those matters.

Gretchen was not aware and had no reason to know of RRC’s fraud, or that any transfers to her may be fraudulent. Gretchen Decl. ¶ 16.

27. To the extent the payments received by Gretchen from RRC were derived from money RRC received from other investors, Gretchen was not aware and had no reason to know that the payments were derived from other investors. Gretchen Decl. ¶ 17.

28. Gretchen accepted the payments from RRC without knowledge of their voidability or potential voidability. Gretchen Decl. ¶ 18.

29. Gretchen is a good faith transferee with respect to all transfers that she received from RRC. Gretchen Decl. ¶ 19.

30. Gretchen gave value to RRC for each transfer she received from RRC – both individually and in the aggregate – in amounts exceeding the value of the asset(s) transferred to her. Gretchen Decl. ¶ 20.

31. The value Gretchen gave to RRC exceeds the value of all benefits that RRC conferred and that she received – both individually and in the aggregate. Gretchen Decl. ¶ 21.

V. ARGUMENT

A. Standard of Review.

The Court of Appeals for the Tenth Circuit has explained:

At the summary judgment stage, evidence need not be submitted “in a form that would be admissible at trial.” ... Nonetheless, “the content or substance of the evidence must be admissible.” Thus, for example, at summary judgment courts should disregard inadmissible hearsay statements contained in affidavits, as those statements could not be presented at trial in any form.... Rule 56(e) of the Federal Rules of Civil Procedure... requires that “[s]upporting and opposing affidavits shall be made on personal knowledge,” [and] Rule 602 of the Federal Rules of Evidence, ... requires that testifying witnesses “ha[ve] personal knowledge of the matter.” Under the personal knowledge standard, an affidavit is inadmissible if “ ‘the witness could not have actually perceived or observed that which he testifies to.’ ”

Argo v. Blue Cross & Blue Shield of Kansas, Inc., 452 F.3d 1193, 1199-1200 (10th Cir. 2006)

(citations omitted). When the moving party also bears the burden of proof at trial,

a more stringent summary judgment standard applies. Thus, if the moving party bears the burden of proof, to obtain summary judgment, it cannot force the

nonmoving party to come forward with “specific facts showing there [is] a genuine issue for trial” merely by pointing to parts of the record that it believes illustrate the absence of a genuine issue of material fact. Instead, the moving party must establish, as a matter of law, all essential elements of the issue before the nonmoving party can be obligated to bring forward any specific facts alleged to rebut the movant's case.

Murphey v. Mid-Century Ins. Co., No. 13-2598-JAR-JPO, 2014 WL 2619073, at *2 (D. Kan. June 12, 2014).

“[E]vidence offered [on] a motion for summary judgment must be made on personal knowledge ... set forth such facts as would be *admissible in evidence*, and ... show affirmatively that the [person who responded to the interrogatories] is competent to testify to the matters' set forth therein.” Gross v. Burggraf Const. Co., 53 F.3d 1531, 1541 (10th Cir. 1995) (emphasis in original) (citations omitted). “Hearsay testimony cannot be considered because ‘[a] third party's description of [a witness'] supposed testimony is not suitable grist for the summary judgment mill.’ ” Id.

B. The Court Should Not Consider the Receiver Report, the Shaw Declaration or the Strong Report in Deciding the Receiver’s Motion.

The Receiver, Shaw and Strong do not have personal knowledge of any relevant or material facts. Accordingly, they are not competent to testify as fact witnesses.

Further, their incompetence as witnesses is not cured by “dressing up” their inadmissible testimony in a report versus a sworn declaration, because their testimony also fails to satisfy the requirements of Federal Rules of Evidence 702 and 703.

District courts are tasked with the responsibility of serving as the gatekeepers of expert evidence and must decide which experts may testify before the jury and the permissible scope of that testimony.²³ While testimony on ultimate facts is authorized under Rule 704, ... testimony on ultimate questions of law is not favored.”²⁴ “The basis for this distinction is that testimony on the ultimate factual questions aids the jury in reaching a verdict; *testimony which articulates and*

²³ Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

²⁴ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988).

applies the relevant law, however, circumvents the jury’s decision-making function by telling it how to decide the case.”²⁵

“[A]n expert is not to opine on the weight of the facts or take a principal role in sifting, weighing and reciting them for the jury.”²⁶ Such impermissible testimony is not helpful.

“Only evidence can establish proof, only the jury can find facts and decide issues . . . and only the attorneys in the case can argue about the meaning of the evidence.”²⁷

The Receiver’s Report is exactly the sort of improper testimony rejected in Specht²⁸ and Rowe.²⁹ It is little more than a closing argument at the end of trial. The Receiver may be an expert trial lawyer, but that does not qualify him to testify, as an expert, regarding how he would sift and weigh information.

Further, to be admissible under Rule of Evidence 702, expert testimony must be reliable.³⁰ To determine whether an expert’s testimony is reliable requires “assess[ing] the reasoning and methodology underlying the expert’s opinion.”³¹ The testimony must be “based on sufficient facts or data.”³² It must be “the product of reliable principles and methods.”³³ And the expert must have “reliably applied the principles and methods to the facts of the case.”³⁴

Shaw’s expert testimony is not admissible for multiple reasons. First, it is not helpful or necessary. Second, Shaw did not apply reliable principles and methods to the facts.

²⁵

Id.

²⁶ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015).

²⁷

Id.

²⁸ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988).

²⁹ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015).

³⁰ Ralston v. Smith & Nephew Richards, Inc., 275 F.3d 965, 969 (10th Cir. 2001).

³¹ United States v. Rodriguez-Felix, 450 F.3d 1117, 1123 (10th Cir. 2006) (internal quotations omitted).

³² Fed. R. Evid. 702(b).

³³ Fed. R. Evid. 702(c).

³⁴ Fed. R. Evid. 702(d).

Strong's testimony is not admissible because the facts and data that he relies upon are neither sufficient nor reliable. Further, his "opinions" cross the line from accounting to advocacy. Much of it is exactly the sort of improper testimony rejected in Specht³⁵ and Rowe,³⁶ as he argues the facts and attempts to instruct the Court how to sift and weigh the facts.

C. The Receiver Has Failed to Carry His Burden of Proof to Establish the Existence of a Ponzi Scheme in This Civil Action.

The Receiver has the burden of proof to establish that RRC was operating a Ponzi scheme before RRC's transactions with the Howells can be questioned. The Receiver may have satisfied that burden in other actions. But he has not satisfied the burden here.

D. Gretchen Was a Good Faith Transferee, Because Gretchen Took All of the Payments She Received from RRC in Good Faith and (at Least) for a Reasonably Equivalent Value. Accordingly, the Receiver's Claims Against Gretchen under the UVTA Must Be Dismissed with Prejudice.

The Receiver is not entitled to a judgment against Gretchen under the Uniform Voidable Transactions Act (the "UVTA") because she is a good faith transferee and the value³⁷ she gave RRC exceeds the value of the transfers she received from RRC.

Under the UVTA, even a transfer that is made with actual intent to hinder, delay and defraud "is not voidable ... against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee" Utah Code Ann. § 25-6-304(1); Miller v. Wulf, 84 F. Supp. 3d 1266, 1274 (D. Utah). Further, in instances where the plaintiff carries its initial burden of proof to establish that a transfer is voidable, "notwithstanding the voidability of a transfer ..., a good faith transferee ... is entitled, to the extent of the value given the debtor ... to: (a) a lien on or a right to retain an interest in the asset transferred; ... or (c) a reduction in the amount of the liability on the judgment." Utah Code

³⁵ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988).

³⁶ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015).

³⁷ Under the UVTA, and without limitation: "Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied." Utah Code Ann. § 25-6-104(1).

Ann. § 25-6-304(4). Accordingly, it is well established that a plaintiff in a claw back action, like this one, cannot obtain judgment against a defendant whose contributions exceed the distributions received. In 1984, Utah Bankruptcy Judge John H. Allen held, and explained:

[E]ven if the Court were to assume that actual intent to defraud was present, defendants would be immune from the trustee's avoidance power [T]hese defendants took their payments for value and in good faith.

Regardless of how the debtors' transactions with the defendants are characterized, the debtors received a "reasonably equivalent value" from these defendants since the monthly payments when aggregated did not exceed the amounts deposited with the debtors. Therefore, the transfers cannot be avoided

[T]he Court concludes that the payments to investors ..., other than sums received in excess of their investments, are not avoidable The Court will grant summary judgment in favor of defendants

In re Independent Clearing House Co., 41 B.R. 985, 1007 (Bankr. D. Utah 1984)

The Receiver's own statement of undisputed facts establish that that Gretchen was a "net loser." Gretchen paid \$96,450.00 to RRC and received only \$22,000.00 in distributions from RRC. In the aggregate, Gretchen lost \$74,450.00, including all of her retirement savings. Gretchen received the payments from RRC in good faith. Gretchen did not have knowledge that RRC or Rust were engaged in fraud or that any transfers to her were made with actual intent to hinder, delay and defraud.³⁸

Gretchen accepted the payments from RRC without knowledge of their voidability or potential voidability and had no reason to know such facts.

Accordingly, the Court should enter a judgment in favor of Gretchen and against the Receiver dismissing with prejudice the Receiver's claims.

³⁸ Gretchen does not stipulate or concede that RRC or Rust operated a Ponzi scheme. Gretchen does not stipulate or concede that any of the transfers to her were made with actual intent to hinder, delay or defraud, or that they are otherwise voidable. Plaintiff holds the burdens of proof and persuasion as to those matters.

E. Gretchen Is Not Liable for Any Transfers RRC Made to Les.

- 1. Gretchen is not liable, under the UVTA or otherwise, for any of Les’s debts, including his potential³⁹ liability to plaintiff.

The Receiver improperly has attempted to conflate Les and Gretchen, and is seeking judgment against Gretchen for RRC’s alleged transfers to Les. But Gretchen is not liable to pay Les’s debts, and is not liable for any of the Receiver’s claims against Les. To the extent Les received transfers from RRC,⁴⁰ they were to Les alone. And Les alone is responsible.

Utah abolished the doctrine of coverture over 100 years ago. As explained by the Utah Supreme Court in Ellis v. Est. of Ellis, “In the revised statutes of 1898, the Utah Legislature enacted the Married Women’s Act ..., which enables wives to sue and be sued, enforce liabilities, and take actions to protect their rights” 2007 UT 77, ¶ 12, 169 P.3d 441, 443–44.

In short, Gretchen is not liable for the Receiver’s claims against Les, including any claim arising from or relating to payments, transfers or distributions Les may have received from RRC. And neither Gretchen nor her property may be attached to satisfy a judgment against Les. In this regard, Utah’s legislature unambiguously has declared:

30-2-5. Separate debts.

(1) Neither spouse is personally liable for the separate debts, obligations, or liabilities of the other: ...

(b) contracted or incurred during marriage, except family expenses as provided in Section 30-2-9

(2) The wages, earnings, property, rents, or other income of one spouse may not be reached by a creditor of the other spouse to satisfy a debt, obligation, or liability of the other spouse, as described under Subsection (1).

Utah Code Ann. § 30-2-5(2) (emphasis added). Accordingly, where a judgment is entered against the husband, the “wife’s property is not attachable for her husband’s separate debts.”

Peterson v. Peterson, 571 P.2d 1360, 1361-62 (Utah 1977); see also Taylor v. Patten, 2 Utah 2d

³⁹ Gretchen does not stipulate or concede that Les owes a debt, or has liability to, the Receiver. Plaintiff holds the burdens of proof and persuasion as to the claims against Les.

⁴⁰ Gretchen does not stipulate or concede that Les received transfers from RRC. Plaintiff holds the burdens of proof and persuasion as to that matter.

404, 407, 275 P.2d 696, 698 (1954) (Utah law “recognize[s] in both husband and wife every kind of right which they were deprived of by the common law fiction that they were one Neither husband nor wife is liable for the debts of the other whether contracted before or after marriage ..., nor are the wages, earnings or property or the rents or income therefrom liable for the debts of the other.”).

2. Gretchen is not the first transferee or an immediate or mediate transferee of transfers Les is alleged to have received from RRC.

Under the Uniform Voidable Transactions Act (the “UVTA”), a judgment may be entered against a “first transferee” or an “immediate or mediate transferee” of the first transferee. Utah Code Ann. § 25-6-304(2)(b) (2021). The first person to receive the funds is the “first transferee,” and the second person is the “immediate” transferee. *Cf. In re Tebbs*, 488 B.R. 729, 732 (D. Utah 2013) (applying Bankruptcy Code); *Big Sky Motors, Ltd. v. Bailey*, No. 299cv270B, 2000 WL 33672946, at *8 (D. Utah Feb. 4, 2000) (same). The transferees subsequent to the “immediate” transferee are “mediate” transferees.

Gretchen was not the “first transferee” or “immediate or mediate transferee” of the funds that RRC distributed, or transferred, to Les. Payments from RRC to Les were deposited into Les’s separate bank account. Moreover, Les alone (not Gretchen), determined and decided how funds in his bank account (including any cash transferred from RRC) were used or spent.

Accordingly, Gretchen cannot be held liable under the UVTA for any transfers that RRC made to Les.

F. Payments from RRC to Les Did Not Confer a Direct Benefit on Gretchen. And the Payments Gretchen Received from RRC Were Less Than Her Investments or Contributions. Accordingly, the Receiver’s Unjust Enrichment Claim Against Gretchen Must Be Dismissed with Prejudice.

The receiver’s unjust enrichment claims against Gretchen depend upon the false, and legally erroneous, premise that a benefit directly conferred on one spouse is a benefit received by the other spouse. RRC did not confer a benefit on Gretchen in excess of her payments to RRC. And Gretchen she did not receive a benefit from RRC that it would be inequitable for her to

retain. Gretchen paid \$96,450 into RRC, and received only \$22,000 back. In short, Gretchen received less from RRC than gave to RRC. Accordingly, the Receiver's unjust enrichment claims against Gretchen must fail.

To obtain a judgment against Gretchen for unjust enrichment, the Receiver must prove three elements: "(1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value." Hess v. Johnston, 2007 UT App 213, ¶ 20, 163 P.3d 747 (citations omitted). Further, "[a] defendant is liable under the unjust enrichment prong of quantum meruit *only if he or she received a **direct** benefit* from the plaintiff. In other words, unjust enrichment does not result if the defendant has received only an incidental benefit," or an indirect benefit. Jones v. Mackey Price Thompson & Ostler, 2015 UT 60, ¶ 65, 355 P.3d 1000 (emphasis added) (second alteration in original) (citation omitted); see also Emergency Physicians Integrated Care v. Salt Lake Cty., 2007 UT 72, ¶ 26, 167 P.3d 1080 ("unjust enrichment does not result if the defendant has received only an incidental benefit"). Instead, unjust enrichment requires the defendant to receive a direct benefit from the plaintiff. See Jones, 2015 UT 60, ¶ 68 ("We uphold the dismissal because there was no genuine issue of material fact regarding ... whether [defendants] directly benefitted The benefit must be direct, not incidental.").

Accordingly, RRC's transfers or distributions to Les cannot give rise to liability in Gretchen. Les, and Les alone, received the direct benefit of any transfers RRC made to him. Gretchen has a separate legal existence from Les.

Unless the Court erroneously accepts the statutorily abolished fiction that husband and wife are one, the Receiver's claims against Gretchen must be dismissed with prejudice.

G. Les Was a Creditor of RRC Until Les’s Gross Distributions from RRC Exceeded Les’s Gross Deliveries to RRC, Plus Ten Percent Statutory Interest, and All Such Payments to Les Were in Satisfaction of an Antecedent Debt.

Les was a creditor of RRC on account of his delivery of cash and other valuables to RRC in the aggregate principal amount of at least \$1,222,003.77. Accordingly, RRC owed Les an antecedent debt in the amount of at least \$1,222,003.77 plus ten percent statutory interest from the date(s) of his investments. When Les began making withdrawals from the RRC investment account, all of the transfers to him were in satisfaction of an antecedent debt until he had received in excess of \$1,222,003.77 plus ten percent statutory interest.

Under the UVTA, even a transfer that is made with actual intent to hinder, delay and defraud “is not voidable ... against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee” Utah Code Ann. § 25-6-304(1); Miller v. Wulf, 84 F. Supp. 3d 1266, 1274 (D. Utah).

Further, under the UVTA, a “creditor” is a “person that has a claim,” and a “debtor” is “a person that is liable on a claim.” Utah Code Ann. § 25-6-102(4) & (6) (2021). A “claim,” in turn, “means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” Utah Code Ann. § 25-6-102(3). Distributions or payments on account of an antecedent debt constitute “value” under the UVTA. Utah Code Ann. § 25-6-104(1) (2021) (“Value is given [by a creditor] for a transfer . . . if property is transferred or an antecedent debt [of the debtor] is . . . satisfied.”)

The undisputed facts establish that Les delivered cash, bullion and other valuables to RRC totaling at least \$1,222,003.77. Thus, Les became or creditor of RRC, and RRC owed an antecedent debt to Les, in the amount of \$1,222,003.77 plus ten percent statutory interest.

In short, all transfers from RRC to Les were in satisfaction of an antecedent debt, and for reasonably equivalent value, until Les’s gross receipts from RRC exceeded Les’s gross payments to RRC, plus interest. Indeed, under Utah statutes, RRC’s debt to Les accrued interest at 10%

per annum unless and until repaid. Utah Code Ann. § 15-1-1 (2021) (“Unless the parties to a lawful written, verbal, or implied contract expressly specify a different rate of interest, the legal rate of interest for the contract, including a contract for services, a loan or forbearance of any money, goods, or services, or a claim for breach of contract is 10% per annum.”).

Because Les was a creditor of RRC, the distributions Les received from RRC (that is, until the distributions Les received exceeded his contributions) were on account of an antecedent debt owed by RRC to Les. Les gave value for all distributions or transfers that he received from RRC at least until said antecedent debt was satisfied.

H. Les Was a Good Faith Transferee of All Payments that He Received from RRC, and Les Is Entitled to a Reduction in the Amount of His Liability in the Amount of His Aggregate Deliveries to RRC.

Under the UVTA, even where the plaintiff carries its initial burden of proof to establish that a transfer is voidable, “notwithstanding the voidability of a transfer ..., a good faith transferee ... is entitled, to the extent of the value given the debtor ... to: (a) a lien on or a right to retain an interest in the asset transferred; ... or (c) a reduction in the amount of the liability on the judgment.” Utah Code Ann. § 25-6-304(4). Accordingly, it is well established that a plaintiff in a claw back action, like this one, cannot obtain judgment against a defendant for distributions equal to or less than the defendant’s aggregate contributions. In 1984, Utah Bankruptcy Judge John H. Allen held, and explained:

[E]ven if the Court were to assume that actual intent to defraud was present, defendants would be immune from the trustee's avoidance power [T]hese defendants took their payments for value and in good faith.

Regardless of how the debtors' transactions with the defendants are characterized, the debtors received a “reasonably equivalent value” from these defendants

[T]he Court concludes that the payments to investors ..., other than sums received in excess of their investments, are not avoidable The Court will grant summary judgment in favor of defendants

In re Independent Clearing House Co., 41 B.R. 985, 1007 (Bankr. D. Utah 1984)

Les gave value to RRC in the aggregate amount of at least \$1,222,003.77.⁴¹ Les received the payments from RRC in good faith. He did not have knowledge that RRC or Rust were engaged in fraud or that any transfers to him were made with actual intent to hinder, delay and defraud.⁴² Les accepted the payments from RRC without knowledge of their voidability or potential voidability and had no reason to know such facts.

Accordingly, the Court should deny the Receiver's motion for entry of judgment against Les, and should instead grant judgment to Les on his cross-motion. Without limitation, Les is entitled to a reduction in the amount of his liability in the amount of at least \$1,222,003.77 plus ten percent statutory interests thereon, notwithstanding the potential voidability of any transfers from RRC to Les.

I. Les Was Not Unjustly Enriched by Any Distributions that He Received from RRC unless and until the Distributions to Him Exceeded \$1,222,003.77, plus 10% Statutory Interest. All Such Payments to Les Were in Satisfaction of an Antecedent Debt.

The receiver's unjust enrichment claims against Les improperly ignore the \$1,222,003.77 of cash and other valuables that Les gave to RRC, and fail to account for the antecedent debt that RRC owed Les (*i.e.*, \$1,222,003.77 in principal plus 10% statutory interest). Payments by a debtor to a creditor in satisfaction of an antecedent debt do not unjustly enrich the creditor.

To obtain a judgment against Les for unjust enrichment, the Receiver must prove three elements: "(1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention of the benefit under such

⁴¹ The Receiver may dispute \$15,251.73 of the value that Les gave to RRC by reason of (a) non-delivery of a portion of the gold coins due to Les in exchange, or trade, for the foreign platinum and gold coins that Les delivered to RRC on May 1, 2009, and (b) RRC's conversion of the undelivered gold coins into Les's RRC investment account as of April 23, 2012. *See* Les Decl. ¶ 6; *see also* footnote 7, *supra*. The Receiver has interpreted Rust's notes relating to the May 1, 2009 exchange, and the subsequent conversion of the undelivered coins, incorrectly. In any event, the Receiver's asserted absence of evidence is insufficient to satisfy his burden in opposition to a motion for summary judgment. Fed. R. Civ. P. 56(c)(1)(A).

⁴² Les does not stipulate or concede that RRC or Rust operated a Ponzi scheme. Les does not stipulate or concede that any of the transfers to him were made with actual intent to hinder, delay or defraud, or that they are otherwise voidable. Plaintiff holds the burdens of proof and persuasion as to those matters.

circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value.” Hess v. Johnston, 2007 UT App 213, ¶ 20, 163 P.3d 747 (citations omitted).

Accordingly, RRC’s transfers or distributions to Les in payment or satisfaction of RRC’s antecedent debt to Les cannot give rise to liability in Les. In short, the Court should deny the Receiver’s Motion.

VI. CONCLUSION

The Receiver’s Motion should be denied for all of the foregoing reasons. The Receiver has not presented admissible evidence in this action to establish that RRC was operating a Ponzi scheme and that the distributions to the Howells were part of it. Even if he had, the Receiver is not entitled to judgment against Gretchen, because she is a net loser. Finally, the Receiver’s Motion should be denied as against Les because disputed issues of material facts exist.

WHEREFORE, the Howells respectfully pray that the Court will DENY the Receiver’s Motion, and that it will grant such other and further relief as is just and equitable.

DATED this 31st day of January 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
*Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL*

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January 2022, I filed the foregoing **HOWELLS' RESPONSE OPPOSING RECEIVER'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to counsel of record in the above-captioned civil action, including without limitation:

Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 S 200 E STE 700
SALT LAKE CITY, UT 84111

E-mail: mball@parrbrown.com

Attorneys for plaintiff JONATHAN O. HAFEN

/s/ Krys Lopez

Matthew M. Boley (8536)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
E-mail: mboley@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">SUPPLEMENTAL APPENDIX OF EVIDENCE IN OPPOSITION TO RECEIVER’S MOTION FOR SUMMARY JUDGMENT</p> <p style="text-align: center;">Case No. 2:19-cv-00813</p> <p style="text-align: center;">Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Pursuant to DUCivR 56-1(c)(6), defendants GRETCHEN HOWELL and LESLIE M. HOWELL through counsel, hereby submit this supplemental appendix of evidence in connection with their concurrently filed *Howells’ Response Opposing Receiver’s Motion for Summary Judgment* (the “**Howells’ Opposition**”). Exhibits A and B referenced in the Howells’ Opposition are appended to the *Appendix of Evidence* filed November 30, 2021 [Docket No. 43].

EXHIBIT C – *Supplemental Declaration of Leslie M. Howell in Opposition to Receiver’s Summary Judgment Motion.*

EXHIBIT D – *Deposition Jonathan O. Hafen, taken on June 24, 2021*

EXHIBIT E – *Deposition of Ray Strong, CPA, CFE, CIRA taken on July 14, 2021*

EXHIBIT F – *Deposition of Gaylen D. Rust taken on June 23, 2021*

EXHIBIT G – *Official Change Page to Leslie M. Howell Deposition*

EXHIBIT H – *Official Change Page to Gretchen Anne Howell Deposition.*

DATED this 31st day of January, 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
Attorneys for defendants GRETCHEN A.
HOWELL and LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2022, I filed the foregoing **SUPPLEMENTAL APPENDIX OF EVIDENCE IN OPPOSITION TO RECEIVER'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to counsel of record in the above-captioned civil action, including without limitation:

Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 S 200 E STE 700
SALT LAKE CITY, UT 84111

E-mail: mball@parrbrown.com

Attorneys for plaintiff JONATHAN O. HAFEN

/s/ Krys Lopez

EXHIBIT C

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">DECLARATION OF LESLIE M. HOWELL IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT</p> <p style="text-align: center;">Case No. 2:19-cv-00813</p> <p style="text-align: center;">Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

I, LESLIE M. HOWELL (“I”, “me”, “Les”), depose and state as follows:

1. I am an individual above the age of 21, and make this declaration based on my own personal knowledge.
2. I am competent to testify to the matters set forth herein. If called as a witness, I could and would testify from my own personal knowledge regarding the matters set forth in this Declaration.
3. The following testimony is in supplement to, or clarification of, my previously filed declaration.
4. I made investments with my own cash, and gave value, to Rust Rare Coin, Inc. (including all other receivership entities “RRC”) on the following days in the following amounts:

10/3/2008	\$225,000.00
11/11/2008	\$95,000.00
12/5/2008	\$50,000.00
5/28/2010	\$32,634.00
4/23/2012	\$156,573.84
4/23/2012	\$82,723.38
4/23/2012	\$15,251.73
4/24/2012	\$122,440.26
4/24/2012	\$2,897.28
4/24/2012	\$8,000.00
10/27/2012	\$152,275.76
3/20/2013	\$10,000.00
3/29/2013	\$1,886.15
4/1/2013	\$99,985.26
4/1/2013	\$68,336.11
10/21/2014	\$27,000.00
11/11/2014	\$10,000.00
6/2/2015	\$62,000.00
TOTAL	\$1,222,003.77

I gave value to RRC for the transfers I received from RRC in the amount of at least \$1,222,003.77, plus ten percent statutory interest from the dates of my contributions.

5. I had invested \$1,107,752.54 with RRC by April 1, 2013. If those funds had been invested conservatively in the S&P 500 in 2013, they would have grown to over \$4,251,259.16 today. See <https://www.officialdata.org/us/stocks/s-p-500/2013?amount=1107752.04&endYear=2022..>

6. I invested an additional \$114,251.73 with RRC in 2014 and 2015. If those funds had been invested conservatively in the S&P 500 in 2015, and added to the other funds similarly invested as described in the foregoing paragraph, I would be sitting on a stock portfolio worth \$4,550,000 today. See <https://www.officialdata.org/us/stocks/s-p-500/2015?amount=114251.73&endYear=2022.>

7. Believing that my retirement savings held by RRC were safe and secure, I took early retirement from PacifiCorp in May of 2013, leaving behind over 35 years of hard-won seniority. I forfeited an average of \$100,000 per year of wages that I would have earned if I had not retired early – a loss of approximately \$900,000 to date.

8. With some of the earliest distributions that I received from RRC, I purchased property in a somewhat remote area near Kingman, Arizona which I titled in my name and Gretchen's, as joint tenants. The aggregate distributions that I had received from RRC at the time I purchased the real property were substantially less than the \$1,222,003.77 in value that I had given to RRC. Accordingly, the distributions directly traceable to the purchase of the property on which my and Gretchen's home is constructed were in satisfaction of the antecedent debt that RRC owed me, and for reasonably equivalent value.

9. Most of the subsequent distributions that I received from RRC were used to pay legitimate debts that I owed to third parties, including debts due to contractors, materialmen and suppliers.

10. In 2015, I moved to Arizona. I personally worked full time on constructing improvements on the Kingman, Arizona property, investing approximately six thousand hours of my time (over 3+ years) performing skilled and unskilled construction services – literally contributing my blood and sweat to the value of the property.

11. When RRC was seized, Gretchen and my home in Kingman, Arizona was unfinished (and still is), and neither I nor Gretchen had any meaningful savings.

12. From the time that I first received a payment or distribution from RRC until the time that RRC was seized and all distributions ceased, I received payments in the form of checks, wires and one metal transaction (gold sets) from RRC totaling \$4,522,830.85.

In accordance with 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED ON this 31st day of January, 2022.

DocuSigned by:
Leslie M. Howell
60B6389FB0DD487...
LESLIE M. HOWELL

EXHIBIT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

* * *

JONATHAN O. HAFEN, in his :
capacity as Court-appointed : Remote Videoconference
Receiver, : Deposition of:

Plaintiff, : JONATHAN O. HAFEN

vs.

GRETCHEN E. HOWELL, an :
individual; and LESLIE M. :
HOWELL, an individual, : Case No. 2:19-cv-00813

Defendants. : Honorable Tena Campbell

* * *

June 24, 2021
10:07 a.m.

Witness located at:
Parr, Brown, Gee & Loveless
101 South 200 East,
Suite 700
Salt Lake City, Utah

* * *

Jamie R. Brey
- Registered Professional Reporter -

<p>1 APPEARANCES</p> <p>2 For the Plaintiff: MATTHEW J. BALL</p> <p>3 CYNTHIA D. LOVE</p> <p>4 PARR BROWN GEE & LOVELESS</p> <p>5 Attorneys at Law</p> <p>6 101 South 200 East</p> <p>7 Salt Lake City, Utah 84111</p> <p>8 (801) 257-7974</p> <p>9 mball@parrbrown.com</p> <p>10 clove@parrbrown.com</p> <p>11</p> <p>12 For the Defendants: PATRICK E. JOHNSON</p> <p>13 COHNE KINGHORN</p> <p>14 Attorneys at Law</p> <p>15 111 East Broadway, 11th Floor</p> <p>16 Salt Lake City, Utah 84111</p> <p>17 (801) 363-4300</p> <p>18 pjohanson@ck.law</p> <p>19</p> <p>20 ***</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Remote Videoconference</p> <p>2 June 24, 2021</p> <p>3 10:07 a.m.</p> <p>4 PROCEEDINGS</p> <p>5 JONATHAN O. HAFEN,</p> <p>6 called as a witness, being first duly sworn, was examined</p> <p>7 and testified as follows:</p> <p>8</p> <p>9 EXAMINATION</p> <p>10</p> <p>11 BY MR. JOHNSON:</p> <p>12 Q. I guess I'll get started here. Mr. Hafen,</p> <p>13 would you mind stating your name for the record, please?</p> <p>14 A. Sure. Jonathan Hafen.</p> <p>15 Q. That's H-a-f-e-n on the last name?</p> <p>16 A. That's right.</p> <p>17 Q. So today's deposition is being conducted by</p> <p>18 Zoom, and I just want to make sure that we're all on board</p> <p>19 with the procedure today. Do you and your counsel consent to</p> <p>20 proceeding today by Zoom?</p> <p>21 A. Yes.</p> <p>22 Q. I'm just going to share my screen real quick.</p> <p>23 I have pulled up a document. Can you see that</p> <p>24 document? Do you need me to zoom in?</p> <p>25 A. I can't see the document.</p>
Page 2	Page 4
<p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 JONATHAN O. HAFEN</p> <p>4 Examination by Mr. Johnson 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 NUMBER DESCRIPTION PAGE</p> <p>11 Exhibit 1 Declaration of Jonathan Hafen 5</p> <p>12</p> <p>13</p> <p>14</p> <p>15 ***</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Q. Are you sitting in front of, like, a laptop?</p> <p>2 A. Yes, I've got my laptop in front of me. I also</p> <p>3 have an external monitor that makes the document a little bit</p> <p>4 easier to read.</p> <p>5 Q. Okay. So you can see the document now?</p> <p>6 A. Yes.</p> <p>7 Q. And it's been marked as Exhibit 1. Do you</p> <p>8 recognize this document?</p> <p>9 A. I do.</p> <p>10 Q. Is it the declaration that you signed in</p> <p>11 connection with the motion for summary judgment in the -- I</p> <p>12 think it's generally referred as the Oberhansly case?</p> <p>13 A. I haven't been through the document because</p> <p>14 it's not in front of me. But based on what you've put in</p> <p>15 front of me, that appears to be the first page of a</p> <p>16 declaration that I submitted in conjunction with a motion for</p> <p>17 summary judgment.</p> <p>18 Q. Okay. Thank you. I'm just going to go through</p> <p>19 some of the statements here and ask you a little bit about</p> <p>20 them. I'm scrolling down to -- this is Page 3 of 293, and</p> <p>21 just for the record, I'll note the full declaration was 293</p> <p>22 pages. I've only -- Exhibit 1 only consists of the first</p> <p>23 nine pages, which are -- which does not include all the</p> <p>24 various exhibits that were attached. If it's necessary to --</p> <p>25 if you'd like to refer to some of those, I can pull that up</p>
Page 3	Page 5

1 on my screen.
 2 So I'd like to draw your attention to statement
 3 of the Paragraph No. 7. Can you read that? Are you able to
 4 read it? Is it large enough on your screen?
 5 A. Yes.
 6 Q. Okay. And it says, "Since my appointment, I
 7 have engaged in an investigation of the Receivership
 8 Defendants' financial and business operations and, at my
 9 direction, BRG have conducted an analysis of whether
 10 Receivership Defendants operated a Ponzi investment scheme."
 11 Could you generally describe to me what you --
 12 you know, what you've personally done in your investigation
 13 of the receivership defendants' financial and business
 14 operations?
 15 A. Yes. Primarily I've retained experts. BRG, as
 16 you can see from this paragraph, is an entity that I retained
 17 for purposes of conducting a forensic analysis and making a
 18 determination recommendation to me with respect to whether or
 19 not what was being operated by Gaylen Rust was, in fact, a
 20 Ponzi scheme.
 21 I also talked to various others, including
 22 counsel, and directed my counsel also to undertake an
 23 investigation in conjunction with BRG to advise me with
 24 respect to whether my teams, I guess I can call them, reached
 25 the conclusion that, in fact, what Gaylen Rust was doing was

Page 6

1 undertaking a Ponzi scheme.
 2 Q. And I obviously don't want to get into any type
 3 of privileged communication, but just big-picture-wise, are
 4 your conclusions and -- are your conclusions generally based
 5 upon the -- what your teams, as you said, have reported to
 6 you?
 7 A. Yes.
 8 Q. I'll draw your attention to Paragraph 9. It
 9 says, "My counsel at Parr Brown have secured and reviewed
 10 hundreds of thousands of documents belonging to Receivership
 11 Defendants, including correspondence and other business
 12 records."
 13 Just, again, so the record is clear, I think
 14 we're understanding -- and I can scroll back up -- but
 15 receivership defendants is defined as Rust Rare Coin, Inc.,
 16 Gaylen Rust, R Legacy Racing, R Legacy Entertainment, LLC,
 17 and R Legacy Investments, LLC, and that's from Paragraph 1.
 18 So if you go down to Paragraph 7 -- Paragraph 9
 19 again, it says, My counsel at Parr Brown secured and reviewed
 20 hundreds of thousands of documents belonging to receivership
 21 defendants, including correspondence and other business
 22 records.
 23 Have you personally participated in the review
 24 of those, of the hundreds of thousands of documents that have
 25 been reviewed?

Page 7

1 A. I have reviewed a significant number of
 2 documents. I have not reviewed all hundreds of thousands of
 3 documents by myself.
 4 Q. Paragraph 11, Based upon my investigation to
 5 date, I have concluded that receivership defendants operated
 6 the Silver Pool as a classic Ponzi scheme from at least 2008
 7 through November 18 -- through November 2018 and that
 8 receivership defendants were insolvent for that time period.
 9 The basis for these conclusions is set forth in my
 10 receivership report attached hereto as Exhibit 1 and
 11 incorporated herein by reference.
 12 Did your involvement in Rust Rare Coin -- did
 13 you have any involvement in receivership defendants or Rust
 14 Rare Coin prior to November 2018?
 15 A. No.
 16 Q. Would it be fair to say that the conclusions as
 17 you've drawn are based upon documents and information and
 18 whatever else you've learned post November 18 -- or November
 19 2018 and beyond?
 20 A. I would agree with the latter way that you
 21 characterized the question. The investigation started in
 22 November of 2018. So with that qualification, the answer to
 23 your question is yes.
 24 Q. I'm just going to go down to Paragraph 13. And
 25 this could -- and just to foretell things, this is probably

Page 8

1 going to turn into a broken record here pretty quickly. So
 2 if there's a way to expedite this, I'm all for it before I
 3 get to that.
 4 So Paragraph 13, you see it says
 5 Mr. Oberhansly made -- "Ms. Oberhansly made the following
 6 investments into the Silver Pool," and it lists "A" through
 7 "I," and then Paragraph 14, it totals her investment at 2.6
 8 million and change.
 9 How do you -- how do you know that the
 10 Oberhanslys -- Ms. Oberhansly made these particular
 11 investments in the Silver Pool?
 12 A. That is based on the investigation conducted by
 13 BRG as well as interactions with the Oberhanslys' counsel.
 14 Q. Do you personally review any bank statements or
 15 other financial records in connection with determining that
 16 she had invested 2.6 million?
 17 A. I believe I have seen documents reflecting the
 18 investments. I don't recall exactly what those documents
 19 were. But I do know that BRG and my legal counsel have
 20 reviewed those records.
 21 (Court reporter interrupted for clarification.)
 22 THE WITNESS: Records. I don't remember. I'm
 23 good with either one, Jamie.
 24 BY MR. JOHNSON:
 25 Q. I think it goes without saying that you didn't

Page 9

1 personally receive these investments from -- from the --
2 Ms. Oberhansly?
3 A. If that's a question, the answer is yes, it
4 goes without saying that I did not personally receive these
5 investments.
6 Q. In 17, it says Ms. Oberhansly, and later her
7 estate, received at least 16 -- about 16 and a half million
8 in disbursements from the Silver Pool. Really, the same two
9 questions. How did you know that she received the 16
10 point -- 16 and a half million dollars?
11 A. Again, as previously stated, that is based on
12 investigations conducted by my legal counsel and BRG. And
13 also communications with the Oberhansly's counsel.
14 Q. And you didn't personally write the checks to
15 Ms. Oberhansly?
16 A. I did not.
17 Q. Paragraph 18, "Receivership defendants raised
18 funds from investors by claiming that they would use those
19 funds to purchase and sell physical silver."
20 I guess the simple question is, how do you know
21 this? What information do you have available to you to make
22 this determination, or make this statement?
23 A. Well, interviews with various victims of the
24 Ponzi scheme, the investigation by BRG, work done by my legal
25 counsel, representations made by third parties with whom we
Page 10

1 interacted. That's the basis of that conclusion.
2 Q. Would that apply to the remainder of this
3 paragraph?
4 A. Could you show -- Patrick, could you show me
5 the rest of 18, please?
6 Yes, that does apply to the entire
7 Paragraph 18.
8 Q. Here's where I may try to expedite things
9 because -- let me ask it this way. Does the response to
10 Paragraph 18 -- and by response, I mean, you know, your
11 statement with respect to how you formed the conclusion or
12 made the statement Paragraph 18 in referring back to the
13 investigation the BRG did, the interviews and whatnot, would
14 that response apply to Paragraph 19 as well?
15 A. Yes.
16 Q. On Paragraph 20, it says, When interviewed by
17 the FBI, Rust -- Gaylen Rust expressly admitted that newly
18 invested funds were used to pay returns to existing investors
19 and to fund unrelated business ventures.
20 Were you personally present when the FBI
21 investigated Mr. Rust?
22 A. No. A member of my legal team was present.
23 And I received a report from that person. I also believe I
24 also reviewed a transcript of that interview.
25 Q. I believe I said investigated when I meant to
Page 11

1 say interviewed by the FBI.
2 A. What I heard was what you meant.
3 Q. Fair enough. With respect to Paragraph 21,
4 Rust further admitted that there was no significant amount of
5 silver stored at Brinks or any other facility. That's,
6 again, based upon potentially your review of the transcript
7 and a report from counsel?
8 A. Correct.
9 We also confirmed that with Brinks.
10 Q. When you say "we," is that your -- BRG, Parr
11 Brown, your team at Parr Brown, or reliance upon the FBI's
12 investigation or more?
13 A. I believe that was a confirmation achieved by
14 somebody at Parr Brown.
15 Q. So I think what I'd like to, again -- and
16 hopefully for an efficiency purpose, I think what I would
17 like to ask is if you're -- getting back to the Paragraph 18
18 and 19, that general response that you made.
19 I'm curious, I'd like to ask you whether that
20 response also applies to Paragraph 22 and its subparts. So
21 if you could just take a minute to review that and just let
22 me know at -- when necessary, I can scroll through it if you
23 don't have a copy of the document.
24 A. Yeah, if you could just scroll down. Scroll
25 down a little more. Yeah, sorry -- yeah, just down, keep
Page 12

1 going. Okay. So far so good. Yes, my answer would be the
2 same.
3 Q. And the same question as to Paragraph 23?
4 A. Same answer.
5 Q. I think, again, I'll just scroll through the
6 rest of the declaration and ask the same question, which is
7 if your response to 18 also applies to the remainder of the
8 declaration.
9 A. Yeah. If you want to just slowly scroll
10 through it until we get to the end, I can give you that
11 response.
12 Q. I'll just scroll, and you let me know if I'm
13 going too fast.
14 A. Okay.
15 Yes, it's the same answer with respect to the
16 balance of my declaration.
17 Q. I'll stop sharing my screen. And I have been
18 provided with another list of questions here. I'll just run
19 through those really quickly, and we can hopefully wrap this
20 up.
21 This is a slight repeat, I suppose, of an
22 earlier answer you've given, but I'll ask it anyway. Would
23 you describe the general nature of your involvement with the
24 alleged Rust Rare Coin Ponzi investigation?
25 A. Yes, I'll do my best. My general involvement
Page 13

1 has been to act as a Court-appointed receiver and to work
 2 with experts in their various fields, including BRG, my legal
 3 counsel, other experts; for example, numismatic experts with
 4 respect to some of the assets in the receivership defendants'
 5 entities that we liquidated in order to generate returns that
 6 are intended for eventual distribution to victims.
 7 And I have personally reviewed many thousands
 8 of pages of documents and received reports through hundreds
 9 of meetings with the experts that I have retained for
 10 purposes of doing my job as receiver, which, as I understand
 11 it, is to seek to recover as much in the way of assets, both
 12 cash and other assets, from people who received it in order
 13 to provide for an eventual distribution of the victims of the
 14 Ponzi scheme to try to give them back some portion of the
 15 money that they lost to victims to the Gaylen-Rust-run Ponzi
 16 scheme.
 17 Q. When were you first approached to potentially
 18 become the receiver?
 19 A. I believe it was in November of 2018.
 20 Q. If I said that the -- I don't want to call it a
 21 raid. When the FBI and then the other -- I guess, the
 22 investigators, if I said that occurred on November 15th that
 23 they approached Mr. Rust and that's when subpoenas were
 24 served and whatnot, would that refresh your recollection as
 25 to when you were first approached to be the receiver?

Page 14

1 A. Yes.
 2 Q. And when would that have been that you were
 3 approached?
 4 A. I believe it was a day or so before that. It
 5 may have been as much as a week. But it was shortly before
 6 the FBI entered the premises at Rust Rare Coin and
 7 interviewed Mr. Rust.
 8 Q. And do you recall the persons or -- person or
 9 persons were that first approached you?
 10 A. I believe I was approached by representatives
 11 from the Commodity Futures Trading Commission as well as
 12 individuals associated with the attorney general's office.
 13 Q. Do you remember any names specifically?
 14 A. I don't. Sorry, I don't remember all the names
 15 right now.
 16 Q. What was the general nature of the conversation
 17 that you had with them?
 18 A. Whether I would be interested and willing to
 19 accept an appointment from a federal judge to serve as the
 20 receiver should a receiver be appointed by a court.
 21 Q. And then what did they -- do you have a memory
 22 of what was said with regard to Rust Rare Coin or Gaylen Rust
 23 specifically?
 24 A. I don't at that stage. I think -- I mean,
 25 my -- I can just give you my impression. I don't remember

Page 15

1 specifically the words that were used. But that there was --
 2 based on an investigation that had been done previous to my
 3 involvement, there was a strong belief that what was
 4 happening at Rust Rare Coin was, in fact, a Ponzi scheme; it
 5 was not a legitimate business operation.
 6 And that there were numerous victims that had
 7 suffered extensive losses, and my impression was that the
 8 government wanted to put a stop to the operation and also to
 9 try to work with a receiver in hopes of recovering assets
 10 that could be distributed to victims at a future point in
 11 time.
 12 Q. Other than the -- I believe that we've referred
 13 to it as sort of the November 15th interviews, I believe
 14 there's two separate transcripts, but other than those, do
 15 you know whether Gaylen Rust or any members of his family or
 16 the employees of Rust's in the affiliated business have been
 17 interviewed with regard to the alleged Ponzi scheme?
 18 A. I am not sure about the details. I know that
 19 my legal counsel and I have had several conversations with
 20 Gaylen Rust; that Gaylen Rust also had conversations with the
 21 folks at BRG. We also spoke with Gaylen Rust's wife. I
 22 believe that there were conversations between my legal
 23 counsel and Josh Rust with respect to our investigation.
 24 Again, I think that's the scope of my knowledge
 25 at this point. I also received reports with respect to

Page 16

1 interviews that I was not involved in.
 2 Q. Do you know if those interviews were reported?
 3 A. I -- again, as you've indicated, you've seen a
 4 couple of transcripts. I -- I believe that several of the
 5 early interviews involving the FBI were recorded. I do not
 6 believe any of the conversations between BRG and anyone in
 7 the Rust family or between my legal counsel and anyone in the
 8 Rust family were recorded.
 9 Q. Let's assume -- are you aware of -- do you know
 10 whether you, as the receiver, and your team are in possession
 11 of transcripts of Gaylen Rust, Denise Rust, Josh Rust or the
 12 employees other than the two from November 15th that we've
 13 discussed? That was a long question; I can repeat it, too.
 14 A. I do believe we have some transcripts. I don't
 15 know how many, I don't know how long they are. But I believe
 16 that we have received some transcripts of interviews that fit
 17 within the definition that you've just provided.
 18 Q. In your capacity as the receiver, are you aware
 19 of any evidence that employees and individuals other than
 20 Gaylen Rust had knowledge or involvement in the allegations
 21 against Mr. Rust that he operated a Ponzi scheme?
 22 A. I guess I don't understand what you mean by
 23 "involvement."
 24 Q. I'll rephrase the question. Do you believe
 25 that other -- let's start with the premise that Gaylen Rust

Page 17

1 operated a Ponzi scheme and is alleged to have been
2 operated -- have operated a Ponzi scheme. Are you aware of
3 other individuals with knowledge of the alleged Ponzi scheme?
4 MR. BALL: Let me enter an objection. I think
5 the form of the question is vague.
6 THE WITNESS: Yeah. I mean, there are a lot of
7 people with knowledge of the Ponzi scheme. Again, as far as
8 people that were involved in the perpetration of the Ponzi
9 scheme, I'm aware that the U.S. Attorneys Office has
10 conducted its own investigation; that indictments have been
11 handed down against Josh and Denise and Gaylen.
12 I'm aware that Denise pleaded guilty to charges
13 against her, some portion of them, and she's currently
14 incarcerated. I understand that both Josh and Gaylen are
15 anticipated to have a trial with respect to the criminal
16 charges against them. I'm not aware of any other indictments
17 or charges brought against anyone other than those three.
18 BY MR. JOHNSON:
19 Q. Are you aware of any other individuals that the
20 FBI or other government entities have investigated to
21 determine whether they were a, as you -- the word you used,
22 perpetrator of the Ponzi scheme?
23 A. I'm not aware of any other stated targets
24 beyond the three that I've identified.
25 Q. From your investigation and auditing, what

Page 18

1 evidence can you identify that validates the authenticity of
2 the Rust Rare Coin store's cash sales receipts? And I should
3 probably -- let me not ask that question.
4 A. Okay, I'll pretend like you didn't ask it.
5 Q. Let me give a little context and establish a
6 little foundation for that. Are you aware that Rust Rare
7 Coin had a QuickBooks file system?
8 A. Yes.
9 Q. Are you aware that it -- I believe the
10 QuickBooks commenced around 2011 or 2012 time frame?
11 MR. BALL: Objection. Vague. Are you talking
12 about Rust Rare Coin's use of QuickBooks or QuickBooks itself
13 becoming available to the general public?
14 MR. JOHNSON: Rust Rare Coin's use. Thanks,
15 Matt.
16 THE WITNESS: I believe that's right. I don't
17 have a specific year in mind. Again, I want to be careful
18 about privilege. I know that I've had discussions with my
19 legal counsel about the financial -- financial resources, I
20 guess.
21 Well, let me strike that. It's not really
22 financial resources. I would say tracking systems. I'm
23 familiar with looking at it from a point-of-sale standpoint
24 and also reviewing QuickBooks. But, you know, again, many
25 other documents have been reviewed for purposes of trying to

Page 19

1 put back together what actually happened at Rust Rare Coin
2 from 2003 until the receivership took over in November of
3 2018. And I do know that QuickBooks was part of what was
4 used by Gaylen Rust to keep track of at least some of the
5 things that were happening at Rust Rare Coin.
6 BY MR. JOHNSON:
7 Q. And do you -- are you aware that there was a
8 time period prior to QuickBooks where the -- most of the
9 records were sales receipts and sort of paper records as
10 opposed to electronic records?
11 A. I -- I'm not sure what system was used prior to
12 QuickBooks. I've seen many, many, many paper receipts. So I
13 know that that was part of how business was done at Rust Rare
14 Coin. But with respect to how -- how Rust Rare Coin was
15 tracking income and expenses, that is something that I would
16 rely on BRG as to the details.
17 Q. You mentioned the paper -- I forget the exact
18 words you used, the paper sales receipts, I believe, is maybe
19 the term you used?
20 A. Right.
21 Q. Do you -- this gets back to that ultimate
22 question that I was trying to ask which is, do you have any
23 information or evidence that validates the authenticity and
24 accuracy of those paper records?
25 A. Sorry, can you ask that again?

Page 20

1 Q. Do you have any information that validates the
2 authenticity of those paper records?
3 A. Again, I would look at many of the paper
4 records created by Gaylen with some degree of skepticism.
5 However, I would say that we've received some of those
6 receipts from victims as we've worked through situations with
7 the hundreds of victims of this Ponzi scheme. We also
8 obtained some of the documents from Rust Rare Coin, from its
9 files. We also reviewed bank records. And by placing all of
10 those against each other, we've done our best to try to
11 reconstruct what happened at Rust Rare Coin.
12 Q. Subsequent to the November 15th, 2018,
13 interview and take-over of Rust Rare Coin, are you aware of
14 any inventory records that were produced or obtained that
15 detail the inventory of precious metal bullions or coins that
16 were in the possession of Gaylen Rust or Rust Rare Coin?
17 A. I know that we conducted our own inventory.
18 And there may have been other records that related to what
19 was on hand at Rust Rare Coin. But primarily what's in my
20 mind as you ask that question is the inventory that was put
21 together by folks at Parr Brown.
22 MR. JOHNSON: Jamie, did you -- Jon, you kind
23 of broke up there for a second.
24 Jamie, did you pick that up?
25 (Record read)

Page 21

1 THE WITNESS: No, it's gone. Yeah, let me
2 just, Patrick, try to restate it for you. With respect to
3 the inventory that was on hand at Rust Rare Coin at the time
4 that I took over as receiver, I know that the legal team at
5 Parr Brown spent a significant amount of time inventorying
6 everything that was there on the premises. And they put
7 together an inventory list, which I received and reviewed.
8 We then used that inventory list to consult
9 with others about ways that we could maximize the disposition
10 of those assets for the benefits of -- for the benefit of the
11 victims of the Ponzi scheme.
12 BY MR. JOHNSON:
13 Q. In your Rust-related investigations, have you
14 found any evidence of other criminal activity other than the
15 alleged Ponzi scheme?
16 MR. BALL: Objection. Foundation.
17 THE WITNESS: Not -- not that I recall. I
18 mean, we have been focusing on the Ponzi scheme. I mean,
19 arguably, you could have a lot of other unlawful conduct
20 around a Ponzi scheme. And, again, that's -- my
21 responsibility is simply to step into the shoes of the
22 businesses and try to recoup as much as by way of resources
23 and then liquidate those resources and make them available to
24 victims of the Ponzi scheme. So I guess that's the best I
25 can do on that, that question.

Page 22

1 MR. JOHNSON: Okay.
2 BY MR. JOHNSON:
3 Q. So this is a -- the same question, just stated
4 another way. Other than the alleged Rust Rare Coin Ponzi
5 scheme, are you willing to state that you have no knowledge
6 or -- and found no evidence of the illegal activity that
7 had -- that has occurred or is occurring on the part of any
8 of the Rust -- on the part of either the Rust family or
9 employees?
10 MR. BALL: Same objection. Foundation.
11 THE WITNESS: Yeah, I would say, again, with
12 respect to the investigation of criminal activity, I've left
13 that up to the U.S. Attorneys Office. I would say during the
14 course of the investigation, we certainly have uncovered
15 massive amounts of evidence that would support criminal
16 misconduct allegations, but as far as how to define those,
17 I've left that up to the U.S. Attorneys Office.
18 BY MR. JOHNSON:
19 Q. What you described as the mass amount of
20 evidence, is that related to -- does that -- are you
21 referring to -- does that evidence relate to other
22 individuals? Or is it limited to the three people, the three
23 Rusts, that have been charged?
24 A. Again, I'm leaving up to the U.S. Attorneys
25 Office how to decide how to proceed with respect to criminal

Page 23

1 charges. But the evidence that I have reviewed, that I'm
2 familiar with, demonstrates a criminal -- what I would
3 characterize as criminal activity at Rust Rare Coin that
4 relates to the Ponzi scheme itself in some fashion.
5 BY MR. JOHNSON:
6 Q. Have you made any referrals to the FBI or other
7 government agencies that are investigating Rust Rare Coin
8 with respect to a criminal referral, with a formal and sort
9 of general sense, uhm, to the FBI or other agencies
10 investigating Rust Rare Coin, with respect to other
11 individuals -- other individuals not including the three that
12 we talked about, the three Rusts?
13 A. No.
14 Q. Will you identify the names of the financial
15 institutions that you know have been affiliated with the
16 Rusts and Rust Rare Coin and Gaylen Rust?
17 A. I know that Rust Rare Coin used Zions Bank as
18 its primary banker. There may have been others. There
19 probably were others; I can't recall any names at this time.
20 Q. Do you know the names of any financial
21 institutions that have provided information, data, bank
22 statements and stuff, that you used in connection with your
23 investigation and receivership duties?
24 A. I can't recall the names of any financial
25 institutions other than Zions.

Page 24

1 Q. Are you aware of any or have knowledge of any
2 omissions of information that Zions Bank -- with respect to
3 the -- let me strike that.
4 With respect to the information that you
5 received from Zions Bank, are you aware of any omissions or
6 documents that they withheld and did not provide to you?
7 A. I am not. Let me just note so that you're
8 aware, a conflicts receiver has been appointed with respect
9 to all matters that relate to Zions, and that's Wayne Cline.
10 And so he may have knowledge that I don't.
11 Q. I believe you stated earlier that individuals
12 that are part of your team or teams have reviewed the Rust
13 Rare Coin QuickBooks records?
14 A. That's correct.
15 Q. Okay. Do you know why...
16 I mean, there were...
17 I'll represent that there were three --
18 (Court reporter interrupted for clarification.)
19 (Record read)
20 MR. JOHNSON: I think I said "there were" and
21 then made a long, long pause.
22 BY MR. JOHNSON:
23 Q. And then I said I'll represent that there
24 are -- that Les Howell made three investment contributions in
25 the amounts of \$1,886.15, \$68,336.11, and \$99,985.26.

Page 25

1 (Court reporter interrupted for clarification.)
 2 MR. JOHNSON: Les, L-e-s, Howell, H-o-w-e-l-l.
 3 BY MR. JOHNSON:
 4 Q. Would you --
 5 A. I would -- sorry. Go ahead.
 6 MR. BALL: Let him ask the question.
 7 BY MR. JOHNSON:
 8 Q. Mr. Hafen, would you have -- would you -- do
 9 you -- I'll just ask the question and deal with the -- and
 10 hear the objection.
 11 Do you know why those were not properly
 12 credited to Les Howell's QuickBooks account but were
 13 documented within the QuickBooks generally?
 14 MR. BALL: Yeah. Two objections. One is that
 15 it assumes facts, the other is foundation.
 16 THE WITNESS: The answer is I -- again, I -- we
 17 have hundreds of people who participated in the Rust Rare
 18 Coin Ponzi scheme. And I have a general knowledge about the
 19 Howell situation. My general knowledge is that they
 20 collectively put in somewhere around a million dollars and
 21 got back out somewhere around 4.3 million dollars.
 22 So I just have sort of the big-picture numbers.
 23 With respect to the specifics, I haven't taken a fresh look
 24 at that.
 25 *


Page 26

1 BY MR. JOHNSON:
 2 Q. And so is it fair to say you don't have
 3 personal knowledge of how the Howells' investments were
 4 inputted and recorded into QuickBooks?
 5 A. I would say it's fair to say that I don't have
 6 personal knowledge. But I would add to that, that I know
 7 that both my legal counsel and BRG spent significant time
 8 looking at the Howells' specific situation. And so I'm
 9 relying on their personal knowledge with respect to the
 10 conclusions that were reached as to amounts that the Howells
 11 put in and took out of the Rust Rare Coin Ponzi scheme.
 12 Q. So if I'm asking you about specific investments
 13 and how it reflected, I'm just going down into a rabbit hole,
 14 essentially?
 15 A. I think that's fair. And I believe you're
 16 going to be deposing BRG and Ray Strong, and I anticipate
 17 he'll have more specific information for you.
 18 Q. Are you or any individual under your
 19 supervision aware of a private letter authored by the Howells
 20 and delivered to Gaylen Rust's residence on November 9th,
 21 2020?
 22 A. I am not.
 23 MR. JOHNSON: That's the last question that I
 24 was directed to ask.
 25 MR. BALL: Okay.

Page 27

1 MR. JOHNSON: I have no further questions for
 2 you.
 3 MR. BALL: Okay. All right. Thanks very much.
 4 Good to see you.
 5 MR. JOHNSON: Same.
 6 (Whereupon, Exhibit No. 1 was marked for
 7 identification.)
 8 (Deposition concluded at 10:55 a.m.)
 9 * * *
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 28

1 CERTIFICATE
 2 STATE OF UTAH)
 3 :
 4 COUNTY OF SALT LAKE)
 5 THIS IS TO CERTIFY that the remote
 6 videoconference deposition of JONATHAN O. HAFEN, the witness
 7 in the foregoing deposition named, was taken before me,
 8 JAMIE R. BREY, a Certified Shorthand Reporter and Registered
 9 Professional Reporter in and for the State of Utah, residing
 10 at Salt Lake City, Utah.
 11 That the said witness was by me, before
 12 examination, duly sworn to testify the truth, the whole truth
 13 and nothing but the truth in said cause.
 14 That the testimony of said witness was reported
 15 by me in Stenotype and thereafter caused by me to be
 16 transcribed into typewriting, and that a full, true and
 17 correct transcription of said testimony so taken and
 18 transcribed is set forth in the foregoing pages numbered from
 19 4 through 28, inclusive, and said witness deposed and said as
 20 in the foregoing annexed deposition.
 21 I further certify that I am not of kin or
 22 otherwise associated with any of the parties to said cause of
 23 action, and that I am not interested in the events thereof.
 24
 25 Salt Lake City, Utah, this
 26 25th day of  2022
 27
 28 JAMIE R. BREY, CSR, RPR
 29 Utah license No. 361682

Page 29

[& - believe]

&	23 13:3	action 29:16	associated 15:12
& 1:16 2:3	24 1:13 4:1	activity 22:14 23:6	29:16
0	257-7974 2:5	23:12 24:3	assume 17:9
00813 1:9	25th 29:18	add 27:6	assumes 26:15
1	26851 29:21	admitted 11:17	attached 5:24 8:10
1 3:10 5:7,22 7:17	28 29:13	12:4	attention 6:2 7:8
8:10 28:6	293 5:20,21	advise 6:23	attorney 15:12
1,886.15 25:25	2:19 1:9	affiliated 16:16	attorneys 2:4,9
101 1:17 2:4	3	24:15	18:9 23:13,17,24
10:07 1:14 4:2	3 5:20	agencies 24:7,9	auditing 18:25
10:55 28:8	361682 29:22	agree 8:20	authenticity 19:1
11 8:4	363-4300 2:11	ahead 26:5	20:23 21:2
111 2:10	4	allegations 17:20	authored 27:19
11th 2:10	4 3:4 29:13	23:16	available 10:21
13 8:24 9:4	4.3 26:21	alleged 13:24	19:13 22:23
14 9:7	5	16:17 18:1,3	aware 17:9,18
15th 14:22 16:13	5 3:10	22:15 23:4	18:2,9,12,16,19,23
17:12 21:12	6	amount 12:4 22:5	19:6,9 20:7 21:13
16 10:7,7,9,10	68,336.11 25:25	23:19	25:1,5,8 27:19
17 10:6	7	amounts 23:15	b
18 8:7,18 10:17	7 6:3 7:18	25:25 27:10	b 3:8
11:5,7,10,12 12:17	700 1:17	analysis 6:9,17	back 7:14 11:12
13:7	8	annexed 29:14	12:17 14:14 20:1
19 11:14 12:18	801 2:5,11	answer 8:22 10:3	20:21 26:21
2	84111 2:5,10	13:1,4,15,22 26:16	balance 13:16
2.6 9:7,16	9	anticipate 27:16	ball 2:2 18:4 19:11
20 11:16	9 7:8,18	anticipated 18:15	22:16 23:10 26:6
200 1:17 2:4	99,985.26. 25:25	anyway 13:22	26:14 27:25 28:3
2003 20:2	9th 27:20	appears 5:15	bank 9:14 21:9
2008 8:6	a	applies 12:20 13:7	24:17,21 25:2,5
2011 19:10	a.m. 1:14 4:2 28:8	apply 11:2,6,14	banker 24:18
2012 19:10	able 6:3	appointed 1:4	based 5:14 7:4 8:4
2018 8:7,14,19,22	accept 15:19	14:1 15:20 25:8	8:17 9:12 10:11
14:19 20:3 21:12	account 26:12	appointment 6:6	12:6 16:2
2020 27:21	accuracy 20:24	15:19	basis 8:9 11:1
2021 1:13 4:1	achieved 12:13	approached 14:17	becoming 19:13
2022 29:18	act 14:1	14:23,25 15:3,9,10	belief 16:3
21 12:3		arguably 22:19	believe 9:17 11:23
22 12:20		asking 27:12	11:25 12:13 14:19
		assets 14:4,11,12	15:4,10 16:12,13
		16:9 22:10	16:22 17:4,6,14,15

[believe - deposed]

<p>17:24 19:9,16 20:18 25:11 27:15 belonging 7:10,20 benefit 22:10 benefits 22:10 best 13:25 21:10 22:24 beyond 8:19 18:24 big 7:3 26:22 bit 5:3,19 board 4:18 brey 1:21 29:6,21 brg 6:9,15,23 9:13 9:19 10:12,24 11:13 12:10 14:2 16:21 17:6 20:16 27:7,16 brinks 12:5,9 broadway 2:10 broke 21:23 broken 9:1 brought 18:17 brown 1:16 2:3 7:9,19 12:11,11,14 21:21 22:5 bullions 21:15 business 6:8,13 7:11,21 11:19 16:5,16 20:13 businesses 22:22</p>	<p>caused 29:11 central 1:2 certainly 23:14 certified 29:6 certify 29:4,15 change 9:8 characterize 24:3 characterized 8:21 charged 23:23 charges 18:12,16 18:17 24:1 checks 10:14 city 1:18 2:5,10 29:7,18 ck.law 2:11 claiming 10:18 clarification 9:21 25:18 26:1 classic 8:6 clear 7:13 cline 25:9 clove 2:6 cohne 2:9 coin 7:15 8:12,14 13:24 15:6,22 16:4 19:2,7 20:1,5 20:14,14 21:8,11 21:13,16,19 22:3 23:4 24:3,7,10,16 24:17 25:13 26:18 27:11 coin's 19:12,14 coins 21:15 collectively 26:20 commenced 19:10 commission 15:11 commodity 15:11 communication 7:3</p>	<p>communications 10:13 concluded 8:5 28:8 conclusion 6:25 11:1,11 conclusions 7:4,4 8:9,16 27:10 conduct 22:19 conducted 4:17 6:9 9:12 10:12 18:10 21:17 conducting 6:17 confirmation 12:13 confirmed 12:9 conflicts 25:8 conjunction 5:16 6:23 connection 5:11 9:15 24:22 consent 4:19 consists 5:22 consult 22:8 context 19:5 contributions 25:24 conversation 15:16 conversations 16:19,20,22 17:6 copy 12:23 correct 12:8 25:14 29:12 correspondence 7:11,21 counsel 4:19 6:22 6:22 7:9,19 9:13 9:19 10:12,13,25 12:7 14:3 16:19 16:23 17:7 19:19</p>	<p>27:7 county 29:3 couple 17:4 course 23:14 court 1:1,4 9:21 14:1 15:20 25:18 26:1 created 21:4 credited 26:12 criminal 18:15 22:14 23:12,15,25 24:2,3,8 csr 29:21 curious 12:19 currently 18:13 cv 1:9 cynthia 2:3</p>
<p>c</p>			<p>d</p>
<p>c 2:1 4:4 29:1,1 call 6:24 14:20 called 4:6 campbell 1:10 capacity 1:4 17:18 careful 19:17 case 1:9 5:12 cash 14:12 19:2 cause 29:9,16</p>			<p>d 2:3 3:1 4:4 data 24:21 date 8:5 day 15:4 29:18 deal 26:9 decide 23:25 declaration 3:10 5:10,16,21 13:6,8 13:16 defendants 1:10 2:8 6:8,10,13 7:11 7:15,21 8:5,8,13 10:17 14:4 define 23:16 defined 7:15 definition 17:17 degree 21:4 delivered 27:20 demonstrates 24:2 denise 17:11 18:11 18:12 deposed 29:13</p>

[deposing - general]

<p>deposing 27:16 deposition 1:5 4:17 28:8 29:5,5 29:14 describe 6:11 13:23 described 23:19 description 3:9 detail 21:15 details 16:18 20:16 determination 6:18 10:22 determine 18:21 determining 9:15 directed 6:22 27:24 direction 6:9 disbursements 10:8 discussed 17:13 discussions 19:18 disposition 22:9 distributed 16:10 distribution 14:6 14:13 district 1:1,2 division 1:2 document 4:23,24 4:25 5:3,5,8,13 12:23 documented 26:13 documents 7:10 7:20,24 8:2,3,17 9:17,18 14:8 19:25 21:8 25:6 doing 6:25 14:10 dollars 10:10 26:20,21 draw 6:2 7:8</p>	<p>drawn 8:17 duly 4:6 29:9 duties 24:23</p> <hr/> <p style="text-align: center;">e</p> <hr/> <p>e 1:8 2:1,1,8 3:1,8 4:4,4,9,15 26:2,2 29:1,1 earlier 13:22 25:11 early 17:5 easier 5:4 east 1:17 2:4,10 efficiency 12:16 either 9:23 23:8 electronic 20:10 employees 16:16 17:12,19 23:9 engaged 6:7 enter 18:4 entered 15:6 entertainment 7:16 entire 11:6 entities 14:5 18:20 entity 6:16 essentially 27:14 establish 19:5 estate 10:7 events 29:16 eventual 14:6,13 evidence 17:19 19:1 20:23 22:14 23:6,15,20,21 24:1 exact 20:17 exactly 9:18 examination 3:4 29:9 examined 4:6 example 14:3 exhibit 3:10 5:7,22 8:10 28:6</p>	<p>exhibits 5:24 existing 11:18 expedite 9:2 11:8 expenses 20:15 experts 6:15 14:2 14:3,3,9 expressly 11:17 extensive 16:7 external 5:3</p> <hr/> <p style="text-align: center;">f</p> <hr/> <p>f 4:15 29:1 facility 12:5 fact 6:19,25 16:4 facts 26:15 fair 8:16 12:3 27:2 27:5,15 familiar 19:23 24:2 family 16:15 17:7 17:8 23:8 far 13:1 18:7 23:16 fashion 24:4 fast 13:13 fbi 11:17,20 12:1 14:21 15:6 17:5 18:20 24:6,9 fbi's 12:11 federal 15:19 fields 14:2 file 19:7 files 21:9 financial 6:8,13 9:15 19:19,19,22 24:14,20,24 first 4:6 5:15,22 14:17,25 15:9 fit 17:16 floor 2:10 focusing 22:18</p>	<p>folks 16:21 21:21 following 9:5 follows 4:7 foregoing 29:5,13 29:14 forensic 6:17 foretell 8:25 forget 20:17 form 18:5 formal 24:8 formed 11:11 forth 8:9 29:13 found 22:14 23:6 foundation 19:6 22:16 23:10 26:15 frame 19:10 fresh 26:23 front 5:1,2,14,15 full 5:21 29:12 fund 11:19 funds 10:18,19 11:18 further 12:4 28:1 29:15 future 16:10 futures 15:11</p> <hr/> <p style="text-align: center;">g</p> <hr/> <p>g 4:4 gaylen 6:19,25 7:16 11:17 14:15 15:22 16:15,20,20 16:21 17:11,20,25 18:11,14 20:4 21:4,16 24:16 27:20 gee 1:16 2:3 general 12:18 13:23,25 15:16 19:13 24:9 26:18 26:19</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[general's - know]

<p>general's 15:12 generally 5:12 6:11 7:4 26:13 generate 14:5 getting 12:17 give 13:10 14:14 15:25 19:5 given 13:22 go 5:18 7:18 8:24 26:5 goes 9:25 10:4 going 4:22 5:18 8:24 9:1 13:1,13 27:13,16 good 9:23 13:1 28:4 government 16:8 18:20 24:7 gretchen 1:8 guess 4:12 6:24 10:20 14:21 17:22 19:20 22:24 guilty 18:12</p>	<p>hole 27:13 honorable 1:10 hopefully 12:16 13:19 hopes 16:9 howell 1:8,9 25:24 26:2,19 howell's 26:12 howells 27:3,8,10 27:19 hundreds 7:10,20 7:24 8:2 14:8 21:7 26:17</p>	<p>24:21 25:2,4 27:17 inputted 27:4 insolvent 8:8 institutions 24:15 24:21,25 intended 14:6 interacted 11:1 interactions 9:13 interested 15:18 29:16 interrupted 9:21 25:18 26:1 interview 11:24 21:13 interviewed 11:16 12:1 15:7 16:17 interviews 10:23 11:13 16:13 17:1 17:2,5,16 inventory 21:14 21:15,17,20 22:3,7 22:8 inventorying 22:5 invested 9:16 11:18 investigated 11:21 11:25 18:20 investigating 24:7 24:10 investigation 6:7 6:12,23 8:4,21 9:12 10:24 11:13 12:12 13:24 16:2 16:23 18:10,25 23:12,14 24:23 investigations 10:12 22:13 investigators 14:22</p>	<p>investment 6:10 9:7 25:24 investments 7:17 9:6,11,18 10:1,5 27:3,12 investors 10:18 11:18 involved 17:1 18:8 involvement 8:12 8:13 13:23,25 16:3 17:20,23 involving 17:5</p>
	i		j
	<p>identification 28:7 identified 18:24 identify 19:1 24:14 illegal 23:6 impression 15:25 16:7 incarcerated 18:14 include 5:23 including 6:21 7:11,21 14:2 24:11 inclusive 29:13 income 20:15 incorporated 8:11 indicated 17:3 indictments 18:10 18:16 individual 1:8,9 27:18 individuals 15:12 17:19 18:3,19 23:22 24:11,11 25:11 information 8:17 10:21 20:23 21:1</p>		<p>j 2:2 jamie 1:21 9:23 21:22,24 29:6,21 january 29:18 job 14:10 johnson 2:8 3:4 4:11 9:24 18:18 19:14 20:6 21:22 22:12 23:1,2,18 24:5 25:20,22 26:2,3,7 27:1,23 28:1,5 jon 21:22 jonathan 1:4,6 3:3 3:10 4:5,14 29:5 josh 16:23 17:11 18:11,14 judge 15:19 judgment 5:11,17 june 1:13 4:1</p>
h			k
<p>h 3:8 4:15 26:2 hafen 1:4,6 3:3,10 4:5,12,14 26:8 29:5 half 10:7,10 hand 21:19 22:3 29:18 handed 18:11 happened 20:1 21:11 happening 16:4 20:5 he'll 27:17 hear 26:10 heard 12:2 hereto 8:10</p>			<p>keep 12:25 20:4 kin 29:15 kind 21:22 kinghorn 2:9 know 6:12 9:9,19 10:9,20 11:10</p>

[know - people]

<p>12:22 13:12 16:15 16:18 17:2,9,15,15 19:18,24 20:3,13 21:17 22:4 24:15 24:17,20 25:15 26:11 27:6</p> <p>knowledge 16:24 17:20 18:3,7 23:5 25:1,10 26:18,19 27:3,6,9</p>	<p>look 21:3 26:23 looking 19:23 27:8 losses 16:7 lost 14:15 lot 18:6 22:19 love 2:3 loveless 1:16 2:3</p>	<p>name 4:13,15 named 29:5 names 15:13,14 24:14,19,20,24 nature 13:23 15:16 necessary 5:24 12:22 need 4:24 newly 11:17 nine 5:23 note 5:21 25:7 november 8:7,7,14 8:18,18,22 14:19 14:22 16:13 17:12 20:2 21:12 27:20 number 3:9 8:1 numbered 29:13 numbers 26:22 numerous 16:6 numismatic 14:3</p>	<p>okay 5:5,18 6:6 13:1,14 19:4 23:1 25:15 27:25 28:3 omissions 25:2,5 operated 6:10,19 8:5 17:21 18:1,2,2 operation 16:5,8 operations 6:8,14 opposed 20:10 order 14:5,12</p>
<p>l</p>	<p>m</p>	<p>o</p>	<p>p</p>
<p>l 26:2,2,2 lake 1:18 2:5,10 29:3,7,18 laptop 5:1,2 large 6:4 law 2:4,9 learned 8:18 leaving 23:24 left 23:12,17 legacy 7:16,16,17 legal 9:19 10:12,24 11:22 14:2 16:19 16:22 17:7 19:19 22:4 27:7 legitimate 16:5 les 25:24 26:2,12 leslie 1:8 letter 27:19 license 29:22 limited 23:22 liquidate 22:23 liquidated 14:5 list 13:18 22:7,8 lists 9:6 little 5:3,19 12:25 19:5,6 llc 7:16,17 located 1:16 long 17:13,15 25:21,21</p>	<p>m 1:8 4:9 making 6:17 marked 5:7 28:6 mass 23:19 massive 23:15 matt 19:15 matters 25:9 matthew 2:2 maximize 22:9 mball 2:6 mean 11:10 15:24 17:22 18:6 22:18 22:18 25:16 meant 11:25 12:2 meetings 14:9 member 11:22 members 16:15 memory 15:21 mentioned 20:17 metal 21:15 million 9:8,16 10:7 10:10 26:20,21 mind 4:13 19:17 21:20 minute 12:21 misconduct 23:16 money 14:15 monitor 5:3 motion 5:11,16</p>	<p>o 1:4,6 3:3 4:4,5,9 26:2 29:5 oberhansly 5:12 9:5,5,10 10:2,6,15 oberhansly's 10:13 oberhanslys 9:10 9:13 objection 18:4 19:11 22:16 23:10 26:10 objections 26:14 obtained 21:8,14 obviously 7:2 occurred 14:22 23:7 occurring 23:7 office 15:12 18:9 23:13,17,25</p>	<p>p 2:1,1 4:4 page 3:2,9 5:15,20 pages 5:22,23 14:8 29:13 paper 20:9,12,17 20:18,24 21:2,3 paragraph 6:3,16 7:8,17,18,18 8:4 8:24 9:4,7 10:17 11:3,7,10,12,14,16 12:3,17,20 13:3 parr 1:16 2:3 7:9 7:19 12:10,11,14 21:21 22:5 parrbrown.com 2:6,6 part 20:3,13 23:7 23:8 25:12 participated 7:23 26:17 particular 9:10 parties 10:25 29:16 patrick 2:8 11:4 22:2 pause 25:21 pay 11:18 people 14:12 18:7 18:8 23:22 26:17</p>
	<p>n</p>		
	<p>n 2:1 3:1 4:4,9,9 4:15</p>		

[period - registered]

<p>period 8:8 20:8 perpetration 18:8 perpetrator 18:22 person 11:23 15:8 personal 27:3,6,9 personally 6:12 7:23 9:14 10:1,4 10:14 11:20 14:7 persons 15:8,9 physical 10:19 pick 21:24 picture 7:3 26:22 pjohnson 2:11 placing 21:9 plaintiff 1:6 2:2 pleaded 18:12 please 4:13 11:5 point 10:10 16:10 16:25 19:23 ponzi 6:10,20 7:1 8:6 10:24 13:24 14:14,15 16:4,17 17:21 18:1,2,3,7,8 18:22 21:7 22:11 22:15,18,20,24 23:4 24:4 26:18 27:11 pool 8:6 9:6,11 10:8 portion 14:14 18:13 possession 17:10 21:16 post 8:18 potentially 12:6 14:17 precious 21:15 premise 17:25 premises 15:6 22:6</p>	<p>present 11:20,22 pretend 19:4 pretty 9:1 previous 16:2 previously 10:11 primarily 6:15 21:19 primary 24:18 prior 8:14 20:8,11 private 27:19 privilege 19:18 privileged 7:3 probably 8:25 19:3 24:19 procedure 4:19 proceed 23:25 proceeding 4:20 produced 21:14 professional 1:22 29:6 properly 26:11 provide 14:13 25:6 provided 13:18 17:17 24:21 public 19:13 pull 5:25 pulled 4:23 purchase 10:19 purpose 12:16 purposes 6:17 14:10 19:25 put 5:14 16:8 20:1 21:20 22:6 26:20 27:11</p>	<p>22:25 23:3 26:6,9 27:23 questions 10:9 13:18 28:1 quick 4:22 quickbooks 19:7 19:10,12,12,24 20:3,8,12 25:13 26:12,13 27:4 quickly 9:1 13:19</p>	<p>22:7 25:5 receiver 1:5 14:1 14:10,18,25 15:20 15:20 16:9 17:10 17:18 22:4 25:8 receivership 6:7 6:10,13 7:10,15,20 8:5,8,10,13 10:17 14:4 20:2 24:23 recognize 5:8 recollection 14:24 recommendation 6:18 reconstruct 21:11 record 4:13 5:21 7:13 9:1 21:25 25:19 recorded 17:5,8 27:4 records 7:12,22 9:15,20,22 20:9,9 20:10,24 21:2,4,9 21:14,18 25:13 recoup 22:22 recover 14:11 recovering 16:9 refer 5:25 reference 8:11 referral 24:8 referrals 24:6 referred 5:12 16:12 referring 11:12 23:21 reflected 27:13 reflecting 9:17 refresh 14:24 regard 15:22 16:17 registered 1:22 29:6</p>
	r	<p>r 1:21 2:1 4:4 7:16 7:16,17 29:1,6,21 rabbit 27:13 racing 7:16 raid 14:21 raised 10:17 rare 7:15 8:12,14 13:24 15:6,22 16:4 19:2,6,12,14 20:1,5,13,14 21:8 21:11,13,16,19 22:3 23:4 24:3,7 24:10,16,17 25:13 26:17 27:11 ray 27:16 reached 6:24 27:10 read 5:4 6:3,4 21:25 25:19 real 4:22 really 10:8 13:19 19:21 recall 9:18 15:8 22:17 24:19,24 receipts 19:2 20:9 20:12,18 21:6 receive 10:1,4 received 10:7,9 11:23 14:8,12 16:25 17:16 21:5</p>	
	q	<p>qualification 8:22 question 8:21,23 10:3,20 13:3,6 17:13,24 18:5 19:3 20:22 21:20</p>	

[relate - statements]

<p>relate 23:21 25:9 related 21:18 22:13 23:20 relates 24:4 reliance 12:11 rely 20:16 relying 27:9 remainder 11:2 13:7 remember 9:22 15:13,14,25 remote 1:4 4:1 29:4 repeat 13:21 17:13 rephrase 17:24 report 8:10 11:23 12:7 reported 7:5 17:2 29:11 reporter 1:22 9:21 25:18 26:1 29:6,6 reports 14:8 16:25 represent 25:17 25:23 representations 10:25 representatives 15:10 residence 27:20 residing 29:6 resources 19:19 19:22 22:22,23 respect 6:18,24 11:11 12:3 13:15 14:4 16:23,25 18:15 20:14 22:2 23:12,25 24:8,10 25:2,4,8 26:23 27:9 response 11:9,10 11:14 12:18,20</p>	<p>13:7,11 responsibility 22:21 rest 11:5 13:6 restate 22:2 retained 6:15,16 14:9 returns 11:18 14:5 review 7:23 9:14 12:6,21 reviewed 7:9,19 7:25 8:1,2 9:20 11:24 14:7 19:25 21:9 22:7 24:1 25:12 reviewing 19:24 right 4:16 15:15 19:16 20:20 28:3 rpr 29:21 run 13:18 14:15 rust 6:19,25 7:15 7:16 8:12,13 11:17,17,21 12:4 13:24 14:15,23 15:6,7,22,22 16:4 16:15,20,20,23 17:7,8,11,11,11,20 17:21,25 19:2,6,12 19:14 20:1,4,5,13 20:14 21:8,11,13 21:16,16,19 22:3 22:13 23:4,8,8 24:3,7,10,16,16,17 25:12 26:17 27:11 rust's 16:16,21 27:20 rusts 23:23 24:12 24:16</p>	<p>s s 2:1 3:8 4:4 26:2 sale 19:23 sales 19:2 20:9,18 salt 1:18 2:5,10 29:3,7,18 saying 9:25 10:4 says 6:6 7:9,19 9:4 10:6 11:16 scheme 6:10,20 7:1 8:6 10:24 14:14,16 16:4,17 17:21 18:1,2,3,7,9 18:22 21:7 22:11 22:15,18,20,24 23:5 24:4 26:18 27:11 scope 16:24 screen 4:22 6:1,4 13:17 scroll 7:14 12:22 12:24,24 13:5,9,12 scrolling 5:20 second 21:23 secured 7:9,19 see 4:23,25 5:5 6:16 9:4 28:4 seek 14:11 seen 9:17 17:3 20:12 sell 10:19 sense 24:9 separate 16:14 serve 15:19 served 14:24 set 8:9 29:13 share 4:22 sharing 13:17 shoes 22:21 shorthand 29:6</p>	<p>shortly 15:5 show 11:4,4 signature 29:21 signed 5:10 significant 8:1 12:4 22:5 27:7 silver 8:6 9:6,11 10:8,19 12:5 simple 10:20 simply 22:21 sitting 5:1 situation 26:19 27:8 situations 21:6 skepticism 21:4 slight 13:21 slowly 13:9 somebody 12:14 sorry 12:25 15:14 20:25 26:5 sort 16:13 20:9 24:8 26:22 south 1:17 2:4 specific 19:17 27:8 27:12,17 specifically 15:13 15:23 16:1 specifics 26:23 spent 22:5 27:7 spoke 16:21 stage 15:24 standpoint 19:23 start 17:25 started 4:12 8:21 state 23:5 29:2,6 stated 10:11 18:23 23:3 25:11 statement 6:2 10:22 11:11,12 statements 5:19 9:14 24:22</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[states - year]

<p>states 1:1 stating 4:13 stenotype 29:11 step 22:21 stop 13:17 16:8 store's 19:2 stored 12:5 strike 19:21 25:3 strong 16:3 27:16 stuff 24:22 submitted 5:16 subparts 12:20 subpoenas 14:23 subsequent 21:12 suffered 16:7 suite 1:17 summary 5:11,17 supervision 27:19 support 23:15 suppose 13:21 sure 4:14,18 16:18 20:11 sworn 4:6 29:9 system 19:7 20:11 systems 19:22</p>	<p>testify 29:9 testimony 29:11 29:12 thank 5:18 thanks 19:14 28:3 thereof 29:16 things 8:25 11:8 20:5 think 5:12 7:13 9:25 12:15,16 13:5 15:24 16:24 18:4 25:20 27:15 third 10:25 thousands 7:10,20 7:24 8:2 14:7 three 18:17,24 23:22,22 24:11,12 25:17,24 time 8:8 16:11 19:10 20:8 22:3,5 24:19 27:7 today 4:19,20 today's 4:17 totals 9:7 track 20:4 tracking 19:22 20:15 trading 15:11 transcribed 29:12 29:13 transcript 11:24 12:6 transcription 29:12 transcripts 16:14 17:4,11,14,16 trial 18:15 true 29:12 truth 29:9,9,9 try 11:8 14:14 16:9 21:10 22:2</p>	<p>22:22 trying 19:25 20:22 turn 9:1 two 10:8 16:14 17:12 26:14 type 7:2 typewriting 29:12</p> <p style="text-align: center;">u</p> <p>u.s. 18:9 23:13,17 23:24 uhm 24:9 ultimate 20:21 uncovered 23:14 understand 14:10 17:22 18:14 understanding 7:14 undertake 6:22 undertaking 7:1 united 1:1 unlawful 22:19 unrelated 11:19 use 10:18 19:12,14 utah 1:2,18 2:5,10 29:2,6,7,18,22</p> <p style="text-align: center;">v</p> <p>vague 18:5 19:11 validates 19:1 20:23 21:1 various 5:24 6:21 10:23 14:2 ventures 11:19 victims 10:23 14:6 14:13,15 16:6,10 21:6,7 22:11,24 videoconference 1:4 4:1 29:5 vs 1:7</p>	<p style="text-align: center;">w</p> <p>w 26:2 want 4:18 7:2 13:9 14:20 19:17 wanted 16:8 way 8:20 9:2 11:9 14:11 22:22 23:4 wayne 25:9 ways 22:9 we've 16:12 17:12 21:5,6,10 week 15:5 whatnot 11:13 14:24 wife 16:21 willing 15:18 23:5 wise 7:3 withheld 25:6 witness 1:16 3:2 4:6 9:22 18:6 19:16 22:1,17 23:11 26:16 29:5 29:8,11,13,18 word 18:21 words 16:1 20:18 work 10:24 14:1 16:9 worked 21:6 wrap 13:19 write 10:14</p> <p style="text-align: center;">x</p> <p>x 3:1,8 4:9</p> <p style="text-align: center;">y</p> <p>yeah 12:24,25,25 13:9 18:6 22:1 23:11 26:14 year 19:17</p>
t			
<p>t 3:8 4:9 29:1,1 take 12:21 21:13 taken 26:23 29:5 29:12 talked 6:21 24:12 talking 19:11 targets 18:23 team 11:22 12:11 17:10 22:4 25:12 teams 6:24 7:5 25:12 tena 1:10 term 20:19 testified 4:7</p>			

[zions - zoom]

z
zions 24:17,25 25:2,5,9
zoom 4:18,20,24

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days

after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

EXHIBIT E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES JUDICIAL DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JONATHAN O. HAFEN, in his)
 capacity as Court-appointed)
 Receiver;)
)
 Plaintiff,) Civil No.
) 2:19-cv-00813
 v.)
)
 GRETCHEN A. HOWELL, an)
 individual, and LESLIE)
 HOWELL, an individual,)
) Judge Tena Campbell
 Defendants.)

DEPOSITION OF RAY STRONG, CPA, CFE, CIRA
July 14, 2021 10:01 a.m.
Location: DEPOSITION BY VIDEOCONFERENCE
SALT LAKE CITY, UTAH

Reported by:
HEIDI HUNTER, RPR, CSR

1 APPEARANCES
 2 FOR THE PLAINTIFF
 3 Cynthia D. Love
 PARR, BROWN, GEE & LOVELESS
 4 Attorneys at Law
 101 South 200 East, Suite 700
 5 Salt Lake City, UT 84111
 Tel: 801.532.7840
 6 Email: clove@parrbrown.com
 7
 8 FOR THE PLAINTIFF
 9 Patrick E. Johnson
 COHNE KINGHORN, P.C.
 10 Attorneys at Law
 111 Broadway, 11th Floor
 11 Salt Lake City, UT 84111
 Tel: 801.363.4300
 12 Email: pjohanson@ck.law
 13
 14 ALSO PRESENT:
 15 (None)
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 PROCEEDINGS
 2
 3 RAY STRONG,
 4 called as a witness, being first duly sworn, was
 5 examined and testified as follows:
 6
 7 EXAMINATION
 8 BY MR. JOHNSON:
 9 Q Would you mind just stating your name for the
 10 record, please.
 11 A Ray Strong.
 12 Q Okay. And just to confirm your identity, you
 13 are the -- you've been retained by the receiver in
 14 connection with the Rust Rare Coin proceedings?
 15 A Yes, to provide accounting and financial
 16 analyses.
 17 Q I just want to go over a few things. As we
 18 all know, we're conducting the deposition by Zoom today
 19 as a result of the coronavirus pandemic. The rules of
 20 civil procedure haven't quite caught up with. How we're
 21 doing things these days, and I just want to make sure
 22 everybody is on board with this procedure. I want to
 23 confirm that you consent to the Zoom deposition today --
 24 or proceeding by Zoom today?
 25 A Yes, I do.

1 INDEX
 2
 3 PAGE
 4 Ray Strong
 5 Examination by Mr. Johnson 4
 6
 7 EXHIBITS
 8 NO. DESCRIPTION PAGE
 9
 10 Exhibit A Motion Seeking Approval of the 10
 Proposed Claim Procedures Claim
 Deadline, and Claim Forms
 11
 12 Exhibit B Declaration of D. Ray Strong, CPA, 12
 CFE, CIRA
 13 Exhibit C Exhibit 2; Pre-Silver Pool Accounts 31
 14 Exhibit D Rust Rare Coin, Inc., Account 38
 QuickReport
 15
 16 Exhibit E Rust Rare Coin receipts 50
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 Q And, Cynthia, does the receiver agree to
 2 proceed by Zoom today as well?
 3 MS. LOVE: We have no objection.
 4 MR. JOHNSON: Thank you.
 5 Q (By Mr. Johnson) Are you suffering from any
 6 illnesses or have you taken any medication that prevents
 7 you from understanding my questions today and answering
 8 them fully?
 9 A No.
 10 Q Is there anything that I need to know that
 11 will prohibit you from giving me your full attention
 12 today?
 13 A No.
 14 Q When were you first approached concerning Rust
 15 Rare Coin?
 16 A By the receiver or by other parties?
 17 Q Fair point. By other parties?
 18 A I was contacted by the Attorney General's
 19 Office for the state of Utah in early October 2018.
 20 Q Okay. And do you recall who specifically
 21 approached you?
 22 A Would have been Robert Wing.
 23 Q And he's -- at the time, he was at the Utah
 24 Securities Division; is that --
 25 A My understanding is he was with the Attorney

1 General's Office. He's an attorney for them.
 2 Q And what did he tell you about the Rust Rare
 3 Coin at the time?
 4 A He just indicated that they had a situation
 5 that they'd been investigating for a period of time and
 6 that it may involve a Ponzi scheme and wanted to engage
 7 me and my firm to evaluate the information and
 8 transactions as it relates to a determination of whether
 9 it was or wasn't a Ponzi scheme.
 10 Q And just as a sort of placeholder that we'll
 11 come back later, we can all agree that state and federal
 12 authorities seized control of Rust Rare Coin on
 13 November 15, 2018. Is that your memory?
 14 A That's when the receiver took possession and
 15 that's also the same time that the federal authorities
 16 served a search warrant on Rust Rare Coin.
 17 Q Sorry. I think an ambulance has now passed
 18 and hopefully you all aren't hearing that now.
 19 So what -- so after they -- after Robert Wing
 20 approached you, what was your involvement and what did
 21 you do, what did you look at, just a general sort of big
 22 picture concept?
 23 A So my team and I met with Mr. Wing and one of
 24 the lead investigators, Liz Blaylock, to initially walk
 25 through some of the investigation that they had done and

Page 6

1 some of the information that they had gathered. We
 2 obtained a large portion of that documentation and
 3 information and we started to analyze that information,
 4 including bank statements and bank records and investor
 5 lists and the like, and started to develop our own
 6 analysis to evaluate the existing situation.
 7 Q What did you concluded from that initial
 8 investigation?
 9 A Well, that was referenced in a declaration
 10 that was filed just prior to the appointment of a
 11 receiver, I think it was on November 9th or
 12 November 11th a few days prior, and what I identified
 13 was a number of transactions and characteristics that
 14 were similar to the characteristics of a Ponzi-type
 15 scheme based on that initial data we were able to
 16 analyze.
 17 Q So if I wanted to be more specific on what you
 18 looked at, what you concluded, I could just go look at
 19 that declaration; is that fair?
 20 A Correct.
 21 Q Did you interview any investors during this
 22 time period?
 23 A No. The securities investigator, Liz
 24 Blaylock, did most of the investigative work or
 25 interviews.

Page 7

1 Q Did you have any role in Rust Rare Coin prior
 2 to being approached by the state and federal
 3 authorities?
 4 A No.
 5 Q And then presumably even after you were
 6 approached, you didn't control how Rust Rare Coin was
 7 operated?
 8 A No.
 9 Q And is it fair to say your involvement -- your
 10 direct involvement in Rust Rare Coin only began after
 11 the receiver was appointed?
 12 A What do you mean by "direct"?
 13 Q That's fair -- that's a fair question. I
 14 think what I'm -- you didn't -- and I think I know -- we
 15 all know the answer to this question, but you didn't
 16 have any role in Rust Rare Coin other -- prior to the
 17 state and federal authorities seizing control, it was
 18 just limited to just analyzing the data that they had
 19 collected?
 20 A Correct.
 21 Q So you didn't have any control of the entries
 22 in any bookkeeping system?
 23 A No, I did not.
 24 Q It was other people -- you know, it was other
 25 individuals made all the entries in the Rust Rare Coin

Page 8

1 bookkeeping system?
 2 A I was not -- I didn't have any involvement in
 3 Rust Rare Coin accounting prior to -- or basically it
 4 was just analysis of the entries and the accounting that
 5 I obtained from either the attorney general engagement
 6 or the receiver engagement. I didn't prepare any of
 7 those entries, no.
 8 Q Didn't authorize any financial transactions of
 9 any sort?
 10 A No.
 11 MR. JOHNSON: So I was -- Heidi, I was going
 12 to try to share my screen and it says "Hostess able
 13 participant screen sharing?"
 14 COURT REPORTER: Okay.
 15 You should now.
 16 MR. JOHNSON: Great. Thank you.
 17 Q (By Mr. Johnson) So I am -- I believe I'm
 18 sharing my screen, and my screens are huge, so I can see
 19 things clearly. Let me know if you need me to Zoom in.
 20 Can you see this document that's entitled "Motion
 21 Seeking Approval of the Proposed Claim Procedures Claim
 22 Deadline and Claim Forms"?
 23 A Yes.
 24 Q At the top, the ribbon indicates that it was
 25 filed in Case 2:18-cv-892, and it's been filed as

Page 9

1 Document 236. Do you see that?
2 A I do.
3 MR. JOHNSON: And I would like to just
4 designate this document as Exhibit A.
5 (EXHIBIT A WAS MARKED.)
6 Q (By Mr. Johnson) And you see down below that
7 it's 32 pages long. If you can track my mouse.
8 A That's what it shows.
9 Q Okay. So scroll down to the second page here.
10 And if you could just sort of read the first two
11 sentences, that would be helpful for me, if you don't
12 mind.
13 A Okay.
14 Q And so you see the -- if you follow my
15 mouse -- that "receivership defendants" is a defined
16 term in quotations on the fifth line. And it references
17 a Footnote 1. And then I will scroll down to
18 Footnote 1. And if you could take -- and I've zoomed in
19 a little bit. If you could take a look at these
20 entities and read them, and then let me know when you've
21 done that.
22 A Okay.
23 Q And do you -- are these -- to your knowledge,
24 are these all of the entities that are part of the
25 receivership?

Page 10

1 MS. LOVE: I just want to object for a second
2 to the extent that calls for a legal conclusion. The
3 receivership scope is defined by the court's
4 receivership order.
5 A Those appear to be entities consistent with
6 entities that we've analyzed and reviewed as part of the
7 receivership. Whether it's legally defined as the
8 receivership defendants, I think that's probably a legal
9 question.
10 Q (By Mr. Johnson) To the extent any of these
11 entities had assets and operations, had they become part
12 of the receivership?
13 A If they would have been assets, the receiver
14 and their legal team have analyzed those assets and
15 administered them.
16 Q And are you aware of any other companies or
17 entities controlled by Gaylen Rust, Denise Rust or Josh
18 Rust that are not part of the receivership?
19 A The only entity that appears to be missing
20 here, although it's -- I don't recall it being part of
21 the receivership, would be Legacy Music Alliance, which
22 is a not for profit, but they have a separate board and
23 there were -- from my recollection, there was no assets
24 there.
25 Q Other than the -- you said that was -- remind

Page 11

1 me, what was the name of that entity that you just
2 mentioned?
3 A Legacy Music Alliance.
4 Q Other than Legacy Music Alliance, are you
5 aware of any assets or -- any assets owned or controlled
6 by Gaylen Rust, Denise Rust, or Josh Rust that are not
7 part of the receivership?
8 A Not that I'm aware of as I sit here today.
9 Q So hopefully you can see a new document put
10 up. It's the declaration of D. Ray Strong, CPA, CFE,
11 CIRA. Do you see that?
12 A I do.
13 Q And you see that it's been filed in the
14 Case 2:19-cv-627 as Document 17-2?
15 A I do.
16 Q Do you recognize this document?
17 A I do.
18 Q And can you tell me what it is?
19 A This was a declaration that I prepared with --
20 with my team pursuant -- it was part of the Oberhansly
21 proceeding.
22 (EXHIBIT B WAS MARKED.)
23 Q And I just want to -- what I would like to do
24 is designate this as Exhibit B, but if you look at the
25 bottom right screen, it's one -- 386 pages, which is

Page 12

1 quite big. So I think what I'd like to do is just
2 designate the first -- I think -- let's say the first 83
3 pages. I've scrolled down to Page 83. So let me scroll
4 up a little bit.
5 You see that there's -- on Page 77 it's your
6 sort of signature?
7 A That's my signature.
8 Q Okay. And then the next several pages to 83
9 identify a fair number of exhibits that are attached to
10 the declaration?
11 A Correct.
12 Q And then Exhibit 1 begins on Page 84. I'll
13 just designate, for convenience and size, 1 through 83
14 of this document. And then to the extent we need to
15 refer to any exhibits, we can designate those
16 separately.
17 I just want to ask a few questions about some
18 of the statements in this.
19 Paragraph 18 -- let me know if I need to zoom
20 in more for you to be able to read this document. I'm
21 happy to do that.
22 A Okay. I can read it.
23 Q So Paragraph 18 says, "Over the decades
24 RRC" -- and I think we all agree that refers to Rust
25 Rare Coins -- "and G Rust" -- that's Gaylen Rust --

Page 13

<p>1 "built significant trust and loyalty with its customer 2 base through its historical coin store dealings, 3 affiliations with The Church of Jesus Christ of 4 Latter-Day Saints, community and philanthropic 5 endeavors, industry relationships and involvement with 6 numismatic trade associations." 7 I want to ask just what did you mean by 8 "affiliations with The Church of Jesus Christ of 9 Latter-Day Saints"? 10 A He was involved in transactions with the 11 church as far as investors or customers would make 12 tithing donations and Rust Rare Coin would liquidate 13 some of those metals that were traded -- or not traded, 14 but metals that were donated, and/or through the 15 investors, the investors would want periodic tithing 16 payments made to the church, and Rust Rare Coin and 17 Gaylen, as part of the investor programs, would make 18 those payments. 19 Q Are you aware of any LDS church leader that 20 specifically promoted the silver pool to others? 21 And let's -- well, let me step back. Let me 22 define a couple of terms. I refer to "silver pool" -- 23 if we -- well, for sake of convenience, let's define 24 "silver pool" as in Paragraph 19 sometime around 2008 25 Gaylen Rust created and promoted a silver only pool</p> <p style="text-align: right;">Page 14</p>	<p>1 at Brinks. 2 Q Okay. So that sort of gets us around silver 3 pool. And then the other, I think, term I need to 4 define in that question is LDS church leader. And what 5 I'll include is that is somebody that was, let's say, a 6 bishop, a member of the bishopric, stake president, a 7 member of the stake presidency, or held some sort of 8 position higher in the church. 9 So with that sort of framework, I'll reask 10 this question. Are you aware of any LDS church leader 11 that promoted the silver pool to others? 12 A I'm not aware of specific instances. I do 13 know that the investor pool included members of the LDS 14 church, and whether or not they were leaders within the 15 LDS church and they promoted amongst their investor 16 groups or families, I don't know that specifically, but 17 it's possible. 18 Q Are you aware of any LDS church leaders that 19 knew how the silver pool operated? And when I say 20 "operated" I mean in the context of what we just sort of 21 discussed as the silver pool and how Gaylen Rust 22 described it to others. 23 Let me reask that question. I apologize. So 24 the question is: Are you aware of any LDS church 25 leaders that knew how the silver pool operated? And by</p> <p style="text-align: right;">Page 16</p>
<p>1 investment opportunity." 2 And then if we can agree that the silver pool 3 is generally defined as what's been identified and 4 described by the receiver and others as sort of the 5 alleged Ponzi scheme here; is that agreeable? 6 A No, I don't think I would necessarily agree 7 with that. I think the Ponzi scheme itself -- the 8 silver pool was an evolution of other arrangements or 9 programs that Gaylen had, and the silver pool was kind 10 of the -- kind of final major investment program that 11 Gaylen promoted. 12 Q Okay. And I'm just trying to figure out a 13 definition that we can work from. I'm not trying to put 14 words in your mouth. Is the silver pool generally a 15 program where Gaylen Rust through Rust Rare Coin -- at 16 least, just for the record, it's alleged that he brought 17 in investor money, told investors that he was trading 18 that silver on this sort of a short sale, a program 19 where he would sell it at a higher price and then buy it 20 back at a lower price and buy more back at a lower price 21 and that would cause the investor's balance of silver to 22 increase? 23 A Correct. That was one component of it. 24 Another component of it was that he represented to 25 investors that 50 percent or so would be stored securely</p> <p style="text-align: right;">Page 15</p>	<p>1 "operated" I mean in the manner that you contend is a 2 Ponzi scheme. How about that? 3 A And are you talking about church leaders that 4 were not investors? I guess that's where the 5 distinction I'm trying to understand. 6 Q Let me ask this in a different order. So is 7 it fair to say -- again, I'm just trying to make sure 8 we're working from the same framework. As the silver 9 pool that we've sort of agreed about how it worked, you 10 contend that that was a Ponzi scheme; is that a fair 11 statement? 12 A It demonstrates the badges of a Ponzi scheme, 13 the characteristics of a Ponzi scheme, and the 14 definition of a Ponzi scheme, correct. 15 Q Are you aware -- do you know of anybody other 16 than Gaylen Rust that knew how the silver pool operated 17 and knew of the facts that you describe as having the 18 badges of a Ponzi scheme? 19 A I don't know -- as far as church leaders, I 20 don't know of anyone. There, obviously, were members of 21 the church that were investors, and whether or not that 22 was a Ponzi scheme, that would probably be subject to 23 the facts and circumstances of each one of those 24 individuals that were investors. 25 Q Sort of, generally speaking, did -- and this</p> <p style="text-align: right;">Page 17</p>

1 isn't a trick question and it's not a -- it's not a hard
 2 question, I'm just not articulating it well, but I think
 3 the core point is that, to your knowledge, was Gaylen
 4 Rust the only person that knew what was going on and had
 5 a full picture?
 6 A I think with a full picture, yes.
 7 Q Okay. So maybe we can just break down what
 8 we're talking about in full picture, and what do you
 9 mean by that -- I said it first, but what do you
 10 understand that to be?
 11 A Well, there may have been other -- there may
 12 have been other employees that had some components or
 13 some responsibilities for certain aspects of the scheme
 14 such Felicia Fry or Frey. She did a lot of the
 15 administrative kind of day-to-day interactions with some
 16 of these investors. Josh Rust also -- you know, he made
 17 payments to investors.
 18 He was aware of transactions with investors.
 19 Denise Rust did the same work prior to the hiring of
 20 Felicia Fray. Michael Allred, obviously, accounted for
 21 some of the transactions of the investor accounts, and
 22 he prepared the books in QuickBooks files and books and
 23 records of Rust Rare Coin that involved investor related
 24 activities.
 25 So there are a variety of different kind of

Page 18

1 components of the scheme that others may have some
 2 limited knowledge.
 3 Q But is it fair to say that Gaylen Rust was
 4 sort of the mastermind and he's the only one, in your
 5 opinion, that -- based upon -- not your opinion -- your
 6 knowledge, really had all the parts of the puzzle and
 7 knew all the parts of the puzzle?
 8 A I think that's fair to say.
 9 Q Okay. And so let's step back to my prior
 10 question, if I'd asked it in the correct order. So that
 11 would exclude -- so there was no LDS church leaders that
 12 knew of -- you know, had all the parts of the puzzle and
 13 knew what was going?
 14 A As it relates to the scheme itself, I wouldn't
 15 think so, no.
 16 Q And what about -- I want to use the term
 17 "intermediary." And that's a term that -- I can pull
 18 this up, but I'm just going describe -- because it's an
 19 exhibit to your declaration. It's Exhibit No. 5. And
 20 if you recall -- maybe I'll just scroll down to it. If
 21 we need to put it in the record, that's fine. I'm just
 22 trying to keep things simple.
 23 So this is Exhibit No. 5. It's Page 121 of, I
 24 guess, Exhibit B, but obviously -- the document, part of
 25 the document that we designated -- I designated as

Page 19

1 Exhibit B. Do you recognize this document that's shown
 2 on the screen?
 3 A I do.
 4 Q Okay. This document refers to intermediaries
 5 a lot of times, and I think it was -- the purpose was
 6 really just to strip names so that this -- you know,
 7 people's names didn't show up in the document, this
 8 public record.
 9 Do you have an understanding of what the term
 10 "intermediary" is in this document?
 11 A As it relates to -- can you show me an
 12 example?
 13 Q Yes. Okay. And so I'm on Page 132 of 386.
 14 If you look at Line 234 -- zoom in a hair -- it just
 15 says, "Email to Gaylen from intermediary investor.
 16 Please see attached request for investor to draw monthly
 17 from her account. Thanks for all you do for us and
 18 others."
 19 And if we go down to Page 57, Line 349,
 20 "Initially I was approached by a good friend
 21 [intermediary]."
 22 Does that give you an idea of what I'm
 23 referring to by the term "intermediary"?
 24 A Yes, it does.
 25 Q What's your understanding of what an

Page 20

1 intermediary would be in relation to the Rust Rare Coin?
 2 A This would have been a situation where Gaylen
 3 had a relationship with a particular investor and that
 4 investor had a pool of other investors that provided
 5 that intermediary with investments, contributions, and
 6 that intermediary would then make the investment in
 7 the -- what I'll call the intermediary investor's name
 8 with Gaylen.
 9 So an example of that would be somebody like
 10 Clarence Fields, where if you look at his investment
 11 statements, they'll be a series of other investors that
 12 are in his transaction activity.
 13 Q And how many of -- how many Clarence Fields
 14 were there? How many intermediaries? It doesn't have
 15 to be precise, just a ballpark figure, if you don't know
 16 the exact number.
 17 A I don't -- I'd have to go back and look. I
 18 haven't looked or tallied that up or -- for some time.
 19 There are a number of them, but I couldn't give even an
 20 estimate without going back and looking at the investor
 21 lists and the transaction history.
 22 Q Can you ballpark it, half dozen, dozen, 50?
 23 A Probably under 20.
 24 Q Did any -- sorry, did I interrupt you?
 25 A If I had to ballpark it, probably under 20.

Page 21

1 But, again, I would have to go back and look at that in
 2 more detail.
 3 Q Did any of the intermediaries receive
 4 commissions?
 5 A I'd have to go back and look at those details.
 6 I do know that -- from whom?
 7 Q From whom, is that what you mean?
 8 A Yes, commissions from whom?
 9 Q Commissions from Rust Rare Coin or Gaylen Rust
 10 for bringing in new investor money.
 11 A I'd have to go back and look. I don't know
 12 off the top of my head at the moment. And the detailed
 13 investor analysis, which I supervised, was done by Jeff
 14 Shaw from my office.
 15 Q So we've sort of established what intermediary
 16 means. I think we agreed to that. If not, let me know.
 17 But I want to step back to sort of where my earlier
 18 questioning was, which is, do you know -- I asked if
 19 anybody else knew about the inner workings and had the
 20 full picture of Rust Rare Coin's operations and you
 21 identified some of the employees that had bits and
 22 pieces.
 23 I then asked whether any LDS church leader
 24 knew about -- had the full picture. So my next question
 25 is: Are you aware of any intermediary that had a full
 Page 22

1 picture of -- not me.
 2 (INTERRUPTION)
 3 A Sorry. It comes through my phone and since
 4 I'm on the computer with Zoom, I can't shut that off.
 5 Q So are you aware of any intermediary that had
 6 a full picture of the operations of the silver pool or
 7 what you contend is a Ponzi scheme?
 8 A There may have been some inclinations along
 9 the way, but the full picture where they understood the
 10 total investors, how it completely functioned, that
 11 would be Gaylen in its entirety.
 12 Q So I'm back on Exhibit B, and I'm focusing on
 13 Paragraph 19 and again back at this term "silver pool."
 14 When do you -- stepping back a little bit more. I think
 15 you earlier -- and I'm not trying to put words in your
 16 mouth, but you -- would you agree that the silver pool
 17 you contended was a Ponzi scheme -- I think you
 18 clarified more and said it had the hallmarks and the
 19 characteristics of a Ponzi scheme; is that fair?
 20 A You know, in my view, it is a Ponzi scheme.
 21 Q Okay. And when did you -- when do you think
 22 it began? I know that you opined or stated at least as
 23 early as 2008. Do you have -- do you think it began
 24 earlier than that and, if so, when?
 25 A You know, I do believe that it started earlier
 Page 23

1 than that. We have not done the full analysis. The
 2 analysis that we prepared for 2008, 2009, 2010 was
 3 substantial. It took a substantial amount of work
 4 involving looking at a variety of different sources of
 5 information to kind of reconstruct the activity, and the
 6 cost benefit of going back any further just wasn't there
 7 at the time.
 8 I think it probably did begin prior to that.
 9 As to when, I couldn't tell you without doing the full
 10 analysis that we did in 2008, 2009, 2010.
 11 Q Do you know where the term "silver pool"
 12 originated?
 13 A The silver pool -- I think it was just a
 14 scripted term used by the -- it's basically a pooling of
 15 investor funds. It was a pooled investment, and the
 16 original term I heard probably from the CFTC.
 17 Q And "CFTC" is Commodity Futures Trading
 18 Commission?
 19 A Correct.
 20 Q Are you aware of other names that were used
 21 for the silver pool or the investment opportunity?
 22 A I'm sure there's -- investments opportunity
 23 would be one, silver program, you know, metals program,
 24 but for the most part, as I mentioned, it was an
 25 evolving process and the end program was what's defined
 Page 24

1 here is as the silver pool.
 2 Q Have you heard of the term "silver bullion
 3 accounts"?
 4 A I've heard "silver bullion accounts," sure.
 5 Q And what's your understanding of what those
 6 were?
 7 A Well, bullion is basically the same as one
 8 ounce ground silver, which is -- based on discussions
 9 with Gaylen Rust, is what this -- this version of the
 10 investment programs centered around, was the one-ounce
 11 silver bullion.
 12 Q And then have you heard of gold bullion
 13 accounts?
 14 A There are variations of -- variations of
 15 investor activity that involved gold bullion.
 16 Q And if -- do you -- do you lump silver bullion
 17 accounts and gold bullion accounts into the same
 18 definition of what we've been describing as the silver
 19 pool or are they something different in your mind?
 20 A Those would have been a little different as
 21 far as the mechanism. Earlier on, prior to the silver
 22 pool, he was -- he had programs or investment vehicles
 23 that involved gold bullion, platinum, coin collections,
 24 and so forth. It was just a different version of the
 25 overall scheme.
 Page 25

1 Q So if an investor had a gold bullion account
2 and there was a statement that indicated an amount of
3 gold bullion, if I'm -- was it the same scheme as what's
4 generally the silver pool, which I think we understand
5 is there -- it's your conclusion or determination that
6 there wasn't ultimately silver held by Rust Rare Coin to
7 match what was on the statement or everybody's
8 statements.

9 If somebody had a silver bullion account or
10 gold bullion account, do you know whether there was a
11 visible asset that matched what was on those statements?

12 A I don't -- I don't believe there was. And the
13 reason for that is that in our 2008 analysis, which is
14 kind of the beginning points of the silver pool version
15 of the scheme, there was very little income generated
16 from Rust Rare Coin, if any.

17 And based on our reconstruction of the
18 investor activity, there was 3.3 million of investor
19 contributions, which would involve silver pool related
20 activity, gold bullion, platinum, other accounts, other
21 vehicles of investment that Mr. Gaylen used. And in
22 that same period, there was \$1.7 million of payments or
23 distributions out to investors and \$1.6 million worth of
24 distributions out to related entities, which is, in
25 essence, the \$3.1 million or \$3.2 million.

Page 26

1 So all of the funds that came in from the
2 investor contributions were ultimately used to pay the
3 investors and/or related party transactions for that
4 time period. So I not believe that there was physical
5 gold sitting somewhere for Rust Coin pursuant to some of
6 the other investment vehicles.

7 Q And that -- that's a conclusion that you've
8 drawn from your analysis, though, correct?

9 A It's a conclusion I've drawn from analysis and
10 based on some of the other activity that's occurred. At
11 the end of the day, there was none of this activity --
12 none of this -- these physical metals or coins that were
13 in existence at the time the receiver ultimately took
14 possession, and that seemed to be the same pattern.

15 He would take these investor funds in
16 depending on what the vehicle was and they were used to
17 pay operations, they were used to pay investors and
18 related party transactions. The cash balances kind of
19 bear that out.

20 Q Have you been able to determine what the cash
21 on hand of Rust Rare Coin was at any time from 2008
22 until the -- until November 15th, 2018?

23 A It varied at various points in time. There
24 were cash balances in the QuickBooks files from 2008 to
25 2012. And from 2012, we have the actual bank statements

Page 27

1 that we obtained from -- independently from the banks,
2 and those show balances at various points in time.

3 Q And I need to clarify my question. By "cash"
4 I mean currency, physical currency in the possession
5 of -- you know, in a safe or on the location of the
6 business. Could you -- can you pinpoint the amount on
7 any given day during that time period?

8 A So cash that's in the till? Or cash that's in
9 the coin fund or the metals fund that Larry Call kept in
10 the safe? Or the cash funds that Gaylen kept as it
11 related to investors?

12 Q I think, you know, all of the above. What I'm
13 referring to is not cash that's in a bank account, but
14 physical currency that would be in any of those three
15 locations, just not bank account cash, can you pinpoint
16 the balances of those?

17 A No, those balances weren't tracked.

18 Q What about inventory of, let's say, tradeable
19 coins and other things that were general inventory of
20 the coin operation, as well as silver, gold, and other
21 precious metals, can you pinpoint the amount that was on
22 hand at any given time?

23 A There was a report at the end in the Acumatica
24 system that Josh's legal counsel went through,
25 identified the inventory at that point in time. There

Page 28

1 was a point-of-sale system that was in place that
2 tracked the purchases and sales of that activity. I'd
3 have to go back and look to see if it would allow for
4 after-the-fact reports to generate inventory -- an
5 inventory report.

6 Q To step back, you mentioned that this --
7 Acumatica, is that the correct -- is that how you
8 pronounce that?

9 A That's correct.

10 Q And Acumatica was just at the very, very end,
11 it was something that they were -- that Rust Rare Coin
12 was transitioning to?

13 A That's correct.

14 Q And then just -- the follow-up question, then,
15 is you haven't found any inventory reports saying this
16 is -- these are all the coins that we -- that Rust Rare
17 Coins has in its possession and are on the floor or in
18 the safe and -- I'll stop the question there.

19 A I haven't looked at the system for quite some
20 time, the RMS system, the point-of-sale system. There
21 may be some reports in that system that could pull
22 inventory. I just don't know if you can go back in time
23 and pull those inventory. I know that Larry Call
24 tracked some of the inventory along the way in some
25 spreadsheets that he kept.

Page 29

1 Q And the same question -- is your answer the
2 same -- is your answer the same if I were to ask with
3 respect to silver bullion, gold bullion, and other sort
4 of precious metals as opposed to coins?
5 A Yes, that would be the same.
6 Q Did you say that gentleman's name was Larry
7 Call?
8 A Larry Call.
9 Q Call, C-A-L-L?
10 A Uh-huh. That's correct.
11 Q In Paragraph 18, you refer to pre-silver pool
12 accounts -- and I suppose you probably answered this
13 already in a different form, but I'll ask it here: In
14 your -- in your mind, what's your distinction between
15 pre-silver pool accounts and silver pool accounts?
16 A These would have been some of the kind of
17 precursor or -- as I talked about the evolution of his
18 scheme, these would have been -- this would have been
19 activity that involved coins, gold bullion, platinum,
20 90 percent silver, that -- many of those ultimately
21 rolled into the current version, in fact, most of them
22 did, but that's what I'm referring to there.
23 Q So would -- do you know -- let's start with
24 the premise that Rust Rare Coin gave those people that
25 had those accounts statements; is that a fair -- fair

Page 30

1 assumption?
2 A He gave them -- not statements in the
3 traditional sense like you would from some sort of
4 brokerage or investment related, formalized statement,
5 but they were Excel spreadsheets that Gaylen used to
6 track the investor activity for a particular investor.
7 Q And maybe -- let's -- I'll just try to
8 simplify this, and I'll -- so attached as Exhibit 2 to
9 the declaration -- and maybe I'll just make this an
10 exhibit. I pulled up -- this is Exhibit 2 to your
11 declaration. It's Page 94 to -- I'll just scroll
12 down -- I think at -- it goes to 107.
13 Are you -- do you have a memory of these or do
14 you want me to kind of scroll through them so that you
15 can refresh your recollection?
16 A I have a general memory of them.
17 (EXHIBIT C WAS MARKED.)
18 Q Okay. So, again, we'll make this Exhibit C.
19 And my question is -- I guess -- I believe in your
20 declaration, you refer to these as sort of the
21 pre-silver pool statements; is that correct?
22 A A version of them, yes. There are other
23 versions.
24 Q Do you know whether they're accurate?
25 A I have no idea if they're accurate or not.

Page 31

1 This is what he was listing as activity at that point in
2 time. Based on our analysis in 2008 between the
3 investor contributions and the payments to investors,
4 which is the definition of a Ponzi scheme, he was making
5 the contributions -- or payments to investors with
6 investor money.
7 Q Was there a -- if we start from the premise
8 that there was a Ponzi scheme side of -- alleged Ponzi
9 scheme side of what Gaylen Rust and Rust Rare Coin was
10 doing, was there a -- what I'll say is a legitimate side
11 or sort of something that -- just a normal business that
12 you wouldn't consider it to be a Ponzi scheme?
13 A Well, I think you have to look at the activity
14 as a whole. They had a coin store. And in a lot of
15 Ponzi cases there's some fashion of activity. Here they
16 had a coin store where they were actually selling --
17 buying and selling coins and bullion and metals and
18 memorabilia, but when -- you've got to look at it in its
19 totality. Is there a source of funds or profit that can
20 be used to make investor payments? And in this
21 particular case, there was not.
22 Q Okay. And because -- well, let's ask the
23 question this way -- I mean, there were sort of
24 legitimate customers that weren't -- that weren't
25 investors that came in and maybe bought a rare coin or

Page 32

1 sold a rare coin and had no other involvement in any
2 investment or something like that?
3 A Correct.
4 Q Okay. Here on my screen I've got Paragraph 26
5 pulled up, and it just starts with "The BRG team
6 obtained and conducted an extensive analysis of the
7 following documentation data and information." And then
8 there's a list of documents and sources that your
9 team -- you and your team reviewed; is that fair? Are
10 we on the same page, I guess?
11 A Those are general categories of documentation
12 that we reviewed. Obviously, you know, if you get into
13 the granular details, there's a lot of information that
14 we reviewed, but these are general categories.
15 Q And in fairness, this list continues to
16 Page -- you know, the next page and lists some other
17 general categories. Were you or your team able to
18 obtain bank statements prior to 2012?
19 A No, we were not -- no, that's not true. The
20 Zions account started in 2010. I believe we have at
21 least some of those statements prior to 2012, between
22 the 2010 and 2012 time period. We just didn't have all
23 the underlying transaction detail that accompanied those
24 statements prior to 2012.
25 Q Do you have a memory of what date ranges the

Page 33

1 QuickBooks covers?
2 A For which entity?
3 Q Fair question. For the Rust Rare Coin, Inc.
4 A I haven't looked at the QuickBooks files for
5 some time, but my recollection is from 2003 through -- I
6 think it was June of 2018.
7 Q And I believe you stated in the declaration
8 that the QuickBooks records were incomplete and didn't
9 include every single transaction, whether it was the
10 retail store or the silver pool?
11 A For certain areas of QuickBooks, we came to
12 the conclusion -- which lead to a much larger and much
13 more extensive analysis from a variety of other sources
14 of documents and information, but the QuickBooks files
15 for certain key areas, such as the investor activity and
16 the sales and the purchases of coins and metals, was not
17 complete.
18 Q And if you look at -- I'm just going to refer
19 to one, two, three -- the fifth item on this
20 Paragraph 26, the -- you've defined a term -- there's a
21 defined term, "RMS POS system," that's the Rust Rare
22 Coin Microsoft Dynamics RMS point-of-sale system. You
23 would agree that that also was incomplete and didn't
24 include every transaction?
25 A I guess I don't understand the question.

Page 34

1 The -- yeah, that would be -- that would be correct.
2 One of the things that we -- it was the most correct
3 information, especially for sales. Sales was -- it was
4 designed for tracking the sales.
5 On the purchases side, along the way, Josh was
6 trying to get that system much more robust and accurate,
7 but there were differences on the purchasing side where
8 QuickBooks would include transactions for the purchase
9 of bullion and coins and the like and the RMS system
10 would include some.
11 And we went through a kind of
12 transaction-by-transaction analysis and compared them,
13 and where there were QuickBooks transactions that were
14 not in the RMS system, we would make an adjustment for
15 those.
16 Q I've pulled up -- again, we're on Exhibit B --
17 Paragraph 210. In this paragraph, you mention -- you
18 say that there's \$100 million in allowable claims from
19 over 500 investors and other claimants. I'm just trying
20 to understand what you mean by 100 million in allowable
21 claims.
22 Is that -- I see it as two options. One is
23 it's money that was contributed and there's no money to
24 repay, or it's what was represented on the statements --
25 we'll call -- air quotations around statements -- the

Page 35

1 statements that the investors received. Does the
2 100 million refer to one of those two categories, in
3 your mind?
4 A Well, it wouldn't include the fictitious gains
5 names that were included on the statements. These would
6 be investors that contributed funds, less any payments
7 that were made to them, as well as any of the other --
8 what I'll call more vendor or employee related claims
9 for the Receivership. That would be the totality of the
10 potential allowed claims, which is still an ongoing
11 analysis.
12 Q Do you know what the -- if we back out -- if
13 we were to just look at sort of the investors and back
14 out vendor claims or employee claims, do you have a
15 number in mind of what that amount would be?
16 A I don't without going through that process.
17 Our -- we provided some of the transactional analyses
18 and transactional data. The legal team has been -- of
19 the receiver has been going through the actual claims
20 forms -- we've reviewed them as well, but they're the
21 ones that's charged with evaluating the actual legal
22 allowable claims.
23 Q And do you know what -- what the -- the term
24 you used "fictitious gains". Do you know what was
25 promised to investors when everything was sort of shut

Page 36

1 down?
2 A I think that's a very difficult question to
3 ultimately answer, and the reason for that is that not
4 everyone would get monthly statements or monthly
5 tracking sheets. People that were a little more vocal
6 would get them more frequently. Other people he
7 wouldn't prepare -- you know, sometimes for a year or
8 two.
9 So I think it's difficult to really determine
10 what he had ultimately promised to these investors, but
11 I think it's in excess -- based on just a rough
12 evaluation of kind of the last statements that these
13 individuals received, it would be in excess of
14 600 million, if not more.
15 Q Is that -- is that something that your team
16 has done or is that something that the Receiver's team
17 has done?
18 A Well, as part of the investor analysis -- we
19 haven't done a formal analysis of that. We've done a
20 rough review of the last statements, and that's -- those
21 are the rough numbers that we came up with based on what
22 statements are available. There's statements that are
23 not available.
24 And to be clear on that, I think, that relates
25 to the statements for the investor tracking sheets that

Page 37

1 include the fictitious gains.
2 Q I didn't quite follow that last point. I
3 think maybe I did, but can you just --
4 A Well, in excess of 600 million, those would be
5 based on the statements or the tracking sheets, * via
6 the spreadsheets that Gaylen prepared for these
7 investors, and that value would include -- obviously
8 their contributions less payments, but also all of the
9 fictitious gains -- fictitious trading gains.
10 Q And so just -- and I don't -- just to make
11 sure I'm on the same page. So if one were to look or --
12 if one were to look at sort of the last statements, the
13 most recent or most current statements, understanding
14 it's not monthly and it could be old or something, if
15 one were to take a look at those, you think it's about
16 \$600 million of what -- the final number on that is what
17 the person is believed to have -- or what the recipient
18 would believe they have, which would include anything
19 that they contributed plus the fictitious gains, that's
20 the number we're getting to?
21 A Yes. Roughly it would be in excess of
22 600 million.
23 (EXHIBIT D WAS MARKED.)
24 Q Pulling up the -- I shared my screen with you.
25 It's a new document. I'm going to designate this as

Page 38

1 Exhibit D. This isn't a document that's familiar to
2 you, but does this, to you, look like a report -- like a
3 report from QuickBooks?
4 A Yes.
5 Q And at the top it's identified as "Rust Rare
6 Coin, Inc." It says, "Account Quick Report." And then
7 there's an account number, a 2443, and it says, "Les and
8 Gretchen Howell." Do you see that?
9 A I do.
10 Q Let's do some background work so that we just
11 have a clear record. And I'm sure you know how
12 QuickBooks operates, so these are -- this is just kind
13 of background questions -- or background information.
14 But QuickBooks has -- you'll agree it has sort of a --
15 there's different modules. It has sort of a sales
16 module, it has sort of an expense module. Would you
17 agree with that?
18 A Well, QuickBooks is set up a little different
19 than you would a normal accounting system where they
20 have modules. There are different menu items where you
21 can pull transaction detail for specific things. You
22 can pull income statement items, you can pull balance
23 sheet statement items. There is a -- what you would
24 deem a module for accounts payable, accounts receivable,
25 but QuickBooks is a fairly basic accounting system

Page 39

1 for -- geared towards smaller businesses.
2 Q And so some people -- some businesses will run
3 it -- you know, they may run their accounts receivable
4 or sales, and they'll enter an invoice and it will --
5 and maybe what I can do is refer to this type, that's
6 the first column. We see "General, Journal, Check,
7 Deposit" -- that's the three types. But sort of
8 depending on what menu item or module they're using --
9 I'm sorry.
10 So if a small business is using sort of the
11 accounts receivable option, they may be -- the business
12 owner may be looking at an invoice or something like and
13 it looks like an invoice with an invoice number and
14 there's a buyer or something, and that transaction data
15 filters in through the general ledger?
16 A It eventually makes its way to the general
17 ledger, that's correct.
18 Q Okay. And, likewise, there's the accounts
19 payable and a business owner may enter a check, and it
20 looks like they're just entering a check, but ultimately
21 that's being fed into the general ledger as well; is
22 that fair?
23 A Well, it can come from two different sources
24 in QuickBooks. It can come from the accounts payable --
25 I'll use your term -- module or the accounts receivable

Page 40

1 module, but it can also be just a direct entry into the
2 bank account, in the general ledger bank account.
3 Q And is that -- and just so we're on the same
4 page, would that show up as -- and I'm referring to
5 these first seven or eight lines -- as a general journal
6 entry, in your mind, or is that through one of the
7 modules?
8 A No. General journal entries typically in
9 QuickBooks, you would enter a general journal entry.
10 There's a separate functionality or menu item in
11 QuickBooks where you can create a general journal entry.
12 Q Okay. And that's kind of what I was trying to
13 get the foundation for. As you kind of got these normal
14 sort of forward facing parts of QuickBooks that are user
15 friendly for businesses that -- either it's the accounts
16 payable or accounts receivable where the business owner
17 is using -- you know, what's presented to them is sort
18 of an invoice or a check or something like that, but
19 then there's this other side that's more accounting
20 directed that -- where a user can actually enter an
21 entry through a general journal entry, which is much
22 more of a -- sort of a more formal accounting process;
23 is that fair?
24 A I don't know what you mean by "formal
25 accounting process." It is part of an accounting

Page 41

1 process where you have various modules in accounting
2 system that could be payroll, it could be accounts
3 payable, it could be accounts receivable, but there's
4 also -- in any business, frankly, there are general
5 journal entries into the general ledger system that are
6 made for a variety of different reasons.
7 It could be to correct an entry. It could be
8 to -- it could be to add a particular entry. It could
9 be to record accruals for an accrual-based accounting
10 system.
11 There's a variety of different reasons why
12 companies use general journal entries and they're
13 frequent. People use them all the time.
14 Q And so is -- these first -- these first seven
15 transactions, is that -- to the extent we added any
16 clarity to it, but is that what's happening here? Is
17 that the module or the menu item that's being used in
18 QuickBooks for these first seven entries?
19 A Those are general journal entries being
20 entered into QuickBooks.
21 Q Okay. And there's just a couple questions I
22 have to ask about these first seven. And you recognize
23 that the first five, it's -- they're general journal
24 entries. There's an amount being put in to this 2443
25 account, and there's a designation of U.S. gold to

Page 42

1 silver, platinum to silver, gold to silver -- or gold to
2 silver, various to silver, scrap, and cash to silver.
3 Would you be able to term -- with the
4 documents that you have obtained and could access, could
5 you determine whether these are accurate entries?
6 A Which entries are you talking about?
7 Q The first seven that are dated 10/1/2012.
8 A Well, one of the things that Gaylen would
9 do -- and you have to take into consideration here, this
10 is in 2012, which is when Mike Allred first came on
11 board, the accountant for Rust Coin, and I know he went
12 through a process of trying to clean up some of the
13 transactions in the existing accounting system.
14 And one of the things we have seen in a
15 variety of different examples of investors, is that
16 transactions weren't recorded in the periods that they
17 occurred and Gaylen would just provide numbers to
18 Michael Allred for these various investors. Michael
19 Allred didn't have the transparency into the investor
20 numbers and often they included amounts that included
21 gains -- the fictitious gains and not just the
22 contributions and the payments.
23 Q And just so I can distill that down -- and I
24 don't want to say that -- just to distill that down, it
25 would be your understanding that these entries are

Page 43

1 probably based upon what information Gaylen Rust gave to
2 Mike Allred who then inputted it into QuickBooks?
3 A Correct. That would be my understanding.
4 Some of those transactions there -- at least I know on
5 the first two -- don't correlate with the actual
6 contributions based on the information that we have and
7 what's been provided by the Howells.
8 Q And I'm just going to scroll down to -- can
9 you see a yellow highlighted general journal entry of
10 9/30/2016?
11 A I can.
12 Q Okay. It's a -- it's a deposit in to the --
13 deposit is not the right term. But it's an amount being
14 entered in to this 2443 account number, and you see
15 where it says -- references "2510 Papa Bear"?
16 A Yes.
17 Q And you weren't -- do you have an
18 understanding of -- through your analysis and your
19 investigation, do you have an understanding of what's
20 going on here? Why there's a -- what looks like a
21 moving of funds from the Papa Bear account into the
22 Howell account?
23 A I have no idea without going through and
24 trying to investigate that further. Again, Gaylen would
25 provide, without support, balances and summarized

Page 44

1 amounts for investors to be recorded at the request of
2 Mike Allred and, frankly, the tax professional, Travis
3 Fenton.
4 So I wouldn't know on that particular
5 transaction without being able to try to spend some time
6 trying to understanding what's there, but --
7 Q Does this type of transaction -- and I
8 understand that I caught you cold with this and you may
9 not know what's going on with this specific transaction,
10 but does this transaction look similar to things that
11 you've seen throughout your investigation?
12 A There are a number of summarized journal
13 entries that have been included in the investor related
14 accounts that don't provide sufficient detail or tie to
15 actual contributions and/or payments to investors.
16 There are a lot of transactions that do and we verified
17 a lot of them with other supporting documentation,
18 receipts, investor statements, information from
19 investors, but there are also a lot of transactions
20 under these bulk summarized transactions that we have
21 not been able to determine why or how they were made.
22 Q Got another set of questions to ask. Hope
23 this will go pretty quickly.
24 To your knowledge, has Gaylen Rust or any
25 members of his family or employees of the Rust

Page 45

1 businesses, have they been -- to your knowledge, have
2 they been interviewed with regard to the alleged Ponzi
3 scheme?
4 A Interviewed by whom?
5 Q Anyone. Interviewed by state or federal
6 authorities or by your team, the receiver, the
7 receiver's team in connection with the -- why we're here
8 today?
9 A Yes.
10 Q And when were those interviews?
11 A I think a number of those interviews were
12 referenced -- at least from the federal -- from the FBI
13 and Ms. Blaylock, those were referenced in my
14 declaration, and a lot of those interviews were
15 conducted from federal law enforcement on the day of the
16 receivership appointment on November 15th, 2018.
17 Q We have -- "we," the Howells, have received or
18 have access to two transcripts from that day. Do you
19 know whether there were other interviews with Gaylen
20 Rust, his family, or employees?
21 A I don't know what other interviews they would
22 have had -- the federal law enforcement would have had
23 with Gaylen, Josh, or Denise. I do know on that day
24 they did speak with both of them. They also, from what
25 I understand, spoke with Felicia Frey. And there may
Page 46

1 have been some others. They had a whole team of people
2 doing interviews of employees, both at Rust Rare Coin
3 and other related entity locations.
4 Q Do you know whether any of those interviews
5 were recorded and have been transcribed?
6 A I know some of them have been recorded. I
7 don't know if they've been -- they may have been
8 transcribed, some of them anyway.
9 Q Do you know who would -- I think we're -- to
10 the extent you can be specific -- I mean, do you have a
11 specific memory of any of these interviews other than
12 the two that I mentioned of Gaylen Rust that have
13 been -- that were recorded?
14 A Well, I believe Denise's was recorded. I
15 believe Felicia Frey's is recorded. I remember
16 listening to it. I would assume Josh's, but I don't
17 have a -- I would have to go back and look. I don't
18 know -- they were recording everybody's at the time from
19 what I could ascertain.
20 Q And this was the day -- this was on the
21 November 15th?
22 A Correct.
23 Q Are you aware of any other recordings that
24 were made of -- are you aware of any other recordings
25 other than ones that were made on November 15th, 2018?
Page 47

1 A I'm not.
2 Q Are you -- do you know if -- would you agree
3 that Rust Rare Coin in connection with the operations,
4 that they had paper invoices, paper receipts?
5 A For what type of activity?
6 Q Both for receiving investor funds and for the
7 sale of collectible coins and memorabilia?
8 A They were tracking paper copies of investor
9 receipts, sure, and I've seen many examples of those,
10 and for the sale and purchase of metals.
11 Q Is there anything in your possession that
12 would sort of authenticate those documents and indicates
13 that they are, in fact, accurate?
14 A Well, I was involved in the process of
15 identifying and locating documentation which included
16 the investor receipts and included, at least for some
17 period of time, the purchases and sales invoices.
18 Q Would those cash -- would those -- I guess
19 we'll call them cash sale receipts, or something like,
20 would those have been inputted into the point-of-sale
21 system or would they stand separately and apart from the
22 point-of-sale system?
23 A No. They would have been generated from the
24 point-of-sale system for the sale of coins and bullion
25 and for the purchases of coins and bullion if they were
Page 48

1 in the -- for the purchases if they were in the
2 point-of-sale system. They also kept hard copies -- at
3 least going back to a specific period of time -- in
4 Denise's office, that would include some other
5 information as it relates to that transaction if it was
6 obtained at the time of the transaction.
7 Q And these are -- and what I'm referring to --
8 I suppose I can find one if you can give me a minute --
9 or just -- just handwritten cash sales receipts, is that
10 what your -- you had in your mind?
11 A Well, it depends on what you're talking about.
12 You may need to show me what you're looking at, because
13 the investor receipts were handwritten, but there are
14 also transactions with investors that may have also had
15 receipt, so maybe you can show me what you're referring
16 to.
17 Q Let me see if I can find one.
18 MS. LOVE: Patrick, we've been going for about
19 an hour and a half.
20 Ray, are you okay or do you need a break?
21 THE WITNESS: I guess it depends on how long
22 we think we're going to be going. If we're going to be
23 going for hours, probably ought to take a break.
24 MR. JOHNSON: Let's hope not hours. I think
25 maybe a half an hour, but so you guys aren't looking at
Page 49

1 me trying to look and find something on my computer,
 2 maybe we'll just take a five-minute or ten-minute break.
 3 Does that work, just for everybody to get up and stretch
 4 their legs and then not have to stare at the same screen
 5 for a few minutes?
 6 THE WITNESS: Yeah.
 7 MS. LOVE: Yeah, works for me.
 8 (Recess from 11:32 to 11:42.)
 9 Q (By Mr. Johnson) So let me share my screen.
 10 Sir, can you see my screening right now?
 11 A Yes, I can.
 12 Q And it's a couple paper receipts?
 13 A Correct.
 14 Q Okay. And in your -- I'll mark this as
 15 Exhibit E.
 16 (EXHIBIT E WAS MARKED.)
 17 Q In connection with your investigation, did you
 18 take possession of -- or did the receiver take
 19 possession of and you reviewed a large number of
 20 receipts similar to this?
 21 A Yes.
 22 Q Okay. And would these transactions have been
 23 entered into the point-of-sale system or the QuickBooks
 24 system?
 25 A I would have to go back and look. They used
 Page 50

1 paper receipts and other receipts from the system,
 2 sometimes both. So I'd have to look at the specific
 3 receipt.
 4 Q So there's no way to tell from just -- just
 5 generally that -- that documents like this -- not
 6 actually these particular two receipts, but the stack
 7 there, the ones you received, you would have to
 8 individually check to make sure that they ended up in
 9 one of the computer systems?
 10 A Correct.
 11 Q Do you know whether -- let's say after the
 12 state and federal authorities took control of Rust Rare
 13 Coin, do you know whether inventory -- an inventory was
 14 performed of the precious metal collectible coins and
 15 other memorabilia?
 16 A When you say when the federal authorities took
 17 over, there was a receiver, an independent receiver that
 18 was appointed. Are you saying when the receiver took
 19 over?
 20 Q Yeah. Thanks for clarifying.
 21 When the receiver -- when the federal
 22 authorities obtained approval from the court to have a
 23 receiver appointed to control it, do you know whether
 24 the receiver did an inventory at that time?
 25 A My understanding is they did do an inventory.
 Page 51

1 Q In your investigation -- sorry, these are not
 2 my questions.
 3 In your investigation, did you find any
 4 evidence of illegal activity other than the alleged
 5 Ponzi scheme?
 6 A Maybe you can expand on what you mean by
 7 illegal activity.
 8 MS. LOVE: Just -- I'm just going to object
 9 for foundation and calls for a legal conclusion.
 10 Q (By Mr. Johnson) So there's an alleged Ponzi
 11 scheme, that's a fair statement, and obviously, you're
 12 not an attorney or a criminal prosecuting attorney, but
 13 are there other -- are there other acts, other things
 14 that are outside the Ponzi scheme where you at least
 15 suspected or -- you know, within your knowledge said,
 16 This also looks illegal to me, this is different from
 17 the Ponzi scheme, but something somebody else
 18 or Gaylen -- something Gaylen Rust or others have been
 19 involved in?
 20 A Well, in this case, there's the Ponzi scheme,
 21 there's the misappropriation of assets and fraud against
 22 the investors. So I guess I'm not aware of anything as
 23 I sit here today that we've chased down outside of those
 24 issues.
 25 Q Again, not my question. Other than the
 Page 52

1 alleged Ponzi scheme, in your investigation, have you
 2 discovered any evidence of any other illegal activity
 3 that had occurred or is occurring with any of the Rust
 4 Rare Coin or Rust family members, employees, associates,
 5 properties, businesses, or any other entities associated
 6 with the Rust or any of their business interests?
 7 MS. LOVE: Same objections.
 8 A I think other than what we've discussed as far
 9 as the investor-related fraud issues, I'm not aware of
 10 any that exist here.
 11 Q What are the names of the financial
 12 institutions that you're aware of that have been
 13 affiliated with the Rusts from 2005 to November 15th of
 14 2018?
 15 A When you say "affiliated," where they had bank
 16 accounts and other business relationships?
 17 Q Yes. Thanks for clarifying.
 18 A At the end, beginning in 2010 through the
 19 receivership, beginning of receivership, it would have
 20 been Zions Bank. And for a couple of the affiliates, I
 21 believe it was Twerk Entertainment and Writer's Den, and
 22 they had bank accounts with US Bank.
 23 Prior to 2010, in 2009, it would have been
 24 Barnes Bank. And prior to Barnes Bank, in 2009 through,
 25 I believe, 2007, it was First National Bank. And then
 Page 53

1 prior to First National Bank, it would have been
 2 KeyBank.
 3 Q And which of those banks have you obtained or
 4 reviewed statements and other documents from?
 5 A Well, through the subpoena process, we
 6 requested documentation from those prior names, and
 7 because of their document retention policies, they
 8 haven't kept those records. So we haven't seen any in
 9 those earlier periods from those earlier banks.
 10 I also asked Denise Rust and some of the other
 11 employees where those other statements may have been,
 12 and my understanding is that they were destroyed when
 13 they moved the store in -- I think roughly around 2016.
 14 Q And so -- I believe the declaration did say --
 15 and this is just to clarify. Your declaration indicated
 16 that you reviewed documents or bank statements from
 17 Zions Bank and some from US Bank; is that correct?
 18 A From US Bank for Twerk Entertainment and
 19 Writer's Den.
 20 Q And then you haven't obtained -- or
 21 reviewed -- haven't been able to obtain from the other
 22 banks, which I believe you identified as Barnes, First
 23 Security, and KeyBank?
 24 A No. Barnes, First National Bank, and KeyBank.
 25 Q In the course of your investigation and the

Page 54

1 subpoenas, have you become aware of or identified any
 2 omissions of information or data or statements from the
 3 financial institutions?
 4 A Maybe you can help clarify that question.
 5 When you say "omissions," what are you asking?
 6 Q I think in simpler terms, in the course of
 7 looking at the bank statements that you received, did
 8 you say to yourself, Hey, I didn't get everything,
 9 something is missing, or something along those lines?
 10 A No. We went through a very extensive analysis
 11 and analyzed the deposit detail, the wire transfer
 12 detail, the check detail, and we believe that it's
 13 complete. There may be a check here that for whatever
 14 their system couldn't produce it, but it would be a very
 15 rare occurrence in my view.
 16 Q Are you or any member of your team aware of a
 17 private letter authored by the Howells and delivered to
 18 Gaylen Rust residence on November 9th, 2020?
 19 A You would have to show it to me.
 20 Q Let me -- I don't have a letter. Are you just
 21 aware whether a letter was delivered or not on
 22 November 9th to Gaylen Rust that was written by the
 23 Howells?
 24 A I don't know. I don't recall seeing a letter
 25 and being provided a letter. Mr. Rust -- I don't recall

Page 55

1 him providing us with a letter.
 2 Q What were the names of the individuals under
 3 your supervision that reviewed the QuickBooks records?
 4 A Would have been myself, Jeff Shaw, Christina
 5 *Ter-Gevorkian, and Matt Babcock may have accessed and
 6 reviewed certain areas of QuickBooks files.
 7 Q I'll just ask it. Why -- do you have an
 8 understanding of why the Howell's investment account
 9 contributions of \$1,886.15, \$68,336.11, and \$99,985.26
 10 are not attributed and credited to the Howell's account
 11 in QuickBooks?
 12 A I don't know why they wouldn't have been
 13 accounted for in QuickBooks. My understanding is that
 14 the ins and the outs of the Howell's activity, I think
 15 from the receiver's perspective and from the Howell's
 16 perspective, I think we are very close as to the dollar
 17 amounts other than, I think, \$11,000.
 18 MR. JOHNSON: I think that's all the question.
 19 I'm just going to take a couple quick minutes to flip
 20 back through everything and make sure I didn't skip over
 21 something as I went along, so I'll be back in just a
 22 second.
 23 (Recess from 11:57 to 12:02.)
 24 MR. JOHNSON: I don't have any further
 25 questions.

Page 56

1 MS. LOVE: No questions on my end.
 2 THE WITNESS: Can I also review and sign? You
 3 can send it to my business address, Berkeley Research
 4 Group, 201 South Main Street, Suite 450, Salt Lake City,
 5 Utah, 84111.
 6 (Concluded at 12:02 p.m.)
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 57

1 CERTIFICATE OF DEPONENT
 2 Case: Hafen v. Howell
 Reported by: Heidi Hunter, RPR, CRR
 3 Date Taken: July 14, 2021
 4 WITNESS CERTIFICATE
 5 I, Ray Strong, HEREBY DECLARE:
 6 That I am the witness in the foregoing
 transcript; that I have read the transcript and know
 7 the contents thereof; that with these corrections, I
 have noted this transcript truly and accurately
 8 reflects my testimony.
 9 PAGE-LINE CHANGE-CORRECTION REASON
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 I, Ray Strong, deponent herein, do hereby
 certify and declare, under penalty of perjury the
 19 within and foregoing transcription to be true and
 correct. hereby affix my signature to said
 20 deposition.
 21 _____
 DATE Ray Strong
 22 _____
 23 Subscribed and sworn to before me this
 _____ day of _____, 2021.
 24 _____
 Notary Public
 25

Page 58

1 REPORTER'S CERTIFICATE
 2 STATE OF UTAH)
 3 COUNTY OF SALT LAKE)
 4)
 5 I, Heidi Hunter, RPR, CCR, for the state
 6 of Utah.
 7 That the foregoing proceedings were taken
 before me at the time and place set forth in the
 8 caption hereof; that the witness was placed under
 oath to tell the truth, the whole truth, and nothing
 9 but the truth.
 10 That I thereafter transcribed my said
 shorthand notes into typing and that the typewritten
 11 transcript of said deposition is a complete, true
 and accurate transcription of my said shorthand
 12 notes taken at said time.
 13 I further certify that I am not a relative
 employee, attorney, or counsel of any of the parties
 14 nor am I a relative or employee of any of the
 parties' attorney or counsel connected with the
 15 action, nor am I financially interested in the
 action.
 16
 17
 18 *Heidi Hunter*
 HEIDI HUNTER, RPR, CCR
 19
 20
 21
 22
 23
 24
 25

Page 59

[& - acumatica]

&	2007 53:25	450 57:4	account 3:14
& 2:3	2008 14:24 23:23	5	20:17 26:1,9,10
0	24:2,10 26:13	5 19:19,23	28:13,15 33:20
00813 1:6	27:21,24 32:2	50 3:15 15:25	39:6,7 41:2,2
1	2009 24:2,10 53:23	21:22	42:25 44:14,21,22
1 10:17,18 13:12	53:24	500 35:19	56:8,10
13:13	201 57:4	57 20:19	accountant 43:11
1,886.15 56:9	2010 24:2,10 33:20	6	accounted 18:20
1.6 26:23	33:22 53:18,23	600 37:14 38:4,16	56:13
1.7 26:22	2012 27:25,25	38:22	accounting 4:15
10 3:9	33:18,21,22,24	627 12:14	9:3,4 39:19,25
10/1/2012 43:7	43:10	68,336.11 56:9	41:19,22,25,25
100 35:18,20 36:2	2016 54:13	7	42:1,9 43:13
101 2:4	2018 5:19 6:13	700 2:4	accounts 3:13
107 31:12	27:22 34:6 46:16	77 13:5	18:21 25:3,4,13,17
10:01 1:13	47:25 53:14	8	25:17 26:20 30:12
11,000 56:17	2020 55:18	801.363.4300 2:11	30:15,15,25 39:24
111 2:10	2021 1:13 58:3,23	801.532.7840 2:5	39:24 40:3,11,18
11:32 50:8	210 35:17	83 13:2,3,8,13	40:24,25 41:15,16
11:42 50:8	234 20:14	84 13:12	42:2,3 45:14
11:57 56:23	236 10:1	84111 2:5,11 57:5	53:16,22
11th 2:10 7:12	2443 39:7 42:24	892 9:25	accrual 42:9
12 3:11	44:14	9	accruals 42:9
121 19:23	2510 44:15	9/30/2016 44:10	accurate 31:24,25
12:02 56:23 57:6	26 33:4 34:20	90 30:20	35:6 43:5 48:13
132 20:13	26850 59:17	94 31:11	59:11
14 1:13 58:3	2:18 9:25	99,985.26 56:9	accurately 58:7
15 6:13	2:19 1:6 12:14	9th 7:11 55:18,22	action 59:15,15
15th 27:22 46:16	3	a	activities 18:24
47:21,25 53:13	3.1 26:25	a.m. 1:13	activity 21:12 24:5
17-2 12:14	3.2 26:25	able 7:15 9:12	25:15 26:18,20
18 13:19,23 30:11	3.3 26:18	13:20 27:20 33:17	27:10,11 29:2
19 14:24 23:13	31 3:13	43:3 45:5,21	30:19 31:6 32:1
2	32 10:7	54:21	32:13,15 34:15
2 3:13 31:8,10	349 20:19	access 43:4 46:18	48:5 52:4,7 53:2
20 21:23,25	38 3:14	accessed 56:5	56:14
200 2:4	386 12:25 20:13	accompanied	acts 52:13
2003 34:5	4	33:23	actual 27:25 36:19
2005 53:13	4 3:5		36:21 44:5 45:15
			acumatica 28:23
			29:7,10

[add - believed]

<p>add 42:8 added 42:15 address 57:3 adjustment 35:14 administered 11:15 administrative 18:15 affiliated 53:13,15 affiliates 53:20 affiliations 14:3,8 affix 58:19 agree 5:1 6:11 13:24 15:2,6 23:16 34:23 39:14 39:17 48:2 agreeable 15:5 agreed 17:9 22:16 air 35:25 alleged 15:5,16 32:8 46:2 52:4,10 53:1 alliance 11:21 12:3,4 allow 29:3 allowable 35:18 35:20 36:22 allowed 36:10 allred 18:20 43:10 43:18,19 44:2 45:2 ambulance 6:17 amount 24:3 26:2 28:6,21 36:15 42:24 44:13 amounts 43:20 45:1 56:17 analyses 4:16 36:17 analysis 7:6 9:4 22:13 24:1,2,10</p>	<p>26:13 27:8,9 32:2 33:6 34:13 35:12 36:11 37:18,19 44:18 55:10 analyze 7:3,16 analyzed 11:6,14 55:11 analyzing 8:18 answer 8:15 30:1 30:2 37:3 answered 30:12 answering 5:7 anybody 17:15 22:19 anyway 47:8 apart 48:21 apologize 16:23 appear 11:5 appears 11:19 appointed 1:4 8:11 51:18,23 appointment 7:10 46:16 approached 5:14 5:21 6:20 8:2,6 20:20 approval 3:9 9:21 51:22 areas 34:11,15 56:6 arrangements 15:8 articulating 18:2 ascertain 47:19 asked 19:10 22:18 22:23 54:10 asking 55:5 aspects 18:13 asset 26:11 assets 11:11,13,14 11:23 12:5,5</p>	<p>52:21 associated 53:5 associates 53:4 associations 14:6 assume 47:16 assumption 31:1 attached 13:9 20:16 31:8 attention 5:11 attorney 5:18,25 6:1 9:5 52:12,12 59:13,14 attorneys 2:4,10 attributed 56:10 authenticate 48:12 authored 55:17 authorities 6:12 6:15 8:3,17 46:6 51:12,16,22 authorize 9:8 available 37:22,23 aware 11:16 12:5 12:8 14:19 16:10 16:12,18,24 17:15 18:18 22:25 23:5 24:20 47:23,24 52:22 53:9,12 55:1,16,21</p>	<p>background 39:10 39:13,13 badges 17:12,18 balance 15:21 39:22 balances 27:18,24 28:2,16,17 44:25 ballpark 21:15,22 21:25 bank 7:4,4 27:25 28:13,15 33:18 41:2,2 53:15,20,22 53:22,24,24,25 54:1,16,17,17,18 54:24 55:7 banks 28:1 54:3,9 54:22 barnes 53:24,24 54:22,24 base 14:2 based 7:15 19:5 25:8 26:17 27:10 32:2 37:11,21 38:5 42:9 44:1,6 basic 39:25 basically 9:3 24:14 25:7 bear 27:19 44:15 44:21</p>
		b	
		<p>b 3:7,11 12:22,24 19:24 20:1 23:12 35:16 babcock 56:5 back 6:11 14:21 15:20,20 19:9 21:17,20 22:1,5,11 22:17 23:12,13,14 24:6 29:3,6,22 36:12,13 47:17 49:3 50:25 56:20 56:21</p>	<p>began 8:10 23:22 23:23 beginning 26:14 53:18,19 begins 13:12 believe 9:17 23:25 26:12 27:4 31:19 33:20 34:7 38:18 47:14,15 53:21,25 54:14,22 55:12 believed 38:17</p>

[benefit - computer]

<p>benefit 24:6 berkeley 57:3 big 6:21 13:1 bishop 16:6 bishopric 16:6 bit 10:19 13:4 23:14 bits 22:21 blaylock 6:24 7:24 46:13 board 4:22 11:22 43:11 bookkeeping 8:22 9:1 books 18:22,22 bottom 12:25 bought 32:25 break 18:7 49:20 49:23 50:2 brg 33:5 bringing 22:10 brinks 16:1 broadway 2:10 brokerage 31:4 brought 15:16 brown 2:3 built 14:1 bulk 45:20 bullion 25:2,4,7,11 25:12,15,16,17,23 26:1,3,9,10,20 30:3,3,19 32:17 35:9 48:24,25 business 28:6 32:11 40:10,11,19 41:16 42:4 53:6 53:16 57:3 businesses 40:1,2 41:15 46:1 53:5 buy 15:19,20</p>	<p>buyer 40:14 buying 32:17</p> <hr/> <p style="text-align: center;">c</p> <hr/> <p>c 2:1 3:13 4:1 30:9 31:17,18 call 21:7 28:9 29:23 30:7,8,9 35:25 36:8 48:19 called 4:4 calls 11:2 52:9 campbell 1:9 capacity 1:4 caption 59:8 case 9:25 12:14 32:21 52:20 58:2 cases 32:15 cash 27:18,20,24 28:3,8,8,10,13,15 43:2 48:18,19 49:9 categories 33:11 33:14,17 36:2 caught 4:20 45:8 cause 15:21 ccr 59:5,18 centered 25:10 central 1:2 certain 18:13 34:11,15 56:6 certificate 58:1,4 59:1 certify 58:18 59:13 cfe 1:12 3:12 12:10 cftc 24:16,17 change 58:9 characteristics 7:13,14 17:13 23:19 charged 36:21</p>	<p>chased 52:23 check 40:6,19,20 41:18 51:8 55:12 55:13 christ 14:3,8 christina 56:4 church 14:3,8,11 14:16,19 16:4,8,10 16:14,15,18,24 17:3,19,21 19:11 22:23 cira 1:12 3:12 12:11 circumstances 17:23 city 1:14 2:5,11 57:4 civil 1:6 4:20 ck.law 2:12 claim 3:10,10,10 9:21,21,22 claimants 35:19 claims 35:18,21 36:8,10,14,14,19 36:22 clarence 21:10,13 clarified 23:18 clarify 28:3 54:15 55:4 clarifying 51:20 53:17 clarity 42:16 clean 43:12 clear 37:24 39:11 clearly 9:19 close 56:16 clove 2:6 cohne 2:9 coin 3:14,15 4:14 5:15 6:3,12,16 8:1 8:6,10,16,25 9:3</p>	<p>14:2,12,16 15:15 18:23 21:1 22:9 25:23 26:6,16 27:5,21 28:9,20 29:11 30:24 32:9 32:14,16,25 33:1 34:3,22 39:6 43:11 47:2 48:3 51:13 53:4 coin's 22:20 coins 13:25 27:12 28:19 29:16,17 30:4,19 32:17 34:16 35:9 48:7 48:24,25 51:14 cold 45:8 collected 8:19 collectible 48:7 51:14 collections 25:23 column 40:6 come 6:11 40:23 40:24 comes 23:3 commission 24:18 commissions 22:4 22:8,9 commodity 24:17 community 14:4 companies 11:16 42:12 compared 35:12 complete 34:17 55:13 59:11 completely 23:10 component 15:23 15:24 components 18:12 19:1 computer 23:4 50:1 51:9</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[concept - different]

<p>concept 6:22 concerning 5:14 concluded 7:7,18 57:6 conclusion 11:2 26:5 27:7,9 34:12 52:9 conducted 33:6 46:15 conducting 4:18 confirm 4:12,23 connected 59:14 connection 4:14 46:7 48:3 50:17 consent 4:23 consider 32:12 consideration 43:9 consistent 11:5 contacted 5:18 contend 17:1,10 23:7 contended 23:17 contents 58:7 context 16:20 continues 33:15 contributed 35:23 36:6 38:19 contributions 21:5 26:19 27:2 32:3,5 38:8 43:22 44:6 45:15 56:9 control 6:12 8:6 8:17,21 51:12,23 controlled 11:17 12:5 convenience 13:13 14:23 copies 48:8 49:2 core 18:3 coronavirus 4:19</p>	<p>correct 7:20 8:20 13:11 15:23 17:14 19:10 24:19 27:8 29:7,9,13 30:10 31:21 33:3 35:1,2 40:17 42:7 44:3 47:22 50:13 51:10 54:17 58:19 correction 58:9 corrections 58:7 correlate 44:5 cost 24:6 counsel 28:24 59:13,14 county 59:3 couple 14:22 42:21 50:12 53:20 56:19 course 54:25 55:6 court 1:1,4 9:14 51:22 court's 11:3 covers 34:1 cpa 1:12 3:11 12:10 create 41:11 created 14:25 credited 56:10 criminal 52:12 crr 58:2 csr 1:21 currency 28:4,4 28:14 current 30:21 38:13 customer 14:1 customers 14:11 32:24 cv 1:6 9:25 12:14 cynthia 2:3 5:1</p>	<p>d</p> <p>d 2:3 3:1,11,14 4:1 12:10 38:23 39:1 data 7:15 8:18 33:7 36:18 40:14 55:2 date 33:25 58:3,21 dated 43:7 day 14:4,9 18:15 18:15 27:11 28:7 46:15,18,23 47:20 58:23 days 4:21 7:12 deadline 3:10 9:22 dealings 14:2 decades 13:23 declaration 3:11 7:9,19 12:10,19 13:10 19:19 31:9 31:11,20 34:7 46:14 54:14,15 declare 58:5,18 deem 39:24 defendants 1:10 10:15 11:8 define 14:22,23 16:4 defined 10:15 11:3 11:7 15:3 24:25 34:20,21 definition 15:13 17:14 25:18 32:4 delivered 55:17,21 demonstrates 17:12 den 53:21 54:19 denise 11:17 12:6 18:19 46:23 54:10 denise's 47:14 49:4</p>	<p>depending 27:16 40:8 depends 49:11,21 deponent 58:1,18 deposit 40:7 44:12 44:13 55:11 deposition 1:12,14 4:18,23 58:20 59:11 describe 17:17 19:18 described 15:4 16:22 describing 25:18 description 3:8 designate 10:4 12:24 13:2,13,15 38:25 designated 19:25 19:25 designation 42:25 designed 35:4 destroyed 54:12 detail 22:2 33:23 39:21 45:14 55:11 55:12,12 detailed 22:12 details 22:5 33:13 determination 6:8 26:5 determine 27:20 37:9 43:5 45:21 develop 7:5 differences 35:7 different 17:6 18:25 24:4 25:19 25:20,24 30:13 39:15,18,20 40:23 42:6,11 43:15 52:16</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[difficult - filters]

<p>difficult 37:2,9 direct 8:10,12 41:1 directed 41:20 discovered 53:2 discussed 16:21 53:8 discussions 25:8 distill 43:23,24 distinction 17:5 30:14 distributions 26:23,24 district 1:1,2 division 1:2 5:24 document 9:20 10:1,4 12:9,14,16 13:14,20 19:24,25 20:1,4,7,10 38:25 39:1 54:7 documentation 7:2 33:7,11 45:17 48:15 54:6 documents 33:8 34:14 43:4 48:12 51:5 54:4,16 doing 4:21 24:9 32:10 47:2 dollar 56:16 donated 14:14 donations 14:12 dozen 21:22,22 draw 20:16 drawn 27:8,9 duly 4:4 dynamics 34:22</p>	<p>early 5:19 23:23 east 2:4 eight 41:5 either 9:5 41:15 email 2:6,12 20:15 employee 36:8,14 59:13,14 employees 18:12 22:21 45:25 46:20 47:2 53:4 54:11 endeavors 14:5 ended 51:8 enforcement 46:15,22 engage 6:6 engagement 9:5,6 enter 40:4,19 41:9 41:20 entered 42:20 44:14 50:23 entering 40:20 entertainment 53:21 54:18 entirety 23:11 entities 10:20,24 11:5,6,11,17 26:24 53:5 entitled 9:20 entity 11:19 12:1 34:2 47:3 entries 8:21,25 9:4 9:7 41:8 42:5,12 42:18,19,24 43:5,6 43:25 45:13 entry 41:1,6,9,11 41:21,21 42:7,8 44:9 especially 35:3 essence 26:25 established 22:15</p>	<p>estimate 21:20 evaluate 6:7 7:6 evaluating 36:21 evaluation 37:12 eventually 40:16 everybody 4:22 50:3 everybody's 26:7 47:18 evidence 52:4 53:2 evolution 15:8 30:17 evolving 24:25 exact 21:16 examination 3:5 4:7 examined 4:5 example 20:12 21:9 examples 43:15 48:9 excel 31:5 excess 37:11,13 38:4,21 exclude 19:11 exhibit 3:9,11,13 3:13,14,15 10:4,5 12:22,24 13:12 19:19,19,23,24 20:1 23:12 31:8 31:10,10,17,18 35:16 38:23 39:1 50:15,16 exhibits 13:9,15 exist 53:10 existence 27:13 existing 7:6 43:13 expand 52:6 expense 39:16 extensive 33:6 34:13 55:10</p>	<p>extent 11:2,10 13:14 42:15 47:10</p> <p style="text-align: center;">f</p> <p>facing 41:14 fact 29:4 30:21 48:13 facts 17:17,23 fair 5:17 7:19 8:9 8:13,13 13:9 17:7 17:10 19:3,8 23:19 30:25,25 33:9 34:3 40:22 41:23 52:11 fairly 39:25 fairness 33:15 familiar 39:1 families 16:16 family 45:25 46:20 53:4 far 14:11 17:19 25:21 53:8 fashion 32:15 fbi 46:12 fed 40:21 federal 6:11,15 8:2 8:17 46:5,12,15,22 51:12,16,21 felicia 18:14,20 46:25 47:15 fenton 45:3 fictitious 36:4,24 38:1,9,9,19 43:21 fields 21:10,13 fifth 10:16 34:19 figure 15:12 21:15 filed 7:10 9:25,25 12:13 files 18:22 27:24 34:4,14 56:6 filters 40:15</p>
e			
<p>e 2:1,1,9 3:1,7,15 4:1,1 50:15,16 earlier 22:17 23:15,24,25 25:21 54:9,9</p>			

[final - hostess]

<p>final 15:10 38:16 financial 4:15 9:8 53:11 55:3 financially 59:15 find 49:8,17 50:1 52:3 fine 19:21 firm 6:7 first 4:4 5:14 10:10 13:2,2 18:9 40:6 41:5 42:14 42:14,18,22,23 43:7,10 44:5 53:25 54:1,22,24 five 42:23 50:2 flip 56:19 floor 2:10 29:17 focusing 23:12 follow 10:14 29:14 38:2 following 33:7 follows 4:5 footnote 10:17,18 foregoing 58:6,19 59:7 form 30:13 formal 37:19 41:22,24 formalized 31:4 forms 3:10 9:22 36:20 forth 25:24 59:7 forward 41:14 found 29:15 foundation 41:13 52:9 framework 16:9 17:8 frankly 42:4 45:2 fraud 52:21 53:9</p>	<p>fray 18:20 frequent 42:13 frequently 37:6 frey 18:14 46:25 frey's 47:15 friend 20:20 friendly 41:15 fry 18:14 full 5:11 18:5,6,8 22:20,24,25 23:6,9 24:1,9 fully 5:8 functionality 41:10 functioned 23:10 fund 28:9,9 funds 24:15 27:1 27:15 28:10 32:19 36:6 44:21 48:6 further 24:6 44:24 56:24 59:13 futures 24:17</p> <hr/> <p style="text-align: center;">g</p> <p>g 4:1 13:25 gains 36:4,24 38:1 38:9,9,19 43:21,21 gathered 7:1 gaylen 11:17 12:6 13:25 14:17,25 15:9,11,15 16:21 17:16 18:3 19:3 20:15 21:2,8 22:9 23:11 25:9 26:21 28:10 31:5 32:9 38:6 43:8,17 44:1 44:24 45:24 46:19 46:23 47:12 52:18 52:18 55:18,22 geared 40:1 gee 2:3</p>	<p>general 6:21 9:5 28:19 31:16 33:11 33:14,17 40:6,15 40:16,21 41:2,5,8 41:9,11,21 42:4,5 42:12,19,23 44:9 general's 5:18 6:1 generally 15:3,14 17:25 26:4 51:5 generate 29:4 generated 26:15 48:23 gentleman's 30:6 getting 38:20 gevorkian 56:5 give 20:22 21:19 49:8 given 28:7,22 giving 5:11 go 4:17 7:18 20:19 21:17 22:1,5,11 29:3,22 45:23 47:17 50:25 goes 31:12 going 9:11 18:4 19:13,18 21:20 24:6 34:18 36:16 36:19 38:25 44:8 44:20,23 45:9 49:3,18,22,22,22 49:23 52:8 56:19 gold 25:12,15,17 25:23 26:1,3,10,20 27:5 28:20 30:3 30:19 42:25 43:1 43:1 good 20:20 granular 33:13 great 9:16 gretchen 1:8 39:8</p>	<p>ground 25:8 group 57:4 groups 16:16 guess 17:4 19:24 31:19 33:10 34:25 48:18 49:21 52:22 guys 49:25</p> <hr/> <p style="text-align: center;">h</p> <p>h 3:7 hafen 1:4 58:2 hair 20:14 half 21:22 49:19 49:25 hallmarks 23:18 hand 27:21 28:22 handwritten 49:9 49:13 happening 42:16 happy 13:21 hard 18:1 49:2 head 22:12 heard 24:16 25:2,4 25:12 hearing 6:18 heidi 1:21 9:11 58:2 59:5,18 held 16:7 26:6 help 55:4 helpful 10:11 hereof 59:8 hey 55:8 higher 15:19 16:8 highlighted 44:9 hiring 18:19 historical 14:2 history 21:21 hope 45:22 49:24 hopefully 6:18 12:9 hostess 9:12</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[hour - june]

<p>hour 49:19,25 hours 49:23,24 howell 1:8,9 39:8 44:22 58:2 howell's 56:8,10 56:14,15 howells 44:7 46:17 55:17,23 huge 9:18 huh 30:10 hunter 1:21 58:2 59:5,18</p>	<p>indicated 6:4 26:2 54:15 indicates 9:24 48:12 individual 1:8,9 individually 51:8 individuals 8:25 17:24 37:13 56:2 industry 14:5 information 6:7 7:1,3,3 24:5 33:7 33:13 34:14 35:3 39:13 44:1,6 45:18 49:5 55:2 initial 7:7,15 initially 6:24 20:20 inner 22:19 inputted 44:2 48:20 ins 56:14 instances 16:12 institutions 53:12 55:3 interactions 18:15 interested 59:15 interests 53:6 intermediaries 20:4 21:14 22:3 intermediary 19:17 20:10,15,21 20:23 21:1,5,6,7 22:15,25 23:5 interrupt 21:24 interruption 23:2 interview 7:21 interviewed 46:2,4 46:5 interviews 7:25 46:10,11,14,19,21 47:2,4,11</p>	<p>inventory 28:18 28:19,25 29:4,5,15 29:22,23,24 51:13 51:13,24,25 investigate 44:24 investigating 6:5 investigation 6:25 7:8 44:19 45:11 50:17 52:1,3 53:1 54:25 investigative 7:24 investigator 7:23 investigators 6:24 investment 15:1 15:10 21:6,10 24:15,21 25:10,22 26:21 27:6 31:4 33:2 56:8 investments 21:5 24:22 investor 7:4 14:17 15:17 16:13,15 18:21,23 20:15,16 21:3,4,20 22:10,13 24:15 25:15 26:1 26:18,18 27:2,15 31:6,6 32:3,6,20 34:15 37:18,25 43:19 45:13,18 48:6,8,16 49:13 53:9 investor's 15:21 21:7 investors 7:21 14:11,15,15 15:17 15:25 17:4,21,24 18:16,17,18 21:4 21:11 23:10 26:23 27:3,17 28:11 32:3,5,25 35:19 36:1,6,13,25 37:10</p>	<p>38:7 43:15,18 45:1,15,19 49:14 52:22 invoice 40:4,12,13 40:13 41:18 invoices 48:4,17 involve 6:6 26:19 involved 14:10 18:23 25:15,23 30:19 48:14 52:19 involvement 6:20 8:9,10 9:2 14:5 33:1 involving 24:4 issues 52:24 53:9 item 34:19 40:8 41:10 42:17 items 39:20,22,23</p>
<p>i</p>			
<p>idea 20:22 31:25 44:23 identified 7:12 15:3 22:21 28:25 39:5 54:22 55:1 identify 13:9 identifying 48:15 identity 4:12 illegal 52:4,7,16 53:2 illnesses 5:6 inclinations 23:8 include 16:5 34:9 34:24 35:8,10 36:4 38:1,7,18 49:4 included 16:13 36:5 43:20,20 45:13 48:15,16 including 7:4 income 26:15 39:22 incomplete 34:8 34:23 increase 15:22 independent 51:17 independently 28:1</p>			
			<p>j</p>
			<p>jeff 22:13 56:4 jesus 14:3,8 johnson 2:9 3:5 4:8 5:4,5 9:11,16 9:17 10:3,6 11:10 49:24 50:9 52:10 56:18,24 jonathan 1:4 josh 11:17 12:6 18:16 35:5 46:23 josh's 28:24 47:16 journal 40:6 41:5 41:8,9,11,21 42:5 42:12,19,23 44:9 45:12 judge 1:9 judicial 1:1 july 1:13 58:3 june 34:6</p>

[keep - metals]

k	l	list 33:8,15	m
<p>keep 19:22 kept 28:9,10 29:25 49:2 54:8 key 34:15 keybank 54:2,23 54:24 kind 15:9,10 18:15 18:25 24:5 26:14 27:18 30:16 31:14 35:11 37:12 39:12 41:12,13 kinghorn 2:9 knew 16:19,25 17:16,17 18:4 19:7,12,13 22:19 22:24 know 4:18 5:10 8:14,15,24 9:19 10:20 13:19 16:13 16:16 17:15,19,20 18:16 19:12 20:6 21:15 22:6,11,16 22:18 23:20,22,25 24:11,23 26:10 28:5,12 29:22,23 30:23 31:24 33:12 33:16 36:12,23,24 37:7 39:11 40:3 41:17,24 43:11 44:4 45:4,9 46:19 46:21,23 47:4,6,7 47:9,18 48:2 51:11,13,23 52:15 55:24 56:12 58:6 knowledge 10:23 18:3 19:2,6 45:24 46:1 52:15</p>	<p>l 30:9,9 lake 1:14 2:5,11 57:4 59:3 large 7:2 50:19 larger 34:12 larry 28:9 29:23 30:6,8 law 2:4,10 46:15 46:22 lds 14:19 16:4,10 16:13,15,18,24 19:11 22:23 lead 6:24 34:12 leader 14:19 16:4 16:10 22:23 leaders 16:14,18 16:25 17:3,19 19:11 ledger 40:15,17,21 41:2 42:5 legacy 11:21 12:3 12:4 legal 11:2,8,14 28:24 36:18,21 52:9 legally 11:7 legitimate 32:10 32:24 legs 50:4 les 39:7 leslie 1:8 letter 55:17,20,21 55:24,25 56:1 likewise 40:18 limited 8:18 19:2 line 10:16 20:14 20:19 58:9 lines 41:5 55:9 liquidate 14:12</p>	<p>listening 47:16 listing 32:1 lists 7:5 21:21 33:16 little 10:19 13:4 23:14 25:20 26:15 37:5 39:18 liz 6:24 7:23 locating 48:15 location 1:14 28:5 locations 28:15 47:3 long 10:7 49:21 look 6:21 7:18 10:19 12:24 20:14 21:10,17 22:1,5,11 29:3 32:13,18 34:18 36:13 38:11 38:12,15 39:2 45:10 47:17 50:1 50:25 51:2 looked 7:18 21:18 29:19 34:4 looking 21:20 24:4 40:12 49:12,25 55:7 looks 40:13,20 44:20 52:16 lot 18:14 20:5 32:14 33:13 45:16 45:17,19 46:14 love 2:3 5:3 11:1 49:18 50:7 52:8 53:7 57:1 loveless 2:3 lower 15:20,20 loyalty 14:1 lump 25:16</p>	<p>main 57:4 major 15:10 making 32:4 manner 17:1 mark 50:14 marked 10:5 12:22 31:17 38:23 50:16 mastermind 19:4 match 26:7 matched 26:11 mat 56:5 mean 8:12 14:7 16:20 17:1 18:9 22:7 28:4 32:23 35:20 41:24 47:10 52:6 means 22:16 mechanism 25:21 medication 5:6 member 16:6,7 55:16 members 16:13 17:20 45:25 53:4 memorabilia 32:18 48:7 51:15 memory 6:13 31:13,16 33:25 47:11 mention 35:17 mentioned 12:2 24:24 29:6 47:12 menu 39:20 40:8 41:10 42:17 met 6:23 metal 51:14 metals 14:13,14 24:23 27:12 28:9 28:21 30:4 32:17 34:16 48:10</p>

[michael - particular]

<p>michael 18:20 43:18,18 microsoft 34:22 mike 43:10 44:2 45:2 million 26:18,22 26:23,25,25 35:18 35:20 36:2 37:14 38:4,16,22 mind 4:9 10:12 25:19 30:14 36:3 36:15 41:6 49:10 minute 49:8 50:2,2 minutes 50:5 56:19 misappropriation 52:21 missing 11:19 55:9 module 39:16,16 39:24 40:8,25 41:1 42:17 modules 39:15,20 41:7 42:1 moment 22:12 money 15:17 22:10 32:6 35:23 35:23 monthly 20:16 37:4,4 38:14 motion 3:9 9:20 mouse 10:7,15 mouth 15:14 23:16 moved 54:13 moving 44:21 music 11:21 12:3,4</p>	<p>names 20:6,7 24:20 36:5 53:11 54:6 56:2 national 53:25 54:1,24 necessarily 15:6 need 5:10 9:19 13:14,19 16:3 19:21 28:3 49:12 49:20 new 12:9 22:10 38:25 normal 32:11 39:19 41:13 notary 58:24 noted 58:7 notes 59:10,12 november 6:13 7:11,12 27:22 46:16 47:21,25 53:13 55:18,22 number 7:13 13:9 21:16,19 36:15 38:16,20 39:7 40:13 44:14 45:12 46:11 50:19 numbers 37:21 43:17,20 numismatic 14:6</p>	<p>obviously 17:20 18:20 19:24 33:12 38:7 52:11 occurred 27:10 43:17 53:3 occurrence 55:15 occurring 53:3 october 5:19 office 5:19 6:1 22:14 49:4 okay 4:12 5:20 9:14 10:9,13,22 13:8,22 15:12 16:2 18:7 19:9 20:4,13 23:21 31:18 32:22 33:4 40:18 41:12 42:21 44:12 49:20 50:14 50:22 old 38:14 omissions 55:2,5 ones 36:21 47:25 51:7 ongoing 36:10 operated 8:7 16:19,20,25 17:1 17:16 operates 39:12 operation 28:20 operations 11:11 22:20 23:6 27:17 48:3 opined 23:22 opinion 19:5,5 opportunity 15:1 24:21,22 opposed 30:4 option 40:11 options 35:22 order 11:4 17:6 19:10</p>	<p>original 24:16 originated 24:12 ought 49:23 ounce 25:8,10 outs 56:14 outside 52:14,23 overall 25:25 owned 12:5 owner 40:12,19 41:16</p>
			p
			<p>p 2:1,1 4:1 p.c. 2:9 p.m. 57:6 page 3:3,8 10:9 13:3,5,12 19:23 20:13,19 31:11 33:10,16,16 38:11 41:4 58:9 pages 10:7 12:25 13:3,8 pandemic 4:19 papa 44:15,21 paper 48:4,4,8 50:12 51:1 paragraph 13:19 13:23 14:24 23:13 30:11 33:4 34:20 35:17,17 parr 2:3 parrbrown.com 2:6 part 10:24 11:6,11 11:18,20 12:7,20 14:17 19:24 24:24 37:18 41:25 participant 9:13 particular 21:3 31:6 32:21 42:8 45:4 51:6</p>
	o		
	<p>o 1:4 4:1 oath 59:8 oberhansly 12:20 object 11:1 52:8 objection 5:3 objections 53:7 obtain 33:18 54:21 obtained 7:2 9:5 28:1 33:6 43:4 49:6 51:22 54:3 54:20</p>		
n			
<p>n 2:1 3:1 4:1 name 4:9 12:1 21:7 30:6</p>			

[parties - purchase]

<p>parties 5:16,17 59:13,14</p> <p>parts 19:6,7,12 41:14</p> <p>party 27:3,18</p> <p>passed 6:17</p> <p>patrick 2:9 49:18</p> <p>pattern 27:14</p> <p>pay 27:2,17,17</p> <p>payable 39:24 40:19,24 41:16 42:3</p> <p>payments 14:16 14:18 18:17 26:22 32:3,5,20 36:6 38:8 43:22 45:15</p> <p>payroll 42:2</p> <p>penalty 58:18</p> <p>people 8:24 30:24 37:5,6 40:2 42:13 47:1</p> <p>people's 20:7</p> <p>percent 15:25 30:20</p> <p>performed 51:14</p> <p>period 6:5 7:22 26:22 27:4 28:7 33:22 48:17 49:3</p> <p>periodic 14:15</p> <p>periods 43:16 54:9</p> <p>perjury 58:18</p> <p>person 18:4 38:17</p> <p>perspective 56:15 56:16</p> <p>philanthropic 14:4</p> <p>phone 23:3</p> <p>physical 27:4,12 28:4,14</p> <p>picture 6:22 18:5 18:6,8 22:20,24</p>	<p>23:1,6,9</p> <p>pieces 22:22</p> <p>pinpoint 28:6,15 28:21</p> <p>pjohnson 2:12</p> <p>place 29:1 59:7</p> <p>placed 59:8</p> <p>placeholder 6:10</p> <p>plaintiff 1:6 2:2,8</p> <p>platinum 25:23 26:20 30:19 43:1</p> <p>please 4:10 20:16</p> <p>plus 38:19</p> <p>point 5:17 18:3 28:25 29:1,20 32:1 34:22 38:2 48:20,22,24 49:2 50:23</p> <p>points 26:14 27:23 28:2</p> <p>policies 54:7</p> <p>ponzi 6:6,9 7:14 15:5,7 17:2,10,12 17:13,14,18,22 23:7,17,19,20 32:4 32:8,8,12,15 46:2 52:5,10,14,17,20 53:1</p> <p>pool 3:13 14:20,22 14:24,25 15:2,8,9 15:14 16:3,11,13 16:19,21,25 17:9 17:16 21:4 23:6 23:13,16 24:11,13 24:21 25:1,19,22 26:4,14,19 30:11 30:15,15 31:21 34:10</p> <p>pooled 24:15</p> <p>pooling 24:14</p>	<p>portion 7:2</p> <p>pos 34:21</p> <p>position 16:8</p> <p>possession 6:14 27:14 28:4 29:17 48:11 50:18,19</p> <p>possible 16:17</p> <p>potential 36:10</p> <p>pre 3:13 30:11,15 31:21</p> <p>precious 28:21 30:4 51:14</p> <p>precise 21:15</p> <p>precursor 30:17</p> <p>premise 30:24 32:7</p> <p>prepare 9:6 37:7</p> <p>prepared 12:19 18:22 24:2 38:6</p> <p>present 2:14</p> <p>presented 41:17</p> <p>presidency 16:7</p> <p>president 16:6</p> <p>presumably 8:5</p> <p>pretty 45:23</p> <p>prevents 5:6</p> <p>price 15:19,20,20</p> <p>prior 7:10,12 8:1 8:16 9:3 18:19 19:9 24:8 25:21 33:18,21,24 53:23 53:24 54:1,6</p> <p>private 55:17</p> <p>probably 11:8 17:22 21:23,25 24:8,16 30:12 44:1 49:23</p> <p>procedure 4:20,22</p> <p>procedures 3:10 9:21</p>	<p>proceed 5:2</p> <p>proceeding 4:24 12:21</p> <p>proceedings 4:14 59:7</p> <p>process 24:25 36:16 41:22,25 42:1 43:12 48:14 54:5</p> <p>produce 55:14</p> <p>professional 45:2</p> <p>profit 11:22 32:19</p> <p>program 15:10,15 15:18 24:23,23,25</p> <p>programs 14:17 15:9 25:10,22</p> <p>prohibit 5:11</p> <p>promised 36:25 37:10</p> <p>promoted 14:20 14:25 15:11 16:11 16:15</p> <p>pronounce 29:8</p> <p>properties 53:5</p> <p>proposed 3:10 9:21</p> <p>prosecting 52:12</p> <p>provide 4:15 43:17 44:25 45:14</p> <p>provided 21:4 36:17 44:7 55:25</p> <p>providing 56:1</p> <p>public 20:8 58:24</p> <p>pull 19:17 29:21 29:23 39:21,22,22</p> <p>pulled 31:10 33:5 35:16</p> <p>pulling 38:24</p> <p>purchase 35:8 48:10</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[purchases - reviewed]

<p>purchases 29:2 34:16 35:5 48:17 48:25 49:1 purchasing 35:7 purpose 20:5 pursuant 12:20 27:5 put 12:9 15:13 19:21 23:15 42:24 puzzle 19:6,7,12</p>	<p style="text-align: center;">r</p> <p>r 2:1 4:1 ranges 33:25 rare 3:14,15 4:14 5:15 6:2,12,16 8:1 8:6,10,16,25 9:3 13:25 14:12,16 15:15 18:23 21:1 22:9,20 26:6,16 27:21 29:11,16 30:24 32:9,25 33:1 34:3,21 39:5 47:2 48:3 51:12 53:4 55:15 ray 1:12 3:4,11 4:3 4:11 12:10 49:20 58:5,18,21 read 10:10,20 13:20,22 58:6 really 19:6 20:6 37:9 reask 16:9,23 reason 26:13 37:3 58:9 reasons 42:6,11 recall 5:20 11:20 19:20 55:24,25 receipt 49:15 51:3 receipts 3:15 45:18 48:4,9,16,19 49:9,13 50:12,20 51:1,1,6 receivable 39:24 40:3,11,25 41:16 42:3 receive 22:3 received 36:1 37:13 46:17 51:7 55:7 receiver 1:5 4:13 5:1,16 6:14 7:11</p>	<p>8:11 9:6 11:13 15:4 27:13 36:19 46:6 50:18 51:17 51:17,18,21,23,24 receiver's 37:16 46:7 56:15 receivership 10:15 10:25 11:3,4,7,8 11:12,18,21 12:7 36:9 46:16 53:19 53:19 receiving 48:6 recess 50:8 56:23 recipient 38:17 recognize 12:16 20:1 42:22 recollection 11:23 31:15 34:5 reconstruct 24:5 reconstruction 26:17 record 4:10 15:16 19:21 20:8 39:11 42:9 recorded 43:16 45:1 47:5,6,13,14 47:15 recording 47:18 recordings 47:23 47:24 records 7:4 18:23 34:8 54:8 56:3 refer 13:15 14:22 30:11 31:20 34:18 36:2 40:5 referenced 7:9 46:12,13 references 10:16 44:15 referring 20:23 28:13 30:22 41:4</p>	<p>49:7,15 refers 13:24 20:4 reflects 58:8 refresh 31:15 regard 46:2 related 18:23 26:19,24 27:3,18 28:11 31:4 36:8 45:13 47:3 53:9 relates 6:8 19:14 20:11 37:24 49:5 relation 21:1 relationship 21:3 relationships 14:5 53:16 relative 59:13,14 remember 47:15 remind 11:25 repay 35:24 report 28:23 29:5 39:2,3,6 reported 1:21 58:2 reporter 9:14 reporter's 59:1 reports 29:4,15,21 represented 15:24 35:24 request 20:16 45:1 requested 54:6 research 57:3 residence 55:18 respect 30:3 responsibilities 18:13 result 4:19 retail 34:10 retained 4:13 retention 54:7 review 37:20 57:2 reviewed 11:6 33:9,12,14 36:20</p>
<p style="text-align: center;">q</p>			
<p>question 8:13,15 11:9 16:4,10,23,24 18:1,2 19:10 22:24 28:3 29:14 29:18 30:1 31:19 32:23 34:3,25 37:2 52:25 55:4 56:18 questioning 22:18 questions 5:7 13:17 39:13 42:21 45:22 52:2 56:25 57:1 quick 39:6 56:19 quickbooks 18:22 27:24 34:1,4,8,11 34:14 35:8,13 39:3,12,14,18,25 40:24 41:9,11,14 42:18,20 44:2 50:23 56:3,6,11,13 quickly 45:23 quickreport 3:14 quite 4:20 13:1 29:19 38:2 quotations 10:16 35:25</p>			

[reviewed - skip]

<p>50:19 54:4,16,21 56:3,6 ribbon 9:24 right 12:25 44:13 50:10 rms 29:20 34:21 34:22 35:9,14 robert 5:22 6:19 robust 35:6 role 8:1,16 rolled 30:21 rough 37:11,20,21 roughly 38:21 54:13 rpr 1:21 58:2 59:5 59:18 rrc 13:24 rules 4:19 run 40:2,3 rust 3:14,15 4:14 5:14 6:2,12,16 8:1 8:6,10,16,25 9:3 11:17,17,18 12:6,6 12:6 13:24,25,25 14:12,16,25 15:15 15:15 16:21 17:16 18:4,16,19,23 19:3 21:1 22:9,9,20 25:9 26:6,16 27:5 27:21 29:11,16 30:24 32:9,9 34:3 34:21 39:5 43:11 44:1 45:24,25 46:20 47:2,12 48:3 51:12 52:18 53:3,4,6 54:10 55:18,22,25 rusts 53:13</p>	<p style="text-align: center;">s</p> <p>s 2:1 3:7 4:1 safe 28:5,10 29:18 saints 14:4,9 sake 14:23 sale 15:18 29:1,20 34:22 48:7,10,19 48:20,22,24,24 49:2 50:23 sales 29:2 34:16 35:3,3,4 39:15 40:4 48:17 49:9 salt 1:14 2:5,11 57:4 59:3 saying 29:15 51:18 says 9:12 13:23 20:15 39:6,7 44:15 scheme 6:6,9 7:15 15:5,7 17:2,10,12 17:13,14,18,22 18:13 19:1,14 23:7,17,19,20 25:25 26:3,15 30:18 32:4,8,9,12 46:3 52:5,11,14,17 52:20 53:1 scope 11:3 scrap 43:2 screen 9:12,13,18 12:25 20:2 33:4 38:24 50:4,9 screening 50:10 screens 9:18 scripted 24:14 scroll 10:9,17 13:3 19:20 31:11,14 44:8 scrolled 13:3 search 6:16</p>	<p>second 10:9 11:1 56:22 securely 15:25 securities 5:24 7:23 security 54:23 see 9:18,20 10:1,6 10:14 12:9,11,13 13:5 20:16 29:3 35:22 39:8 40:6 44:9,14 49:17 50:10 seeing 55:24 seeking 3:9 9:21 seen 43:14 45:11 48:9 54:8 seized 6:12 seizing 8:17 sell 15:19 selling 32:16,17 send 57:3 sense 31:3 sentences 10:11 separate 11:22 41:10 separately 13:16 48:21 series 21:11 served 6:16 set 39:18 45:22 59:7 seven 41:5 42:14 42:18,22 43:7 share 9:12 50:9 shared 38:24 sharing 9:13,18 shaw 22:14 56:4 sheet 39:23 sheets 37:5,25 38:5</p>	<p>short 15:18 shorthand 59:10 59:11 show 20:7,11 28:2 41:4 49:12,15 55:19 shown 20:1 shows 10:8 shut 23:4 36:25 side 32:8,9,10 35:5 35:7 41:19 sign 57:2 signature 13:6,7 58:19 59:17 significant 14:1 silver 3:13 14:20 14:22,24,25 15:2,8 15:9,14,18,21 16:2 16:11,19,21,25 17:8,16 23:6,13,16 24:11,13,21,23 25:1,2,4,8,11,16 25:18,21 26:4,6,9 26:14,19 28:20 30:3,11,15,15,20 31:21 34:10 43:1 43:1,1,2,2,2 similar 7:14 45:10 50:20 simple 19:22 simpler 55:6 simplify 31:8 single 34:9 sir 50:10 sit 12:8 52:23 sitting 27:5 situation 6:4 7:6 21:2 size 13:13 skip 56:20</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[small - time]

<p>small 40:10 smaller 40:1 sold 33:1 somebody 16:5 21:9 26:9 52:17 sorry 6:17 21:24 23:3 40:9 52:1 sort 6:10,21 9:9 10:10 13:6 15:4 15:18 16:2,7,9,20 17:9,25 19:4 22:15,17 30:3 31:3,20 32:11,23 36:13,25 38:12 39:14,15,16 40:7 40:10 41:14,17,22 48:12 source 32:19 sources 24:4 33:8 34:13 40:23 south 2:4 57:4 speak 46:24 speaking 17:25 specific 7:17 16:12 39:21 45:9 47:10 47:11 49:3 51:2 specifically 5:20 14:20 16:16 spend 45:5 spoke 46:25 spreadsheets 29:25 31:5 38:6 stack 51:6 stake 16:6,7 stand 48:21 stare 50:4 start 30:23 32:7 started 7:3,5 23:25 33:20 starts 33:5</p>	<p>state 5:19 6:11 8:2 8:17 46:5 51:12 59:2,5 stated 23:22 34:7 statement 17:11 26:2,7 31:4 39:22 39:23 52:11 statements 7:4 13:18 21:11 26:8 26:11 27:25 30:25 31:2,21 33:18,21 33:24 35:24,25 36:1,5 37:4,12,20 37:22,22,25 38:5 38:12,13 45:18 54:4,11,16 55:2,7 states 1:1 stating 4:9 step 14:21 19:9 22:17 29:6 stepping 23:14 stop 29:18 store 14:2 32:14 32:16 34:10 54:13 stored 15:25 street 57:4 stretch 50:3 strip 20:6 strong 1:12 3:4,11 4:3,11 12:10 58:5 58:18,21 subject 17:22 subpoena 54:5 subpoenas 55:1 subscribed 58:22 substantial 24:3,3 suffering 5:5 sufficient 45:14 suite 2:4 57:4 summarized 44:25 45:12,20</p>	<p>supervised 22:13 supervision 56:3 support 44:25 supporting 45:17 suppose 30:12 49:8 sure 4:21 17:7 24:22 25:4 38:11 39:11 48:9 51:8 56:20 suspected 52:15 sworn 4:4 58:22 system 8:22 9:1 28:24 29:1,19,20 29:20,21 34:21,22 35:6,9,14 39:19,25 42:2,5,10 43:13 48:21,22,24 49:2 50:23,24 51:1 55:14 systems 51:9</p> <hr/> <p style="text-align: center;">t</p> <hr/> <p>t 3:7 take 10:18,19 27:15 38:15 43:9 49:23 50:2,18,18 56:19 taken 5:6 58:3 59:7,12 talked 30:17 talking 17:3 18:8 43:6 49:11 tallied 21:18 tax 45:2 team 6:23 11:14 12:20 33:5,9,9,17 36:18 37:15,16 46:6,7 47:1 55:16 tel 2:5,11 tell 6:2 12:18 24:9 51:4 59:8</p>	<p>ten 50:2 tena 1:9 ter 56:5 term 10:16 16:3 19:16,17 20:9,23 23:13 24:11,14,16 25:2 34:20,21 36:23 40:25 43:3 44:13 terms 14:22 55:6 testified 4:5 testimony 58:8 thank 5:4 9:16 thanks 20:17 51:20 53:17 thereof 58:7 things 4:17,21 9:19 19:22 28:19 35:2 39:21 43:8 43:14 45:10 52:13 think 6:17 7:11 8:14,14 11:8 13:1 13:2,24 15:6,7 16:3 18:2,6 19:8 19:15 20:5 22:16 23:14,17,21,23 24:8,13 26:4 28:12 31:12 32:13 34:6 37:2,9,11,24 38:3,15 46:11 47:9 49:22,24 53:8 54:13 55:6 56:14,16,17,18 three 28:14 34:19 40:7 tie 45:14 till 28:8 time 5:23 6:3,5,15 7:22 21:18 24:7 27:4,13,21,23 28:2 28:7,22,25 29:20</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[time - x]

29:22 32:2 33:22 34:5 42:13 45:5 47:18 48:17 49:3 49:6 51:24 59:7 59:12 times 20:5 tithing 14:12,15 today 4:18,23,24 5:2,7,12 12:8 46:8 52:23 told 15:17 top 9:24 22:12 39:5 total 23:10 totality 32:19 36:9 track 10:7 31:6 tracked 28:17 29:2,24 tracking 35:4 37:5 37:25 38:5 48:8 trade 14:6 tradeable 28:18 traded 14:13,13 trading 15:17 24:17 38:9 traditional 31:3 transaction 21:12 21:21 33:23 34:9 34:24 35:12,12 39:21 40:14 45:5 45:7,9,10 49:5,6 transactional 36:17,18 transactions 6:8 7:13 9:8 14:10 18:18,21 27:3,18 35:8,13 42:15 43:13,16 44:4 45:16,19,20 49:14 50:22	transcribed 47:5,8 59:10 transcript 58:6,6,7 59:11 transcription 58:19 59:11 transcripts 46:18 transfer 55:11 transitioning 29:12 transparency 43:19 travis 45:2 trick 18:1 true 33:19 58:19 59:11 truly 58:7 trust 14:1 truth 59:8,8,9 try 9:12 31:7 45:5 trying 15:12,13 17:5,7 19:22 23:15 35:6,19 41:12 43:12 44:24 45:6 50:1 twerk 53:21 54:18 two 10:10 34:19 35:22 36:2 37:8 40:23 44:5 46:18 47:12 51:6 type 7:14 40:5 45:7 48:5 types 40:7 typewritten 59:10 typically 41:8 typing 59:10	37:3,10 40:20 underlying 33:23 understand 17:5 18:10 26:4 34:25 35:20 45:8 46:25 understanding 5:7 5:25 20:9,25 25:5 38:13 43:25 44:3 44:18,19 45:6 51:25 54:12 56:8 56:13 understood 23:9 united 1:1 use 19:16 40:25 42:12,13 user 41:14,20 ut 2:5,11 utah 1:2,14 5:19 5:23 57:5 59:2,6	view 23:20 55:15 visible 26:11 vocal 37:5
			w
			walk 6:24 want 4:17,21,22 11:1 12:23 13:17 14:7,15 19:16 22:17 31:14 43:24 wanted 6:6 7:17 warrant 6:16 way 23:9 29:24 32:23 35:5 40:16 51:4 we've 11:6 17:9 22:15 25:18 36:20 37:19 49:18 52:23 53:8 went 28:24 35:11 43:11 55:10 56:21 wing 5:22 6:19,23 wire 55:11 witness 4:4 49:21 50:6 57:2 58:4,6 59:8 words 15:14 23:15 work 7:24 15:13 18:19 24:3 39:10 50:3 worked 17:9 working 17:8 workings 22:19 works 50:7 worth 26:23 writer's 53:21 54:19 written 55:22
		v	
		v 1:7 58:2 value 38:7 variations 25:14 25:14 varied 27:23 variety 18:25 24:4 34:13 42:6,11 43:15 various 27:23 28:2 42:1 43:2,18 vehicle 27:16 vehicles 25:22 26:21 27:6 vendor 36:8,14 verified 45:16 version 25:9,24 26:14 30:21 31:22 versions 31:23 videoconference 1:14	
	u		
	u.s. 42:25 uh 30:10 ultimately 26:6 27:2,13 30:20		
			x
			x 3:1,7

[yeah - zoomed]

y
yeah 35:1 50:6,7 51:20
year 37:7
yellow 44:9
z
zions 33:20 53:20 54:17
zoom 4:18,23,24 5:2 9:19 13:19 20:14 23:4
zoomed 10:18

Utah Rules of Civil Procedure
Part V. Depositions and Discovery

Rule 30

(E) Submission to Witness; Changes; Signing.

Within 28 days after being notified by the officer that the transcript or recording is available, a witness may sign a statement of changes to the form or substance of the transcript or recording and the reasons for the changes. The officer shall append any changes timely made by the witness.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

EXHIBIT F

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

* * *

JONATHAN O. HAFEN, in his :
capacity as Court-appointed : Remote Videoconference
Receiver, : Deposition of:

Plaintiff, : GAYLEN D. RUST

vs.

GRETCHEN E. HOWELL, an :
individual; and LESLIE M. :
HOWELL, an individual, : Case No. 2:19-cv-00813

Defendants. : Honorable Tena Campbell

* * *

June 23, 2021
10:33 a.m.

Witness located at:
Office of the Utah
Federal Public Defender
46 West Broadway, Suite 110
Salt Lake City, Utah

* * *

Jamie R. Brey
- Registered Professional Reporter -

1 APPEARANCES
 2
 3 For the Plaintiff: CYNTHIA D. LOVE
 4 PARR BROWN GEE & LOVELESS
 5 Attorneys at Law
 6 101 South 200 East
 7 Salt Lake City, Utah 84111
 8 (801) 257-7974
 9 clove@parrbrown.com
 10
 11 For the Defendants: PATRICK E. JOHNSON
 12 COHNE KINGHORN
 13 Attorneys at Law
 14 111 East Broadway, 11th Floor
 15 Salt Lake City, Utah 84111
 16 (801) 363-4300
 17 pjohanson@ck.law
 18
 19 For the Witness: ROBERT K. HUNT
 20 OFFICE OF THE UTAH FEDERAL
 21 PUBLIC DEFENDER
 22 46 West Broadway, Suite 110
 23 Salt Lake City, Utah 84101
 24 (801) 524-5876
 25 robert_hunt@fd.org
 Also Present: Jeff Shaw
 David Park

 Page 2

1 Remote Videoconference
 2 June 23, 2021
 3 10:33 a.m.
 4 PROCEEDINGS
 5 GAYLEN D. RUST,
 6 called as a witness, being first duly sworn, was examined
 7 and testified as follows:
 8
 9 EXAMINATION
 10
 11 BY MR. JOHNSON:
 12 Q. Mr. Rust, my name is Patrick Johnson. I
 13 represent Les and Gretchen Howell in connection with a -- one
 14 of the cases brought by the receiver to claw back proceeds
 15 received from the Rust Rare Coin enterprise.
 16 Would you mind stating your name, please?
 17 A. Gaylen Dean Rust.
 18 Q. Will you spell that, please?
 19 A. G-a-y-l-e-n, D-e-e-a-n, R-u-s-t.
 20 Q. Thank you. I just want to go over a few
 21 things, if you don't mind. Obviously we're conducting this
 22 deposition by Zoom as a result of the coronavirus pandemic.
 23 I think it's fair to say that maybe the rules of civil
 24 procedure have not quite caught up with the times and
 25 necessarily address remote video -- remote depositions and
 Page 4

1 INDEX
 2 WITNESS PAGE
 3 GAYLEN D. RUST
 4 Examination by Mr. Johnson 4
 5
 6
 7
 8 EXHIBITS
 9
 10 NUMBER DESCRIPTION PAGE
 11 Exhibit 1 Written questions with attached 6
 12 accounting of investments
 13 Exhibit 2 Written questions (9 pages) 9
 14
 15 ***
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 Page 3

1 video appearances. Therefore, before we go further, I'd like
 2 to make sure that we're sort of all on board with the
 3 procedure today. Obviously the Howells consent to have
 4 having this deposition conducted via Zoom. Do you consent to
 5 this deposition being conducted by Zoom?
 6 MR. HUNT: Yes.
 7 THE WITNESS: Yes.
 8 MR. JOHNSON: And does the receiver consent to
 9 the deposition being conducted by Zoom?
 10 MS. LOVE: Yes.
 11 MR. JOHNSON: Thank you.
 12 BY MR. JOHNSON:
 13 Q. Mr. Rust, have you ever been deposed before?
 14 A. On advice of counsel, I take the Fifth.
 15 Q. Do you understand that you are under oath?
 16 A. On the advice of counsel, I take the Fifth.
 17 Q. Okay. Are you suffering from any illnesses or
 18 have you taken any medication that prevents you from
 19 understanding my questions or answering them fully?
 20 A. No.
 21 Q. Is there anything else that I need to know that
 22 will prevent you from giving me your full attention today?
 23 A. No.
 24 Q. I realize there's probably only one Gaylen Rust
 25 in the phone book, but I just want to make sure we have the
 Page 5

1 right person. Are you the Gaylen Rust that operated Rust
 2 Rare Coin?
 3 MR. HUNT: He is the Gaylen Rust identified in
 4 your complaint.
 5 MR. JOHNSON: In whose complaint -- in the
 6 receiver's complaint?
 7 MR. HUNT: Receiver's complaint.
 8 MR. JOHNSON: Okay. Thank you.
 9 Sorry, I'm just moving things around on my
 10 screen so that I can share them.
 11 MR. HUNT: We're on the iPhone, Patrick,
 12 remember that.
 13 MR. JOHNSON: Okay. I'll zoom in.
 14 BY MR. JOHNSON:
 15 Q. I'm sharing my screen, and I'm showing you a
 16 document that's been identified -- it has been marked as
 17 Exhibit 1. Can you see this document? Is it zoomed in
 18 enough for you, Mr. Rust?
 19 A. I can see it. I can't read it.
 20 THE WITNESS: That's not the same as the one --
 21 MR. HUNT: He told us there was going to be
 22 some lined out, so you got to look behind the lined out.
 23 Is this the new one you sent over this morning?
 24 Well, for the first page purposes, they're the same document
 25 MR. JOHNSON: Yeah. So I'll give a little

Page 6

1 background and then I'll, I guess, ask the questions.
 2 MR. HUNT: Okay.
 3 MR. JOHNSON: So this is -- Rob, this is
 4 Exhibit 1 that I e-mailed over the clean version, and then I
 5 have stricken through a couple of the questions.
 6 THE WITNESS: Okay.
 7 MR. HUNT: We don't have the stricken through
 8 version. But other than that...
 9 (Whereupon, Mr. David Park joined the
 10 deposition proceedings.)
 11 MR. JOHNSON: And I'm just going to interrupt
 12 things. Jamie, do you want to identify David Park for us?
 13 (Off-the-record discussion)
 14 BY MR. JOHNSON:
 15 Q. Mr. Rust, can you see that this document has
 16 been identified as Exhibit 1 in the upper right-hand corner?
 17 A. Yes.
 18 Q. And are you able to read the questions on the
 19 document?
 20 A. Yes.
 21 Q. Okay. And do you -- have you seen this
 22 document before excepting the questions that have
 23 strike-throughs?
 24 A. Yes.
 25 Q. I'm just going to scroll through. I'm just

Page 7

1 going to ask you at the end whether it's the document that
 2 you've already have been -- have already seen.
 3 MR. HUNT: Do you want him to move over?
 4 THE WITNESS: Yeah. Okay, hold -- oh, okay.
 5 Yeah, keep going.
 6 (Off-the-record discussion between the witness
 7 and Mr. Hunt.)
 8 BY MR. JOHNSON:
 9 Q. Okay. I'm at the end of the document. I just
 10 want to reconfirm that you've seen this document before and
 11 it contains a -- would you agree with me that it contains a
 12 list of questions?
 13 A. Yes.
 14 Q. And have you reviewed this document and read
 15 each and every question?
 16 A. Yes.
 17 Q. And are you willing to answer any of the
 18 questions listed on this document?
 19 A. On the advice of counsel, I take the Fifth.
 20 Q. Okay.
 21 Just so we have a clear record, if I were to
 22 read each of these questions aloud, you would and you, in
 23 fact, are declining to answer any of the questions listed on
 24 Exhibit 1 on the basis of the Fifth Amendment of the
 25 Constitution of the United States?


Page 8

1 A. Yes.
 2 Q. I'm showing you what's been marked as Exhibit
 3 No. 2. Can you see on the screen that it's -- it has the
 4 Exhibit 2 at the top right?
 5 A. Yes.
 6 Q. Just as before, I'm going to scroll through
 7 this document and then again ask you at the end to confirm
 8 that you've seen this document.
 9 (Off-the-record discussion between the witness
 10 and Mr. Hunt.)
 11 MR. JOHNSON: I think that's the end of the
 12 document of Page 9 of 9.
 13 BY MR. JOHNSON:
 14 Q. Again, have you seen this document before,
 15 Mr. Rust?
 16 A. Yes.
 17 Q. And do you agree with me it contains questions,
 18 a list of questions?
 19 A. Yes.
 20 Q. And are you willing to answer any of the
 21 questions listed in this document?
 22 A. On the advice of counsel, I take the Fifth.
 23 Q. Again, just so we have a clear record, if I
 24 were to read each of these questions aloud, you would and you
 25 are, in fact, declining to answer any of the questions that

Page 9

1 are listed on Exhibit 2 on the basis of the Fifth Amendment
2 of the Constitution?
3 A. Yes.
4 Q. So as for both 1 and 2, Exhibits 1 and 2, again
5 I just want to make it abundantly clear that if I were to
6 read each of these questions aloud, that you would decline to
7 answer them?
8 A. On the grounds -- or on the advice of counsel,
9 I would take the Fifth.
10 Q. Okay.
11 MR. JOHNSON: That concludes my questioning.
12 Cynthia?
13 MS. LOVE: No questions for the receiver.
14 MR. JOHNSON: That wraps things up. Thank you
15 for your time today.
16 MR. HUNT: Okay. Thank you.
17 (Whereupon, Exhibit Nos. 1 and 2 were marked
18 for identification.)
19 (Deposition concluded at 10:45 a.m.)
20 * * *
21
22
23
24
25

Page 10

1 CERTIFICATE
2 STATE OF UTAH)
:)
3 COUNTY OF SALT LAKE)
4)
THIS IS TO CERTIFY that the remote
5 videoconference deposition of GAYLEN D. RUST, the witness in
the foregoing deposition named, was taken before me,
6 JAMIE R. BREY, a Certified Shorthand Reporter and Registered
Professional Reporter in and for the State of Utah, residing
7 at Salt Lake City, Utah.
8
That the said witness was by me, before
9 examination, duly sworn to testify the truth, the whole truth
and nothing but the truth in said cause.
10
That the testimony of said witness was reported
11 by me in Stenotype and thereafter caused by me to be
12 transcribed into typewriting, and that a full, true and
correct transcription of said testimony so taken and
13 transcribed is set forth in the foregoing pages numbered from
4 through 10, inclusive, and said witness deposed and said as
14 in the foregoing annexed deposition.
15
I further certify that I am not of kin or
16 otherwise associated with any of the parties to said cause of
action, and that I am not interested in the events thereof.
17
18 Salt Lake City, Utah, this
19 25th day of  2022
20
21
22 JAMIE R. BREY, CSR, RPR
Utah license No. 361682
23
24
25

Page 11

[& - duly]

&	8	broadway 1:17 2:9,14	corner 7:16
& 2:3	801 2:5,10,15	brought 4:14	coronavirus 4:22
0	84101 2:14	brown 2:3	correct 11:12
00813 1:9	84111 2:4,9	c	counsel 5:14,16 8:19 9:22 10:8
1	9 3:11,11 9:12,12	c 2:1 4:4 11:1,1	county 11:3
1 3:10 6:17 7:4,16 8:24 10:4,4,17	a	called 4:6	couple 7:5
10 11:13	a.m. 1:14 4:2 10:19	campbell 1:10	court 1:1,4
101 2:4	able 7:18	capacity 1:4	csr 11:21
10:33 1:14 4:2	abundantly 10:5	case 1:9	cv 1:9
10:45 10:19	accounting 3:11	cases 4:14	cynthia 2:2 10:12
110 1:17 2:14	action 11:16	caught 4:24	d
111 2:9	address 4:25	cause 11:9,16	d 1:6 2:2 3:1,3 4:4 4:5,19 11:5
11th 2:9	advice 5:14,16 8:19 9:22 10:8	caused 11:11	david 2:18 7:9,12
2	agree 8:11 9:17	central 1:2	day 11:18
2 3:11 9:3,4 10:1,4 10:4,17	aloud 8:22 9:24 10:6	certified 11:6	dean 4:17
200 2:4	amendment 8:24 10:1	certify 11:4,15	decline 10:6
2021 1:13 4:1	annexed 11:14	city 1:18 2:4,9,14 11:7,18	declining 8:23 9:25
2022 11:18	answer 8:17,23 9:20,25 10:7	civil 4:23	defendants 1:10 2:7
23 1:13 4:1	answering 5:19	ck.law 2:10	defender 1:17 2:13
257-7974 2:5	appearances 5:1	claw 4:14	deposed 5:13 11:13
25th 11:18	appointed 1:4	clean 7:4	deposition 1:5 4:22 5:4,5,9 7:10 10:19 11:5,5,14
26851 11:21	associated 11:16	clear 8:21 9:23 10:5	depositions 4:25
2:19 1:9	attached 3:10	clove 2:5	description 3:9
3	attention 5:22	cohne 2:8	discussion 7:13 8:6 9:9
361682 11:22	attorneys 2:3,8	coin 4:15 6:2	district 1:1,2
363-4300 2:10	b	complaint 6:4,5,6 6:7	division 1:2
4	b 3:8	concluded 10:19	document 6:16,17 6:24 7:15,19,22 8:1,9,10,14,18 9:7 9:8,12,14,21
4 3:4 11:13	back 4:14	concludes 10:11	duly 4:6 11:9
46 1:17 2:14	background 7:1	conducted 5:4,5,9	
5	basis 8:24 10:1	conducting 4:21	
524-5876 2:15	board 5:2	confirm 9:7	
6	book 5:25	connection 4:13	
6 3:10	brey 1:21 11:6,21	consent 5:3,4,8	
		constitution 8:25 10:2	
		contains 8:11,11 9:17	

[e - please]

e	giving 5:22 go 4:20 5:1 going 6:21 7:11,25 8:1,5 9:6 gretchen 1:8 4:13 grounds 10:8 guess 7:1	9:13 10:11,14 joined 7:9 jonathan 1:4 june 1:13 4:1	n
e 1:8 2:1,1,7 3:1,8 4:4,4,9,19,19 7:4 11:1,1 east 2:4,9 enterprise 4:15 events 11:16 examination 3:4 11:9 examined 4:6 excepting 7:22 exhibit 3:10,11 6:17 7:4,16 8:24 9:2,4 10:1,17 exhibits 10:4	h	k	n 2:1 3:1 4:4,9,9 4:19,19 name 4:12,16 named 11:5 necessarily 4:25 need 5:21 new 6:23 nos 10:17 number 3:9 numbered 11:13
f	h 3:8 hafen 1:4 hand 7:16 11:18 hold 8:4 honorable 1:10 howell 1:8,9 4:13 howells 5:3 hunt 2:12,15 5:6 6:3,7,11,21 7:2,7 8:3,7 9:10 10:16	l	o
f 11:1 fact 8:23 9:25 fair 4:23 fd.org 2:15 federal 1:17 2:13 fifth 5:14,16 8:19 8:24 9:22 10:1,9 first 4:6 6:24 floor 2:9 follows 4:7 foregoing 11:5,13 11:14 forth 11:13 full 5:22 11:12 fully 5:19 further 5:1 11:15	i	l 4:19 lake 1:18 2:4,9,14 11:3,7,18 law 2:3,8 les 4:13 leslie 1:8 license 11:22 lined 6:22,22 list 8:12 9:18 listed 8:18,23 9:21 10:1 little 6:25 located 1:16 look 6:22 love 2:2 5:10 10:13 loveless 2:3	o 1:4 4:4,9 oath 5:15 obviously 4:21 5:3 office 1:16 2:13 oh 8:4 okay 5:17 6:8,13 7:2,6,21 8:4,4,9,20 10:10,16 operated 6:1
g	j	m	p
g 4:4,19 gaylen 1:6 3:3 4:5 4:17 5:24 6:1,3 11:5 gee 2:3 give 6:25	jamie 1:21 7:12 11:6,21 january 11:18 jeff 2:17 johnson 2:7 3:4 4:11,12 5:8,11,12 6:5,8,13,14,25 7:3 7:11,14 8:8 9:11	m 1:8 4:9 mailed 7:4 marked 6:16 9:2 10:17 medication 5:18 mind 4:16,21 morning 6:23 move 8:3 moving 6:9	p 2:1,1 4:4 page 3:2,9 6:24 9:12 pages 3:11 11:13 pandemic 4:22 park 2:18 7:9,12 parr 2:3 parrbrown.com 2:5 parties 11:16 patrick 2:7 4:12 6:11 person 6:1 phone 5:25 pjohnson 2:10 plaintiff 1:6 2:2 please 4:16,18

[present - zoomed]

<p>present 2:17 prevent 5:22 prevents 5:18 probably 5:24 procedure 4:24 5:3 proceedings 7:10 proceeds 4:14 professional 1:22 11:6 public 1:17 2:13 purposes 6:24</p>	<p>reported 11:11 reporter 1:22 11:6 11:6 represent 4:13 residing 11:6 result 4:22 reviewed 8:14 right 6:1 7:16 9:4 rob 7:3 robert 2:12,15 rpr 11:21 rules 4:23 rust 1:6 3:3 4:5,12 4:15,17 5:13,24 6:1,1,3,18 7:15 9:15 11:5</p>	<p>stating 4:16 stenotype 11:11 stricken 7:5,7 strike 7:23 suffering 5:17 suite 1:17 2:14 sure 5:2,25 sworn 4:6 11:9</p>	<p>understand 5:15 understanding 5:19 united 1:1 8:25 upper 7:16 utah 1:2,16,18 2:4 2:9,13,14 11:2,6,7 11:18,22</p>
<p>q</p>	<p>s</p>	<p>t</p>	<p>v</p>
<p>question 8:15 questioning 10:11 questions 3:10,11 5:19 7:1,5,18,22 8:12,18,22,23 9:17 9:18,21,24,25 10:6 10:13 quite 4:24</p>	<p>s 2:1 3:8 4:4,19 salt 1:18 2:4,9,14 11:3,7,18 screen 6:10,15 9:3 scroll 7:25 9:6 see 6:17,19 7:15 9:3 seen 7:21 8:2,10 9:8,14 sent 6:23 set 11:13 share 6:10 sharing 6:15 shaw 2:17 shorthand 11:6 showing 6:15 9:2 signature 11:21 sorry 6:9 sort 5:2 south 2:4 spell 4:18 state 11:2,6 states 1:1 8:25</p>	<p>t 3:8 4:9,19 11:1,1 take 5:14,16 8:19 9:22 10:9 taken 5:18 11:5,12 tena 1:10 testified 4:7 testify 11:9 testimony 11:11 11:12 thank 4:20 5:11 6:8 10:14,16 thereof 11:16 things 4:21 6:9 7:12 10:14 think 4:23 9:11 throughs 7:23 time 10:15 times 4:24 today 5:3,22 10:15 told 6:21 top 9:4 transcribed 11:12 11:13 transcription 11:12 true 11:12 truth 11:9,9,9 typewriting 11:12</p>	<p>version 7:4,8 video 4:25 5:1 videoconference 1:4 4:1 11:5 vs 1:7</p>
<p>r</p>	<p>u</p>	<p>u</p>	<p>w</p>
<p>r 1:21 2:1 4:4,19 11:1,6,21 rare 4:15 6:2 read 6:19 7:18 8:14,22 9:24 10:6 realize 5:24 received 4:15 receiver 1:5 4:14 5:8 10:13 receiver's 6:6,7 reconfirm 8:10 record 7:13 8:6,21 9:9,23 registered 1:22 11:6 remember 6:12 remote 1:4 4:1,25 4:25 11:4</p>	<p>w</p>	<p>w</p>	<p>w</p>
<p>x</p>	<p>x</p>	<p>x</p>	<p>x</p>
<p>x 3:1,8 4:9</p>	<p>y</p>	<p>y</p>	<p>y</p>
<p>y 4:19 yeah 6:25 8:4,5</p>	<p>z</p>	<p>z</p>	<p>z</p>
<p>z</p>	<p>zoom 4:22 5:4,5,9 6:13 zoomed 6:17</p>	<p>z</p>	<p>z</p>

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days

after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

EXHIBIT G

Requested Corrections to Les' Deposition

Page 14, Line 17 should state: "I was a *Control Room Operator*".

Page 20, Line 6-Les requests the answer "No" be changed to "Yes". Les purchased metal from Rust in spring of 2008, to be returned to Rust later for investment.

Page 33, Line 9-Les requests the name "Alisha" be changed to "*Felicia*". Felicia Frey was Gaylen Rust's Executive Assistant at that time.

Page 107, Line 1-Les requests the answer "No" be changed to "Yes". There was home theater seating purchased that was in excess of \$5,000.00 (\$10,055.00 paid).

Page 107, Line 4-Les requests that the answer "No" be changed to "*Yes, home theater seating, a dining room table and chairs, a mattress and metal frame*".

Page 114, Line 9-Please correct spelling from "Craig Marcene" to "*Greg Marsing*".

Page 122, Line 6-"411,830.85" should state "*\$11,830.85*". A "4" was typed when it should be a "\$".

EXHIBIT H

Requested Corrections to Gretchen's Deposition

Page 1, Line 14, should read Leslie M. Howell

Page 3, Line 10 should read: Gretchen Anne Howell

When being questioned about Gretchen's \$22,000.00 Rust Rare Coin investment in pages 11-15, Matt Ball asked Gretchen if the amount of this investment which is documented on the Rust Rare Coin receipt was \$22 **million** or \$22 **thousand**. This question by Matt Ball is missing from the deposition. Gretchen's answer of \$22 thousand is also missing from the deposition.

Included with this document is additional bank documentation of the above \$22,000.00 Rust Rare Coin investment which shows Gretchen deposited the 401K loan from Utah Retirement Systems into two bank accounts at the same financial institution (Eastern Utah Community Credit Union). Gretchen then withdrew the entire \$22,000.00 in multiple cash withdrawals which she subsequently gave to Gaylen Rust, in person, to be added to her investment account.

Page 17, Lines 11-13, a copy of the cancelled check of \$27,000.00, for Gretchen's investment to Rust Rare Coin, was emailed to Matt Boley and Patrick Johnson on 6/5/2021.

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">HOWELLS’ MOTION TO EXCLUDE PROPOSED EXPERT JONATHAN O. HAFEN</p> <p style="text-align: center;">[ORAL ARGUMENT REQUESTED]</p> <p style="text-align: center;">Case No. 2:19-cv-00813</p> <p style="text-align: center;">Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Defendants GRETCHEN HOWELL (“**Gretchen**”) and LESLIE M. HOWELL (“**Les**”) (collectively, the “**Howells**”), through counsel, move the Court to exclude Jonathan O. Hafen (in his capacity as a potential witness, “**Hafen**”) from testifying as an expert in this civil action, and to enter an order prohibiting plaintiff from offering “opinions” of Hafen at trial and for any other purpose, including for purposes of seeking or opposing summary judgment.

I. INTRODUCTION AND RELIEF SOUGHT

In this action, plaintiff has asserted claims under Utah’s Uniform Voidable Transactions Act (the “**UVTA**”).¹ Plaintiff has the burden to prove that Rust Rare Coin, Inc. (including all other receivership entities “**RRC**”) “made ... transfer[s to the Howells] ... with actual intent to hinder, delay, or defraud any creditor of [RRC]”²

¹ The UVTA is codified at Utah Code Ann. § 25-6-101, et seq.

² Utah Code Ann. § 25-6-202(1)(a).

According to plaintiff's expert disclosures, plaintiff apparently intends to offer opinion testimony from Hafen to establish, among other things, (a) that RRC operated a "Ponzi scheme," (b) that RRC made fraudulent representations to investors, (c) that the returns RRC paid out to investors derived (i.e., are traceable directly to) funds received from new investors, and (d) that RRC was generally insolvent. Hafen lacks personal knowledge to offer such testimony as a fact witness. And he should not be permitted to testify as an "expert".

Although Hafen serves as the Court appointed receiver for RRC, that does not qualify him as an expert on "Ponzi schemes," if such thing exists. And he certainly has no qualifications to testify regarding insolvency or tracing. Even if there were such a thing as a "Ponzi scheme expert" and even if Hafen was one, his proposed opinion testimony is improper and inadmissible because expert "opinions" on purely legal issues are unhelpful attempts to usurp what is the fundamental province of the judge and jury: to apply the governing law to the facts and determine which party is entitled to relief. In short, Hafen is not actually providing expert testimony. Rather, he is merely arguing what conclusions of law and inferences of fact should be drawn based upon his (and/or his team's) subjective interpretation data and information. The Receiver's "opinions" are nothing more than a closing argument made by counsel. The Court should exclude Hafen's testimony as unhelpful under Federal Rule of Evidence 702.

II. ARGUMENT

A. Hafen In Not Qualified to Testify as an Expert Regarding the Matters Covered by His Report.

Hafen is an experienced and skilled trial lawyer. He has significant experience arguing to judges and juries how they should weigh evidence to reach the conclusions desired by his clients. And he is experienced in making a closing argument, where he sums the evidence the trier of fact has heard and argues how that evidence should be applied to the applicable legal standards. But

that does not qualify him to give the “opinions” disclosed in the Receiver’s Report, dated August 26, 2021 (the “**Hafen Report**” or the “**Report**”).³

There is no such thing as a “Ponzi scheme expert.” Even if such an expert specialty existed, Hafen would not qualify. According to his curriculum vitae, Hafen’s receivership experience is limited to two discrete (and relatively recent) legal matters. First, his appointment as receiver for RRC. Second, his representation of Wayne Klein as court appointed receiver for RaPower. His thirty years of experience as a lawyer undoubtedly qualify him to offer opinions on a number of things, including various standards of care that a trial lawyer owes clients. But he lacks sufficient experience, training and specialized knowledge to claim expertise in receiverships generally or Ponzi schemes particularly.

Further, Hafen’s thirty years of experience as a lawyer does not qualify him to opine regarding RRC’s solvency, RRC’s insolvency, tracing of funds or other accounting and financial matters.

B. Hafen’s Purported Expert Opinions Applying Law to Facts Are Unhelpful, Invade the Province of the Judge and Jury, and Should Be Excluded.

Since its 1988 decision in Specht v. Jensen, the Tenth Circuit has held firmly to the principle that an expert should not be permitted “to supplant both the court's duty to set forth the law *and the jury's ability to apply this law to the evidence.*”⁴ Hafen’s proposed “opinions” should be excluded because he attempts to opine on the weight of the facts – facts as to which he has no personal knowledge and which are based upon information that may be categorized as double/triple hearsay or otherwise inadmissible – and usurps the jury’s role in sifting and weighing the (largely inadmissible) information.

District courts are tasked with the responsibility of serving as the gatekeepers of expert evidence and must decide which experts may testify before the jury and the permissible scope of

³ Plaintiff has filed a copy of the 283-page Hafen Report as Exhibit A to plaintiff’s appendix of evidence offered in support of summary judgment [Docket No. 38-1].

⁴ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988) (en banc) (emphasis added), cert. denied, 488 U.S. 1008 (1989).

that testimony.⁵ While testimony on ultimate facts is authorized under Rule 704, “an expert is not to opine on the weight of the facts or take a principal role in sifting, weighing and reciting them for the jury.”⁶

Hafen’s proposed opinion testimony is not helpful and is both unreliable and impermissible. “Only evidence can establish proof, only the jury can find facts and decide issues ... and only the attorneys in the case can argue about the meaning of the evidence.”⁷ Further, “only the jury has the opportunity to conclude the factual issues in the case. Until a jury has found facts to resolve the factual issues presented to them, an expert has nothing other than assumptions on which [her] analysis may be based.”⁸

Hafen’s proposed opinions in the Report are exactly the sort of improper testimony rejected in Rowe.⁹ It is tantamount to a closing argument at the conclusion of trial. Hafen may be an expert trial lawyer, but as a proposed expert witness he appears not to “understand his role in the courtroom, [because he is] seeking ... ‘to opine on the weight of the facts,’ and to ‘take a principal role in sifting, weighing and reciting them for the jury.’”¹⁰ As in Rowe, the “facts” which Hafen seeks to establish through his testimony “[a]re contested and [a]re for the jury to ultimately decide.”¹¹ Thus, the Court should exclude Hafen’s testimony as unreliable and unhelpful.

⁵ Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

⁶ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015), aff’d in part, 727 F. App’x 488 (10th Cir. 2018); see also United States v. Samara, 643 F.2d 701, 705 (10th Cir. 1981) (“An expert ‘may not go so far as to usurp the exclusive function of the jury to weigh the evidence and determine credibility.’”); United States v. Brown, 540 F.2d 1048, 1054 (10th Cir. 1976) (“the test of admissibility is often predicated upon the proposition that opinion evidence cannot usurp the functions of the jury or be received if it touches the very issue before the jury”).

⁷ Rowe, 2015 WL 4949097, at *5 (D. Utah Aug. 19, 2015).

⁸ Id.

⁹ Id.

¹⁰ Rowe v. DPI Specialty Foods, Inc., 727 F. App’x 488, 501 (10th Cir. 2018).

¹¹ Id.

III. CONCLUSION

WHEREFORE, the Howells respectfully pray that the Court will exclude Jonathan O. Hafen from testifying as an expert in this civil action, that the Court will enter an order prohibiting plaintiff from offering “opinions” of Hafen at trial and for any other purpose, including for purposes of seeking or opposing summary judgment, and that it will grant such other and further relief as is just and equitable.

DATED this 14th day of February 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February 2022, I filed the foregoing **HOWELLS' MOTION TO EXCLUDE PROPOSED EXPERT JONATHAN O. HAFEN** with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to counsel of record in the above-captioned civil action, including without limitation:

Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 S 200 E STE 700
SALT LAKE CITY, UT 84111

E-mail: mball@parrbrown.com

Attorneys for plaintiff JONATHAN O. HAFEN

/s/ Krys Lopez _____

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">HOWELLS’ MOTION TO EXCLUDE PROPOSED EXPERT D. RAY STRONG</p> <p style="text-align: center;">[ORAL ARGUMENT REQUESTED]</p> <p style="text-align: center;">Case No. 2:19-cv-00813 Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Defendants GRETCHEN HOWELL (“**Gretchen**”) and LESLIE M. HOWELL (“**Les**”) (collectively, the “**Howells**”), through counsel, move the Court to exclude D. Ray Strong (“**Strong**”) from testifying as an expert in this civil action, and to enter an order prohibiting plaintiff from offering “opinions” of Strong at trial and for any other purpose, including for purposes of seeking or opposing summary judgment.

I. INTRODUCTION AND RELIEF SOUGHT

In this action, plaintiff has asserted claims under Utah’s Uniform Voidable Transactions Act (the “**UVTA**”).¹ Plaintiff has the burden to prove that Rust Rare Coin, Inc. (including all other receivership entities “**RRC**”) “made ... transfer[s] to the Howells] ... with actual intent to hinder, delay, or defraud any creditor of [RRC]”²

¹ The UVTA is codified at Utah Code Ann. § 25-6-101, et seq.

² Utah Code Ann. § 25-6-202(1)(a).

According to plaintiff's expert disclosures, plaintiff apparently intends to offer opinion testimony from Strong to establish "that Gaylen Rust operated RRC operated as a Ponzi scheme." Strong lacks personal knowledge to offer such testimony as a fact witness. And he should not be permitted to testify as to the ultimate facts as an expert.

Strong's proposed opinion testimony is improper and inadmissible for two reasons. First, Strong admits that the documents and data upon which he is relying are incomplete and unreliable. Second, Strong's opinions cross the line from accounting to advocacy. Rather than keeping Strong's expert opinions with the proper constraints of conclusions derived from applying reliable methodologies to the facts and data, plaintiff seeks to make Strong an advocate in the guise of "expert witness" who will offer opinions that usurp what is the fundamental province of the judge and jury: to apply the governing law to the facts and determine which party is entitled to relief. When Strong attempts to give opinions on the ultimate facts, he is no longer providing expert testimony. Rather, he is merely arguing what conclusions of law and inferences of fact should be drawn based upon his subjective interpretation data and information. These "opinions" are tantamount to a closing argument made by counsel. The Court should exclude this testimony as unhelpful under Federal Rule of Evidence 702.

II. ARGUMENT

A. **Strong's Opinions Are Not Admissible Because the Data and Information He Relied upon Is Incomplete and Unreliable.**

District courts are tasked with the responsibility of serving as the gatekeepers of expert evidence and must decide which experts may testify before the jury and the permissible scope of that testimony.³ To be admissible under Rule of Evidence 702, expert testimony must be reliable.⁴ This requires that the testimony must be "based on sufficient facts or data."⁵

³ Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

⁴ Ralston v. Smith & Nephew Richards, Inc., 275 F.3d 965, 969 (10th Cir. 2001).

⁵ Fed. R. Evid. 702(b).

Strong was deposed in this civil action on July 14, 2021.⁶ During his deposition, Strong testified in relevant part:

- that Strong had no direct involvement with RRC or the Receivership Defendants accounting until after November 2018, and that he had no control over bookkeeping entries prior to November 2018;⁷
- that Strong does not know whether Receivership Defendants actually held precious metals that matched statements received by investors;⁸
- that Strong is unable determine the amount of cash, inventory, silver bullion, gold bullion or other precious metals held by RRC at any given point in time;⁹
- that Strong does not know whether pre-silver pool statements received by investors were accurate;¹⁰
- that the accounting records of RRC were incomplete and unreliable, and that Strong did not have access to bank statements prior to 2010;¹¹ and
- that Strong had to “reconstruct” the accounting records and that RRC used paper records and multiple accounting programs, which contained incomplete, inaccurate and unreliable information, including QuickBooks, Rust Rare Coin Microsoft Dynamics RMS point-of-sale system and Acumatica software.¹²

In short, Strong’s testimony is not admissible because the facts and data that he relies upon are neither sufficient nor reliable.

⁶ A copy of the transcript of Strong’s deposition (“**Strong Depo.**”) was filed as Exhibit E to the Howell’s *Supplemental Appendix of Evidence in Opposition to Receiver’s Motion for Summary Judgment*, filed January 31, 2022 [Docket No 48-3].

⁷ Strong Depo. 8:1–9:10.

⁸ Strong Depo. 24:26:9-16.

⁹ Strong Depo. 27:20–30:5.

¹⁰ Strong Depo. 31:18-25.

¹¹ Strong Depo. 33:25–35:15 & 53:11–54:24.

¹² Strong Depo. *passim*.

B. Strong’s Purported Expert Opinions Applying Law to Facts Are Unhelpful, Invade the Province of the Judge and Jury, and Should Be Excluded.

Strong’s “opinions” cross the line from accounting to advocacy.¹³ When Strong crosses this line, his “opinions” are inadmissible as the sort of improper testimony rejected in Specht¹⁴ and Rowe,¹⁵ as he argues the facts and attempts to instruct the Court how to sift and weigh the facts.

Since its 1988 decision in Specht v. Jensen, the Tenth Circuit has held firmly to the principle that an expert should not be permitted “to supplant both the court's duty to set forth the law *and the jury's ability to apply this law to the evidence.*”¹⁶ Strong’s proposed “opinions” on pages 76-77 of the Strong Report, including his opinion “that RRC was not a viable enterprise and operated as a Ponzi scheme” should be excluded because he attempts to opine on the weight of the facts – facts as to which he has no personal knowledge and which are based upon information that may be categorized as double/triple hearsay or otherwise inadmissible – and usurps the jury’s role in sifting and weighing the (largely inadmissible) information.

District courts are tasked with the responsibility of serving as the gatekeepers of expert evidence and must decide which experts may testify before the jury and the permissible scope of that testimony.¹⁷ While testimony on ultimate facts is authorized under Rule 704, “an expert is not to opine on the weight of the facts or take a principal role in sifting, weighing and reciting them for the jury.”¹⁸

¹³ Plaintiff has filed a copy of the 447-page *Expert Report of D. Ray Strong, CPA, CFE, CIRA* (the “**Strong Report**” or the “**Report**”) as Exhibit B to plaintiff’s appendix of evidence offered in support of summary judgment [Docket No. 38-2].

¹⁴ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988).

¹⁵ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015).

¹⁶ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988) (en banc) (emphasis added), cert. denied, 488 U.S. 1008 (1989).

¹⁷ Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

¹⁸ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015), aff’d in part, 727 F. App’x 488 (10th Cir. 2018); see also United States v. Samara, 643 F.2d 701, 705 (10th Cir. 1981) (“An expert ‘may not go so far as to usurp the exclusive function of the jury to weigh the evidence and determine credibility.’ ”); United States v. Brown, 540 F.2d 1048, 1054 (10th Cir. 1976) (“the test of admissibility is often predicated upon the proposition that opinion evidence cannot usurp the functions of the jury or be received if it touches the very issue before the jury”).

Strong’s proposed opinion testimony on the ultimate fact that RRC operated as a Ponzi scheme (and his opinions that RRC exhibits common characteristics prevalent in Ponzi schemes) is not helpful and is impermissible. “Only evidence can establish proof, only the jury can find facts and decide issues ... and only the attorneys in the case can argue about the meaning of the evidence.”¹⁹ Further, “only the jury has the opportunity to conclude the factual issues in the case. Until a jury has found facts to resolve the factual issues presented to them, an expert has nothing other than assumptions on which [her] analysis may be based.”²⁰

Strong’s proposed opinion on the ultimate facts that RRC operated as a Ponzi scheme are exactly the sort of improper testimony rejected in Rowe.²¹ As in Rowe, the “facts” which Strong seeks to establish through his testimony “[a]re contested and [a]re for the jury to ultimately decide.”²² Thus, the Court should exclude Strong’s testimony on the ultimate facts.

III. CONCLUSION

WHEREFORE, the Howells respectfully pray that the Court will exclude D. Ray Strong from testifying as an expert in this civil action, that the Court will enter an order prohibiting plaintiff from offering “opinions” of Strong at trial and for any other purpose, including for purposes of seeking or opposing summary judgment, and that it will grant such other and further relief as is just and equitable.

DATED this 14th day of February 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
*Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL*

¹⁹ Rowe, 2015 WL 4949097, at *5 (D. Utah Aug. 19, 2015).

²⁰ Id.

²¹ Id.

²² Rowe v. DPI Specialty Foods, Inc., 727 F. App'x 488, 501 (10th Cir. 2018).

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February 2022, I filed the foregoing **HOWELLS' MOTION TO EXCLUDE PROPOSED EXPERT D. RAY STRONG** with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to counsel of record in the above-captioned civil action, including without limitation:

Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 S 200 E STE 700
SALT LAKE CITY, UT 84111

E-mail: mball@parrbrown.com

Attorneys for plaintiff JONATHAN O. HAFEN

/s/ Krys Lopez _____

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: right;">Defendants.</p>	<p>OBJECTIONS TO NEW EVIDENCE SUBMITTED BY PLAINTIFF IN CONNECTION WITH ITS REPLY IN SUPPORT OF SUMMARY JUDGMENT [ORAL ARGUMENT REQUESTED]</p> <p style="text-align: center;">Case No. 2:19-cv-00813 Honorable Tena Campbell</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Pursuant to DUCivR 7-1(b)(3), defendants GRETCHEN HOWELL (“**Gretchen**”) and LESLIE M. HOWELL (“**Les**”) (collectively, the “**Howells**”), through counsel, hereby object to the new evidence submitted by plaintiff in connection with the *Reply Memorandum in Support of Receiver’s Motion for Summary Judgment* [Docket No. 55] (the “**Reply**”), including specifically the “stipulations” and concessions of Gaylen Dean Rust (“**Rust**”) made as part of his *Statement by Defendant in Advance of Plea of Guilty and Plea Agreement Pursuant to Fed. R. Cim. P. 11(c)(1)(C)* (“**Rust’s Plea Agreement**”) which are referenced in the Reply and attached as Exhibit A thereto.

A. Plaintiff’s New Evidence Is Prohibited by DUCivR 56-1(d) and Rule 56.

Receiver’s Motion for Summary Judgment, filed November 30, 2021 [Docket No. 37] (the “**Receiver’s Motion**”) is governed by Federal Rule of Civil Procedure 56 and Local Rule 56-1. The Howells have opposed the Receiver’s Motion. Without limitation, the Howells’

opposition demonstrates that the Receiver's Motion is not supported by competent and admissible evidence, see Fed. R. Civ. P. 56(c)(4) ("A[] ... declaration used to support ... a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the ... declarant is competent to testify on the matters stated").

Plaintiff has submitted new "evidence" in connection with the Reply, which is not permitted. Specifically, DUCivR 56-1(d) provides, in relevant part: "In the reply, a moving party may cite only additional evidence not previously cited in the opening memorandum to rebut a claim that a material fact is in dispute. Otherwise, no additional evidence may be cited in the reply memorandum, and if cited, the court will disregard it."

B. Specific Objections to New Evidence Submitted with the Reply.

As discussed above, plaintiff cannot submit new evidence in support of the Motion with the Reply except only for the limited purpose "to rebut a claim that a material fact is in dispute." Out of an abundance of caution, however, the Howells object specifically to the new evidence.

1. Rust's Plea Agreement Is Inadmissible Hearsay; It Is Not an Affidavit or an Unsworn Declaration.

Rust's Plea Agreement attached as Exhibit A to the Reply is hearsay and, even if it had been submitted with the original Motion rather than with the Reply, it could not be considered by the Court. No hearsay exceptions apply to the Plea Agreement.

Further, the Plea Agreement is not an "affidavit[]" or declaration[]" as referenced in Federal Rule of Civil Procedure 56(c)(1)(A). Rust's Plea Agreement does not satisfy the requirements of 28 U.S.C. § 1746.

2. Rust's Statements Cannot Be Relied upon by the Court, or the Receiver's Experts, Because when the Howells Deposed Rust He Refused to Testify.

The Howells deposed Rust in this civil action. Rust, however, refused to answer any of the questions that the Howells posed to Rust during the deposition – invoking his fifth amendment right against self-incrimination. Accordingly, plaintiff cannot now offer any of Rust's statements against the Howells – either directly as evidence in support of plaintiff's request

for summary judgment or indirectly, disguised as part of the evidence and information that plaintiff's experts "relied" upon in forming their opinions.

The Circuit Court of Appeals' decision in Poore v. Glanz, 724 F. App'x 635 (10th Cir. 2018) is a case in point. In Poore, a nonparty witness was deposed and "invo[ked] the Fifth Amendment during the deposition." Id. at 644. The court of appeals affirmed the trial court's ruling precluding the nonparty witness from "withdraw[ing] his prior invocations of the Fifth Amendment" and testifying at trial, holding that "such conduct would be unfairly prejudicial." Id.; see also Sec. & Exch. Comm'n v. Graystone Nash, Inc., 25 F.3d 187, 190-91 (3rd Cir. 1994) (noting that "because the [Fifth Amendment] privilege may be initially invoked and later waived at a time when an adverse party can no longer secure the benefits of discovery, the potential for exploitation is apparent" and thus "belated waiver of the privilege could be unfair").

The decision of this court in S.E.C. v. Art Intellect, Inc., No. 2:11-CV-357, (D. Utah Mar. 6, 2013) (Campbell, J.) is also instructive. "During the[ir] depositions, [two individual defendants] asserted their Fifth Amendment privilege against self-incrimination to every question" Id., 2013 WL 840048, at *2. In connection with cross-motions for summary judgment later in the civil action, the same witnesses sought to withdraw their invocation of the Fifth Amendment, and submitted testimony by declaration. In explaining its decision to strike the declarations and exclude the declaration testimony, the Court held and reasoned:

A party may assert the privilege against self-incrimination during civil as well as criminal proceedings. But during civil proceedings, "because the privilege may be initially invoked and later waived at a time when an adverse party can no longer secure the benefits of discovery, the potential for exploitation is apparent." SEC v. Graystone Nash, Inc., 25 F.3d 187, 190 (3d Cir.1994).

* * *

"The Fifth Amendment privilege cannot be invoked to oppose discovery and then tossed aside to support a party's assertions." SEC v. Zimmerman, 854 F.Supp. 896, 899 (N.D.Ga.1993) (distinguishing situation where party invoking privilege is a defendant in both civil and criminal cases and is forced to choose between waiver of the testimonial privilege in the criminal case and automatic entry of an adverse judgment in a civil case).

But the context and timing within which [the witnesses] waived their privilege is troubling. Here, [the witnesses] invoked the Fifth Amendment privilege during civil discovery Neither [of the witnesses] submitted sworn testimony concerning their activities ... until more than a year after invoking their privilege and *after the conclusion of fact discovery*.... [T]he Fifth Amendment privilege cannot be invoked as a shield to oppose depositions while discarding it for the limited purpose of making statements to support a summary judgment motion.” ... Acceptance of the last-minute affidavits would cause substantial prejudice to the SEC. One purpose of discovery is to ascertain the position of the adverse party on controverted issues. Discovery determines what the facts are and what your opponent contends the facts are and what purpose they will serve. The ability to cross-examine an adverse party also provides an opportunity to test that party's credibility....

S.E.C. v. Art Intellect, Inc., No. 2:11-CV-357, 2013 WL 840048, at *9–11 (D. Utah Mar. 6, 2013).

WHEREFORE, the Howells respectfully pray that the Court will strike and refuse to consider the new evidence offered by plaintiff in connection with its Reply, that the Court will sustain the Howells’ objections to plaintiff’s new evidence, and that the Court will grant such other and further relief as is just and appropriate.

DATED this 1st day of March 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March 2022, I filed the foregoing **OBJECTIONS TO NEW EVIDENCE SUBMITTED BY PLAINTIFF IN CONNECTION WITH REPLY IN SUPPORT OF SUMMARY JUDGMENT** with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to counsel of record in the above-captioned civil action, including without limitation:

Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 S 200 E STE 700
SALT LAKE CITY, UT 84111

E-mail: mball@parrbrown.com

Attorneys for plaintiff JONATHAN O. HAFEN

/s/ Krys Lopez

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,
v.

RUST RARE COIN INC., a Utah corporation,
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.

**ORDER ESTABLISHING PONZI
OBJECTION PROCEDURE**

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

District Judge Tena Campbell
Chief Magistrate Judge Dustin B. Pead

On March 15, 2022, Jonathan O. Hafen, the court-appointed Receiver in the above-captioned matter, filed a Motion for Ponzi Determination and to Establish an Objection Procedure. (ECF No. 448.) As its name suggests, the Motion asks for two things. The Receiver seeks a court determination that an investment program operated by Receivership Defendants was a Ponzi scheme since at least 2008. The Receiver also asks the court to adopt its prior summary disposition procedure (ECF No. 165) to allow for objections and to decide the Ponzi-

scheme issue. Having considered the Motion, the court will adopt its summary disposition procedure to decide the Ponzi-scheme issue, and it will defer deciding that issue pending the following objection procedure. The court ORDERS as follows:

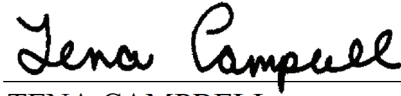
1. Any interested party wishing to object to the Receiver's Motion shall submit such objection in writing directly to the Receiver within thirty days of entry of this Order.
2. The Receiver shall provide copies of all objections received to Plaintiffs.
3. If an objecting party specifically requests discovery, the parties shall have an additional thirty days to complete such discovery, which will be conducted in accordance with the Federal Rules of Civil Procedure with the exception that written discovery must be responded to within fifteen days. Either side may seek relief from the court if the requested discovery is unduly burdensome or not proportional to the issues being determined. Any such discovery will be subject to the standard protective order.
4. After the deadline for objections passes and any specifically requested discovery is completed, the Receiver shall lodge all objections with the court and request a hearing at which such objections may be considered.
5. If an evidentiary hearing is required, the Receiver may request additional deadlines related to the disclosure of witnesses and exhibits as needed.
6. The Receiver and Plaintiffs may file a response to any objection five days prior to the hearing.

DATED this 30th day of March, 2022.

///

///

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive style with a horizontal line underneath it.

TENA CAMPBELL
United States District Judge

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Matthew J. Ball (9414) (mball@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840

Attorneys for Jonathan O. Hafen, Receiver

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

<p>JONATHAN O. HAFEN, in his capacity as Court-Appointed Receiver,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>GRETCHEN A. HOWELL, an individual; and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">AMENDED STIPULATED MOTION TO STAY ACTION (IN SUBSTANTIAL PART), TO VACATE TRIAL DATES AND TO SUSPEND TRIAL-RELATED DEADLINES</p> <p style="text-align: center;">Case No. 2:19-cv-00813-TC</p> <p style="text-align: center;">Judge Tena Campbell</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Receiver Jonathan O. Hafen, by and through his counsel of record, and defendants Gretchen A. Howell and Leslie M. Howell (collectively, the “Howells”), through their counsel of record, hereby stipulate and agree (a) that, excepting only the resolution of the Howells’ pending motions for summary judgment and the Howells’ Motion to Exclude Proposed Expert Jeffrey T. Shaw (which should proceed, be heard and decided), all other aspects of the above-captioned action (including all other pending motions), should be stayed, (b) the trial dates and final pre-trial conference should be vacated and continued without date, and (c) all trial-related deadlines (including deadlines for pretrial disclosures) should be suspended and extended without date. In further support and explanation of the requested relief, the parties state as follows:

1. The Receiver intends to file in the receivership proceeding, *Commodity Futures Trading Commission, et al. v. Rust Rare Coin Inc., et al.* No. 2:19-cv-892 (D. Utah Nov. 27, 2018) (the “Receivership Proceeding”), a motion asking the Court to make a determination that Rust Rare Coin, Inc. was a Ponzi scheme, which the Receiver will ask the Court to make binding on the Howells and all other persons that currently are, or in the future may be, defendants in lawsuits to recover alleged “voidable transfers.”

2. The Receiver submits that it would be most efficient for the Court to resolve the question of whether Rust Rare Coin, Inc. was a Ponzi scheme once, for purposes of the Receivership Proceeding and all related cases, pursuant to the procedure for summarily disposing of issues approved by the Court in the Receivership Proceeding. *See* Order Granting Motion to Allow Summary Disposition Procedure, entered on May 1, 2019 (Main Case, Document No. 165).

3. The Receiver further submits that staying all aspects of this action (except the resolution of the Howells’ motions for summary judgment and motion to exclude Jeffrey T. Shaw) pending a determination of whether Rust Rare Coin, Inc. was a Ponzi scheme will obviate duplicative litigation and avoid the risk of potentially inconsistent determinations in different cases.

4. The Howells do not stipulate or consent that a determination that Rust Rare Coin, Inc. was a Ponzi scheme should be made in the Receivership Proceeding, and do not stipulate that such a determination in the Receivership Proceeding should be binding upon the Howells in this civil action. Indeed, the Howells have advised the Receiver (and now advise the Court) that they intend to object to and oppose the Receiver’s proposed procedure.

5. Nonetheless, the Howells are willing to stipulate to a stay in this action, except with respect to the Howells' own two pending motions for summary judgment and their motion to exclude Jeffrey T. Shaw, which do not turn on whether Rust Rare Coin, Inc. was a Ponzi scheme.

6. Accordingly, the parties stipulate and jointly move the Court:

a. to vacate the trial dates and the final pretrial conference, and to continue the trial and final pretrial conference without date;

b. to suspend and extend (without date) all trial-related deadlines, including the deadlines for the parties' pretrial disclosures;

c. to order that the Howells' two motions for summary judgment and Motion to Exclude Proposed Expert Jeffrey T. Shaw (which do not implicate the question of whether Rust Rare Coin, Inc. was a Ponzi scheme) shall not be stayed, but should proceed, be heard and be decided; and

d. to order that, excepting resolution of the Howells' motions for summary judgment and motion to exclude Jeffrey T. Shaw, all other aspects of the above-captioned action should be stayed.

A proposed Order is attached hereto as Exhibit "A."

DATED: April 8, 2022

PARR BROWN GEE & LOVELESS, P.C.

/s/ Matthew J. Ball

Joseph M.R. Covey
Matthew J. Ball
Attorneys for the Receiver

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley (w/ permission)

Matthew M. Boley
Patrick E. Johnson
Attorneys for the Howells

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2022, I caused true and correct copies of the foregoing **Amended Stipulated Motion to Stay Action (in Substantial Part), to Vacate Trial Dates and to Suspend Trial-Related Deadlines** to be served electronically on the following:

Matthew M. Boley
Patrick E. Johnson
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, Utah 84111
mboley@ck.law
pjohnson@ck.law

/s/ Matthew J. Ball _____

Exhibit “A”

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Matthew J. Ball (9414) (mball@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840

Attorneys for Jonathan O. Hafen, Receiver

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

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

Plaintiff,

v.

GRETCHEN A. HOWELL, an individual;
and LESLIE M. HOWELL, an individual,

Defendants.

**ORDER STAYING ACTION (IN
SUBSTANTIAL PART), VACATING
TRIAL DATES AND SUSPENDING
TRIAL-RELATED DEADLINES**

Case No. 2:19-cv-00813-TC

Judge Tena Campbell

Receiver Jonathan O. Hafen and defendants Gretchen A. Howell and Leslie M. Howell’s (collectively, the “Howells”) Amended Stipulated Motion to Stay Action (in Substantial Part), to Vacate Trial Dates and to Suspend Trial-Related Deadlines came before the Court for decision. Having considered the parties’ Stipulated Motion, and for good cause appearing, it is hereby

ORDERED, ADJUDGED and DECREED that the parties’ Stipulated Motion is GRANTED; and it is

FURTHER ORDERED, as follows:

A. the trial dates and the final pretrial conference shall be, and hereby are, VACATED and continued without date;

B. all trial-related deadlines, including the deadlines for the parties’ pretrial disclosures, shall be, and hereby are, SUSPENDED and extended without date;

C. excepting resolution of the Howells’ motions for summary judgment, all other aspects of the above-captioned action shall be, and hereby are, STAYED;

D. the Receiver shall file and serve his response to the Howells’ Motion to Exclude Proposed Expert Jeffrey T. Shaw within two weeks of the entry of this order and the Howells shall file and serve their reply within the following two weeks.

ENTERED this ____ day of _____, 2022.

BY THE COURT:

Honorable Tena Campbell

Approved as to form:

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley (w/ permission)

Matthew M. Boley

Patrick E. Johnson

Attorneys for the Howells

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboleyc@ck.law
pjohnson@ck.law

Attorneys for GRETCHEN A. HOWELL
and LESLIE M. HOWELL

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

IN RE:

RUST RARE COIN INC., et al.

Plaintiff,

**HOWELLS' OBJECTION AND
MEMORANDUM OPPOSING THE
RECEIVER'S MOTION FOR A PONZI
DETERMINATION
[ORAL ARGUMENT REQUESTED]**

Case No. 2:18-cv-00892

Honorable Tena Campbell

GRETCHEN HOWELL (“**Gretchen**”) and LESLIE M. HOWELL (“**Les**”) (collectively, the “**Howells**”), through counsel, hereby object to and oppose the *Motion for Ponzi Determination and to Establish and Objection Procedure*, filed March 15, 2022 (the “**Ponzi Motion**”) by Jonathan O. Hafen in his capacity as Receiver (the “**Receiver**”) for the assets of Rust Rare Coin, Inc. (“**RRC**”), Gaylen D. Rust (“**Rust**”) and others. This objection and memorandum objects to and opposes the Receiver’s request for a “Ponzi Determination” on the merits. The Howells separately (in a contemporaneously submitted objection) have challenged the “summary disposition procedure” itself.

In further objection and opposition to Ponzi Motion, the Howells respectfully state as follows.

I. INTRODUCTION AND RELIEF SOUGHT

The Receiver has failed to present *admissible* evidence sufficient to satisfy his burden of proof to establish the existence of a Ponzi scheme. Further, genuine issues of material fact preclude summary judgment (or judgment in the form of summary disposition).

The Howells are defendants in Hafen v. Howell, Case No. 2:19-cv-00813 (the “**Howell Transfer Lawsuit**”), which the Ponzi Motion refers to as an “ancillary action.” The Howell Transfer Lawsuit has been pending since 2019. Except only trial itself and the related deadlines for pretrial disclosures under Rule 26(a)(3), all deadlines in the Howell Transfer Lawsuit have passed. Fact discovery is complete and the deadline for fact-related disclosures has passed. (The Receiver is bound by his disclosures in the Howell Transfer Lawsuit and is limited to the evidence that was disclosed prior to the fact discovery cutoff.) Expert discovery complete, and the deadline for expert disclosures has passed. (The Receiver is bound by his expert disclosures in the Howell Transfer Lawsuit, and is limited to the opinions and grounds disclosed.)

In November 2021, the Receiver moved for summary judgment in the Howell Transfer Lawsuit on exactly the same issues implicated by the Ponzi Motion. The Howells already have incurred the substantial expense to respond to and oppose the Receiver’s motion for summary judgment. The Ponzi Motion should be denied – at least to the extent the Receiver seeks a ruling on the Ponzi Motion that would be binding against the Howells in the Howell Transfer Lawsuit. He is not entitled to a second bite at the apple.

The Howells deposed Gaylen D. Rust in the Howell Transfer Lawsuit. Rust, however, refused to answer any of the questions that the Howells posed to him – invoking his fifth amendment right against self-incrimination.¹ Accordingly, the Receiver cannot now offer any of Rust’s statements against the Howells – either as direct evidence or, indirectly, disguised as part of the evidence and information that Receiver’s experts “relied” upon in forming their opinions.

¹ See Gaylen Rust Deposition, June 23, 2021, 7:15–10:9 (Mr. Rust invoking the Fifth Amendment and declining to answer approximately 150 questions posed to him).

Similarly, the Receiver's Report could not come into evidence at trial, and the Receiver could not testify at trial – whether as a fact witness or as an expert. The Receiver is not a competent fact witness. He has no personal knowledge of any of the events, circumstances or transactions. His testimony is at best hearsay, and sometime double- and triple-hearsay. He may have supervised a number of individuals who investigated facts (a/k/a conducted discovery), and he may even have participated directly in that discovery to some extent. But that does not make him a competent fact witness. And neither his appointment as Receiver, nor any other specialized knowledge or training, make him an “expert” that is qualified to testify in this case. In any event, the Receiver is not actually providing expert testimony. Rather, he is merely telling the Court what conclusions of law and inferences of fact it should draw based upon his (or his team's) subjective interpretation data and information that is neither admissible in this action nor part of the summary judgment record. In short, the Receiver's “opinions” are nothing more than a closing argument made by counsel – and here without any admissible evidence in the record from which to argue.

II. BACKGROUND

The collapse of RRC has devastated Les and Gretchen – both financially and psychologically. Neither of them is better off. Further, Gretchen was, and is, unequivocally a “loser”. Her contributions into RRC clearly exceeded the distributions she received.

Gretchen met Les in 1998, and they married in 1999. Gretchen and Les lived in Wellington, Utah for 16 years. Les worked for what is now PacifiCorp for over 35 years as a power plant operator, and Gretchen worked for the State of Utah as an assistant caseworker. They lived modestly, if not frugally, and had little to no debt. Although Gretchen and Les both contributed to household expenses, they maintained separate bank accounts and kept their finances largely separate.

Les began investing in RRC in October 2008. Over time, Les invested a principal amount aggregating \$1,222,003.77 with RRC. In the course of making his investments, Les

cashed out his retirement savings (incurring substantial tax liabilities) and poured all of his liquid assets and disposable funds into RRC. Les even sold RRC heirloom silverware, rings and jewelry, and then contributed the resulting proceeds to his RRC account.

Gretchen invested separately with RRC, contributing a total of \$96,450.00, including funds she obtained by borrowing against and/or cashing out her 401(k)-retirement savings. Meanwhile, she took and received distributions of only \$22,000. In short, Gretchen put into RRC over \$74,000 more than she got out. She unequivocally is a “net loser.”

Believing that his retirement savings held by RRC were safe and secure, Les took early retirement from PacifiCorp in May of 2013, leaving behind over 35 years of hard-won seniority. Les forfeited an average of \$100,000 per year of wages that he would have earned if he had not retired early – a loss of approximately \$900,000 to date.

With some of his earliest distributions from RRC (which at that time were substantially less than the value that he had given to RRC), Les purchased property in a somewhat remote area near Kingman, Arizona which he titled in his name and Gretchen’s, as joint tenants. (The distributions directly traceable to the purchase of the property on which Les and Gretchen’s home is constructed unequivocally are not avoidable.) Most of the subsequent distributions taken by Les were used to pay legitimate debts due to third parties, including debts due to contractors, materialmen and suppliers.

In 2015, Les moved to Arizona. Les personally worked full time on constructing improvements on the Kingman, Arizona property, investing approximately six thousand hours of his time (over 3+ years) performing skilled and unskilled construction services – literally contributing his blood and sweat to the value of the property.

Gretchen resigned from her position with the State of Utah (which she had held for 16 years) in 2015 and joined Les in Arizona. Because Les expected, and Gretchen intended, to pay her own share of the household expenses, Gretchen immediately obtained new employment

working for Mohave County, Arizona. Gretchen and Les continued to live a modest life, and did not live lavishly.

When RRC was seized, Gretchen and Les's home in Kingman, Arizona was unfinished (and still is), and neither Les nor Gretchen had any meaningful savings. In short, Les put all of his eggs into the same basket (RRC), and did not diversify his investments.² Gretchen similarly was left bereft. Les is 63+ years old and, as a result, his employment options are limited. Gretchen is currently employed by Mohave County and makes only approximately \$20 per hour. Les and Gretchen have been living month to month, just scraping by, since November 2018.

III. PROCEDURAL HISTORY – THE HOWELL TRANSFER LAWSUIT

1. On October 24, 2019, the Receiver commenced the Howell Transfer Lawsuit by filing a Complaint [Docket No. 2, 2:19-cv-813] (the “**Complaint**”) naming the Howells as defendants. The Complaint purports to assert claims to avoid “fraudulent transfers” pursuant to the Utah Uniform Voidable Transactions Act. Specifically, the Complaint alleges:

- a. that “Receivership Defendants operated the Silver Pool as a Ponzi scheme,” [Complaint ¶ 40];
- b. that, “[b]ecause Receivership Defendants operated the Silver Pool as a Ponzi scheme, as a matter of law, the transfers to Defendants were made with the intent to hinder, delay, or defraud creditors,” [Complaint ¶ 42]; and
- c. that RRC “did not receive reasonably equivalent value in exchange for the transfers,” [see Complaint ¶ 43].”

2. In response to the Complaint, the Howells filed their *Answer and Jury Demand* on November 26, 2019 [Docket No. 7, 2:19-cv-813] (the “**Answer**” or the “**Jury Demand**”).

² Les had invested \$1,107,752.54 with RRC by April 1, 2013. If those funds had been invested conservatively in the S&P 500 in 2013, they would have grown to over \$4,251,259.16 today. See <https://www.officialdata.org/us/stocks/s-p-500/2013?amount=1107752.04&endYear=2022>. If the additional \$114,251.73 Les invested in 2014 and 2015 are included, Les would be sitting on a stock portfolio worth \$4,550,000 today. See <https://www.officialdata.org/us/stocks/s-p-500/2015?amount=114251.73&endYear=2022>.

Specifically, the Howells “demand[ed] a trial by jury of all claims and defenses that are triable to a jury.”

3. Thereafter, the Howell Transfer Lawsuit proceeded to the point where the case is trial ready.

4. The Receiver served “initial disclosures” pursuant to Rule 26(a)(1) on February 17, 2020, and supplemented the disclosure on February 27, 2020 (the “**Fact Evidence Disclosures**”). The Receiver did not thereafter supplement his mandatory Rule 26(a)(1) disclosures.

5. In reliance upon the allegations of the Complaint and the Receiver’s Fact Evidence Disclosures, the Howells invested substantial time, money and effort in pursuing discovery narrowly tailored to the claims against them and the scope of potential evidence covered by the Fact Disclosures. Without limitation:

- a. the Howells served written discovery on the Receiver, including requests for admission, interrogatories and requests for production, including (without limitation)
 - i. a contention interrogatory regarding the Receiver’s “contention that Receivership Entities were operating as a Ponzi scheme” (the “**Ponzi Contention Interrogatory**”),
 - ii. a contention interrogatory regarding the Receiver’s “contention that the Receivership Entities transferred money to defendants with the actual intent to hinder, delay, or defraud creditors” (the “**Actual Intent Contention Interrogatory**”),
 - iii. a number of related contention interrogatories regarding the Receiver’s assertions, and
 - iv. Rule 34 requests for production regarding all documents and electronically stored information relevant to the contentions;

- b. the Howells subpoenaed documents from various third parties, including ZB, N.A. d/b/a Zions, US Bank, Mountain America Federal Credit Union, Bank of America, Gaylen D. Rust, Joshua Rust;
- c. the Howells deposed Gaylen D. Rust on June 23, 2021;
- d. the Howells deposed the Receiver, Jonathan O. Hafen, on June 24, 2021;
- e. the Howells deposed D. Ray Strong on July 14, 2021.

6. During his deposition in the Howell Transfer Lawsuit, Gaylen D. Rust refused to answer any of the questions that the Howells posed to him – invoking his fifth amendment right against self-incrimination.³ Accordingly, the Receiver cannot now offer any of Rust’s statements against the Howells – either as direct evidence or, indirectly, disguised as part of the evidence and information that Receiver’s experts “relied” upon in forming their opinions.

7. During his deposition in the Howell Transfer Lawsuit, Jonathan D. Hafen’s testimony demonstrates that he is not a competent fact witness because he does not have personal knowledge of any of the events, circumstances or facts.⁴

8. Similarly, during his deposition in the Howell Transfer Lawsuit, D. Ray Strong’s testimony demonstrates that he is not a competent fact witness because he does not have personal knowledge of any of the events, circumstances or facts.⁵

³ See Gaylen Rust Deposition, June 23, 2021, 7:15–10:9 (Mr. Rust invoking the Fifth Amendment and declining to answer approximately 150 questions posed to him).

⁴ See Deposition of Jonathan O. Hafen, June 24, 2021 (“**Hafen Depo.**”), 10:17–11:14 (stating that Hafen’s knowledge of Receivership Defendants and statements Receivership Defendants made to investors based upon “interviews with various victims of the Ponzi scheme, the investigation by BRG, work done by my legal counsel, representations made by third parties with whom we interacted.”), 8:4-23 (stating that Hafen had no involvement in the Receivership Defendants until after November 2018 and all conclusions are based upon information learned after November 2018), 6:6–7:7 (stating Hafen’s conclusions regarding the Receivership Defendants’ financial and business operations are based upon what his accountants and attorneys told him), 12:15–13:16 (stating that all of Hafen’s conclusions with respect to the fact that the Receivership Defendants operated a Ponzi scheme in a case against another investor were based upon “interviews with various victims of the Ponzi scheme, the investigation by BRG, work done by my legal counsel, representations made by third parties with whom we interacted.”).

⁵ See Deposition of D. Ray Strong, July 14, 2021, 8:1–9:10 (stating that Strong had no direct involvement in the Receivership Defendants accounting until after November 2018 and no control over bookkeeping entries prior to November 2018), 24:26:9-16 (stating that Strong does not know whether Receivership Defendants held precious metals that matched statements received by investors), 27:20–30:5 (stating that Strong is unable determine the amount of cash, inventory, silver bullion, gold bullion or other

9. The discovery schedule and case management deadlines were extended at least five times in the Howell Transfer Lawsuit. Under the [Fifth] *Amended Scheduling Order*, entered April 27, 2021 [Docket No. 36, 2:19-cv-813], the deadline to complete fact discovery was June 20, 2021, the deadline for expert disclosures was August 2, 2021. The deadline for motions for summary judgment was November 30, 2021.

10. The Receiver timely served expert disclosures (the “**Expert Evidence Disclosures**”).

11. The Howells subsequently (and timely) filed motions to exclude the Receiver’s proposed expert testimony.

12. Each of the Receiver and the Howells filed cross-motions for summary judgment prior to expiration of the deadline for dispositive motions.

13. Excepting only trial and deadlines for pretrial disclosures, all deadlines in the Howell Transfer Lawsuit have passed.

14. Accordingly, the fact evidence that the Receiver may offer against the Howells is limited to the Fact Evidence Disclosures. The Receiver may not offer evidence that was not timely disclosed including, for example, Rust’s guilty plea and his statements relating to his guilty plea. The Receiver’s ability to offer evidence at trial also is constrained by the deposition testimony taken in the Howell Transfer Lawsuit (including (a) the deposition of Rust in which he refused to answer any of the Howell’s questions, and (b) the depositions of Hafen and Strong demonstrating that they are not competent fact witnesses), and is further constrained by the Receiver’s responses to written discovery, including the Receiver’s answers to the Howells’ contention interrogatories.

~~precious metals at a given point in time), 31:18-25 (stating that Strong does not know whether pre-silver pool statements received by investors were accurate), 33:25-35:15 & 53:11-54:24 (explaining that the accounting records were incomplete and Strong did not have access to bank statements prior to 2010); *passim* (stating that Strong had to reconstruct the accounting records and the Receivership Defendants used paper records and multiple accounting programs, which contained incomplete and inaccurate information, including QuickBooks, Rust Rare Coin Microsoft Dynamics RMS point-of-sale system and Acumatica software).~~

15. The Howell Transfer Lawsuit has been stayed in substantial part. But the Howells never stipulated or consented to the “summary disposition procedure” that the Receiver proposes in the Procedure Motion. Indeed, the *Amended Stipulated Motion to Stay Action (in Substantial Part), to Vacate Trial Dates and to Suspend Trial-Related Deadlines* filed April 8, 2022 [Docket No. 70, 2:19-cv-813] (the “**Stay Stipulation**”) expressly states:

The Howells do not stipulate or consent that a determination that Rust Rare Coin, Inc. was a Ponzi scheme should be made in the Receivership Proceeding, and do not stipulate that such a determination in the Receivership Proceeding should be binding upon the Howells in this civil action. Indeed, the Howells have advised the Receiver (and now advise the Court) that they intend to object to and oppose the Receiver’s proposed procedure.

16. Notice of the Stay Stipulation was not filed in the Howell Transfer Lawsuit, and the Receiver’s professionals neglected to advise the Howells’ counsel that the Procedure Motion already had been filed when they entered into the Stay Stipulation.

17. On March 30, 2022, the Court entered in the instant case its *Order Establishing Ponzi Objection Procedure* [Docket No. 451] (the “**March 31 Order**”) which, in relevant part, provides: “Any interested party wishing to object to the Receiver’s Motion shall submit such objection in writing directly to the Receiver within thirty days of entry of this Order.”

18. This Objection is submitted in compliance with the March 31 Order.

IV. OBJECTIONS AND RESPONSE TO THE MATERIAL FACTS RECITED IN THE PONZI MOTION

The Howells previously responded to 31 numbered paragraphs of “facts” which the Receiver alleged in seeking summary judgment against the Howells. Excepting procedural facts which are not relevant and new “facts” which appear to derive from Rust’s recent guilty plea, the Howells already have responded to each of the alleged facts now reiterated in the Ponzi Motion. The Howells incorporate by reference their objections and responses to the Receiver’s facts stated in their *Howells’ Response Opposing Receiver’s Motion for Summary Judgment* filed January 31, 2022 in the Howell Transfer Lawsuit [Docket No. 47, 2:19-cv-813] (the “**Prior Summary Judgment Opposition**”).

The Howells object to the Receiver’s evidence for the same reasons described in the Prior Summary Judgment Opposition, the *Objections to New Evidence Submitted by Plaintiff in Connection with Its Reply in Support of Summary Judgment* filed March 1, 2022 [Docket No. 60, 2:19-cv-813], the *Howells’ Motion to Exclude Proposed Expert Jonathan O. Hafen* filed February 14, 2022 [Docket No. 52, 2:19-cv-813] and the *Howells’ Motion to Exclude Proposed Expert D. Ray Strong* filed February 14, 2022 [Docket No. 54, 2:19-cv-813], all of which are incorporated by reference.

V. ARGUMENT

A. Standard of Review.

The Court of Appeals for the Tenth Circuit has explained:

At the summary judgment stage, evidence need not be submitted “in a form that would be admissible at trial.” ... Nonetheless, “the content or substance of the evidence must be admissible.” Thus, for example, at summary judgment courts should disregard inadmissible hearsay statements contained in affidavits, as those statements could not be presented at trial in any form.... Rule 56(e) of the Federal Rules of Civil Procedure... requires that “[s]upporting and opposing affidavits shall be made on personal knowledge,” [and] Rule 602 of the Federal Rules of Evidence, ... requires that testifying witnesses “ha[ve] personal knowledge of the matter.” Under the personal knowledge standard, an affidavit is inadmissible if “ ‘the witness could not have actually perceived or observed that which he testifies to.’ ”

Argo v. Blue Cross & Blue Shield of Kansas, Inc., 452 F.3d 1193, 1199-1200 (10th Cir. 2006)

(citations omitted). When the moving party also bears the burden of proof at trial,

a more stringent summary judgment standard applies. Thus, if the moving party bears the burden of proof, to obtain summary judgment, it cannot force the nonmoving party to come forward with “specific facts showing there [is] a genuine issue for trial” merely by pointing to parts of the record that it believes illustrate the absence of a genuine issue of material fact. Instead, the moving party must establish, as a matter of law, all essential elements of the issue before the nonmoving party can be obligated to bring forward any specific facts alleged to rebut the movant's case.

Murphey v. Mid-Century Ins. Co., No. 13-2598-JAR-JPO, 2014 WL 2619073, at *2 (D. Kan.

June 12, 2014).

“[E]vidence offered [on] a motion for summary judgment must be made on personal knowledge ... set forth such facts as would be *admissible in evidence*, and ... show

affirmatively that the [person who responded to the interrogatories] is competent to testify to the matters' set forth therein.” Gross v. Burggraf Const. Co., 53 F.3d 1531, 1541 (10th Cir. 1995) (emphasis in original) (citations omitted). “Hearsay testimony cannot be considered because ‘[a] third party's description of [a witness'] supposed testimony is not suitable grist for the summary judgment mill.’ ” Id.

B. The Court Should Not Consider the Statements of Gaylen Rust, Including Specifically the Statements Made in Support of His Plea Agreement.

Although Rust’s statements may be offered against him, as admissions against his interest, they cannot be offered against the Howells, especially under these circumstances.

1. Rust’s Plea Agreement Is Inadmissible Hearsay; It Is Not an Affidavit or an Unsworn Declaration.

Rust’s Plea Agreement is hearsay, and no hearsay exceptions apply to the Plea Agreement. Further, the Plea Agreement is not an “affidavit[] or declaration[]” as referenced in Federal Rule of Civil Procedure 56(c)(1)(A). Rust’s Plea Agreement does not satisfy the requirements of 28 U.S.C. § 1746.

2. Rust’s Statements Cannot Be Relied upon by the Court, or the Receiver’s Experts, Because when the Howells Deposed Rust He Refused to Testify.

The Howells deposed Rust in the Howell Transfer Lawsuit. Rust, however, refused to answer any of the questions that the Howells posed to Rust during the deposition – invoking his fifth amendment right against self-incrimination. Accordingly, plaintiff cannot now offer any of Rust’s statements against the Howells – either directly as evidence in support of plaintiff’s request for “summary disposition” or indirectly, disguised as part of the evidence and information that the Receiver’s experts “relied” upon in forming their opinions.

The Circuit Court of Appeals’ decision in Poore v. Glanz, 724 F. App’x 635 (10th Cir. 2018) is a case in point. In Poore, a nonparty witness was deposed and “invo[ked] the Fifth Amendment during the deposition.” Id. at 644. The court of appeals affirmed the trial court’s ruling precluding the nonparty witness from “withdraw[ing] his prior invocations of the

Fifth Amendment” and testifying at trial, holding that “such conduct would be unfairly prejudicial.” *Id.*; see also *Sec. & Exch. Comm'n v. Graystone Nash, Inc.*, 25 F.3d 187, 190-91 (3rd Cir. 1994) (noting that “because the [Fifth Amendment] privilege may be initially invoked and later waived at a time when an adverse party can no longer secure the benefits of discovery, the potential for exploitation is apparent” and thus “belated waiver of the privilege could be unfair”).

The decision of this court in *S.E.C. v. Art Intellect, Inc.*, No. 2:11-CV-357, (D. Utah Mar. 6, 2013) (Campbell, J.) is also instructive. “During the[ir] depositions, [two individual defendants] asserted their Fifth Amendment privilege against self-incrimination to every question” *Id.*, 2013 WL 840048, at *2. In connection with cross-motions for summary judgment later in the civil action, the same witnesses sought to withdraw their invocation of the Fifth Amendment, and submitted testimony by declaration. In explaining its decision to strike the declarations and exclude the declaration testimony, the Court held and reasoned:

A party may assert the privilege against self-incrimination during civil as well as criminal proceedings. But during civil proceedings, “because the privilege may be initially invoked and later waived at a time when an adverse party can no longer secure the benefits of discovery, the potential for exploitation is apparent.” *SEC v. Graystone Nash, Inc.*, 25 F.3d 187, 190 (3d Cir.1994).

* * *

“The Fifth Amendment privilege cannot be invoked to oppose discovery and then tossed aside to support a party's assertions.” *SEC v. Zimmerman*, 854 F.Supp. 896, 899 (N.D.Ga.1993) (distinguishing situation where party invoking privilege is a defendant in both civil and criminal cases and is forced to choose between waiver of the testimonial privilege in the criminal case and automatic entry of an adverse judgment in a civil case).

But the context and timing within which [the witnesses] waived their privilege is troubling. Here, [the witnesses] invoked the Fifth Amendment privilege during civil discovery Neither [of the witnesses] submitted sworn testimony concerning their activities ... until more than a year after invoking their privilege and *after the conclusion of fact discovery*.... [T]he Fifth Amendment privilege cannot be invoked as a shield to oppose depositions while discarding it for the limited purpose of making statements to support a summary judgment motion.” ... Acceptance of the last-minute affidavits would cause substantial prejudice to the SEC. One purpose of discovery is to ascertain the position of the adverse party on controverted issues. Discovery determines what the facts are and what your opponent

contends the facts are and what purpose they will serve. The ability to cross-examine an adverse party also provides an opportunity to test that party's credibility....

S.E.C. v. Art Intellect, Inc., No. 2:11-CV-357, 2013 WL 840048, at *9–11 (D. Utah Mar. 6, 2013).

C. The Court Should Not Consider the Receiver Report or the Strong Report in Deciding the Receiver's Motion.

The Receiver and Strong do not have personal knowledge of any relevant or material facts. Accordingly, they are not competent to testify as fact witnesses.

Further, their incompetence as witnesses is not cured by “dressing up” their inadmissible testimony in a report versus a sworn declaration, because their testimony also fails to satisfy the requirements of Federal Rules of Evidence 702 and 703. The Howells incorporate by reference the points and authorities recited in the *Howells' Motion to Exclude Proposed Expert Jonathan O. Hafen* filed February 14, 2022 in the Howell Transfer Lawsuit [Docket No. 52, 2:19-cv-813] and the *Howells' Motion to Exclude Proposed Expert D. Ray Strong* filed February 14, 2022 in the Howell Transfer Lawsuit [Docket No. 54, 2:19-cv-813].

District courts are tasked with the responsibility of serving as the gatekeepers of expert evidence and must decide which experts may testify before the jury and the permissible scope of that testimony.⁶ While testimony on ultimate facts is authorized under Rule 704, ... testimony on ultimate questions of law is not favored.”⁷ “The basis for this distinction is that testimony on the ultimate factual questions aids the jury in reaching a verdict; *testimony which articulates and applies the relevant law*, however, circumvents the jury’s decision-making function by telling it how to decide the case.”⁸

“[A]n expert is not to opine on the weight of the facts or take a principal role in sifting, weighing and reciting them for the jury.”⁹ Such impermissible testimony is not helpful.

⁶ Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

⁷ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988).

⁸ Id.

⁹ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015).

“Only evidence can establish proof, only the jury can find facts and decide issues . . . and only the attorneys in the case can argue about the meaning of the evidence.”¹⁰

The Receiver’s Report is exactly the sort of improper testimony rejected in Specht¹¹ and Rowe.¹² It is little more than a closing argument at the end of trial. The Receiver may be an expert trial lawyer, but that does not qualify him to testify, as an expert, regarding how he would sift and weigh information.

Further, to be admissible under Rule of Evidence 702, expert testimony must be reliable.¹³ To determine whether an expert’s testimony is reliable requires “assess[ing] the reasoning and methodology underlying the expert’s opinion.”¹⁴ The testimony must be “based on sufficient facts or data.”¹⁵ It must be “the product of reliable principles and methods.”¹⁶ And the expert must have “reliably applied the principles and methods to the facts of the case.”¹⁷

Strong’s testimony is not admissible because the facts and data that he relies upon are neither sufficient nor reliable. Strong was deposed in the Howell Transfer Lawsuit on July 14, 2021.¹⁸ During his deposition, Strong testified in relevant part:

- that Strong had no direct involvement with RRC or the Receivership Defendants accounting until after November 2018, and that he had no control over bookkeeping entries prior to November 2018;¹⁹
- that Strong does not know whether Receivership Defendants actually held precious metals that matched statements received by investors;²⁰

¹⁰ Id.

¹¹ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988).

¹² Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015).

¹³ Ralston v. Smith & Nephew Richards, Inc., 275 F.3d 965, 969 (10th Cir. 2001).

¹⁴ United States v. Rodriguez-Felix, 450 F.3d 1117, 1123 (10th Cir. 2006) (internal quotations omitted).

¹⁵ Fed. R. Evid. 702(b).

¹⁶ Fed. R. Evid. 702(c).

¹⁷ Fed. R. Evid. 702(d).

¹⁸ A copy of the transcript of Strong’s deposition (“**Strong Depo.**”) was filed as Exhibit E to the Howell’s *Supplemental Appendix of Evidence in Opposition to Receiver’s Motion for Summary Judgment*, filed January 31, 2022 [Docket No 48-3].

¹⁹ Strong Depo. 8:1–9:10.

²⁰ Strong Depo. 24:26:9-16.

- that Strong is unable determine the amount of cash, inventory, silver bullion, gold bullion or other precious metals held by RRC at any given point in time;²¹
- that Strong does not know whether pre-silver pool statements received by investors were accurate;²²
- that the accounting records of RRC were incomplete and unreliable, and that Strong did not have access to bank statements prior to 2010;²³ and
- that Strong had to “reconstruct” the accounting records and that RRC used paper records and multiple accounting programs, which contained incomplete, inaccurate and unreliable information, including QuickBooks, Rust Rare Coin Microsoft Dynamics RMS point-of-sale system and Acumatica software.²⁴

In short, Strong’s testimony is not admissible because the facts and data that he relies upon are neither sufficient nor reliable.

Further, Strong’s “opinions” cross the line from accounting to advocacy. Strong’s proposed opinion on the ultimate facts that RRC operated as a Ponzi scheme are exactly the sort of improper testimony rejected in Rowe.²⁵ As in Rowe, the “facts” which Strong seeks to establish through his testimony “[a]re contested and [a]re for the jury to ultimately decide.”²⁶ Thus, the Court should exclude Strong’s testimony on the ultimate facts.

D. The Receiver Has Failed to Carry His Burden of Proof to Establish the Existence of a Ponzi Scheme.

The Receiver has the burden of proof to establish that RRC was operating a Ponzi scheme before RRC’s transactions with the Howells can be questioned. The Receiver has not satisfied that burden with admissible evidence.

E. The “Summary Disposition Procedure” Is Unfair and Prejudicial Because It Permits the Receiver to End Run the Important Procedural Protections Due to the Howells in the Howell Transfer Lawsuit.

The Rules of Procedure impose important disclosure requirements and procedural protections for litigants. “[T]he deposition-discovery portions of the Federal Rules of

²¹ Strong Depo. 27:20–30:5.

²² Strong Depo. 31:18-25.

²³ Strong Depo. 33:25–35:15 & 53:11–54:24.

²⁴ Strong Depo. *passim*.

²⁵ Id.

²⁶ Rowe v. DPI Specialty Foods, Inc., 727 F. App’x 488, 501 (10th Cir. 2018).

Civil Procedure are designed to enable the parties to discover the true facts and to compel their disclosure wherever they may be found.” Hickman v. Taylor, 329 U.S. 495, 506 (1947).

The Supreme Court has explained:

The pre-trial deposition-discovery mechanism established by Rules 26 to 37 is one of the most significant innovations of the Federal Rules of Civil Procedure. Under the prior federal practice, the pre-trial functions of notice-giving issue-formulation and fact-revelation were performed primarily and inadequately by the pleadings. Inquiry into the issues and the facts before trial was narrowly confined and was often cumbersome in method. The new rules, however, restrict the pleadings to the task of general notice-giving and invest the deposition-discovery process with a vital role in the preparation for trial. The various instruments of discovery now serve (1) as a device, along with the pre-trial hearing under Rule 16, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts, or information as to the existence or whereabouts of facts, relative to those issues. Thus civil trials in the federal courts no longer need be carried on in the dark. The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial.

Id. at 500–01.

In the Howell Transfer Lawsuit, the Howells relied upon the Receiver’s disclosures in tailoring discovery and preparing for trial (and to respond to anticipated dispositive motions). Similarly, the Howells relied upon the Receiver’s responses to written discovery, including several contention interrogatories that are directly relevant to the “Ponzi determination.” “[C]ontention interrogatories are permissible under the Federal Rules and allowed by courts. Indeed, the ‘general view is that contention interrogatories are a perfectly permissible form of discovery, to which a response ordinarily would be required.’ ” EC Source Servs. v. Burndy LLC, No. 2:16-CV-122 JNP, 2018 WL 3625330, at *2 (D. Utah July 30, 2018)²⁷

²⁷ See also Uinta Oil Ref. Co. v. Cont’l Oil Co., 226 F. Supp. 495, 505 (D. Utah 1964) (“Responses must be full, complete, and without evasion.... [S]pecific inquiry can[] include present claims and contentions as a part of discovery, for these are not the type of work product excluded from discovery. And the factual bases of claims and contentions may be reasonably explored.”); Frederick v. Hartford Underwriters Ins. Co., 683 F.3d 1242, 1247, 2012 WL 2443100 (10th Cir. 2012) (permitting the use of contention interrogatories to establish an amount in controversy); Oklahoma v. Tyson Foods, Inc., 262 F.R.D. 617, 630, 2009 WL 3682757 (N.D. Okla. 2009) (“Rule 33 expressly permits contention interrogatories that delve into opinion work product ‘because it asks for an opinion or contention that relates to fact or the application of law to fact.’ ”) (quoting Fed. R. Civ. P. 33(a)(2)); Lucero v. Valdez, 240 F.R.D. 591, 594, 2007 WL 737918 (D.N.M. 2007) (“Interrogatories may ask for

The Receiver now is limited and constrained to the evidence – fact witnesses, documents and expert opinions – that were disclosed and available to the parties in the Howell Transfer Lawsuit. Indeed, Rule 37(c) provides: “If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), *the party is not allowed to use that information or witness* to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c) (emphasis added). See also Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co., 170 F.3d 985, 993 (10th Cir. 1999) (discussing prejudice to the party against whom undisclosed evidence will be offered).

The Receiver should not now be able to “end run” the limitations on evidence that derive from the procedural events, disclosures and discovery that occurred in the Howell Transfer Lawsuit. Similarly, to the extent the Procedure Motion requests summary disposition by motion, it should not be permitted as against the Howells because it was filed long after the dispositive motion cutoff in the Howell Transfer Lawsuit. Indeed, the Howells already have incurred great expense to respond to the Receiver’s motion for summary judgment filed in the Howell Transfer Lawsuit.

The Howells have incurred substantial expense to litigate the Howell Transfer Lawsuit to the point where it is trial ready – including engaging in discovery, opposing the Receiver’s

the material or principal facts that support a party's contentions, and contention interrogatories that do not encompass every allegation, or a significant number of allegations, made by a party are proper.”); Johnson v. Kraft Foods N. Am., Inc., 236 F.R.D. 535, 544, 2006 WL 1675942 (D. Kan. 2006) (noting that contention interrogatories “may be used to narrow and define the issues for trial”); Smash Tech., LLC v. Smash Sols., LLC, 335 F.R.D. 438, 448 (D. Utah 2020) (“it is well settled that contention interrogatories that seek non-privileged information are permissible and warrant a response”); English v. Wash. Metro. Area Transit Auth., 323 F.R.D. 1, 19 (D.D.C. 2017); and Steven S. Gensler, Lumen N. Mulligan, Rule 33 Fed. R. Of Civil Pro., Rules and Commentary (February 2020 update)); In re Brca1-& Brca2-based Hereditary Cancer Test Patent Litig., 2014 WL 12600708, at *1 (D. Utah Nov. 19, 2014) (noting the value of contention interrogatories); Christison v. Biogen Idec, 2014 WL 3749191, at *3 (D. Utah July 29, 2014) (ordering the plaintiff to answer defendant's contention interrogatories); IOSTAR Corp. v. Stuart, 2008 WL 1924209, at *2 (D. Utah Apr. 25, 2008) (stating that contention interrogatories are fairly common in complex cases).

motion for summary judgment, and moving to exclude the Receiver's "expert opinion" evidence. The Receiver has had his "bite at the apple." He should not be given another.

VI. CONCLUSION

The Ponzi Motion should be denied for all of the foregoing reasons. The Receiver has not presented admissible to establish that RRC was operating a Ponzi scheme.

WHEREFORE, the Howells respectfully pray that the Court will DENY the Ponzi Motion, and that it will grant such other and further relief as is just and equitable.

DATED this 29th day of April 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley

Attorneys for GRETCHEN A. HOWELL
and LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April 2022, I “submit[ted] ... in writing directly to the Receiver” the foregoing **HOWELLS’ OBJECTION AND MEMORANDUM OPPOSING THE RECEIVER’S MOTION FOR A PONZI DETERMINATION** by emailing it to the Receiver and his attorneys of record, as follows:

Jonathan O. Hafen
Joseph M.R. Covey
Cynthia D. Love
Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 South 200 East, Suite 700
SALT LAKE CITY, UT 84111

E-mail: jhafen@parrbrown.com
jcovey@parrbrown.com
clove@parrbrown.com
mball@parrbrown.com

/s/ Matthew M. Boley _____

Joseph M.R. Covey (7492) (jccovey@parrbrown.com)
Matthew J. Ball (9414) (mball@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532-7750

Attorneys for Jonathan O. Hafen, Receiver

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

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

Plaintiff,

v.

GRETCHEN A. HOWELL, an individual;
and LESLIE M. HOWELL, an individual,

Defendants.

COMPLAINT

(Ancillary Suit – General Order 19-001)

Case No. _____

Judge Tena Campbell

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”), hereby alleges, avers, and complains of defendants Gretchen Howell and Leslie Howell (collectively, the “Defendants”) as follows:

INTRODUCTION

1. The Receivership Defendants have been operating a classic Ponzi scheme since at least 2008 by soliciting funds from investors in violation of federal commodities and securities laws and using the funds obtained to pay bogus returns to earlier investors.

2. In the course of the Ponzi scheme, the Receivership Defendants made numerous material misrepresentations and omissions, misappropriated investor and other funds, and committed fraud as a commodity pool operator.

3. On November 13, 2018, the Commodity Futures Trading Commission (“CFTC”) and the Utah Division of Securities (“DOS”) filed a Complaint against the Receivership Defendants in the United States District Court for the District of Utah, Civil No. 2:18-cv-00892-TC-DBP (the “CFTC Action”).¹

4. The CFTC and DOS allege that the Receivership Defendants fraudulently solicited over \$200 million from investors who they tricked into believing that the Receivership Defendants were pooling their investments for the purposes of trading physical silver (the “Silver Pool”).

5. The CFTC and DOS further allege that there was, in fact, no Silver Pool. Instead, the Receivership Defendants operated a massive Ponzi scheme whereby they used money from new investors to pay fraudulent returns to earlier investors.

6. On November 15, 2018, the Receiver was appointed by this Court to identify, collect, and preserve the assets of the Receivership Estate for the benefit of the estate’s creditors, including the hundreds of defrauded investors.

¹ The CFTC and DOS filed an amended complaint in the CFTC Action on December 6, 2018.

7. The instant action is brought by the Receiver as part of his continuing duty to: (1) recapture and return investor funds that were sent to the Receivership Defendants and then diverted in the course of their Ponzi scheme, and (2) avoid fraudulent transfers of property belonging to the Receivership Defendants.

PARTIES, JURISDICTION, AND VENUE

8. Jonathan O. Hafen was appointed November 15, 2018, as receiver for the assets of the Receivership Defendants in the CFTC Action.

9. Gretchen Howell is an individual recipient of funds from the Ponzi scheme. Gretchen Howell is married to Leslie Howell.

10. Leslie Howell is an individual recipient of funds from the Ponzi scheme. Leslie Howell is married to Gretchen Howell.

11. Upon information and belief, Defendants reside in the State of Arizona.

12. This Court has jurisdiction over the subject matter of this action because it is ancillary to the CFTC Action and the appointment of the Receiver by this Court.

13. Defendants have sufficient minimum contacts with Utah that personal jurisdiction is appropriate in this Court. Personal jurisdiction is also proper pursuant to 28 U.S.C. §§ 754, 1692.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 754.

THE RECEIVER, STANDING, AND STATUS OF CFTC ACTION

15. On November 15, 2018, in the CFTC Action, this Court entered an Order Granting Plaintiffs' Ex Parte Motion for Statutory Restraining Order, Appointment of Receiver, and Other Equitable Relief, appointing Mr. Hafen as Temporary Receiver.

16. On November 27, 2018, this Court entered an Order Appointing Receiver and Staying Litigation (the “Appointment Order”), appointing Mr. Hafen as permanent Receiver.

17. Pursuant to the Appointment Order, the Receiver was to take control of all property of the Receivership Estate, wherever located.

18. The Receiver was further authorized to initiate suit to recover any and all property of the Receivership Estate in the possession of third parties.

19. Since entry of the Appointment Order, preliminary injunctions have entered as to all Receivership Defendants.

THE FRAUDULENT PONZI SCHEME

20. For over thirty years, Gaylen Dean Rust (“Rust”) owned and operated RRC, a specialty coin shop in Salt Lake City, Utah, dealing in rare coins, precious metals, and other memorabilia.

21. From at least 2008, Rust also operated a massive Ponzi scheme through which he and others defrauded over 430 individuals out of over \$200 million.

22. The Receivership Defendants promoted the Silver Pool as an exclusive investment opportunity through which individual investors both contributed money and recruited their friends and family to invest as word spread about the investment returns Receivership Defendants were purportedly generating.

23. Receivership Defendants told investors and prospective investors that they were using the money contributed to the Silver Pool to purchase and store physical silver for investment.

24. Receivership Defendants claimed to use funds contributed to the Silver Pool to purchase physical silver, which was then stored at Brinks storage facilities in Salt Lake City, Utah and Los Angeles, California.

25. Receivership Defendants claimed that they generated profits for investors by selling physical silver held in the Silver Pool when market prices began to decline and, after such a decline, they used the profits from the sale to purchase a larger quantity of silver at a lower price.

26. Through this process, Receivership Defendants claimed they were able to consistently increase the number of ounces of silver held in the Silver Pool and, consequently, increase the value of each investor's share of the Silver Pool.

27. Receivership Defendants further represented that only fifty percent of the silver held in the Silver Pool was traded at any given time, meaning that there was always at least fifty percent of the silver physically held at Brinks facilities.

28. Receivership Defendants told investors that they were able to consistently sell silver at higher prices and purchase silver back at lower prices because they had advance knowledge of when market prices would decline. Specifically, Rust claimed that he received information from an analyst at a large global bank when the bank and other large market participants planned to sell large quantities of physical silver, thereby driving down prices.

29. Receivership Defendants told investors that they could generate high rates of return for the Silver Pool, often representing that they were able to generate consistent returns of twenty to twenty-five percent. Receivership Defendants told some investors that they had consistently generated returns as high as forty percent between 2013 and 2018.

30. Receivership Defendants represented that they had approximately \$80 million in physical silver stored at Brinks facilities in Utah and California.

31. But Receivership Defendants' representations were false. Receivership Defendants never traded silver in the manner they described to Silver Pool investors.

32. Receivership Defendants did not store significant quantities of silver at any Brinks facility.

33. Instead, Receivership Defendants misappropriated funds invested in the Silver Pool to make payments to other investors in the Silver Pool in the manner of a Ponzi scheme. Specifically, after receiving a new deposit into the Silver Pool, Receivership Defendants made payments to other investors from the same bank account without ever transferring funds to or from a trading account or otherwise purchasing silver or other precious metals.

34. Additionally, Receivership Defendants transferred money contributed by Silver Pool investors to other entities owned by Rust, including but not limited to R Legacy Entertainment, R Legacy Racing, and R Legacy Investments.

35. None of these other entities owned any trading or similar accounts used to buy or sell silver or other precious metals and none had a legitimate right to funds sourced from Silver Pool investors.

DEFENDANTS' INVESTMENT IN THE SILVER POOL

36. Starting in or around October 2008 and continuing on various occasions into 2015, Defendants made investments into the Silver Pool totaling almost \$1 million.

37. Commencing in or about 2013, Defendants received various distributions from Silver Pool accounts totaling approximately \$4.2 million.

38. Receivership Defendants transferred money to Defendants with the actual intent to hinder, delay, or defraud creditors.

FIRST CLAIM FOR RELIEF
(Fraudulent Transfer)

39. The Receiver hereby incorporates the foregoing paragraphs of this Complaint herein by this reference.

40. Receivership Defendants operated the Silver Pool as a Ponzi scheme.

41. Defendants received payments totaling approximately \$4.2 million from Receivership Defendants.

42. Because Receivership Defendants operated the Silver Pool as a Ponzi scheme, as a matter of law, the transfers to Defendants were made with the intent to hinder, delay, or defraud creditors.

43. In addition, the transfers to Defendants were made at a time when Receivership Defendants were insolvent, and Receivership Defendants did not receive reasonably equivalent value in exchange for the transfers.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)

44. The Receiver hereby incorporates the foregoing paragraphs of this Complaint herein by this reference.

45. Receivership Defendants conferred a benefit upon Defendants when Defendants received payments from the Silver Pool.

46. Defendants know and understand the benefit they received.

47. It would be unjust, under the circumstances, to allow Defendants to retain payments from the Silver Pool in excess of their individual contributions.

WHEREFORE, the Receiver prays as follows:

- A. That the Receiver be awarded damages against Defendant in an amount to be determined at trial, plus prejudgment and post judgment interest, costs and attorney fees;
- B. For such other relief as the Court may allow.

DATED this 24th day of October, 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Matthew J. Ball

Joseph M.R. Covey
Matthew J. Ball
Attorneys for the Receiver

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail:mboley@ck.law
pjohanson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">ANSWER</p> <p style="text-align: center;">AND</p> <p style="text-align: center;">JURY DEMAND</p> <p style="text-align: center;">Case No. 2:19-cv-00813</p> <p style="text-align: center;">Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Pursuant to Federal Rules of Civil Procedure 8(b), 8(c) and 12, defendants Gretchen A. Howell (“**Mrs. Howell**”) and Leslie M. Howell (“**Mr. Howell**”) (collectively, the “**Howells**” or the “**Defendants**”), through counsel, respond to the *Complaint*, dated October 24, 2019 (the “**Complaint**”), filed by plaintiff Jonathan O. Hafen, in his capacity as the Court-appointed Receiver (the “**Receiver**” or the “**Plaintiff**”), as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted against the Defendants (both and/or each of them) and should, therefore, be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

SECOND DEFENSE

In response to the individually numbered paragraphs of the Complaint, Defendants admits, deny and aver as follows:

INTRODUCTION

1. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 1 of the Complaint and, therefore, deny them.

2. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 2 of the Complaint and, therefore, deny them.

3. The Defendants admit the allegations of ¶ 3 of the Complaint, upon information and belief.

4. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 4 of the Complaint and, therefore, deny them. In any event, the fact that certain allegations were asserted in the CFTC Action is not relevant to this action.

5. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 5 of the Complaint and, therefore, deny them. In any event, the fact that certain allegations were asserted in the CFTC Action is not relevant to this action.

6. In response to the allegations of ¶ 6 of the Complaint, Defendants admit that the Receiver was appointed. Defendants deny all remaining allegations of ¶ 6 of the Complaint.

7. In response to the allegations of ¶ 7 of the Complaint, Defendants admit that the Receiver has brought this action. Defendants deny all remaining allegations of ¶ 7 of the Complaint.

PARTIES, JURISDICTION, AND VENUE

8. In response to the allegations of ¶ 8 of the Complaint, the Defendants admit the Receiver was appointed. Defendants deny all remaining allegations of ¶ 8 of the Complaint.

9. In response to the allegations of ¶ 9 of the Complaint, Defendants admit that Mrs. Howell is married to Mr. Howell. Defendants deny all remaining allegations of ¶ 9 of the Complaint.

10. In response to the allegations of ¶ 10 of the Complaint, Defendants admit that Mr. Howell married to Mrs. Howell. Defendants deny all remaining allegations of ¶ 10 of the Complaint.

11. The Defendants admit the allegations of ¶ 11 of the Complaint.

12. This paragraph of the Complaint states legal conclusions to which no response is required. To the extent ¶ 12 of the Complaint contains any factual averments, the Defendants deny them.

13. This paragraph of the Complaint states legal conclusions to which no response is required. To the extent ¶ 13 of the Complaint contains any factual averments, the Defendants deny them.

14. This paragraph of the Complaint states legal conclusions to which no response is required. To the extent ¶ 14 of the Complaint contains any factual averment, the Defendants deny them.

THE RECEIVER, STANDING, AND STATUS OF CFTC ACTION

15. The Defendants admit the allegations of ¶ 15 of the Complaint, upon information and belief.

16. The Defendants admit the allegations of ¶ 16 of the Complaint, upon information and belief.

17. In response to the allegations of ¶ 17 of the Complaint, Defendants admit that the order appointing the Receiver speaks for itself, and that its interpretation is a question of law. Defendants deny all remaining allegations of ¶ 17 of the Complaint.

18. In response to the allegations of ¶ 18 of the Complaint, Defendants admit that the order appointing the Receiver speaks for itself, and that its interpretation is a question of law. Defendants deny all remaining allegations of ¶ 18 of the Complaint.

19. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 19 of the Complaint and, therefore, deny them.

THE FRAUDULENT PONZI SCHEME

20. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 20 of the Complaint and, therefore, deny them.

21. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 21 of the Complaint and, therefore, deny them.

22. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 22 of the Complaint and, therefore, deny them.

23. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 23 of the Complaint and, therefore, deny them.

24. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 24 of the Complaint and, therefore, deny them.

25. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 25 of the Complaint and, therefore, deny them.

26. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 26 of the Complaint and, therefore, deny them.

27. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 27 of the Complaint and, therefore, deny them.

28. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 28 of the Complaint and, therefore, deny them.

29. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 29 of the Complaint and, therefore, deny them.

30. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 30 of the Complaint and, therefore, deny them.

31. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 31 of the Complaint and, therefore, deny them.

32. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 32 of the Complaint and, therefore, deny them.

33. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 33 of the Complaint and, therefore, deny them.

34. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 34 of the Complaint and, therefore, deny them.

35. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in ¶ 35 of the Complaint and, therefore, deny them.

DEFENDANTS' INVESTMENT IN THE SILVER POOL

36. The Defendants deny the allegations of ¶ 36 of the Complaint. Defendants did not jointly invest. Investments by Mr. Rust were separate from investments by Mrs. Rust. Upon information and belief, the respective investments made by Mr. Rust and Mrs. Rust were not in the “Silver Pool” as referenced in the Complaint. Upon information and belief, Defendants affirmatively aver that the respective, separate investments by Mr. Rust and Mrs. Rust were in separate accounts (different that the “Silver Pool”) and were not commingled.

37. The Defendants deny the allegations of ¶ 37 of the Complaint. Defendants did not jointly invest. Investments by Mr. Rust were separate from investments by Mrs. Rust. Distributions to Mr. Rust were made to him alone and received by him alone, and not made to or received by Mrs. Rust. Likewise, distributions to Mrs. Rust were made to her alone and received by her alone, and not made to or received by Mr. Rust. Upon information and belief, Defendants affirmatively aver that any money received by Mr. Rust or Mrs. Rust originated from separate accounts (different that the “Silver Pool”) and was not commingled.

38. The Defendants deny the averments contained in ¶ 38 of the Complaint, upon information and belief.

FIRST CLAIM FOR RELIEF
(Fraudulent Transfer)

39. In response to the allegations of ¶ 39 of the Complaint, the Defendants restate and incorporate herein by reference each and every admission, denial, averment and other response to the other numbered paragraphs of the Complaint.

40. The Defendants deny the allegations of ¶ 40 of the Complaint.

41. The Defendants deny the allegations of ¶ 41 of the Complaint. Defendants did not jointly invest. Investments by Mr. Rust were separate from investments by Mrs. Rust. Distributions to Mr. Rust were made to him alone and received by him alone, and not made to or received by Mrs. Rust. Likewise, distributions to Mrs. Rust were made to her alone and received by her alone, and not made to or received by Mr. Rust.

42. The Defendants deny the allegations of ¶ 42 of the Complaint.

43. The Defendants deny the allegations of ¶ 43 of the Complaint.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)

44. In response to the allegations of ¶ 44 of the Complaint, the Defendants restate and incorporate herein by reference each and every admission, denial, averment and other response to the other numbered paragraphs of the Complaint.

45. The Defendants deny the allegations of ¶ 45 of the Complaint.

46. The Defendants deny the allegations of ¶ 46 of the Complaint.

47. The Defendants deny the allegations of ¶ 47 of the Complaint.

Except to the extent expressly admitted above, Defendants deny any and all allegations, factual averments, legal assertions, requests for judgment, and prayers for relief set forth in the Complaint.

THIRD DEFENSE

The Defendants assert the defenses of license, accord and satisfaction, estoppel, laches, waiver, release, payment, statute of frauds, and/or failure of consideration.

FOURTH DEFENSE

The Plaintiff's claims against the Defendants are barred to the extent their claims are inconsistent with the provisions, terms, disclaimers, waivers, releases, or limitations of any contracts or agreements entered into by or for the benefit of the Plaintiff or its predecessors.

FIFTH DEFENSE

The Plaintiff's claims fail to the extent that they are barred by any applicable statute of limitations or statute of repose including, without limitation, (A) Utah Code Ann. §§ 25-6-10(1), 25-6-10(2), 25-6-305(1), 25-6-305(2), 78B-2-305(2), 78B-2-305(3), 78B-2-307(1)(a), 78B-2-307(2), 78B-2-307(3) and/or (B) A.R.S. §§ 12-541(5), 12-542(5), 12-543(1), 12-543(3), 12-542, 12-550, 44-1009(1), 44-1009(2).

SIXTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent Plaintiff's claims are barred by waiver, estoppel, laches, *in pari delicto*, or unclean hands. Without limitation, under the circumstances, Plaintiff's delay in filing its claims against Defendants was not reasonable, and Defendants have suffered (or will suffer) material prejudice as a consequence of the delay.

SEVENTH DEFENSE

The alleged transfers to Mr. Howell and Mrs. Howell, respectively, are not avoidable to the extent he or she (as the case may be) (a) took in good faith, (b) gave value, and/or (c) was a subsequent transferee.

EIGHTH DEFENSE

The alleged transfers to Mr. Howell and Mrs. Howell, respectively, are not avoidable to the extent the transferor was not, at the time of the transfer, a debtor of Plaintiff.

NINTH DEFENSE

To the extent the evidence may so establish, the Plaintiff lacks standing to assert some or all of the claims contained in the Complaint and/or are not the real party in interest with respect to such claims.

TENTH DEFENSE

To the extent the evidence may so establish, the Plaintiff's claims are barred by the failure to join one or more indispensable parties.

ELEVENTH DEFENSE

To the extent the evidence may so establish, the Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

TWELFTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent the Plaintiff's claims are barred pursuant to the terms of the Plaintiff's (or his predecessors) agreements, acknowledgments, representations, warranties, statements, acts, omissions, conduct and/or consents (both oral and written, both express and implied).

THIRTEENTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent that the Plaintiff's claims are barred by setoff, recoupment, payment, release and/or accord and satisfaction.

FOURTEENTH DEFENSE

The relief requested in the Complaint should be denied, in whole or part, based upon fraud, mistake, duress, breach of the duty of good faith and fair dealing, undue influence, procedural unconscionability, substantive unconscionability, public policy, illegality and/or other legal or equitable grounds.

FIFTEENTH DEFENSE

The claims for equitable relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff has an adequate remedy at law.

SIXTEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff's claims are barred by the statute of frauds, including Utah Code Ann. § 25-5-4(1)(b) and A.R.S. § 44-101(2).

SEVENTEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff's claims are barred by lack of or absence of injury or actual, realized damages.

EIGHTEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent a recovery by the Plaintiff would result in the unjust enrichment of, and a windfall to, the Plaintiff.

NINETEENTH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, to the extent that the Plaintiff's injuries, if any, were caused by the actions and/or omissions of persons other than the Defendants (including by the Plaintiff or his predecessors), and were not caused by the Defendants.

TWENTIETH DEFENSE

The relief requested in the Complaint should be denied and the Complaint should be dismissed with prejudice, in whole or part, because Plaintiff has failed to plead certain required allegations with particularity as required by applicable statute or rule of civil procedure. Without limitation, Plaintiff has failed to plead fraud and special damages, if any, with particularity, as required by Federal Rules of Civil Procedure 9(b) and 9(g). Answering Defendant reserves the right to file a motion requesting dismissal of the fraud claims, fraud allegations and/or special damages based upon failure to plead with particularity as well as failure to state a claim.

TWENTY-FIRST DEFENSE

The relief requested in the Complaint should be denied, in whole or part, and the Complaint should be dismissed with prejudice to the extent that Plaintiff's claims are, or become, barred by election of remedies.

TWENTY-SECOND DEFENSE

The Defendants incorporates by reference any and all additional defenses asserted by other defendants, crossclaim defendants, third-party defendants and/or counterclaim defendants.

TWENTY-SECOND DEFENSE

The Defendants reserves the right to assert additional defenses to the extent that such defenses become known as a result of discovery or otherwise.

TWENTY-THIRD DEFENSE

The Defendants reserve their right to prosecute any or all of the defenses described above as counterclaims.

PRAYER FOR RELIEF

WHEREFORE, the Defendants prays for relief as follows:

- A. that Plaintiff has and take nothing by its Complaint herein;
- B. that the Complaint be dismissed as against the Defendants, no cause of action;
- C. that the Defendants be awarded their costs, attorneys' fees and expenses to the extent permitted by applicable law; and
- D. for such other and further relief the court deems just and equitable.

JURY DEMAND

The Defendants, through counsel, hereby demands a trial by jury of all claims and defenses that are triable to a jury.

DATED this 26th day of November 2019.

COHNE KINGHORN, P.C.

/s/ Patrick E. Johnson

Matthew M. Boley
Patrick E. Johnson
Attorneys for defendant GRETCHEN A.
HOWELL and defendant LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on this the this 26th day of November 2019, I filed the foregoing ANSWER with the Clerk of the Court using the electronic filing system, which will send notice of electronic filing to parties of record.

/s/ Patrick E. Johnson

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

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

Plaintiff,

v.

GRETCHEN A. HOWELL, an individual;
and LESLIE M. HOWELL, an individual,

Defendants.

AMENDED SCHEDULING ORDER

Case No. 2:19-cv-00813-TC

District Judge Tena Campbell

Pursuant to the Stipulation and Joint Motion to Amend Scheduling Order (ECF No. 35) submitted by the parties herein pursuant to Rule 16(b)(4) of the *Federal Rules of Civil Procedure* and DUCivR 16-1(e), the Amended Scheduling Order entered herein on or about February 23, 2021 (ECF No. 34) is hereby amended as follows:

Event	Deadline
Close of fact discovery	June 30, 2021
Disclosure of experts (by party bearing burden of proof)	August 2, 2021
Disclosure of rebuttal experts (by party not bearing burden of proof)	August 16, 2021
Production of expert reports (by party bearing burden of proof)	August 31, 2021
Production of rebuttal expert reports (by party not bearing burden of proof)	September 30, 2021
Last day for expert discovery	October 29, 2021
Deadline for filing dispositive or potentially dispositive motions	November 30, 2021
Deadline for filing partial or complete motions to exclude expert testimony	January 3, 2022
Plaintiff's Rule 26(a)(3) pretrial disclosures	January 28, 2022

Defendants' Rule 26(a)(3) pretrial disclosures	February 11, 2022
Special attorney's conference and settlement conference	February 25, 2022
Final pretrial conference	1:00 pm, March 11, 2022
Two-day jury trial	8:30 am, April 7-8, 2022

All other deadlines established by and provisions of the Court's prior Scheduling Order shall remain in effect.

ENTERED this 27th day of April, 2021.

UNITED STATES DISTRICT COURT



Honorable Tena Campbell

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p>HOWELLS' RESPONSE OPPOSING RECEIVER'S MOTION FOR SUMMARY JUDGMENT [ORAL ARGUMENT REQUESTED]</p> <p style="text-align: center;">Case No. 2:19-cv-00813 Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Defendants GRETCHEN HOWELL (“**Gretchen**”) and LESLIE M. HOWELL (“**Les**”) (collectively, the “**Howells**”), through counsel, submit this response opposing *Receiver’s Motion for Summary Judgment*, filed November 30, 2021 [Docket No. 37] (the “**Receiver’s Motion**”).

In considering the Receiver’s Motion, the Court should review and consider the points and authorities in *Defendant Gretchen Howell’s Motion for Summary Judgment* [Docket No. 40] (“**Gretchen’s Motion**”) and *Defendant Leslie Howell’s Motion for Partial Summary Judgment* [Docket No. 41] (“**Les’ Motion**”), which are responsive to portions of the Receiver’s Motion.

I. INTRODUCTION AND RELIEF SOUGHT

The Receiver’s Motion should be denied. The Receiver has failed to present *admissible* evidence sufficient to satisfy his burden of proof to establish the existence of a Ponzi scheme. Further, genuine issues of material fact preclude summary judgment against the Howells

regarding both the value they each, respectively, delivered to Rust Rare Coin, Inc. (including all other receivership entities “RRC”) and Gaylen Rust (“Rust”) as well as the amount of the distributions that each of Gretchen and Les, respectively, received.

The Receiver’s Report could not come into evidence at trial, and the Receiver could not testify at trial – whether as a fact witness or as an expert. The Receiver is not a competent fact witness. He has no personal knowledge of any of the events, circumstances or transactions. His testimony is at best hearsay, and sometime double- and triple-hearsay. He may have supervised a number of individuals who investigated facts (a/k/a conducted discovery), and he may even have participated directly in that discovery to some extent. But that does not make him a competent fact witness. And neither his appointment as Receiver, nor any other specialized knowledge or training, make him an “expert” that is qualified to testify in this case.

In any event, the Receiver is not actually providing expert testimony. Rather, he is merely telling the Court what conclusions of law and inferences of fact it should draw based upon his (or his teams) subjective interpretation data and information that is neither admissible in this action nor part of the summary judgment record. In short, the Receiver’s “opinions” are nothing more than a closing argument made by counsel – and here without any admissible evidence in the record from which to argue.

Further, material disputes exist as to the material facts regarding the aggregate value that each of Gretchen and Les, respectively, delivered to RRC, as well as the amount of the distributions that each of them received from RRC.

Finally, the Receiver inappropriately attempts to conflate Gretchen and Les, as if Gretchen has no separate identity or legal existence from her husband. Contrary to the Receiver’s Motion, the undisputed facts demonstrate that Gretchen was a “loser” when it comes to her investments into and distributions from RRC. The Receiver’s claims against Gretchen must be dismissed with prejudice.

II. BACKGROUND

The collapse of RRC has devastated Les and Gretchen – both financially and psychologically. Neither of them is better off. Further, Gretchen was, and is, unequivocally a “loser”. Her contributions into RRC clearly exceeded the distributions she received.

Gretchen met Les in 1998, and they married in 1999. Gretchen and Les lived in Wellington, Utah for 16 years. Les worked for what is now PacifiCorp for over 35 years as a power plant operator, and Gretchen worked for the State of Utah as an assistant caseworker. They lived modestly, if not frugally, and had little to no debt. Although Gretchen and Les both contributed to household expenses, they maintained separate bank accounts and kept their finances largely separate.

Les began investing in RRC in October 2008, investing \$225,000 of his own cash with the understanding that his money was purchasing gold bullion. Later in the same year, Les made two more investments that totaled \$145,000.00. Les continued to invest – all of his cash and other valuables (including coins, bullion and jewelry) – until he had invested a principal amount aggregating \$1,222,003.77. In the course of making his investments, Les cashed out his retirement savings (incurring substantial tax liabilities) and poured all of his liquid assets and disposable funds into RRC. Les even sold RRC heirloom silverware, rings and jewelry, and then contributed the resulting proceeds to his RRC account.

In February 2009, Gretchen made her first investment with RRC. Gretchen delivered \$5,000.00 of her own cash to RRC to invest in silver. Over time, Gretchen invested a total of \$96,450.00, including funds she obtained by borrowing against and/or cashing out her 401(k)-retirement savings. Meanwhile, she took and received distributions of only \$22,000. In short, Gretchen put into RRC over \$74,000 more than she got out. She unequivocally is a “net loser.”

Rust separately accounted for Les’s and Gretchen’s separate investments, and similarly accounted for the distributions to Les separately from distributions to Gretchen.

Believing that his retirement savings held by RRC were safe and secure, Les took early retirement from PacifiCorp in May of 2013, leaving behind over 35 years of hard-won seniority. Les forfeited an average of \$100,000 per year of wages that he would have earned if he had not retired early – a loss of approximately \$900,000 to date.

With some of his earliest distributions from RRC (which at that time were substantially less than the value that he had given to RRC), Les purchased property in a somewhat remote area near Kingman, Arizona which he titled in his name and Gretchen's, as joint tenants. (The distributions directly traceable to the purchase of the property on which Les and Gretchen's home is constructed unequivocally are not avoidable.) Most of the subsequent distributions taken by Les were used to pay legitimate debts due to third parties, including debts due to contractors, materialmen and suppliers.

In 2015, Les moved to Arizona. Les personally worked full time on constructing improvements on the Kingman, Arizona property, investing approximately six thousand hours of his time (over 3+ years) performing skilled and unskilled construction services – literally contributing his blood and sweat to the value of the property.

Gretchen resigned from her position with the State of Utah (which she had held for 16 years) in 2015 and joined Les in Arizona. Because Les expected, and Gretchen intended, to pay her own share of the household expenses, Gretchen immediately obtained new employment working for Mohave County, Arizona.

Gretchen and Les continued to live a modest life, and did not live lavishly. When RRC was seized, Gretchen and Les's home in Kingman, Arizona was unfinished (and still is), and neither Les nor Gretchen had any meaningful savings. In short, Les put all of his eggs into the same basket (RRC), and did not diversify his investments.¹ Gretchen similarly was left bereft.

¹ Les had invested \$1,107,752.54 with RRC by April 1, 2013. If those funds had been invested conservatively in the S&P 500 in 2013, they would have grown to over \$4,251,259.16 today. See <https://www.officialdata.org/us/stocks/s-p-500/2013?amount=1107752.04&endYear=2022>. If the additional \$114,251.73 Les invested in 2014 and 2015 are included, Les would be sitting on a stock

Les is 63 years old and, as a result, his employment options are limited. Gretchen is currently employed by Mohave County and makes only approximately \$20 per hour. Les and Gretchen have been living month to month, just scraping by, since November 2018.

III. RESPONSE TO RECEIVER’S STATEMENT OF UNDISPUTED FACTS

The Howells respond to the “undisputed material facts” described in the Receiver’s Motion as follows. The Howells’ responses are supported by (A) the *Declaration of Gretchen Howell in Support of Motions for Summary Judgment* (“**Gretchen Decl.**”);² (B) the *Declaration of Leslie M. Howell in Support of Motions for Summary Judgment* (“**Les Decl.**”);³ (C) the *Supplemental Declaration of Leslie M. Howell in Opposition to the Receiver’s Motion for Summary Judgment* (“**Les Suppl. Decl.**”);⁴ (D) the transcript of the Deposition of Jonathan O. Hafen, June 24, 2021 (“**Hafen Depo.**”), and Exhibit 1 to the deposition;⁵ (E) the transcript of the Deposition of D. Ray Strong, July 14, 2021 (“**Strong Depo.**”), and Exhibits A through E to the deposition;⁶ (F) the transcript of the Gaylen Rust Deposition, June 23, 2021 (“**Rust Depo.**”), and Exhibits 1 and 2 to the deposition;⁷ (G) the change pages to the transcript of the deposition of Les;⁸ and (H) the change pages to the transcript of the deposition of Gretchen.⁹

1. The Receivership Defendants solicited funds from investors by representing that they would use such funds to trade physical silver, thereby generating returns for investors. [Hafen Report, at pp. 12-13, and Exhibit A thereto, ¶ 98.]

portfolio worth \$4,550,000 today. See <https://www.officialdata.org/us/stocks/s-p-500/2015?amount=114251.73&endYear=2022>.

² The Gretchen Decl. is submitted as Exhibit A to the *Appendix of Evidence* filed November 30, 2021 [Docket No. 43] (the “**Prior Appendix**”)

³ The Les Decl. is submitted as Exhibit B to the Prior Appendix.

⁴ The Les Suppl. Decl. is submitted as Exhibit C to the concurrently filed *Supplemental Appendix of Evidence in Opposition to Receiver’s Motion for Summary Judgment* (“Supplemental Appendix”).

⁵ The Hafen Depo. is submitted as Exhibit D to the concurrently filed Supplemental Appendix.

⁶ The Strong Depo. is submitted as Exhibit E to the concurrently filed Supplemental Appendix.

⁷ The Rust Depo. is submitted as Exhibit F to the concurrently filed Supplemental Appendix.

⁸ When the Receiver submitted the transcript of Les’s deposition in support of the Receiver’s Motion, the change pages were not included. The official change pages to Les’s deposition are submitted as Exhibit G to the concurrently filed Supplemental Appendix.

⁹ When the Receiver submitted the transcript of Gretchen’s deposition in support of the Receiver’s Motion, the change pages were not included. The official change pages to Gretchen’s deposition are submitted as Exhibit H to the concurrently filed Supplemental Appendix.

OBJECTION & RESPONSE: DISPUTED. The content or substance of the evidence submitted by the Receiver is not admissible.¹⁰ Specifically, the Receiver does not have personal knowledge of any of the events, circumstances or facts.¹¹ Neither does D. Ray Strong.¹² Further, to the extent his Receiver’s Report or Exhibit A thereto refers to excerpts from interviews of third-party witnesses, the excerpts are likewise inadmissible. At best, the statements are hearsay and no hearsay exception applies that would permit the hearsay statement to be offered as evidence at trial against the Howells. By way of example, the Receiver’s or Mr. Strong’s reference to alleged “admissions” by Gaylen Rust are not admissible at trial. Especially because when the Howells deposed Gaylen Rust in this action, he invoked the Fifth Amendment and refused to answer any questions.¹³ Where the Receiver has failed to come forward with admissible evidence, the Howells

¹⁰ The Court of Appeals for the Tenth Circuit has explained:

At the summary judgment stage, evidence need not be submitted “in a form that would be admissible at trial.” Nonetheless, “the content or substance of the evidence must be admissible.” Thus, for example, at summary judgment courts should disregard inadmissible hearsay statements *contained* in affidavits, as those statements could not be presented at trial in any form.... Rule 56(e) of the Federal Rules of Civil Procedure... requires that “[s]upporting and opposing affidavits shall be made on personal knowledge,” [and] Rule 602 of the Federal Rules of Evidence, ... requires that testifying witnesses “ha[ve] personal knowledge of the matter.” Under the personal knowledge standard, an affidavit is inadmissible if “ ‘the witness could not have actually perceived or observed that which he testifies to.’ ”

Argo v. Blue Cross & Blue Shield of Kansas, Inc., 452 F.3d 1193, 1199-1200 (10th Cir. 2006) (citations omitted).

¹¹ See Deposition of Jonathan O. Hafen, June 24, 2021 (“**Hafen Depo.**”), 10:17–11:14 (stating that Hafen’s knowledge of Receivership Defendants and statements Receivership Defendants made to investors based upon “interviews with various victims of the Ponzi scheme, the investigation by BRG, work done by my legal counsel, representations made by third parties with whom we interacted.”), 8:4-23 (stating that Hafen had no involvement in the Receivership Defendants until after November 2018 and all conclusions are based upon information learned after November 2018), 6:6–7:7 (stating Hafen’s conclusions regarding the Receivership Defendants’ financial and business operations are based upon what his accountants and attorneys told him), 12:15–13:16 (stating that all of Hafen’s conclusions with respect to the fact that the Receivership Defendants operated a Ponzi scheme in a case against another investor were based upon “interviews with various victims of the Ponzi scheme, the investigation by BRG, work done by my legal counsel, representations made by third parties with whom we interacted.”).

¹² See Deposition of D. Ray Strong, July 14, 2021, 8:1–9:10 (stating that Strong had no direct involvement in the Receivership Defendants accounting until after November 2018 and no control over bookkeeping entries prior to November 2018), 24:26:9-16 (stating that Strong does not know whether Receivership Defendants held precious metals that matched statements received by investors), 27:20–30:5 (stating that Strong is unable determine the amount of cash, inventory, silver bullion, gold bullion or other precious metals at a given point in time), 31:18-25 (stating that Strong does not know whether pre-silver pool statements received by investors were accurate), 33:25–35:15 & 53:11–54:24 (explaining that the accounting records were incomplete and Strong did not have access to bank statements prior to 2010); *passim* (stating that Strong had to reconstruct the accounting records and the Receivership Defendants used paper records and multiple accounting programs, which contained incomplete and inaccurate information, including QuickBooks, Rust Rare Coin Microsoft Dynamics RMS point-of-sale system and Acumatica software).

¹³ See Gaylen Rust Deposition, June 23, 2021, 7:15–10:9 (Mr. Rust invoking the Fifth Amendment and declining to answer approximately 150 questions posed to him).

are not required to come forward with admissible evidence to demonstrate the existence of a genuine issue for trial.¹⁴

2. Specifically, the Receivership Defendants represented that one-half of invested funds would be used to purchase physical silver, which would be stored at Brink’s facilities. According to the Receivership Defendants’ representations, the remaining one-half of the invested funds would be used to buy and sell physical silver on the commodities market, thereby increasing the investor’s silver holdings over time and generating returns on the investment. [Hafen Report, at p. 12, and Exhibit A thereto, ¶¶ 20, 98; Deposition of Leslie M. Howell (“L. Howell Depo.”), 22:12-23:8.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.¹⁵ Additionally, the statement is not consistent with the cited deposition testimony of Les.

3. In reality, investor funds were not used to purchase physical silver. [Hafen Report, at pp. 13-14, and Exhibit A thereto, ¶ 22.]

¹⁴ When the moving party also bears the burden of proof at trial, a more stringent summary judgment standard applies. Thus, if the moving party bears the burden of proof, to obtain summary judgment, it cannot force the nonmoving party to come forward with “specific facts showing there [is] a genuine issue for trial” merely by pointing to parts of the record that it believes illustrate the absence of a genuine issue of material fact. Instead, the moving party must establish, as a matter of law, all essential elements of the issue before the nonmoving party can be obligated to bring forward any specific facts alleged to rebut the movant's case.

Murphey v. Mid-Century Ins. Co., No. 13-2598-JAR-JPO, 2014 WL 2619073, at *2 (D. Kan. June 12, 2014).

¹⁵ Hafen Depo. 10:17–11:7. When asked about an almost identical statement made in a declaration submitted in support of summary judgment in another claw back action (*Hafen v. Oberhansly, et al.*, 2:19-cv-627), the following exchange occurred:

17 Q. Paragraph 18, "Receivership defendants raised
18 funds from investors by claiming that they would use those
19 funds to purchase and sell physical silver."
20 I guess the simple question is, how do you know
21 this? What information do you have available to you to make
22 this determination, or make this statement?
23 A. Well, interviews with various victims of the
24 Ponzi scheme, the investigation by BRG, work done by my legal
25 counsel, representations made by third parties with whom we
1 interacted. That's the basis of that conclusion.
2 Q. Would that apply to the remainder of this
3 paragraph?
4 A. Could you show -- Patrick, could you show me
5 the rest of 18, please?
6 Yes, that does apply to the entire
7 Paragraph 18.

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.¹⁶

4. Rust expressly admitted that new investor funds were used to pay returns to existing investors and to fund other businesses that were unrelated to the Silver Pool. [Strong Report, at pp. 13-15.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1 and footnotes 14 and 15. Additionally, the alleged admissions of a non-party, Rust, are not admissible against the Howells. Further, when the Howells deposed Rust in this action, he invoked the Fifth Amendment and refused to testify. Accordingly, no statements, admissions or sworn testimony from Rust is admissible in this action.

5. Although the Receivership Defendants represented that they managed over \$80 million of physical silver and that approximately one-half of that amount was stored at Brink’s locations in Salt Lake City and Los Angeles, there is no evidence that the Receivership Defendants ever stored significant amounts of physical silver at Brink’s or any other facility. [*Id.*, at pp. 9-10, 48.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

6. Rust expressly admitted that there was no significant amount of silver stored at Brinks at the time of the Receiver’s appointment. [Hafen Report, at p. 13, and Exhibit A thereto, ¶ 99.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their responses to Alleged “Fact” Statement Nos. 1 and 4.¹⁷

7. There is no evidence that the Receivership Defendants ever traded significant amounts of physical silver on a regular basis in the manner represented to investors. [Hafen Report, at p. 13, and Exhibit A thereto, ¶ 99.]

¹⁶ Hafen Depo. 11:9–11:15. When asked about an almost identical statement made in a declaration submitted in support of summary judgment in another claw back action (*Hafen v. Oberhansly, et al.*, 2:19-cv-627), the following exchange occurred:

9 [] Does the response to
10 Paragraph 18 -- and by response, I mean, you know, your
11 statement with respect to how you formed the conclusion or
12 made the statement Paragraph 18 in referring back to the
13 investigation the BRG did, the interviews and whatnot, would
14 that response apply to Paragraph 19 as well?
15 A. Yes.

¹⁷ Hafen Depo. 12:3-14 (stating that counsel for Hafen investigated silver holdings at Brinks facility and not Hafen).

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.¹⁸

8. Since 2008, the Receivership Defendants raised at least \$225 million from investors and paid out at least \$175 million to investors. [Strong Report, at pp. 6-7.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

9. Even as early as tax year 2008 (“TY2008”), the net operating income obtained through the Receivership Defendants’ limited business operations was insufficient to make payments to investors:

- a. The total net operating income of RRC—Rust’s only profit-generating business— in TY2008 was at best \$259,154.
- b. During TY2008, the Receivership Defendants took in at least \$3.2 million in payments from investors.
- c. During TY2008, the Receivership Defendants made payments to investors in excess of \$1.6 million.
- d. During TY2008, the Receivership Defendants also made payments to other RRC-affiliated businesses in excess of \$1.5 million.
- e. From at least TY2008, the income generated from operations of the Receivership Defendants was grossly insufficient to finance the substantial payments promised to investors. New funds contributed by unsuspecting investors provided the only funding source large enough to facilitate these payments.

[Strong Report, at pp. 6, 23-24.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

10. The payments made to investors since 2008 could only have been sourced from funds raised from other investors; there was no other source of funds from which these payments could have been made. [*Id.*, at p. 76.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

11. From 2008 through the appointment of the Receiver in 2018, the Receivership Defendants continued to take in ever-increasing funds from investors and to pay out exorbitant returns. Between January 1, 2018, and November 15, 2018, the Receivership Defendants paid more than \$37 million to investors. [*Id.*, Exhibit 25, p. EX194 (summarizing amounts raised from and paid to investors on a year-by-year basis).]

¹⁸ Hafen Depo. 12:15-13-16 (acknowledging that statements made in a declaration submitted in support of summary judgment in another claw back action (*Hafen v. Oberhansly, et al.*, 2:19-cv-627), which have been repeated almost verbatim here were based up “interviews with various victims of the Ponzi scheme, the investigation by BRG, work done by my legal counsel, representations made by third parties with whom we interacted” and, thus, not personal knowledge.

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

12. The Receivership Defendants represented that the Silver Pool was “risk free,” “no risk,” or “virtually risk free” because the investment was backed by physical silver, which would always have value. [Hafen Report, at p. 6, and Exhibit A thereto, ¶ 125.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1 and footnote 17.

13. The Receivership Defendants guaranteed “no loss of principle [sic]” invested. [Strong Report, Exhibit 8, p. EX104.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

14. The Receivership Defendants represented that the Silver Pool paid an average return of 20-25%. [*Id.*, at p. 44.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

15. The Receivership Defendants represented that returns between 2012 and 2017 exceeded 40%. [*Id.*, Exhibit 35, pp. EX235-36.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

16. The Receivership Defendants represented that the lowest return on the Silver Pool investment during a thirty-year period was 12%. [Strong Report, at p. 44.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

17. Investor statements provided by the Receivership Defendants reflected that every silver trade was profitable and that the Receivership Defendants had never lost money on a trade. [*Id.*, at p. 7.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement Nos. 1 and 4.

18. The Receivership Defendants promoted the Silver Pool as an exclusive program offered only to those investors Rust knew personally. [*Id.*, at pp. 58-59.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

19. The Receivership Defendants falsely claimed to have a trading relationship with HSBC, one of the world’s largest banks, and to employ a proprietary trading algorithm that allowed

the Receivership Defendants to beat the market. [Hafen Report, at p. 21, and Exhibit A thereto, ¶¶ 122, 129-30.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1 and footnote 17.

20. The Receivership Defendants paid exorbitant returns to investors for years, creating the false impression that profits were being earned and thereby attracting new investors to the scheme and convincing existing investors to increase their investment. [Strong Report, at p. 7.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

21. Investors have likely suffered in excess of \$100 million in net principal losses. [*Id.*, at p. 77.]

OBJECTION & RESPONSE: DISPUTED. The Howells incorporate herein in its entirety their response to Alleged “Fact” Statement No. 1.

22. Between February 6, 2009, and December 14, 2015, Gretchen Howell invested \$96,450.00 into the Silver Pool. [Howell Resp., at pp. 6-7, and HOWELL 00182-00191, 00195 (summary of the Howells’ investments and returns); L. Howell Depo., 34:14-25; Shaw Decl., ¶ 17.]

OBJECTION & RESPONSE: DISPUTED in part. Gretchen made investments with her own cash, and gave value, to RRC on the following days in the following amounts:

02/06/2009	\$5,000.00
10/15/2010	\$22,000.00
11/12/2014	\$27,000.00
12/14/2015	\$42,450.00
TOTAL	\$96,450.00

Gretchen Decl. ¶ 7. While Gretchen intended and understood that she was investing in silver, she did not understand or refer to her investment as “the Silver Pool.”

23. Between October 3, 2008, and June 2, 2015, Leslie Howell invested \$1,218,446.04 into the Silver Pool. [*Id.*; L. Howell Depo., 98:1-11 and Exh. 19; Shaw Decl., ¶ 12.³]

OBJECTION & RESPONSE: DISPUTED. Les made investments with his own cash and valuables, and gave value, to RRC on the following days in the following amounts:

10/3/2008	\$225,000.00
11/11/2008	\$95,000.00
12/5/2008	\$50,000.00
5/28/2010	\$32,634.00
4/23/2012	\$156,573.84
4/23/2012	\$82,723.38

4/23/2012	\$15,251.73
4/24/2012	\$122,440.26
4/24/2012	\$2,897.28
4/24/2012	\$8,000.00
10/27/2012	\$152,275.76
3/20/2013	\$10,000.00
3/29/2013	\$1,886.15
4/1/2013	\$99,985.26
4/1/2013	\$68,336.11
10/21/2014	\$27,000.00
11/11/2014	\$10,000.00
6/2/2015	\$62,000.00
TOTAL	\$1,222,003.77

Les Decl. ¶ 7; Les Suppl. Decl. ¶ 7.

24. The Howells’ combined investments into the Silver Pool totaled \$1,314,896.04. [Id.]

OBJECTION & RESPONSE: DISPUTED. Objection, the cited materials do not support the Receiver’s incorrect assertion that the Howells made “combined investments”. The Howells never made “combined” investments. Gretchen’s investments are, and always were, completely separate and independent from Les’s investments. Gretchen and Les were married in 1999. Gretchen Decl. ¶ 3; Les Decl. ¶ 3. Gretchen and Les came into their marriage with separate assets. Although Gretchen and Les both contributed to household expenses, they kept their finances largely separate. Gretchen Decl. ¶ 4; Les Decl. ¶ 4. From the beginning of their marriage, Gretchen and Les have maintained separate bank accounts. Gretchen Decl. ¶ 5; Les Decl. ¶ 5. Except when Les or Gretchen, respectively, contributed to pay monthly household expenses, Gretchen’s cash and earnings were deposited into different and separate accounts from the accounts in which Les’s cash and earnings were deposited and held. Gretchen Decl. ¶ 6; Les Decl. ¶ 6. Gretchen made investments with her own cash, and gave value, to RRC in the aggregate amount of \$96,450. Gretchen Decl. ¶ 7. Les made investments with his own cash and valuables, and gave value, to RRC in the aggregate amount of \$1,222,003.77. Les Decl. ¶ 7. If Gretchen’s and Les’s total investments are aggregated, the combined total is \$1,318,453.77.

25. From September 2013 through July 2018, Gretchen Howell received disbursements from the Receivership Defendants totaling \$22,000.00, such that she paid \$74,450.00 more to the Receivership Defendants than she received from them. [Howell Resp., at pp. 8-9, and HOWELL 00182-00191, 00195; Deposition of Gretchen A. Howell (“G. Howell Depo.”), 24:17-22; Shaw Decl., ¶¶ 18-19.]

RESPONSE: ADMITTED. CORRECT.

26. From May 2013 through November 2018, Leslie Howell received disbursements from the Receivership Defendants totaling \$4,511,000.00. [Howell Resp., at pp. 8-9, and

HOWELL 00182-00191, 00195; L. Howell Depo., 99:6-100:7 and Exh. 20 & 21; Shaw Decl., ¶ 13.]

OBJECTION & RESPONSE: DISPUTED. Les received payments in the form of checks, wires and one metal transaction (gold sets) from RRC totaling \$4,522,830.85. Les Suppl. Decl. ¶ 12. The Howells also object to the Shaw Decl. as cited by the Receiver. Mr. Shaw’s opinions are incorrect and unreliable. Presently, the Howell’s intend to file a motion to exclude Shaw from testifying as an expert.

27. The Howells’ combined disbursements totaled \$4,533,000.00. [*Id.*]

OBJECTION & RESPONSE: DISPUTED. Objection, the cited materials do not support the Receiver’s incorrect assertion that the Howells received “combined disbursements”. The Howells never made “combined” investments, and they did not receive combined disbursements. Gretchen’s investments are, and always were, completely separate and independent from Les’s investments. The Howell’s incorporate by reference their response to Fact Nos. 22-26. In addition, the Howell’s provide the following additional evidence. Gretchen did not receive payments or transfers from RRC aside from the \$22,000 specified above. Gretchen Decl. ¶ 9. Gretchen gave more money (or value) to RRC than she received from RRC. Gretchen Decl. ¶ 10. Payments from RRC to Gretchen were deposited into Gretchen’s separate bank account. Gretchen Decl. ¶ 11; Les Decl. ¶ 12. Payments from RRC to Les were deposited into Les’s separate bank account. Gretchen Decl. ¶ 12; Les Decl. ¶ 11. Aside from instances where Les provided or contributed funds to pay monthly household expenses, the cash in Les’s separate bank account(s), including any funds Les received from RRC, were not transferred to Gretchen. Gretchen Decl. ¶ 13; Les Decl. ¶ 13. Les alone (not Gretchen) determined and decided how funds in his bank account would be spent. Gretchen Decl. ¶ 14; Les Decl. ¶ 14.

28. In all, the Howells collectively received \$3,218,103.96 in excess of the contributions they made to the Silver Pool. [Howell Resp., at pp. 6-9, and HOWELL 00182-00191, 00195; Shaw Decl., ¶ 20.]

OBJECTION & RESPONSE: DISPUTED. Objection, the cited materials do not support the Receiver’s incorrect assertion that the Howells received funds collectively. The Howell’s incorporate by reference their response to Fact Nos. 22-27.

29. The Howells used the money they received from the Receivership Defendants to buy 92 acres of real property in Kingman, Arizona, and build a home thereon. *See* L. Howell Depo., 5:17-13:1; G. Howell Depo., 4:17-25.

OBJECTION & RESPONSE: DISPUTED. Objection, the cited materials do not support the Receiver’s incorrect statement of fact. Both Les and Gretchen testified that Les used his separate funds to purchase the real property, and that Les used his separate funds to pay debts to contractors and suppliers. Les gave value to RRC for the transfers he received from RRC in the amount of at least \$1,222,003.77, plus ten percent statutory interest from the dates of his contributions and investments. Les Decl. ¶ 20; Les Suppl. Decl. ¶ 4. The real property on which Les and Gretchen’s home is located was purchased with funds Les received before his total distributions from RRC exceeded \$1,222,003.77. Les Suppl. Decl. ¶ 8.

30. The Howells hold title to their Kingman property as joint tenants and have both lived in their Kingman home since January 1, 2018. *See* L. Howell Depo., 7:2-20, 12:11-19; G. Howell Depo., 24:6-8.

OBJECTION & RESPONSE: ADMITTED. CORRECT.

31. The Howells spent between three and four million dollars to construct their home in Kingman. *See* L. Howell Depo., 9:24-11:11.

OBJECTION & RESPONSE: DISPUTED. Objection, the cited materials do not support the Receiver’s incorrect statement of fact. The Howell’s incorporate by reference their responses to Fact Nos. 29 and 30.

IV. STATEMENT OF ADDITIONAL MATERIAL FACTS

1. Gretchen and Les were married in 1999. Gretchen Decl. ¶ 3; Les Decl. ¶ 3.

2. Gretchen and Les came into their marriage with separate assets. Although Gretchen and Les both contributed to household expenses, they kept their finances largely separate. Gretchen Decl. ¶ 4; Les Decl. ¶ 4.

3. From the beginning of their marriage, Gretchen and Les have maintained separate bank accounts. Gretchen Decl. ¶ 5; Les Decl. ¶ 5.

4. Except when Les or Gretchen, respectively, contributed to pay monthly household expenses, Gretchen’s cash and earnings were deposited into different and separate accounts from the accounts in which Les’s cash and earnings were deposited and held. Gretchen Decl. ¶ 6; Les Decl. ¶ 6.

5. Les made investments with his own cash, and gave value, to RRC on the following days in the following amounts:

10/3/2008	\$225,000.00
11/11/2008	\$95,000.00
12/5/2008	\$50,000.00
5/28/2010	\$32,634.00
4/23/2012	\$156,573.84
4/23/2012	\$82,723.38
4/23/2012	\$15,251.73
4/24/2012	\$122,440.26
4/24/2012	\$2,897.28
4/24/2012	\$8,000.00

10/27/2012	\$152,275.76
3/20/2013	\$10,000.00
3/29/2013	\$1,886.15
4/1/2013	\$99,985.26
4/1/2013	\$68,336.11
10/21/2014	\$27,000.00
11/11/2014	\$10,000.00
6/2/2015	\$62,000.00
TOTAL	\$1,222,003.77

Les Suppl Decl. ¶ 4.

6. Accordingly, Les gave value to RRC for the transfers he received from RRC in the amount of at least \$1,222,003.77, plus ten percent statutory interest from the dates of his contributions. Les Suppl Decl. ¶ 4.

7. Les had invested \$1,107,752.54 with RRC by April 1, 2013. If those funds had been invested conservatively in the S&P 500 in 2013, they would have grown to over \$4,251,259.16 today. See <https://www.officialdata.org/us/stocks/s-p-500/2013?amount=1107752.04&endYear=2022>. Les Suppl Decl. ¶ 5.

8. Les invested an additional \$114,251.73 with RRC in 2014 and 2015. If those funds had been invested conservatively in the S&P 500 in 2015, and added to the other funds similarly invested as described in the foregoing paragraph, Les would be sitting on a stock portfolio worth \$4,550,000 today. See <https://www.officialdata.org/us/stocks/s-p-500/2015?amount=114251.73&endYear=2022>. Les Suppl Decl. ¶ 6.

9. Believing that his retirement savings held by RRC were safe and secure, Les took early retirement from PacifiCorp in May of 2013, leaving behind over 35 years of hard-won seniority. Les forfeited an average of \$100,000 per year of wages that he would have earned if he had not retired early – a loss of approximately \$900,000 to date. Les Suppl Decl. ¶ 7.

10. With some of the earliest distributions Les received from RRC, Les purchased property in a somewhat remote area near Kingman, Arizona which he titled in his name and Gretchen’s, as joint tenants. The aggregate distributions that Les had received from RRC at the

time he purchased the real property were substantially less than the \$1,222,003.77 in value that he had given to RRC. Accordingly, the distributions directly traceable to the purchase of the property on which Les and Gretchen's home is constructed were in satisfaction of an antecedent debt that RRC owed Les, and for reasonably equivalent value. Les Suppl Decl. ¶ 8.

11. Most of the subsequent distributions that Les received from RRC were used to pay legitimate debts Les owed to third parties, including debts due to contractors, materialmen and suppliers. Les Suppl Decl. ¶ 9.

12. In 2015, Les moved to Arizona. Les personally worked full time on constructing improvements on the Kingman, Arizona property, investing approximately six thousand hours of his time (over 3+ years) performing skilled and unskilled construction services – literally contributing his blood and sweat to the value of the property. Les Suppl Decl. ¶ 10.

13. When RRC was seized, Gretchen and Les's home in Kingman, Arizona was unfinished (and still is), and neither Les nor Gretchen had any meaningful savings. Les Suppl Decl. ¶ 11.

14. Assuming arguendo that RRC was a Ponzi scheme,¹⁹ Les was not aware and had no reason to know that it was a Ponzi scheme. Les Decl. ¶ 15.

15. Assuming arguendo that RRC and Rust committed fraud, or made transfers (including transfers to Les) with actual intent to hinder, delay and defraud creditors,²⁰ Les was not aware and had no reason to know of RRC's fraud, or that any transfers to him may be fraudulent. Les Decl. ¶ 16.

16. To the extent the payments received by Les from RRC were derived from money RRC received from other investors, Les was not aware and had no reason to know that the payments were derived from other investors. Les Decl. ¶ 17.

¹⁹ Les does not stipulate or concede that RRC or Rust operated a Ponzi scheme. Plaintiff holds the burdens of proof and persuasion as to that matter.

²⁰ Les does not stipulate or concede that any of the transfers to her were made with actual intent to hinder, delay or defraud, or that they are otherwise voidable. Plaintiff holds the burdens of proof and persuasion as to those matters.

17. Les accepted the payments from RRC without knowledge of their voidability or potential voidability. Les Decl. ¶ 18.

18. Les is a good faith transferee with respect to all transfers that he received from RRC. Les Decl. ¶ 19.

19. Les gave value to RRC for the transfers he received from RRC – both individually and in the aggregate – in the amount of at least \$1,222,003.77, plus ten percent statutory interest from the dates of his respective contributions and investments. Les Decl. ¶ 20.

20. Gretchen gave more money (or value) to RRC than she received from RRC. Gretchen Decl. ¶ 10.

21. Payments from RRC to Gretchen were deposited into Gretchen’s separate bank account. Gretchen Decl. ¶ 11; Les Decl. ¶ 12.

22. Payments from RRC to Les were deposited into Les’s separate bank account. Gretchen Decl. ¶ 12; Les Decl. ¶ 11.

23. Aside from instances where Les provided or contributed funds to pay monthly household expenses, the cash in Les’s separate bank account(s), including any funds Les received from RRC, were not transferred to Gretchen. Gretchen Decl. ¶ 13; Les Decl. ¶ 13.

24. Les alone (not Gretchen) determined and decided how funds in his bank account would be spent. Gretchen Decl. ¶ 14; Les Decl. ¶ 14.

25. Assuming arguendo that RRC was a Ponzi scheme,²¹ Gretchen was not aware and had no reason to know that it was a Ponzi scheme. Gretchen Decl. ¶ 15.

26. Assuming arguendo that RRC and Rust committed fraud, or made transfers (including transfers to Gretchen) with actual intent to hinder, delay and defraud creditors,²²

²¹ Gretchen does not stipulate or concede that RRC or Rust operated a Ponzi scheme. Plaintiff holds the burdens of proof and persuasion as to that matter.

²² Gretchen does not stipulate or concede that any of the transfers to her were made with actual intent to hinder, delay or defraud, or that they are otherwise voidable. Plaintiff holds the burdens of proof and persuasion as to those matters.

Gretchen was not aware and had no reason to know of RRC’s fraud, or that any transfers to her may be fraudulent. Gretchen Decl. ¶ 16.

27. To the extent the payments received by Gretchen from RRC were derived from money RRC received from other investors, Gretchen was not aware and had no reason to know that the payments were derived from other investors. Gretchen Decl. ¶ 17.

28. Gretchen accepted the payments from RRC without knowledge of their voidability or potential voidability. Gretchen Decl. ¶ 18.

29. Gretchen is a good faith transferee with respect to all transfers that she received from RRC. Gretchen Decl. ¶ 19.

30. Gretchen gave value to RRC for each transfer she received from RRC – both individually and in the aggregate – in amounts exceeding the value of the asset(s) transferred to her. Gretchen Decl. ¶ 20.

31. The value Gretchen gave to RRC exceeds the value of all benefits that RRC conferred and that she received – both individually and in the aggregate. Gretchen Decl. ¶ 21.

V. ARGUMENT

A. Standard of Review.

The Court of Appeals for the Tenth Circuit has explained:

At the summary judgment stage, evidence need not be submitted “in a form that would be admissible at trial.” ... Nonetheless, “the content or substance of the evidence must be admissible.” Thus, for example, at summary judgment courts should disregard inadmissible hearsay statements contained in affidavits, as those statements could not be presented at trial in any form.... Rule 56(e) of the Federal Rules of Civil Procedure... requires that “[s]upporting and opposing affidavits shall be made on personal knowledge,” [and] Rule 602 of the Federal Rules of Evidence, ... requires that testifying witnesses “ha[ve] personal knowledge of the matter.” Under the personal knowledge standard, an affidavit is inadmissible if “ ‘the witness could not have actually perceived or observed that which he testifies to.’ ”

Argo v. Blue Cross & Blue Shield of Kansas, Inc., 452 F.3d 1193, 1199-1200 (10th Cir. 2006)

(citations omitted). When the moving party also bears the burden of proof at trial,

a more stringent summary judgment standard applies. Thus, if the moving party bears the burden of proof, to obtain summary judgment, it cannot force the

nonmoving party to come forward with “specific facts showing there [is] a genuine issue for trial” merely by pointing to parts of the record that it believes illustrate the absence of a genuine issue of material fact. Instead, the moving party must establish, as a matter of law, all essential elements of the issue before the nonmoving party can be obligated to bring forward any specific facts alleged to rebut the movant's case.

Murphey v. Mid-Century Ins. Co., No. 13-2598-JAR-JPO, 2014 WL 2619073, at *2 (D. Kan. June 12, 2014).

“[E]vidence offered [on] a motion for summary judgment must be made on personal knowledge ... set forth such facts as would be *admissible in evidence*, and ... show affirmatively that the [person who responded to the interrogatories] is competent to testify to the matters' set forth therein.” Gross v. Burggraf Const. Co., 53 F.3d 1531, 1541 (10th Cir. 1995) (emphasis in original) (citations omitted). “Hearsay testimony cannot be considered because ‘[a] third party's description of [a witness'] supposed testimony is not suitable grist for the summary judgment mill.’ ” Id.

B. The Court Should Not Consider the Receiver Report, the Shaw Declaration or the Strong Report in Deciding the Receiver’s Motion.

The Receiver, Shaw and Strong do not have personal knowledge of any relevant or material facts. Accordingly, they are not competent to testify as fact witnesses.

Further, their incompetence as witnesses is not cured by “dressing up” their inadmissible testimony in a report versus a sworn declaration, because their testimony also fails to satisfy the requirements of Federal Rules of Evidence 702 and 703.

District courts are tasked with the responsibility of serving as the gatekeepers of expert evidence and must decide which experts may testify before the jury and the permissible scope of that testimony.²³ While testimony on ultimate facts is authorized under Rule 704, ... testimony on ultimate questions of law is not favored.”²⁴ “The basis for this distinction is that testimony on the ultimate factual questions aids the jury in reaching a verdict; *testimony which articulates and*

²³ Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

²⁴ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988).

applies the relevant law, however, circumvents the jury’s decision-making function by telling it how to decide the case.”²⁵

“[A]n expert is not to opine on the weight of the facts or take a principal role in sifting, weighing and reciting them for the jury.”²⁶ Such impermissible testimony is not helpful.

“Only evidence can establish proof, only the jury can find facts and decide issues . . . and only the attorneys in the case can argue about the meaning of the evidence.”²⁷

The Receiver’s Report is exactly the sort of improper testimony rejected in Specht²⁸ and Rowe.²⁹ It is little more than a closing argument at the end of trial. The Receiver may be an expert trial lawyer, but that does not qualify him to testify, as an expert, regarding how he would sift and weigh information.

Further, to be admissible under Rule of Evidence 702, expert testimony must be reliable.³⁰ To determine whether an expert’s testimony is reliable requires “assess[ing] the reasoning and methodology underlying the expert’s opinion.”³¹ The testimony must be “based on sufficient facts or data.”³² It must be “the product of reliable principles and methods.”³³ And the expert must have “reliably applied the principles and methods to the facts of the case.”³⁴

Shaw’s expert testimony is not admissible for multiple reasons. First, it is not helpful or necessary. Second, Shaw did not apply reliable principles and methods to the facts.

²⁵ Id.
²⁶ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015).
²⁷ Id.
²⁸ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988).
²⁹ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015).
³⁰ Ralston v. Smith & Nephew Richards, Inc., 275 F.3d 965, 969 (10th Cir. 2001).
³¹ United States v. Rodriguez-Felix, 450 F.3d 1117, 1123 (10th Cir. 2006) (internal quotations omitted).
³² Fed. R. Evid. 702(b).
³³ Fed. R. Evid. 702(c).
³⁴ Fed. R. Evid. 702(d).

Strong’s testimony is not admissible because the facts and data that he relies upon are neither sufficient nor reliable. Further, his “opinions” cross the line from accounting to advocacy. Much of it is exactly the sort of improper testimony rejected in Specht³⁵ and Rowe,³⁶ as he argues the facts and attempts to instruct the Court how to sift and weigh the facts.

C. The Receiver Has Failed to Carry His Burden of Proof to Establish the Existence of a Ponzi Scheme in This Civil Action.

The Receiver has the burden of proof to establish that RRC was operating a Ponzi scheme before RRC’s transactions with the Howells can be questioned. The Receiver may have satisfied that burden in other actions. But he has not satisfied the burden here.

D. Gretchen Was a Good Faith Transferee, Because Gretchen Took All of the Payments She Received from RRC in Good Faith and (at Least) for a Reasonably Equivalent Value. Accordingly, the Receiver’s Claims Against Gretchen under the UVTA Must Be Dismissed with Prejudice.

The Receiver is not entitled to a judgment against Gretchen under the Uniform Voidable Transactions Act (the “UVTA”) because she is a good faith transferee and the value³⁷ she gave RRC exceeds the value of the transfers she received from RRC.

Under the UVTA, even a transfer that is made with actual intent to hinder, delay and defraud “is not voidable ... against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee” Utah Code Ann. § 25-6-304(1); Miller v. Wulf, 84 F. Supp. 3d 1266, 1274 (D. Utah). Further, in instances where the plaintiff carries its initial burden of proof to establish that a transfer is voidable, “notwithstanding the voidability of a transfer ..., a good faith transferee ... is entitled, to the extent of the value given the debtor ... to: (a) a lien on or a right to retain an interest in the asset transferred; ... or (c) a reduction in the amount of the liability on the judgment.” Utah Code

³⁵ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988).

³⁶ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015).

³⁷ Under the UVTA, and without limitation: “Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied.” Utah Code Ann. § 25-6-104(1).

Ann. § 25-6-304(4). Accordingly, it is well established that a plaintiff in a claw back action, like this one, cannot obtain judgment against a defendant whose contributions exceed the distributions received. In 1984, Utah Bankruptcy Judge John H. Allen held, and explained:

[E]ven if the Court were to assume that actual intent to defraud was present, defendants would be immune from the trustee's avoidance power [T]hese defendants took their payments for value and in good faith.

Regardless of how the debtors' transactions with the defendants are characterized, the debtors received a "reasonably equivalent value" from these defendants since the monthly payments when aggregated did not exceed the amounts deposited with the debtors. Therefore, the transfers cannot be avoided

[T]he Court concludes that the payments to investors ..., other than sums received in excess of their investments, are not avoidable The Court will grant summary judgment in favor of defendants

In re Independent Clearing House Co., 41 B.R. 985, 1007 (Bankr. D. Utah 1984)

The Receiver's own statement of undisputed facts establish that that Gretchen was a "net loser." Gretchen paid \$96,450.00 to RRC and received only \$22,000.00 in distributions from RRC. In the aggregate, Gretchen lost \$74,450.00, including all of her retirement savings. Gretchen received the payments from RRC in good faith. Gretchen did not have knowledge that RRC or Rust were engaged in fraud or that any transfers to her were made with actual intent to hinder, delay and defraud.³⁸

Gretchen accepted the payments from RRC without knowledge of their voidability or potential voidability and had no reason to know such facts.

Accordingly, the Court should enter a judgment in favor of Gretchen and against the Receiver dismissing with prejudice the Receiver's claims.

³⁸ Gretchen does not stipulate or concede that RRC or Rust operated a Ponzi scheme. Gretchen does not stipulate or concede that any of the transfers to her were made with actual intent to hinder, delay or defraud, or that they are otherwise voidable. Plaintiff holds the burdens of proof and persuasion as to those matters.

E. Gretchen Is Not Liable for Any Transfers RRC Made to Les.

- 1. Gretchen is not liable, under the UVTA or otherwise, for any of Les’s debts, including his potential³⁹ liability to plaintiff.

The Receiver improperly has attempted to conflate Les and Gretchen, and is seeking judgment against Gretchen for RRC’s alleged transfers to Les. But Gretchen is not liable to pay Les’s debts, and is not liable for any of the Receiver’s claims against Les. To the extent Les received transfers from RRC,⁴⁰ they were to Les alone. And Les alone is responsible.

Utah abolished the doctrine of coverture over 100 years ago. As explained by the Utah Supreme Court in Ellis v. Est. of Ellis, “In the revised statutes of 1898, the Utah Legislature enacted the Married Women’s Act ..., which enables wives to sue and be sued, enforce liabilities, and take actions to protect their rights” 2007 UT 77, ¶ 12, 169 P.3d 441, 443–44.

In short, Gretchen is not liable for the Receiver’s claims against Les, including any claim arising from or relating to payments, transfers or distributions Les may have received from RRC. And neither Gretchen nor her property may be attached to satisfy a judgment against Les. In this regard, Utah’s legislature unambiguously has declared:

30-2-5. Separate debts.

(1) Neither spouse is personally liable for the separate debts, obligations, or liabilities of the other: ...

(b) contracted or incurred during marriage, except family expenses as provided in Section 30-2-9

(2) The wages, earnings, property, rents, or other income of one spouse may not be reached by a creditor of the other spouse to satisfy a debt, obligation, or liability of the other spouse, as described under Subsection (1).

Utah Code Ann. § 30-2-5(2) (emphasis added). Accordingly, where a judgment is entered against the husband, the “wife’s property is not attachable for her husband’s separate debts.”

Peterson v. Peterson, 571 P.2d 1360, 1361-62 (Utah 1977); see also Taylor v. Patten, 2 Utah 2d

³⁹ Gretchen does not stipulate or concede that Les owes a debt, or has liability to, the Receiver. Plaintiff holds the burdens of proof and persuasion as to the claims against Les.

⁴⁰ Gretchen does not stipulate or concede that Les received transfers from RRC. Plaintiff holds the burdens of proof and persuasion as to that matter.

404, 407, 275 P.2d 696, 698 (1954) (Utah law “recognize[s] in both husband and wife every kind of right which they were deprived of by the common law fiction that they were one Neither husband nor wife is liable for the debts of the other whether contracted before or after marriage ..., nor are the wages, earnings or property or the rents or income therefrom liable for the debts of the other.”).

2. Gretchen is not the first transferee or an immediate or mediate transferee of transfers Les is alleged to have received from RRC.

Under the Uniform Voidable Transactions Act (the “UVTA”), a judgment may be entered against a “first transferee” or an “immediate or mediate transferee” of the first transferee. Utah Code Ann. § 25-6-304(2)(b) (2021). The first person to receive the funds is the “first transferee,” and the second person is the “immediate” transferee. *Cf. In re Tebbs*, 488 B.R. 729, 732 (D. Utah 2013) (applying Bankruptcy Code); *Big Sky Motors, Ltd. v. Bailey*, No. 299cv270B, 2000 WL 33672946, at *8 (D. Utah Feb. 4, 2000) (same). The transferees subsequent to the “immediate” transferee are “mediate” transferees.

Gretchen was not the “first transferee” or “immediate or mediate transferee” of the funds that RRC distributed, or transferred, to Les. Payments from RRC to Les were deposited into Les’s separate bank account. Moreover, Les alone (not Gretchen), determined and decided how funds in his bank account (including any cash transferred from RRC) were used or spent.

Accordingly, Gretchen cannot be held liable under the UVTA for any transfers that RRC made to Les.

F. Payments from RRC to Les Did Not Confer a Direct Benefit on Gretchen. And the Payments Gretchen Received from RRC Were Less Than Her Investments or Contributions. Accordingly, the Receiver’s Unjust Enrichment Claim Against Gretchen Must Be Dismissed with Prejudice.

The receiver’s unjust enrichment claims against Gretchen depend upon the false, and legally erroneous, premise that a benefit directly conferred on one spouse is a benefit received by the other spouse. RRC did not confer a benefit on Gretchen in excess of her payments to RRC. And Gretchen she did not receive a benefit from RRC that it would be inequitable for her to

retain. Gretchen paid \$96,450 into RRC, and received only \$22,000 back. In short, Gretchen received less from RRC than gave to RRC. Accordingly, the Receiver's unjust enrichment claims against Gretchen must fail.

To obtain a judgment against Gretchen for unjust enrichment, the Receiver must prove three elements: "(1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value." Hess v. Johnston, 2007 UT App 213, ¶ 20, 163 P.3d 747 (citations omitted). Further, "[a] defendant is liable under the unjust enrichment prong of quantum meruit *only if he or she received a **direct** benefit* from the plaintiff. In other words, unjust enrichment does not result if the defendant has received only an incidental benefit," or an indirect benefit. Jones v. Mackey Price Thompson & Ostler, 2015 UT 60, ¶ 65, 355 P.3d 1000 (emphasis added) (second alteration in original) (citation omitted); see also Emergency Physicians Integrated Care v. Salt Lake Cty., 2007 UT 72, ¶ 26, 167 P.3d 1080 ("unjust enrichment does not result if the defendant has received only an incidental benefit"). Instead, unjust enrichment requires the defendant to receive a direct benefit from the plaintiff. See Jones, 2015 UT 60, ¶ 68 ("We uphold the dismissal because there was no genuine issue of material fact regarding ... whether [defendants] directly benefitted The benefit must be direct, not incidental.").

Accordingly, RRC's transfers or distributions to Les cannot give rise to liability in Gretchen. Les, and Les alone, received the direct benefit of any transfers RRC made to him. Gretchen has a separate legal existence from Les.

Unless the Court erroneously accepts the statutorily abolished fiction that husband and wife are one, the Receiver's claims against Gretchen must be dismissed with prejudice.

G. Les Was a Creditor of RRC Until Les’s Gross Distributions from RRC Exceeded Les’s Gross Deliveries to RRC, Plus Ten Percent Statutory Interest, and All Such Payments to Les Were in Satisfaction of an Antecedent Debt.

Les was a creditor of RRC on account of his delivery of cash and other valuables to RRC in the aggregate principal amount of at least \$1,222,003.77. Accordingly, RRC owed Les an antecedent debt in the amount of at least \$1,222,003.77 plus ten percent statutory interest from the date(s) of his investments. When Les began making withdrawals from the RRC investment account, all of the transfers to him were in satisfaction of an antecedent debt until he had received in excess of \$1,222,003.77 plus ten percent statutory interest.

Under the UVTA, even a transfer that is made with actual intent to hinder, delay and defraud “is not voidable ... against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee” Utah Code Ann. § 25-6-304(1); Miller v. Wulf, 84 F. Supp. 3d 1266, 1274 (D. Utah).

Further, under the UVTA, a “creditor” is a “person that has a claim,” and a “debtor” is “a person that is liable on a claim.” Utah Code Ann. § 25-6-102(4) & (6) (2021). A “claim,” in turn, “means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” Utah Code Ann. § 25-6-102(3). Distributions or payments on account of an antecedent debt constitute “value” under the UVTA. Utah Code Ann. § 25-6-104(1) (2021) (“Value is given [by a creditor] for a transfer . . . if property is transferred or an antecedent debt [of the debtor] is . . . satisfied.”)

The undisputed facts establish that Les delivered cash, bullion and other valuables to RRC totaling at least \$1,222,003.77. Thus, Les became or creditor of RRC, and RRC owed an antecedent debt to Les, in the amount of \$1,222,003.77 plus ten percent statutory interest.

In short, all transfers from RRC to Les were in satisfaction of an antecedent debt, and for reasonably equivalent value, until Les’s gross receipts from RRC exceeded Les’s gross payments to RRC, plus interest. Indeed, under Utah statutes, RRC’s debt to Les accrued interest at 10%

per annum unless and until repaid. Utah Code Ann. § 15-1-1 (2021) (“Unless the parties to a lawful written, verbal, or implied contract expressly specify a different rate of interest, the legal rate of interest for the contract, including a contract for services, a loan or forbearance of any money, goods, or services, or a claim for breach of contract is 10% per annum.”).

Because Les was a creditor of RRC, the distributions Les received from RRC (that is, until the distributions Les received exceeded his contributions) were on account of an antecedent debt owed by RRC to Les. Les gave value for all distributions or transfers that he received from RRC at least until said antecedent debt was satisfied.

H. Les Was a Good Faith Transferee of All Payments that He Received from RRC, and Les Is Entitled to a Reduction in the Amount of His Liability in the Amount of His Aggregate Deliveries to RRC.

Under the UVTA, even where the plaintiff carries its initial burden of proof to establish that a transfer is voidable, “notwithstanding the voidability of a transfer ..., a good faith transferee ... is entitled, to the extent of the value given the debtor ... to: (a) a lien on or a right to retain an interest in the asset transferred; ... or (c) a reduction in the amount of the liability on the judgment.” Utah Code Ann. § 25-6-304(4). Accordingly, it is well established that a plaintiff in a claw back action, like this one, cannot obtain judgment against a defendant for distributions equal to or less than the defendant’s aggregate contributions. In 1984, Utah Bankruptcy Judge John H. Allen held, and explained:

[E]ven if the Court were to assume that actual intent to defraud was present, defendants would be immune from the trustee's avoidance power [T]hese defendants took their payments for value and in good faith.

Regardless of how the debtors' transactions with the defendants are characterized, the debtors received a “reasonably equivalent value” from these defendants

[T]he Court concludes that the payments to investors ..., other than sums received in excess of their investments, are not avoidable The Court will grant summary judgment in favor of defendants

In re Independent Clearing House Co., 41 B.R. 985, 1007 (Bankr. D. Utah 1984)

Les gave value to RRC in the aggregate amount of at least \$1,222,003.77.⁴¹ Les received the payments from RRC in good faith. He did not have knowledge that RRC or Rust were engaged in fraud or that any transfers to him were made with actual intent to hinder, delay and defraud.⁴² Les accepted the payments from RRC without knowledge of their voidability or potential voidability and had no reason to know such facts.

Accordingly, the Court should deny the Receiver's motion for entry of judgment against Les, and should instead grant judgment to Les on his cross-motion. Without limitation, Les is entitled to a reduction in the amount of his liability in the amount of at least \$1,222,003.77 plus ten percent statutory interests thereon, notwithstanding the potential voidability of any transfers from RRC to Les.

I. Les Was Not Unjustly Enriched by Any Distributions that He Received from RRC unless and until the Distributions to Him Exceeded \$1,222,003.77, plus 10% Statutory Interest. All Such Payments to Les Were in Satisfaction of an Antecedent Debt.

The receiver's unjust enrichment claims against Les improperly ignore the \$1,222,003.77 of cash and other valuables that Les gave to RRC, and fail to account for the antecedent debt that RRC owed Les (*i.e.*, \$1,222,003.77 in principal plus 10% statutory interest). Payments by a debtor to a creditor in satisfaction of an antecedent debt do not unjustly enrich the creditor.

To obtain a judgment against Les for unjust enrichment, the Receiver must prove three elements: "(1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention of the benefit under such

⁴¹ The Receiver may dispute \$15,251.73 of the value that Les gave to RRC by reason of (a) non-delivery of a portion of the gold coins due to Les in exchange, or trade, for the foreign platinum and gold coins that Les delivered to RRC on May 1, 2009, and (b) RRC's conversion of the undelivered gold coins into Les's RRC investment account as of April 23, 2012. *See* Les Decl. ¶ 6; *see also* footnote 7, *supra*. The Receiver has interpreted Rust's notes relating to the May 1, 2009 exchange, and the subsequent conversion of the undelivered coins, incorrectly. In any event, the Receiver's asserted absence of evidence is insufficient to satisfy his burden in opposition to a motion for summary judgment. Fed. R. Civ. P. 56(c)(1)(A).

⁴² Les does not stipulate or concede that RRC or Rust operated a Ponzi scheme. Les does not stipulate or concede that any of the transfers to him were made with actual intent to hinder, delay or defraud, or that they are otherwise voidable. Plaintiff holds the burdens of proof and persuasion as to those matters.

circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value.” Hess v. Johnston, 2007 UT App 213, ¶ 20, 163 P.3d 747 (citations omitted).

Accordingly, RRC’s transfers or distributions to Les in payment or satisfaction of RRC’s antecedent debt to Les cannot give rise to liability in Les. In short, the Court should deny the Receiver’s Motion.

VI. CONCLUSION

The Receiver’s Motion should be denied for all of the foregoing reasons. The Receiver has not presented admissible evidence in this action to establish that RRC was operating a Ponzi scheme and that the distributions to the Howells were part of it. Even if he had, the Receiver is not entitled to judgment against Gretchen, because she is a net loser. Finally, the Receiver’s Motion should be denied as against Les because disputed issues of material facts exist.

WHEREFORE, the Howells respectfully pray that the Court will DENY the Receiver’s Motion, and that it will grant such other and further relief as is just and equitable.

DATED this 31st day of January 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
*Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL*

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January 2022, I filed the foregoing **HOWELLS' RESPONSE OPPOSING RECEIVER'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to counsel of record in the above-captioned civil action, including without limitation:

Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 S 200 E STE 700
SALT LAKE CITY, UT 84111

E-mail: mball@parrbrown.com

Attorneys for plaintiff JONATHAN O. HAFEN

/s/ Krys Lopez

Matthew M. Boley (8536)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
E-mail: mboley@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">SUPPLEMENTAL APPENDIX OF EVIDENCE IN OPPOSITION TO RECEIVER’S MOTION FOR SUMMARY JUDGMENT</p> <p style="text-align: center;">Case No. 2:19-cv-00813</p> <p style="text-align: center;">Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Pursuant to DUCivR 56-1(c)(6), defendants GRETCHEN HOWELL and LESLIE M. HOWELL through counsel, hereby submit this supplemental appendix of evidence in connection with their concurrently filed *Howells’ Response Opposing Receiver’s Motion for Summary Judgment* (the “**Howells’ Opposition**”). Exhibits A and B referenced in the Howells’ Opposition are appended to the *Appendix of Evidence* filed November 30, 2021 [Docket No. 43].

EXHIBIT C – *Supplemental Declaration of Leslie M. Howell in Opposition to Receiver’s Summary Judgment Motion.*

EXHIBIT D – *Deposition Jonathan O. Hafen, taken on June 24, 2021*

EXHIBIT E – *Deposition of Ray Strong, CPA, CFE, CIRA taken on July 14, 2021*

EXHIBIT F – *Deposition of Gaylen D. Rust taken on June 23, 2021*

EXHIBIT G – *Official Change Page to Leslie M. Howell Deposition*

EXHIBIT H – *Official Change Page to Gretchen Anne Howell Deposition.*

DATED this 31st day of January, 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
Attorneys for defendants GRETCHEN A.
HOWELL and LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2022, I filed the foregoing **SUPPLEMENTAL APPENDIX OF EVIDENCE IN OPPOSITION TO RECEIVER’S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to counsel of record in the above-captioned civil action, including without limitation:

Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 S 200 E STE 700
SALT LAKE CITY, UT 84111

E-mail: mball@parrbrown.com

Attorneys for plaintiff JONATHAN O. HAFEN

/s/ Krys Lopez

EXHIBIT C

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">DECLARATION OF LESLIE M. HOWELL IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT</p> <p style="text-align: center;">Case No. 2:19-cv-00813</p> <p style="text-align: center;">Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

I, LESLIE M. HOWELL (“I”, “me”, “Les”), depose and state as follows:

1. I am an individual above the age of 21, and make this declaration based on my own personal knowledge.
2. I am competent to testify to the matters set forth herein. If called as a witness, I could and would testify from my own personal knowledge regarding the matters set forth in this Declaration.
3. The following testimony is in supplement to, or clarification of, my previously filed declaration.
4. I made investments with my own cash, and gave value, to Rust Rare Coin, Inc. (including all other receivership entities “RRC”) on the following days in the following amounts:

10/3/2008	\$225,000.00
11/11/2008	\$95,000.00
12/5/2008	\$50,000.00
5/28/2010	\$32,634.00
4/23/2012	\$156,573.84
4/23/2012	\$82,723.38
4/23/2012	\$15,251.73
4/24/2012	\$122,440.26
4/24/2012	\$2,897.28
4/24/2012	\$8,000.00
10/27/2012	\$152,275.76
3/20/2013	\$10,000.00
3/29/2013	\$1,886.15
4/1/2013	\$99,985.26
4/1/2013	\$68,336.11
10/21/2014	\$27,000.00
11/11/2014	\$10,000.00
6/2/2015	\$62,000.00
TOTAL	\$1,222,003.77

I gave value to RRC for the transfers I received from RRC in the amount of at least \$1,222,003.77, plus ten percent statutory interest from the dates of my contributions.

5. I had invested \$1,107,752.54 with RRC by April 1, 2013. If those funds had been invested conservatively in the S&P 500 in 2013, they would have grown to over \$4,251,259.16 today. See <https://www.officialdata.org/us/stocks/s-p-500/2013?amount=1107752.04&endYear=2022..>

6. I invested an additional \$114,251.73 with RRC in 2014 and 2015. If those funds had been invested conservatively in the S&P 500 in 2015, and added to the other funds similarly invested as described in the foregoing paragraph, I would be sitting on a stock portfolio worth \$4,550,000 today. See <https://www.officialdata.org/us/stocks/s-p-500/2015?amount=114251.73&endYear=2022.>

7. Believing that my retirement savings held by RRC were safe and secure, I took early retirement from PacifiCorp in May of 2013, leaving behind over 35 years of hard-won seniority. I forfeited an average of \$100,000 per year of wages that I would have earned if I had not retired early – a loss of approximately \$900,000 to date.

8. With some of the earliest distributions that I received from RRC, I purchased property in a somewhat remote area near Kingman, Arizona which I titled in my name and Gretchen’s, as joint tenants. The aggregate distributions that I had received from RRC at the time I purchased the real property were substantially less than the \$1,222,003.77 in value that I had given to RRC. Accordingly, the distributions directly traceable to the purchase of the property on which my and Gretchen’s home is constructed were in satisfaction of the antecedent debt that RRC owed me, and for reasonably equivalent value.

9. Most of the subsequent distributions that I received from RRC were used to pay legitimate debts that I owed to third parties, including debts due to contractors, materialmen and suppliers.

10. In 2015, I moved to Arizona. I personally worked full time on constructing improvements on the Kingman, Arizona property, investing approximately six thousand hours of my time (over 3+ years) performing skilled and unskilled construction services – literally contributing my blood and sweat to the value of the property.

11. When RRC was seized, Gretchen and my home in Kingman, Arizona was unfinished (and still is), and neither I nor Gretchen had any meaningful savings.

12. From the time that I first received a payment or distribution from RRC until the time that RRC was seized and all distributions ceased, I received payments in the form of checks, wires and one metal transaction (gold sets) from RRC totaling \$4,522,830.85.

In accordance with 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED ON this 31st day of January, 2022.

DocuSigned by:
Leslie M. Howell
60B6389FB0DD487...
LESLIE M. HOWELL

EXHIBIT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

* * *

JONATHAN O. HAFEN, in his :
capacity as Court-appointed : Remote Videoconference
Receiver, : Deposition of:

Plaintiff, : JONATHAN O. HAFEN

vs.

GRETCHEN E. HOWELL, an :
individual; and LESLIE M. :
HOWELL, an individual, : Case No. 2:19-cv-00813

Defendants. : Honorable Tena Campbell

* * *

June 24, 2021
10:07 a.m.

Witness located at:
Parr, Brown, Gee & Loveless
101 South 200 East,
Suite 700
Salt Lake City, Utah

* * *

Jamie R. Brey
- Registered Professional Reporter -

<p>1 APPEARANCES</p> <p>2 For the Plaintiff: MATTHEW J. BALL</p> <p>3 CYNTHIA D. LOVE</p> <p>4 PARR BROWN GEE & LOVELESS</p> <p>5 Attorneys at Law</p> <p>6 101 South 200 East</p> <p>7 Salt Lake City, Utah 84111</p> <p>8 (801) 257-7974</p> <p>9 mball@parrbrown.com</p> <p>10 clove@parrbrown.com</p> <p>11</p> <p>12 For the Defendants: PATRICK E. JOHNSON</p> <p>13 COHNE KINGHORN</p> <p>14 Attorneys at Law</p> <p>15 111 East Broadway, 11th Floor</p> <p>16 Salt Lake City, Utah 84111</p> <p>17 (801) 363-4300</p> <p>18 pjohanson@ck.law</p> <p>19</p> <p>20 ***</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Remote Videoconference</p> <p>2 June 24, 2021</p> <p>3 10:07 a.m.</p> <p>4 PROCEEDINGS</p> <p>5 JONATHAN O. HAFEN,</p> <p>6 called as a witness, being first duly sworn, was examined</p> <p>7 and testified as follows:</p> <p>8</p> <p>9 EXAMINATION</p> <p>10</p> <p>11 BY MR. JOHNSON:</p> <p>12 Q. I guess I'll get started here. Mr. Hafen,</p> <p>13 would you mind stating your name for the record, please?</p> <p>14 A. Sure. Jonathan Hafen.</p> <p>15 Q. That's H-a-f-e-n on the last name?</p> <p>16 A. That's right.</p> <p>17 Q. So today's deposition is being conducted by</p> <p>18 Zoom, and I just want to make sure that we're all on board</p> <p>19 with the procedure today. Do you and your counsel consent to</p> <p>20 proceeding today by Zoom?</p> <p>21 A. Yes.</p> <p>22 Q. I'm just going to share my screen real quick.</p> <p>23 I have pulled up a document. Can you see that</p> <p>24 document? Do you need me to zoom in?</p> <p>25 A. I can't see the document.</p>
Page 2	Page 4
<p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 JONATHAN O. HAFEN</p> <p>4 Examination by Mr. Johnson 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 NUMBER DESCRIPTION PAGE</p> <p>11 Exhibit 1 Declaration of Jonathan Hafen 5</p> <p>12</p> <p>13</p> <p>14</p> <p>15 ***</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Q. Are you sitting in front of, like, a laptop?</p> <p>2 A. Yes, I've got my laptop in front of me. I also</p> <p>3 have an external monitor that makes the document a little bit</p> <p>4 easier to read.</p> <p>5 Q. Okay. So you can see the document now?</p> <p>6 A. Yes.</p> <p>7 Q. And it's been marked as Exhibit 1. Do you</p> <p>8 recognize this document?</p> <p>9 A. I do.</p> <p>10 Q. Is it the declaration that you signed in</p> <p>11 connection with the motion for summary judgment in the -- I</p> <p>12 think it's generally referred as the Oberhansly case?</p> <p>13 A. I haven't been through the document because</p> <p>14 it's not in front of me. But based on what you've put in</p> <p>15 front of me, that appears to be the first page of a</p> <p>16 declaration that I submitted in conjunction with a motion for</p> <p>17 summary judgment.</p> <p>18 Q. Okay. Thank you. I'm just going to go through</p> <p>19 some of the statements here and ask you a little bit about</p> <p>20 them. I'm scrolling down to -- this is Page 3 of 293, and</p> <p>21 just for the record, I'll note the full declaration was 293</p> <p>22 pages. I've only -- Exhibit 1 only consists of the first</p> <p>23 nine pages, which are -- which does not include all the</p> <p>24 various exhibits that were attached. If it's necessary to --</p> <p>25 if you'd like to refer to some of those, I can pull that up</p>
Page 3	Page 5

1 on my screen.
2 So I'd like to draw your attention to statement
3 of the Paragraph No. 7. Can you read that? Are you able to
4 read it? Is it large enough on your screen?
5 A. Yes.
6 Q. Okay. And it says, "Since my appointment, I
7 have engaged in an investigation of the Receivership
8 Defendants' financial and business operations and, at my
9 direction, BRG have conducted an analysis of whether
10 Receivership Defendants operated a Ponzi investment scheme."
11 Could you generally describe to me what you --
12 you know, what you've personally done in your investigation
13 of the receivership defendants' financial and business
14 operations?
15 A. Yes. Primarily I've retained experts. BRG, as
16 you can see from this paragraph, is an entity that I retained
17 for purposes of conducting a forensic analysis and making a
18 determination recommendation to me with respect to whether or
19 not what was being operated by Gaylen Rust was, in fact, a
20 Ponzi scheme.
21 I also talked to various others, including
22 counsel, and directed my counsel also to undertake an
23 investigation in conjunction with BRG to advise me with
24 respect to whether my teams, I guess I can call them, reached
25 the conclusion that, in fact, what Gaylen Rust was doing was

Page 6

1 undertaking a Ponzi scheme.
2 Q. And I obviously don't want to get into any type
3 of privileged communication, but just big-picture-wise, are
4 your conclusions and -- are your conclusions generally based
5 upon the -- what your teams, as you said, have reported to
6 you?
7 A. Yes.
8 Q. I'll draw your attention to Paragraph 9. It
9 says, "My counsel at Parr Brown have secured and reviewed
10 hundreds of thousands of documents belonging to Receivership
11 Defendants, including correspondence and other business
12 records."
13 Just, again, so the record is clear, I think
14 we're understanding -- and I can scroll back up -- but
15 receivership defendants is defined as Rust Rare Coin, Inc.,
16 Gaylen Rust, R Legacy Racing, R Legacy Entertainment, LLC,
17 and R Legacy Investments, LLC, and that's from Paragraph 1.
18 So if you go down to Paragraph 7 -- Paragraph 9
19 again, it says, My counsel at Parr Brown secured and reviewed
20 hundreds of thousands of documents belonging to receivership
21 defendants, including correspondence and other business
22 records.
23 Have you personally participated in the review
24 of those, of the hundreds of thousands of documents that have
25 been reviewed?

Page 7

1 A. I have reviewed a significant number of
2 documents. I have not reviewed all hundreds of thousands of
3 documents by myself.
4 Q. Paragraph 11, Based upon my investigation to
5 date, I have concluded that receivership defendants operated
6 the Silver Pool as a classic Ponzi scheme from at least 2008
7 through November 18 -- through November 2018 and that
8 receivership defendants were insolvent for that time period.
9 The basis for these conclusions is set forth in my
10 receivership report attached hereto as Exhibit 1 and
11 incorporated herein by reference.
12 Did your involvement in Rust Rare Coin -- did
13 you have any involvement in receivership defendants or Rust
14 Rare Coin prior to November 2018?
15 A. No.
16 Q. Would it be fair to say that the conclusions as
17 you've drawn are based upon documents and information and
18 whatever else you've learned post November 18 -- or November
19 2018 and beyond?
20 A. I would agree with the latter way that you
21 characterized the question. The investigation started in
22 November of 2018. So with that qualification, the answer to
23 your question is yes.
24 Q. I'm just going to go down to Paragraph 13. And
25 this could -- and just to foretell things, this is probably

Page 8

1 going to turn into a broken record here pretty quickly. So
2 if there's a way to expedite this, I'm all for it before I
3 get to that.
4 So Paragraph 13, you see it says
5 Mr. Oberhansly made -- "Ms. Oberhansly made the following
6 investments into the Silver Pool," and it lists "A" through
7 "I," and then Paragraph 14, it totals her investment at 2.6
8 million and change.
9 How do you -- how do you know that the
10 Oberhanslys -- Ms. Oberhansly made these particular
11 investments in the Silver Pool?
12 A. That is based on the investigation conducted by
13 BRG as well as interactions with the Oberhanslys' counsel.
14 Q. Do you personally review any bank statements or
15 other financial records in connection with determining that
16 she had invested 2.6 million?
17 A. I believe I have seen documents reflecting the
18 investments. I don't recall exactly what those documents
19 were. But I do know that BRG and my legal counsel have
20 reviewed those records.
21 (Court reporter interrupted for clarification.)
22 THE WITNESS: Records. I don't remember. I'm
23 good with either one, Jamie.
24 BY MR. JOHNSON:
25 Q. I think it goes without saying that you didn't

Page 9

1 personally receive these investments from -- from the --
2 Ms. Oberhansly?
3 A. If that's a question, the answer is yes, it
4 goes without saying that I did not personally receive these
5 investments.
6 Q. In 17, it says Ms. Oberhansly, and later her
7 estate, received at least 16 -- about 16 and a half million
8 in disbursements from the Silver Pool. Really, the same two
9 questions. How did you know that she received the 16
10 point -- 16 and a half million dollars?
11 A. Again, as previously stated, that is based on
12 investigations conducted by my legal counsel and BRG. And
13 also communications with the Oberhansly's counsel.
14 Q. And you didn't personally write the checks to
15 Ms. Oberhansly?
16 A. I did not.
17 Q. Paragraph 18, "Receivership defendants raised
18 funds from investors by claiming that they would use those
19 funds to purchase and sell physical silver."
20 I guess the simple question is, how do you know
21 this? What information do you have available to you to make
22 this determination, or make this statement?
23 A. Well, interviews with various victims of the
24 Ponzi scheme, the investigation by BRG, work done by my legal
25 counsel, representations made by third parties with whom we
Page 10

1 interacted. That's the basis of that conclusion.
2 Q. Would that apply to the remainder of this
3 paragraph?
4 A. Could you show -- Patrick, could you show me
5 the rest of 18, please?
6 Yes, that does apply to the entire
7 Paragraph 18.
8 Q. Here's where I may try to expedite things
9 because -- let me ask it this way. Does the response to
10 Paragraph 18 -- and by response, I mean, you know, your
11 statement with respect to how you formed the conclusion or
12 made the statement Paragraph 18 in referring back to the
13 investigation the BRG did, the interviews and whatnot, would
14 that response apply to Paragraph 19 as well?
15 A. Yes.
16 Q. On Paragraph 20, it says, When interviewed by
17 the FBI, Rust -- Gaylen Rust expressly admitted that newly
18 invested funds were used to pay returns to existing investors
19 and to fund unrelated business ventures.
20 Were you personally present when the FBI
21 investigated Mr. Rust?
22 A. No. A member of my legal team was present.
23 And I received a report from that person. I also believe I
24 also reviewed a transcript of that interview.
25 Q. I believe I said investigated when I meant to
Page 11

1 say interviewed by the FBI.
2 A. What I heard was what you meant.
3 Q. Fair enough. With respect to Paragraph 21,
4 Rust further admitted that there was no significant amount of
5 silver stored at Brinks or any other facility. That's,
6 again, based upon potentially your review of the transcript
7 and a report from counsel?
8 A. Correct.
9 We also confirmed that with Brinks.
10 Q. When you say "we," is that your -- BRG, Parr
11 Brown, your team at Parr Brown, or reliance upon the FBI's
12 investigation or more?
13 A. I believe that was a confirmation achieved by
14 somebody at Parr Brown.
15 Q. So I think what I'd like to, again -- and
16 hopefully for an efficiency purpose, I think what I would
17 like to ask is if you're -- getting back to the Paragraph 18
18 and 19, that general response that you made.
19 I'm curious, I'd like to ask you whether that
20 response also applies to Paragraph 22 and its subparts. So
21 if you could just take a minute to review that and just let
22 me know at -- when necessary, I can scroll through it if you
23 don't have a copy of the document.
24 A. Yeah, if you could just scroll down. Scroll
25 down a little more. Yeah, sorry -- yeah, just down, keep
Page 12

1 going. Okay. So far so good. Yes, my answer would be the
2 same.
3 Q. And the same question as to Paragraph 23?
4 A. Same answer.
5 Q. I think, again, I'll just scroll through the
6 rest of the declaration and ask the same question, which is
7 if your response to 18 also applies to the remainder of the
8 declaration.
9 A. Yeah. If you want to just slowly scroll
10 through it until we get to the end, I can give you that
11 response.
12 Q. I'll just scroll, and you let me know if I'm
13 going too fast.
14 A. Okay.
15 Yes, it's the same answer with respect to the
16 balance of my declaration.
17 Q. I'll stop sharing my screen. And I have been
18 provided with another list of questions here. I'll just run
19 through those really quickly, and we can hopefully wrap this
20 up.
21 This is a slight repeat, I suppose, of an
22 earlier answer you've given, but I'll ask it anyway. Would
23 you describe the general nature of your involvement with the
24 alleged Rust Rare Coin Ponzi investigation?
25 A. Yes, I'll do my best. My general involvement
Page 13

1 has been to act as a Court-appointed receiver and to work
 2 with experts in their various fields, including BRG, my legal
 3 counsel, other experts; for example, numismatic experts with
 4 respect to some of the assets in the receivership defendants'
 5 entities that we liquidated in order to generate returns that
 6 are intended for eventual distribution to victims.
 7 And I have personally reviewed many thousands
 8 of pages of documents and received reports through hundreds
 9 of meetings with the experts that I have retained for
 10 purposes of doing my job as receiver, which, as I understand
 11 it, is to seek to recover as much in the way of assets, both
 12 cash and other assets, from people who received it in order
 13 to provide for an eventual distribution of the victims of the
 14 Ponzi scheme to try to give them back some portion of the
 15 money that they lost to victims to the Gaylen-Rust-run Ponzi
 16 scheme.
 17 Q. When were you first approached to potentially
 18 become the receiver?
 19 A. I believe it was in November of 2018.
 20 Q. If I said that the -- I don't want to call it a
 21 raid. When the FBI and then the other -- I guess, the
 22 investigators, if I said that occurred on November 15th that
 23 they approached Mr. Rust and that's when subpoenas were
 24 served and whatnot, would that refresh your recollection as
 25 to when you were first approached to be the receiver?

Page 14

1 A. Yes.
 2 Q. And when would that have been that you were
 3 approached?
 4 A. I believe it was a day or so before that. It
 5 may have been as much as a week. But it was shortly before
 6 the FBI entered the premises at Rust Rare Coin and
 7 interviewed Mr. Rust.
 8 Q. And do you recall the persons or -- person or
 9 persons were that first approached you?
 10 A. I believe I was approached by representatives
 11 from the Commodity Futures Trading Commission as well as
 12 individuals associated with the attorney general's office.
 13 Q. Do you remember any names specifically?
 14 A. I don't. Sorry, I don't remember all the names
 15 right now.
 16 Q. What was the general nature of the conversation
 17 that you had with them?
 18 A. Whether I would be interested and willing to
 19 accept an appointment from a federal judge to serve as the
 20 receiver should a receiver be appointed by a court.
 21 Q. And then what did they -- do you have a memory
 22 of what was said with regard to Rust Rare Coin or Gaylen Rust
 23 specifically?
 24 A. I don't at that stage. I think -- I mean,
 25 my -- I can just give you my impression. I don't remember

Page 15

1 specifically the words that were used. But that there was --
 2 based on an investigation that had been done previous to my
 3 involvement, there was a strong belief that what was
 4 happening at Rust Rare Coin was, in fact, a Ponzi scheme; it
 5 was not a legitimate business operation.
 6 And that there were numerous victims that had
 7 suffered extensive losses, and my impression was that the
 8 government wanted to put a stop to the operation and also to
 9 try to work with a receiver in hopes of recovering assets
 10 that could be distributed to victims at a future point in
 11 time.
 12 Q. Other than the -- I believe that we've referred
 13 to it as sort of the November 15th interviews, I believe
 14 there's two separate transcripts, but other than those, do
 15 you know whether Gaylen Rust or any members of his family or
 16 the employees of Rust's in the affiliated business have been
 17 interviewed with regard to the alleged Ponzi scheme?
 18 A. I am not sure about the details. I know that
 19 my legal counsel and I have had several conversations with
 20 Gaylen Rust; that Gaylen Rust also had conversations with the
 21 folks at BRG. We also spoke with Gaylen Rust's wife. I
 22 believe that there were conversations between my legal
 23 counsel and Josh Rust with respect to our investigation.
 24 Again, I think that's the scope of my knowledge
 25 at this point. I also received reports with respect to

Page 16

1 interviews that I was not involved in.
 2 Q. Do you know if those interviews were reported?
 3 A. I -- again, as you've indicated, you've seen a
 4 couple of transcripts. I -- I believe that several of the
 5 early interviews involving the FBI were recorded. I do not
 6 believe any of the conversations between BRG and anyone in
 7 the Rust family or between my legal counsel and anyone in the
 8 Rust family were recorded.
 9 Q. Let's assume -- are you aware of -- do you know
 10 whether you, as the receiver, and your team are in possession
 11 of transcripts of Gaylen Rust, Denise Rust, Josh Rust or the
 12 employees other than the two from November 15th that we've
 13 discussed? That was a long question; I can repeat it, too.
 14 A. I do believe we have some transcripts. I don't
 15 know how many, I don't know how long they are. But I believe
 16 that we have received some transcripts of interviews that fit
 17 within the definition that you've just provided.
 18 Q. In your capacity as the receiver, are you aware
 19 of any evidence that employees and individuals other than
 20 Gaylen Rust had knowledge or involvement in the allegations
 21 against Mr. Rust that he operated a Ponzi scheme?
 22 A. I guess I don't understand what you mean by
 23 "involvement."
 24 Q. I'll rephrase the question. Do you believe
 25 that other -- let's start with the premise that Gaylen Rust

Page 17

1 operated a Ponzi scheme and is alleged to have been
2 operated -- have operated a Ponzi scheme. Are you aware of
3 other individuals with knowledge of the alleged Ponzi scheme?
4 MR. BALL: Let me enter an objection. I think
5 the form of the question is vague.
6 THE WITNESS: Yeah. I mean, there are a lot of
7 people with knowledge of the Ponzi scheme. Again, as far as
8 people that were involved in the perpetration of the Ponzi
9 scheme, I'm aware that the U.S. Attorneys Office has
10 conducted its own investigation; that indictments have been
11 handed down against Josh and Denise and Gaylen.
12 I'm aware that Denise pleaded guilty to charges
13 against her, some portion of them, and she's currently
14 incarcerated. I understand that both Josh and Gaylen are
15 anticipated to have a trial with respect to the criminal
16 charges against them. I'm not aware of any other indictments
17 or charges brought against anyone other than those three.
18 BY MR. JOHNSON:
19 Q. Are you aware of any other individuals that the
20 FBI or other government entities have investigated to
21 determine whether they were a, as you -- the word you used,
22 perpetrator of the Ponzi scheme?
23 A. I'm not aware of any other stated targets
24 beyond the three that I've identified.
25 Q. From your investigation and auditing, what

Page 18

1 evidence can you identify that validates the authenticity of
2 the Rust Rare Coin store's cash sales receipts? And I should
3 probably -- let me not ask that question.
4 A. Okay, I'll pretend like you didn't ask it.
5 Q. Let me give a little context and establish a
6 little foundation for that. Are you aware that Rust Rare
7 Coin had a QuickBooks file system?
8 A. Yes.
9 Q. Are you aware that it -- I believe the
10 QuickBooks commenced around 2011 or 2012 time frame?
11 MR. BALL: Objection. Vague. Are you talking
12 about Rust Rare Coin's use of QuickBooks or QuickBooks itself
13 becoming available to the general public?
14 MR. JOHNSON: Rust Rare Coin's use. Thanks,
15 Matt.
16 THE WITNESS: I believe that's right. I don't
17 have a specific year in mind. Again, I want to be careful
18 about privilege. I know that I've had discussions with my
19 legal counsel about the financial -- financial resources, I
20 guess.
21 Well, let me strike that. It's not really
22 financial resources. I would say tracking systems. I'm
23 familiar with looking at it from a point-of-sale standpoint
24 and also reviewing QuickBooks. But, you know, again, many
25 other documents have been reviewed for purposes of trying to

Page 19

1 put back together what actually happened at Rust Rare Coin
2 from 2003 until the receivership took over in November of
3 2018. And I do know that QuickBooks was part of what was
4 used by Gaylen Rust to keep track of at least some of the
5 things that were happening at Rust Rare Coin.
6 BY MR. JOHNSON:
7 Q. And do you -- are you aware that there was a
8 time period prior to QuickBooks where the -- most of the
9 records were sales receipts and sort of paper records as
10 opposed to electronic records?
11 A. I -- I'm not sure what system was used prior to
12 QuickBooks. I've seen many, many, many paper receipts. So I
13 know that that was part of how business was done at Rust Rare
14 Coin. But with respect to how -- how Rust Rare Coin was
15 tracking income and expenses, that is something that I would
16 rely on BRG as to the details.
17 Q. You mentioned the paper -- I forget the exact
18 words you used, the paper sales receipts, I believe, is maybe
19 the term you used?
20 A. Right.
21 Q. Do you -- this gets back to that ultimate
22 question that I was trying to ask which is, do you have any
23 information or evidence that validates the authenticity and
24 accuracy of those paper records?
25 A. Sorry, can you ask that again?

Page 20

1 Q. Do you have any information that validates the
2 authenticity of those paper records?
3 A. Again, I would look at many of the paper
4 records created by Gaylen with some degree of skepticism.
5 However, I would say that we've received some of those
6 receipts from victims as we've worked through situations with
7 the hundreds of victims of this Ponzi scheme. We also
8 obtained some of the documents from Rust Rare Coin, from its
9 files. We also reviewed bank records. And by placing all of
10 those against each other, we've done our best to try to
11 reconstruct what happened at Rust Rare Coin.
12 Q. Subsequent to the November 15th, 2018,
13 interview and take-over of Rust Rare Coin, are you aware of
14 any inventory records that were produced or obtained that
15 detail the inventory of precious metal bullions or coins that
16 were in the possession of Gaylen Rust or Rust Rare Coin?
17 A. I know that we conducted our own inventory.
18 And there may have been other records that related to what
19 was on hand at Rust Rare Coin. But primarily what's in my
20 mind as you ask that question is the inventory that was put
21 together by folks at Parr Brown.
22 MR. JOHNSON: Jamie, did you -- Jon, you kind
23 of broke up there for a second.
24 Jamie, did you pick that up?
25 (Record read)

Page 21

1 THE WITNESS: No, it's gone. Yeah, let me
2 just, Patrick, try to restate it for you. With respect to
3 the inventory that was on hand at Rust Rare Coin at the time
4 that I took over as receiver, I know that the legal team at
5 Parr Brown spent a significant amount of time inventorying
6 everything that was there on the premises. And they put
7 together an inventory list, which I received and reviewed.
8 We then used that inventory list to consult
9 with others about ways that we could maximize the disposition
10 of those assets for the benefits of -- for the benefit of the
11 victims of the Ponzi scheme.
12 BY MR. JOHNSON:
13 Q. In your Rust-related investigations, have you
14 found any evidence of other criminal activity other than the
15 alleged Ponzi scheme?
16 MR. BALL: Objection. Foundation.
17 THE WITNESS: Not -- not that I recall. I
18 mean, we have been focusing on the Ponzi scheme. I mean,
19 arguably, you could have a lot of other unlawful conduct
20 around a Ponzi scheme. And, again, that's -- my
21 responsibility is simply to step into the shoes of the
22 businesses and try to recoup as much as by way of resources
23 and then liquidate those resources and make them available to
24 victims of the Ponzi scheme. So I guess that's the best I
25 can do on that, that question.

Page 22

1 MR. JOHNSON: Okay.
2 BY MR. JOHNSON:
3 Q. So this is a -- the same question, just stated
4 another way. Other than the alleged Rust Rare Coin Ponzi
5 scheme, are you willing to state that you have no knowledge
6 or -- and found no evidence of the illegal activity that
7 had -- that has occurred or is occurring on the part of any
8 of the Rust -- on the part of either the Rust family or
9 employees?
10 MR. BALL: Same objection. Foundation.
11 THE WITNESS: Yeah, I would say, again, with
12 respect to the investigation of criminal activity, I've left
13 that up to the U.S. Attorneys Office. I would say during the
14 course of the investigation, we certainly have uncovered
15 massive amounts of evidence that would support criminal
16 misconduct allegations, but as far as how to define those,
17 I've left that up to the U.S. Attorneys Office.
18 BY MR. JOHNSON:
19 Q. What you described as the mass amount of
20 evidence, is that related to -- does that -- are you
21 referring to -- does that evidence relate to other
22 individuals? Or is it limited to the three people, the three
23 Rusts, that have been charged?
24 A. Again, I'm leaving up to the U.S. Attorneys
25 Office how to decide how to proceed with respect to criminal

Page 23

1 charges. But the evidence that I have reviewed, that I'm
2 familiar with, demonstrates a criminal -- what I would
3 characterize as criminal activity at Rust Rare Coin that
4 relates to the Ponzi scheme itself in some fashion.
5 BY MR. JOHNSON:
6 Q. Have you made any referrals to the FBI or other
7 government agencies that are investigating Rust Rare Coin
8 with respect to a criminal referral, with a formal and sort
9 of general sense, uhm, to the FBI or other agencies
10 investigating Rust Rare Coin, with respect to other
11 individuals -- other individuals not including the three that
12 we talked about, the three Rusts?
13 A. No.
14 Q. Will you identify the names of the financial
15 institutions that you know have been affiliated with the
16 Rusts and Rust Rare Coin and Gaylen Rust?
17 A. I know that Rust Rare Coin used Zions Bank as
18 its primary banker. There may have been others. There
19 probably were others; I can't recall any names at this time.
20 Q. Do you know the names of any financial
21 institutions that have provided information, data, bank
22 statements and stuff, that you used in connection with your
23 investigation and receivership duties?
24 A. I can't recall the names of any financial
25 institutions other than Zions.

Page 24

1 Q. Are you aware of any or have knowledge of any
2 omissions of information that Zions Bank -- with respect to
3 the -- let me strike that.
4 With respect to the information that you
5 received from Zions Bank, are you aware of any omissions or
6 documents that they withheld and did not provide to you?
7 A. I am not. Let me just note so that you're
8 aware, a conflicts receiver has been appointed with respect
9 to all matters that relate to Zions, and that's Wayne Cline.
10 And so he may have knowledge that I don't.
11 Q. I believe you stated earlier that individuals
12 that are part of your team or teams have reviewed the Rust
13 Rare Coin QuickBooks records?
14 A. That's correct.
15 Q. Okay. Do you know why...
16 I mean, there were...
17 I'll represent that there were three --
18 (Court reporter interrupted for clarification.)
19 (Record read)
20 MR. JOHNSON: I think I said "there were" and
21 then made a long, long pause.
22 BY MR. JOHNSON:
23 Q. And then I said I'll represent that there
24 are -- that Les Howell made three investment contributions in
25 the amounts of \$1,886.15, \$68,336.11, and \$99,985.26.

Page 25

1 (Court reporter interrupted for clarification.)
 2 MR. JOHNSON: Les, L-e-s, Howell, H-o-w-e-l-l.
 3 BY MR. JOHNSON:
 4 Q. Would you --
 5 A. I would -- sorry. Go ahead.
 6 MR. BALL: Let him ask the question.
 7 BY MR. JOHNSON:
 8 Q. Mr. Hafen, would you have -- would you -- do
 9 you -- I'll just ask the question and deal with the -- and
 10 hear the objection.
 11 Do you know why those were not properly
 12 credited to Les Howell's QuickBooks account but were
 13 documented within the QuickBooks generally?
 14 MR. BALL: Yeah. Two objections. One is that
 15 it assumes facts, the other is foundation.
 16 THE WITNESS: The answer is I -- again, I -- we
 17 have hundreds of people who participated in the Rust Rare
 18 Coin Ponzi scheme. And I have a general knowledge about the
 19 Howell situation. My general knowledge is that they
 20 collectively put in somewhere around a million dollars and
 21 got back out somewhere around 4.3 million dollars.
 22 So I just have sort of the big-picture numbers.
 23 With respect to the specifics, I haven't taken a fresh look
 24 at that.
 25 *

Page 26


1 BY MR. JOHNSON:
 2 Q. And so is it fair to say you don't have
 3 personal knowledge of how the Howells' investments were
 4 inputted and recorded into QuickBooks?
 5 A. I would say it's fair to say that I don't have
 6 personal knowledge. But I would add to that, that I know
 7 that both my legal counsel and BRG spent significant time
 8 looking at the Howells' specific situation. And so I'm
 9 relying on their personal knowledge with respect to the
 10 conclusions that were reached as to amounts that the Howells
 11 put in and took out of the Rust Rare Coin Ponzi scheme.
 12 Q. So if I'm asking you about specific investments
 13 and how it reflected, I'm just going down into a rabbit hole,
 14 essentially?
 15 A. I think that's fair. And I believe you're
 16 going to be deposing BRG and Ray Strong, and I anticipate
 17 he'll have more specific information for you.
 18 Q. Are you or any individual under your
 19 supervision aware of a private letter authored by the Howells
 20 and delivered to Gaylen Rust's residence on November 9th,
 21 2020?
 22 A. I am not.
 23 MR. JOHNSON: That's the last question that I
 24 was directed to ask.
 25 MR. BALL: Okay.

Page 27

1 MR. JOHNSON: I have no further questions for
 2 you.
 3 MR. BALL: Okay. All right. Thanks very much.
 4 Good to see you.
 5 MR. JOHNSON: Same.
 6 (Whereupon, Exhibit No. 1 was marked for
 7 identification.)
 8 (Deposition concluded at 10:55 a.m.)
 9 * * *
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 28

1 CERTIFICATE
 2 STATE OF UTAH)
 3 :
 4 COUNTY OF SALT LAKE)
 5 THIS IS TO CERTIFY that the remote
 6 videoconference deposition of JONATHAN O. HAFEN, the witness
 7 in the foregoing deposition named, was taken before me,
 8 JAMIE R. BREY, a Certified Shorthand Reporter and Registered
 9 Professional Reporter in and for the State of Utah, residing
 10 at Salt Lake City, Utah.
 11 That the said witness was by me, before
 12 examination, duly sworn to testify the truth, the whole truth
 13 and nothing but the truth in said cause.
 14 That the testimony of said witness was reported
 15 by me in Stenotype and thereafter caused by me to be
 16 transcribed into typewriting, and that a full, true and
 17 correct transcription of said testimony so taken and
 18 transcribed is set forth in the foregoing pages numbered from
 19 4 through 28, inclusive, and said witness deposed and said as
 20 in the foregoing annexed deposition.
 21 I further certify that I am not of kin or
 22 otherwise associated with any of the parties to said cause of
 23 action, and that I am not interested in the events thereof.
 24
 25

Salt Lake City, Utah, this
 25th day of  2022

JAMIE R. BREY, CSR, RPR
 Utah license No. 361682

Page 29

[& - believe]

&	23 13:3	action 29:16	associated 15:12
& 1:16 2:3	24 1:13 4:1	activity 22:14 23:6	29:16
0	257-7974 2:5	23:12 24:3	assume 17:9
00813 1:9	25th 29:18	add 27:6	assumes 26:15
1	26851 29:21	admitted 11:17	attached 5:24 8:10
1 3:10 5:7,22 7:17	28 29:13	12:4	attention 6:2 7:8
8:10 28:6	293 5:20,21	advise 6:23	attorney 15:12
1,886.15 25:25	2:19 1:9	affiliated 16:16	attorneys 2:4,9
101 1:17 2:4	3	24:15	18:9 23:13,17,24
10:07 1:14 4:2	3 5:20	agencies 24:7,9	auditing 18:25
10:55 28:8	361682 29:22	agree 8:20	authenticity 19:1
11 8:4	363-4300 2:11	ahead 26:5	20:23 21:2
111 2:10	4	allegations 17:20	authored 27:19
11th 2:10	4 3:4 29:13	23:16	available 10:21
13 8:24 9:4	4.3 26:21	alleged 13:24	19:13 22:23
14 9:7	5	16:17 18:1,3	aware 17:9,18
15th 14:22 16:13	5 3:10	22:15 23:4	18:2,9,12,16,19,23
17:12 21:12	6	amount 12:4 22:5	19:6,9 20:7 21:13
16 10:7,7,9,10	68,336.11 25:25	23:19	25:1,5,8 27:19
17 10:6	7	amounts 23:15	b
18 8:7,18 10:17	7 6:3 7:18	25:25 27:10	b 3:8
11:5,7,10,12 12:17	700 1:17	analysis 6:9,17	back 7:14 11:12
13:7	8	annexed 29:14	12:17 14:14 20:1
19 11:14 12:18	801 2:5,11	answer 8:22 10:3	20:21 26:21
2	84111 2:5,10	13:1,4,15,22 26:16	balance 13:16
2.6 9:7,16	9	anticipate 27:16	ball 2:2 18:4 19:11
20 11:16	9 7:8,18	anticipated 18:15	22:16 23:10 26:6
200 1:17 2:4	99,985.26. 25:25	anyway 13:22	26:14 27:25 28:3
2003 20:2	9th 27:20	appears 5:15	bank 9:14 21:9
2008 8:6	a	applies 12:20 13:7	24:17,21 25:2,5
2011 19:10	a.m. 1:14 4:2 28:8	apply 11:2,6,14	banker 24:18
2012 19:10	able 6:3	appointed 1:4	based 5:14 7:4 8:4
2018 8:7,14,19,22	accept 15:19	14:1 15:20 25:8	8:17 9:12 10:11
14:19 20:3 21:12	account 26:12	appointment 6:6	12:6 16:2
2020 27:21	accuracy 20:24	15:19	basis 8:9 11:1
2021 1:13 4:1	achieved 12:13	approached 14:17	becoming 19:13
2022 29:18	act 14:1	14:23,25 15:3,9,10	belief 16:3
21 12:3		arguably 22:19	believe 9:17 11:23
22 12:20		asking 27:12	11:25 12:13 14:19
		assets 14:4,11,12	15:4,10 16:12,13
		16:9 22:10	16:22 17:4,6,14,15

[believe - deposed]

<p>17:24 19:9,16 20:18 25:11 27:15 belonging 7:10,20 benefit 22:10 benefits 22:10 best 13:25 21:10 22:24 beyond 8:19 18:24 big 7:3 26:22 bit 5:3,19 board 4:18 brey 1:21 29:6,21 brg 6:9,15,23 9:13 9:19 10:12,24 11:13 12:10 14:2 16:21 17:6 20:16 27:7,16 brinks 12:5,9 broadway 2:10 broke 21:23 broken 9:1 brought 18:17 brown 1:16 2:3 7:9,19 12:11,11,14 21:21 22:5 bullions 21:15 business 6:8,13 7:11,21 11:19 16:5,16 20:13 businesses 22:22</p>	<p>caused 29:11 central 1:2 certainly 23:14 certified 29:6 certify 29:4,15 change 9:8 characterize 24:3 characterized 8:21 charged 23:23 charges 18:12,16 18:17 24:1 checks 10:14 city 1:18 2:5,10 29:7,18 ck.law 2:11 claiming 10:18 clarification 9:21 25:18 26:1 classic 8:6 clear 7:13 cline 25:9 clove 2:6 cohne 2:9 coin 7:15 8:12,14 13:24 15:6,22 16:4 19:2,7 20:1,5 20:14,14 21:8,11 21:13,16,19 22:3 23:4 24:3,7,10,16 24:17 25:13 26:18 27:11 coin's 19:12,14 coins 21:15 collectively 26:20 commenced 19:10 commission 15:11 commodity 15:11 communication 7:3</p>	<p>communications 10:13 concluded 8:5 28:8 conclusion 6:25 11:1,11 conclusions 7:4,4 8:9,16 27:10 conduct 22:19 conducted 4:17 6:9 9:12 10:12 18:10 21:17 conducting 6:17 confirmation 12:13 confirmed 12:9 conflicts 25:8 conjunction 5:16 6:23 connection 5:11 9:15 24:22 consent 4:19 consists 5:22 consult 22:8 context 19:5 contributions 25:24 conversation 15:16 conversations 16:19,20,22 17:6 copy 12:23 correct 12:8 25:14 29:12 correspondence 7:11,21 counsel 4:19 6:22 6:22 7:9,19 9:13 9:19 10:12,13,25 12:7 14:3 16:19 16:23 17:7 19:19</p>	<p>27:7 county 29:3 couple 17:4 course 23:14 court 1:1,4 9:21 14:1 15:20 25:18 26:1 created 21:4 credited 26:12 criminal 18:15 22:14 23:12,15,25 24:2,3,8 csr 29:21 curious 12:19 currently 18:13 cv 1:9 cynthia 2:3</p>
<p>c</p>			<p>d</p>
<p>c 2:1 4:4 29:1,1 call 6:24 14:20 called 4:6 campbell 1:10 capacity 1:4 17:18 careful 19:17 case 1:9 5:12 cash 14:12 19:2 cause 29:9,16</p>			<p>d 2:3 3:1 4:4 data 24:21 date 8:5 day 15:4 29:18 deal 26:9 decide 23:25 declaration 3:10 5:10,16,21 13:6,8 13:16 defendants 1:10 2:8 6:8,10,13 7:11 7:15,21 8:5,8,13 10:17 14:4 define 23:16 defined 7:15 definition 17:17 degree 21:4 delivered 27:20 demonstrates 24:2 denise 17:11 18:11 18:12 deposed 29:13</p>

[deposing - general]

<p>deposing 27:16 deposition 1:5 4:17 28:8 29:5,5 29:14 describe 6:11 13:23 described 23:19 description 3:9 detail 21:15 details 16:18 20:16 determination 6:18 10:22 determine 18:21 determining 9:15 directed 6:22 27:24 direction 6:9 disbursements 10:8 discussed 17:13 discussions 19:18 disposition 22:9 distributed 16:10 distribution 14:6 14:13 district 1:1,2 division 1:2 document 4:23,24 4:25 5:3,5,8,13 12:23 documented 26:13 documents 7:10 7:20,24 8:2,3,17 9:17,18 14:8 19:25 21:8 25:6 doing 6:25 14:10 dollars 10:10 26:20,21 draw 6:2 7:8</p>	<p>drawn 8:17 duly 4:6 29:9 duties 24:23</p> <hr/> <p style="text-align: center;">e</p> <hr/> <p>e 1:8 2:1,1,8 3:1,8 4:4,4,9,15 26:2,2 29:1,1 earlier 13:22 25:11 early 17:5 easier 5:4 east 1:17 2:4,10 efficiency 12:16 either 9:23 23:8 electronic 20:10 employees 16:16 17:12,19 23:9 engaged 6:7 enter 18:4 entered 15:6 entertainment 7:16 entire 11:6 entities 14:5 18:20 entity 6:16 essentially 27:14 establish 19:5 estate 10:7 events 29:16 eventual 14:6,13 evidence 17:19 19:1 20:23 22:14 23:6,15,20,21 24:1 exact 20:17 exactly 9:18 examination 3:4 29:9 examined 4:6 example 14:3 exhibit 3:10 5:7,22 8:10 28:6</p>	<p>exhibits 5:24 existing 11:18 expedite 9:2 11:8 expenses 20:15 experts 6:15 14:2 14:3,3,9 expressly 11:17 extensive 16:7 external 5:3</p> <hr/> <p style="text-align: center;">f</p> <hr/> <p>f 4:15 29:1 facility 12:5 fact 6:19,25 16:4 facts 26:15 fair 8:16 12:3 27:2 27:5,15 familiar 19:23 24:2 family 16:15 17:7 17:8 23:8 far 13:1 18:7 23:16 fashion 24:4 fast 13:13 fbi 11:17,20 12:1 14:21 15:6 17:5 18:20 24:6,9 fbi's 12:11 federal 15:19 fields 14:2 file 19:7 files 21:9 financial 6:8,13 9:15 19:19,19,22 24:14,20,24 first 4:6 5:15,22 14:17,25 15:9 fit 17:16 floor 2:10 focusing 22:18</p>	<p>folks 16:21 21:21 following 9:5 follows 4:7 foregoing 29:5,13 29:14 forensic 6:17 foretell 8:25 forget 20:17 form 18:5 formal 24:8 formed 11:11 forth 8:9 29:13 found 22:14 23:6 foundation 19:6 22:16 23:10 26:15 frame 19:10 fresh 26:23 front 5:1,2,14,15 full 5:21 29:12 fund 11:19 funds 10:18,19 11:18 further 12:4 28:1 29:15 future 16:10 futures 15:11</p> <hr/> <p style="text-align: center;">g</p> <hr/> <p>g 4:4 gaylen 6:19,25 7:16 11:17 14:15 15:22 16:15,20,20 16:21 17:11,20,25 18:11,14 20:4 21:4,16 24:16 27:20 gee 1:16 2:3 general 12:18 13:23,25 15:16 19:13 24:9 26:18 26:19</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[general's - know]

<p>general's 15:12 generally 5:12 6:11 7:4 26:13 generate 14:5 getting 12:17 give 13:10 14:14 15:25 19:5 given 13:22 go 5:18 7:18 8:24 26:5 goes 9:25 10:4 going 4:22 5:18 8:24 9:1 13:1,13 27:13,16 good 9:23 13:1 28:4 government 16:8 18:20 24:7 gretchen 1:8 guess 4:12 6:24 10:20 14:21 17:22 19:20 22:24 guilty 18:12</p>	<p>hole 27:13 honorable 1:10 hopefully 12:16 13:19 hopes 16:9 howell 1:8,9 25:24 26:2,19 howell's 26:12 howells 27:3,8,10 27:19 hundreds 7:10,20 7:24 8:2 14:8 21:7 26:17</p>	<p>24:21 25:2,4 27:17 inputted 27:4 insolvent 8:8 institutions 24:15 24:21,25 intended 14:6 interacted 11:1 interactions 9:13 interested 15:18 29:16 interrupted 9:21 25:18 26:1 interview 11:24 21:13 interviewed 11:16 12:1 15:7 16:17 interviews 10:23 11:13 16:13 17:1 17:2,5,16 inventory 21:14 21:15,17,20 22:3,7 22:8 inventorying 22:5 invested 9:16 11:18 investigated 11:21 11:25 18:20 investigating 24:7 24:10 investigation 6:7 6:12,23 8:4,21 9:12 10:24 11:13 12:12 13:24 16:2 16:23 18:10,25 23:12,14 24:23 investigations 10:12 22:13 investigators 14:22</p>	<p>investment 6:10 9:7 25:24 investments 7:17 9:6,11,18 10:1,5 27:3,12 investors 10:18 11:18 involved 17:1 18:8 involvement 8:12 8:13 13:23,25 16:3 17:20,23 involving 17:5</p>
	i		j
	<p>identification 28:7 identified 18:24 identify 19:1 24:14 illegal 23:6 impression 15:25 16:7 incarcerated 18:14 include 5:23 including 6:21 7:11,21 14:2 24:11 inclusive 29:13 income 20:15 incorporated 8:11 indicated 17:3 indictments 18:10 18:16 individual 1:8,9 27:18 individuals 15:12 17:19 18:3,19 23:22 24:11,11 25:11 information 8:17 10:21 20:23 21:1</p>		<p>j 2:2 jamie 1:21 9:23 21:22,24 29:6,21 january 29:18 job 14:10 johnson 2:8 3:4 4:11 9:24 18:18 19:14 20:6 21:22 22:12 23:1,2,18 24:5 25:20,22 26:2,3,7 27:1,23 28:1,5 jon 21:22 jonathan 1:4,6 3:3 3:10 4:5,14 29:5 josh 16:23 17:11 18:11,14 judge 15:19 judgment 5:11,17 june 1:13 4:1</p>
h			k
<p>h 3:8 4:15 26:2 hafen 1:4,6 3:3,10 4:5,12,14 26:8 29:5 half 10:7,10 hand 21:19 22:3 29:18 handed 18:11 happened 20:1 21:11 happening 16:4 20:5 he'll 27:17 hear 26:10 heard 12:2 hereto 8:10</p>			<p>keep 12:25 20:4 kin 29:15 kind 21:22 kinghorn 2:9 know 6:12 9:9,19 10:9,20 11:10</p>

[know - people]

<p>12:22 13:12 16:15 16:18 17:2,9,15,15 19:18,24 20:3,13 21:17 22:4 24:15 24:17,20 25:15 26:11 27:6</p> <p>knowledge 16:24 17:20 18:3,7 23:5 25:1,10 26:18,19 27:3,6,9</p>	<p>look 21:3 26:23 looking 19:23 27:8 losses 16:7 lost 14:15 lot 18:6 22:19 love 2:3 loveless 1:16 2:3</p>	<p>name 4:13,15 named 29:5 names 15:13,14 24:14,19,20,24 nature 13:23 15:16 necessary 5:24 12:22 need 4:24 newly 11:17 nine 5:23 note 5:21 25:7 november 8:7,7,14 8:18,18,22 14:19 14:22 16:13 17:12 20:2 21:12 27:20 number 3:9 8:1 numbered 29:13 numbers 26:22 numerous 16:6 numismatic 14:3</p>	<p>okay 5:5,18 6:6 13:1,14 19:4 23:1 25:15 27:25 28:3 omissions 25:2,5 operated 6:10,19 8:5 17:21 18:1,2,2 operation 16:5,8 operations 6:8,14 opposed 20:10 order 14:5,12</p>
<p>l</p>	<p>m</p>	<p>o</p>	<p>p</p>
<p>l 26:2,2,2 lake 1:18 2:5,10 29:3,7,18 laptop 5:1,2 large 6:4 law 2:4,9 learned 8:18 leaving 23:24 left 23:12,17 legacy 7:16,16,17 legal 9:19 10:12,24 11:22 14:2 16:19 16:22 17:7 19:19 22:4 27:7 legitimate 16:5 les 25:24 26:2,12 leslie 1:8 letter 27:19 license 29:22 limited 23:22 liquidate 22:23 liquidated 14:5 list 13:18 22:7,8 lists 9:6 little 5:3,19 12:25 19:5,6 llc 7:16,17 located 1:16 long 17:13,15 25:21,21</p>	<p>m 1:8 4:9 making 6:17 marked 5:7 28:6 mass 23:19 massive 23:15 matt 19:15 matters 25:9 matthew 2:2 maximize 22:9 mball 2:6 mean 11:10 15:24 17:22 18:6 22:18 22:18 25:16 meant 11:25 12:2 meetings 14:9 member 11:22 members 16:15 memory 15:21 mentioned 20:17 metal 21:15 million 9:8,16 10:7 10:10 26:20,21 mind 4:13 19:17 21:20 minute 12:21 misconduct 23:16 money 14:15 monitor 5:3 motion 5:11,16</p>	<p>o 1:4,6 3:3 4:4,5,9 26:2 29:5 oberhansly 5:12 9:5,5,10 10:2,6,15 oberhansly's 10:13 oberhanslys 9:10 9:13 objection 18:4 19:11 22:16 23:10 26:10 objections 26:14 obtained 21:8,14 obviously 7:2 occurred 14:22 23:7 occurring 23:7 office 15:12 18:9 23:13,17,25</p>	<p>p 2:1,1 4:4 page 3:2,9 5:15,20 pages 5:22,23 14:8 29:13 paper 20:9,12,17 20:18,24 21:2,3 paragraph 6:3,16 7:8,17,18,18 8:4 8:24 9:4,7 10:17 11:3,7,10,12,14,16 12:3,17,20 13:3 parr 1:16 2:3 7:9 7:19 12:10,11,14 21:21 22:5 parrbrown.com 2:6,6 part 20:3,13 23:7 23:8 25:12 participated 7:23 26:17 particular 9:10 parties 10:25 29:16 patrick 2:8 11:4 22:2 pause 25:21 pay 11:18 people 14:12 18:7 18:8 23:22 26:17</p>
	<p>n</p>		
	<p>n 2:1 3:1 4:4,9,9 4:15</p>		

[period - registered]

<p>period 8:8 20:8 perpetration 18:8 perpetrator 18:22 person 11:23 15:8 personal 27:3,6,9 personally 6:12 7:23 9:14 10:1,4 10:14 11:20 14:7 persons 15:8,9 physical 10:19 pick 21:24 picture 7:3 26:22 pjohnson 2:11 placing 21:9 plaintiff 1:6 2:2 pleaded 18:12 please 4:13 11:5 point 10:10 16:10 16:25 19:23 ponzi 6:10,20 7:1 8:6 10:24 13:24 14:14,15 16:4,17 17:21 18:1,2,3,7,8 18:22 21:7 22:11 22:15,18,20,24 23:4 24:4 26:18 27:11 pool 8:6 9:6,11 10:8 portion 14:14 18:13 possession 17:10 21:16 post 8:18 potentially 12:6 14:17 precious 21:15 premise 17:25 premises 15:6 22:6</p>	<p>present 11:20,22 pretend 19:4 pretty 9:1 previous 16:2 previously 10:11 primarily 6:15 21:19 primary 24:18 prior 8:14 20:8,11 private 27:19 privilege 19:18 privileged 7:3 probably 8:25 19:3 24:19 procedure 4:19 proceed 23:25 proceeding 4:20 produced 21:14 professional 1:22 29:6 properly 26:11 provide 14:13 25:6 provided 13:18 17:17 24:21 public 19:13 pull 5:25 pulled 4:23 purchase 10:19 purpose 12:16 purposes 6:17 14:10 19:25 put 5:14 16:8 20:1 21:20 22:6 26:20 27:11</p>	<p>22:25 23:3 26:6,9 27:23 questions 10:9 13:18 28:1 quick 4:22 quickbooks 19:7 19:10,12,12,24 20:3,8,12 25:13 26:12,13 27:4 quickly 9:1 13:19</p>	<p>22:7 25:5 receiver 1:5 14:1 14:10,18,25 15:20 15:20 16:9 17:10 17:18 22:4 25:8 receivership 6:7 6:10,13 7:10,15,20 8:5,8,10,13 10:17 14:4 20:2 24:23 recognize 5:8 recollection 14:24 recommendation 6:18 reconstruct 21:11 record 4:13 5:21 7:13 9:1 21:25 25:19 recorded 17:5,8 27:4 records 7:12,22 9:15,20,22 20:9,9 20:10,24 21:2,4,9 21:14,18 25:13 recoup 22:22 recover 14:11 recovering 16:9 refer 5:25 reference 8:11 referral 24:8 referrals 24:6 referred 5:12 16:12 referring 11:12 23:21 reflected 27:13 reflecting 9:17 refresh 14:24 regard 15:22 16:17 registered 1:22 29:6</p>
		r	
		<p>r 1:21 2:1 4:4 7:16 7:16,17 29:1,6,21 rabbit 27:13 racing 7:16 raid 14:21 raised 10:17 rare 7:15 8:12,14 13:24 15:6,22 16:4 19:2,6,12,14 20:1,5,13,14 21:8 21:11,13,16,19 22:3 23:4 24:3,7 24:10,16,17 25:13 26:17 27:11 ray 27:16 reached 6:24 27:10 read 5:4 6:3,4 21:25 25:19 real 4:22 really 10:8 13:19 19:21 recall 9:18 15:8 22:17 24:19,24 receipts 19:2 20:9 20:12,18 21:6 receive 10:1,4 received 10:7,9 11:23 14:8,12 16:25 17:16 21:5</p>	
	q		
	<p>qualification 8:22 question 8:21,23 10:3,20 13:3,6 17:13,24 18:5 19:3 20:22 21:20</p>		

[relate - statements]

<p>relate 23:21 25:9 related 21:18 22:13 23:20 relates 24:4 reliance 12:11 rely 20:16 relying 27:9 remainder 11:2 13:7 remember 9:22 15:13,14,25 remote 1:4 4:1 29:4 repeat 13:21 17:13 rephrase 17:24 report 8:10 11:23 12:7 reported 7:5 17:2 29:11 reporter 1:22 9:21 25:18 26:1 29:6,6 reports 14:8 16:25 represent 25:17 25:23 representations 10:25 representatives 15:10 residence 27:20 residing 29:6 resources 19:19 19:22 22:22,23 respect 6:18,24 11:11 12:3 13:15 14:4 16:23,25 18:15 20:14 22:2 23:12,25 24:8,10 25:2,4,8 26:23 27:9 response 11:9,10 11:14 12:18,20</p>	<p>13:7,11 responsibility 22:21 rest 11:5 13:6 restate 22:2 retained 6:15,16 14:9 returns 11:18 14:5 review 7:23 9:14 12:6,21 reviewed 7:9,19 7:25 8:1,2 9:20 11:24 14:7 19:25 21:9 22:7 24:1 25:12 reviewing 19:24 right 4:16 15:15 19:16 20:20 28:3 rpr 29:21 run 13:18 14:15 rust 6:19,25 7:15 7:16 8:12,13 11:17,17,21 12:4 13:24 14:15,23 15:6,7,22,22 16:4 16:15,20,20,23 17:7,8,11,11,11,20 17:21,25 19:2,6,12 19:14 20:1,4,5,13 20:14 21:8,11,13 21:16,16,19 22:3 22:13 23:4,8,8 24:3,7,10,16,16,17 25:12 26:17 27:11 rust's 16:16,21 27:20 rusts 23:23 24:12 24:16</p>	<p>s s 2:1 3:8 4:4 26:2 sale 19:23 sales 19:2 20:9,18 salt 1:18 2:5,10 29:3,7,18 saying 9:25 10:4 says 6:6 7:9,19 9:4 10:6 11:16 scheme 6:10,20 7:1 8:6 10:24 14:14,16 16:4,17 17:21 18:1,2,3,7,9 18:22 21:7 22:11 22:15,18,20,24 23:5 24:4 26:18 27:11 scope 16:24 screen 4:22 6:1,4 13:17 scroll 7:14 12:22 12:24,24 13:5,9,12 scrolling 5:20 second 21:23 secured 7:9,19 see 4:23,25 5:5 6:16 9:4 28:4 seek 14:11 seen 9:17 17:3 20:12 sell 10:19 sense 24:9 separate 16:14 serve 15:19 served 14:24 set 8:9 29:13 share 4:22 sharing 13:17 shoes 22:21 shorthand 29:6</p>	<p>shortly 15:5 show 11:4,4 signature 29:21 signed 5:10 significant 8:1 12:4 22:5 27:7 silver 8:6 9:6,11 10:8,19 12:5 simple 10:20 simply 22:21 sitting 5:1 situation 26:19 27:8 situations 21:6 skepticism 21:4 slight 13:21 slowly 13:9 somebody 12:14 sorry 12:25 15:14 20:25 26:5 sort 16:13 20:9 24:8 26:22 south 1:17 2:4 specific 19:17 27:8 27:12,17 specifically 15:13 15:23 16:1 specifics 26:23 spent 22:5 27:7 spoke 16:21 stage 15:24 standpoint 19:23 start 17:25 started 4:12 8:21 state 23:5 29:2,6 stated 10:11 18:23 23:3 25:11 statement 6:2 10:22 11:11,12 statements 5:19 9:14 24:22</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[states - year]

<p>states 1:1 stating 4:13 stenotype 29:11 step 22:21 stop 13:17 16:8 store's 19:2 stored 12:5 strike 19:21 25:3 strong 16:3 27:16 stuff 24:22 submitted 5:16 subparts 12:20 subpoenas 14:23 subsequent 21:12 suffered 16:7 suite 1:17 summary 5:11,17 supervision 27:19 support 23:15 suppose 13:21 sure 4:14,18 16:18 20:11 sworn 4:6 29:9 system 19:7 20:11 systems 19:22</p>	<p>testify 29:9 testimony 29:11 29:12 thank 5:18 thanks 19:14 28:3 thereof 29:16 things 8:25 11:8 20:5 think 5:12 7:13 9:25 12:15,16 13:5 15:24 16:24 18:4 25:20 27:15 third 10:25 thousands 7:10,20 7:24 8:2 14:7 three 18:17,24 23:22,22 24:11,12 25:17,24 time 8:8 16:11 19:10 20:8 22:3,5 24:19 27:7 today 4:19,20 today's 4:17 totals 9:7 track 20:4 tracking 19:22 20:15 trading 15:11 transcribed 29:12 29:13 transcript 11:24 12:6 transcription 29:12 transcripts 16:14 17:4,11,14,16 trial 18:15 true 29:12 truth 29:9,9,9 try 11:8 14:14 16:9 21:10 22:2</p>	<p>22:22 trying 19:25 20:22 turn 9:1 two 10:8 16:14 17:12 26:14 type 7:2 typewriting 29:12</p> <p style="text-align: center;">u</p> <p>u.s. 18:9 23:13,17 23:24 uhm 24:9 ultimate 20:21 uncovered 23:14 understand 14:10 17:22 18:14 understanding 7:14 undertake 6:22 undertaking 7:1 united 1:1 unlawful 22:19 unrelated 11:19 use 10:18 19:12,14 utah 1:2,18 2:5,10 29:2,6,7,18,22</p> <p style="text-align: center;">v</p> <p>vague 18:5 19:11 validates 19:1 20:23 21:1 various 5:24 6:21 10:23 14:2 ventures 11:19 victims 10:23 14:6 14:13,15 16:6,10 21:6,7 22:11,24 videoconference 1:4 4:1 29:5 vs 1:7</p>	<p style="text-align: center;">w</p> <p>w 26:2 want 4:18 7:2 13:9 14:20 19:17 wanted 16:8 way 8:20 9:2 11:9 14:11 22:22 23:4 wayne 25:9 ways 22:9 we've 16:12 17:12 21:5,6,10 week 15:5 whatnot 11:13 14:24 wife 16:21 willing 15:18 23:5 wise 7:3 withheld 25:6 witness 1:16 3:2 4:6 9:22 18:6 19:16 22:1,17 23:11 26:16 29:5 29:8,11,13,18 word 18:21 words 16:1 20:18 work 10:24 14:1 16:9 worked 21:6 wrap 13:19 write 10:14</p> <p style="text-align: center;">x</p> <p>x 3:1,8 4:9</p> <p style="text-align: center;">y</p> <p>yeah 12:24,25,25 13:9 18:6 22:1 23:11 26:14 year 19:17</p>
t			
<p>t 3:8 4:9 29:1,1 take 12:21 21:13 taken 26:23 29:5 29:12 talked 6:21 24:12 talking 19:11 targets 18:23 team 11:22 12:11 17:10 22:4 25:12 teams 6:24 7:5 25:12 tena 1:10 term 20:19 testified 4:7</p>			

[zions - zoom]

z
zions 24:17,25 25:2,5,9
zoom 4:18,20,24

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

EXHIBIT E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES JUDICIAL DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JONATHAN O. HAFEN, in his)
 capacity as Court-appointed)
 Receiver;)
)
 Plaintiff,) Civil No.
) 2:19-cv-00813
 v.)
)
 GRETCHEN A. HOWELL, an)
 individual, and LESLIE)
 HOWELL, an individual,)
) Judge Tena Campbell
 Defendants.)

DEPOSITION OF RAY STRONG, CPA, CFE, CIRA
July 14, 2021 10:01 a.m.
Location: DEPOSITION BY VIDEOCONFERENCE
SALT LAKE CITY, UTAH

Reported by:
HEIDI HUNTER, RPR, CSR

1 APPEARANCES
 2 FOR THE PLAINTIFF
 3 Cynthia D. Love
 PARR, BROWN, GEE & LOVELESS
 4 Attorneys at Law
 101 South 200 East, Suite 700
 5 Salt Lake City, UT 84111
 Tel: 801.532.7840
 6 Email: clove@parrbrown.com
 7
 8 FOR THE PLAINTIFF
 9 Patrick E. Johnson
 COHNE KINGHORN, P.C.
 10 Attorneys at Law
 111 Broadway, 11th Floor
 11 Salt Lake City, UT 84111
 Tel: 801.363.4300
 12 Email: pjohanson@ck.law
 13
 14 ALSO PRESENT:
 15 (None)
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 PROCEEDINGS
 2
 3 RAY STRONG,
 4 called as a witness, being first duly sworn, was
 5 examined and testified as follows:
 6
 7 EXAMINATION
 8 BY MR. JOHNSON:
 9 Q Would you mind just stating your name for the
 10 record, please.
 11 A Ray Strong.
 12 Q Okay. And just to confirm your identity, you
 13 are the -- you've been retained by the receiver in
 14 connection with the Rust Rare Coin proceedings?
 15 A Yes, to provide accounting and financial
 16 analyses.
 17 Q I just want to go over a few things. As we
 18 all know, we're conducting the deposition by Zoom today
 19 as a result of the coronavirus pandemic. The rules of
 20 civil procedure haven't quite caught up with. How we're
 21 doing things these days, and I just want to make sure
 22 everybody is on board with this procedure. I want to
 23 confirm that you consent to the Zoom deposition today --
 24 or proceeding by Zoom today?
 25 A Yes, I do.

1 INDEX
 2
 3 PAGE
 4 Ray Strong
 5 Examination by Mr. Johnson 4
 6
 7 EXHIBITS
 8 NO. DESCRIPTION PAGE
 9
 10 Exhibit A Motion Seeking Approval of the 10
 Proposed Claim Procedures Claim
 Deadline, and Claim Forms
 11
 12 Exhibit B Declaration of D. Ray Strong, CPA, 12
 CFE, CIRA
 13 Exhibit C Exhibit 2; Pre-Silver Pool Accounts 31
 14 Exhibit D Rust Rare Coin, Inc., Account 38
 QuickReport
 15
 16 Exhibit E Rust Rare Coin receipts 50
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 Q And, Cynthia, does the receiver agree to
 2 proceed by Zoom today as well?
 3 MS. LOVE: We have no objection.
 4 MR. JOHNSON: Thank you.
 5 Q (By Mr. Johnson) Are you suffering from any
 6 illnesses or have you taken any medication that prevents
 7 you from understanding my questions today and answering
 8 them fully?
 9 A No.
 10 Q Is there anything that I need to know that
 11 will prohibit you from giving me your full attention
 12 today?
 13 A No.
 14 Q When were you first approached concerning Rust
 15 Rare Coin?
 16 A By the receiver or by other parties?
 17 Q Fair point. By other parties?
 18 A I was contacted by the Attorney General's
 19 Office for the state of Utah in early October 2018.
 20 Q Okay. And do you recall who specifically
 21 approached you?
 22 A Would have been Robert Wing.
 23 Q And he's -- at the time, he was at the Utah
 24 Securities Division; is that --
 25 A My understanding is he was with the Attorney

1 General's Office. He's an attorney for them.
 2 Q And what did he tell you about the Rust Rare
 3 Coin at the time?
 4 A He just indicated that they had a situation
 5 that they'd been investigating for a period of time and
 6 that it may involve a Ponzi scheme and wanted to engage
 7 me and my firm to evaluate the information and
 8 transactions as it relates to a determination of whether
 9 it was or wasn't a Ponzi scheme.
 10 Q And just as a sort of placeholder that we'll
 11 come back later, we can all agree that state and federal
 12 authorities seized control of Rust Rare Coin on
 13 November 15, 2018. Is that your memory?
 14 A That's when the receiver took possession and
 15 that's also the same time that the federal authorities
 16 served a search warrant on Rust Rare Coin.
 17 Q Sorry. I think an ambulance has now passed
 18 and hopefully you all aren't hearing that now.
 19 So what -- so after they -- after Robert Wing
 20 approached you, what was your involvement and what did
 21 you do, what did you look at, just a general sort of big
 22 picture concept?
 23 A So my team and I met with Mr. Wing and one of
 24 the lead investigators, Liz Blaylock, to initially walk
 25 through some of the investigation that they had done and
 Page 6

1 some of the information that they had gathered. We
 2 obtained a large portion of that documentation and
 3 information and we started to analyze that information,
 4 including bank statements and bank records and investor
 5 lists and the like, and started to develop our own
 6 analysis to evaluate the existing situation.
 7 Q What did you concluded from that initial
 8 investigation?
 9 A Well, that was referenced in a declaration
 10 that was filed just prior to the appointment of a
 11 receiver, I think it was on November 9th or
 12 November 11th a few days prior, and what I identified
 13 was a number of transactions and characteristics that
 14 were similar to the characteristics of a Ponzi-type
 15 scheme based on that initial data we were able to
 16 analyze.
 17 Q So if I wanted to be more specific on what you
 18 looked at, what you concluded, I could just go look at
 19 that declaration; is that fair?
 20 A Correct.
 21 Q Did you interview any investors during this
 22 time period?
 23 A No. The securities investigator, Liz
 24 Blaylock, did most of the investigative work or
 25 interviews.
 Page 7

1 Q Did you have any role in Rust Rare Coin prior
 2 to being approached by the state and federal
 3 authorities?
 4 A No.
 5 Q And then presumably even after you were
 6 approached, you didn't control how Rust Rare Coin was
 7 operated?
 8 A No.
 9 Q And is it fair to say your involvement -- your
 10 direct involvement in Rust Rare Coin only began after
 11 the receiver was appointed?
 12 A What do you mean by "direct"?
 13 Q That's fair -- that's a fair question. I
 14 think what I'm -- you didn't -- and I think I know -- we
 15 all know the answer to this question, but you didn't
 16 have any role in Rust Rare Coin other -- prior to the
 17 state and federal authorities seizing control, it was
 18 just limited to just analyzing the data that they had
 19 collected?
 20 A Correct.
 21 Q So you didn't have any control of the entries
 22 in any bookkeeping system?
 23 A No, I did not.
 24 Q It was other people -- you know, it was other
 25 individuals made all the entries in the Rust Rare Coin
 Page 8

1 bookkeeping system?
 2 A I was not -- I didn't have any involvement in
 3 Rust Rare Coin accounting prior to -- or basically it
 4 was just analysis of the entries and the accounting that
 5 I obtained from either the attorney general engagement
 6 or the receiver engagement. I didn't prepare any of
 7 those entries, no.
 8 Q Didn't authorize any financial transactions of
 9 any sort?
 10 A No.
 11 MR. JOHNSON: So I was -- Heidi, I was going
 12 to try to share my screen and it says "Hostess able
 13 participant screen sharing?"
 14 COURT REPORTER: Okay.
 15 You should now.
 16 MR. JOHNSON: Great. Thank you.
 17 Q (By Mr. Johnson) So I am -- I believe I'm
 18 sharing my screen, and my screens are huge, so I can see
 19 things clearly. Let me know if you need me to Zoom in.
 20 Can you see this document that's entitled "Motion
 21 Seeking Approval of the Proposed Claim Procedures Claim
 22 Deadline and Claim Forms"?
 23 A Yes.
 24 Q At the top, the ribbon indicates that it was
 25 filed in Case 2:18-cv-892, and it's been filed as
 Page 9

1 Document 236. Do you see that?
 2 A I do.
 3 MR. JOHNSON: And I would like to just
 4 designate this document as Exhibit A.
 5 (EXHIBIT A WAS MARKED.)
 6 Q (By Mr. Johnson) And you see down below that
 7 it's 32 pages long. If you can track my mouse.
 8 A That's what it shows.
 9 Q Okay. So scroll down to the second page here.
 10 And if you could just sort of read the first two
 11 sentences, that would be helpful for me, if you don't
 12 mind.
 13 A Okay.
 14 Q And so you see the -- if you follow my
 15 mouse -- that "receivership defendants" is a defined
 16 term in quotations on the fifth line. And it references
 17 a Footnote 1. And then I will scroll down to
 18 Footnote 1. And if you could take -- and I've zoomed in
 19 a little bit. If you could take a look at these
 20 entities and read them, and then let me know when you've
 21 done that.
 22 A Okay.
 23 Q And do you -- are these -- to your knowledge,
 24 are these all of the entities that are part of the
 25 receivership?

Page 10

1 MS. LOVE: I just want to object for a second
 2 to the extent that calls for a legal conclusion. The
 3 receivership scope is defined by the court's
 4 receivership order.
 5 A Those appear to be entities consistent with
 6 entities that we've analyzed and reviewed as part of the
 7 receivership. Whether it's legally defined as the
 8 receivership defendants, I think that's probably a legal
 9 question.
 10 Q (By Mr. Johnson) To the extent any of these
 11 entities had assets and operations, had they become part
 12 of the receivership?
 13 A If they would have been assets, the receiver
 14 and their legal team have analyzed those assets and
 15 administered them.
 16 Q And are you aware of any other companies or
 17 entities controlled by Gaylen Rust, Denise Rust or Josh
 18 Rust that are not part of the receivership?
 19 A The only entity that appears to be missing
 20 here, although it's -- I don't recall it being part of
 21 the receivership, would be Legacy Music Alliance, which
 22 is a not for profit, but they have a separate board and
 23 there were -- from my recollection, there was no assets
 24 there.
 25 Q Other than the -- you said that was -- remind

Page 11

1 me, what was the name of that entity that you just
 2 mentioned?
 3 A Legacy Music Alliance.
 4 Q Other than Legacy Music Alliance, are you
 5 aware of any assets or -- any assets owned or controlled
 6 by Gaylen Rust, Denise Rust, or Josh Rust that are not
 7 part of the receivership?
 8 A Not that I'm aware of as I sit here today.
 9 Q So hopefully you can see a new document put
 10 up. It's the declaration of D. Ray Strong, CPA, CFE,
 11 CIRA. Do you see that?
 12 A I do.
 13 Q And you see that it's been filed in the
 14 Case 2:19-cv-627 as Document 17-2?
 15 A I do.
 16 Q Do you recognize this document?
 17 A I do.
 18 Q And can you tell me what it is?
 19 A This was a declaration that I prepared with --
 20 with my team pursuant -- it was part of the Oberhansly
 21 proceeding.
 22 (EXHIBIT B WAS MARKED.)
 23 Q And I just want to -- what I would like to do
 24 is designate this as Exhibit B, but if you look at the
 25 bottom right screen, it's one -- 386 pages, which is

Page 12

1 quite big. So I think what I'd like to do is just
 2 designate the first -- I think -- let's say the first 83
 3 pages. I've scrolled down to Page 83. So let me scroll
 4 up a little bit.
 5 You see that there's -- on Page 77 it's your
 6 sort of signature?
 7 A That's my signature.
 8 Q Okay. And then the next several pages to 83
 9 identify a fair number of exhibits that are attached to
 10 the declaration?
 11 A Correct.
 12 Q And then Exhibit 1 begins on Page 84. I'll
 13 just designate, for convenience and size, 1 through 83
 14 of this document. And then to the extent we need to
 15 refer to any exhibits, we can designate those
 16 separately.
 17 I just want to ask a few questions about some
 18 of the statements in this.
 19 Paragraph 18 -- let me know if I need to zoom
 20 in more for you to be able to read this document. I'm
 21 happy to do that.
 22 A Okay. I can read it.
 23 Q So Paragraph 18 says, "Over the decades
 24 RRC" -- and I think we all agree that refers to Rust
 25 Rare Coins -- "and G Rust" -- that's Gaylen Rust --

Page 13

1 "built significant trust and loyalty with its customer
 2 base through its historical coin store dealings,
 3 affiliations with The Church of Jesus Christ of
 4 Latter-Day Saints, community and philanthropic
 5 endeavors, industry relationships and involvement with
 6 numismatic trade associations."
 7 I want to ask just what did you mean by
 8 "affiliations with The Church of Jesus Christ of
 9 Latter-Day Saints"?

10 A He was involved in transactions with the
 11 church as far as investors or customers would make
 12 tithing donations and Rust Rare Coin would liquidate
 13 some of those metals that were traded -- or not traded,
 14 but metals that were donated, and/or through the
 15 investors, the investors would want periodic tithing
 16 payments made to the church, and Rust Rare Coin and
 17 Gaylen, as part of the investor programs, would make
 18 those payments.

19 Q Are you aware of any LDS church leader that
 20 specifically promoted the silver pool to others?

21 And let's -- well, let me step back. Let me
 22 define a couple of terms. I refer to "silver pool" --
 23 if we -- well, for sake of convenience, let's define
 24 "silver pool" as in Paragraph 19 sometime around 2008
 25 Gaylen Rust created and promoted a silver only pool

Page 14

1 investment opportunity."
 2 And then if we can agree that the silver pool
 3 is generally defined as what's been identified and
 4 described by the receiver and others as sort of the
 5 alleged Ponzi scheme here; is that agreeable?

6 A No, I don't think I would necessarily agree
 7 with that. I think the Ponzi scheme itself -- the
 8 silver pool was an evolution of other arrangements or
 9 programs that Gaylen had, and the silver pool was kind
 10 of the -- kind of final major investment program that
 11 Gaylen promoted.

12 Q Okay. And I'm just trying to figure out a
 13 definition that we can work from. I'm not trying to put
 14 words in your mouth. Is the silver pool generally a
 15 program where Gaylen Rust through Rust Rare Coin -- at
 16 least, just for the record, it's alleged that he brought
 17 in investor money, told investors that he was trading
 18 that silver on this sort of a short sale, a program
 19 where he would sell it at a higher price and then buy it
 20 back at a lower price and buy more back at a lower price
 21 and that would cause the investor's balance of silver to
 22 increase?

23 A Correct. That was one component of it.
 24 Another component of it was that he represented to
 25 investors that 50 percent or so would be stored securely

Page 15

1 at Brinks.
 2 Q Okay. So that sort of gets us around silver
 3 pool. And then the other, I think, term I need to
 4 define in that question is LDS church leader. And what
 5 I'll include is that is somebody that was, let's say, a
 6 bishop, a member of the bishopric, stake president, a
 7 member of the stake presidency, or held some sort of
 8 position higher in the church.

9 So with that sort of framework, I'll reask
 10 this question. Are you aware of any LDS church leader
 11 that promoted the silver pool to others?

12 A I'm not aware of specific instances. I do
 13 know that the investor pool included members of the LDS
 14 church, and whether or not they were leaders within the
 15 LDS church and they promoted amongst their investor
 16 groups or families, I don't know that specifically, but
 17 it's possible.

18 Q Are you aware of any LDS church leaders that
 19 knew how the silver pool operated? And when I say
 20 "operated" I mean in the context of what we just sort of
 21 discussed as the silver pool and how Gaylen Rust
 22 described it to others.

23 Let me reask that question. I apologize. So
 24 the question is: Are you aware of any LDS church
 25 leaders that knew how the silver pool operated? And by

Page 16

1 "operated" I mean in the manner that you contend is a
 2 Ponzi scheme. How about that?

3 A And are you talking about church leaders that
 4 were not investors? I guess that's where the
 5 distinction I'm trying to understand.

6 Q Let me ask this in a different order. So is
 7 it fair to say -- again, I'm just trying to make sure
 8 we're working from the same framework. As the silver
 9 pool that we've sort of agreed about how it worked, you
 10 contend that that was a Ponzi scheme; is that a fair
 11 statement?

12 A It demonstrates the badges of a Ponzi scheme,
 13 the characteristics of a Ponzi scheme, and the
 14 definition of a Ponzi scheme, correct.

15 Q Are you aware -- do you know of anybody other
 16 than Gaylen Rust that knew how the silver pool operated
 17 and knew of the facts that you describe as having the
 18 badges of a Ponzi scheme?

19 A I don't know -- as far as church leaders, I
 20 don't know of anyone. There, obviously, were members of
 21 the church that were investors, and whether or not that
 22 was a Ponzi scheme, that would probably be subject to
 23 the facts and circumstances of each one of those
 24 individuals that were investors.

25 Q Sort of, generally speaking, did -- and this

Page 17

1 isn't a trick question and it's not a -- it's not a hard
2 question, I'm just not articulating it well, but I think
3 the core point is that, to your knowledge, was Gaylen
4 Rust the only person that knew what was going on and had
5 a full picture?
6 A I think with a full picture, yes.
7 Q Okay. So maybe we can just break down what
8 we're talking about in full picture, and what do you
9 mean by that -- I said it first, but what do you
10 understand that to be?
11 A Well, there may have been other -- there may
12 have been other employees that had some components or
13 some responsibilities for certain aspects of the scheme
14 such Felicia Fry or Frey. She did a lot of the
15 administrative kind of day-to-day interactions with some
16 of these investors. Josh Rust also -- you know, he made
17 payments to investors.
18 He was aware of transactions with investors.
19 Denise Rust did the same work prior to the hiring of
20 Felicia Fray. Michael Allred, obviously, accounted for
21 some of the transactions of the investor accounts, and
22 he prepared the books in QuickBooks files and books and
23 records of Rust Rare Coin that involved investor related
24 activities.
25 So there are a variety of different kind of

Page 18

1 components of the scheme that others may have some
2 limited knowledge.
3 Q But is it fair to say that Gaylen Rust was
4 sort of the mastermind and he's the only one, in your
5 opinion, that -- based upon -- not your opinion -- your
6 knowledge, really had all the parts of the puzzle and
7 knew all the parts of the puzzle?
8 A I think that's fair to say.
9 Q Okay. And so let's step back to my prior
10 question, if I'd asked it in the correct order. So that
11 would exclude -- so there was no LDS church leaders that
12 knew of -- you know, had all the parts of the puzzle and
13 knew what was going?
14 A As it relates to the scheme itself, I wouldn't
15 think so, no.
16 Q And what about -- I want to use the term
17 "intermediary." And that's a term that -- I can pull
18 this up, but I'm just going describe -- because it's an
19 exhibit to your declaration. It's Exhibit No. 5. And
20 if you recall -- maybe I'll just scroll down to it. If
21 we need to put it in the record, that's fine. I'm just
22 trying to keep things simple.
23 So this is Exhibit No. 5. It's Page 121 of, I
24 guess, Exhibit B, but obviously -- the document, part of
25 the document that we designated -- I designated as

Page 19

1 Exhibit B. Do you recognize this document that's shown
2 on the screen?
3 A I do.
4 Q Okay. This document refers to intermediaries
5 a lot of times, and I think it was -- the purpose was
6 really just to strip names so that this -- you know,
7 people's names didn't show up in the document, this
8 public record.
9 Do you have an understanding of what the term
10 "intermediary" is in this document?
11 A As it relates to -- can you show me an
12 example?
13 Q Yes. Okay. And so I'm on Page 132 of 386.
14 If you look at Line 234 -- zoom in a hair -- it just
15 says, "Email to Gaylen from intermediary investor.
16 Please see attached request for investor to draw monthly
17 from her account. Thanks for all you do for us and
18 others."
19 And if we go down to Page 57, Line 349,
20 "Initially I was approached by a good friend
21 [intermediary]."
22 Does that give you an idea of what I'm
23 referring to by the term "intermediary"?
24 A Yes, it does.
25 Q What's your understanding of what an

Page 20

1 intermediary would be in relation to the Rust Rare Coin?
2 A This would have been a situation where Gaylen
3 had a relationship with a particular investor and that
4 investor had a pool of other investors that provided
5 that intermediary with investments, contributions, and
6 that intermediary would then make the investment in
7 the -- what I'll call the intermediary investor's name
8 with Gaylen.
9 So an example of that would be somebody like
10 Clarence Fields, where if you look at his investment
11 statements, they'll be a series of other investors that
12 are in his transaction activity.
13 Q And how many of -- how many Clarence Fields
14 were there? How many intermediaries? It doesn't have
15 to be precise, just a ballpark figure, if you don't know
16 the exact number.
17 A I don't -- I'd have to go back and look. I
18 haven't looked or tallied that up or -- for some time.
19 There are a number of them, but I couldn't give even an
20 estimate without going back and looking at the investor
21 lists and the transaction history.
22 Q Can you ballpark it, half dozen, dozen, 50?
23 A Probably under 20.
24 Q Did any -- sorry, did I interrupt you?
25 A If I had to ballpark it, probably under 20.

Page 21

1 But, again, I would have to go back and look at that in
2 more detail.
3 Q Did any of the intermediaries receive
4 commissions?
5 A I'd have to go back and look at those details.
6 I do know that -- from whom?
7 Q From whom, is that what you mean?
8 A Yes, commissions from whom?
9 Q Commissions from Rust Rare Coin or Gaylen Rust
10 for bringing in new investor money.
11 A I'd have to go back and look. I don't know
12 off the top of my head at the moment. And the detailed
13 investor analysis, which I supervised, was done by Jeff
14 Shaw from my office.
15 Q So we've sort of established what intermediary
16 means. I think we agreed to that. If not, let me know.
17 But I want to step back to sort of where my earlier
18 questioning was, which is, do you know -- I asked if
19 anybody else knew about the inner workings and had the
20 full picture of Rust Rare Coin's operations and you
21 identified some of the employees that had bits and
22 pieces.
23 I then asked whether any LDS church leader
24 knew about -- had the full picture. So my next question
25 is: Are you aware of any intermediary that had a full
Page 22

1 picture of -- not me.
2 (INTERRUPTION)
3 A Sorry. It comes through my phone and since
4 I'm on the computer with Zoom, I can't shut that off.
5 Q So are you aware of any intermediary that had
6 a full picture of the operations of the silver pool or
7 what you contend is a Ponzi scheme?
8 A There may have been some inclinations along
9 the way, but the full picture where they understood the
10 total investors, how it completely functioned, that
11 would be Gaylen in its entirety.
12 Q So I'm back on Exhibit B, and I'm focusing on
13 Paragraph 19 and again back at this term "silver pool."
14 When do you -- stepping back a little bit more. I think
15 you earlier -- and I'm not trying to put words in your
16 mouth, but you -- would you agree that the silver pool
17 you contended was a Ponzi scheme -- I think you
18 clarified more and said it had the hallmarks and the
19 characteristics of a Ponzi scheme; is that fair?
20 A You know, in my view, it is a Ponzi scheme.
21 Q Okay. And when did you -- when do you think
22 it began? I know that you opined or stated at least as
23 early as 2008. Do you have -- do you think it began
24 earlier than that and, if so, when?
25 A You know, I do believe that it started earlier
Page 23

1 than that. We have not done the full analysis. The
2 analysis that we prepared for 2008, 2009, 2010 was
3 substantial. It took a substantial amount of work
4 involving looking at a variety of different sources of
5 information to kind of reconstruct the activity, and the
6 cost benefit of going back any further just wasn't there
7 at the time.
8 I think it probably did begin prior to that.
9 As to when, I couldn't tell you without doing the full
10 analysis that we did in 2008, 2009, 2010.
11 Q Do you know where the term "silver pool"
12 originated?
13 A The silver pool -- I think it was just a
14 scripted term used by the -- it's basically a pooling of
15 investor funds. It was a pooled investment, and the
16 original term I heard probably from the CFTC.
17 Q And "CFTC" is Commodity Futures Trading
18 Commission?
19 A Correct.
20 Q Are you aware of other names that were used
21 for the silver pool or the investment opportunity?
22 A I'm sure there's -- investments opportunity
23 would be one, silver program, you know, metals program,
24 but for the most part, as I mentioned, it was an
25 evolving process and the end program was what's defined
Page 24

1 here is as the silver pool.
2 Q Have you heard of the term "silver bullion
3 accounts"?
4 A I've heard "silver bullion accounts," sure.
5 Q And what's your understanding of what those
6 were?
7 A Well, bullion is basically the same as one
8 ounce ground silver, which is -- based on discussions
9 with Gaylen Rust, is what this -- this version of the
10 investment programs centered around, was the one-ounce
11 silver bullion.
12 Q And then have you heard of gold bullion
13 accounts?
14 A There are variations of -- variations of
15 investor activity that involved gold bullion.
16 Q And if -- do you -- do you lump silver bullion
17 accounts and gold bullion accounts into the same
18 definition of what we've been describing as the silver
19 pool or are they something different in your mind?
20 A Those would have been a little different as
21 far as the mechanism. Earlier on, prior to the silver
22 pool, he was -- he had programs or investment vehicles
23 that involved gold bullion, platinum, coin collections,
24 and so forth. It was just a different version of the
25 overall scheme.
Page 25

1 Q So if an investor had a gold bullion account
 2 and there was a statement that indicated an amount of
 3 gold bullion, if I'm -- was it the same scheme as what's
 4 generally the silver pool, which I think we understand
 5 is there -- it's your conclusion or determination that
 6 there wasn't ultimately silver held by Rust Rare Coin to
 7 match what was on the statement or everybody's
 8 statements.

9 If somebody had a silver bullion account or
 10 gold bullion account, do you know whether there was a
 11 visible asset that matched what was on those statements?

12 A I don't -- I don't believe there was. And the
 13 reason for that is that in our 2008 analysis, which is
 14 kind of the beginning points of the silver pool version
 15 of the scheme, there was very little income generated
 16 from Rust Rare Coin, if any.

17 And based on our reconstruction of the
 18 investor activity, there was 3.3 million of investor
 19 contributions, which would involve silver pool related
 20 activity, gold bullion, platinum, other accounts, other
 21 vehicles of investment that Mr. Gaylen used. And in
 22 that same period, there was \$1.7 million of payments or
 23 distributions out to investors and \$1.6 million worth of
 24 distributions out to related entities, which is, in
 25 essence, the \$3.1 million or \$3.2 million.

Page 26

1 that we obtained from -- independently from the banks,
 2 and those show balances at various points in time.

3 Q And I need to clarify my question. By "cash"
 4 I mean currency, physical currency in the possession
 5 of -- you know, in a safe or on the location of the
 6 business. Could you -- can you pinpoint the amount on
 7 any given day during that time period?

8 A So cash that's in the till? Or cash that's in
 9 the coin fund or the metals fund that Larry Call kept in
 10 the safe? Or the cash funds that Gaylen kept as it
 11 related to investors?

12 Q I think, you know, all of the above. What I'm
 13 referring to is not cash that's in a bank account, but
 14 physical currency that would be in any of those three
 15 locations, just not bank account cash, can you pinpoint
 16 the balances of those?

17 A No, those balances weren't tracked.

18 Q What about inventory of, let's say, tradeable
 19 coins and other things that were general inventory of
 20 the coin operation, as well as silver, gold, and other
 21 precious metals, can you pinpoint the amount that was on
 22 hand at any given time?

23 A There was a report at the end in the Acumatica
 24 system that Josh's legal counsel went through,
 25 identified the inventory at that point in time. There

Page 28

1 So all of the funds that came in from the
 2 investor contributions were ultimately used to pay the
 3 investors and/or related party transactions for that
 4 time period. So I not believe that there was physical
 5 gold sitting somewhere for Rust Coin pursuant to some of
 6 the other investment vehicles.

7 Q And that -- that's a conclusion that you've
 8 drawn from your analysis, though, correct?

9 A It's a conclusion I've drawn from analysis and
 10 based on some of the other activity that's occurred. At
 11 the end of the day, there was none of this activity --
 12 none of this -- these physical metals or coins that were
 13 in existence at the time the receiver ultimately took
 14 possession, and that seemed to be the same pattern.

15 He would take these investor funds in
 16 depending on what the vehicle was and they were used to
 17 pay operations, they were used to pay investors and
 18 related party transactions. The cash balances kind of
 19 bear that out.

20 Q Have you been able to determine what the cash
 21 on hand of Rust Rare Coin was at any time from 2008
 22 until the -- until November 15th, 2018?

23 A It varied at various points in time. There
 24 were cash balances in the QuickBooks files from 2008 to
 25 2012. And from 2012, we have the actual bank statements

Page 27

1 was a point-of-sale system that was in place that
 2 tracked the purchases and sales of that activity. I'd
 3 have to go back and look to see if it would allow for
 4 after-the-fact reports to generate inventory -- an
 5 inventory report.

6 Q To step back, you mentioned that this --
 7 Acumatica, is that the correct -- is that how you
 8 pronounce that?

9 A That's correct.

10 Q And Acumatica was just at the very, very end,
 11 it was something that they were -- that Rust Rare Coin
 12 was transitioning to?

13 A That's correct.

14 Q And then just -- the follow-up question, then,
 15 is you haven't found any inventory reports saying this
 16 is -- these are all the coins that we -- that Rust Rare
 17 Coins has in its possession and are on the floor or in
 18 the safe and -- I'll stop the question there.

19 A I haven't looked at the system for quite some
 20 time, the RMS system, the point-of-sale system. There
 21 may be some reports in that system that could pull
 22 inventory. I just don't know if you can go back in time
 23 and pull those inventory. I know that Larry Call
 24 tracked some of the inventory along the way in some
 25 spreadsheets that he kept.

Page 29

1 Q And the same question -- is your answer the
2 same -- is your answer the same if I were to ask with
3 respect to silver bullion, gold bullion, and other sort
4 of precious metals as opposed to coins?
5 A Yes, that would be the same.
6 Q Did you say that gentleman's name was Larry
7 Call?
8 A Larry Call.
9 Q Call, C-A-L-L?
10 A Uh-huh. That's correct.
11 Q In Paragraph 18, you refer to pre-silver pool
12 accounts -- and I suppose you probably answered this
13 already in a different form, but I'll ask it here: In
14 your -- in your mind, what's your distinction between
15 pre-silver pool accounts and silver pool accounts?
16 A These would have been some of the kind of
17 precursor or -- as I talked about the evolution of his
18 scheme, these would have been -- this would have been
19 activity that involved coins, gold bullion, platinum,
20 90 percent silver, that -- many of those ultimately
21 rolled into the current version, in fact, most of them
22 did, but that's what I'm referring to there.
23 Q So would -- do you know -- let's start with
24 the premise that Rust Rare Coin gave those people that
25 had those accounts statements; is that a fair -- fair

Page 30

1 assumption?
2 A He gave them -- not statements in the
3 traditional sense like you would from some sort of
4 brokerage or investment related, formalized statement,
5 but they were Excel spreadsheets that Gaylen used to
6 track the investor activity for a particular investor.
7 Q And maybe -- let's -- I'll just try to
8 simplify this, and I'll -- so attached as Exhibit 2 to
9 the declaration -- and maybe I'll just make this an
10 exhibit. I pulled up -- this is Exhibit 2 to your
11 declaration. It's Page 94 to -- I'll just scroll
12 down -- I think at -- it goes to 107.
13 Are you -- do you have a memory of these or do
14 you want me to kind of scroll through them so that you
15 can refresh your recollection?
16 A I have a general memory of them.
17 (EXHIBIT C WAS MARKED.)
18 Q Okay. So, again, we'll make this Exhibit C.
19 And my question is -- I guess -- I believe in your
20 declaration, you refer to these as sort of the
21 pre-silver pool statements; is that correct?
22 A A version of them, yes. There are other
23 versions.
24 Q Do you know whether they're accurate?
25 A I have no idea if they're accurate or not.

Page 31

1 This is what he was listing as activity at that point in
2 time. Based on our analysis in 2008 between the
3 investor contributions and the payments to investors,
4 which is the definition of a Ponzi scheme, he was making
5 the contributions -- or payments to investors with
6 investor money.
7 Q Was there a -- if we start from the premise
8 that there was a Ponzi scheme side of -- alleged Ponzi
9 scheme side of what Gaylen Rust and Rust Rare Coin was
10 doing, was there a -- what I'll say is a legitimate side
11 or sort of something that -- just a normal business that
12 you wouldn't consider it to be a Ponzi scheme?
13 A Well, I think you have to look at the activity
14 as a whole. They had a coin store. And in a lot of
15 Ponzi cases there's some fashion of activity. Here they
16 had a coin store where they were actually selling --
17 buying and selling coins and bullion and metals and
18 memorabilia, but when -- you've got to look at it in its
19 totality. Is there a source of funds or profit that can
20 be used to make investor payments? And in this
21 particular case, there was not.
22 Q Okay. And because -- well, let's ask the
23 question this way -- I mean, there were sort of
24 legitimate customers that weren't -- that weren't
25 investors that came in and maybe bought a rare coin or

Page 32

1 sold a rare coin and had no other involvement in any
2 investment or something like that?
3 A Correct.
4 Q Okay. Here on my screen I've got Paragraph 26
5 pulled up, and it just starts with "The BRG team
6 obtained and conducted an extensive analysis of the
7 following documentation data and information." And then
8 there's a list of documents and sources that your
9 team -- you and your team reviewed; is that fair? Are
10 we on the same page, I guess?
11 A Those are general categories of documentation
12 that we reviewed. Obviously, you know, if you get into
13 the granular details, there's a lot of information that
14 we reviewed, but these are general categories.
15 Q And in fairness, this list continues to
16 Page -- you know, the next page and lists some other
17 general categories. Were you or your team able to
18 obtain bank statements prior to 2012?
19 A No, we were not -- no, that's not true. The
20 Zions account started in 2010. I believe we have at
21 least some of those statements prior to 2012, between
22 the 2010 and 2012 time period. We just didn't have all
23 the underlying transaction detail that accompanied those
24 statements prior to 2012.
25 Q Do you have a memory of what date ranges the

Page 33

<p>1 QuickBooks covers? 2 A For which entity? 3 Q Fair question. For the Rust Rare Coin, Inc. 4 A I haven't looked at the QuickBooks files for 5 some time, but my recollection is from 2003 through -- I 6 think it was June of 2018. 7 Q And I believe you stated in the declaration 8 that the QuickBooks records were incomplete and didn't 9 include every single transaction, whether it was the 10 retail store or the silver pool? 11 A For certain areas of QuickBooks, we came to 12 the conclusion -- which lead to a much larger and much 13 more extensive analysis from a variety of other sources 14 of documents and information, but the QuickBooks files 15 for certain key areas, such as the investor activity and 16 the sales and the purchases of coins and metals, was not 17 complete. 18 Q And if you look at -- I'm just going to refer 19 to one, two, three -- the fifth item on this 20 Paragraph 26, the -- you've defined a term -- there's a 21 defined term, "RMS POS system," that's the Rust Rare 22 Coin Microsoft Dynamics RMS point-of-sale system. You 23 would agree that that also was incomplete and didn't 24 include every transaction? 25 A I guess I don't understand the question.</p> <p style="text-align: right;">Page 34</p>	<p>1 statements that the investors received. Does the 2 100 million refer to one of those two categories, in 3 your mind? 4 A Well, it wouldn't include the fictitious gains 5 names that were included on the statements. These would 6 be investors that contributed funds, less any payments 7 that were made to them, as well as any of the other -- 8 what I'll call more vendor or employee related claims 9 for the Receivership. That would be the totality of the 10 potential allowed claims, which is still an ongoing 11 analysis. 12 Q Do you know what the -- if we back out -- if 13 we were to just look at sort of the investors and back 14 out vendor claims or employee claims, do you have a 15 number in mind of what that amount would be? 16 A I don't without going through that process. 17 Our -- we provided some of the transactional analyses 18 and transactional data. The legal team has been -- of 19 the receiver has been going through the actual claims 20 forms -- we've reviewed them as well, but they're the 21 ones that's charged with evaluating the actual legal 22 allowable claims. 23 Q And do you know what -- what the -- the term 24 you used "fictitious gains". Do you know what was 25 promised to investors when everything was sort of shut</p> <p style="text-align: right;">Page 36</p>
<p>1 The -- yeah, that would be -- that would be correct. 2 One of the things that we -- it was the most correct 3 information, especially for sales. Sales was -- it was 4 designed for tracking the sales. 5 On the purchases side, along the way, Josh was 6 trying to get that system much more robust and accurate, 7 but there were differences on the purchasing side where 8 QuickBooks would include transactions for the purchase 9 of bullion and coins and the like and the RMS system 10 would include some. 11 And we went through a kind of 12 transaction-by-transaction analysis and compared them, 13 and where there were QuickBooks transactions that were 14 not in the RMS system, we would make an adjustment for 15 those. 16 Q I've pulled up -- again, we're on Exhibit B -- 17 Paragraph 210. In this paragraph, you mention -- you 18 say that there's \$100 million in allowable claims from 19 over 500 investors and other claimants. I'm just trying 20 to understand what you mean by 100 million in allowable 21 claims. 22 Is that -- I see it as two options. One is 23 it's money that was contributed and there's no money to 24 repay, or it's what was represented on the statements -- 25 we'll call -- air quotations around statements -- the</p> <p style="text-align: right;">Page 35</p>	<p>1 down? 2 A I think that's a very difficult question to 3 ultimately answer, and the reason for that is that not 4 everyone would get monthly statements or monthly 5 tracking sheets. People that were a little more vocal 6 would get them more frequently. Other people he 7 wouldn't prepare -- you know, sometimes for a year or 8 two. 9 So I think it's difficult to really determine 10 what he had ultimately promised to these investors, but 11 I think it's in excess -- based on just a rough 12 evaluation of kind of the last statements that these 13 individuals received, it would be in excess of 14 600 million, if not more. 15 Q Is that -- is that something that your team 16 has done or is that something that the Receiver's team 17 has done? 18 A Well, as part of the investor analysis -- we 19 haven't done a formal analysis of that. We've done a 20 rough review of the last statements, and that's -- those 21 are the rough numbers that we came up with based on what 22 statements are available. There's statements that are 23 not available. 24 And to be clear on that, I think, that relates 25 to the statements for the investor tracking sheets that</p> <p style="text-align: right;">Page 37</p>

1 include the fictitious gains.
2 Q I didn't quite follow that last point. I
3 think maybe I did, but can you just --
4 A Well, in excess of 600 million, those would be
5 based on the statements or the tracking sheets, * via
6 the spreadsheets that Gaylen prepared for these
7 investors, and that value would include -- obviously
8 their contributions less payments, but also all of the
9 fictitious gains -- fictitious trading gains.
10 Q And so just -- and I don't -- just to make
11 sure I'm on the same page. So if one were to look or --
12 if one were to look at sort of the last statements, the
13 most recent or most current statements, understanding
14 it's not monthly and it could be old or something, if
15 one were to take a look at those, you think it's about
16 \$600 million of what -- the final number on that is what
17 the person is believed to have -- or what the recipient
18 would believe they have, which would include anything
19 that they contributed plus the fictitious gains, that's
20 the number we're getting to?
21 A Yes. Roughly it would be in excess of
22 600 million.
23 (EXHIBIT D WAS MARKED.)
24 Q Pulling up the -- I shared my screen with you.
25 It's a new document. I'm going to designate this as

Page 38

1 Exhibit D. This isn't a document that's familiar to
2 you, but does this, to you, look like a report -- like a
3 report from QuickBooks?
4 A Yes.
5 Q And at the top it's identified as "Rust Rare
6 Coin, Inc." It says, "Account Quick Report." And then
7 there's an account number, a 2443, and it says, "Les and
8 Gretchen Howell." Do you see that?
9 A I do.
10 Q Let's do some background work so that we just
11 have a clear record. And I'm sure you know how
12 QuickBooks operates, so these are -- this is just kind
13 of background questions -- or background information.
14 But QuickBooks has -- you'll agree it has sort of a --
15 there's different modules. It has sort of a sales
16 module, it has sort of an expense module. Would you
17 agree with that?
18 A Well, QuickBooks is set up a little different
19 than you would a normal accounting system where they
20 have modules. There are different menu items where you
21 can pull transaction detail for specific things. You
22 can pull income statement items, you can pull balance
23 sheet statement items. There is a -- what you would
24 deem a module for accounts payable, accounts receivable,
25 but QuickBooks is a fairly basic accounting system

Page 39

1 for -- geared towards smaller businesses.
2 Q And so some people -- some businesses will run
3 it -- you know, they may run their accounts receivable
4 or sales, and they'll enter an invoice and it will --
5 and maybe what I can do is refer to this type, that's
6 the first column. We see "General, Journal, Check,
7 Deposit" -- that's the three types. But sort of
8 depending on what menu item or module they're using --
9 I'm sorry.
10 So if a small business is using sort of the
11 accounts receivable option, they may be -- the business
12 owner may be looking at an invoice or something like and
13 it looks like an invoice with an invoice number and
14 there's a buyer or something, and that transaction data
15 filters in through the general ledger?
16 A It eventually makes its way to the general
17 ledger, that's correct.
18 Q Okay. And, likewise, there's the accounts
19 payable and a business owner may enter a check, and it
20 looks like they're just entering a check, but ultimately
21 that's being fed into the general ledger as well; is
22 that fair?
23 A Well, it can come from two different sources
24 in QuickBooks. It can come from the accounts payable --
25 I'll use your term -- module or the accounts receivable

Page 40

1 module, but it can also be just a direct entry into the
2 bank account, in the general ledger bank account.
3 Q And is that -- and just so we're on the same
4 page, would that show up as -- and I'm referring to
5 these first seven or eight lines -- as a general journal
6 entry, in your mind, or is that through one of the
7 modules?
8 A No. General journal entries typically in
9 QuickBooks, you would enter a general journal entry.
10 There's a separate functionality or menu item in
11 QuickBooks where you can create a general journal entry.
12 Q Okay. And that's kind of what I was trying to
13 get the foundation for. As you kind of got these normal
14 sort of forward facing parts of QuickBooks that are user
15 friendly for businesses that -- either it's the accounts
16 payable or accounts receivable where the business owner
17 is using -- you know, what's presented to them is sort
18 of an invoice or a check or something like that, but
19 then there's this other side that's more accounting
20 directed that -- where a user can actually enter an
21 entry through a general journal entry, which is much
22 more of a -- sort of a more formal accounting process;
23 is that fair?
24 A I don't know what you mean by "formal
25 accounting process." It is part of an accounting

Page 41

1 process where you have various modules in accounting
2 system that could be payroll, it could be accounts
3 payable, it could be accounts receivable, but there's
4 also -- in any business, frankly, there are general
5 journal entries into the general ledger system that are
6 made for a variety of different reasons.
7 It could be to correct an entry. It could be
8 to -- it could be to add a particular entry. It could
9 be to record accruals for an accrual-based accounting
10 system.
11 There's a variety of different reasons why
12 companies use general journal entries and they're
13 frequent. People use them all the time.
14 Q And so is -- these first -- these first seven
15 transactions, is that -- to the extent we added any
16 clarity to it, but is that what's happening here? Is
17 that the module or the menu item that's being used in
18 QuickBooks for these first seven entries?
19 A Those are general journal entries being
20 entered into QuickBooks.
21 Q Okay. And there's just a couple questions I
22 have to ask about these first seven. And you recognize
23 that the first five, it's -- they're general journal
24 entries. There's an amount being put in to this 2443
25 account, and there's a designation of U.S. gold to

Page 42

1 silver, platinum to silver, gold to silver -- or gold to
2 silver, various to silver, scrap, and cash to silver.
3 Would you be able to term -- with the
4 documents that you have obtained and could access, could
5 you determine whether these are accurate entries?
6 A Which entries are you talking about?
7 Q The first seven that are dated 10/1/2012.
8 A Well, one of the things that Gaylen would
9 do -- and you have to take into consideration here, this
10 is in 2012, which is when Mike Allred first came on
11 board, the accountant for Rust Coin, and I know he went
12 through a process of trying to clean up some of the
13 transactions in the existing accounting system.
14 And one of the things we have seen in a
15 variety of different examples of investors, is that
16 transactions weren't recorded in the periods that they
17 occurred and Gaylen would just provide numbers to
18 Michael Allred for these various investors. Michael
19 Allred didn't have the transparency into the investor
20 numbers and often they included amounts that included
21 gains -- the fictitious gains and not just the
22 contributions and the payments.
23 Q And just so I can distill that down -- and I
24 don't want to say that -- just to distill that down, it
25 would be your understanding that these entries are

Page 43

1 probably based upon what information Gaylen Rust gave to
2 Mike Allred who then inputted it into QuickBooks?
3 A Correct. That would be my understanding.
4 Some of those transactions there -- at least I know on
5 the first two -- don't correlate with the actual
6 contributions based on the information that we have and
7 what's been provided by the Howells.
8 Q And I'm just going to scroll down to -- can
9 you see a yellow highlighted general journal entry of
10 9/30/2016?
11 A I can.
12 Q Okay. It's a -- it's a deposit in to the --
13 deposit is not the right term. But it's an amount being
14 entered in to this 2443 account number, and you see
15 where it says -- references "2510 Papa Bear"?
16 A Yes.
17 Q And you weren't -- do you have an
18 understanding of -- through your analysis and your
19 investigation, do you have an understanding of what's
20 going on here? Why there's a -- what looks like a
21 moving of funds from the Papa Bear account into the
22 Howell account?
23 A I have no idea without going through and
24 trying to investigate that further. Again, Gaylen would
25 provide, without support, balances and summarized

Page 44

1 amounts for investors to be recorded at the request of
2 Mike Allred and, frankly, the tax professional, Travis
3 Fenton.
4 So I wouldn't know on that particular
5 transaction without being able to try to spend some time
6 trying to understanding what's there, but --
7 Q Does this type of transaction -- and I
8 understand that I caught you cold with this and you may
9 not know what's going on with this specific transaction,
10 but does this transaction look similar to things that
11 you've seen throughout your investigation?
12 A There are a number of summarized journal
13 entries that have been included in the investor related
14 accounts that don't provide sufficient detail or tie to
15 actual contributions and/or payments to investors.
16 There are a lot of transactions that do and we verified
17 a lot of them with other supporting documentation,
18 receipts, investor statements, information from
19 investors, but there are also a lot of transactions
20 under these bulk summarized transactions that we have
21 not been able to determine why or how they were made.
22 Q Got another set of questions to ask. Hope
23 this will go pretty quickly.
24 To your knowledge, has Gaylen Rust or any
25 members of his family or employees of the Rust

Page 45

1 businesses, have they been -- to your knowledge, have
2 they been interviewed with regard to the alleged Ponzi
3 scheme?
4 A Interviewed by whom?
5 Q Anyone. Interviewed by state or federal
6 authorities or by your team, the receiver, the
7 receiver's team in connection with the -- why we're here
8 today?
9 A Yes.
10 Q And when were those interviews?
11 A I think a number of those interviews were
12 referenced -- at least from the federal -- from the FBI
13 and Ms. Blaylock, those were referenced in my
14 declaration, and a lot of those interviews were
15 conducted from federal law enforcement on the day of the
16 receivership appointment on November 15th, 2018.
17 Q We have -- "we," the Howells, have received or
18 have access to two transcripts from that day. Do you
19 know whether there were other interviews with Gaylen
20 Rust, his family, or employees?
21 A I don't know what other interviews they would
22 have had -- the federal law enforcement would have had
23 with Gaylen, Josh, or Denise. I do know on that day
24 they did speak with both of them. They also, from what
25 I understand, spoke with Felicia Frey. And there may
Page 46

1 have been some others. They had a whole team of people
2 doing interviews of employees, both at Rust Rare Coin
3 and other related entity locations.
4 Q Do you know whether any of those interviews
5 were recorded and have been transcribed?
6 A I know some of them have been recorded. I
7 don't know if they've been -- they may have been
8 transcribed, some of them anyway.
9 Q Do you know who would -- I think we're -- to
10 the extent you can be specific -- I mean, do you have a
11 specific memory of any of these interviews other than
12 the two that I mentioned of Gaylen Rust that have
13 been -- that were recorded?
14 A Well, I believe Denise's was recorded. I
15 believe Felicia Frey's is recorded. I remember
16 listening to it. I would assume Josh's, but I don't
17 have a -- I would have to go back and look. I don't
18 know -- they were recording everybody's at the time from
19 what I could ascertain.
20 Q And this was the day -- this was on the
21 November 15th?
22 A Correct.
23 Q Are you aware of any other recordings that
24 were made of -- are you aware of any other recordings
25 other than ones that were made on November 15th, 2018?
Page 47

1 A I'm not.
2 Q Are you -- do you know if -- would you agree
3 that Rust Rare Coin in connection with the operations,
4 that they had paper invoices, paper receipts?
5 A For what type of activity?
6 Q Both for receiving investor funds and for the
7 sale of collectible coins and memorabilia?
8 A They were tracking paper copies of investor
9 receipts, sure, and I've seen many examples of those,
10 and for the sale and purchase of metals.
11 Q Is there anything in your possession that
12 would sort of authenticate those documents and indicates
13 that they are, in fact, accurate?
14 A Well, I was involved in the process of
15 identifying and locating documentation which included
16 the investor receipts and included, at least for some
17 period of time, the purchases and sales invoices.
18 Q Would those cash -- would those -- I guess
19 we'll call them cash sale receipts, or something like,
20 would those have been inputted into the point-of-sale
21 system or would they stand separately and apart from the
22 point-of-sale system?
23 A No. They would have been generated from the
24 point-of-sale system for the sale of coins and bullion
25 and for the purchases of coins and bullion if they were
Page 48

1 in the -- for the purchases if they were in the
2 point-of-sale system. They also kept hard copies -- at
3 least going back to a specific period of time -- in
4 Denise's office, that would include some other
5 information as it relates to that transaction if it was
6 obtained at the time of the transaction.
7 Q And these are -- and what I'm referring to --
8 I suppose I can find one if you can give me a minute --
9 or just -- just handwritten cash sales receipts, is that
10 what your -- you had in your mind?
11 A Well, it depends on what you're talking about.
12 You may need to show me what you're looking at, because
13 the investor receipts were handwritten, but there are
14 also transactions with investors that may have also had
15 receipt, so maybe you can show me what you're referring
16 to.
17 Q Let me see if I can find one.
18 MS. LOVE: Patrick, we've been going for about
19 an hour and a half.
20 Ray, are you okay or do you need a break?
21 THE WITNESS: I guess it depends on how long
22 we think we're going to be going. If we're going to be
23 going for hours, probably ought to take a break.
24 MR. JOHNSON: Let's hope not hours. I think
25 maybe a half an hour, but so you guys aren't looking at
Page 49

1 me trying to look and find something on my computer,
2 maybe we'll just take a five-minute or ten-minute break.
3 Does that work, just for everybody to get up and stretch
4 their legs and then not have to stare at the same screen
5 for a few minutes?
6 THE WITNESS: Yeah.
7 MS. LOVE: Yeah, works for me.
8 (Recess from 11:32 to 11:42.)
9 Q (By Mr. Johnson) So let me share my screen.
10 Sir, can you see my screening right now?
11 A Yes, I can.
12 Q And it's a couple paper receipts?
13 A Correct.
14 Q Okay. And in your -- I'll mark this as
15 Exhibit E.
16 (EXHIBIT E WAS MARKED.)
17 Q In connection with your investigation, did you
18 take possession of -- or did the receiver take
19 possession of and you reviewed a large number of
20 receipts similar to this?
21 A Yes.
22 Q Okay. And would these transactions have been
23 entered into the point-of-sale system or the QuickBooks
24 system?
25 A I would have to go back and look. They used
Page 50

1 paper receipts and other receipts from the system,
2 sometimes both. So I'd have to look at the specific
3 receipt.
4 Q So there's no way to tell from just -- just
5 generally that -- that documents like this -- not
6 actually these particular two receipts, but the stack
7 there, the ones you received, you would have to
8 individually check to make sure that they ended up in
9 one of the computer systems?
10 A Correct.
11 Q Do you know whether -- let's say after the
12 state and federal authorities took control of Rust Rare
13 Coin, do you know whether inventory -- an inventory was
14 performed of the precious metal collectible coins and
15 other memorabilia?
16 A When you say when the federal authorities took
17 over, there was a receiver, an independent receiver that
18 was appointed. Are you saying when the receiver took
19 over?
20 Q Yeah. Thanks for clarifying.
21 When the receiver -- when the federal
22 authorities obtained approval from the court to have a
23 receiver appointed to control it, do you know whether
24 the receiver did an inventory at that time?
25 A My understanding is they did do an inventory.
Page 51

1 Q In your investigation -- sorry, these are not
2 my questions.
3 In your investigation, did you find any
4 evidence of illegal activity other than the alleged
5 Ponzi scheme?
6 A Maybe you can expand on what you mean by
7 illegal activity.
8 MS. LOVE: Just -- I'm just going to object
9 for foundation and calls for a legal conclusion.
10 Q (By Mr. Johnson) So there's an alleged Ponzi
11 scheme, that's a fair statement, and obviously, you're
12 not an attorney or a criminal prosecuting attorney, but
13 are there other -- are there other acts, other things
14 that are outside the Ponzi scheme where you at least
15 suspected or -- you know, within your knowledge said,
16 This also looks illegal to me, this is different from
17 the Ponzi scheme, but something somebody else
18 or Gaylen -- something Gaylen Rust or others have been
19 involved in?
20 A Well, in this case, there's the Ponzi scheme,
21 there's the misappropriation of assets and fraud against
22 the investors. So I guess I'm not aware of anything as
23 I sit here today that we've chased down outside of those
24 issues.
25 Q Again, not my question. Other than the
Page 52

1 alleged Ponzi scheme, in your investigation, have you
2 discovered any evidence of any other illegal activity
3 that had occurred or is occurring with any of the Rust
4 Rare Coin or Rust family members, employees, associates,
5 properties, businesses, or any other entities associated
6 with the Rust or any of their business interests?
7 MS. LOVE: Same objections.
8 A I think other than what we've discussed as far
9 as the investor-related fraud issues, I'm not aware of
10 any that exist here.
11 Q What are the names of the financial
12 institutions that you're aware of that have been
13 affiliated with the Rusts from 2005 to November 15th of
14 2018?
15 A When you say "affiliated," where they had bank
16 accounts and other business relationships?
17 Q Yes. Thanks for clarifying.
18 A At the end, beginning in 2010 through the
19 receivership, beginning of receivership, it would have
20 been Zions Bank. And for a couple of the affiliates, I
21 believe it was Twerk Entertainment and Writer's Den, and
22 they had bank accounts with US Bank.
23 Prior to 2010, in 2009, it would have been
24 Barnes Bank. And prior to Barnes Bank, in 2009 through,
25 I believe, 2007, it was First National Bank. And then
Page 53

1 prior to First National Bank, it would have been
 2 KeyBank.
 3 Q And which of those banks have you obtained or
 4 reviewed statements and other documents from?
 5 A Well, through the subpoena process, we
 6 requested documentation from those prior names, and
 7 because of their document retention policies, they
 8 haven't kept those records. So we haven't seen any in
 9 those earlier periods from those earlier banks.
 10 I also asked Denise Rust and some of the other
 11 employees where those other statements may have been,
 12 and my understanding is that they were destroyed when
 13 they moved the store in -- I think roughly around 2016.
 14 Q And so -- I believe the declaration did say --
 15 and this is just to clarify. Your declaration indicated
 16 that you reviewed documents or bank statements from
 17 Zions Bank and some from US Bank; is that correct?
 18 A From US Bank for Twerk Entertainment and
 19 Writer's Den.
 20 Q And then you haven't obtained -- or
 21 reviewed -- haven't been able to obtain from the other
 22 banks, which I believe you identified as Barnes, First
 23 Security, and KeyBank?
 24 A No. Barnes, First National Bank, and KeyBank.
 25 Q In the course of your investigation and the

Page 54

1 subpoenas, have you become aware of or identified any
 2 omissions of information or data or statements from the
 3 financial institutions?
 4 A Maybe you can help clarify that question.
 5 When you say "omissions," what are you asking?
 6 Q I think in simpler terms, in the course of
 7 looking at the bank statements that you received, did
 8 you say to yourself, Hey, I didn't get everything,
 9 something is missing, or something along those lines?
 10 A No. We went through a very extensive analysis
 11 and analyzed the deposit detail, the wire transfer
 12 detail, the check detail, and we believe that it's
 13 complete. There may be a check here that for whatever
 14 their system couldn't produce it, but it would be a very
 15 rare occurrence in my view.
 16 Q Are you or any member of your team aware of a
 17 private letter authored by the Howells and delivered to
 18 Gaylen Rust residence on November 9th, 2020?
 19 A You would have to show it to me.
 20 Q Let me -- I don't have a letter. Are you just
 21 aware whether a letter was delivered or not on
 22 November 9th to Gaylen Rust that was written by the
 23 Howells?
 24 A I don't know. I don't recall seeing a letter
 25 and being provided a letter. Mr. Rust -- I don't recall

Page 55

1 him providing us with a letter.
 2 Q What were the names of the individuals under
 3 your supervision that reviewed the QuickBooks records?
 4 A Would have been myself, Jeff Shaw, Christina
 5 *Ter-Gevorkian, and Matt Babcock may have accessed and
 6 reviewed certain areas of QuickBooks files.
 7 Q I'll just ask it. Why -- do you have an
 8 understanding of why the Howell's investment account
 9 contributions of \$1,886.15, \$68,336.11, and \$99,985.26
 10 are not attributed and credited to the Howell's account
 11 in QuickBooks?
 12 A I don't know why they wouldn't have been
 13 accounted for in QuickBooks. My understanding is that
 14 the ins and the outs of the Howell's activity, I think
 15 from the receiver's perspective and from the Howell's
 16 perspective, I think we are very close as to the dollar
 17 amounts other than, I think, \$11,000.
 18 MR. JOHNSON: I think that's all the question.
 19 I'm just going to take a couple quick minutes to flip
 20 back through everything and make sure I didn't skip over
 21 something as I went along, so I'll be back in just a
 22 second.
 23 (Recess from 11:57 to 12:02.)
 24 MR. JOHNSON: I don't have any further
 25 questions.

Page 56

1 MS. LOVE: No questions on my end.
 2 THE WITNESS: Can I also review and sign? You
 3 can send it to my business address, Berkeley Research
 4 Group, 201 South Main Street, Suite 450, Salt Lake City,
 5 Utah, 84111.
 6 (Concluded at 12:02 p.m.)
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 57

1 CERTIFICATE OF DEPONENT
 2 Case: Hafen v. Howell
 3 Reported by: Heidi Hunter, RPR, CRR
 4 Date Taken: July 14, 2021
 5 WITNESS CERTIFICATE
 6 I, Ray Strong, HEREBY DECLARE:
 7 That I am the witness in the foregoing
 8 transcript; that I have read the transcript and know
 9 the contents thereof; that with these corrections, I
 10 have noted this transcript truly and accurately
 11 reflects my testimony.
 12 PAGE-LINE CHANGE-CORRECTION REASON
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 I, Ray Strong, deponent herein, do hereby
 19 certify and declare, under penalty of perjury the
 20 within and foregoing transcription to be true and
 21 correct. hereby affix my signature to said
 22 deposition.
 23 DATE _____ Ray Strong _____
 24 Subscribed and sworn to before me this
 25 _____ day of _____, 2021.

 Notary Public

Page 58

1 REPORTER'S CERTIFICATE
 2 STATE OF UTAH)
 3 COUNTY OF SALT LAKE)
 4
 5 I, Heidi Hunter, RPR, CCR, for the state
 6 of Utah.
 7 That the foregoing proceedings were taken
 8 before me at the time and place set forth in the
 9 caption hereof; that the witness was placed under
 10 oath to tell the truth, the whole truth, and nothing
 11 but the truth.
 12 That I thereafter transcribed my said
 13 shorthand notes into typing and that the typewritten
 14 transcript of said deposition is a complete, true
 15 and accurate transcription of my said shorthand
 16 notes taken at said time.
 17 I further certify that I am not a relative
 18 employee, attorney, or counsel of any of the parties
 19 nor am I a relative or employee of any of the
 20 parties' attorney or counsel connected with the
 21 action, nor am I financially interested in the
 22 action.
 23
 24
 25

Heidi Hunter
 HEIDI HUNTER, RPR, CCR

Page 59

[& - acumatica]

&	2007 53:25	450 57:4	account 3:14
& 2:3	2008 14:24 23:23	5	20:17 26:1,9,10
0	24:2,10 26:13	5 19:19,23	28:13,15 33:20
00813 1:6	27:21,24 32:2	50 3:15 15:25	39:6,7 41:2,2
1	2009 24:2,10 53:23	21:22	42:25 44:14,21,22
1 10:17,18 13:12	53:24	500 35:19	56:8,10
13:13	201 57:4	57 20:19	accountant 43:11
1,886.15 56:9	2010 24:2,10 33:20	6	accounted 18:20
1.6 26:23	33:22 53:18,23	600 37:14 38:4,16	56:13
1.7 26:22	2012 27:25,25	38:22	accounting 4:15
10 3:9	33:18,21,22,24	627 12:14	9:3,4 39:19,25
10/1/2012 43:7	43:10	68,336.11 56:9	41:19,22,25,25
100 35:18,20 36:2	2016 54:13	7	42:1,9 43:13
101 2:4	2018 5:19 6:13	700 2:4	accounts 3:13
107 31:12	27:22 34:6 46:16	77 13:5	18:21 25:3,4,13,17
10:01 1:13	47:25 53:14	8	25:17 26:20 30:12
11,000 56:17	2020 55:18	801.363.4300 2:11	30:15,15,25 39:24
111 2:10	2021 1:13 58:3,23	801.532.7840 2:5	39:24 40:3,11,18
11:32 50:8	210 35:17	83 13:2,3,8,13	40:24,25 41:15,16
11:42 50:8	234 20:14	84 13:12	42:2,3 45:14
11:57 56:23	236 10:1	84111 2:5,11 57:5	53:16,22
11th 2:10 7:12	2443 39:7 42:24	892 9:25	accrual 42:9
12 3:11	44:14	9	accruals 42:9
121 19:23	2510 44:15	9/30/2016 44:10	accurate 31:24,25
12:02 56:23 57:6	26 33:4 34:20	90 30:20	35:6 43:5 48:13
132 20:13	26850 59:17	94 31:11	59:11
14 1:13 58:3	2:18 9:25	99,985.26 56:9	accurately 58:7
15 6:13	2:19 1:6 12:14	9th 7:11 55:18,22	action 59:15,15
15th 27:22 46:16	3	a	activities 18:24
47:21,25 53:13	3.1 26:25	a.m. 1:13	activity 21:12 24:5
17-2 12:14	3.2 26:25	able 7:15 9:12	25:15 26:18,20
18 13:19,23 30:11	3.3 26:18	13:20 27:20 33:17	27:10,11 29:2
19 14:24 23:13	31 3:13	43:3 45:5,21	30:19 31:6 32:1
2	32 10:7	54:21	32:13,15 34:15
2 3:13 31:8,10	349 20:19	access 43:4 46:18	48:5 52:4,7 53:2
20 21:23,25	38 3:14	accessed 56:5	56:14
200 2:4	386 12:25 20:13	accompanied	acts 52:13
2003 34:5	4	33:23	actual 27:25 36:19
2005 53:13	4 3:5		36:21 44:5 45:15
			acumatica 28:23
			29:7,10

[add - believed]

<p>add 42:8 added 42:15 address 57:3 adjustment 35:14 administered 11:15 administrative 18:15 affiliated 53:13,15 affiliates 53:20 affiliations 14:3,8 affix 58:19 agree 5:1 6:11 13:24 15:2,6 23:16 34:23 39:14 39:17 48:2 agreeable 15:5 agreed 17:9 22:16 air 35:25 alleged 15:5,16 32:8 46:2 52:4,10 53:1 alliance 11:21 12:3,4 allow 29:3 allowable 35:18 35:20 36:22 allowed 36:10 allred 18:20 43:10 43:18,19 44:2 45:2 ambulance 6:17 amount 24:3 26:2 28:6,21 36:15 42:24 44:13 amounts 43:20 45:1 56:17 analyses 4:16 36:17 analysis 7:6 9:4 22:13 24:1,2,10</p>	<p>26:13 27:8,9 32:2 33:6 34:13 35:12 36:11 37:18,19 44:18 55:10 analyze 7:3,16 analyzed 11:6,14 55:11 analyzing 8:18 answer 8:15 30:1 30:2 37:3 answered 30:12 answering 5:7 anybody 17:15 22:19 anyway 47:8 apart 48:21 apologize 16:23 appear 11:5 appears 11:19 appointed 1:4 8:11 51:18,23 appointment 7:10 46:16 approached 5:14 5:21 6:20 8:2,6 20:20 approval 3:9 9:21 51:22 areas 34:11,15 56:6 arrangements 15:8 articulating 18:2 ascertain 47:19 asked 19:10 22:18 22:23 54:10 asking 55:5 aspects 18:13 asset 26:11 assets 11:11,13,14 11:23 12:5,5</p>	<p>52:21 associated 53:5 associates 53:4 associations 14:6 assume 47:16 assumption 31:1 attached 13:9 20:16 31:8 attention 5:11 attorney 5:18,25 6:1 9:5 52:12,12 59:13,14 attorneys 2:4,10 attributed 56:10 authenticate 48:12 authored 55:17 authorities 6:12 6:15 8:3,17 46:6 51:12,16,22 authorize 9:8 available 37:22,23 aware 11:16 12:5 12:8 14:19 16:10 16:12,18,24 17:15 18:18 22:25 23:5 24:20 47:23,24 52:22 53:9,12 55:1,16,21</p>	<p>background 39:10 39:13,13 badges 17:12,18 balance 15:21 39:22 balances 27:18,24 28:2,16,17 44:25 ballpark 21:15,22 21:25 bank 7:4,4 27:25 28:13,15 33:18 41:2,2 53:15,20,22 53:22,24,24,25 54:1,16,17,17,18 54:24 55:7 banks 28:1 54:3,9 54:22 barnes 53:24,24 54:22,24 base 14:2 based 7:15 19:5 25:8 26:17 27:10 32:2 37:11,21 38:5 42:9 44:1,6 basic 39:25 basically 9:3 24:14 25:7 bear 27:19 44:15 44:21</p>
		b	
		<p>b 3:7,11 12:22,24 19:24 20:1 23:12 35:16 babcock 56:5 back 6:11 14:21 15:20,20 19:9 21:17,20 22:1,5,11 22:17 23:12,13,14 24:6 29:3,6,22 36:12,13 47:17 49:3 50:25 56:20 56:21</p>	<p>began 8:10 23:22 23:23 beginning 26:14 53:18,19 begins 13:12 believe 9:17 23:25 26:12 27:4 31:19 33:20 34:7 38:18 47:14,15 53:21,25 54:14,22 55:12 believed 38:17</p>

[benefit - computer]

<p>benefit 24:6 berkeley 57:3 big 6:21 13:1 bishop 16:6 bishopric 16:6 bit 10:19 13:4 23:14 bits 22:21 blaylock 6:24 7:24 46:13 board 4:22 11:22 43:11 bookkeeping 8:22 9:1 books 18:22,22 bottom 12:25 bought 32:25 break 18:7 49:20 49:23 50:2 brg 33:5 bringing 22:10 brinks 16:1 broadway 2:10 brokerage 31:4 brought 15:16 brown 2:3 built 14:1 bulk 45:20 bullion 25:2,4,7,11 25:12,15,16,17,23 26:1,3,9,10,20 30:3,3,19 32:17 35:9 48:24,25 business 28:6 32:11 40:10,11,19 41:16 42:4 53:6 53:16 57:3 businesses 40:1,2 41:15 46:1 53:5 buy 15:19,20</p>	<p>buyer 40:14 buying 32:17</p> <hr/> <p style="text-align: center;">c</p> <hr/> <p>c 2:1 3:13 4:1 30:9 31:17,18 call 21:7 28:9 29:23 30:7,8,9 35:25 36:8 48:19 called 4:4 calls 11:2 52:9 campbell 1:9 capacity 1:4 caption 59:8 case 9:25 12:14 32:21 52:20 58:2 cases 32:15 cash 27:18,20,24 28:3,8,8,10,13,15 43:2 48:18,19 49:9 categories 33:11 33:14,17 36:2 caught 4:20 45:8 cause 15:21 ccr 59:5,18 centered 25:10 central 1:2 certain 18:13 34:11,15 56:6 certificate 58:1,4 59:1 certify 58:18 59:13 cfe 1:12 3:12 12:10 cftc 24:16,17 change 58:9 characteristics 7:13,14 17:13 23:19 charged 36:21</p>	<p>chased 52:23 check 40:6,19,20 41:18 51:8 55:12 55:13 christ 14:3,8 christina 56:4 church 14:3,8,11 14:16,19 16:4,8,10 16:14,15,18,24 17:3,19,21 19:11 22:23 cira 1:12 3:12 12:11 circumstances 17:23 city 1:14 2:5,11 57:4 civil 1:6 4:20 ck.law 2:12 claim 3:10,10,10 9:21,21,22 claimants 35:19 claims 35:18,21 36:8,10,14,14,19 36:22 clarence 21:10,13 clarified 23:18 clarify 28:3 54:15 55:4 clarifying 51:20 53:17 clarity 42:16 clean 43:12 clear 37:24 39:11 clearly 9:19 close 56:16 clove 2:6 cohne 2:9 coin 3:14,15 4:14 5:15 6:3,12,16 8:1 8:6,10,16,25 9:3</p>	<p>14:2,12,16 15:15 18:23 21:1 22:9 25:23 26:6,16 27:5,21 28:9,20 29:11 30:24 32:9 32:14,16,25 33:1 34:3,22 39:6 43:11 47:2 48:3 51:13 53:4 coin's 22:20 coins 13:25 27:12 28:19 29:16,17 30:4,19 32:17 34:16 35:9 48:7 48:24,25 51:14 cold 45:8 collected 8:19 collectible 48:7 51:14 collections 25:23 column 40:6 come 6:11 40:23 40:24 comes 23:3 commission 24:18 commissions 22:4 22:8,9 commodity 24:17 community 14:4 companies 11:16 42:12 compared 35:12 complete 34:17 55:13 59:11 completely 23:10 component 15:23 15:24 components 18:12 19:1 computer 23:4 50:1 51:9</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[concept - different]

<p>concept 6:22 concerning 5:14 concluded 7:7,18 57:6 conclusion 11:2 26:5 27:7,9 34:12 52:9 conducted 33:6 46:15 conducting 4:18 confirm 4:12,23 connected 59:14 connection 4:14 46:7 48:3 50:17 consent 4:23 consider 32:12 consideration 43:9 consistent 11:5 contacted 5:18 contend 17:1,10 23:7 contended 23:17 contents 58:7 context 16:20 continues 33:15 contributed 35:23 36:6 38:19 contributions 21:5 26:19 27:2 32:3,5 38:8 43:22 44:6 45:15 56:9 control 6:12 8:6 8:17,21 51:12,23 controlled 11:17 12:5 convenience 13:13 14:23 copies 48:8 49:2 core 18:3 coronavirus 4:19</p>	<p>correct 7:20 8:20 13:11 15:23 17:14 19:10 24:19 27:8 29:7,9,13 30:10 31:21 33:3 35:1,2 40:17 42:7 44:3 47:22 50:13 51:10 54:17 58:19 correction 58:9 corrections 58:7 correlate 44:5 cost 24:6 counsel 28:24 59:13,14 county 59:3 couple 14:22 42:21 50:12 53:20 56:19 course 54:25 55:6 court 1:1,4 9:14 51:22 court's 11:3 covers 34:1 cpa 1:12 3:11 12:10 create 41:11 created 14:25 credited 56:10 criminal 52:12 crr 58:2 csr 1:21 currency 28:4,4 28:14 current 30:21 38:13 customer 14:1 customers 14:11 32:24 cv 1:6 9:25 12:14 cynthia 2:3 5:1</p>	<p>d</p> <p>d 2:3 3:1,11,14 4:1 12:10 38:23 39:1 data 7:15 8:18 33:7 36:18 40:14 55:2 date 33:25 58:3,21 dated 43:7 day 14:4,9 18:15 18:15 27:11 28:7 46:15,18,23 47:20 58:23 days 4:21 7:12 deadline 3:10 9:22 dealings 14:2 decades 13:23 declaration 3:11 7:9,19 12:10,19 13:10 19:19 31:9 31:11,20 34:7 46:14 54:14,15 declare 58:5,18 deem 39:24 defendants 1:10 10:15 11:8 define 14:22,23 16:4 defined 10:15 11:3 11:7 15:3 24:25 34:20,21 definition 15:13 17:14 25:18 32:4 delivered 55:17,21 demonstrates 17:12 den 53:21 54:19 denise 11:17 12:6 18:19 46:23 54:10 denise's 47:14 49:4</p>	<p>depending 27:16 40:8 depends 49:11,21 deponent 58:1,18 deposit 40:7 44:12 44:13 55:11 deposition 1:12,14 4:18,23 58:20 59:11 describe 17:17 19:18 described 15:4 16:22 describing 25:18 description 3:8 designate 10:4 12:24 13:2,13,15 38:25 designated 19:25 19:25 designation 42:25 designed 35:4 destroyed 54:12 detail 22:2 33:23 39:21 45:14 55:11 55:12,12 detailed 22:12 details 22:5 33:13 determination 6:8 26:5 determine 27:20 37:9 43:5 45:21 develop 7:5 differences 35:7 different 17:6 18:25 24:4 25:19 25:20,24 30:13 39:15,18,20 40:23 42:6,11 43:15 52:16</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[difficult - filters]

<p>difficult 37:2,9 direct 8:10,12 41:1 directed 41:20 discovered 53:2 discussed 16:21 53:8 discussions 25:8 distill 43:23,24 distinction 17:5 30:14 distributions 26:23,24 district 1:1,2 division 1:2 5:24 document 9:20 10:1,4 12:9,14,16 13:14,20 19:24,25 20:1,4,7,10 38:25 39:1 54:7 documentation 7:2 33:7,11 45:17 48:15 54:6 documents 33:8 34:14 43:4 48:12 51:5 54:4,16 doing 4:21 24:9 32:10 47:2 dollar 56:16 donated 14:14 donations 14:12 dozen 21:22,22 draw 20:16 drawn 27:8,9 duly 4:4 dynamics 34:22</p>	<p>early 5:19 23:23 east 2:4 eight 41:5 either 9:5 41:15 email 2:6,12 20:15 employee 36:8,14 59:13,14 employees 18:12 22:21 45:25 46:20 47:2 53:4 54:11 endeavors 14:5 ended 51:8 enforcement 46:15,22 engage 6:6 engagement 9:5,6 enter 40:4,19 41:9 41:20 entered 42:20 44:14 50:23 entering 40:20 entertainment 53:21 54:18 entirety 23:11 entities 10:20,24 11:5,6,11,17 26:24 53:5 entitled 9:20 entity 11:19 12:1 34:2 47:3 entries 8:21,25 9:4 9:7 41:8 42:5,12 42:18,19,24 43:5,6 43:25 45:13 entry 41:1,6,9,11 41:21,21 42:7,8 44:9 especially 35:3 essence 26:25 established 22:15</p>	<p>estimate 21:20 evaluate 6:7 7:6 evaluating 36:21 evaluation 37:12 eventually 40:16 everybody 4:22 50:3 everybody's 26:7 47:18 evidence 52:4 53:2 evolution 15:8 30:17 evolving 24:25 exact 21:16 examination 3:5 4:7 examined 4:5 example 20:12 21:9 examples 43:15 48:9 excel 31:5 excess 37:11,13 38:4,21 exclude 19:11 exhibit 3:9,11,13 3:13,14,15 10:4,5 12:22,24 13:12 19:19,19,23,24 20:1 23:12 31:8 31:10,10,17,18 35:16 38:23 39:1 50:15,16 exhibits 13:9,15 exist 53:10 existence 27:13 existing 7:6 43:13 expand 52:6 expense 39:16 extensive 33:6 34:13 55:10</p>	<p>extent 11:2,10 13:14 42:15 47:10</p> <p style="text-align: center;">f</p> <p>facing 41:14 fact 29:4 30:21 48:13 facts 17:17,23 fair 5:17 7:19 8:9 8:13,13 13:9 17:7 17:10 19:3,8 23:19 30:25,25 33:9 34:3 40:22 41:23 52:11 fairly 39:25 fairness 33:15 familiar 39:1 families 16:16 family 45:25 46:20 53:4 far 14:11 17:19 25:21 53:8 fashion 32:15 fbi 46:12 fed 40:21 federal 6:11,15 8:2 8:17 46:5,12,15,22 51:12,16,21 felicia 18:14,20 46:25 47:15 fenton 45:3 fictitious 36:4,24 38:1,9,9,19 43:21 fields 21:10,13 fifth 10:16 34:19 figure 15:12 21:15 filed 7:10 9:25,25 12:13 files 18:22 27:24 34:4,14 56:6 filters 40:15</p>
e			
<p>e 2:1,1,9 3:1,7,15 4:1,1 50:15,16 earlier 22:17 23:15,24,25 25:21 54:9,9</p>			

[final - hostess]

<p>final 15:10 38:16 financial 4:15 9:8 53:11 55:3 financially 59:15 find 49:8,17 50:1 52:3 fine 19:21 firm 6:7 first 4:4 5:14 10:10 13:2,2 18:9 40:6 41:5 42:14 42:14,18,22,23 43:7,10 44:5 53:25 54:1,22,24 five 42:23 50:2 flip 56:19 floor 2:10 29:17 focusing 23:12 follow 10:14 29:14 38:2 following 33:7 follows 4:5 footnote 10:17,18 foregoing 58:6,19 59:7 form 30:13 formal 37:19 41:22,24 formalized 31:4 forms 3:10 9:22 36:20 forth 25:24 59:7 forward 41:14 found 29:15 foundation 41:13 52:9 framework 16:9 17:8 frankly 42:4 45:2 fraud 52:21 53:9</p>	<p>fray 18:20 frequent 42:13 frequently 37:6 frey 18:14 46:25 frey's 47:15 friend 20:20 friendly 41:15 fry 18:14 full 5:11 18:5,6,8 22:20,24,25 23:6,9 24:1,9 fully 5:8 functionality 41:10 functioned 23:10 fund 28:9,9 funds 24:15 27:1 27:15 28:10 32:19 36:6 44:21 48:6 further 24:6 44:24 56:24 59:13 futures 24:17</p> <p style="text-align: center;">g</p> <p>g 4:1 13:25 gains 36:4,24 38:1 38:9,9,19 43:21,21 gathered 7:1 gaylen 11:17 12:6 13:25 14:17,25 15:9,11,15 16:21 17:16 18:3 19:3 20:15 21:2,8 22:9 23:11 25:9 26:21 28:10 31:5 32:9 38:6 43:8,17 44:1 44:24 45:24 46:19 46:23 47:12 52:18 52:18 55:18,22 geared 40:1 gee 2:3</p>	<p>general 6:21 9:5 28:19 31:16 33:11 33:14,17 40:6,15 40:16,21 41:2,5,8 41:9,11,21 42:4,5 42:12,19,23 44:9 general's 5:18 6:1 generally 15:3,14 17:25 26:4 51:5 generate 29:4 generated 26:15 48:23 gentleman's 30:6 getting 38:20 gevorkian 56:5 give 20:22 21:19 49:8 given 28:7,22 giving 5:11 go 4:17 7:18 20:19 21:17 22:1,5,11 29:3,22 45:23 47:17 50:25 goes 31:12 going 9:11 18:4 19:13,18 21:20 24:6 34:18 36:16 36:19 38:25 44:8 44:20,23 45:9 49:3,18,22,22,22 49:23 52:8 56:19 gold 25:12,15,17 25:23 26:1,3,10,20 27:5 28:20 30:3 30:19 42:25 43:1 43:1 good 20:20 granular 33:13 great 9:16 gretchen 1:8 39:8</p>	<p>ground 25:8 group 57:4 groups 16:16 guess 17:4 19:24 31:19 33:10 34:25 48:18 49:21 52:22 guys 49:25</p> <p style="text-align: center;">h</p> <p>h 3:7 hafen 1:4 58:2 hair 20:14 half 21:22 49:19 49:25 hallmarks 23:18 hand 27:21 28:22 handwritten 49:9 49:13 happening 42:16 happy 13:21 hard 18:1 49:2 head 22:12 heard 24:16 25:2,4 25:12 hearing 6:18 heidi 1:21 9:11 58:2 59:5,18 held 16:7 26:6 help 55:4 helpful 10:11 hereof 59:8 hey 55:8 higher 15:19 16:8 highlighted 44:9 hiring 18:19 historical 14:2 history 21:21 hope 45:22 49:24 hopefully 6:18 12:9 hostess 9:12</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[hour - june]

<p>hour 49:19,25 hours 49:23,24 howell 1:8,9 39:8 44:22 58:2 howell's 56:8,10 56:14,15 howells 44:7 46:17 55:17,23 huge 9:18 huh 30:10 hunter 1:21 58:2 59:5,18</p>	<p>indicated 6:4 26:2 54:15 indicates 9:24 48:12 individual 1:8,9 individually 51:8 individuals 8:25 17:24 37:13 56:2 industry 14:5 information 6:7 7:1,3,3 24:5 33:7 33:13 34:14 35:3 39:13 44:1,6 45:18 49:5 55:2 initial 7:7,15 initially 6:24 20:20 inner 22:19 inputted 44:2 48:20 ins 56:14 instances 16:12 institutions 53:12 55:3 interactions 18:15 interested 59:15 interests 53:6 intermediaries 20:4 21:14 22:3 intermediary 19:17 20:10,15,21 20:23 21:1,5,6,7 22:15,25 23:5 interrupt 21:24 interruption 23:2 interview 7:21 interviewed 46:2,4 46:5 interviews 7:25 46:10,11,14,19,21 47:2,4,11</p>	<p>inventory 28:18 28:19,25 29:4,5,15 29:22,23,24 51:13 51:13,24,25 investigate 44:24 investigating 6:5 investigation 6:25 7:8 44:19 45:11 50:17 52:1,3 53:1 54:25 investigative 7:24 investigator 7:23 investigators 6:24 investment 15:1 15:10 21:6,10 24:15,21 25:10,22 26:21 27:6 31:4 33:2 56:8 investments 21:5 24:22 investor 7:4 14:17 15:17 16:13,15 18:21,23 20:15,16 21:3,4,20 22:10,13 24:15 25:15 26:1 26:18,18 27:2,15 31:6,6 32:3,6,20 34:15 37:18,25 43:19 45:13,18 48:6,8,16 49:13 53:9 investor's 15:21 21:7 investors 7:21 14:11,15,15 15:17 15:25 17:4,21,24 18:16,17,18 21:4 21:11 23:10 26:23 27:3,17 28:11 32:3,5,25 35:19 36:1,6,13,25 37:10</p>	<p>38:7 43:15,18 45:1,15,19 49:14 52:22 invoice 40:4,12,13 40:13 41:18 invoices 48:4,17 involve 6:6 26:19 involved 14:10 18:23 25:15,23 30:19 48:14 52:19 involvement 6:20 8:9,10 9:2 14:5 33:1 involving 24:4 issues 52:24 53:9 item 34:19 40:8 41:10 42:17 items 39:20,22,23</p>
<p>i</p>			
<p>idea 20:22 31:25 44:23 identified 7:12 15:3 22:21 28:25 39:5 54:22 55:1 identify 13:9 identifying 48:15 identity 4:12 illegal 52:4,7,16 53:2 illnesses 5:6 inclinations 23:8 include 16:5 34:9 34:24 35:8,10 36:4 38:1,7,18 49:4 included 16:13 36:5 43:20,20 45:13 48:15,16 including 7:4 income 26:15 39:22 incomplete 34:8 34:23 increase 15:22 independent 51:17 independently 28:1</p>			
			<p>j</p>
			<p>jeff 22:13 56:4 jesus 14:3,8 johnson 2:9 3:5 4:8 5:4,5 9:11,16 9:17 10:3,6 11:10 49:24 50:9 52:10 56:18,24 jonathan 1:4 josh 11:17 12:6 18:16 35:5 46:23 josh's 28:24 47:16 journal 40:6 41:5 41:8,9,11,21 42:5 42:12,19,23 44:9 45:12 judge 1:9 judicial 1:1 july 1:13 58:3 june 34:6</p>

[keep - metals]

k	l	list 33:8,15	m
<p>keep 19:22 kept 28:9,10 29:25 49:2 54:8 key 34:15 keybank 54:2,23 54:24 kind 15:9,10 18:15 18:25 24:5 26:14 27:18 30:16 31:14 35:11 37:12 39:12 41:12,13 kinghorn 2:9 knew 16:19,25 17:16,17 18:4 19:7,12,13 22:19 22:24 know 4:18 5:10 8:14,15,24 9:19 10:20 13:19 16:13 16:16 17:15,19,20 18:16 19:12 20:6 21:15 22:6,11,16 22:18 23:20,22,25 24:11,23 26:10 28:5,12 29:22,23 30:23 31:24 33:12 33:16 36:12,23,24 37:7 39:11 40:3 41:17,24 43:11 44:4 45:4,9 46:19 46:21,23 47:4,6,7 47:9,18 48:2 51:11,13,23 52:15 55:24 56:12 58:6 knowledge 10:23 18:3 19:2,6 45:24 46:1 52:15</p>	<p>l 30:9,9 lake 1:14 2:5,11 57:4 59:3 large 7:2 50:19 larger 34:12 larry 28:9 29:23 30:6,8 law 2:4,10 46:15 46:22 lds 14:19 16:4,10 16:13,15,18,24 19:11 22:23 lead 6:24 34:12 leader 14:19 16:4 16:10 22:23 leaders 16:14,18 16:25 17:3,19 19:11 ledger 40:15,17,21 41:2 42:5 legacy 11:21 12:3 12:4 legal 11:2,8,14 28:24 36:18,21 52:9 legally 11:7 legitimate 32:10 32:24 legs 50:4 les 39:7 leslie 1:8 letter 55:17,20,21 55:24,25 56:1 likewise 40:18 limited 8:18 19:2 line 10:16 20:14 20:19 58:9 lines 41:5 55:9 liquidate 14:12</p>	<p>listening 47:16 listing 32:1 lists 7:5 21:21 33:16 little 10:19 13:4 23:14 25:20 26:15 37:5 39:18 liz 6:24 7:23 locating 48:15 location 1:14 28:5 locations 28:15 47:3 long 10:7 49:21 look 6:21 7:18 10:19 12:24 20:14 21:10,17 22:1,5,11 29:3 32:13,18 34:18 36:13 38:11 38:12,15 39:2 45:10 47:17 50:1 50:25 51:2 looked 7:18 21:18 29:19 34:4 looking 21:20 24:4 40:12 49:12,25 55:7 looks 40:13,20 44:20 52:16 lot 18:14 20:5 32:14 33:13 45:16 45:17,19 46:14 love 2:3 5:3 11:1 49:18 50:7 52:8 53:7 57:1 loveless 2:3 lower 15:20,20 loyalty 14:1 lump 25:16</p>	<p>main 57:4 major 15:10 making 32:4 manner 17:1 mark 50:14 marked 10:5 12:22 31:17 38:23 50:16 mastermind 19:4 match 26:7 matched 26:11 matt 56:5 mean 8:12 14:7 16:20 17:1 18:9 22:7 28:4 32:23 35:20 41:24 47:10 52:6 means 22:16 mechanism 25:21 medication 5:6 member 16:6,7 55:16 members 16:13 17:20 45:25 53:4 memorabilia 32:18 48:7 51:15 memory 6:13 31:13,16 33:25 47:11 mention 35:17 mentioned 12:2 24:24 29:6 47:12 menu 39:20 40:8 41:10 42:17 met 6:23 metal 51:14 metals 14:13,14 24:23 27:12 28:9 28:21 30:4 32:17 34:16 48:10</p>

[michael - particular]

<p>michael 18:20 43:18,18 microsoft 34:22 mike 43:10 44:2 45:2 million 26:18,22 26:23,25,25 35:18 35:20 36:2 37:14 38:4,16,22 mind 4:9 10:12 25:19 30:14 36:3 36:15 41:6 49:10 minute 49:8 50:2,2 minutes 50:5 56:19 misappropriation 52:21 missing 11:19 55:9 module 39:16,16 39:24 40:8,25 41:1 42:17 modules 39:15,20 41:7 42:1 moment 22:12 money 15:17 22:10 32:6 35:23 35:23 monthly 20:16 37:4,4 38:14 motion 3:9 9:20 mouse 10:7,15 mouth 15:14 23:16 moved 54:13 moving 44:21 music 11:21 12:3,4</p>	<p>names 20:6,7 24:20 36:5 53:11 54:6 56:2 national 53:25 54:1,24 necessarily 15:6 need 5:10 9:19 13:14,19 16:3 19:21 28:3 49:12 49:20 new 12:9 22:10 38:25 normal 32:11 39:19 41:13 notary 58:24 noted 58:7 notes 59:10,12 november 6:13 7:11,12 27:22 46:16 47:21,25 53:13 55:18,22 number 7:13 13:9 21:16,19 36:15 38:16,20 39:7 40:13 44:14 45:12 46:11 50:19 numbers 37:21 43:17,20 numismatic 14:6</p>	<p>obviously 17:20 18:20 19:24 33:12 38:7 52:11 occurred 27:10 43:17 53:3 occurrence 55:15 occurring 53:3 october 5:19 office 5:19 6:1 22:14 49:4 okay 4:12 5:20 9:14 10:9,13,22 13:8,22 15:12 16:2 18:7 19:9 20:4,13 23:21 31:18 32:22 33:4 40:18 41:12 42:21 44:12 49:20 50:14 50:22 old 38:14 omissions 55:2,5 ones 36:21 47:25 51:7 ongoing 36:10 operated 8:7 16:19,20,25 17:1 17:16 operates 39:12 operation 28:20 operations 11:11 22:20 23:6 27:17 48:3 opined 23:22 opinion 19:5,5 opportunity 15:1 24:21,22 opposed 30:4 option 40:11 options 35:22 order 11:4 17:6 19:10</p>	<p>original 24:16 originated 24:12 ought 49:23 ounce 25:8,10 outs 56:14 outside 52:14,23 overall 25:25 owned 12:5 owner 40:12,19 41:16</p>
			p
			<p>p 2:1,1 4:1 p.c. 2:9 p.m. 57:6 page 3:3,8 10:9 13:3,5,12 19:23 20:13,19 31:11 33:10,16,16 38:11 41:4 58:9 pages 10:7 12:25 13:3,8 pandemic 4:19 papa 44:15,21 paper 48:4,4,8 50:12 51:1 paragraph 13:19 13:23 14:24 23:13 30:11 33:4 34:20 35:17,17 parr 2:3 parrbrown.com 2:6 part 10:24 11:6,11 11:18,20 12:7,20 14:17 19:24 24:24 37:18 41:25 participant 9:13 particular 21:3 31:6 32:21 42:8 45:4 51:6</p>
	o		
	<p>o 1:4 4:1 oath 59:8 oberhansly 12:20 object 11:1 52:8 objection 5:3 objections 53:7 obtain 33:18 54:21 obtained 7:2 9:5 28:1 33:6 43:4 49:6 51:22 54:3 54:20</p>		
n			
<p>n 2:1 3:1 4:1 name 4:9 12:1 21:7 30:6</p>			

[parties - purchase]

<p>parties 5:16,17 59:13,14</p> <p>parts 19:6,7,12 41:14</p> <p>party 27:3,18</p> <p>passed 6:17</p> <p>patrick 2:9 49:18</p> <p>pattern 27:14</p> <p>pay 27:2,17,17</p> <p>payable 39:24 40:19,24 41:16 42:3</p> <p>payments 14:16 14:18 18:17 26:22 32:3,5,20 36:6 38:8 43:22 45:15</p> <p>payroll 42:2</p> <p>penalty 58:18</p> <p>people 8:24 30:24 37:5,6 40:2 42:13 47:1</p> <p>people's 20:7</p> <p>percent 15:25 30:20</p> <p>performed 51:14</p> <p>period 6:5 7:22 26:22 27:4 28:7 33:22 48:17 49:3</p> <p>periodic 14:15</p> <p>periods 43:16 54:9</p> <p>perjury 58:18</p> <p>person 18:4 38:17</p> <p>perspective 56:15 56:16</p> <p>philanthropic 14:4</p> <p>phone 23:3</p> <p>physical 27:4,12 28:4,14</p> <p>picture 6:22 18:5 18:6,8 22:20,24</p>	<p>23:1,6,9</p> <p>pieces 22:22</p> <p>pinpoint 28:6,15 28:21</p> <p>pjohnson 2:12</p> <p>place 29:1 59:7</p> <p>placed 59:8</p> <p>placeholder 6:10</p> <p>plaintiff 1:6 2:2,8</p> <p>platinum 25:23 26:20 30:19 43:1</p> <p>please 4:10 20:16</p> <p>plus 38:19</p> <p>point 5:17 18:3 28:25 29:1,20 32:1 34:22 38:2 48:20,22,24 49:2 50:23</p> <p>points 26:14 27:23 28:2</p> <p>policies 54:7</p> <p>ponzi 6:6,9 7:14 15:5,7 17:2,10,12 17:13,14,18,22 23:7,17,19,20 32:4 32:8,8,12,15 46:2 52:5,10,14,17,20 53:1</p> <p>pool 3:13 14:20,22 14:24,25 15:2,8,9 15:14 16:3,11,13 16:19,21,25 17:9 17:16 21:4 23:6 23:13,16 24:11,13 24:21 25:1,19,22 26:4,14,19 30:11 30:15,15 31:21 34:10</p> <p>pooled 24:15</p> <p>pooling 24:14</p>	<p>portion 7:2</p> <p>pos 34:21</p> <p>position 16:8</p> <p>possession 6:14 27:14 28:4 29:17 48:11 50:18,19</p> <p>possible 16:17</p> <p>potential 36:10</p> <p>pre 3:13 30:11,15 31:21</p> <p>precious 28:21 30:4 51:14</p> <p>precise 21:15</p> <p>precursor 30:17</p> <p>premise 30:24 32:7</p> <p>prepare 9:6 37:7</p> <p>prepared 12:19 18:22 24:2 38:6</p> <p>present 2:14</p> <p>presented 41:17</p> <p>presidency 16:7</p> <p>president 16:6</p> <p>presumably 8:5</p> <p>pretty 45:23</p> <p>prevents 5:6</p> <p>price 15:19,20,20</p> <p>prior 7:10,12 8:1 8:16 9:3 18:19 19:9 24:8 25:21 33:18,21,24 53:23 53:24 54:1,6</p> <p>private 55:17</p> <p>probably 11:8 17:22 21:23,25 24:8,16 30:12 44:1 49:23</p> <p>procedure 4:20,22</p> <p>procedures 3:10 9:21</p>	<p>proceed 5:2</p> <p>proceeding 4:24 12:21</p> <p>proceedings 4:14 59:7</p> <p>process 24:25 36:16 41:22,25 42:1 43:12 48:14 54:5</p> <p>produce 55:14</p> <p>professional 45:2</p> <p>profit 11:22 32:19</p> <p>program 15:10,15 15:18 24:23,23,25</p> <p>programs 14:17 15:9 25:10,22</p> <p>prohibit 5:11</p> <p>promised 36:25 37:10</p> <p>promoted 14:20 14:25 15:11 16:11 16:15</p> <p>pronounce 29:8</p> <p>properties 53:5</p> <p>proposed 3:10 9:21</p> <p>prosecting 52:12</p> <p>provide 4:15 43:17 44:25 45:14</p> <p>provided 21:4 36:17 44:7 55:25</p> <p>providing 56:1</p> <p>public 20:8 58:24</p> <p>pull 19:17 29:21 29:23 39:21,22,22</p> <p>pulled 31:10 33:5 35:16</p> <p>pulling 38:24</p> <p>purchase 35:8 48:10</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[purchases - reviewed]

<p>purchases 29:2 34:16 35:5 48:17 48:25 49:1 purchasing 35:7 purpose 20:5 pursuant 12:20 27:5 put 12:9 15:13 19:21 23:15 42:24 puzzle 19:6,7,12</p>	<p style="text-align: center;">r</p> <p>r 2:1 4:1 ranges 33:25 rare 3:14,15 4:14 5:15 6:2,12,16 8:1 8:6,10,16,25 9:3 13:25 14:12,16 15:15 18:23 21:1 22:9,20 26:6,16 27:21 29:11,16 30:24 32:9,25 33:1 34:3,21 39:5 47:2 48:3 51:12 53:4 55:15 ray 1:12 3:4,11 4:3 4:11 12:10 49:20 58:5,18,21 read 10:10,20 13:20,22 58:6 really 19:6 20:6 37:9 reask 16:9,23 reason 26:13 37:3 58:9 reasons 42:6,11 recall 5:20 11:20 19:20 55:24,25 receipt 49:15 51:3 receipts 3:15 45:18 48:4,9,16,19 49:9,13 50:12,20 51:1,1,6 receivable 39:24 40:3,11,25 41:16 42:3 receive 22:3 received 36:1 37:13 46:17 51:7 55:7 receiver 1:5 4:13 5:1,16 6:14 7:11</p>	<p>8:11 9:6 11:13 15:4 27:13 36:19 46:6 50:18 51:17 51:17,18,21,23,24 receiver's 37:16 46:7 56:15 receivership 10:15 10:25 11:3,4,7,8 11:12,18,21 12:7 36:9 46:16 53:19 53:19 receiving 48:6 recess 50:8 56:23 recipient 38:17 recognize 12:16 20:1 42:22 recollection 11:23 31:15 34:5 reconstruct 24:5 reconstruction 26:17 record 4:10 15:16 19:21 20:8 39:11 42:9 recorded 43:16 45:1 47:5,6,13,14 47:15 recording 47:18 recordings 47:23 47:24 records 7:4 18:23 34:8 54:8 56:3 refer 13:15 14:22 30:11 31:20 34:18 36:2 40:5 referenced 7:9 46:12,13 references 10:16 44:15 referring 20:23 28:13 30:22 41:4</p>	<p>49:7,15 refers 13:24 20:4 reflects 58:8 refresh 31:15 regard 46:2 related 18:23 26:19,24 27:3,18 28:11 31:4 36:8 45:13 47:3 53:9 relates 6:8 19:14 20:11 37:24 49:5 relation 21:1 relationship 21:3 relationships 14:5 53:16 relative 59:13,14 remember 47:15 remind 11:25 repay 35:24 report 28:23 29:5 39:2,3,6 reported 1:21 58:2 reporter 9:14 reporter's 59:1 reports 29:4,15,21 represented 15:24 35:24 request 20:16 45:1 requested 54:6 research 57:3 residence 55:18 respect 30:3 responsibilities 18:13 result 4:19 retail 34:10 retained 4:13 retention 54:7 review 37:20 57:2 reviewed 11:6 33:9,12,14 36:20</p>
<p style="text-align: center;">q</p>			
<p>question 8:13,15 11:9 16:4,10,23,24 18:1,2 19:10 22:24 28:3 29:14 29:18 30:1 31:19 32:23 34:3,25 37:2 52:25 55:4 56:18 questioning 22:18 questions 5:7 13:17 39:13 42:21 45:22 52:2 56:25 57:1 quick 39:6 56:19 quickbooks 18:22 27:24 34:1,4,8,11 34:14 35:8,13 39:3,12,14,18,25 40:24 41:9,11,14 42:18,20 44:2 50:23 56:3,6,11,13 quickly 45:23 quickreport 3:14 quite 4:20 13:1 29:19 38:2 quotations 10:16 35:25</p>			

[reviewed - skip]

<p>50:19 54:4,16,21 56:3,6 ribbon 9:24 right 12:25 44:13 50:10 rms 29:20 34:21 34:22 35:9,14 robert 5:22 6:19 robust 35:6 role 8:1,16 rolled 30:21 rough 37:11,20,21 roughly 38:21 54:13 rpr 1:21 58:2 59:5 59:18 rrc 13:24 rules 4:19 run 40:2,3 rust 3:14,15 4:14 5:14 6:2,12,16 8:1 8:6,10,16,25 9:3 11:17,17,18 12:6,6 12:6 13:24,25,25 14:12,16,25 15:15 15:15 16:21 17:16 18:4,16,19,23 19:3 21:1 22:9,9,20 25:9 26:6,16 27:5 27:21 29:11,16 30:24 32:9,9 34:3 34:21 39:5 43:11 44:1 45:24,25 46:20 47:2,12 48:3 51:12 52:18 53:3,4,6 54:10 55:18,22,25 rusts 53:13</p>	<p style="text-align: center;">s</p> <p>s 2:1 3:7 4:1 safe 28:5,10 29:18 saints 14:4,9 sake 14:23 sale 15:18 29:1,20 34:22 48:7,10,19 48:20,22,24,24 49:2 50:23 sales 29:2 34:16 35:3,3,4 39:15 40:4 48:17 49:9 salt 1:14 2:5,11 57:4 59:3 saying 29:15 51:18 says 9:12 13:23 20:15 39:6,7 44:15 scheme 6:6,9 7:15 15:5,7 17:2,10,12 17:13,14,18,22 18:13 19:1,14 23:7,17,19,20 25:25 26:3,15 30:18 32:4,8,9,12 46:3 52:5,11,14,17 52:20 53:1 scope 11:3 scrap 43:2 screen 9:12,13,18 12:25 20:2 33:4 38:24 50:4,9 screening 50:10 screens 9:18 scripted 24:14 scroll 10:9,17 13:3 19:20 31:11,14 44:8 scrolled 13:3 search 6:16</p>	<p>second 10:9 11:1 56:22 securely 15:25 securities 5:24 7:23 security 54:23 see 9:18,20 10:1,6 10:14 12:9,11,13 13:5 20:16 29:3 35:22 39:8 40:6 44:9,14 49:17 50:10 seeing 55:24 seeking 3:9 9:21 seen 43:14 45:11 48:9 54:8 seized 6:12 seizing 8:17 sell 15:19 selling 32:16,17 send 57:3 sense 31:3 sentences 10:11 separate 11:22 41:10 separately 13:16 48:21 series 21:11 served 6:16 set 39:18 45:22 59:7 seven 41:5 42:14 42:18,22 43:7 share 9:12 50:9 shared 38:24 sharing 9:13,18 shaw 22:14 56:4 sheet 39:23 sheets 37:5,25 38:5</p>	<p>short 15:18 shorthand 59:10 59:11 show 20:7,11 28:2 41:4 49:12,15 55:19 shown 20:1 shows 10:8 shut 23:4 36:25 side 32:8,9,10 35:5 35:7 41:19 sign 57:2 signature 13:6,7 58:19 59:17 significant 14:1 silver 3:13 14:20 14:22,24,25 15:2,8 15:9,14,18,21 16:2 16:11,19,21,25 17:8,16 23:6,13,16 24:11,13,21,23 25:1,2,4,8,11,16 25:18,21 26:4,6,9 26:14,19 28:20 30:3,11,15,15,20 31:21 34:10 43:1 43:1,1,2,2,2 similar 7:14 45:10 50:20 simple 19:22 simpler 55:6 simplify 31:8 single 34:9 sir 50:10 sit 12:8 52:23 sitting 27:5 situation 6:4 7:6 21:2 size 13:13 skip 56:20</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[small - time]

<p>small 40:10 smaller 40:1 sold 33:1 somebody 16:5 21:9 26:9 52:17 sorry 6:17 21:24 23:3 40:9 52:1 sort 6:10,21 9:9 10:10 13:6 15:4 15:18 16:2,7,9,20 17:9,25 19:4 22:15,17 30:3 31:3,20 32:11,23 36:13,25 38:12 39:14,15,16 40:7 40:10 41:14,17,22 48:12 source 32:19 sources 24:4 33:8 34:13 40:23 south 2:4 57:4 speak 46:24 speaking 17:25 specific 7:17 16:12 39:21 45:9 47:10 47:11 49:3 51:2 specifically 5:20 14:20 16:16 spend 45:5 spoke 46:25 spreadsheets 29:25 31:5 38:6 stack 51:6 stake 16:6,7 stand 48:21 stare 50:4 start 30:23 32:7 started 7:3,5 23:25 33:20 starts 33:5</p>	<p>state 5:19 6:11 8:2 8:17 46:5 51:12 59:2,5 stated 23:22 34:7 statement 17:11 26:2,7 31:4 39:22 39:23 52:11 statements 7:4 13:18 21:11 26:8 26:11 27:25 30:25 31:2,21 33:18,21 33:24 35:24,25 36:1,5 37:4,12,20 37:22,22,25 38:5 38:12,13 45:18 54:4,11,16 55:2,7 states 1:1 stating 4:9 step 14:21 19:9 22:17 29:6 stepping 23:14 stop 29:18 store 14:2 32:14 32:16 34:10 54:13 stored 15:25 street 57:4 stretch 50:3 strip 20:6 strong 1:12 3:4,11 4:3,11 12:10 58:5 58:18,21 subject 17:22 subpoena 54:5 subpoenas 55:1 subscribed 58:22 substantial 24:3,3 suffering 5:5 sufficient 45:14 suite 2:4 57:4 summarized 44:25 45:12,20</p>	<p>supervised 22:13 supervision 56:3 support 44:25 supporting 45:17 suppose 30:12 49:8 sure 4:21 17:7 24:22 25:4 38:11 39:11 48:9 51:8 56:20 suspected 52:15 sworn 4:4 58:22 system 8:22 9:1 28:24 29:1,19,20 29:20,21 34:21,22 35:6,9,14 39:19,25 42:2,5,10 43:13 48:21,22,24 49:2 50:23,24 51:1 55:14 systems 51:9</p> <hr/> <p style="text-align: center;">t</p> <hr/> <p>t 3:7 take 10:18,19 27:15 38:15 43:9 49:23 50:2,18,18 56:19 taken 5:6 58:3 59:7,12 talked 30:17 talking 17:3 18:8 43:6 49:11 tallied 21:18 tax 45:2 team 6:23 11:14 12:20 33:5,9,9,17 36:18 37:15,16 46:6,7 47:1 55:16 tel 2:5,11 tell 6:2 12:18 24:9 51:4 59:8</p>	<p>ten 50:2 tena 1:9 ter 56:5 term 10:16 16:3 19:16,17 20:9,23 23:13 24:11,14,16 25:2 34:20,21 36:23 40:25 43:3 44:13 terms 14:22 55:6 testified 4:5 testimony 58:8 thank 5:4 9:16 thanks 20:17 51:20 53:17 thereof 58:7 things 4:17,21 9:19 19:22 28:19 35:2 39:21 43:8 43:14 45:10 52:13 think 6:17 7:11 8:14,14 11:8 13:1 13:2,24 15:6,7 16:3 18:2,6 19:8 19:15 20:5 22:16 23:14,17,21,23 24:8,13 26:4 28:12 31:12 32:13 34:6 37:2,9,11,24 38:3,15 46:11 47:9 49:22,24 53:8 54:13 55:6 56:14,16,17,18 three 28:14 34:19 40:7 tie 45:14 till 28:8 time 5:23 6:3,5,15 7:22 21:18 24:7 27:4,13,21,23 28:2 28:7,22,25 29:20</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[time - x]

29:22 32:2 33:22 34:5 42:13 45:5 47:18 48:17 49:3 49:6 51:24 59:7 59:12 times 20:5 tithing 14:12,15 today 4:18,23,24 5:2,7,12 12:8 46:8 52:23 told 15:17 top 9:24 22:12 39:5 total 23:10 totality 32:19 36:9 track 10:7 31:6 tracked 28:17 29:2,24 tracking 35:4 37:5 37:25 38:5 48:8 trade 14:6 tradeable 28:18 traded 14:13,13 trading 15:17 24:17 38:9 traditional 31:3 transaction 21:12 21:21 33:23 34:9 34:24 35:12,12 39:21 40:14 45:5 45:7,9,10 49:5,6 transactional 36:17,18 transactions 6:8 7:13 9:8 14:10 18:18,21 27:3,18 35:8,13 42:15 43:13,16 44:4 45:16,19,20 49:14 50:22	transcribed 47:5,8 59:10 transcript 58:6,6,7 59:11 transcription 58:19 59:11 transcripts 46:18 transfer 55:11 transitioning 29:12 transparency 43:19 travis 45:2 trick 18:1 true 33:19 58:19 59:11 truly 58:7 trust 14:1 truth 59:8,8,9 try 9:12 31:7 45:5 trying 15:12,13 17:5,7 19:22 23:15 35:6,19 41:12 43:12 44:24 45:6 50:1 twerk 53:21 54:18 two 10:10 34:19 35:22 36:2 37:8 40:23 44:5 46:18 47:12 51:6 type 7:14 40:5 45:7 48:5 types 40:7 typewritten 59:10 typically 41:8 typing 59:10	37:3,10 40:20 underlying 33:23 understand 17:5 18:10 26:4 34:25 35:20 45:8 46:25 understanding 5:7 5:25 20:9,25 25:5 38:13 43:25 44:3 44:18,19 45:6 51:25 54:12 56:8 56:13 understood 23:9 united 1:1 use 19:16 40:25 42:12,13 user 41:14,20 ut 2:5,11 utah 1:2,14 5:19 5:23 57:5 59:2,6	view 23:20 55:15 visible 26:11 vocal 37:5
			w
			walk 6:24 want 4:17,21,22 11:1 12:23 13:17 14:7,15 19:16 22:17 31:14 43:24 wanted 6:6 7:17 warrant 6:16 way 23:9 29:24 32:23 35:5 40:16 51:4 we've 11:6 17:9 22:15 25:18 36:20 37:19 49:18 52:23 53:8 went 28:24 35:11 43:11 55:10 56:21 wing 5:22 6:19,23 wire 55:11 witness 4:4 49:21 50:6 57:2 58:4,6 59:8 words 15:14 23:15 work 7:24 15:13 18:19 24:3 39:10 50:3 worked 17:9 working 17:8 workings 22:19 works 50:7 worth 26:23 writer's 53:21 54:19 written 55:22
		v	
		v 1:7 58:2 value 38:7 variations 25:14 25:14 varied 27:23 variety 18:25 24:4 34:13 42:6,11 43:15 various 27:23 28:2 42:1 43:2,18 vehicle 27:16 vehicles 25:22 26:21 27:6 vendor 36:8,14 verified 45:16 version 25:9,24 26:14 30:21 31:22 versions 31:23 videoconference 1:14	
	u		
	u.s. 42:25 uh 30:10 ultimately 26:6 27:2,13 30:20		x
			x 3:1,7

[yeah - zoomed]

y
yeah 35:1 50:6,7 51:20
year 37:7
yellow 44:9
z
zions 33:20 53:20 54:17
zoom 4:18,23,24 5:2 9:19 13:19 20:14 23:4
zoomed 10:18

Utah Rules of Civil Procedure
Part V. Depositions and Discovery

Rule 30

(E) Submission to Witness; Changes; Signing.

Within 28 days after being notified by the officer that the transcript or recording is available, a witness may sign a statement of changes to the form or substance of the transcript or recording and the reasons for the changes. The officer shall append any changes timely made by the witness.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

EXHIBIT F

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

* * *

JONATHAN O. HAFEN, in his :
capacity as Court-appointed : Remote Videoconference
Receiver, : Deposition of:
:
Plaintiff, : GAYLEN D. RUST
:

vs.

GRETCHEN E. HOWELL, an :
individual; and LESLIE M. :
HOWELL, an individual, : Case No. 2:19-cv-00813
:
Defendants. : Honorable Tena Campbell
:

* * *

June 23, 2021
10:33 a.m.

Witness located at:
Office of the Utah
Federal Public Defender
46 West Broadway, Suite 110
Salt Lake City, Utah

* * *

Jamie R. Brey
- Registered Professional Reporter -

1 APPEARANCES
 2
 3 For the Plaintiff: CYNTHIA D. LOVE
 4 PARR BROWN GEE & LOVELESS
 5 Attorneys at Law
 6 101 South 200 East
 7 Salt Lake City, Utah 84111
 8 (801) 257-7974
 9 clove@parrbrown.com
 10
 11 For the Defendants: PATRICK E. JOHNSON
 12 COHNE KINGHORN
 13 Attorneys at Law
 14 111 East Broadway, 11th Floor
 15 Salt Lake City, Utah 84111
 16 (801) 363-4300
 17 pjohanson@ck.law
 18
 19 For the Witness: ROBERT K. HUNT
 20 OFFICE OF THE UTAH FEDERAL
 21 PUBLIC DEFENDER
 22 46 West Broadway, Suite 110
 23 Salt Lake City, Utah 84101
 24 (801) 524-5876
 25 robert_hunt@fd.org
 Also Present: Jeff Shaw
 David Park

 Page 2

1 Remote Videoconference
 2 June 23, 2021
 3 10:33 a.m.
 4 PROCEEDINGS
 5 GAYLEN D. RUST,
 6 called as a witness, being first duly sworn, was examined
 7 and testified as follows:
 8
 9 EXAMINATION
 10
 11 BY MR. JOHNSON:
 12 Q. Mr. Rust, my name is Patrick Johnson. I
 13 represent Les and Gretchen Howell in connection with a -- one
 14 of the cases brought by the receiver to claw back proceeds
 15 received from the Rust Rare Coin enterprise.
 16 Would you mind stating your name, please?
 17 A. Gaylen Dean Rust.
 18 Q. Will you spell that, please?
 19 A. G-a-y-l-e-n, D-e-e-a-n, R-u-s-t.
 20 Q. Thank you. I just want to go over a few
 21 things, if you don't mind. Obviously we're conducting this
 22 deposition by Zoom as a result of the coronavirus pandemic.
 23 I think it's fair to say that maybe the rules of civil
 24 procedure have not quite caught up with the times and
 25 necessarily address remote video -- remote depositions and
 Page 4

1 INDEX
 2 WITNESS PAGE
 3 GAYLEN D. RUST
 4 Examination by Mr. Johnson 4
 5
 6
 7
 8 EXHIBITS
 9
 10 NUMBER DESCRIPTION PAGE
 11 Exhibit 1 Written questions with attached 6
 12 accounting of investments
 13 Exhibit 2 Written questions (9 pages) 9
 14
 15 ***
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 Page 3

1 video appearances. Therefore, before we go further, I'd like
 2 to make sure that we're sort of all on board with the
 3 procedure today. Obviously the Howells consent to have
 4 having this deposition conducted via Zoom. Do you consent to
 5 this deposition being conducted by Zoom?
 6 MR. HUNT: Yes.
 7 THE WITNESS: Yes.
 8 MR. JOHNSON: And does the receiver consent to
 9 the deposition being conducted by Zoom?
 10 MS. LOVE: Yes.
 11 MR. JOHNSON: Thank you.
 12 BY MR. JOHNSON:
 13 Q. Mr. Rust, have you ever been deposed before?
 14 A. On advice of counsel, I take the Fifth.
 15 Q. Do you understand that you are under oath?
 16 A. On the advice of counsel, I take the Fifth.
 17 Q. Okay. Are you suffering from any illnesses or
 18 have you taken any medication that prevents you from
 19 understanding my questions or answering them fully?
 20 A. No.
 21 Q. Is there anything else that I need to know that
 22 will prevent you from giving me your full attention today?
 23 A. No.
 24 Q. I realize there's probably only one Gaylen Rust
 25 in the phone book, but I just want to make sure we have the
 Page 5

1 right person. Are you the Gaylen Rust that operated Rust
2 Rare Coin?
3 MR. HUNT: He is the Gaylen Rust identified in
4 your complaint.
5 MR. JOHNSON: In whose complaint -- in the
6 receiver's complaint?
7 MR. HUNT: Receiver's complaint.
8 MR. JOHNSON: Okay. Thank you.
9 Sorry, I'm just moving things around on my
10 screen so that I can share them.
11 MR. HUNT: We're on the iPhone, Patrick,
12 remember that.
13 MR. JOHNSON: Okay. I'll zoom in.
14 BY MR. JOHNSON:
15 Q. I'm sharing my screen, and I'm showing you a
16 document that's been identified -- it has been marked as
17 Exhibit 1. Can you see this document? Is it zoomed in
18 enough for you, Mr. Rust?
19 A. I can see it. I can't read it.
20 THE WITNESS: That's not the same as the one --
21 MR. HUNT: He told us there was going to be
22 some lined out, so you got to look behind the lined out.
23 Is this the new one you sent over this morning?
24 Well, for the first page purposes, they're the same document
25 MR. JOHNSON: Yeah. So I'll give a little

Page 6

1 background and then I'll, I guess, ask the questions.
2 MR. HUNT: Okay.
3 MR. JOHNSON: So this is -- Rob, this is
4 Exhibit 1 that I e-mailed over the clean version, and then I
5 have stricken through a couple of the questions.
6 THE WITNESS: Okay.
7 MR. HUNT: We don't have the stricken through
8 version. But other than that...
9 (Whereupon, Mr. David Park joined the
10 deposition proceedings.)
11 MR. JOHNSON: And I'm just going to interrupt
12 things. Jamie, do you want to identify David Park for us?
13 (Off-the-record discussion)
14 BY MR. JOHNSON:
15 Q. Mr. Rust, can you see that this document has
16 been identified as Exhibit 1 in the upper right-hand corner?
17 A. Yes.
18 Q. And are you able to read the questions on the
19 document?
20 A. Yes.
21 Q. Okay. And do you -- have you seen this
22 document before excepting the questions that have
23 strike-throughs?
24 A. Yes.
25 Q. I'm just going to scroll through. I'm just

Page 7


1 going to ask you at the end whether it's the document that
2 you've already have been -- have already seen.
3 MR. HUNT: Do you want him to move over?
4 THE WITNESS: Yeah. Okay, hold -- oh, okay.
5 Yeah, keep going.
6 (Off-the-record discussion between the witness
7 and Mr. Hunt.)
8 BY MR. JOHNSON:
9 Q. Okay. I'm at the end of the document. I just
10 want to reconfirm that you've seen this document before and
11 it contains a -- would you agree with me that it contains a
12 list of questions?
13 A. Yes.
14 Q. And have you reviewed this document and read
15 each and every question?
16 A. Yes.
17 Q. And are you willing to answer any of the
18 questions listed on this document?
19 A. On the advice of counsel, I take the Fifth.
20 Q. Okay.
21 Just so we have a clear record, if I were to
22 read each of these questions aloud, you would and you, in
23 fact, are declining to answer any of the questions listed on
24 Exhibit 1 on the basis of the Fifth Amendment of the
25 Constitution of the United States?

Page 8

1 A. Yes.
2 Q. I'm showing you what's been marked as Exhibit
3 No. 2. Can you see on the screen that it's -- it has the
4 Exhibit 2 at the top right?
5 A. Yes.
6 Q. Just as before, I'm going to scroll through
7 this document and then again ask you at the end to confirm
8 that you've seen this document.
9 (Off-the-record discussion between the witness
10 and Mr. Hunt.)
11 MR. JOHNSON: I think that's the end of the
12 document of Page 9 of 9.
13 BY MR. JOHNSON:
14 Q. Again, have you seen this document before,
15 Mr. Rust?
16 A. Yes.
17 Q. And do you agree with me it contains questions,
18 a list of questions?
19 A. Yes.
20 Q. And are you willing to answer any of the
21 questions listed in this document?
22 A. On the advice of counsel, I take the Fifth.
23 Q. Again, just so we have a clear record, if I
24 were to read each of these questions aloud, you would and you
25 are, in fact, declining to answer any of the questions that

Page 9

1 are listed on Exhibit 2 on the basis of the Fifth Amendment
2 of the Constitution?
3 A. Yes.
4 Q. So as for both 1 and 2, Exhibits 1 and 2, again
5 I just want to make it abundantly clear that if I were to
6 read each of these questions aloud, that you would decline to
7 answer them?
8 A. On the grounds -- or on the advice of counsel,
9 I would take the Fifth.
10 Q. Okay.
11 MR. JOHNSON: That concludes my questioning.
12 Cynthia?
13 MS. LOVE: No questions for the receiver.
14 MR. JOHNSON: That wraps things up. Thank you
15 for your time today.
16 MR. HUNT: Okay. Thank you.
17 (Whereupon, Exhibit Nos. 1 and 2 were marked
18 for identification.)
19 (Deposition concluded at 10:45 a.m.)
20 * * *
21
22
23
24
25

1 CERTIFICATE
2 STATE OF UTAH)
3 :
4 COUNTY OF SALT LAKE)
5
6 THIS IS TO CERTIFY that the remote
7 videoconference deposition of GAYLEN D. RUST, the witness in
8 the foregoing deposition named, was taken before me,
9 JAMIE R. BREY, a Certified Shorthand Reporter and Registered
10 Professional Reporter in and for the State of Utah, residing
11 at Salt Lake City, Utah.
12
13 That the said witness was by me, before
14 examination, duly sworn to testify the truth, the whole truth
15 and nothing but the truth in said cause.
16
17 That the testimony of said witness was reported
18 by me in Stenotype and thereafter caused by me to be
19 transcribed into typewriting, and that a full, true and
20 correct transcription of said testimony so taken and
21 transcribed is set forth in the foregoing pages numbered from
22 4 through 10, inclusive, and said witness deposed and said as
23 14 in the foregoing annexed deposition.
24
25 I further certify that I am not of kin or
otherwise associated with any of the parties to said cause of
action, and that I am not interested in the events thereof.
Salt Lake City, Utah, this
25th dt 
JAMIE R. BREY, CSR, RPR
Utah license No. 361682

[& - duly]

&	8	broadway 1:17 2:9,14	corner 7:16
& 2:3	801 2:5,10,15	brought 4:14	coronavirus 4:22
0	84101 2:14	brown 2:3	correct 11:12
00813 1:9	84111 2:4,9	c	counsel 5:14,16 8:19 9:22 10:8
1	9 3:11,11 9:12,12	c 2:1 4:4 11:1,1	county 11:3
1 3:10 6:17 7:4,16 8:24 10:4,4,17	a	called 4:6	couple 7:5
10 11:13	a.m. 1:14 4:2 10:19	campbell 1:10	court 1:1,4
101 2:4	able 7:18	capacity 1:4	csr 11:21
10:33 1:14 4:2	abundantly 10:5	case 1:9	cv 1:9
10:45 10:19	accounting 3:11	cases 4:14	cynthia 2:2 10:12
110 1:17 2:14	action 11:16	caught 4:24	d
111 2:9	address 4:25	cause 11:9,16	d 1:6 2:2 3:1,3 4:4 4:5,19 11:5
11th 2:9	advice 5:14,16 8:19 9:22 10:8	caused 11:11	david 2:18 7:9,12
2	agree 8:11 9:17	central 1:2	day 11:18
2 3:11 9:3,4 10:1,4 10:4,17	aloud 8:22 9:24 10:6	certified 11:6	dean 4:17
200 2:4	amendment 8:24 10:1	certify 11:4,15	decline 10:6
2021 1:13 4:1	annexed 11:14	city 1:18 2:4,9,14 11:7,18	declining 8:23 9:25
2022 11:18	answer 8:17,23 9:20,25 10:7	civil 4:23	defendants 1:10 2:7
23 1:13 4:1	answering 5:19	ck.law 2:10	defender 1:17 2:13
257-7974 2:5	appearances 5:1	claw 4:14	deposed 5:13 11:13
25th 11:18	appointed 1:4	clean 7:4	deposition 1:5 4:22 5:4,5,9 7:10 10:19 11:5,5,14
26851 11:21	associated 11:16	clear 8:21 9:23 10:5	depositions 4:25
2:19 1:9	attached 3:10	clove 2:5	description 3:9
3	attention 5:22	cohne 2:8	discussion 7:13 8:6 9:9
361682 11:22	attorneys 2:3,8	coin 4:15 6:2	district 1:1,2
363-4300 2:10	b	complaint 6:4,5,6 6:7	division 1:2
4	b 3:8	concluded 10:19	document 6:16,17 6:24 7:15,19,22 8:1,9,10,14,18 9:7 9:8,12,14,21
4 3:4 11:13	back 4:14	concludes 10:11	duly 4:6 11:9
46 1:17 2:14	background 7:1	conducted 5:4,5,9	
5	basis 8:24 10:1	conducting 4:21	
524-5876 2:15	board 5:2	confirm 9:7	
6	book 5:25	connection 4:13	
6 3:10	brey 1:21 11:6,21	consent 5:3,4,8	
		constitution 8:25 10:2	
		contains 8:11,11 9:17	

[e - please]

e	giving 5:22 go 4:20 5:1 going 6:21 7:11,25 8:1,5 9:6 gretchen 1:8 4:13 grounds 10:8 guess 7:1	9:13 10:11,14 joined 7:9 jonathan 1:4 june 1:13 4:1	n
e 1:8 2:1,1,7 3:1,8 4:4,4,9,19,19 7:4 11:1,1 east 2:4,9 enterprise 4:15 events 11:16 examination 3:4 11:9 examined 4:6 excepting 7:22 exhibit 3:10,11 6:17 7:4,16 8:24 9:2,4 10:1,17 exhibits 10:4	h	k	n 2:1 3:1 4:4,9,9 4:19,19 name 4:12,16 named 11:5 necessarily 4:25 need 5:21 new 6:23 nos 10:17 number 3:9 numbered 11:13
f	h 3:8 hafen 1:4 hand 7:16 11:18 hold 8:4 honorable 1:10 howell 1:8,9 4:13 howells 5:3 hunt 2:12,15 5:6 6:3,7,11,21 7:2,7 8:3,7 9:10 10:16	l	o
f 11:1 fact 8:23 9:25 fair 4:23 fd.org 2:15 federal 1:17 2:13 fifth 5:14,16 8:19 8:24 9:22 10:1,9 first 4:6 6:24 floor 2:9 follows 4:7 foregoing 11:5,13 11:14 forth 11:13 full 5:22 11:12 fully 5:19 further 5:1 11:15	i	l 4:19 lake 1:18 2:4,9,14 11:3,7,18 law 2:3,8 les 4:13 leslie 1:8 license 11:22 lined 6:22,22 list 8:12 9:18 listed 8:18,23 9:21 10:1 little 6:25 located 1:16 look 6:22 love 2:2 5:10 10:13 loveless 2:3	o 1:4 4:4,9 oath 5:15 obviously 4:21 5:3 office 1:16 2:13 oh 8:4 okay 5:17 6:8,13 7:2,6,21 8:4,4,9,20 10:10,16 operated 6:1
g	j	m	p
g 4:4,19 gaylen 1:6 3:3 4:5 4:17 5:24 6:1,3 11:5 gee 2:3 give 6:25	jamie 1:21 7:12 11:6,21 january 11:18 jeff 2:17 johnson 2:7 3:4 4:11,12 5:8,11,12 6:5,8,13,14,25 7:3 7:11,14 8:8 9:11	m 1:8 4:9 mailed 7:4 marked 6:16 9:2 10:17 medication 5:18 mind 4:16,21 morning 6:23 move 8:3 moving 6:9	p 2:1,1 4:4 page 3:2,9 6:24 9:12 pages 3:11 11:13 pandemic 4:22 park 2:18 7:9,12 parr 2:3 parrbrown.com 2:5 parties 11:16 patrick 2:7 4:12 6:11 person 6:1 phone 5:25 pjohnson 2:10 plaintiff 1:6 2:2 please 4:16,18

[present - zoomed]

<p>present 2:17 prevent 5:22 prevents 5:18 probably 5:24 procedure 4:24 5:3 proceedings 7:10 proceeds 4:14 professional 1:22 11:6 public 1:17 2:13 purposes 6:24</p>	<p>reported 11:11 reporter 1:22 11:6 11:6 represent 4:13 residing 11:6 result 4:22 reviewed 8:14 right 6:1 7:16 9:4 rob 7:3 robert 2:12,15 rpr 11:21 rules 4:23 rust 1:6 3:3 4:5,12 4:15,17 5:13,24 6:1,1,3,18 7:15 9:15 11:5</p>	<p>stating 4:16 stenotype 11:11 stricken 7:5,7 strike 7:23 suffering 5:17 suite 1:17 2:14 sure 5:2,25 sworn 4:6 11:9</p>	<p>understand 5:15 understanding 5:19 united 1:1 8:25 upper 7:16 utah 1:2,16,18 2:4 2:9,13,14 11:2,6,7 11:18,22</p>
<p>q</p>	<p>s</p>	<p>t</p>	<p>v</p>
<p>question 8:15 questioning 10:11 questions 3:10,11 5:19 7:1,5,18,22 8:12,18,22,23 9:17 9:18,21,24,25 10:6 10:13 quite 4:24</p>	<p>s 2:1 3:8 4:4,19 salt 1:18 2:4,9,14 11:3,7,18 screen 6:10,15 9:3 scroll 7:25 9:6 see 6:17,19 7:15 9:3 seen 7:21 8:2,10 9:8,14 sent 6:23 set 11:13 share 6:10 sharing 6:15 shaw 2:17 shorthand 11:6 showing 6:15 9:2 signature 11:21 sorry 6:9 sort 5:2 south 2:4 spell 4:18 state 11:2,6 states 1:1 8:25</p>	<p>t 3:8 4:9,19 11:1,1 take 5:14,16 8:19 9:22 10:9 taken 5:18 11:5,12 tena 1:10 testified 4:7 testify 11:9 testimony 11:11 11:12 thank 4:20 5:11 6:8 10:14,16 thereof 11:16 things 4:21 6:9 7:12 10:14 think 4:23 9:11 throughs 7:23 time 10:15 times 4:24 today 5:3,22 10:15 told 6:21 top 9:4 transcribed 11:12 11:13 transcription 11:12 true 11:12 truth 11:9,9,9 typewriting 11:12</p>	<p>version 7:4,8 video 4:25 5:1 videoconference 1:4 4:1 11:5 vs 1:7</p>
<p>r</p>	<p>u</p>	<p>u</p>	<p>w</p>
<p>r 1:21 2:1 4:4,19 11:1,6,21 rare 4:15 6:2 read 6:19 7:18 8:14,22 9:24 10:6 realize 5:24 received 4:15 receiver 1:5 4:14 5:8 10:13 receiver's 6:6,7 reconfirm 8:10 record 7:13 8:6,21 9:9,23 registered 1:22 11:6 remember 6:12 remote 1:4 4:1,25 4:25 11:4</p>	<p>w</p>	<p>w</p>	<p>w</p>
<p>x</p>	<p>x</p>	<p>x</p>	<p>x</p>
<p>x 3:1,8 4:9</p>	<p>y</p>	<p>y</p>	<p>y</p>
<p>y 4:19 yeah 6:25 8:4,5</p>	<p>z</p>	<p>z</p>	<p>z</p>
<p>z</p>	<p>zoom 4:22 5:4,5,9 6:13 zoomed 6:17</p>	<p>z</p>	<p>z</p>

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days

after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

EXHIBIT G

Requested Corrections to Les' Deposition

Page 14, Line 17 should state: "I was a *Control Room Operator*".

Page 20, Line 6-Les requests the answer "No" be changed to "Yes". Les purchased metal from Rust in spring of 2008, to be returned to Rust later for investment.

Page 33, Line 9-Les requests the name "Alisha" be changed to "*Felicia*". Felicia Frey was Gaylen Rust's Executive Assistant at that time.

Page 107, Line 1-Les requests the answer "No" be changed to "Yes". There was home theater seating purchased that was in excess of \$5,000.00 (\$10,055.00 paid).

Page 107, Line 4-Les requests that the answer "No" be changed to "*Yes, home theater seating, a dining room table and chairs, a mattress and metal frame*".

Page 114, Line 9-Please correct spelling from "Craig Marcene" to "*Greg Marsing*".

Page 122, Line 6-"411,830.85" should state "*\$11,830.85*". A "4" was typed when it should be a "\$".

EXHIBIT H

Requested Corrections to Gretchen's Deposition

Page 1, Line 14, should read Leslie M. Howell

Page 3, Line 10 should read: Gretchen Anne Howell

When being questioned about Gretchen's \$22,000.00 Rust Rare Coin investment in pages 11-15, Matt Ball asked Gretchen if the amount of this investment which is documented on the Rust Rare Coin receipt was \$22 **million** or \$22 **thousand**. This question by Matt Ball is missing from the deposition. Gretchen's answer of \$22 thousand is also missing from the deposition.

Included with this document is additional bank documentation of the above \$22,000.00 Rust Rare Coin investment which shows Gretchen deposited the 401K loan from Utah Retirement Systems into two bank accounts at the same financial institution (Eastern Utah Community Credit Union). Gretchen then withdrew the entire \$22,000.00 in multiple cash withdrawals which she subsequently gave to Gaylen Rust, in person, to be added to her investment account.

Page 17, Lines 11-13, a copy of the cancelled check of \$27,000.00, for Gretchen's investment to Rust Rare Coin, was emailed to Matt Boley and Patrick Johnson on 6/5/2021.

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">HOWELLS’ MOTION TO EXCLUDE PROPOSED EXPERT JONATHAN O. HAFEN</p> <p style="text-align: center;">[ORAL ARGUMENT REQUESTED]</p> <p style="text-align: center;">Case No. 2:19-cv-00813</p> <p style="text-align: center;">Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Defendants GRETCHEN HOWELL (“**Gretchen**”) and LESLIE M. HOWELL (“**Les**”) (collectively, the “**Howells**”), through counsel, move the Court to exclude Jonathan O. Hafen (in his capacity as a potential witness, “**Hafen**”) from testifying as an expert in this civil action, and to enter an order prohibiting plaintiff from offering “opinions” of Hafen at trial and for any other purpose, including for purposes of seeking or opposing summary judgment.

I. INTRODUCTION AND RELIEF SOUGHT

In this action, plaintiff has asserted claims under Utah’s Uniform Voidable Transactions Act (the “**UVTA**”).¹ Plaintiff has the burden to prove that Rust Rare Coin, Inc. (including all other receivership entities “**RRC**”) “made ... transfer[s] to the Howells] ... with actual intent to hinder, delay, or defraud any creditor of [RRC]”²

¹ The UVTA is codified at Utah Code Ann. § 25-6-101, et seq.

² Utah Code Ann. § 25-6-202(1)(a).

According to plaintiff's expert disclosures, plaintiff apparently intends to offer opinion testimony from Hafen to establish, among other things, (a) that RRC operated a "Ponzi scheme," (b) that RRC made fraudulent representations to investors, (c) that the returns RRC paid out to investors derived (i.e., are traceable directly to) funds received from new investors, and (d) that RRC was generally insolvent. Hafen lacks personal knowledge to offer such testimony as a fact witness. And he should not be permitted to testify as an "expert".

Although Hafen serves as the Court appointed receiver for RRC, that does not qualify him as an expert on "Ponzi schemes," if such thing exists. And he certainly has no qualifications to testify regarding insolvency or tracing. Even if there were such a thing as a "Ponzi scheme expert" and even if Hafen was one, his proposed opinion testimony is improper and inadmissible because expert "opinions" on purely legal issues are unhelpful attempts to usurp what is the fundamental province of the judge and jury: to apply the governing law to the facts and determine which party is entitled to relief. In short, Hafen is not actually providing expert testimony. Rather, he is merely arguing what conclusions of law and inferences of fact should be drawn based upon his (and/or his team's) subjective interpretation data and information. The Receiver's "opinions" are nothing more than a closing argument made by counsel. The Court should exclude Hafen's testimony as unhelpful under Federal Rule of Evidence 702.

II. ARGUMENT

A. Hafen In Not Qualified to Testify as an Expert Regarding the Matters Covered by His Report.

Hafen is an experienced and skilled trial lawyer. He has significant experience arguing to judges and juries how they should weigh evidence to reach the conclusions desired by his clients. And he is experienced in making a closing argument, where he sums the evidence the trier of fact has heard and argues how that evidence should be applied to the applicable legal standards. But

that does not qualify him to give the “opinions” disclosed in the Receiver’s Report, dated August 26, 2021 (the “**Hafen Report**” or the “**Report**”).³

There is no such thing as a “Ponzi scheme expert.” Even if such an expert specialty existed, Hafen would not qualify. According to his curriculum vitae, Hafen’s receivership experience is limited to two discrete (and relatively recent) legal matters. First, his appointment as receiver for RRC. Second, his representation of Wayne Klein as court appointed receiver for RaPower. His thirty years of experience as a lawyer undoubtedly qualify him to offer opinions on a number of things, including various standards of care that a trial lawyer owes clients. But he lacks sufficient experience, training and specialized knowledge to claim expertise in receiverships generally or Ponzi schemes particularly.

Further, Hafen’s thirty years of experience as a lawyer does not qualify him to opine regarding RRC’s solvency, RRC’s insolvency, tracing of funds or other accounting and financial matters.

B. Hafen’s Purported Expert Opinions Applying Law to Facts Are Unhelpful, Invade the Province of the Judge and Jury, and Should Be Excluded.

Since its 1988 decision in Specht v. Jensen, the Tenth Circuit has held firmly to the principle that an expert should not be permitted “to supplant both the court's duty to set forth the law *and the jury's ability to apply this law to the evidence.*”⁴ Hafen’s proposed “opinions” should be excluded because he attempts to opine on the weight of the facts – facts as to which he has no personal knowledge and which are based upon information that may be categorized as double/triple hearsay or otherwise inadmissible – and usurps the jury’s role in sifting and weighing the (largely inadmissible) information.

District courts are tasked with the responsibility of serving as the gatekeepers of expert evidence and must decide which experts may testify before the jury and the permissible scope of

³ Plaintiff has filed a copy of the 283-page Hafen Report as Exhibit A to plaintiff’s appendix of evidence offered in support of summary judgment [Docket No. 38-1].

⁴ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988) (en banc) (emphasis added), cert. denied, 488 U.S. 1008 (1989).

that testimony.⁵ While testimony on ultimate facts is authorized under Rule 704, “an expert is not to opine on the weight of the facts or take a principal role in sifting, weighing and reciting them for the jury.”⁶

Hafen’s proposed opinion testimony is not helpful and is both unreliable and impermissible. “Only evidence can establish proof, only the jury can find facts and decide issues ... and only the attorneys in the case can argue about the meaning of the evidence.”⁷ Further, “only the jury has the opportunity to conclude the factual issues in the case. Until a jury has found facts to resolve the factual issues presented to them, an expert has nothing other than assumptions on which [her] analysis may be based.”⁸

Hafen’s proposed opinions in the Report are exactly the sort of improper testimony rejected in Rowe.⁹ It is tantamount to a closing argument at the conclusion of trial. Hafen may be an expert trial lawyer, but as a proposed expert witness he appears not to “understand his role in the courtroom, [because he is] seeking ... ‘to opine on the weight of the facts,’ and to ‘take a principal role in sifting, weighing and reciting them for the jury.’”¹⁰ As in Rowe, the “facts” which Hafen seeks to establish through his testimony “[a]re contested and [a]re for the jury to ultimately decide.”¹¹ Thus, the Court should exclude Hafen’s testimony as unreliable and unhelpful.

⁵ Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

⁶ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015), aff’d in part, 727 F. App’x 488 (10th Cir. 2018); see also United States v. Samara, 643 F.2d 701, 705 (10th Cir. 1981) (“An expert ‘may not go so far as to usurp the exclusive function of the jury to weigh the evidence and determine credibility.’”); United States v. Brown, 540 F.2d 1048, 1054 (10th Cir. 1976) (“the test of admissibility is often predicated upon the proposition that opinion evidence cannot usurp the functions of the jury or be received if it touches the very issue before the jury”).

⁷ Rowe, 2015 WL 4949097, at *5 (D. Utah Aug. 19, 2015).

⁸ Id.

⁹ Id.

¹⁰ Rowe v. DPI Specialty Foods, Inc., 727 F. App’x 488, 501 (10th Cir. 2018).

¹¹ Id.

III. CONCLUSION

WHEREFORE, the Howells respectfully pray that the Court will exclude Jonathan O. Hafen from testifying as an expert in this civil action, that the Court will enter an order prohibiting plaintiff from offering “opinions” of Hafen at trial and for any other purpose, including for purposes of seeking or opposing summary judgment, and that it will grant such other and further relief as is just and equitable.

DATED this 14th day of February 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February 2022, I filed the foregoing **HOWELLS' MOTION TO EXCLUDE PROPOSED EXPERT JONATHAN O. HAFEN** with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to counsel of record in the above-captioned civil action, including without limitation:

Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 S 200 E STE 700
SALT LAKE CITY, UT 84111

E-mail: mball@parrbrown.com

Attorneys for plaintiff JONATHAN O. HAFEN

/s/ Krys Lopez _____

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">HOWELLS’ MOTION TO EXCLUDE PROPOSED EXPERT D. RAY STRONG</p> <p style="text-align: center;">[ORAL ARGUMENT REQUESTED]</p> <p style="text-align: center;">Case No. 2:19-cv-00813 Honorable Tena Campbell</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Defendants GRETCHEN HOWELL (“**Gretchen**”) and LESLIE M. HOWELL (“**Les**”) (collectively, the “**Howells**”), through counsel, move the Court to exclude D. Ray Strong (“**Strong**”) from testifying as an expert in this civil action, and to enter an order prohibiting plaintiff from offering “opinions” of Strong at trial and for any other purpose, including for purposes of seeking or opposing summary judgment.

I. INTRODUCTION AND RELIEF SOUGHT

In this action, plaintiff has asserted claims under Utah’s Uniform Voidable Transactions Act (the “**UVTA**”).¹ Plaintiff has the burden to prove that Rust Rare Coin, Inc. (including all other receivership entities “**RRC**”) “made ... transfer[s to the Howells] ... with actual intent to hinder, delay, or defraud any creditor of [RRC]”²

¹ The UVTA is codified at Utah Code Ann. § 25-6-101, et seq.

² Utah Code Ann. § 25-6-202(1)(a).

According to plaintiff’s expert disclosures, plaintiff apparently intends to offer opinion testimony from Strong to establish “that Gaylen Rust operated RRC operated as a Ponzi scheme.” Strong lacks personal knowledge to offer such testimony as a fact witness. And he should not be permitted to testify as to the ultimate facts as an expert.

Strong’s proposed opinion testimony is improper and inadmissible for two reasons. First, Strong admits that the documents and data upon which he is relying are incomplete and unreliable. Second, Strong’s opinions cross the line from accounting to advocacy. Rather than keeping Strong’s expert opinions with the proper constraints of conclusions derived from applying reliable methodologies to the facts and data, plaintiff seeks to make Strong an advocate in the guise of “expert witness” who will offer opinions that usurp what is the fundamental province of the judge and jury: to apply the governing law to the facts and determine which party is entitled to relief. When Strong attempts to give opinions on the ultimate facts, he is no longer providing expert testimony. Rather, he is merely arguing what conclusions of law and inferences of fact should be drawn based upon his subjective interpretation data and information. These “opinions” are tantamount to a closing argument made by counsel. The Court should exclude this testimony as unhelpful under Federal Rule of Evidence 702.

II. ARGUMENT

A. **Strong’s Opinions Are Not Admissible Because the Data and Information He Relied upon Is Incomplete and Unreliable.**

District courts are tasked with the responsibility of serving as the gatekeepers of expert evidence and must decide which experts may testify before the jury and the permissible scope of that testimony.³ To be admissible under Rule of Evidence 702, expert testimony must be reliable.⁴ This requires that the testimony must be “based on sufficient facts or data.”⁵

³ Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

⁴ Ralston v. Smith & Nephew Richards, Inc., 275 F.3d 965, 969 (10th Cir. 2001).

⁵ Fed. R. Evid. 702(b).

Strong was deposed in this civil action on July 14, 2021.⁶ During his deposition, Strong testified in relevant part:

- that Strong had no direct involvement with RRC or the Receivership Defendants accounting until after November 2018, and that he had no control over bookkeeping entries prior to November 2018;⁷
- that Strong does not know whether Receivership Defendants actually held precious metals that matched statements received by investors;⁸
- that Strong is unable determine the amount of cash, inventory, silver bullion, gold bullion or other precious metals held by RRC at any given point in time;⁹
- that Strong does not know whether pre-silver pool statements received by investors were accurate;¹⁰
- that the accounting records of RRC were incomplete and unreliable, and that Strong did not have access to bank statements prior to 2010;¹¹ and
- that Strong had to “reconstruct” the accounting records and that RRC used paper records and multiple accounting programs, which contained incomplete, inaccurate and unreliable information, including QuickBooks, Rust Rare Coin Microsoft Dynamics RMS point-of-sale system and Acumatica software.¹²

In short, Strong’s testimony is not admissible because the facts and data that he relies upon are neither sufficient nor reliable.

⁶ A copy of the transcript of Strong’s deposition (“**Strong Depo.**”) was filed as Exhibit E to the Howell’s *Supplemental Appendix of Evidence in Opposition to Receiver’s Motion for Summary Judgment*, filed January 31, 2022 [Docket No 48-3].

⁷ Strong Depo. 8:1–9:10.

⁸ Strong Depo. 24:26:9-16.

⁹ Strong Depo. 27:20–30:5.

¹⁰ Strong Depo. 31:18-25.

¹¹ Strong Depo. 33:25–35:15 & 53:11–54:24.

¹² Strong Depo. *passim*.

B. Strong’s Purported Expert Opinions Applying Law to Facts Are Unhelpful, Invade the Province of the Judge and Jury, and Should Be Excluded.

Strong’s “opinions” cross the line from accounting to advocacy.¹³ When Strong crosses this line, his “opinions” are inadmissible as the sort of improper testimony rejected in Specht¹⁴ and Rowe,¹⁵ as he argues the facts and attempts to instruct the Court how to sift and weigh the facts.

Since its 1988 decision in Specht v. Jensen, the Tenth Circuit has held firmly to the principle that an expert should not be permitted “to supplant both the court's duty to set forth the law and the jury's ability to apply this law to the evidence.”¹⁶ Strong’s proposed “opinions” on pages 76-77 of the Strong Report, including his opinion “that RRC was not a viable enterprise and operated as a Ponzi scheme” should be excluded because he attempts to opine on the weight of the facts – facts as to which he has no personal knowledge and which are based upon information that may be categorized as double/triple hearsay or otherwise inadmissible – and usurps the jury’s role in sifting and weighing the (largely inadmissible) information.

District courts are tasked with the responsibility of serving as the gatekeepers of expert evidence and must decide which experts may testify before the jury and the permissible scope of that testimony.¹⁷ While testimony on ultimate facts is authorized under Rule 704, “an expert is not to opine on the weight of the facts or take a principal role in sifting, weighing and reciting them for the jury.”¹⁸

¹³ Plaintiff has filed a copy of the 447-page *Expert Report of D. Ray Strong, CPA, CFE, CIRA* (the “**Strong Report**” or the “**Report**”) as Exhibit B to plaintiff’s appendix of evidence offered in support of summary judgment [Docket No. 38-2].

¹⁴ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988).

¹⁵ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015).

¹⁶ Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988) (en banc) (emphasis added), cert. denied, 488 U.S. 1008 (1989).

¹⁷ Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

¹⁸ Rowe v. DPI Specialty Foods, Inc., No. 2:13-cv-00708-DN-EJF, 2015 WL 4949097, *5 (D. Utah Aug. 19, 2015), aff’d in part, 727 F. App’x 488 (10th Cir. 2018); see also United States v. Samara, 643 F.2d 701, 705 (10th Cir. 1981) (“An expert ‘may not go so far as to usurp the exclusive function of the jury to weigh the evidence and determine credibility.’ ”); United States v. Brown, 540 F.2d 1048, 1054 (10th Cir. 1976) (“the test of admissibility is often predicated upon the proposition that opinion evidence cannot usurp the functions of the jury or be received if it touches the very issue before the jury”).

Strong’s proposed opinion testimony on the ultimate fact that RRC operated as a Ponzi scheme (and his opinions that RRC exhibits common characteristics prevalent in Ponzi schemes) is not helpful and is impermissible. “Only evidence can establish proof, only the jury can find facts and decide issues ... and only the attorneys in the case can argue about the meaning of the evidence.”¹⁹ Further, “only the jury has the opportunity to conclude the factual issues in the case. Until a jury has found facts to resolve the factual issues presented to them, an expert has nothing other than assumptions on which [her] analysis may be based.”²⁰

Strong’s proposed opinion on the ultimate facts that RRC operated as a Ponzi scheme are exactly the sort of improper testimony rejected in Rowe.²¹ As in Rowe, the “facts” which Strong seeks to establish through his testimony “[a]re contested and [a]re for the jury to ultimately decide.”²² Thus, the Court should exclude Strong’s testimony on the ultimate facts.

III. CONCLUSION

WHEREFORE, the Howells respectfully pray that the Court will exclude D. Ray Strong from testifying as an expert in this civil action, that the Court will enter an order prohibiting plaintiff from offering “opinions” of Strong at trial and for any other purpose, including for purposes of seeking or opposing summary judgment, and that it will grant such other and further relief as is just and equitable.

DATED this 14th day of February 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
*Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL*

¹⁹ Rowe, 2015 WL 4949097, at *5 (D. Utah Aug. 19, 2015).

²⁰ Id.

²¹ Id.

²² Rowe v. DPI Specialty Foods, Inc., 727 F. App'x 488, 501 (10th Cir. 2018).

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February 2022, I filed the foregoing **HOWELLS' MOTION TO EXCLUDE PROPOSED EXPERT D. RAY STRONG** with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to counsel of record in the above-captioned civil action, including without limitation:

Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 S 200 E STE 700
SALT LAKE CITY, UT 84111

E-mail: mball@parrbrown.com

Attorneys for plaintiff JONATHAN O. HAFEN

/s/ Krys Lopez _____

Matthew M. Boley (8536)
Patrick E. Johnson (10771)
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
E-mail: mboley@ck.law
pjohnson@ck.law

Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

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

<p>JONATHAN O. HAFEN, in his capacity as Court-appointed Receiver;</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GRETCHEN A. HOWELL, an individual, and LESLIE M. HOWELL, an individual,</p> <p style="text-align: right;">Defendants.</p>	<p style="text-align: center;">OBJECTIONS TO NEW EVIDENCE SUBMITTED BY PLAINTIFF IN CONNECTION WITH ITS REPLY IN SUPPORT OF SUMMARY JUDGMENT [ORAL ARGUMENT REQUESTED]</p> <p style="text-align: center;">Case No. 2:19-cv-00813 Honorable Tena Campbell</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Pursuant to DUCivR 7-1(b)(3), defendants GRETCHEN HOWELL (“**Gretchen**”) and LESLIE M. HOWELL (“**Les**”) (collectively, the “**Howells**”), through counsel, hereby object to the new evidence submitted by plaintiff in connection with the *Reply Memorandum in Support of Receiver’s Motion for Summary Judgment* [Docket No. 55] (the “**Reply**”), including specifically the “stipulations” and concessions of Gaylen Dean Rust (“**Rust**”) made as part of his *Statement by Defendant in Advance of Plea of Guilty and Plea Agreement Pursuant to Fed. R. Cim. P. 11(c)(1)(C)* (“**Rust’s Plea Agreement**”) which are referenced in the Reply and attached as Exhibit A thereto.

A. Plaintiff’s New Evidence Is Prohibited by DUCivR 56-1(d) and Rule 56.

Receiver’s Motion for Summary Judgment, filed November 30, 2021 [Docket No. 37] (the “**Receiver’s Motion**”) is governed by Federal Rule of Civil Procedure 56 and Local Rule 56-1. The Howells have opposed the Receiver’s Motion. Without limitation, the Howells’

opposition demonstrates that the Receiver's Motion is not supported by competent and admissible evidence, see Fed. R. Civ. P. 56(c)(4) ("A[] ... declaration used to support ... a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the ... declarant is competent to testify on the matters stated").

Plaintiff has submitted new "evidence" in connection with the Reply, which is not permitted. Specifically, DUCivR 56-1(d) provides, in relevant part: "In the reply, a moving party may cite only additional evidence not previously cited in the opening memorandum to rebut a claim that a material fact is in dispute. Otherwise, no additional evidence may be cited in the reply memorandum, and if cited, the court will disregard it."

B. Specific Objections to New Evidence Submitted with the Reply.

As discussed above, plaintiff cannot submit new evidence in support of the Motion with the Reply except only for the limited purpose "to rebut a claim that a material fact is in dispute." Out of an abundance of caution, however, the Howells object specifically to the new evidence.

1. Rust's Plea Agreement Is Inadmissible Hearsay; It Is Not an Affidavit or an Unsworn Declaration.

Rust's Plea Agreement attached as Exhibit A to the Reply is hearsay and, even if it had been submitted with the original Motion rather than with the Reply, it could not be considered by the Court. No hearsay exceptions apply to the Plea Agreement.

Further, the Plea Agreement is not an "affidavit[]" or declaration[]" as referenced in Federal Rule of Civil Procedure 56(c)(1)(A). Rust's Plea Agreement does not satisfy the requirements of 28 U.S.C. § 1746.

2. Rust's Statements Cannot Be Relied upon by the Court, or the Receiver's Experts, Because when the Howells Deposed Rust He Refused to Testify.

The Howells deposed Rust in this civil action. Rust, however, refused to answer any of the questions that the Howells posed to Rust during the deposition – invoking his fifth amendment right against self-incrimination. Accordingly, plaintiff cannot now offer any of Rusts statements against the Howells – either directly as evidence in support of plaintiff's request

for summary judgment or indirectly, disguised as part of the evidence and information that plaintiff's experts "relied" upon in forming their opinions.

The Circuit Court of Appeals' decision in Poore v. Glanz, 724 F. App'x 635 (10th Cir. 2018) is a case in point. In Poore, a nonparty witness was deposed and "invo[ked] the Fifth Amendment during the deposition." Id. at 644. The court of appeals affirmed the trial court's ruling precluding the nonparty witness from "withdraw[ing] his prior invocations of the Fifth Amendment" and testifying at trial, holding that "such conduct would be unfairly prejudicial." Id.; see also Sec. & Exch. Comm'n v. Graystone Nash, Inc., 25 F.3d 187, 190-91 (3rd Cir. 1994) (noting that "because the [Fifth Amendment] privilege may be initially invoked and later waived at a time when an adverse party can no longer secure the benefits of discovery, the potential for exploitation is apparent" and thus "belated waiver of the privilege could be unfair").

The decision of this court in S.E.C. v. Art Intellect, Inc., No. 2:11-CV-357, (D. Utah Mar. 6, 2013) (Campbell, J.) is also instructive. "During the[ir] depositions, [two individual defendants] asserted their Fifth Amendment privilege against self-incrimination to every question" Id., 2013 WL 840048, at *2. In connection with cross-motions for summary judgment later in the civil action, the same witnesses sought to withdraw their invocation of the Fifth Amendment, and submitted testimony by declaration. In explaining its decision to strike the declarations and exclude the declaration testimony, the Court held and reasoned:

A party may assert the privilege against self-incrimination during civil as well as criminal proceedings. But during civil proceedings, "because the privilege may be initially invoked and later waived at a time when an adverse party can no longer secure the benefits of discovery, the potential for exploitation is apparent." SEC v. Graystone Nash, Inc., 25 F.3d 187, 190 (3d Cir.1994).

* * *

"The Fifth Amendment privilege cannot be invoked to oppose discovery and then tossed aside to support a party's assertions." SEC v. Zimmerman, 854 F.Supp. 896, 899 (N.D.Ga.1993) (distinguishing situation where party invoking privilege is a defendant in both civil and criminal cases and is forced to choose between waiver of the testimonial privilege in the criminal case and automatic entry of an adverse judgment in a civil case).

But the context and timing within which [the witnesses] waived their privilege is troubling. Here, [the witnesses] invoked the Fifth Amendment privilege during civil discovery Neither [of the witnesses] submitted sworn testimony concerning their activities ... until more than a year after invoking their privilege and *after the conclusion of fact discovery*.... [T]he Fifth Amendment privilege cannot be invoked as a shield to oppose depositions while discarding it for the limited purpose of making statements to support a summary judgment motion.” ... Acceptance of the last-minute affidavits would cause substantial prejudice to the SEC. One purpose of discovery is to ascertain the position of the adverse party on controverted issues. Discovery determines what the facts are and what your opponent contends the facts are and what purpose they will serve. The ability to cross-examine an adverse party also provides an opportunity to test that party's credibility....

S.E.C. v. Art Intellect, Inc., No. 2:11-CV-357, 2013 WL 840048, at *9–11 (D. Utah Mar. 6, 2013).

WHEREFORE, the Howells respectfully pray that the Court will strike and refuse to consider the new evidence offered by plaintiff in connection with its Reply, that the Court will sustain the Howells’ objections to plaintiff’s new evidence, and that the Court will grant such other and further relief as is just and appropriate.

DATED this 1st day of March 2022.

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley
Attorneys for defendant GRETCHEN A. HOWELL
and defendant LESLIE M. HOWELL

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March 2022, I filed the foregoing **OBJECTIONS TO NEW EVIDENCE SUBMITTED BY PLAINTIFF IN CONNECTION WITH REPLY IN SUPPORT OF SUMMARY JUDGMENT** with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to counsel of record in the above-captioned civil action, including without limitation:

Matthew J. Ball
PARR BROWN GEE & LOVELESS
101 S 200 E STE 700
SALT LAKE CITY, UT 84111

E-mail: mball@parrbrown.com

Attorneys for plaintiff JONATHAN O. HAFEN

/s/ Krys Lopez

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,
v.

RUST RARE COIN INC., a Utah corporation,
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.

**ORDER ESTABLISHING PONZI
OBJECTION PROCEDURE**

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

District Judge Tena Campbell
Chief Magistrate Judge Dustin B. Pead

On March 15, 2022, Jonathan O. Hafen, the court-appointed Receiver in the above-captioned matter, filed a Motion for Ponzi Determination and to Establish an Objection Procedure. (ECF No. 448.) As its name suggests, the Motion asks for two things. The Receiver seeks a court determination that an investment program operated by Receivership Defendants was a Ponzi scheme since at least 2008. The Receiver also asks the court to adopt its prior summary disposition procedure (ECF No. 165) to allow for objections and to decide the Ponzi-

scheme issue. Having considered the Motion, the court will adopt its summary disposition procedure to decide the Ponzi-scheme issue, and it will defer deciding that issue pending the following objection procedure. The court ORDERS as follows:

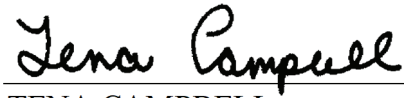
1. Any interested party wishing to object to the Receiver's Motion shall submit such objection in writing directly to the Receiver within thirty days of entry of this Order.
2. The Receiver shall provide copies of all objections received to Plaintiffs.
3. If an objecting party specifically requests discovery, the parties shall have an additional thirty days to complete such discovery, which will be conducted in accordance with the Federal Rules of Civil Procedure with the exception that written discovery must be responded to within fifteen days. Either side may seek relief from the court if the requested discovery is unduly burdensome or not proportional to the issues being determined. Any such discovery will be subject to the standard protective order.
4. After the deadline for objections passes and any specifically requested discovery is completed, the Receiver shall lodge all objections with the court and request a hearing at which such objections may be considered.
5. If an evidentiary hearing is required, the Receiver may request additional deadlines related to the disclosure of witnesses and exhibits as needed.
6. The Receiver and Plaintiffs may file a response to any objection five days prior to the hearing.

DATED this 30th day of March, 2022.

///

///

BY THE COURT:

Handwritten signature of Tena Campbell in black ink.

TENA CAMPBELL
United States District Judge

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Matthew J. Ball (9414) (mball@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840

Attorneys for Jonathan O. Hafen, Receiver

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

<p>JONATHAN O. HAFEN, in his capacity as Court-Appointed Receiver,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>GRETCHEN A. HOWELL, an individual; and LESLIE M. HOWELL, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">AMENDED STIPULATED MOTION TO STAY ACTION (IN SUBSTANTIAL PART), TO VACATE TRIAL DATES AND TO SUSPEND TRIAL-RELATED DEADLINES</p> <p style="text-align: center;">Case No. 2:19-cv-00813-TC</p> <p style="text-align: center;">Judge Tena Campbell</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Receiver Jonathan O. Hafen, by and through his counsel of record, and defendants Gretchen A. Howell and Leslie M. Howell (collectively, the “Howells”), through their counsel of record, hereby stipulate and agree (a) that, excepting only the resolution of the Howells’ pending motions for summary judgment and the Howells’ Motion to Exclude Proposed Expert Jeffrey T. Shaw (which should proceed, be heard and decided), all other aspects of the above-captioned action (including all other pending motions), should be stayed, (b) the trial dates and final pre-trial conference should be vacated and continued without date, and (c) all trial-related deadlines (including deadlines for pretrial disclosures) should be suspended and extended without date. In further support and explanation of the requested relief, the parties state as follows:

1. The Receiver intends to file in the receivership proceeding, *Commodity Futures Trading Commission, et al. v. Rust Rare Coin Inc., et al.* No. 2:19-cv-892 (D. Utah Nov. 27, 2018) (the “Receivership Proceeding”), a motion asking the Court to make a determination that Rust Rare Coin, Inc. was a Ponzi scheme, which the Receiver will ask the Court to make binding on the Howells and all other persons that currently are, or in the future may be, defendants in lawsuits to recover alleged “voidable transfers.”

2. The Receiver submits that it would be most efficient for the Court to resolve the question of whether Rust Rare Coin, Inc. was a Ponzi scheme once, for purposes of the Receivership Proceeding and all related cases, pursuant to the procedure for summarily disposing of issues approved by the Court in the Receivership Proceeding. *See* Order Granting Motion to Allow Summary Disposition Procedure, entered on May 1, 2019 (Main Case, Document No. 165).

3. The Receiver further submits that staying all aspects of this action (except the resolution of the Howells’ motions for summary judgment and motion to exclude Jeffrey T. Shaw) pending a determination of whether Rust Rare Coin, Inc. was a Ponzi scheme will obviate duplicative litigation and avoid the risk of potentially inconsistent determinations in different cases.

4. The Howells do not stipulate or consent that a determination that Rust Rare Coin, Inc. was a Ponzi scheme should be made in the Receivership Proceeding, and do not stipulate that such a determination in the Receivership Proceeding should be binding upon the Howells in this civil action. Indeed, the Howells have advised the Receiver (and now advise the Court) that they intend to object to and oppose the Receiver’s proposed procedure.

5. Nonetheless, the Howells are willing to stipulate to a stay in this action, except with respect to the Howells' own two pending motions for summary judgment and their motion to exclude Jeffrey T. Shaw, which do not turn on whether Rust Rare Coin, Inc. was a Ponzi scheme.

6. Accordingly, the parties stipulate and jointly move the Court:

a. to vacate the trial dates and the final pretrial conference, and to continue the trial and final pretrial conference without date;

b. to suspend and extend (without date) all trial-related deadlines, including the deadlines for the parties' pretrial disclosures;

c. to order that the Howells' two motions for summary judgment and Motion to Exclude Proposed Expert Jeffrey T. Shaw (which do not implicate the question of whether Rust Rare Coin, Inc. was a Ponzi scheme) shall not be stayed, but should proceed, be heard and be decided; and

d. to order that, excepting resolution of the Howells' motions for summary judgment and motion to exclude Jeffrey T. Shaw, all other aspects of the above-captioned action should be stayed.

A proposed Order is attached hereto as Exhibit "A."

DATED: April 8, 2022

PARR BROWN GEE & LOVELESS, P.C.

/s/ Matthew J. Ball

Joseph M.R. Covey
Matthew J. Ball
Attorneys for the Receiver

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley (w/ permission)

Matthew M. Boley
Patrick E. Johnson
Attorneys for the Howells

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2022, I caused true and correct copies of the foregoing **Amended Stipulated Motion to Stay Action (in Substantial Part), to Vacate Trial Dates and to Suspend Trial-Related Deadlines** to be served electronically on the following:

Matthew M. Boley
Patrick E. Johnson
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, Utah 84111
mboley@ck.law
pjohnson@ck.law

/s/ Matthew J. Ball _____

Exhibit “A”

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)
Matthew J. Ball (9414) (mball@parrbrown.com)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 532-7840

Attorneys for Jonathan O. Hafen, Receiver

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

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

Plaintiff,

v.

GRETCHEN A. HOWELL, an individual;
and LESLIE M. HOWELL, an individual,

Defendants.

**ORDER STAYING ACTION (IN
SUBSTANTIAL PART), VACATING
TRIAL DATES AND SUSPENDING
TRIAL-RELATED DEADLINES**

Case No. 2:19-cv-00813-TC

Judge Tena Campbell

Receiver Jonathan O. Hafen and defendants Gretchen A. Howell and Leslie M. Howell’s (collectively, the “Howells”) Amended Stipulated Motion to Stay Action (in Substantial Part), to Vacate Trial Dates and to Suspend Trial-Related Deadlines came before the Court for decision. Having considered the parties’ Stipulated Motion, and for good cause appearing, it is hereby

ORDERED, ADJUDGED and DECREED that the parties’ Stipulated Motion is GRANTED; and it is

FURTHER ORDERED, as follows:

A. the trial dates and the final pretrial conference shall be, and hereby are, VACATED and continued without date;

B. all trial-related deadlines, including the deadlines for the parties’ pretrial disclosures, shall be, and hereby are, SUSPENDED and extended without date;

C. excepting resolution of the Howells’ motions for summary judgment, all other aspects of the above-captioned action shall be, and hereby are, STAYED;

D. the Receiver shall file and serve his response to the Howells’ Motion to Exclude Proposed Expert Jeffrey T. Shaw within two weeks of the entry of this order and the Howells shall file and serve their reply within the following two weeks.

ENTERED this ____ day of _____, 2022.

BY THE COURT:

Honorable Tena Campbell

Approved as to form:

COHNE KINGHORN, P.C.

/s/ Matthew M. Boley (w/ permission)

Matthew M. Boley

Patrick E. Johnson

Attorneys for the Howells

James K. Tracy (#6668)
Joshua L. Lee (#11701)
Hyrum J. Bosserman (#16404)
BENNETT TUELLER JOHNSON & DEERE
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121
Telephone: (801) 438-2000
Email: jtracy@btjd.com; jlee@btjd.com;
hbosserman@btjd.com

Attorneys for Defendant Vanessa Percell Maldonado

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

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

Plaintiff,

v.

ROSARIA M. PERCELL, in her individual
capacity; VANESSA PERCELL, in her
individual capacity; and CHARLOTTE ANNE
PERCELL, in her individual capacity,

Defendants.

**OBJECTION TO RECEIVER’S MOTION
FOR PONZI DETERMINATION AND TO
ESTABLISH AN OBJECTION
PROCEDURE**

Case No. 2:19-cv-00899-TC

Judge Tena Campbell
Magistrate Jude Dustin B. Pead

Defendant Vanessa Percell Maldonado (“*Maldonado*”), by and through counsel, hereby objects to Plaintiff Jonathan O. Hafen’s (the “*Receiver*”) Motion for Ponzi Determination and to Establish an Objection Procedure (the “*Motion for Ponzi Determination*”), filed in *CFTC v. Rust Rare Coin, Inc.*, United States District Court for the District of Utah, Central Division, Case No. 2:18-cv-00892-TC-DBP (the “*2018 Case*”) and the subsequent Order Establishing Ponzi

Objection Procedure, entered on March 30, 2022 by the court of the 2018 Case (the “*Order on Ponzi Procedure*”).

OBJECTION

On April 29, 2022, Maldonado filed a Motion for Order Declaring Any Determination on Receiver’s Motion for Ponzi Determination in a Separate Case is Non-Binding (the “*Motion for Declaration*”) in the above-captioned case. *See* Motion for Declaration, attached hereto as Exhibit A. Maldonado expressly incorporates her argument and briefing in Motion for Declaration herein. As detailed in the Motion for Declaration, Maldonado objects to the Motion on Ponzi Determination and the procedure set forth in the Order on Ponzi Procedure. The court of the 2018 Case does not have jurisdiction over Maldonado—a non-party who has not been joined in this case—and does not have authority to issue bindings, preclusive orders on Maldonado. Further, the Motion for Ponzi Determination seeks to strip Maldonado of a full and fair opportunity to defend herself and robs her of her right to due process. Additionally, the Motion for Ponzi Determination is at odds with the Federal Rules of Civil Procedure. And, the truncated discovery schedule set forth in the Order on Ponzi Determination prevents Maldonado the adequate opportunity to mount a defense. What’s more, it violates the Scheduling Order that the court in the above-caption case already entered.

Maldonado sternly objects to being subject to any decision or procedure stemming from the 2018 Case. The court should not allow the Receiver to circumvent due process or the Federal Rules of Civil Procedure. Maldonado expects the court in the above-captioned case will grant the Motion for Declaration and declare that any order stemming from the Motion for Ponzi

Determination and Order on Ponzi Procedure in the 2018 Case has no binding on Maldonado and is without effect on her case.

In the event the court in the above-captioned case does not grant the Motion for Declaration, and the court for the 2018 Case orders Maldonado to participate in the 2018 Case, Maldonado reserves her right to respond to the Motion for Ponzi Determination, conduct discovery, and participate in an evidentiary hearing. Less than two weeks ago, the Receiver provided Maldonado with initial disclosures in the above-captioned case. And Maldonado has had no opportunity to conduct discovery in that case (or, of course, the 2018 Case). Maldonado intends to depose Gaylen Rust (and others) in order to obtain testimony concerning Rust Rare Coin (“*RRC*”) affairs and when it allegedly stopped operating as a legitimate business. Additionally, the Receiver apparently has significant documents related to RRC’s accounts and records. Maldonado has had no opportunity to retain an expert and evaluate RRC’s accounts and records to determine the extent of the allegedly fraudulent scheme, or when that alleged scheme actually began. Because RRC operated a legitimate business before allegedly turning fraudulent at some point, the date of any purported Ponzi scheme is particularly important. It will take significantly more than 30 days to take these depositions, review the materials, conduct discovery, and provide expert analysis. Maldonado should be afforded more time.

Finally, as detailed in the Motion for Declaration, any decision on the Ponzi determination is premature. Maldonado has filed her Motion to Certify in the above-captioned case. In the Motion to Certify, Maldonado sought to certify several questions related to the Ponzi scheme presumption, including whether the Utah Voidable Transaction Act contained any presumption in the case of a Ponzi scheme and whether the Receiver lacked standing. There is

no need to make the determination that a Ponzi scheme existed at this time if the questions in the Motion to Certify are certified by the court in the above-captioned case. As detailed at length in the Motion to Certify, the Utah Supreme Court may very well determine that the Receiver lacks standing to bring claims under the UVTA. If that is the case, then a Ponzi determination would be of little value. Similarly, the Motion to Certify seeks answers to questions over the Ponzi scheme presumption. If the court in the above-captioned case grants that Motion, certifies these questions, and the Utah Supreme Court holds that the Ponzi scheme presumption is not supported in the text of the UVTA—as has high courts of other states, *see* Motion to Certify—then a Ponzi determination will likewise be essentially useless. There is no reason that the parties should be forced into expending significant time and resources complying with an expediated discovery schedule on an issue that may very well be rendered meaningless.

CONCLUSION

For the forgoing reasons, and those specifically detailed in the attached Motion for Declaration, Maldonado objects to being subject to the jurisdiction of the court of the 2018 Case and any procedure established therein.

DATED this 29th day of April, 2022.

BENNETT TUELLER JOHNSON & DEERE

/s/ Hyrum J. Bosserman

James K. Tracy

Joshua L. Lee

Hyrum J. Bosserman

Attorneys for Vanessa Percell Maldonado

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of April, 2022, a true and correct copy of the foregoing **OBJECTION TO RECEIVER’S MOTION FOR PONZI DETERMINATION AND TO ESTABLISH AN OBJECTION PROCEDURE** was served on the following:

Joseph M. R. Covey	()	U.S. Mail, Postage Prepaid
Michael T. Hoppe	()	Hand Delivered
Claire M. McGuire	()	Overnight Mail
PARR BROWN GEE & LOVELESS	()	E-Filed
101 S. 200 E., Suite 700	(X)	E-Mailed
Salt Lake City, Utah 84111		
jcovey@parrbrown.com		
mhoppe@parrbrown.com		
cmcguire@parrbrown.com		
<i>Attorneys for Jonathan O. Hafen, Receiver</i>		

Lorraine P. Brown
UTAH LEGAL ADVOCATES, LLC
P.O. Box 150848
Ogden, Utah 84415
lbrown@utahlegaladvocates.com
*Attorneys for Rosaria M. Percell and
Charlotte Ann Percell*

/s/ Holly Van Leeuwen

EXHIBIT A

James K. Tracy (#6668)
Joshua L. Lee (#11701)
Hyrum J. Bosserman (#16404)
BENNETT TUELLER JOHNSON & DEERE
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121
Telephone: (801) 438-2000
Email: jtracy@btjd.com; jlee@btjd.com;
hbosserman@btjd.com

Attorneys for Defendant Vanessa Percell

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

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

Plaintiff,

v.

ROSARIA M. PERCELL, in her individual
capacity; VANESSA PERCELL, in her
individual capacity; and CHARLOTTE ANNE
PERCELL, in her individual capacity,

Defendants.

**MOTION FOR ORDER
DECLARING ANY
DETERMINATION ON
RECEIVER’S MOTION FOR PONZI
DETERMINATION IN SEPARATE
CASE IS NON-BINDING**

Case No. 2:19-cv-00899-TC

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Defendant Vanessa Percell Maldonado (“*Maldonado*”), by and through counsel, and pursuant to Rule 7 of the Federal Rules of Civil Procedure, hereby moves this Court to enter an order declaring that any decision stemming from Plaintiff Jonathan O. Hafen’s (the “*Receiver*”) Motion for Ponzi Determination and to Establish an Objection Procedure (the “*Motion for Ponzi Determination*”), filed in *CFTC v. Rust Rare Coin, Inc.*, United States District Court for the

District of Utah, Central Division, Case No. 2:18-cv-00892-TC-DBP (the “*2018 Case*”) is non-binding on this case and has no effect on Defendants.

RELIEF REQUESTED AND GROUNDS FOR RELIEF

On March 15, 2022, the Receiver filed his Motion for Ponzi Determination in the 2018 Case. In the Motion for Ponzi Determination, the Receiver expressly sought “a conclusive ruling from the Court that Receivership Defendants operated a Ponzi scheme since at least 2008 that will have preclusive effect in the **present and future ancillary actions.**” *See* Motion for Ponzi Determination at 4 (emphasis added), attached hereto as Exhibit A. In other words, the Receiver sought to conclusively establish the existence of a Ponzi scheme that would be binding on any other possible action, including this one. But, as the Receiver is well aware, neither Maldonado or any of the Defendants in this case are parties to the 2018 Case. Indeed, no claw-back defendants are part of that suit. Rather, only the Commodity Future Trading Commission, Utah Division of Securities, Rust Rare Coin, Inc., Gaylen Rust, and the other receivership defendants are parties there.

What the Receiver really seeks is to strip potential claw-back defendants, including Maldonado, from their day in court. And the Receiver seeks to rob Maldonado of the discovery required for her to mount an appropriate defense. This Court should not allow the Receiver to circumvent due process or the Federal Rules of Civil Procedure. Accordingly, the Court should enter an order declaring that any order stemming from the Motion for Ponzi Determination and Order on Ponzi Procedure in the 2018 Case has no binding on Maldonado and is without effect on this case.

STATEMENT OF RELEVANT FACTS

1. On November 13, 2018, the Commodity Futures Trading Commission and the Utah Division of Securities filed a Complaint against Rust Rare Coin, Inc. (“**RRC**”), Gaylen Dean Rust (“**Gaylen**”), R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC, and affiliated individuals and entities (the “**Receivership Defendants**”) in the United States District Court for the District of Utah, Civil No. 2:18-cv-00892-TC-DBP (the “**2018 Case**”).

2. On November 15, 2018, Jonathan Hafen was appointed receiver for RRC and the Receivership Defendants.

3. On November 14, 2019, Jonathan Hafen, as court-appointed Receiver for RRC (the “**Receiver**”), filed a Complaint in this case against Maldonado, asserting fraudulent transfer (the “**Complaint**”).¹

4. The case was thereafter placed on hold until 2022.

5. On March 24, 2022, the Maldonado filed an Amended Answer.²

6. On March 15, 2022, the Receiver filed the Motion for Ponzi Determination in the 2018 Case.³

7. In the Motion for Ponzi Determination, the Receiver sought “to obtain a definitive finding in [the 2018 Case] that Receivership Defendants operated a Ponzi scheme” in order “to eliminate the need to continue re-litigating the issue in all of the outstanding ancillary

¹ See generally Complaint

² See Vanessa Percell Maldonado’s Amended Answer, Court Docket 18.

³ See Motion for Ponzi Determination, attached hereto as Exhibit A

proceedings or any future ancillary proceeding.” In other words, the Receiver sought “a conclusive determination that the Silver Pool operated as a Ponzi scheme since at least 2008 . . . to preclude further litigation of that issue.”⁴

8. In the Motion for Ponzi Determination, the Receiver provided the court of the 2018 Case with no authority for seeking an order that was conclusively binding on hundreds of non-parties.⁵

9. The Receiver also sought to establish a grossly one-sided “Objection Procedure” to allow non-parties in other proceedings to send objections directly to the Receiver for his review.⁶

10. Specifically, the Receiver sought an order requiring any non-party to submit their objection to the Motion within 30 days, but not permitting a non-party to intervene or file documents directly with the Court.⁷

11. The Receiver would then provide copies of the objections to the “Plaintiffs” of the 2018 Case—i.e., the CFTC or Utah Division of Securities. No one—including the other non-parties or the court of the 2018 Case—would receive a copy of the objections.⁸

12. The objecting non-party could then request discovery, but would only get 30 days to complete discovery (and only 14 days to respond to written discovery).⁹

⁴ See *id.* at 17.

⁵ See generally *id.*

⁶ See *id.* at 17-19.

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

13. Once discovery concludes, the Receiver would file the objections with the court of the 2018 Case and a hearing would be scheduled before the court of the 2018 Case (not this Court).¹⁰

14. On March 16, 2022, the Court entered a Scheduling Order, explicitly declaring that fact discovery would close on December 9, 2022 and setting other discovery deadlines.¹¹

15. On March 30, 2022, the court in the 2018 Case entered its Order Establishing Ponzi Objection Procedure (the “*Order on Ponzi Procedure*”), adopting the procedures outlined in the Receiver’s Motion for Ponzi Determination.¹²

16. On April 1, 2022, Maldonado received notice of the Order on Ponzi Procedure.

17. As a non-party to the 2018 Case, Maldonado never received notice of the Motion for Ponzi Determination or had any opportunity to respond.

18. In fact, the Court in the 2018 Case has made it clear that persons not parties to the 2018 Case have no right to seek relief in that action, explaining:

Finally, Mr. Guyon asks the court to certify three questions to the Utah Supreme Court. Each of these questions involves what presumptions or standards of proof apply to determining whether a Ponzi scheme exists. Again, to the extent these questions are related to proving that there was no Ponzi scheme at all in this case, these issues should be raised by the Plaintiffs or the Defendants, not Mr. Guyon. If, on the other hand, these questions are related to proving that Mr. Guyon personally was not a victim of the Ponzi scheme, then he may raise the issue in an ancillary suit if such a suit is filed against him.

CFTC v. Rust Rare Coin, Inc., No. 2:18-cv-00892, 2020 WL 4904165, *8 (Aug. 8, 2020).

¹⁰ *See id.*

¹¹ *See* Scheduling Order, Court Docket # 15.

¹² *See* Order Establishing Ponzi Objection Procedure, attached hereto as Exhibit B.

19. No discovery has taken place in this action.¹³

20. On April 18, 2022, the Receiver produced initial disclosures.

21. On April 19, 2022, Maldonado filed a Motion to Certify Question of Law to the Utah Supreme Court (the “*Motion to Certify*”), seeking to certify nine separate questions to the Utah Supreme Court.¹⁴

22. Specifically, Maldonado seeks to certify questions relating to what is commonly referred to as the Ponzi scheme presumption and the Receiver’s standing.

ARGUMENT

A. The Motion for Ponzi Determination and Subsequent Order Violates Due Process

The U.S. Supreme Court has long reaffirmed “the general rule that a person cannot be deprived of his legal rights in a proceeding to which he is not a party.” *Martin v. Wilks*, 490 U.S. 755, 759 (1989), *abrogated by statute on other grounds as set forth in Landgarf v. USI Film Product*, 511 U.S. 244 (1994). “It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.” *Hansberry v. Lee*, 311 U.S. 32, 40-41 (1940); *see also CGC Holding Co., LLC v. Hutchens*, 974 F.3d 1201, 1215–16 (10th Cir. 2020) (same). “This rule is part of our ‘deep-rooted historic tradition that everyone should have his own day in court.’” *Martin*, 490 U.S. at 761–62 (citation omitted). In other words, “[a] judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.” *Id.*; *see also*

¹³ *See generally* Ct. Dkt.

¹⁴ *See* Motion to Certify Questions of Law to the Utah Supreme Court, Court Docket # 19.

Ashley v. City of Jackson, Miss., 464 U.S. 900, 902 (1983) (“It is fundamental premise of preclusion law that nonparties to a prior action are not bound by the judgment.”).

To hold otherwise would undermine a non-party’s due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution. In fact, “it is a violation of due process for a judgment to be binding on a litigant who was not a party nor a privy and therefore has never had an opportunity to be heard.” *Ashley*, 464 U.S. at 902 (citation omitted). “[J]udicial action enforcing [a judgment] against the person or property of [an] absent party is not that due process which the Fifth and Fourteenth Amendments require.” *F.D.I.C. v. Geldermann, Inc.*, 975 F.2d 695, 698 (10th Cir. 1992) (quoting *Hansberry*, 311 U.S. at 41) (alterations in original).

For this reason, the U.S. Supreme Court has repeatedly held that joinder of a party in the same suit is necessary to obtain a binding order on that party. Indeed, “[t]he law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger.” *See Martin*, 490 U.S. at 762. And “[u]nless duly summoned to appear in a legal proceeding, a person not a privy may rest assured that a judgment recovered therein will not affect his legal rights.” *Id.*

Here, the Receiver seeks to deprive Maldonado (and other claw-back defendants) of her due process rights. Instead of seeking to join Maldonado as a party to the 2018 Case, the Receiver simply seeks a binding order on all non-parties—past, present, and future. But neither the Receiver (nor the court for the 2018 Case) cited any authority permitting the Receiver to strip Maldonado of her due process rights. That is because none exists. As a non-party, any decision in the 2018 Case is not binding on Maldonado. *See Ashley*, 464 U.S. at 902. What’s more, Maldonado is not being afforded a full and fair opportunity to be heard. Indeed, rather than

permitting Maldonado the full slate of discovery permitted under Federal Rules of Civil Procedure—and which this Court already explicitly granted her in its Scheduling Order—the Receiver seeks to severely curtail Maldonado’s ability to defend herself by affording Maldonado a mere “30 days” to conduct discovery. That is patently unfair, particularly in light of the fact that the Receiver has had 3 ½ years to investigate the financial condition of Rust Rare Coin. To adequately protect Maldonado’s due process rights, the Court should enter an order declaring any determination stemming from the Motion for Ponzi Determination and Order on Ponzi Procedure to be non-binding and without effect on this case.

Finally, while the U.S. Supreme Court has spelled out six narrow circumstances where preclusion potentially may apply to a non-party, none of them apply here. Specifically, these circumstances include when (1) a non-party “agrees to be bound by the determination of issues in an action between others . . . in accordance with the terms of his agreement,” (2) there are “pre-existing ‘substantive legal relationship[s]’ between the person to be bound and a party to the judgment,” such as a assignor and assignee, (3) in limited circumstances where the non-party is “adequately represented by someone with the same interests who [wa]s a party to the suit,” (4) the non-party “‘assume[d] control’ over the litigation in which that judgment was rendered,” (5) the “nonparty later brings suit as an agent for a party who is bound by a judgment”, and (6) a special statutory scheme” exists which “expressly foreclos[e] successive litigation by nonlitigants . . . if the scheme is otherwise consistent with due process.” *See Taylor v. Sturgell*, 553 U.S. 880, 893-94 (2008) (citations omitted). First, Maldonado has not entered into any agreement to be bound by the 2018 Case. Second, there is no pre-existing substantive legal relationship between Maldonado and the Receiver. Third, no party is representing Maldonado’s

interest in the 2018 Case. In fact, the Receiver has brought suit against Maldonado and is directly at odds with her interests. Fourth, Maldonado has not assumed control over the 2018 Case. In fact, she generally has not even received notice of the happenings in that case. Fifth, Maldonado is not representing a party from the 2018 Case. And, finally, there is no special statutory scheme expressly foreclosing successive litigation. *See id.* There simply is no basis for the Motion for Ponzi Determination and Order on Ponzi Procedure to have binding, preclusive effect on this action or Maldonado's rights.

B. The Motion for Ponzi Determination and Subsequent Order Violates the Federal Rules of Civil Procedure

In addition to violating Maldonado's due process rights, the Motion for Ponzi Determination and Order on Ponzi Procedure is at odds with the Federal Rules of Civil Procedure. For starters, forcing Maldonado to conduct expedited discovery violates Maldonado's rights under Rule 26 (not to mention this Court's explicit Scheduling Order), and the truncated discovery schedule is at odds with Rule 16. Further, the Receiver's attempt to get a binding determination in the 2018 Case on Maldonado—a non-party—undermines the joinder requirements set forth in Rules 19 and 20. Finally, the Receiver's Motion for Ponzi Determination circumvents Rule 42 and consolidation requirements. This Court should not sanction an order or decision that is directly contrary to the Federal Rules of Civil Procedure.

i. The Receiver's Motion for Ponzi Determination is an Attempt to Rob Maldonado of His Right to Conduct Discovery Under Rules 26 and 16.

In the Motion for Ponzi Determination, the Receiver asked the court for the 2018 Case to limit any discovery on the Ponzi scheme determination to a mere 30 days, which the court

ultimately granted. *See* Motion for Ponzi Determination at 18. This is at odds with the Federal Rules of Civil Procedure and robs Maldonado of the right to mount a proper defense.

Defendants of claw-back cases in this district have consistently been granted significant time to conduct discovery related to their claims and defenses. *See, e.g., Georgelas v. Desert Hill Ventures, Inc.*, 510 F. Supp. 3d 1061, 1067-68 (D. Utah 2021) (discovery ran for nine months before summary judgment motion filed); *Georgelas v. Olsen*, No. 216CV00529RJSJCB, 2020 WL 7027731, at *3 (D. Utah Nov. 30, 2020) (discovery ran for nine months before summary judgment motion filed); *Miller v. Kelley*, No. 1:12-CV-00056-DN, 2014 WL 5437023, at *3 (D. Utah Oct. 27, 2014) (fact discovery closed almost a year and a half after case commenced). And this Court is no different. Specifically, this Court granted Maldonado approximately nine months to conduct discovery in this case. *See* Scheduling Order. Understanding full well the import of the Ponzi determination on this case, the Receiver seeks a binding determination without affording Maldonado the same time typically granted to conduct meaningful discovery (and which this Court already approved).¹⁵

The Receiver's Motion for Ponzi Determination and subsequent Order on Ponzi Procedure is particularly prejudicial to Maldonado's discovery rights in this case. As detailed above, this case is in the very early procedural stages. The Court very recently entered its Scheduling Order. Maldonado has not engaged in discovery. And, most importantly, the

¹⁵ For example, Maldonado intends to take Gaylen Rust's deposition in order to obtain testimony concerning his operations and when he went from operating a legitimate business to allegedly operating a fraudulent scheme. Since Mr. Rust is currently under the custody of the federal government, procuring a deposition of this sort in such a short time would be virtually impossible. Additionally, the Receiver apparently has significant documents related to RRC's accounts and records. Maldonado has had no opportunity to retain an expert and evaluate RRC's accounts.

Receiver provided Maldonado with his initial disclosures less than two weeks ago. Maldonado has not had opportunity to review documents and retain her own expert and forensic account to contradict the Receiver's alleged facts. And she has had no time to prepare her defense. Rather, the Receiver expects Maldonado to conduct discovery in a mere 30 days and have a binding determination made on a vital aspect of the case. In short, the Receiver has sought to undermine Rule 26 (and this Court's Scheduling Order) and the Court should reject his attempt to short-circuit the discovery process to Maldonado's detriment.¹⁶

The Receiver has also sought to undermine Rule 16. That rule provides that the parties must enter into a scheduling conference to determine agreeable discovery deadlines. *See* Fed. R. Civ. P. 26(f). And the Court will thereafter enter an order explicitly determining the scope and boundaries of the discovery in the Case. *See id.* 16(b). The Motion for Ponzi Determination and Order on Ponzi Determination circumvents this process, and instead sets a truncated and unrealistic discovery schedule to which Maldonado never agreed and this Court never sanctioned. To the contrary, the Receiver and Maldonado agreed to, and the Court sanctioned, a very different discovery schedule. The Court should enter an order declaring the Order on Ponzi Procedure to have no effect on this Court and should direct the parties to follow the Scheduling Order entered in this case.

ii. The Receiver's Motion is an Attempt to Circumvent Joinder Rules.

It is well-established that "a party seeking a judgment binding on another cannot obligate that person to intervene; he must be joined." *Martin v. Wilks*, 490 U.S. 755, 763-64 (1989). In

¹⁶ Indeed, in addition to setting discovery at 30 days, written discovery responses are to be returned in 15 days. *See* Order on Ponzi Determination. Again, this is a departure from the Federal Rules of Civil Procedure and this Court's Scheduling Order.

other words, “[j]oinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is the method by which potential parties are subjected to the jurisdiction of the court and bound by a judgment or decree.” *Id.* And because “[t]he parties to a lawsuit presumably know better than anyone else the nature and scope of relief sought in the action, and at whose expense such relief might be granted,” courts consistently hold that the parties to the suit (i.e., the Receiver) “bear the burden of bringing in additional parties . . . rather than placing on potential additional parties a duty to intervene when they acquire knowledge of the lawsuit.” *See id.*

If the Receiver desires to create a binding order on Maldonado, he must move to join Maldonado as a party to the 2018 Case pursuant to Rules 19 or 20 of the Federal Rules of Civil Procedure. *Id.* And he must carry his burden of proving joinder is proper in that case at this late stage. *Id.* For example, Rule 19 requires a party to show that

- (A) in that person’s absence, the court cannot accord complete relief among existing parties; or
- (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
 - (i) as a practical matter impair or impede the person's ability to protect the interest; or
 - (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

See Fed. R. Civ. P. 19(1)(a). Similarly, Rule 20 requires a party to show that “(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.” *See id.* 20(a)(2); *see also Trail Realty, Inc. v. Beckett*, 462 F.2d 396, 399 (10th Cir. 1972).

Here, Maldonado has not been joined in the 2018 Case, nor has the Receiver even moved for joinder in the 2018 Case. Accordingly, the Order on Ponzi Determination cannot bind

Maldonado. *See Martin v. Wilks*, 490 U.S. at 763–64. Moreover, the Receiver has not even attempted to meet the standards under Rules 19 or 20. This Court should not sanction the Receiver’s actions and permit the Receiver to circumvent joinder requirements he must follow to obtain the relief he seeks.

iii. The Receiver’s Motion for Ponzi Determination Violates Rule 42.

Finally, the Receiver essentially seeks consolidation without meeting the requirements in the Federal Rules of Civil Procedure. Rule 42 specifically details the procedure a party must walk through in order to consolidate proceedings. *See Fed. R. Civ. P. 42*. Of course, “[t]he party seeking consolidation has the burden to show the benefits of consolidation or the risk of injury to the moving party if the actions are not consolidated.” *Wedel Grp. XVIII, LLC v. Emps. Mut. Cas. Co.*, No. CIV-11-1113-F, 2011 WL 13116080, at *1 (W.D. Okla. Dec. 16, 2011); *see also Servants of Paraclete, Inc. v. Great Am. Ins. Co.*, 866 F. Supp. 1560, 1572 (D.N.M. 1994) (“[T]he party moving for consolidation bears the burden of proving that consolidation is desirable.”). In deciding whether to grant a motion to consolidate, the moving party must also show that the cases to be consolidated “involv[e] a common question of law or fact.” *See Fed. R. Civ. P. 42(a)*. “If the cases involve a common question of law or fact, the Court should then weigh the interests of judicial convenience in consolidating the cases against the delay, confusion, and prejudice consolidation might cause.” *Cheney v. Judd*, 429 F. Supp. 3d 931, 935–36 (D.N.M. 2019) (citation omitted). “The mere fact that a defendant has been sued in separate cases involving similar subject matter does not require a court grant a motion to consolidate.” *Wedel Grp.*, 2011 WL 13116080, at *1 (citing *American Emp. Ins. Co. v. King Resources Co.*, 545 F.2d 1265, 1269-70 (10th Cir. 1976)).

Here, again, the Receiver has not moved or attempted to meet his burden to consolidate this case with the 2018 Case. Instead, he simply requested a binding, preclusive order from the court of the 2018 Case. The Court should not sanction this end-run of the Rules of Civil Procedure.

In short, the Receiver has sought to strip Maldonado from her rights to fully defend against claims through the discovery process set forth in the Federal Rules of Civil Procedure. And he has sought to circumvent rules on joinder and consolidation. The Court should grant the Motion and enter an order declaring any determination on the Motion for Ponzi Determination and Order on Ponzi Procedure is not binding on Maldonado and any outcome there will not have preclusive effect on this action.

C. A Ponzi Determination is Premature and May Be Rendered Unnecessary If Questions are Certified to the Utah Supreme Court.

Earlier this month, Maldonado filed her Motion to Certify in this case. In the Motion to Certify, Maldonado sought to certify several questions related to the Ponzi scheme presumption, including whether the Utah Voidable Transaction Act contained any presumption in the case of a Ponzi scheme and whether the Receiver lacked standing. Notwithstanding this, the Motion for Ponzi Determination in the 2018 Case seeks an immediate, conclusive and preclusive determination that a Ponzi scheme existed. But such a determination is premature and may be wholly unnecessary if the Court grants the Motion to Certify.

There is no need to make the determination that a Ponzi scheme existed at this time if the questions in the Motion to Certify are certified by this Court. As detailed at length in the Motion to Certify, the Utah Supreme Court may very well determine that the Receiver lacks standing to bring claims under the UVTA. If that is the case, then a Ponzi determination would be of little

value. Similarly, the Motion to Certify seeks answers to questions over the Ponzi scheme presumption. If this Court grants that motion, certifies these questions, and the Utah Supreme Court holds that the Ponzi scheme presumption is not supported in the text of the UVTA—as has high courts of other states, *see* Motion to Certify—then a Ponzi determination will likewise be essentially useless. There is no reason that the parties should be forced into expending significant time and resources complying with an expediated discovery schedule on an issue that may very well be rendered meaningless. Rather, this Court should defer any decision on the Ponzi determination until it determines the Motion to Certify, and, if granted, after the Utah Supreme Court renders a decision. Even assuming the Receiver has standing and that the Utah Supreme Court would recognize the Ponzi presumption, Maldonado has also asked to certify questions regarding the scope and effect of the Ponzi presumption.

In short, the Motion for Ponzi Determination is premature. If the Court is inclined to certify the questions presented in the Motion to Certify, there is no need, at this time, to go through the time and expense of making a Ponzi scheme determination.

CONCLUSION

For the forgoing reasons, Maldonado respectfully requests that the Court grant this motion and enter and order declaring that any order or ruling stemming from the Motion for Ponzi Determination and Order on Ponzi Procedure in the 2018 Case is not binding on Maldonado and is without effect on this case.

DATED this 29th day of April, 2022.

BENNETT TUELLER JOHNSON & DEERE

/s/ Hyrum J. Bosserman

James K. Tracy

Joshua L. Lee

Hyrum J. Bosserman

Attorneys for Vanessa Percell Maldonado

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of April, 2022, a true and correct copy of the foregoing **MOTION FOR ORDER DECLARING ANY DETERMINATION ON RECIEVER’S MOTION FOR PONZI DETERMINATION IN SEPARATE CASE IS**

NON-BINDING was served on the following:

Joseph M. R. Covey	()	U.S. Mail, Postage Prepaid
Michael T. Hoppe	()	Hand Delivered
Claire M. McGuire	()	Overnight Mail
PARR BROWN GEE & LOVELESS	(X)	E-Filed
101 S. 200 E., Suite 700	()	E-Mailed
Salt Lake City, Utah 84111		
jcovey@parrbrown.com		
mhoppe@parrbrown.com		
cmcguire@parrbrown.com		
<i>Attorneys for Jonathan O. Hafen, Receiver</i>		

/s/ Holly Van Leeuwen

EXHIBIT A

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)

Cynthia D. Love (14703) (clove@parrbrown.com)

PARR BROWN GEE & LOVELESS, P.C.

101 South 200 East, Suite 700

Salt Lake City, Utah 84111

Telephone: (801) 532-7840

Facsimile: (801) 532 7750

Attorneys for Johnathan O. Hafen as Receiver for the Rust Rare Coin Receivership

**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,

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.

**MOTION FOR PONZI
DETERMINATION AND TO
ESTABLISH AN OBJECTION
PROCEDURE**

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

Judge Tena Campbell
Magistrate Judge Dustin Pead

Jonathan O. Hafen, as Court-Appointed Receiver (the “Receiver”) for the assets of Rust Rare Coin, Inc. (“RRC”), Gaylen D. Rust, Denise G. Rust, and Joshua D. Rust (collectively with RRC, “Defendants”), as well as R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, “Relief Defendants” and, collectively with Defendants, “Receivership Defendants”), respectfully submits this Motion for Ponzi Determination and to Establish an Objection Procedure (this “Motion”).

RELIEF REQUESTED AND GROUNDS

Through this Motion, the Receiver requests a determination that Receivership Defendants operated a silver investment scheme (the “Silver Pool”) as a Ponzi scheme since at least 2008 and that the Court establish an objection procedure pursuant to the Court’s summary disposition procedure so that any interested party has the opportunity to be heard on the issue of whether the Silver Pool was a Ponzi scheme. Although the Court has previously determined that the Silver Pool operated as a Ponzi scheme in a number of the ancillary actions initiated by the Receiver,¹ those decisions are technically not binding on non-parties. *See Murdock v. Ute Indian Tribe of Uintah and Ouray Reservation*, 975 F.2d 683, 387 (10th Cir. 1992) (holding that collateral estoppel may be applied if “the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication”); *Kuhar v. Thompson Mfg. Inc.*, __ P.3d. __, 2022 WL 481117 (Utah Ct. App. 2022) (same). In order to streamline other ancillary actions and conserve the resources of the Receivership Estate, the Receiver now seeks a conclusive determination that the Silver Pool operated as a Ponzi scheme since at least 2008. Such a

¹ *See Hafen v. Famulary*, 2:19-cv-00627-TC, Dkt. No. 28; *Hafen v. Brimley*, 2:19-cv-00875-TC, Dkt. No. 21; *Hafen v. Evans*, 2:19-cv-00895-TC, Dkt. No. 38.

determination will act to preclude further litigation of that issue.² The Receiver further asks the Court to establish a procedure through which interested parties, including parties to existing ancillary actions or with whom the Receiver has tolling agreements, can lodge objections or otherwise challenge the determination of a Ponzi scheme.

This Motion is supported by the Memorandum of Law set forth herein. Additionally, the Receiver submits the following in support of the Motion: (1) guilty pleas of Gaylen Rust, Denise Rust, and Joshua Rust, true and correct copies of which are included as Exhibit A; (2) Jonathan O. Hafen’s Receiver’s Report (“Hafen Report”) and its accompanying exhibits, a true and correct copy of which are included as Exhibit B; and (3) Expert Report of D. Ray Strong (“Strong Report”) and its accompanying exhibits, a true and correct copy of which are included as Exhibit C.

MEMORANDUM OF LAW

INTRODUCTION

Since at least 2008, Receivership Defendants operated a classic Ponzi scheme in which they used funds from new investors to pay exorbitant returns to existing investors. Although Receivership Defendants’ scheme occasionally took other forms, Receivership Defendants most commonly solicited funds from investors by claiming to invest those funds in the Silver Pool through which Receivership Defendants supposedly generated returns through the buying and selling of physical silver. Ultimately, Receivership Defendants defrauded investors of more than \$200 million, causing significant harm to hundreds of families.

² As explained in more detail below, Gaylen Rust variably described his silver investment scheme as the Silver Pool, a commissions program, or similar iterations. Through the Motion, the Receiver seeks a determination that none of the various iterations of Rust’s investment programs were legitimate and that all of the various programs touted by Rust were simply part of the larger Ponzi scheme.

Now that the individual Receivership Defendants have all pled guilty in their parallel criminal proceedings, the existence of a Ponzi scheme operated by Receivership Defendants is undisputable. Rather than wasting precious Estate resources by continuing to litigate the existence of a Ponzi scheme in each ancillary proceeding, the Receiver seeks a conclusive ruling from the Court that Receivership Defendants operated a Ponzi scheme since at least 2008 that will have preclusive effect in present and future ancillary actions.

RELEVANT MATERIAL FACTS

Procedural and Factual History

1. On November 13, 2018, the Commodity Futures Trading Commission (“CFTC”) and the Utah Division of Securities (“UDOS”) (collectively, the “Plaintiffs”) initiated this action against Receivership Defendants and related parties, alleging that Receivership Defendants operated the Silver Pool as a Ponzi scheme. [Dkt. No. 1.]

2. On November 15, 2018, the Court appointed the Receiver as Temporary Receiver for the assts of Receivership Defendants. [Dkt. No. 22.]

3. On November 27, 2018, the Court entered an Order Appointing Receiver and Staying Litigation (the “Appointment Order”), which continued the Receiver’s appointment until further order of the Court. [Dkt. No. 54.]

4. The Receiver was charged with, among other things, investigating the financial and business affairs of Receivership Defendants and recovering all assets of the Receivership Estate. [*Id.* ¶¶ 7, 41-42.]

5. On March 20, 2019, the Court entered an Order Staying Civil Case Pending Outcome of Criminal Proceedings, which stayed this action “until after entry of a guilty plea or a jury verdict of guilty in any criminal action brought by the U.S. Attorney.” [Dkt. No. 149.]

6. On May 1, 2019, the Court entered an Order Granting Motion to Allow Summary Disposition Procedure, which established a set of procedures through which the Receiver could seek substantive relief from the Court and interested parties could lodge objections and obtain discovery without having to intervene in this matter. [Dkt. No. 165.]

7. On May 8, 2019, the U.S. District Attorney charged the individual Receivership Defendants with various crimes related to the operation of the Silver Pool as a Ponzi scheme. [See *United States v. Rust*, 2:19-cv-00164-TS-CMR, Dkt. No. 1, hereafter the “Criminal Proceedings”.]

8. On June 13, 2019, the individual Receivership Defendants pled not guilty to the crimes with which they were charged. [Criminal Proceedings, Dkt. No. 19.]

9. On June 25, 2020, Denise Rust pled guilty to one count of money laundering related to the operation of the Silver Pool. [Criminal Proceedings, Dkt. Nos. 82, 87.]

10. On September 8, 2020, Denise Rust was sentenced to 18 months’ imprisonment, followed by 36 months’ supervised release. [Criminal Proceedings, Dkt. No. 93.]

11. On January 22, 2021, the Court granted the Receiver’s Motion for Partial Summary Judgment in the *Hafen v. Famulary* ancillary action, finding “that Receivership Defendants operated the Silver Pool as a Ponzi scheme since at least 2008.” [*Famulary*, 2:19-cv-00627-TC, Dkt. No. 28 at 10.]

12. On April 15, 2021, the Court granted the Receiver’s Motion for Summary Judgment in the *Hafen v. Brimley* ancillary action, finding that the “Silver Pool operated by Receivership Defendants was a Ponzi scheme since at least 2008.” [*Brimley*, 2:19-cv-00875-TC, Dkt. No. 21 at 13.]

13. On August 9, 2021, the Court granted in part the Receiver’s Motion for Partial Summary Judgment in the *Hafen v. Evans* ancillary action, finding that “the Receivership Defendants operated the Silver Pool which constituted a Ponzi scheme since at least 2008.” [*Evans*, 2:19-cv-00895-TC, Dkt. No. 38 at 10.]

14. On December 20, 2021, Gaylen Rust pled guilty to wire fraud conspiracy, money laundering conspiracy, and securities fraud in connection with operation of the Silver Pool. [Criminal Proceedings, Dkt. Nos. 132, 134.]

15. On March 8, 2022, Gaylen Rust was sentenced to 19 years’ imprisonment, followed by 36 months’ supervised release. [Criminal Proceedings, Dkt. No. 156.]

16. On March 8, 2022, Joshua Rust pled guilty to misprision of wire fraud conspiracy in connection with the Silver Pool.³ [Criminal Proceedings, Dkt. Nos. 159, 162.]

Receivership Defendants’ Fraudulent Scheme

17. Since at least 2008, Receivership Defendants operated an investment scheme promoted as a “silver trading program.” [Ex. A, Statement by Defendant in Advance of Plea of Guilty and Plea Agreement (“G.Rust Guilty Plea”), at 5.]

18. In operating the scheme, Receivership Defendants “knowingly and willfully” conspired “to defraud investors by inducing them to invest in RRC’s ‘silver trading program’ through material misrepresentations and omissions of material fact about the program.” [*Id.*]

19. G.Rust promoted the Silver Pool as “a lucrative investment that involved the buying and selling of actual physical silver bullion.” [*Id.*]

20. G.Rust falsely represented to investors “[t]hat 100% of investor funds would be used to buy actual, physical silver; when in fact [G.Rust] diverted nearly all investor funds

³ Joshua Rust is set to be sentenced on May 31, 2022. [Criminal Proceedings, Dkt. No. 159.]

received to unrelated businesses, to personal uses, and to make payments to other investors.”

[*Id.*]

21. G.Rust falsely represented to investors “[t]hat only half the amount of silver bought for the investor would be ‘traded’ with the other half stored for safekeeping to minimize investment risk; when in fact, there was no significant actual silver trading occurring and no meaningful amount of investor money was used to purchase and store actual silver.” [*Id.* at 6.]

22. G.Rust falsely represented to investors “[t]hat the profit generated in trades would be used to repurchase a larger amount of silver at a lower price, thereby continually increasing the amount of silver for investors; when in fact, there was no actual silver trading occurring.”

[*Id.*]

23. G.Rust falsely claimed “[t]hat by using algorithms, the silver trading program never experienced a losing month, much less a losing year, that the worst year had generated a 12% return, and that the average rate of return was 20 to 25% per year; when in fact, RRC traded almost no silver and had no trading mechanism that could generate such returns, and [Receivership Defendants] used investor money in a way that only ever resulted in losses of the invested funds.” [*Id.*]

24. G.Rust expressly admitted that he “used investor funds for [his] own personal use and benefit, for unrelated businesses that all operated at significant losses, and to pay other investors.” [*Id.*]

25. G.Rust further admitted that “[t]o convince investors and potential investors that their investments were profitable and to convince potential investors that the silver trading program was earning money, [he] used investment money from later investors to pay the promised returns to earlier investors” and that this “created the false impression that the silver

trading program was profitable, that the investments were safe and secure, and that the promised returns were being generated through trading.” [*Id.* at 6-7.]

26. In addition to G.Rust’s express admissions in his Guilty Plea, the Receiver’s own investigation confirms that Receivership Defendants operated the Silver Pool as a Ponzi scheme since at least 2008 and that G.Rust’s admissions are corroborated by substantial additional evidence.

27. Receivership Defendants solicited funds from investors by representing that they would use such funds to trade physical silver, thereby generating returns for investors. [Hafen Report, at pp. 12-13, and Exhibit A thereto, ¶ 98.]

28. Specifically, the Receivership Defendants represented that one-half of invested funds would be used to purchase physical silver, which would be stored at Brink’s facilities. According to the Receivership Defendants’ representations, the remaining one-half of the invested funds would be used to buy and sell physical silver on the commodities market, thereby increasing the investor’s silver holdings over time and generating returns on the investment. [Hafen Report, at p. 12, and Exhibit A thereto, ¶¶ 20, 98.]

29. In reality, investor funds were not used to purchase physical silver. [Hafen Report, at pp. 13-14, and Exhibit A thereto, ¶ 22.]

30. G.Rust expressly admitted that new investor funds were used to pay returns to existing investors and to fund other businesses that were unrelated to the Silver Pool. [Strong Report, at pp. 13-15.]

31. Although the Receivership Defendants represented that they managed over \$80 million of physical silver and that approximately one-half of that amount was stored at Brink’s locations in Salt Lake City and Los Angeles, there is no evidence that the Receivership

Defendants ever stored significant amounts of physical silver at Brink's or any other facility.

[*Id.*, at pp. 9-10, 48.]

32. G.Rust expressly admitted that there was no significant amount of silver stored at Brinks at the time of the Receiver's appointment. [Hafen Report, at p. 13, and Exhibit A thereto, ¶ 99.]

33. There is no evidence that the Receivership Defendants ever traded significant amounts of physical silver on a regular basis in the manner represented to investors. [Hafen Report, at p. 13, and Exhibit A thereto, ¶ 99.]

34. Since 2008, the Receivership Defendants raised at least \$225 million from investors and paid out at least \$175 million to investors. [Strong Report, at pp. 6-7.]

35. Even as early as tax year 2008 ("TY2008"), the net operating income obtained through the Receivership Defendants' limited business operations was insufficient to make payments to investors:

- a. The total net operating income of RRC—Rust's only profit-generating business—in TY2008 was at best \$259,154.
- b. During TY2008, the Receivership Defendants took in at least \$3.2 million in payments from investors.
- c. During TY2008, the Receivership Defendants made payments to investors in excess of \$1.6 million.
- d. During TY2008, the Receivership Defendants also made payments to other RRC-affiliated businesses in excess of \$1.5 million.
- e. From at least TY2008, the income generated from operations of the Receivership Defendants was grossly insufficient to finance the substantial payments promised

to investors. New funds contributed by unsuspecting investors provided the only funding source large enough to facilitate these payments.

[Strong Report, at pp. 6, 23-24.]

36. The payments made to investors since 2008 could only have been sourced from funds raised from other investors; there was no other source of funds from which these payments could have been made. [*Id.*, at p. 76.]

37. From 2008 through the appointment of the Receiver in 2018, the Receivership Defendants continued to take in ever-increasing funds from investors and to pay out exorbitant returns. Between January 1, 2018, and November 15, 2018, the Receivership Defendants paid more than \$37 million to investors. [*Id.*, Exhibit 25, p. EX194 (summarizing amounts raised from and paid to investors on a year-by-year basis).]

38. The Receivership Defendants represented that the Silver Pool was “risk free,” “no risk,” or “virtually risk free” because the investment was backed by physical silver, which would always have value. [Hafen Report, at p. 6, and Exhibit A thereto, ¶ 125.]

39. The Receivership Defendants guaranteed “no loss of principle [sic]” invested. [Strong Report, Exhibit 8, p. EX104.]

40. The Receivership Defendants represented that the Silver Pool paid an average return of 20-25%. [*Id.*, at p. 44.]

41. The Receivership Defendants represented that returns between 2012 and 2017 exceeded 40%. [*Id.*, Exhibit 35, pp. EX235-36.]

42. The Receivership Defendants represented that the lowest return on the Silver Pool investment during a thirty-year period was 12%. [Strong Report, at p. 44.]

43. Investor statements provided by the Receivership Defendants reflected that every silver trade was profitable and that the Receivership Defendants had never lost money on a trade. [*Id.*, at p. 7.]

44. The Receivership Defendants promoted the Silver Pool as an exclusive program offered only to those investors G.Rust knew personally. [*Id.*, at pp. 58-59.]

45. The Receivership Defendants falsely claimed to have a trading relationship with HSBC, one of the world’s largest banks, and to employ a proprietary trading algorithm that allowed the Receivership Defendants to beat the market. [Hafen Report, at p. 21, and Exhibit A thereto, ¶¶ 122, 129-30.]

46. The Receivership Defendants paid exorbitant returns to investors for years, creating the false impression that profits were being earned and thereby attracting new investors to the scheme and convincing existing investors to increase their investment. [Strong Report, at p. 7.]

47. Investors have likely suffered in excess of \$100 million in net principal losses. [*Id.*, at p. 77.]

ARGUMENT

I. Factors Governing Ponzi Determination

A Ponzi scheme is “an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments.” *Jobin v. McKay*, 84 F.3d 1330, 1332 n.1 (10th Cir. 1996); accord *S.E.C. v. Management Solutions, Inc.*, No. 2:11-cv-1165-BSJ, 2013 WL 4501088, at *19 (D. Utah Aug. 22, 2013). “In order to show that an investment scheme falls within the definition of a Ponzi scheme, the Receiver must prove by a preponderance of the evidence the *sine qua non* of a Ponzi scheme: that returns to earlier investors were paid by funds from later investors.”

Management Solutions, 2013 WL 4501088, at *19. In addition, Ponzi schemes typically—though not always—exhibit the following characteristics:

- Investors are promised substantial returns;
- Investors are promised returns with little or no risk;
- Investors are promised consistent returns;
- Investors are paid the promised returns for at least some time, which attracts new investors to the program;
- The scheme is generally insolvent from the beginning;
- The scheme is secret, exclusive, and/or highly complex.

Id. As explained in detail herein, it is undisputable that the Silver Pool operated as a Ponzi scheme since at least 2008.

II. Receivership Defendants’ Guilty Pleas Conclusively Establish the Existence of a Ponzi Scheme.

Receivership Defendants’ guilty pleas and factual admissions conclusively establish that the investment scheme operated by Receivership Defendants was a Ponzi scheme. Numerous courts have concluded that a guilty plea or a criminal conviction of the operator of a Ponzi scheme conclusively establishes that a Ponzi scheme occurred. *See, e.g., In re Slatkin*, 525 F.3d 805, 814 (9th Cir. 2008) (“We now hold that a debtor’s admission, through guilty pleas and a plea agreement admissible under the Federal Rules of Evidence, that he operated a Ponzi scheme with the actual intent to defraud his creditors conclusively establishes the debtor’s fraudulent intent . . . and precludes relitigation of that issue.”); *In re AFI Holding, Inc.*, 525 F.3d 700, 704 (9th Cir. 2008) (holding that the Ponzi operator’s guilty plea “demonstrates the existence of fraudulent intent and a Ponzi scheme”); *In re Fin. Federated Title & Trust, Inc.*, 347 F.3d 880,

886 n.5 (11th Cir. 2003) (“[T]he guilty pleas of ABS and Ray Levy undisputably establish that this Debtor’s operations were nothing more than a massive fraud and Ponzi scheme.”); *Scholes v. Lehmann*, 56 F.3d 750, 762 (7th Cir. 1995) (accepting Ponzi scheme operator’s guilty plea as evidence establishing existence of a Ponzi scheme); *Wiand v. Morgan*, 919 F. Supp. 2d 1342, 1361 (M.D. Fla. 2013) (collecting cases); *In re Barnard L. Madoff Inv. Securities LLC*, 445 B.R. 206, 220-21 (S.D.N.Y. 2011) (collecting cases and finding existence of a Ponzi scheme “particularly in light of Madoff’s criminal admission”); *In re Rothstein Rosenfeldt Adler, P.A.*, 2010 WL 5173796, at *5 (S.D. Fla. Dec. 14, 2010) (“Criminal plea agreements are admissible to establish the existence of a Ponzi scheme and a wrongdoer’s fraudulent intent.”); *Wing v. Alvey*, No. 2:08-cv-796, 2009 WL 223612, at *1 (D. Utah Jan. 29, 2009) (“[N]umerous courts have also held that a criminal conviction for operating a Ponzi scheme establishes the operator’s fraudulent intent.”); *In re McCarn’s Allstate Finance, Inc.*, 326 B.R. 843, 851 (M.D. Fla. 2005) (“Even if the information or indictment did not specifically label the fraud a ‘Ponzi scheme,’ if the allegations in the information establish that the debtor ran a scheme whereby the debtor intended to defraud the debtor’s creditors, evidence of a guilty verdict or plea agreement admitting the charges can establish the existence of a Ponzi scheme.”).

G.Rust’s Guilty Plea does not merely admit to the operation of a Ponzi scheme. G.Rust admits to specific facts conclusively establishing that Receivership Defendants’ investment program operated as a Ponzi scheme, including but not limited to the following:

1. That Receivership Defendants “diverted nearly all investor funds received to unrelated businesses, to personal uses, and to make payments to other investors”;

2. That, despite G.Rust's representations to investors, "there was no significant actual silver trading occurring and no meaningful amount of investor money was used to purchase and store actual silver";
3. That "RRC traded almost no silver and had no trading mechanism that could generate such returns, and we used investor money in a way that only ever resulted in losses of the invested funds";
4. That G.Rust "used investor funds for [his] own personal use and benefit, for unrelated businesses that all operated at significant losses, and to pay other investors";
5. That "[t]o convince investors and potential investors that their investments were profitable and to convince potential investors that the silver trading program was earning money, [G.Rust] used investment money from later investors to pay the promised returns to earlier investors."

[Ex. A, G.Rust Guilty Plea at 5-7.]

Thus, the G.Rust Guilty Plea conclusively establishes the *sine qua non* of a Ponzi scheme: that newly invested funds were used to pay returns to existing investors. *See S.E.C. v. Management Solutions, Inc.*, No. 2:11-cv-1165-BSJ, 2013 WL 4501088, at *19 (D. Utah Aug. 22, 2013). The Receiver's independent investigation is entirely consistent with the G.Rust Guilty Plea and confirms that Receivership Defendants operated their investment program as a Ponzi Scheme.

III. Receivership Defendants' Investment Program Was a Ponzi Scheme.

Pursuant to the Court's instructions, the Receiver has extensively investigated the business dealings of Receivership Defendants. The Receiver's investigation also conclusively establishes that Receivership Defendants operated their investment program as a Ponzi scheme.

As an initial matter, as in the G.Rust Guilty Plea, G.Rust expressly admitted when interviewed by investigators that he used newly invested funds to pay returns to existing investors. *See* Hafen Report at 15 & Ex. F at 11:8-18. Similarly, G.Rust admitted that—despite his representations to investors—Receivership Defendants engaged in little to no trading and that what little trading was conducted had generated net losses to investors. *See* Hafen Report, Ex. F at 30:12-31:2.

These admissions are consistent with the Receiver’s review of the books and records of Receivership Defendants. The Receiver discovered no evidence of purchases of silver in the amounts necessary to correlate with G.Rust’s representations to investors. Hafen Report at 16. Nor has the Receiver discovered any evidence that Receivership Defendants ever stored significant amounts of physical metals at Brinks or any other facility. *Id.*

Mr. Stong’s analysis confirms that Receivership Defendants used newly invested funds to pay returns to existing investors. Since 2008, the Receivership Defendants raised at least \$225 million from and paid out at least \$175 million to investors. Strong Report, at pp. 6-7. Mr. Strong also opined that the net operating income of RRC—the only profit-making business—was insufficient to make payments to investors. *Id.* at 76.

For example, Mr. Strong’s analysis revealed that RRC’s total operating income in TY2008 was, at best, \$259,154. *Id.* at 6, 23-24. During that same year, RRC took in at least \$3.2 million from investors and made payments in excess of \$1.6 million to investors. *Id.* RRC also made payments to its affiliated business entities in excess of \$1.5 million. *Id.* None of the other RRC-affiliated entities was a net cash-positive operation and all were heavily subsidized by RRC. *Id.* Based on the finances of RRC and its affiliated entities, it is clear that the payments made to investors in 2008 could only have come from other investors’ funds. *Id.* There was simply no other source of funds from which to pay these investor returns.

Moreover, from 2008 until the appointment of the Receiver in November 2018, Receivership Defendants' financial condition continued to deteriorate. As Mr. Strong's analysis makes clear, Receivership Defendants continued to take in ever-increasing funds from investors and to pay out exorbitant returns without any legitimate underlying business activity. Strong Report, EX194 (summarizing amounts raised from and paid to investors on a year-by-year basis).

The Receiver's preliminary analysis has revealed that investors likely suffered net principal losses in excess of \$100 million related to the Receivership Defendants' actions.⁴ [*Id.* at 77.] At the time the Enforcement Action commenced, the assets of RRC were grossly inadequate to repay the amounts owed to investors, and RRC had no reasonable expectation of ever generating sufficient funds to repay those amounts.

In short, the Silver Pool exhibited the classic characteristics of a Ponzi scheme:

- (1) newly attracted investor funds were used to finance payments to existing investors;
- (2) investors were promised significant returns with little to no risk;
- (3) investors were promised that these returns would be consistent;
- (4) the Receivership Defendants, in fact, paid substantial returns to early investors in order to entice new investment;
- (5) the Receivership Defendants promoted the Silver Pool as an exclusive, highly complex investment opportunity;

⁴ In the G.Rust Guilty Plea, G.Rust stipulated to a money judgment in the amount of \$153,073,328.32 and indicated that such a judgment represented "property acquired from or traceable to my offenses." G.Rust Guilty Plea at 10.

(6) the Receivership Defendants' assets were grossly inadequate to repay amounts owed to investors, and the Receivership Defendants had no reasonable expectation of being able to generate sufficient funds to meet those obligations.

OBJECTION PROCEDURE

As discussed above, the Court has previously determined in three separate ancillary proceedings that the investment scheme operated by Receivership Defendants was a Ponzi scheme. *See Hafen v. Famulary*, 2:19-cv-00627-TC, Dkt. No. 28; *Hafen v. Brimley*, 2:19-cv-00875-TC, Dkt. No. 21; *Hafen v. Evans*, 2:19-cv-00895-TC, Dkt. No. 38. The Receiver desires to obtain a definitive finding in this action that Receivership Defendants operated a Ponzi scheme, which will eliminate the need to continue re-litigating the issue in all of the outstanding ancillary proceedings or any future ancillary proceeding. In order to streamline other ancillary actions and conserve the resources of the Receivership Estate, the Receiver now seeks a conclusive determination that the Silver Pool operated as a Ponzi scheme since at least 2008, which will act to preclude further litigation of that issue.

Because the Receiver recognizes that certain interested parties may wish to object or respond to this Motion, the Receiver respectfully requests that the Court apply the Summary Disposition Procedure previously established by the Court to this Motion and all objections related thereto. [See Dkt. No. 165.] This will allow the Receiver to expeditiously and cost effectively resolve any challenges to the Ponzi scheme determination while preserving the due process rights of litigants in the ancillary proceedings and other interested parties. To that end, the Receiver proposes the following procedures:

1. Once the Receiver files this Motion, the Receiver will serve a copy of the Motion and accompanying exhibits on all parties to existing ancillary proceedings and any party

- with whom the Receiver has a tolling agreement. The Receiver will also serve a copy of the Motion and accompanying exhibits to all parties on the Receiver's master mailing matrix and post a copy to the Receiver's website at <http://rustrarecoinreceiver.com>.
2. As set forth in the Court's *Order Granting Motion to Allow Summary Disposition Procedure*, any party wishing to object or respond to this Motion must lodge their response or objection directly with the Receiver within 30 days. The objecting party will not become a party to the overall proceeding, will not intervene in the case, and will not file any pleadings or other documents directly with the Court unless otherwise authorized to do so by the Court.
 3. The Receiver shall provide copies of all objections received to Plaintiffs.
 4. If the objecting party specifically requests discovery, the parties will have an additional 30 days to complete discovery. Discovery will be conducted pursuant to the *Federal Rules of Civil Procedure*, except that written discovery must be responded to within 14 days. Either side may seek relief from the Court if the requested discovery is unduly burdensome or not proportional to the issues being determined.
 5. Following the close of any specifically requested discovery, the Receiver will lodge the objections with the Court and request a hearing on the matter. If an evidentiary hearing is needed, the Receiver will schedule additional deadlines regarding disclosure of witnesses and exhibits as needed.
 6. The Receiver and Plaintiffs may file a response to any objection five days before the hearing.

CONCLUSION

For the reasons discussed herein, the Receiver respectfully requests a conclusive determination that Receivership Defendants operated a Ponzi scheme since at least 2008. The Receiver requests that the Court adopt its previously approved summary disposition procedure as the objection procedure for any person objecting to this Motion. Such a streamlined process will obviate the need for the Receiver to continue to re-litigate the Ponzi issue, which will greatly reduce the financial impact on the Receivership Estate, while allowing interested parties a meaningful right to be heard.

A proposed order is submitted herewith.

DATED this 15th day of March, 2022.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Cynthia D. Love

Joseph M.R. Covey

Cynthia D. Love

Attorneys for the Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION FOR PONZI DETERMINATION AND TO ESTABLISH AN OBJECTION PROCEDURE** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on March 15, 2022, which sent notice of the electronic filing to all counsel of record, (2) posted on the Receiver's website (rustrarecoinreceiver.com), (3) emailed to all those on the Receiver's master mailing matrix, and (4) served on all parties to existing ancillary proceedings and any party with whom the Receiver has a tolling agreement.

/s/ Cynthia D. Lovei

EXHIBIT B

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,
v.

RUST RARE COIN INC., a Utah corporation,
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.

**ORDER ESTABLISHING PONZI
OBJECTION PROCEDURE**

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

District Judge Tena Campbell
Chief Magistrate Judge Dustin B. Pead

On March 15, 2022, Jonathan O. Hafen, the court-appointed Receiver in the above-captioned matter, filed a Motion for Ponzi Determination and to Establish an Objection Procedure. (ECF No. 448.) As its name suggests, the Motion asks for two things. The Receiver seeks a court determination that an investment program operated by Receivership Defendants was a Ponzi scheme since at least 2008. The Receiver also asks the court to adopt its prior summary disposition procedure (ECF No. 165) to allow for objections and to decide the Ponzi-

scheme issue. Having considered the Motion, the court will adopt its summary disposition procedure to decide the Ponzi-scheme issue, and it will defer deciding that issue pending the following objection procedure. The court ORDERS as follows:

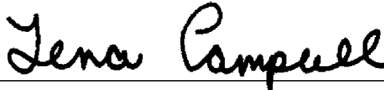
1. Any interested party wishing to object to the Receiver's Motion shall submit such objection in writing directly to the Receiver within thirty days of entry of this Order.
2. The Receiver shall provide copies of all objections received to Plaintiffs.
3. If an objecting party specifically requests discovery, the parties shall have an additional thirty days to complete such discovery, which will be conducted in accordance with the Federal Rules of Civil Procedure with the exception that written discovery must be responded to within fifteen days. Either side may seek relief from the court if the requested discovery is unduly burdensome or not proportional to the issues being determined. Any such discovery will be subject to the standard protective order.
4. After the deadline for objections passes and any specifically requested discovery is completed, the Receiver shall lodge all objections with the court and request a hearing at which such objections may be considered.
5. If an evidentiary hearing is required, the Receiver may request additional deadlines related to the disclosure of witnesses and exhibits as needed.
6. The Receiver and Plaintiffs may file a response to any objection five days prior to the hearing.

DATED this 30th day of March, 2022.

///

///

BY THE COURT:

Handwritten signature of Tena Campbell in black ink.

TENA CAMPBELL
United States District Judge

James K. Tracy (#6668)
Joshua L. Lee (#11701)
Hyrum J. Bosserman (#16404)
BENNETT TUELLER JOHNSON & DEERE
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121
Telephone: (801) 438-2000
Email: jtracy@btjd.com; jlee@btjd.com;
hbosserman@btjd.com

Attorneys for Defendant

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

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

Plaintiff,

v.

JEANNE MUIR, an individual,

Defendant.

**OBJECTION TO RECEIVER’S MOTION
FOR PONZI DETERMINATION AND TO
ESTABLISH AN OBJECTION
PROCEDURE**

Case No. 2:19-cv-00913-TC

Judge Tena Campbell

Magistrate Judge Daphne A. Oberg

Defendant Jeanne Muir (“*Muir*”), by and through counsel, hereby objects to Plaintiff Jonathan O. Hafen’s (the “*Receiver*”) Motion for Ponzi Determination and to Establish an Objection Procedure (the “*Motion for Ponzi Determination*”), filed in *CFTC v. Rust Rare Coin, Inc.*, United States District Court for the District of Utah, Central Division, Case No. 2:18-cv-00892-TC-DBP (the “*2018 Case*”) and the subsequent Order Establishing Ponzi Objection Procedure, entered on March 30, 2022 by the court of the 2018 Case (the “*Order on Ponzi Procedure*”).

OBJECTION

On April 29, 2022, Muir filed a Motion for Order Declaring Any Determination on Receiver’s Motion for Ponzi Determination in a Separate Case is Non-Binding (the “*Motion for Declaration*”) in the above-captioned case. *See* Motion for Declaration, attached hereto as Exhibit A. Muir expressly incorporates her argument and briefing in Motion for Declaration herein. As detailed in the Motion for Declaration, Muir objects to the Motion on Ponzi Determination and the procedure set forth in the Order on Ponzi Procedure. The court of the 2018 Case does not have jurisdiction over Muir—a non-party who has not been joined in this case—and does not have authority to issue bindings, preclusive orders on Muir. Further, the Motion for Ponzi Determination seeks to strip Muir of a full and fair opportunity to defend herself and robs her of her right to due process. Additionally, the Motion for Ponzi Determination is at odds with the Federal Rules of Civil Procedure. And, the truncated discovery schedule set forth in the Order on Ponzi Determination prevents Muir the adequate opportunity to mount a defense. What’s more, it violates the Scheduling Order that the court in the above-caption case already entered.

Muir sternly objects to being subject to any decision or procedure stemming from the 2018 Case. This court should not allow the Receiver to circumvent due process or the Federal Rules of Civil Procedure. Muir expects the court in the above-captioned case will grant the Motion for Declaration and declare that any order stemming from the Motion for Ponzi Determination and Order on Ponzi Procedure in the 2018 Case has no binding on Muir and is without effect on her case.

In the event the court in the above-captioned case does not grant the Motion for Declaration, and the court for the 2018 Case orders Muir to participate in the 2018 Case, Muir reserves her right to respond to the Motion for Ponzi Determination, conduct discovery, and participate in an evidentiary hearing. Less than two weeks ago, the Receiver provided Muir with initial disclosures in the above-captioned case. And Muir has had no opportunity to conduct discovery in that case (or, of course, the 2018 Case). Muir intends to depose Gaylen Rust (and others) in order to obtain testimony concerning Rust Rare Coin ("**RRC**") affairs and when it allegedly stopped operating as a legitimate business. Additionally, the Receiver apparently has significant documents related to RRC's accounts and records. Muir has had no opportunity to retain an expert and evaluate RRC's accounts and records to determine the extent of the allegedly fraudulent scheme, or when that alleged scheme actually began. Because RRC operated a legitimate business before allegedly turning fraudulent at some point, the date of any purported Ponzi scheme is particularly important. It will take significantly more than 30 days to take these depositions, review the materials, conduct discovery, and provide expert analysis. Muir should be afforded more time.

Finally, as detailed in the Motion for Declaration, any decision on the Ponzi determination is premature. Muir has filed her Motion to Certify in the above-captioned case. In the Motion to Certify, Muir sought to certify several questions related to the Ponzi scheme presumption, including whether the Utah Voidable Transaction Act contained any presumption in the case of a Ponzi scheme and whether the Receiver lacked standing. There is no need to make the determination that a Ponzi scheme existed at this time if the questions in the Motion to Certify are certified by the court in the above-captioned case. As detailed at length in the Motion

to Certify, the Utah Supreme Court may very well determine that the Receiver lacks standing to bring claims under the UVTA. If that is the case, then a Ponzi determination would be of little value. Similarly, the Motion to Certify seeks answers to questions over the Ponzi scheme presumption. If the court in the above-captioned case grants that Motion, certifies these questions, and the Utah Supreme Court holds that the Ponzi scheme presumption is not supported in the text of the UVTA—as has high courts of other states, *see* Motion to Certify—then a Ponzi determination will likewise be essentially useless. There is no reason that the parties should be forced into expending significant time and resources complying with an expediated discovery schedule on an issue that may very well be rendered meaningless.

CONCLUSION

For the forgoing reasons, and those specifically detailed in the attached Motion for Declaration, Muir objects to being subject to the jurisdiction of the court of the 2018 Case and any procedure established therein.

DATED this 29th day of April, 2022.

BENNETT TUELLER JOHNSON & DEERE

/s/ Hyrum J. Bosserman
James K. Tracy
Joshua L. Lee
Hyrum J. Bosserman
Attorneys for Jeanne Muir

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of April, 2022, a true and correct copy of the foregoing **OBJECTION TO RECEIVER’S MOTION FOR PONZI DETERMINATION AND TO ESTABLISH AN OBJECTION PROCEDURE** was served on the following:

Joseph M. R. Covey	()	U.S. Mail, Postage Prepaid
Michael T. Hoppe	()	Hand Delivered
Claire M. McGuire	()	Overnight Mail
PARR BROWN GEE & LOVELESS	()	E-Filed
101 S. 200 E., Suite 700	(X)	E-Mailed
Salt Lake City, Utah 84111		
jcovey@parrbrown.com		
mhoppe@parrbrown.com		
cmcguire@parrbrown.com		
<i>Attorneys for Jonathan O. Hafen, Receiver</i>		

/s/ Holly Van Leeuwen

EXHIBIT A

James K. Tracy (#6668)
Joshua L. Lee (#11701)
Hyrum J. Bosserman (#16404)
BENNETT TUELLER JOHNSON & DEERE
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121
Telephone: (801) 438-2000
Email: jtracy@btjd.com; jlee@btjd.com;
hbosserman@btjd.com

Attorneys for Defendant

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

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

Plaintiff,

v.

JEANNE MUIR, an individual,

Defendant.

**MOTION FOR ORDER
DECLARING ANY
DETERMINATION ON
RECEIVER’S MOTION FOR PONZI
DETERMINATION IN SEPARATE
CASE IS NON-BINDING**

Case No. 2:19-cv-00913-TC

Judge Tena Campbell

Magistrate Judge Daphne A. Oberg

Defendant Jeanne Muir (“*Muir*”), by and through counsel, and pursuant to Rule 7 of the Federal Rules of Civil Procedure, hereby moves this Court to enter an order declaring that any decision stemming from Plaintiff Jonathan O. Hafen’s (the “*Receiver*”) Motion for Ponzi Determination and to Establish an Objection Procedure (the “*Motion for Ponzi Determination*”), filed in *CFTC v. Rust Rare Coin, Inc.*, United States District Court for the District of Utah,

Central Division, Case No. 2:18-cv-00892-TC-DBP (the “*2018 Case*”) is non-binding on this case and has no effect on Defendants.

RELIEF REQUESTED AND GROUNDS FOR RELIEF

On March 15, 2022, the Receiver filed his Motion for Ponzi Determination in the 2018 Case. In the Motion for Ponzi Determination, the Receiver expressly sought “a conclusive ruling from the Court that Receivership Defendants operated a Ponzi scheme since at least 2008 that will have preclusive effect in the **present and future ancillary actions.**” See Motion for Ponzi Determination at 4 (emphasis added), attached hereto as Exhibit A. In other words, the Receiver sought to conclusively establish the existence of a Ponzi scheme that would be binding on any other possible action, including this one. But, as the Receiver is well aware, Muir is not a party to the 2018 Case. Indeed, no claw-back defendants are part of that suit. Rather, only the Commodity Future Trading Commission, Utah Division of Securities, Rust Rare Coin, Inc., Gaylen Rust, and the other receivership defendants are parties there.

What the Receiver really seeks is to strip potential claw-back defendants, including Muir, from their day in court. And the Receiver seeks to rob Muir of the discovery required for her to mount an appropriate defense. This Court should not allow the Receiver to circumvent due process or the Federal Rules of Civil Procedure. Accordingly, the Court should enter an order declaring that any order stemming from the Motion for Ponzi Determination and Order on Ponzi Procedure in the 2018 Case has no binding on Muir and is without effect on this case.

STATEMENT OF RELEVANT FACTS

1. On November 13, 2018, the Commodity Futures Trading Commission and the Utah Division of Securities filed a Complaint against Rust Rare Coin, Inc. (“*RRC*”), Gaylen

Dean Rust (“*Gaylen*”), R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC, and affiliated individuals and entities (the “*Receivership Defendants*”) in the United States District Court for the District of Utah, Civil No. 2:18-cv-00892-TC-DBP (the “*2018 Case*”).

2. On November 15, 2018, Jonathan Hafen was appointed receiver for RRC and the Receivership Defendants.

3. On November 15, 2019, Jonathan Hafen, as court-appointed Receiver for RRC (the “*Receiver*”), filed a Complaint in this case against Muir, asserting fraudulent transfer (the “*Complaint*”).¹

4. On January 30, 2020, the Court entered an Order Granting Stipulated Motion to Extend Deadline to Respond to Complaint, placing the case on hold until “21 days after either party gives notice that it intends to resume litigation.”²

5. On February 24, 2022, the litigation resumed and Muir filed her Answer.³

6. On March 15, 2022, the Court entered a Scheduling Order, explicitly declaring that fact discovery would close on December 12, 2022 and setting other discovery deadlines.⁴

7. On the same day, the Receiver filed the Motion for Ponzi Determination in the 2018 Case.⁵

8. In the Motion for Ponzi Determination, the Receiver sought “to obtain a definitive finding in [the 2018 Case] that Receivership Defendants operated a Ponzi scheme” in order “to

¹ See generally Complaint, Ct. Dkt..

² See Order Granting Stipulated Motion to Extend Deadline to Respond to Complaint, Court Docket # 7.

³ See Answer, Court Docket # 9.

⁴ See Scheduling Order, Court Docket # 13.

⁵ See Motion for Ponzi Determination, attached hereto as Exhibit A

eliminate the need to continue re-litigating the issue in all of the outstanding ancillary proceedings or any future ancillary proceeding.” In other words, the Receiver sought “a conclusive determination that the Silver Pool operated as a Ponzi scheme since at least 2008 . . . to preclude further litigation of that issue.”⁶

9. In the Motion for Ponzi Determination, the Receiver provided the court of the 2018 Case with no authority for seeking an order that was conclusively binding on hundreds of non-parties.⁷

10. The Receiver also sought to establish a grossly one-sided “Objection Procedure” to allow non-parties in other proceedings to send objections directly to the Receiver for his review.⁸

11. Specifically, the Receiver sought an order requiring any non-party to submit their objection to the Motion within 30 days, but not permitting a non-party to intervene or file documents directly with the Court.⁹

12. The Receiver would then provide copies of the objections to the “Plaintiffs” of the 2018 Case—i.e., the CFTC or Utah Division of Securities. No one—including the other non-parties or the court of the 2018 Case—would receive a copy of the objections.¹⁰

13. The objecting non-party could then request discovery, but would only get 30 days to complete discovery (and only 14 days to respond to written discovery).¹¹

⁶ See *id.* at 17.

⁷ See generally *id.*

⁸ See *id.* at 17-19.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

14. Once discovery concludes, the Receiver would file the objections with the court of the 2018 Case and a hearing would be scheduled before the court of the 2018 Case (not this Court).¹²

15. On March 30, 2022, the court in the 2018 Case entered its Order Establishing Ponzi Objection Procedure (the “*Order on Ponzi Procedure*”), adopting the procedures outlined in the Receiver’s Motion for Ponzi Determination.¹³

16. On April 1, 2022, Muir received notice of the Order on Ponzi Procedure.

17. As a non-party to the 2018 Case, Muir never received notice of the Motion for Ponzi Determination or had any opportunity to respond.

18. In fact, the Court in the 2018 Case has made it clear that persons not parties to the 2018 Case have no right to seek relief in that action, explaining:

Finally, Mr. Guyon asks the court to certify three questions to the Utah Supreme Court. Each of these questions involves what presumptions or standards of proof apply to determining whether a Ponzi scheme exists. Again, to the extent these questions are related to proving that there was no Ponzi scheme at all in this case, these issues should be raised by the Plaintiffs or the Defendants, not Mr. Guyon. If, on the other hand, these questions are related to proving that Mr. Guyon personally was not a victim of the Ponzi scheme, then he may raise the issue in an ancillary suit if such a suit is filed against him.

CFTC v. Rust Rare Coin, Inc., No. 2:18-cv-00892, 2020 WL 4904165, *8 (Aug. 8, 2020).

19. On April 8, 2022, Muir filed a Motion to Certify Question of Law to the Utah Supreme Court (the “*Motion to Certify*”), seeking to certify nine separate questions to the Utah Supreme Court.

¹² *See id.*

¹³ *See* Order Establishing Ponzi Objection Procedure, attached hereto as Exhibit B.

20. Specifically, Muir seeks to certify questions relating to what is commonly referred to as the Ponzi scheme presumption and the Receiver’s standing.

21. No discovery has taken place in this action.¹⁴

22. On April 18, 2022, the Receiver produced initial disclosures.

ARGUMENT

A. The Motion for Ponzi Determination and Subsequent Order Violates Due Process

The U.S. Supreme Court has long reaffirmed “the general rule that a person cannot be deprived of his legal rights in a proceeding to which he is not a party.” *Martin v. Wilks*, 490 U.S. 755, 759 (1989), *abrogated by statute on other grounds as set forth in Landgarf v. USI Film Product*, 511 U.S. 244 (1994). “It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.” *Hansberry v. Lee*, 311 U.S. 32, 40-41 (1940); *see also CGC Holding Co., LLC v. Hutchens*, 974 F.3d 1201, 1215–16 (10th Cir. 2020) (same). “This rule is part of our ‘deep-rooted historic tradition that everyone should have his own day in court.’” *Martin*, 490 U.S. at 761–62 (citation omitted). In other words, “[a] judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.” *Id.*; *see also Ashley v. City of Jackson, Miss.*, 464 U.S. 900, 902 (1983) (“It is fundamental premise of preclusion law that nonparties to a prior action are not bound by the judgment.”).

To hold otherwise would undermine a non-party’s due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution. In fact, “it is a violation of due process for a

¹⁴ *See generally* Ct. Dkt.

judgment to be binding on a litigant who was not a party nor a privy and therefore has never had an opportunity to be heard.” *Ashley*, 464 U.S. at 902 (citation omitted). “[J]udicial action enforcing [a judgment] against the person or property of [an] absent party is not that due process which the Fifth and Fourteenth Amendments require.” *F.D.I.C. v. Geldermann, Inc.*, 975 F.2d 695, 698 (10th Cir. 1992) (quoting *Hansberry*, 311 U.S. at 41) (alterations in original).

For this reason, the U.S. Supreme Court has repeatedly held that joinder of a party in the same suit is necessary to obtain a binding order on that party. Indeed, “[t]he law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger.” *See Martin*, 490 U.S. at 762. And “[u]nless duly summoned to appear in a legal proceeding, a person not a privy may rest assured that a judgment recovered therein will not affect his legal rights.” *Id.*

Here, the Receiver seeks to deprive Muir (and other claw-back defendants) of her due process rights. Instead of seeking to join Muir as a party to the 2018 Case, the Receiver simply seeks a binding order on all non-parties—past, present, and future. But neither the Receiver (nor the court for the 2018 Case) cited any authority permitting the Receiver to strip Muir of his due process rights. That is because none exists. As a non-party, any decision in the 2018 Case is not binding on Muir. *See Ashley*, 464 U.S. at 902. What’s more, Muir is not being afforded a full and fair opportunity to be heard. Indeed, rather than permitting Muir the full slate of discovery permitted under Federal Rules of Civil Procedure—and which this Court already explicitly granted her in its Scheduling Order—the Receiver seeks to severely curtail Muir’s ability to defend herself by affording Muir a mere “30 days” to conduct discovery. That is patently unfair, particularly in light of the fact that the Receiver has had 3 ½ years to investigate the financial

condition of Rust Rare Coin. To adequately protect Muir’s due process rights, the Court should enter an order declaring any determination stemming from the Motion for Ponzi Determination and Order on Ponzi Procedure to be non-binding and without effect on this case.

Finally, while the U.S. Supreme Court has spelled out six narrow circumstances where preclusion potentially may apply to a non-party, none of them apply here. Specifically, these circumstances include when (1) a non-party “agrees to be bound by the determination of issues in an action between others . . . in accordance with the terms of his agreement,” (2) there are “pre-existing ‘substantive legal relationship[s]’ between the person to be bound and a party to the judgment,” such as a assignor and assignee, (3) in limited circumstances where the non-party is “adequately represented by someone with the same interests who [wa]s a party to the suit,” (4) the non-party “‘assume[d] control’ over the litigation in which that judgment was rendered,” (5) the “nonparty later brings suit as an agent for a party who is bound by a judgment”, and (6) a special statutory scheme” exists which “expressly foreclos[e] successive litigation by nonlitigants . . . if the scheme is otherwise consistent with due process.” *See Taylor v. Sturgell*, 553 U.S. 880, 893-94 (2008) (citations omitted). First, Muir has not entered into any agreement to be bound by the 2018 Case. Second, there is no pre-existing substantive legal relationship between Muir and the Receiver. Third, no party is representing Muir’s interest in the 2018 Case. In fact, the Receiver has brought suit against Muir and is directly at odds with her interests. Fourth, Muir has not assumed control over the 2018 Case. In fact, she generally has not even received notice of the happenings in that case. Fifth, Muir is not representing a party from the 2018 Case. And, finally, there is no special statutory scheme expressly foreclosing successive

litigation. *See id.* There simply is no basis for the Motion for Ponzi Determination and Order on Ponzi Procedure to have binding, preclusive effect on this action or Muir’s rights.

B. The Motion for Ponzi Determination and Subsequent Order Violates the Federal Rules of Civil Procedure

In addition to violating Muir’s due process rights, the Motion for Ponzi Determination and Order on Ponzi Procedure is at odds with the Federal Rules of Civil Procedure. For starters, forcing Muir to conduct expedited discovery violates Muir’s rights under Rule 26 (not to mention this Court’s explicit Scheduling Order), and the truncated discovery schedule is at odds with Rule 16. Further, the Receiver’s attempt to get a binding determination in the 2018 Case on Muir—a non-party—undermines the joinder requirements set forth in Rules 19 and 20. Finally, the Receiver’s Motion for Ponzi Determination circumvents Rule 42 and consolidation requirements. This Court should not sanction an order or decision that is directly contrary to the Federal Rules of Civil Procedure.

i. The Receiver’s Motion for Ponzi Determination is an Attempt to Rob Muir of His Right to Conduct Discovery Under Rules 26 and 16.

In the Motion for Ponzi Determination, the Receiver asked the court for the 2018 Case to limit any discovery on the Ponzi scheme determination to a mere 30 days, which the court ultimately granted. *See* Motion for Ponzi Determination at 18. This is at odds with the Federal Rules of Civil Procedure and robs Muir of the right to mount a proper defense.

Defendants of claw-back cases in this district have consistently been granted significant time to conduct discovery related to their claims and defenses. *See, e.g., Georgelas v. Desert Hill Ventures, Inc.*, 510 F. Supp. 3d 1061, 1067-68 (D. Utah 2021) (discovery ran for nine months before summary judgment motion filed); *Georgelas v. Olsen*, No. 216CV00529RJSJCB,

2020 WL 7027731, at *3 (D. Utah Nov. 30, 2020) (discovery ran for nine months before summary judgment motion filed); *Miller v. Kelley*, No. 1:12-CV-00056-DN, 2014 WL 5437023, at *3 (D. Utah Oct. 27, 2014) (fact discovery closed almost a year and a half after case commenced). And this Court is no different. Specifically, this Court granted Muir approximately nine months to conduct discovery in this case. *See* Scheduling Order. Understanding full well the import of the Ponzi determination on this case, the Receiver seeks a binding determination without affording Muir the same time typically granted to conduct meaningful discovery (and which this Court already approved).¹⁵

The Receiver's Motion for Ponzi Determination and subsequent Order on Ponzi Procedure is particularly prejudicial to Muir's discovery rights in this case. As detailed above, this case is in the very early procedural stages. The Court very recently entered its Scheduling Order. Muir has not engaged in discovery. And, most importantly, the Receiver provided Muir with his initial disclosures less than two weeks ago. Muir has not had opportunity to review documents and retain her own expert and forensic account to contradict the Receiver's alleged facts. And she has had no time to prepare her defense. Rather, the Receiver expects Muir to conduct discovery in a mere 30 days and have a binding determination made on a vital aspect of the case. In short, the Receiver has sought to undermine Rule 26 (and this Court's Scheduling

¹⁵ For example, Muir intends to take Gaylen Rust's deposition in order to obtain testimony concerning his operations and when he went from operating a legitimate business to allegedly operating a fraudulent scheme. Since Mr. Rust is currently under the custody of the federal government, procuring a deposition of this sort in such a short time would be virtually impossible. Additionally, the Receiver apparently has significant documents related to RRC's accounts and records. Muir has had no opportunity to retain an expert and evaluate RRC's accounts.

Order) and the Court should reject his attempt to short-circuit the discovery process to Muir's detriment.¹⁶

The Receiver has also sought to undermine Rule 16. That rule provides that the parties must enter into a scheduling conference to determine agreeable discovery deadlines. *See* Fed. R. Civ. P. 26(f). And the Court will thereafter enter an order explicitly determining the scope and boundaries of the discovery in the Case. *See id.* 16(b). The Motion for Ponzi Determination and Order on Ponzi Determination circumvents this process, and instead sets a truncated and unrealistic discovery schedule to which Muir never agreed and this Court never sanctioned. To the contrary, the Receiver and Muir agreed to, and the Court sanctioned, a very different discovery schedule. The Court should enter an order declaring the Order on Ponzi Procedure to have no effect on this Court and should direct the parties to follow the Scheduling Order entered in this case.

ii. The Receiver's Motion for Ponzi Determination is an Attempt to Circumvent Joinder Rules.

It is well-established that "a party seeking a judgment binding on another cannot obligate that person to intervene; he must be joined." *Martin v. Wilks*, 490 U.S. 755, 763-64 (1989). In other words, "[j]oinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is the method by which potential parties are subjected to the jurisdiction of the court and bound by a judgment or decree." *Id.* And because "[t]he parties to a lawsuit presumably know better than anyone else the nature and scope of relief sought in the action, and at whose

¹⁶ Indeed, in addition to setting discovery at 30 days, written discovery responses are to be returned in 15 days. *See* Order on Ponzi Determination. Again, this is a departure from the Federal Rules of Civil Procedure and this Court's Scheduling Order.

expense such relief might be granted,” courts consistently hold that the parties to the suit (i.e., the Receiver) “bear the burden of bringing in additional parties . . . rather than placing on potential additional parties a duty to intervene when they acquire knowledge of the lawsuit.” *See id.*

If the Receiver desires to create a binding order on Muir, he must move to join Muir as a party to the 2018 Case pursuant to Rules 19 or 20 of the Federal Rules of Civil Procedure. *Id.* And he must carry his burden of proving joinder is proper in that case at this late stage. *Id.* For example, Rule 19 requires a party to show that

- (A) in that person’s absence, the court cannot accord complete relief among existing parties; or
- (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
 - (i) as a practical matter impair or impede the person's ability to protect the interest; or
 - (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

See Fed. R. Civ. P. 19(1)(a). Similarly, Rule 20 requires a party to show that “(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.” *See id.* 20(a)(2); *see also Trail Realty, Inc. v. Beckett*, 462 F.2d 396, 399 (10th Cir. 1972).

Here, Muir has not been joined in the 2018 Case, nor has the Receiver even moved for joinder in the 2018 Case. Accordingly, the Order on Ponzi Determination cannot bind Muir. *See Martin v. Wilks*, 490 U.S. at 763–64. Moreover, the Receiver has not even attempted to meet the standards under Rules 19 or 20. This Court should not sanction the Receiver’s actions and permit the Receiver to circumvent joinder requirements he must follow to obtain the relief he seeks.

iii. *The Receiver's Motion for Ponzi Determination Violates Rule 42.*

Finally, the Receiver essentially seeks consolidation without meeting the requirements in the Federal Rules of Civil Procedure. Rule 42 specifically details the procedure a party must walk through in order to consolidate proceedings. *See* Fed. R. Civ. P. 42. Of course, “[t]he party seeking consolidation has the burden to show the benefits of consolidation or the risk of injury to the moving party if the actions are not consolidated.” *Wedel Grp. XVIII, LLC v. Emps. Mut. Cas. Co.*, No. CIV-11-1113-F, 2011 WL 13116080, at *1 (W.D. Okla. Dec. 16, 2011); *see also* *Servants of Paraclete, Inc. v. Great Am. Ins. Co.*, 866 F. Supp. 1560, 1572 (D.N.M. 1994) (“[T]he party moving for consolidation bears the burden of proving that consolidation is desirable.”). In deciding whether to grant a motion to consolidate, the moving party must also show that the cases to be consolidated “involv[e] a common question of law or fact.” *See* Fed. R. Civ. P. 42(a). “If the cases involve a common question of law or fact, the Court should then weigh the interests of judicial convenience in consolidating the cases against the delay, confusion, and prejudice consolidation might cause.” *Cheney v. Judd*, 429 F. Supp. 3d 931, 935–36 (D.N.M. 2019) (citation omitted). “The mere fact that a defendant has been sued in separate cases involving similar subject matter does not require a court grant a motion to consolidate.” *Wedel Grp.*, 2011 WL 13116080, at *1 (citing *American Emp. Ins. Co. v. King Resources Co.*, 545 F.2d 1265, 1269-70 (10th Cir. 1976)).

Here, again, the Receiver has not moved or attempted to meet his burden to consolidate this case with the 2018 Case. Instead, he simply requested a binding, preclusive order from the court of the 2018 Case. The Court should not sanction this end-run of the Rules of Civil Procedure.

In short, the Receiver has sought to strip Muir from her rights to fully defend against claims through the discovery process set forth in the Federal Rules of Civil Procedure. And he has sought to circumvent rules on joinder and consolidation. The Court should grant the Motion and enter an order declaring any determination on the Motion for Ponzi Determination and Order on Ponzi Procedure is not binding on Muir and any outcome there will not have preclusive effect on this action.

C. A Ponzi Determination is Premature and May Be Rendered Unnecessary If Questions are Certified to the Utah Supreme Court.

Earlier this month, Muir filed her Motion to Certify in this case. In the Motion to Certify, Muir sought to certify several questions related to the Ponzi scheme presumption, including whether the Utah Voidable Transaction Act contained any presumption in the case of a Ponzi scheme and whether the Receiver lacked standing. Notwithstanding this, the Motion for Ponzi Determination in the 2018 Case seeks an immediate, conclusive and preclusive determination that a Ponzi scheme existed. But such a determination is premature and may be wholly unnecessary if the Court grants the Motion to Certify.

There is no need to make the determination that a Ponzi scheme existed at this time if the questions in the Motion to Certify are certified by this Court. As detailed at length in the Motion to Certify, the Utah Supreme Court may very well determine that the Receiver lacks standing to bring claims under the UVTA. If that is the case, then a Ponzi determination would be of little value. Similarly, the Motion to Certify seeks answers to questions over the Ponzi scheme presumption. If this Court grants that motion, certifies these questions, and the Utah Supreme Court holds that the Ponzi scheme presumption is not supported in the text of the UVTA—as has high courts of other states, *see* Motion to Certify—then a Ponzi determination will likewise be

essentially useless. There is no reason that the parties should be forced into expending significant time and resources complying with an expediated discovery schedule on an issue that may very well be rendered meaningless. Rather, this Court should defer any decision on the Ponzi determination until it determines the Motion to Certify, and, if granted, after the Utah Supreme Court renders a decision. Even assuming the Receiver has standing and that the Utah Supreme Court would recognize the Ponzi presumption, Muir has also asked to certify questions regarding the scope and effect of the Ponzi presumption.

In short, the Motion for Ponzi Determination is premature. If the Court is inclined to certify the questions presented in the Motion to Certify, there is no need, at this time, to go through the time and expense of making a Ponzi scheme determination.

CONCLUSION

For the forgoing reasons, Muir respectfully requests that the Court grant this motion and enter and order declaring that any order or ruling stemming from the Motion for Ponzi Determination and Order on Ponzi Procedure in the 2018 Case is not binding on Muir and is without effect on this case.

DATED this 29th day of April, 2022.

BENNETT TUELLER JOHNSON & DEERE

/s/ Hyrum J. Bosserman

James K. Tracy

Joshua L. Lee

Hyrum J. Bosserman

Attorneys for Jeanne Muir

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of April, 2022, a true and correct copy of the foregoing **MOTION FOR ORDER DECLARING ANY DETERMINATION ON RECIEVER’S MOTION FOR PONZI DETERMINATION IN SEPARATE CASE IS NON-BINDING** was served on the following:

Joseph M. R. Covey	() U.S. Mail, Postage Prepaid
Michael T. Hoppe	() Hand Delivered
Claire M. McGuire	() Overnight Mail
PARR BROWN GEE & LOVELESS	(X) E-Filed
101 S. 200 E., Suite 700	() E-Mailed
Salt Lake City, Utah 84111	
jcovey@parrbrown.com	
mhoppe@parrbrown.com	
cmcguire@parrbrown.com	
<i>Attorneys for Jonathan O. Hafen, Receiver</i>	

/s/ Holly Van Leeuwen

EXHIBIT A

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)

Cynthia D. Love (14703) (clove@parrbrown.com)

PARR BROWN GEE & LOVELESS, P.C.

101 South 200 East, Suite 700

Salt Lake City, Utah 84111

Telephone: (801) 532-7840

Facsimile: (801) 532 7750

Attorneys for Johnathan O. Hafen as Receiver for the Rust Rare Coin Receivership

**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,

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.

**MOTION FOR PONZI
DETERMINATION AND TO
ESTABLISH AN OBJECTION
PROCEDURE**

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

Judge Tena Campbell
Magistrate Judge Dustin Pead

Jonathan O. Hafen, as Court-Appointed Receiver (the “Receiver”) for the assets of Rust Rare Coin, Inc. (“RRC”), Gaylen D. Rust, Denise G. Rust, and Joshua D. Rust (collectively with RRC, “Defendants”), as well as R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, “Relief Defendants” and, collectively with Defendants, “Receivership Defendants”), respectfully submits this Motion for Ponzi Determination and to Establish an Objection Procedure (this “Motion”).

RELIEF REQUESTED AND GROUNDS

Through this Motion, the Receiver requests a determination that Receivership Defendants operated a silver investment scheme (the “Silver Pool”) as a Ponzi scheme since at least 2008 and that the Court establish an objection procedure pursuant to the Court’s summary disposition procedure so that any interested party has the opportunity to be heard on the issue of whether the Silver Pool was a Ponzi scheme. Although the Court has previously determined that the Silver Pool operated as a Ponzi scheme in a number of the ancillary actions initiated by the Receiver,¹ those decisions are technically not binding on non-parties. *See Murdock v. Ute Indian Tribe of Uintah and Ouray Reservation*, 975 F.2d 683, 387 (10th Cir. 1992) (holding that collateral estoppel may be applied if “the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication”); *Kuhar v. Thompson Mfg. Inc.*, __ P.3d __, 2022 WL 481117 (Utah Ct. App. 2022) (same). In order to streamline other ancillary actions and conserve the resources of the Receivership Estate, the Receiver now seeks a conclusive determination that the Silver Pool operated as a Ponzi scheme since at least 2008. Such a

¹ *See Hafen v. Famulary*, 2:19-cv-00627-TC, Dkt. No. 28; *Hafen v. Brimley*, 2:19-cv-00875-TC, Dkt. No. 21; *Hafen v. Evans*, 2:19-cv-00895-TC, Dkt. No. 38.

determination will act to preclude further litigation of that issue.² The Receiver further asks the Court to establish a procedure through which interested parties, including parties to existing ancillary actions or with whom the Receiver has tolling agreements, can lodge objections or otherwise challenge the determination of a Ponzi scheme.

This Motion is supported by the Memorandum of Law set forth herein. Additionally, the Receiver submits the following in support of the Motion: (1) guilty pleas of Gaylen Rust, Denise Rust, and Joshua Rust, true and correct copies of which are included as Exhibit A; (2) Jonathan O. Hafen’s Receiver’s Report (“Hafen Report”) and its accompanying exhibits, a true and correct copy of which are included as Exhibit B; and (3) Expert Report of D. Ray Strong (“Strong Report”) and its accompanying exhibits, a true and correct copy of which are included as Exhibit C.

MEMORANDUM OF LAW

INTRODUCTION

Since at least 2008, Receivership Defendants operated a classic Ponzi scheme in which they used funds from new investors to pay exorbitant returns to existing investors. Although Receivership Defendants’ scheme occasionally took other forms, Receivership Defendants most commonly solicited funds from investors by claiming to invest those funds in the Silver Pool through which Receivership Defendants supposedly generated returns through the buying and selling of physical silver. Ultimately, Receivership Defendants defrauded investors of more than \$200 million, causing significant harm to hundreds of families.

² As explained in more detail below, Gaylen Rust variably described his silver investment scheme as the Silver Pool, a commissions program, or similar iterations. Through the Motion, the Receiver seeks a determination that none of the various iterations of Rust’s investment programs were legitimate and that all of the various programs touted by Rust were simply part of the larger Ponzi scheme.

Now that the individual Receivership Defendants have all pled guilty in their parallel criminal proceedings, the existence of a Ponzi scheme operated by Receivership Defendants is undisputable. Rather than wasting precious Estate resources by continuing to litigate the existence of a Ponzi scheme in each ancillary proceeding, the Receiver seeks a conclusive ruling from the Court that Receivership Defendants operated a Ponzi scheme since at least 2008 that will have preclusive effect in present and future ancillary actions.

RELEVANT MATERIAL FACTS

Procedural and Factual History

1. On November 13, 2018, the Commodity Futures Trading Commission (“CFTC”) and the Utah Division of Securities (“UDOS”) (collectively, the “Plaintiffs”) initiated this action against Receivership Defendants and related parties, alleging that Receivership Defendants operated the Silver Pool as a Ponzi scheme. [Dkt. No. 1.]

2. On November 15, 2018, the Court appointed the Receiver as Temporary Receiver for the assts of Receivership Defendants. [Dkt. No. 22.]

3. On November 27, 2018, the Court entered an Order Appointing Receiver and Staying Litigation (the “Appointment Order”), which continued the Receiver’s appointment until further order of the Court. [Dkt. No. 54.]

4. The Receiver was charged with, among other things, investigating the financial and business affairs of Receivership Defendants and recovering all assets of the Receivership Estate. [*Id.* ¶¶ 7, 41-42.]

5. On March 20, 2019, the Court entered an Order Staying Civil Case Pending Outcome of Criminal Proceedings, which stayed this action “until after entry of a guilty plea or a jury verdict of guilty in any criminal action brought by the U.S. Attorney.” [Dkt. No. 149.]

6. On May 1, 2019, the Court entered an Order Granting Motion to Allow Summary Disposition Procedure, which established a set of procedures through which the Receiver could seek substantive relief from the Court and interested parties could lodge objections and obtain discovery without having to intervene in this matter. [Dkt. No. 165.]

7. On May 8, 2019, the U.S. District Attorney charged the individual Receivership Defendants with various crimes related to the operation of the Silver Pool as a Ponzi scheme. [See *United States v. Rust*, 2:19-cv-00164-TS-CMR, Dkt. No. 1, hereafter the “Criminal Proceedings”.]

8. On June 13, 2019, the individual Receivership Defendants pled not guilty to the crimes with which they were charged. [Criminal Proceedings, Dkt. No. 19.]

9. On June 25, 2020, Denise Rust pled guilty to one count of money laundering related to the operation of the Silver Pool. [Criminal Proceedings, Dkt. Nos. 82, 87.]

10. On September 8, 2020, Denise Rust was sentenced to 18 months’ imprisonment, followed by 36 months’ supervised release. [Criminal Proceedings, Dkt. No. 93.]

11. On January 22, 2021, the Court granted the Receiver’s Motion for Partial Summary Judgment in the *Hafen v. Famulary* ancillary action, finding “that Receivership Defendants operated the Silver Pool as a Ponzi scheme since at least 2008.” [*Famulary*, 2:19-cv-00627-TC, Dkt. No. 28 at 10.]

12. On April 15, 2021, the Court granted the Receiver’s Motion for Summary Judgment in the *Hafen v. Brimley* ancillary action, finding that the “Silver Pool operated by Receivership Defendants was a Ponzi scheme since at least 2008.” [*Brimley*, 2:19-cv-00875-TC, Dkt. No. 21 at 13.]

13. On August 9, 2021, the Court granted in part the Receiver’s Motion for Partial Summary Judgment in the *Hafen v. Evans* ancillary action, finding that “the Receivership Defendants operated the Silver Pool which constituted a Ponzi scheme since at least 2008.” [*Evans*, 2:19-cv-00895-TC, Dkt. No. 38 at 10.]

14. On December 20, 2021, Gaylen Rust pled guilty to wire fraud conspiracy, money laundering conspiracy, and securities fraud in connection with operation of the Silver Pool. [Criminal Proceedings, Dkt. Nos. 132, 134.]

15. On March 8, 2022, Gaylen Rust was sentenced to 19 years’ imprisonment, followed by 36 months’ supervised release. [Criminal Proceedings, Dkt. No. 156.]

16. On March 8, 2022, Joshua Rust pled guilty to misprision of wire fraud conspiracy in connection with the Silver Pool.³ [Criminal Proceedings, Dkt. Nos. 159, 162.]

Receivership Defendants’ Fraudulent Scheme

17. Since at least 2008, Receivership Defendants operated an investment scheme promoted as a “silver trading program.” [Ex. A, Statement by Defendant in Advance of Plea of Guilty and Plea Agreement (“G.Rust Guilty Plea”), at 5.]

18. In operating the scheme, Receivership Defendants “knowingly and willfully” conspired “to defraud investors by inducing them to invest in RRC’s ‘silver trading program’ through material misrepresentations and omissions of material fact about the program.” [*Id.*]

19. G.Rust promoted the Silver Pool as “a lucrative investment that involved the buying and selling of actual physical silver bullion.” [*Id.*]

20. G.Rust falsely represented to investors “[t]hat 100% of investor funds would be used to buy actual, physical silver; when in fact [G.Rust] diverted nearly all investor funds

³ Joshua Rust is set to be sentenced on May 31, 2022. [Criminal Proceedings, Dkt. No. 159.]

received to unrelated businesses, to personal uses, and to make payments to other investors.”

[*Id.*]

21. G.Rust falsely represented to investors “[t]hat only half the amount of silver bought for the investor would be ‘traded’ with the other half stored for safekeeping to minimize investment risk; when in fact, there was no significant actual silver trading occurring and no meaningful amount of investor money was used to purchase and store actual silver.” [*Id.* at 6.]

22. G.Rust falsely represented to investors “[t]hat the profit generated in trades would be used to repurchase a larger amount of silver at a lower price, thereby continually increasing the amount of silver for investors; when in fact, there was no actual silver trading occurring.”

[*Id.*]

23. G.Rust falsely claimed “[t]hat by using algorithms, the silver trading program never experienced a losing month, much less a losing year, that the worst year had generated a 12% return, and that the average rate of return was 20 to 25% per year; when in fact, RRC traded almost no silver and had no trading mechanism that could generate such returns, and [Receivership Defendants] used investor money in a way that only ever resulted in losses of the invested funds.” [*Id.*]

24. G.Rust expressly admitted that he “used investor funds for [his] own personal use and benefit, for unrelated businesses that all operated at significant losses, and to pay other investors.” [*Id.*]

25. G.Rust further admitted that “[t]o convince investors and potential investors that their investments were profitable and to convince potential investors that the silver trading program was earning money, [he] used investment money from later investors to pay the promised returns to earlier investors” and that this “created the false impression that the silver

trading program was profitable, that the investments were safe and secure, and that the promised returns were being generated through trading.” [*Id.* at 6-7.]

26. In addition to G.Rust’s express admissions in his Guilty Plea, the Receiver’s own investigation confirms that Receivership Defendants operated the Silver Pool as a Ponzi scheme since at least 2008 and that G.Rust’s admissions are corroborated by substantial additional evidence.

27. Receivership Defendants solicited funds from investors by representing that they would use such funds to trade physical silver, thereby generating returns for investors. [Hafen Report, at pp. 12-13, and Exhibit A thereto, ¶ 98.]

28. Specifically, the Receivership Defendants represented that one-half of invested funds would be used to purchase physical silver, which would be stored at Brink’s facilities. According to the Receivership Defendants’ representations, the remaining one-half of the invested funds would be used to buy and sell physical silver on the commodities market, thereby increasing the investor’s silver holdings over time and generating returns on the investment. [Hafen Report, at p. 12, and Exhibit A thereto, ¶¶ 20, 98.]

29. In reality, investor funds were not used to purchase physical silver. [Hafen Report, at pp. 13-14, and Exhibit A thereto, ¶ 22.]

30. G.Rust expressly admitted that new investor funds were used to pay returns to existing investors and to fund other businesses that were unrelated to the Silver Pool. [Strong Report, at pp. 13-15.]

31. Although the Receivership Defendants represented that they managed over \$80 million of physical silver and that approximately one-half of that amount was stored at Brink’s locations in Salt Lake City and Los Angeles, there is no evidence that the Receivership

Defendants ever stored significant amounts of physical silver at Brink's or any other facility.

[*Id.*, at pp. 9-10, 48.]

32. G.Rust expressly admitted that there was no significant amount of silver stored at Brinks at the time of the Receiver's appointment. [Hafen Report, at p. 13, and Exhibit A thereto, ¶ 99.]

33. There is no evidence that the Receivership Defendants ever traded significant amounts of physical silver on a regular basis in the manner represented to investors. [Hafen Report, at p. 13, and Exhibit A thereto, ¶ 99.]

34. Since 2008, the Receivership Defendants raised at least \$225 million from investors and paid out at least \$175 million to investors. [Strong Report, at pp. 6-7.]

35. Even as early as tax year 2008 ("TY2008"), the net operating income obtained through the Receivership Defendants' limited business operations was insufficient to make payments to investors:

- a. The total net operating income of RRC—Rust's only profit-generating business—in TY2008 was at best \$259,154.
- b. During TY2008, the Receivership Defendants took in at least \$3.2 million in payments from investors.
- c. During TY2008, the Receivership Defendants made payments to investors in excess of \$1.6 million.
- d. During TY2008, the Receivership Defendants also made payments to other RRC-affiliated businesses in excess of \$1.5 million.
- e. From at least TY2008, the income generated from operations of the Receivership Defendants was grossly insufficient to finance the substantial payments promised

to investors. New funds contributed by unsuspecting investors provided the only funding source large enough to facilitate these payments.

[Strong Report, at pp. 6, 23-24.]

36. The payments made to investors since 2008 could only have been sourced from funds raised from other investors; there was no other source of funds from which these payments could have been made. [*Id.*, at p. 76.]

37. From 2008 through the appointment of the Receiver in 2018, the Receivership Defendants continued to take in ever-increasing funds from investors and to pay out exorbitant returns. Between January 1, 2018, and November 15, 2018, the Receivership Defendants paid more than \$37 million to investors. [*Id.*, Exhibit 25, p. EX194 (summarizing amounts raised from and paid to investors on a year-by-year basis).]

38. The Receivership Defendants represented that the Silver Pool was “risk free,” “no risk,” or “virtually risk free” because the investment was backed by physical silver, which would always have value. [Hafen Report, at p. 6, and Exhibit A thereto, ¶ 125.]

39. The Receivership Defendants guaranteed “no loss of principle [sic]” invested. [Strong Report, Exhibit 8, p. EX104.]

40. The Receivership Defendants represented that the Silver Pool paid an average return of 20-25%. [*Id.*, at p. 44.]

41. The Receivership Defendants represented that returns between 2012 and 2017 exceeded 40%. [*Id.*, Exhibit 35, pp. EX235-36.]

42. The Receivership Defendants represented that the lowest return on the Silver Pool investment during a thirty-year period was 12%. [Strong Report, at p. 44.]

43. Investor statements provided by the Receivership Defendants reflected that every silver trade was profitable and that the Receivership Defendants had never lost money on a trade.

[*Id.*, at p. 7.]

44. The Receivership Defendants promoted the Silver Pool as an exclusive program offered only to those investors G.Rust knew personally. [*Id.*, at pp. 58-59.]

45. The Receivership Defendants falsely claimed to have a trading relationship with HSBC, one of the world’s largest banks, and to employ a proprietary trading algorithm that allowed the Receivership Defendants to beat the market. [Hafen Report, at p. 21, and Exhibit A thereto, ¶¶ 122, 129-30.]

46. The Receivership Defendants paid exorbitant returns to investors for years, creating the false impression that profits were being earned and thereby attracting new investors to the scheme and convincing existing investors to increase their investment. [Strong Report, at p. 7.]

47. Investors have likely suffered in excess of \$100 million in net principal losses. [*Id.*, at p. 77.]

ARGUMENT

I. Factors Governing Ponzi Determination

A Ponzi scheme is “an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments.” *Jobin v. McKay*, 84 F.3d 1330, 1332 n.1 (10th Cir. 1996); *accord S.E.C. v. Management Solutions, Inc.*, No. 2:11-cv-1165-BSJ, 2013 WL 4501088, at *19 (D. Utah Aug. 22, 2013). “In order to show that an investment scheme falls within the definition of a Ponzi scheme, the Receiver must prove by a preponderance of the evidence the *sine qua non* of a Ponzi scheme: that returns to earlier investors were paid by funds from later investors.”

Management Solutions, 2013 WL 4501088, at *19. In addition, Ponzi schemes typically—though not always—exhibit the following characteristics:

- Investors are promised substantial returns;
- Investors are promised returns with little or no risk;
- Investors are promised consistent returns;
- Investors are paid the promised returns for at least some time, which attracts new investors to the program;
- The scheme is generally insolvent from the beginning;
- The scheme is secret, exclusive, and/or highly complex.

Id. As explained in detail herein, it is undisputable that the Silver Pool operated as a Ponzi scheme since at least 2008.

II. Receivership Defendants’ Guilty Pleas Conclusively Establish the Existence of a Ponzi Scheme.

Receivership Defendants’ guilty pleas and factual admissions conclusively establish that the investment scheme operated by Receivership Defendants was a Ponzi scheme. Numerous courts have concluded that a guilty plea or a criminal conviction of the operator of a Ponzi scheme conclusively establishes that a Ponzi scheme occurred. *See, e.g., In re Slatkin*, 525 F.3d 805, 814 (9th Cir. 2008) (“We now hold that a debtor’s admission, through guilty pleas and a plea agreement admissible under the Federal Rules of Evidence, that he operated a Ponzi scheme with the actual intent to defraud his creditors conclusively establishes the debtor’s fraudulent intent . . . and precludes relitigation of that issue.”); *In re AFI Holding, Inc.*, 525 F.3d 700, 704 (9th Cir. 2008) (holding that the Ponzi operator’s guilty plea “demonstrates the existence of fraudulent intent and a Ponzi scheme”); *In re Fin. Federated Title & Trust, Inc.*, 347 F.3d 880,

886 n.5 (11th Cir. 2003) (“[T]he guilty pleas of ABS and Ray Levy undisputably establish that this Debtor’s operations were nothing more than a massive fraud and Ponzi scheme.”); *Scholes v. Lehmann*, 56 F.3d 750, 762 (7th Cir. 1995) (accepting Ponzi scheme operator’s guilty plea as evidence establishing existence of a Ponzi scheme); *Wiand v. Morgan*, 919 F. Supp. 2d 1342, 1361 (M.D. Fla. 2013) (collecting cases); *In re Barnard L. Madoff Inv. Securities LLC*, 445 B.R. 206, 220-21 (S.D.N.Y. 2011) (collecting cases and finding existence of a Ponzi scheme “particularly in light of Madoff’s criminal admission”); *In re Rothstein Rosenfeldt Adler, P.A.*, 2010 WL 5173796, at *5 (S.D. Fla. Dec. 14, 2010) (“Criminal plea agreements are admissible to establish the existence of a Ponzi scheme and a wrongdoer’s fraudulent intent.”); *Wing v. Alvey*, No. 2:08-cv-796, 2009 WL 223612, at *1 (D. Utah Jan. 29, 2009) (“[N]umerous courts have also held that a criminal conviction for operating a Ponzi scheme establishes the operator’s fraudulent intent.”); *In re McCarn’s Allstate Finance, Inc.*, 326 B.R. 843, 851 (M.D. Fla. 2005) (“Even if the information or indictment did not specifically label the fraud a ‘Ponzi scheme,’ if the allegations in the information establish that the debtor ran a scheme whereby the debtor intended to defraud the debtor’s creditors, evidence of a guilty verdict or plea agreement admitting the charges can establish the existence of a Ponzi scheme.”).

G.Rust’s Guilty Plea does not merely admit to the operation of a Ponzi scheme. G.Rust admits to specific facts conclusively establishing that Receivership Defendants’ investment program operated as a Ponzi scheme, including but not limited to the following:

1. That Receivership Defendants “diverted nearly all investor funds received to unrelated businesses, to personal uses, and to make payments to other investors”;

2. That, despite G.Rust's representations to investors, "there was no significant actual silver trading occurring and no meaningful amount of investor money was used to purchase and store actual silver";
3. That "RRC traded almost no silver and had no trading mechanism that could generate such returns, and we used investor money in a way that only ever resulted in losses of the invested funds";
4. That G.Rust "used investor funds for [his] own personal use and benefit, for unrelated businesses that all operated at significant losses, and to pay other investors";
5. That "[t]o convince investors and potential investors that their investments were profitable and to convince potential investors that the silver trading program was earning money, [G.Rust] used investment money from later investors to pay the promised returns to earlier investors."

[Ex. A, G.Rust Guilty Plea at 5-7.]

Thus, the G.Rust Guilty Plea conclusively establishes the *sine qua non* of a Ponzi scheme: that newly invested funds were used to pay returns to existing investors. *See S.E.C. v. Management Solutions, Inc.*, No. 2:11-cv-1165-BSJ, 2013 WL 4501088, at *19 (D. Utah Aug. 22, 2013). The Receiver's independent investigation is entirely consistent with the G.Rust Guilty Plea and confirms that Receivership Defendants operated their investment program as a Ponzi Scheme.

III. Receivership Defendants' Investment Program Was a Ponzi Scheme.

Pursuant to the Court's instructions, the Receiver has extensively investigated the business dealings of Receivership Defendants. The Receiver's investigation also conclusively establishes that Receivership Defendants operated their investment program as a Ponzi scheme.

As an initial matter, as in the G.Rust Guilty Plea, G.Rust expressly admitted when interviewed by investigators that he used newly invested funds to pay returns to existing investors. *See* Hafen Report at 15 & Ex. F at 11:8-18. Similarly, G.Rust admitted that—despite his representations to investors—Receivership Defendants engaged in little to no trading and that what little trading was conducted had generated net losses to investors. *See* Hafen Report, Ex. F at 30:12-31:2.

These admissions are consistent with the Receiver's review of the books and records of Receivership Defendants. The Receiver discovered no evidence of purchases of silver in the amounts necessary to correlate with G.Rust's representations to investors. Hafen Report at 16. Nor has the Receiver discovered any evidence that Receivership Defendants ever stored significant amounts of physical metals at Brinks or any other facility. *Id.*

Mr. Stong's analysis confirms that Receivership Defendants used newly invested funds to pay returns to existing investors. Since 2008, the Receivership Defendants raised at least \$225 million from and paid out at least \$175 million to investors. Strong Report, at pp. 6-7. Mr. Strong also opined that the net operating income of RRC—the only profit-making business—was insufficient to make payments to investors. *Id.* at 76.

For example, Mr. Strong's analysis revealed that RRC's total operating income in TY2008 was, at best, \$259,154. *Id.* at 6, 23-24. During that same year, RRC took in at least \$3.2 million from investors and made payments in excess of \$1.6 million to investors. *Id.* RRC also made payments to its affiliated business entities in excess of \$1.5 million. *Id.* None of the other RRC-affiliated entities was a net cash-positive operation and all were heavily subsidized by RRC. *Id.* Based on the finances of RRC and its affiliated entities, it is clear that the payments made to investors in 2008 could only have come from other investors' funds. *Id.* There was simply no other source of funds from which to pay these investor returns.

Moreover, from 2008 until the appointment of the Receiver in November 2018, Receivership Defendants' financial condition continued to deteriorate. As Mr. Strong's analysis makes clear, Receivership Defendants continued to take in ever-increasing funds from investors and to pay out exorbitant returns without any legitimate underlying business activity. Strong Report, EX194 (summarizing amounts raised from and paid to investors on a year-by-year basis).

The Receiver's preliminary analysis has revealed that investors likely suffered net principal losses in excess of \$100 million related to the Receivership Defendants' actions.⁴ [*Id.* at 77.] At the time the Enforcement Action commenced, the assets of RRC were grossly inadequate to repay the amounts owed to investors, and RRC had no reasonable expectation of ever generating sufficient funds to repay those amounts.

In short, the Silver Pool exhibited the classic characteristics of a Ponzi scheme:

- (1) newly attracted investor funds were used to finance payments to existing investors;
- (2) investors were promised significant returns with little to no risk;
- (3) investors were promised that these returns would be consistent;
- (4) the Receivership Defendants, in fact, paid substantial returns to early investors in order to entice new investment;
- (5) the Receivership Defendants promoted the Silver Pool as an exclusive, highly complex investment opportunity;

⁴ In the G.Rust Guilty Plea, G.Rust stipulated to a money judgment in the amount of \$153,073,328.32 and indicated that such a judgment represented "property acquired from or traceable to my offenses." G.Rust Guilty Plea at 10.

(6) the Receivership Defendants' assets were grossly inadequate to repay amounts owed to investors, and the Receivership Defendants had no reasonable expectation of being able to generate sufficient funds to meet those obligations.

OBJECTION PROCEDURE

As discussed above, the Court has previously determined in three separate ancillary proceedings that the investment scheme operated by Receivership Defendants was a Ponzi scheme. *See Hafen v. Famulary*, 2:19-cv-00627-TC, Dkt. No. 28; *Hafen v. Brimley*, 2:19-cv-00875-TC, Dkt. No. 21; *Hafen v. Evans*, 2:19-cv-00895-TC, Dkt. No. 38. The Receiver desires to obtain a definitive finding in this action that Receivership Defendants operated a Ponzi scheme, which will eliminate the need to continue re-litigating the issue in all of the outstanding ancillary proceedings or any future ancillary proceeding. In order to streamline other ancillary actions and conserve the resources of the Receivership Estate, the Receiver now seeks a conclusive determination that the Silver Pool operated as a Ponzi scheme since at least 2008, which will act to preclude further litigation of that issue.

Because the Receiver recognizes that certain interested parties may wish to object or respond to this Motion, the Receiver respectfully requests that the Court apply the Summary Disposition Procedure previously established by the Court to this Motion and all objections related thereto. [See Dkt. No. 165.] This will allow the Receiver to expeditiously and cost effectively resolve any challenges to the Ponzi scheme determination while preserving the due process rights of litigants in the ancillary proceedings and other interested parties. To that end, the Receiver proposes the following procedures:

1. Once the Receiver files this Motion, the Receiver will serve a copy of the Motion and accompanying exhibits on all parties to existing ancillary proceedings and any party

- with whom the Receiver has a tolling agreement. The Receiver will also serve a copy of the Motion and accompanying exhibits to all parties on the Receiver's master mailing matrix and post a copy to the Receiver's website at <http://rustrarecoinreceiver.com>.
2. As set forth in the Court's *Order Granting Motion to Allow Summary Disposition Procedure*, any party wishing to object or respond to this Motion must lodge their response or objection directly with the Receiver within 30 days. The objecting party will not become a party to the overall proceeding, will not intervene in the case, and will not file any pleadings or other documents directly with the Court unless otherwise authorized to do so by the Court.
 3. The Receiver shall provide copies of all objections received to Plaintiffs.
 4. If the objecting party specifically requests discovery, the parties will have an additional 30 days to complete discovery. Discovery will be conducted pursuant to the *Federal Rules of Civil Procedure*, except that written discovery must be responded to within 14 days. Either side may seek relief from the Court if the requested discovery is unduly burdensome or not proportional to the issues being determined.
 5. Following the close of any specifically requested discovery, the Receiver will lodge the objections with the Court and request a hearing on the matter. If an evidentiary hearing is needed, the Receiver will schedule additional deadlines regarding disclosure of witnesses and exhibits as needed.
 6. The Receiver and Plaintiffs may file a response to any objection five days before the hearing.

CONCLUSION

For the reasons discussed herein, the Receiver respectfully requests a conclusive determination that Receivership Defendants operated a Ponzi scheme since at least 2008. The Receiver requests that the Court adopt its previously approved summary disposition procedure as the objection procedure for any person objecting to this Motion. Such a streamlined process will obviate the need for the Receiver to continue to re-litigate the Ponzi issue, which will greatly reduce the financial impact on the Receivership Estate, while allowing interested parties a meaningful right to be heard.

A proposed order is submitted herewith.

DATED this 15th day of March, 2022.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Cynthia D. Love

Joseph M.R. Covey

Cynthia D. Love

Attorneys for the Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION FOR PONZI DETERMINATION AND TO ESTABLISH AN OBJECTION PROCEDURE** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on March 15, 2022, which sent notice of the electronic filing to all counsel of record, (2) posted on the Receiver's website (rustrarecoinreceiver.com), (3) emailed to all those on the Receiver's master mailing matrix, and (4) served on all parties to existing ancillary proceedings and any party with whom the Receiver has a tolling agreement.

/s/ Cynthia D. Lovei

EXHIBIT B

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,
v.

RUST RARE COIN INC., a Utah corporation,
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.

**ORDER ESTABLISHING PONZI
OBJECTION PROCEDURE**

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

District Judge Tena Campbell
Chief Magistrate Judge Dustin B. Pead

On March 15, 2022, Jonathan O. Hafen, the court-appointed Receiver in the above-captioned matter, filed a Motion for Ponzi Determination and to Establish an Objection Procedure. (ECF No. 448.) As its name suggests, the Motion asks for two things. The Receiver seeks a court determination that an investment program operated by Receivership Defendants was a Ponzi scheme since at least 2008. The Receiver also asks the court to adopt its prior summary disposition procedure (ECF No. 165) to allow for objections and to decide the Ponzi-

scheme issue. Having considered the Motion, the court will adopt its summary disposition procedure to decide the Ponzi-scheme issue, and it will defer deciding that issue pending the following objection procedure. The court ORDERS as follows:

1. Any interested party wishing to object to the Receiver's Motion shall submit such objection in writing directly to the Receiver within thirty days of entry of this Order.
2. The Receiver shall provide copies of all objections received to Plaintiffs.
3. If an objecting party specifically requests discovery, the parties shall have an additional thirty days to complete such discovery, which will be conducted in accordance with the Federal Rules of Civil Procedure with the exception that written discovery must be responded to within fifteen days. Either side may seek relief from the court if the requested discovery is unduly burdensome or not proportional to the issues being determined. Any such discovery will be subject to the standard protective order.
4. After the deadline for objections passes and any specifically requested discovery is completed, the Receiver shall lodge all objections with the court and request a hearing at which such objections may be considered.
5. If an evidentiary hearing is required, the Receiver may request additional deadlines related to the disclosure of witnesses and exhibits as needed.
6. The Receiver and Plaintiffs may file a response to any objection five days prior to the hearing.

DATED this 30th day of March, 2022.

///

///

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

James K. Tracy (#6668)
Joshua L. Lee (#11701)
Hyrum J. Bosserman (#16404)
BENNETT TUELLER JOHNSON & DEERE
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121
Telephone: (801) 438-2000
Email: jtracy@btjd.com; jlee@btjd.com;
hbosserman@btjd.com

Attorneys for Richard A. Larsen

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

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

Plaintiff,

v.

RICHARD A. LARSEN, in his individual and
trustee capacity for the LARSEN TRUST,
ANDRIA SCOTT, AMANDA PARRISH,
CALI PARKS and BRIAN LARSEN, in their
individual capacities, and DOES 1-10,

Defendants.

**OBJECTION TO RECEIVER’S MOTION
FOR PONZI DETERMINATION AND TO
ESTABLISH AN OBJECTION
PROCEDURE**

Case No. 2:21-cv-00743-TC

Judge Tena Campbell

Defendant Richard A. Larsen (“**Larsen**”), individually and as trustee of the Larsen Trust (the “**Trust**”), by and through counsel, hereby objects to Plaintiff Jonathan O. Hafen’s (the “**Receiver**”) Motion for Ponzi Determination and to Establish an Objection Procedure (the “**Motion for Ponzi Determination**”), filed in *CFTC v. Rust Rare Coin, Inc.*, United States District Court for the District of Utah, Central Division, Case No. 2:18-cv-00892-TC-DBP (the

“*2018 Case*”) and the subsequent Order Establishing Ponzi Objection Procedure, entered on March 30, 2022 by the court of the 2018 Case (the “*Order on Ponzi Procedure*”). .

OBJECTION

On April 29, 2022, Larsen filed a Motion for Order Declaring Any Determination on Receiver’s Motion for Ponzi Determination in a Separate Case is Non-Binding (the “*Motion for Declaration*”) in the above-captioned case. See Motion for Declaration, attached hereto as Exhibit A. Larsen expressly incorporates his argument and briefing in Motion for Declaration herein. As detailed in the Motion for Declaration, Larsen objects to the Motion on Ponzi Determination and the procedure set forth in the Order on Ponzi Procedure. The court of the 2018 Case does not have jurisdiction over Larsen—a non-party who has not been joined in this case—and does not have authority to issue bindings, preclusive orders on Larsen. Further, the Motion for Ponzi Determination seeks to strip Larsen of a full and fair opportunity to defend himself and robs him of his right to due process. Additionally, the Motion for Ponzi Determination is at odds with the Federal Rules of Civil Procedure. And, the truncated discovery schedule set forth in the Order on Ponzi Determination prevents Larsen the adequate opportunity to mount a defense.

Larsen sternly objects to being subject to any decision or procedure stemming from the 2018 Case. This court should not allow the Receiver to circumvent due process or the Federal Rules of Civil Procedure. Larsen expects the court in the above-captioned case will grant the Motion for Declaration and declare that any order stemming from the Motion for Ponzi Determination and Order on Ponzi Procedure in the 2018 Case has no binding on Larsen and is without effect on this case.

In the event the court in the above-captioned case does not grant the Motion for Declaration, and the court for the 2018 Case orders Larsen to participate in the 2018 Case, Larsen reserves his right to respond to the Motion for Ponzi Determination, conduct discovery, and participate in an evidentiary hearing. To date, the Receiver has not provided Larsen with initial disclosures in the above-captioned case and has not produced documents to Larsen. And Larsen has had no opportunity to conduct discovery in that case (or, of course, the 2018 Case). Larsen intends to depose Gaylen Rust (and others) in order to obtain testimony concerning Larsen's legitimate business with Rust Rare Coin ("**RRC**") since approximately 1999 and a Precious Metals Custody Agreement Mr. Rust entered into. Additionally, the Receiver apparently has significant documents related to RRC's accounts and records. Larsen has had no opportunity to retain an expert and evaluate RRC's accounts and records to determine the extent of the allegedly fraudulent scheme, or when that alleged scheme actually began. Because RRC operated a legitimate business before allegedly turning fraudulent at some point, the date of any purported Ponzi scheme is particularly important. It will take significantly more than 30 days to take these depositions, review the materials, conduct discovery, and provide expert analysis. Larsen should be afforded more time.

Finally, as detailed in the Motion for Declaration, any decision on the Ponzi determination is premature. Three weeks before the Receiver submitted his Motion for Ponzi Determination in the 2018 Case, Larsen filed his Motion to Certify in the above-captioned case. In the Motion to Certify, Larsen sought to certify several questions related to the Ponzi scheme presumption, including whether the Utah Voidable Transaction Act contained any presumption in the case of a Ponzi scheme and whether the Receiver lacked standing. There is no need to

make the determination that a Ponzi scheme existed at this time if the questions in the Motion to Certify are certified by the court in the above-captioned case. As detailed at length in the Motion to Certify, the Utah Supreme Court may very well determine that the Receiver lacks standing to bring claims under the UVTA. If that is the case, then a Ponzi determination would be of little value. Similarly, the Motion to Certify seeks answers to questions over the Ponzi scheme presumption. If the court in the above-captioned case grants that motion, certifies these questions, and the Utah Supreme Court holds that the Ponzi scheme presumption is not supported in the text of the UVTA—as has high courts of other states, *see* Motion to Certify—then a Ponzi determination will likewise be essentially useless. There is no reason that the parties should be forced into expending significant time and resources complying with an expediated discovery schedule on an issue that may very well be rendered meaningless.

CONCLUSION

For the forgoing reasons, and those specifically detailed in the attached Motion for Declaration, Larsen objects to being subject to the jurisdiction of the court of the 2018 Case any procedure established therein.

DATED this 29th day of April, 2022.

BENNETT TUELLER JOHNSON & DEERE

/s/ Hyrum J. Bosserman
James K. Tracy
Joshua L. Lee
Hyrum J. Bosserman
Attorneys for Richard A. Larsen

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of April, 2022, a true and correct copy of the foregoing **OBJECTION TO RECEIVER’S MOTION FOR PONZI DETERMINATION AND TO ESTABLISH AN OBJECTION PROCEDURE** was served on the following:

Joseph M. R. Covey	()	U.S. Mail, Postage Prepaid
Michael T. Hoppe	()	Hand Delivered
Claire M. McGuire	()	Overnight Mail
PARR BROWN GEE & LOVELESS	()	E-Filed
101 S. 200 E., Suite 700	(X)	E-Mailed
Salt Lake City, Utah 84111		
jcovey@parrbrown.com		
mhoppe@parrbrown.com		
cmcguire@parrbrown.com		
<i>Attorneys for Jonathan O. Hafen, Receiver</i>		

/s/ Holly Van Leeuwen

EXHIBIT A

James K. Tracy (#6668)
Joshua L. Lee (#11701)
Hyrum J. Bosserman (#16404)
BENNETT TUELLER JOHNSON & DEERE
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121
Telephone: (801) 438-2000
Email: jtracy@btjd.com; jlee@btjd.com;
hbosserman@btjd.com

Attorneys for Richard A. Larsen

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

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

Plaintiff,

v.

RICHARD A. LARSEN, in his individual and
trustee capacity for the LARSEN TRUST,
ANDRIA SCOTT, AMANDA PARRISH,
CALI PARKS and BRIAN LARSEN, in their
individual capacities, and DOES 1-10,

Defendants.

**MOTION FOR ORDER
DECLARING ANY
DETERMINATION ON
RECEIVER’S MOTION FOR PONZI
DETERMINATION IN A SEPARATE
CASE IS NON-BINDING**

Case No. 2:21-cv-00743-TC

Judge Tena Campbell

Defendant Richard A. Larsen (“**Larsen**”), individually and as trustee of the Larsen Trust (the “**Trust**”), by and through counsel, and pursuant to Rule 7 of the Federal Rules of Civil Procedure, hereby moves this Court to enter an order declaring that any decision stemming from Plaintiff Jonathan O. Hafen’s (the “**Receiver**”) Motion for Ponzi Determination and to Establish an Objection Procedure (the “**Motion for Ponzi Determination**”), filed in *CFTC v. Rust Rare*

Coin, Inc., United States District Court for the District of Utah, Central Division, Case No. 2:18-cv-00892-TC-DBP (the “*2018 Case*”) is non-binding on this case and has no effect on Defendants.

RELIEF REQUESTED AND GROUNDS FOR RELIEF

On March 15, 2022—three weeks after Larsen filed his Motion to Certify in this case no less—the Receiver filed his Motion for Ponzi Determination in the 2018 Case. In the Motion for Ponzi Determination, the Receiver expressly sought “a conclusive ruling from the Court that Receivership Defendants operated a Ponzi scheme since at least 2008 that will have preclusive effect in the **present and future ancillary actions.**” *See* Motion for Ponzi Determination at 4 (emphasis added), attached hereto as Exhibit A. In other words, the Receiver sought to conclusively establish the existence of a Ponzi scheme that would be binding on any other possible action, including this one. But, as the Receiver is well aware, neither Larsen or any of the Defendants in this case are parties to the 2018 Case. Indeed, no claw-back defendants are part of that suit. Rather, only the Commodity Future Trading Commission, Utah Division of Securities, Rust Rare Coin, Inc., Gaylen Rust, and the other receivership defendants are parties there.

What the Receiver really seeks is to strip potential claw-back defendants, including Larsen, from their day in court. And the Receiver seeks to rob Larsen of the discovery required for him to mount an appropriate defense. This Court should not allow the Receiver to circumvent due process or the Federal Rules of Civil Procedure. Accordingly, the Court should enter an order declaring that any order stemming from the Motion for Ponzi Determination and

Order on Ponzi Procedure in the 2018 Case has no binding on Larsen and is without effect on this case

STATEMENT OF RELEVANT FACTS

1. On November 13, 2018, the Commodity Futures Trading Commission and the Utah Division of Securities filed a Complaint against Rust Rare Coin, Inc. (“**RRC**”), Gaylen Dean Rust (“**Gaylen**”), R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC, and affiliated individuals and entities (the “**Receivership Defendants**”) in the United States District Court for the District of Utah, Civil No. 2:18-cv-00892-TC-DBP (the “**2018 Case**”).

2. On November 15, 2018, Jonathan Hafen was appointed receiver for RRC and the Receivership Defendants.

3. On December 12, 2021, Jonathan Hafen, as court-appointed Receiver for RRC (the “**Receiver**”), filed a Complaint in this case against Larsen, the Trust, and others defendants asserting fraudulent transfer (the “**Complaint**”).¹

4. Larsen and the Trust filed their Answer on January 12, 2022.²

5. On February 25, 2022, Larsen filed a Motion to Certify Question of Law to the Utah Supreme Court (the “**Motion to Certify**”), seeking to certify nine separate questions to the Utah Supreme Court.³

¹ See generally Complaint.

² See Answer, Court Docket # 10.

³ See Motion to Certify, Court Docket # 20.

6. Specifically, Larsen seeks to certify questions relating to what is commonly referred to as the Ponzi scheme presumption.⁴

7. On March 15, 2022—some three weeks after the Motion to Certify was filed—the Receiver filed the Motion for Ponzi Determination in the 2018 Case.⁵

8. In the Motion for Ponzi Determination, the Receiver sought “to obtain a definitive finding in [the 2018 Case] that Receivership Defendants operated a Ponzi scheme” in order “to eliminate the need to continue re-litigating the issue in all of the outstanding ancillary proceedings or any future ancillary proceeding.” In other words, the Receiver sought “a conclusive determination that the Silver Pool operated as a Ponzi scheme since at least 2008 . . . to preclude further litigation of that issue.”⁶

9. In the Motion for Ponzi Determination, the Receiver provided the court of the 2018 Case with no authority for seeking an order that was conclusively binding on hundreds of non-parties.⁷

10. The Receiver also sought to establish a grossly one-sided “Objection Procedure” to allow non-parties in other proceedings to send objections directly to the Receiver for his review.⁸

⁴ See Motion to Certify, Court Docket # 20.

⁵ See Motion for Ponzi Determination, attached hereto as Exhibit A.

⁶ See *id.* at 17.

⁷ See *generally id.*

⁸ See *id.* at 17-19.

11. Specifically, the Receiver sought an order requiring any non-party to submit their objection to the Motion within 30 days, but not permitting a non-party to intervene or file documents directly with the Court.⁹

12. The Receiver would then provide copies of the objections to the “Plaintiffs” of the 2018 Case—i.e., the CFTC or Utah Division of Securities. No one—including the other non-parties or the court of the 2018 Case—would receive a copy of the objections.¹⁰

13. The objecting non-party could then request discovery, but would only get 30 days to complete discovery (and only 14 days to respond to written discovery).¹¹

14. Once discovery concludes, the Receiver would file the objections with the court of the 2018 Case and a hearing would be scheduled before the court of the 2018 Case (not this Court).¹²

15. On March 30, 2022, the court in the 2018 Case entered its Order Establishing Ponzi Objection Procedure (the “***Order on Ponzi Procedure***”), adopting the procedures outlined in the Receiver’s Motion for Ponzi Determination.¹³

16. On April 1, 2022, Larsen received notice of the Order on Ponzi Procedure.

17. As a non-party to the 2018 Case, Larsen never received notice of the Motion for Ponzi Determination or had any opportunity to respond.

18. In fact, the Court in the 2018 Case has made it clear that persons not parties to the 2018 Case have no right to seek relief in that action, explaining:

⁹ *See id.*

¹⁰ *See id.*

¹¹ *See id.*

¹² *See id.*

¹³ *See* Order Establishing Ponzi Objection Procedure, attached hereto as Exhibit B.

Finally, Mr. Guyon asks the court to certify three questions to the Utah Supreme Court. Each of these questions involves what presumptions or standards of proof apply to determining whether a Ponzi scheme exists. Again, to the extent these questions are related to proving that there was no Ponzi scheme at all in this case, these issues should be raised by the Plaintiffs or the Defendants, not Mr. Guyon. If, on the other hand, these questions are related to proving that Mr. Guyon personally was not a victim of the Ponzi scheme, then he may raise the issue in an ancillary suit if such a suit is filed against him.

CFTC v. Rust Rare Coin, Inc., No. 2:18-cv-00892, 2020 WL 4904165, *8 (Aug. 8, 2020).

19. No discovery has taken place in this action.¹⁴

20. The Receiver has not produced initial disclosures and the parties have not participated in a Rule 26(f) scheduling conference.¹⁵

21. No scheduling order has been entered by the Court.¹⁶

ARGUMENT

A. The Motion for Ponzi Determination and Subsequent Order Violates Due Process

The U.S. Supreme Court has long reaffirmed “the general rule that a person cannot be deprived of his legal rights in a proceeding to which he is not a party.” *Martin v. Wilks*, 490 U.S. 755, 759 (1989), *abrogated by statute on other grounds as set forth in Landgarf v. USI Film Product*, 511 U.S. 244 (1994). “It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.”

Hansberry v. Lee, 311 U.S. 32, 40-41 (1940); *see also CGC Holding Co., LLC v. Hutchens*, 974

¹⁴ *See generally* Ct. Dkt.

¹⁵ *See generally* Ct. Dkt.

¹⁶ *See generally* Ct. Dkt.

F.3d 1201, 1215–16 (10th Cir. 2020) (same). “This rule is part of our ‘deep-rooted historic tradition that everyone should have his own day in court.’” *Martin*, 490 U.S. at 761–62 (citation omitted). In other words, “[a] judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.” *Id.*; see also *Ashley v. City of Jackson, Miss.*, 464 U.S. 900, 902 (1983) (“It is fundamental premise of preclusion law that nonparties to a prior action are not bound by the judgment.”).

To hold otherwise would undermine a non-party’s due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution. In fact, “it is a violation of due process for a judgment to be binding on a litigant who was not a party nor a privy and therefore has never had an opportunity to be heard.” *Ashley*, 464 U.S. at 902 (citation omitted). “[J]udicial action enforcing [a judgment] against the person or property of [an] absent party is not that due process which the Fifth and Fourteenth Amendments require.” *F.D.I.C. v. Geldermann, Inc.*, 975 F.2d 695, 698 (10th Cir. 1992) (quoting *Hansberry*, 311 U.S. at 41) (alterations in original).

For this reason, the U.S. Supreme Court has repeatedly held that joinder of a party in the same suit is necessary to obtain a binding order on that party. Indeed, “[t]he law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger.” See *Martin*, 490 U.S. at 762. And “[u]nless duly summoned to appear in a legal proceeding, a person not a privy may rest assured that a judgment recovered therein will not affect his legal rights.” *Id.*

Here, the Receiver seeks to deprive Larsen (and other claw-back defendants) of his due process rights. Instead of seeking to join Larsen as a party to the 2018 Case, the Receiver simply seeks a binding order on all non-parties—past, present, and future. But neither the Receiver (nor

the court for the 2018 Case) cited any authority permitting the Receiver to strip Larsen of his due process rights. That is because none exists. As a non-party, any decision in the 2018 Case is not binding on Larsen. *See Ashley*, 464 U.S. at 902. What’s more, Larsen is not being afforded a full and fair opportunity to be heard. Indeed, rather than permitting Larsen the full slate of discovery permitted under Federal Rules of Civil Procedure, the Receiver seeks to severely curtail Larsen’s ability to defend himself by affording Larsen a mere “30 days” to conduct discovery. That is patently unfair, particularly in light of the fact that the Receiver has had 3 ½ years to investigate the financial condition of Rust Rare Coin. To adequately protect Larsen’s due process rights, the Court should enter an order declaring any determination stemming from the Motion for Ponzi Determination and Order on Ponzi Procedure to be non-binding and without effect on this case.

Finally, while the U.S. Supreme Court has spelled out six narrow circumstances where preclusion potentially may apply to a non-party, none of them apply here. Specifically, these circumstances include when (1) a non-party “agrees to be bound by the determination of issues in an action between others . . . in accordance with the terms of his agreement,” (2) there are “pre-existing ‘substantive legal relationship[s]’ between the person to be bound and a party to the judgment,” such as a assignor and assignee, (3) in limited circumstances where the non-party is “adequately represented by someone with the same interests who [wa]s a party to the suit,” (4) the non-party “‘assume[d] control’ over the litigation in which that judgment was rendered,” (5) the “nonparty later brings suit as an agent for a party who is bound by a judgment”, and (6) a special statutory scheme” exists which “expressly foreclos[e] successive litigation by nonlitigants . . . if the scheme is otherwise consistent with due process.” *See Taylor v. Sturgell*,

553 U.S. 880, 893-94 (2008) (citations omitted). First, Larsen has not entered into any agreement to be bound by the 2018 Case. Second, there is no pre-existing substantive legal relationship between Larsen and the Receiver. Third, no party is representing Larsen's interest in the 2018 Case. In fact, the Receiver has brought suit against Larsen and is directly at odds with his interests. Fourth, Larsen has not assumed control over the 2018 Case. In fact, he generally has not even received notice of the happenings in that case. Fifth, Larsen is not representing a party from the 2018 Case. And, finally, there is no special statutory scheme expressly foreclosing successive litigation. *See id.* There simply is no basis for the Motion for Ponzi Determination and Order on Ponzi Procedure to have binding, preclusive effect on this action or Larsen's rights.

B. The Motion for Ponzi Determination and Subsequent Order Violates the Federal Rules of Civil Procedure

In addition to violating Larsen's due process rights, the Motion for Ponzi Determination and Order on Ponzi Procedure is at odds with the Federal Rules of Civil Procedure. For starters, forcing Larsen to conduct expedited discovery violates Larsen's rights under Rule 26, and the truncated discovery schedule is at odds with Rule 16. Further, the Receiver's attempt to get a binding determination in the 2018 Case on Larsen—a non-party—undermines the joinder requirements set forth in Rules 19 and 20. Finally, the Receiver's Motion for Ponzi Determination circumvents Rule 42 and consolidation requirements. This Court should not sanction an order or decision that is directly contrary to the Federal Rules of Civil Procedure.

i. The Receiver's Motion for Ponzi Determination is an Attempt to Rob Larsen of His Right to Conduct Discovery Under Rules 26 and 16.

In the Motion for Ponzi Determination, the Receiver asked the court for the 2018 Case to limit any discovery on the Ponzi scheme determination to a mere 30 days, which the court

ultimately granted. *See* Motion for Ponzi Determination at 18. This is at odds with the Federal Rules of Civil Procedure and robs Larsen of the right to mount a proper defense.

Defendants of claw-back cases in this district have consistently been granted significant time to conduct discovery related to their claims and defenses. *See, e.g., Georgelas v. Desert Hill Ventures, Inc.*, 510 F. Supp. 3d 1061, 1067-68 (D. Utah 2021) (discovery ran for nine months before summary judgment motion filed); *Georgelas v. Olsen*, No. 216CV00529RJSJCB, 2020 WL 7027731, at *3 (D. Utah Nov. 30, 2020) (discovery ran for nine months before summary judgment motion filed); *Miller v. Kelley*, No. 1:12-CV-00056-DN, 2014 WL 5437023, at *3 (D. Utah Oct. 27, 2014) (fact discovery closed almost a year and a half after case commenced). Understanding full well the import of the Ponzi determination on this case, the Receiver seeks a binding determination without affording Larsen the same time to conduct meaningful discovery.¹⁷

The Receiver's Motion for Ponzi Determination and subsequent Order on Ponzi Procedure is particularly prejudicial to Larsen's discovery rights in this case. As detailed above, this case is in the very early procedural stages. The parties have not had a Rule 26(f) scheduling conference, nor has a scheduling order even been entered by the Court. Most importantly, the Receiver has not provided Larsen with his initial disclosures and document production. Without the documents, Larsen has no opportunity to review and retain his own expert and forensic

¹⁷ For example, Larsen intends to take Gaylen Rust's deposition in order to obtain testimony concerning Larsen's business with RRC since approximately 1999 and a Precious Metals Custody Agreement. Since Mr. Rust is currently under the custody of the federal government, procuring a deposition of this sort in such a short time would be virtually impossible. Additionally, the Receiver apparently has significant documents related to RRC's accounts and records. Larsen has had no opportunity to retain an expert and evaluate RRC's accounts.

account to contradict the Receiver's alleged facts. And he has had no time to prepare his defense. Rather, the Receiver expects Larsen to conduct discovery in a mere 30 days (without documents) and have a binding determination made on a vital aspect of the case. In short, the Receiver has sought to undermine Rule 26 and the Court should reject his attempt to short-circuit the discovery process to Larsen's detriment.¹⁸

The Receiver has also sought to undermine Rule 16. That rule provides that the parties must enter into a scheduling conference to determine agreeable discovery deadlines. *See* Fed. R. Civ. P. 26(f). And the Court will thereafter enter an order explicitly determining the scope and boundaries of the discovery in the Case. *See id.* 16(b). The Motion for Ponzi Determination and Order on Ponzi Determination circumvents this process, and instead sets a truncated and unrealistic discovery schedule to which Larsen never agreed and this Court never sanctioned. The Court should enter an order declaring the Order on Ponzi Procedure to have no effect on this Court and should direct the parties to participate in the Rule 26(f) conference and prepare a proposed scheduling order for its review.

ii. The Receiver's Motion for Ponzi Determination is an Attempt to Circumvent Joinder Rules.

It is well-established that "a party seeking a judgment binding on another cannot obligate that person to intervene; he must be joined." *Martin v. Wilks*, 490 U.S. 755, 763-64 (1989). In other words, "[j]oinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is the method by which potential parties are subjected to the jurisdiction of the court

¹⁸ Indeed, in addition to setting discovery at 30 days, written discovery responses are to be returned in 15 days. *See* Order on Ponzi Determination. Again, this is a departure from the Federal Rules of Civil Procedure.

and bound by a judgment or decree.” *Id.* And because “[t]he parties to a lawsuit presumably know better than anyone else the nature and scope of relief sought in the action, and at whose expense such relief might be granted,” courts consistently hold that the parties to the suit (i.e., the Receiver) “bear the burden of bringing in additional parties . . . rather than placing on potential additional parties a duty to intervene when they acquire knowledge of the lawsuit.” *See id.*

If the Receiver desires to create a binding order on Larsen, he must move to join Larsen as a party to the 2018 Case pursuant to Rules 19 or 20 of the Federal Rules of Civil Procedure.

Id. And he must carry his burden of proving joinder is proper in that case at this late stage. *Id.*

For example, Rule 19 requires a party to show that

- (A) in that person’s absence, the court cannot accord complete relief among existing parties; or
- (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
 - (i) as a practical matter impair or impede the person's ability to protect the interest; or
 - (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

See Fed. R. Civ. P. 19(1)(a). Similarly, Rule 20 requires a party to show that “(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.” *See id.* 20(a)(2); *see also Trail Realty, Inc. v. Beckett*, 462 F.2d 396, 399 (10th Cir. 1972).

Here, Larsen has not been joined in the 2018 Case, nor has the Receiver even moved for joinder in the 2018 Case. Accordingly, the Order on Ponzi Determination cannot bind Larsen. *See Martin v. Wilks*, 490 U.S. at 763–64. Moreover, the Receiver has not even attempted to meet the standards under Rules 19 or 20. This Court should not sanction the Receiver’s actions and

permit the Receiver to circumvent joinder requirements he must follow to obtain the relief he seeks.

iii. The Receiver's Motion for Ponzi Determination Violates Rule 42.

Finally, the Receiver essentially seeks consolidation without meeting the requirements in the Federal Rules of Civil Procedure. Rule 42 specifically details the procedure a party must walk through in order to consolidate proceedings. *See* Fed. R. Civ. P. 42. Of course, “[t]he party seeking consolidation has the burden to show the benefits of consolidation or the risk of injury to the moving party if the actions are not consolidated.” *Wedel Grp. XVIII, LLC v. Emps. Mut. Cas. Co.*, No. CIV-11-1113-F, 2011 WL 13116080, at *1 (W.D. Okla. Dec. 16, 2011); *see also* *Servants of Paraclete, Inc. v. Great Am. Ins. Co.*, 866 F. Supp. 1560, 1572 (D.N.M. 1994) (“[T]he party moving for consolidation bears the burden of proving that consolidation is desirable.”). In deciding whether to grant a motion to consolidate, the moving party must also show that the cases to be consolidated “involv[e] a common question of law or fact.” *See* Fed. R. Civ. P. 42(a). “If the cases involve a common question of law or fact, the Court should then weigh the interests of judicial convenience in consolidating the cases against the delay, confusion, and prejudice consolidation might cause.” *Cheney v. Judd*, 429 F. Supp. 3d 931, 935–36 (D.N.M. 2019) (citation omitted). “The mere fact that a defendant has been sued in separate cases involving similar subject matter does not require a court grant a motion to consolidate.” *Wedel Grp.*, 2011 WL 13116080, at *1 (citing *American Emp. Ins. Co. v. King Resources Co.*, 545 F.2d 1265, 1269-70 (10th Cir. 1976)).

Here, again, the Receiver has not moved or attempted to meet his burden to consolidate this case with the 2018 Case. Instead, he simply requested a binding, preclusive order from the

court of the 2018 Case. The Court should not sanction this end-run of the Rules of Civil Procedure.

In short, the Receiver has sought to strip Larsen from his rights to fully defend against claims through the discovery process set forth in the Federal Rules of Civil Procedure. And he has sought to circumvent rules on joinder and consolidation. The Court should grant the Motion and enter an order declaring any determination on the Motion for Ponzi Determination and Order on Ponzi Procedure is not binding on Larsen and any outcome there will not have preclusive effect on this action.

C. A Ponzi Determination is Premature and May Be Rendered Unnecessary If Questions are Certified to the Utah Supreme Court.

Three weeks before the Receiver submitted his Motion for Ponzi Determination in the 2018 Case, Larsen filed his Motion to Certify in this case. In the Motion to Certify, Larsen sought to certify several questions related to the Ponzi scheme presumption, including whether the Utah Voidable Transaction Act contained any presumption in the case of a Ponzi scheme and whether the Receiver lacked standing. In apparent response to that Motion to Certify, the Receiver quickly filed the Motion for Ponzi Determination in the 2018 Case, seeking a conclusive and preclusive determination that a Ponzi scheme existed. But such a determination is premature and may be wholly unnecessary if the Court grants the Motion to Certify.

There is no need to make the determination that a Ponzi scheme existed at this time if the questions in the Motion to Certify are certified by this Court. As detailed at length in the Motion to Certify, the Utah Supreme Court may very well determine that the Receiver lacks standing to bring claims under the UVTA. If that is the case, then a Ponzi determination would be of little value. Similarly, the Motion to Certify seeks answers to questions over the Ponzi scheme

presumption. If this Court grants that motion, certifies these questions, and the Utah Supreme Court holds that the Ponzi scheme presumption is not supported in the text of the UVTA—as has high courts of other states, *see* Motion to Certify—then a Ponzi determination will likewise be essentially useless. There is no reason that the parties should be forced into expending significant time and resources complying with an expediated discovery schedule on an issue that may very well be rendered meaningless. Rather, this Court should defer any decision on the Ponzi determination until it determines the Motion to Certify, and, if granted, after the Utah Supreme Court renders a decision. Even assuming the Receiver has standing and that the Utah Supreme Court would recognize the Ponzi presumption, Larsen has also asked to certify questions regarding the scope and effect of the Ponzi presumption.

In short, the Motion for Ponzi Determination is premature. If the Court is inclined to certify the questions presented in the Motion to Certify, there is no need, at this time, to go through the time and expense of making a Ponzi scheme determination.

CONCLUSION

For the forgoing reasons, Larsen respectfully requests that the Court grant this motion and enter an order declaring that any order or ruling stemming from the Motion for Ponzi Determination and Order on Ponzi Procedure in the 2018 Case is not binding on Larsen and is without effect on this case.

DATED this 29th day of April, 2022.

BENNETT TUELLER JOHNSON & DEERE

/s/ Hyrum J. Bosserman
James K. Tracy
Joshua L. Lee
Hyrum J. Bosserman
Attorneys for Richard A. Larsen

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of April, 2022, a true and correct copy of the foregoing **MOTION FOR ORDER DECLARING ANY DETERMINATION ON RECIEVER’S MOTION FOR PONZI DETERMINATION IN A SEPARATE CASE IS**

NON-BINDING was served on the following:

Joseph M. R. Covey	() U.S. Mail, Postage Prepaid
Michael T. Hoppe	() Hand Delivered
Claire M. McGuire	() Overnight Mail
PARR BROWN GEE & LOVELESS	(X) E-Filed
101 S. 200 E., Suite 700	() E-Mailed
Salt Lake City, Utah 84111	
jcovey@parrbrown.com	
mhoppe@parrbrown.com	
cmcguire@parrbrown.com	
<i>Attorneys for Jonathan O. Hafen, Receiver</i>	

/s/ Holly Van Leeuwen

EXHIBIT A

Joseph M.R. Covey (7492) (jcovey@parrbrown.com)

Cynthia D. Love (14703) (clove@parrbrown.com)

PARR BROWN GEE & LOVELESS, P.C.

101 South 200 East, Suite 700

Salt Lake City, Utah 84111

Telephone: (801) 532-7840

Facsimile: (801) 532 7750

Attorneys for Johnathan O. Hafen as Receiver for the Rust Rare Coin Receivership

**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,

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.

**MOTION FOR PONZI
DETERMINATION AND TO
ESTABLISH AN OBJECTION
PROCEDURE**

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

Judge Tena Campbell
Magistrate Judge Dustin Pead

Jonathan O. Hafen, as Court-Appointed Receiver (the “Receiver”) for the assets of Rust Rare Coin, Inc. (“RRC”), Gaylen D. Rust, Denise G. Rust, and Joshua D. Rust (collectively with RRC, “Defendants”), as well as R Legacy Racing Inc., R Legacy Entertainment LLC, and R Legacy Investments LLC (collectively, “Relief Defendants” and, collectively with Defendants, “Receivership Defendants”), respectfully submits this Motion for Ponzi Determination and to Establish an Objection Procedure (this “Motion”).

RELIEF REQUESTED AND GROUNDS

Through this Motion, the Receiver requests a determination that Receivership Defendants operated a silver investment scheme (the “Silver Pool”) as a Ponzi scheme since at least 2008 and that the Court establish an objection procedure pursuant to the Court’s summary disposition procedure so that any interested party has the opportunity to be heard on the issue of whether the Silver Pool was a Ponzi scheme. Although the Court has previously determined that the Silver Pool operated as a Ponzi scheme in a number of the ancillary actions initiated by the Receiver,¹ those decisions are technically not binding on non-parties. *See Murdock v. Ute Indian Tribe of Uintah and Ouray Reservation*, 975 F.2d 683, 387 (10th Cir. 1992) (holding that collateral estoppel may be applied if “the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication”); *Kuhar v. Thompson Mfg. Inc.*, __ P.3d. __, 2022 WL 481117 (Utah Ct. App. 2022) (same). In order to streamline other ancillary actions and conserve the resources of the Receivership Estate, the Receiver now seeks a conclusive determination that the Silver Pool operated as a Ponzi scheme since at least 2008. Such a

¹ *See Hafen v. Famulary*, 2:19-cv-00627-TC, Dkt. No. 28; *Hafen v. Brimley*, 2:19-cv-00875-TC, Dkt. No. 21; *Hafen v. Evans*, 2:19-cv-00895-TC, Dkt. No. 38.

determination will act to preclude further litigation of that issue.² The Receiver further asks the Court to establish a procedure through which interested parties, including parties to existing ancillary actions or with whom the Receiver has tolling agreements, can lodge objections or otherwise challenge the determination of a Ponzi scheme.

This Motion is supported by the Memorandum of Law set forth herein. Additionally, the Receiver submits the following in support of the Motion: (1) guilty pleas of Gaylen Rust, Denise Rust, and Joshua Rust, true and correct copies of which are included as Exhibit A; (2) Jonathan O. Hafen’s Receiver’s Report (“Hafen Report”) and its accompanying exhibits, a true and correct copy of which are included as Exhibit B; and (3) Expert Report of D. Ray Strong (“Strong Report”) and its accompanying exhibits, a true and correct copy of which are included as Exhibit C.

MEMORANDUM OF LAW

INTRODUCTION

Since at least 2008, Receivership Defendants operated a classic Ponzi scheme in which they used funds from new investors to pay exorbitant returns to existing investors. Although Receivership Defendants’ scheme occasionally took other forms, Receivership Defendants most commonly solicited funds from investors by claiming to invest those funds in the Silver Pool through which Receivership Defendants supposedly generated returns through the buying and selling of physical silver. Ultimately, Receivership Defendants defrauded investors of more than \$200 million, causing significant harm to hundreds of families.

² As explained in more detail below, Gaylen Rust variably described his silver investment scheme as the Silver Pool, a commissions program, or similar iterations. Through the Motion, the Receiver seeks a determination that none of the various iterations of Rust’s investment programs were legitimate and that all of the various programs touted by Rust were simply part of the larger Ponzi scheme.

Now that the individual Receivership Defendants have all pled guilty in their parallel criminal proceedings, the existence of a Ponzi scheme operated by Receivership Defendants is undisputable. Rather than wasting precious Estate resources by continuing to litigate the existence of a Ponzi scheme in each ancillary proceeding, the Receiver seeks a conclusive ruling from the Court that Receivership Defendants operated a Ponzi scheme since at least 2008 that will have preclusive effect in present and future ancillary actions.

RELEVANT MATERIAL FACTS

Procedural and Factual History

1. On November 13, 2018, the Commodity Futures Trading Commission (“CFTC”) and the Utah Division of Securities (“UDOS”) (collectively, the “Plaintiffs”) initiated this action against Receivership Defendants and related parties, alleging that Receivership Defendants operated the Silver Pool as a Ponzi scheme. [Dkt. No. 1.]
2. On November 15, 2018, the Court appointed the Receiver as Temporary Receiver for the assts of Receivership Defendants. [Dkt. No. 22.]
3. On November 27, 2018, the Court entered an Order Appointing Receiver and Staying Litigation (the “Appointment Order”), which continued the Receiver’s appointment until further order of the Court. [Dkt. No. 54.]
4. The Receiver was charged with, among other things, investigating the financial and business affairs of Receivership Defendants and recovering all assets of the Receivership Estate. [*Id.* ¶¶ 7, 41-42.]
5. On March 20, 2019, the Court entered an Order Staying Civil Case Pending Outcome of Criminal Proceedings, which stayed this action “until after entry of a guilty plea or a jury verdict of guilty in any criminal action brought by the U.S. Attorney.” [Dkt. No. 149.]

6. On May 1, 2019, the Court entered an Order Granting Motion to Allow Summary Disposition Procedure, which established a set of procedures through which the Receiver could seek substantive relief from the Court and interested parties could lodge objections and obtain discovery without having to intervene in this matter. [Dkt. No. 165.]

7. On May 8, 2019, the U.S. District Attorney charged the individual Receivership Defendants with various crimes related to the operation of the Silver Pool as a Ponzi scheme. [See *United States v. Rust*, 2:19-cv-00164-TS-CMR, Dkt. No. 1, hereafter the “Criminal Proceedings”.]

8. On June 13, 2019, the individual Receivership Defendants pled not guilty to the crimes with which they were charged. [Criminal Proceedings, Dkt. No. 19.]

9. On June 25, 2020, Denise Rust pled guilty to one count of money laundering related to the operation of the Silver Pool. [Criminal Proceedings, Dkt. Nos. 82, 87.]

10. On September 8, 2020, Denise Rust was sentenced to 18 months’ imprisonment, followed by 36 months’ supervised release. [Criminal Proceedings, Dkt. No. 93.]

11. On January 22, 2021, the Court granted the Receiver’s Motion for Partial Summary Judgment in the *Hafen v. Famulary* ancillary action, finding “that Receivership Defendants operated the Silver Pool as a Ponzi scheme since at least 2008.” [*Famulary*, 2:19-cv-00627-TC, Dkt. No. 28 at 10.]

12. On April 15, 2021, the Court granted the Receiver’s Motion for Summary Judgment in the *Hafen v. Brimley* ancillary action, finding that the “Silver Pool operated by Receivership Defendants was a Ponzi scheme since at least 2008.” [*Brimley*, 2:19-cv-00875-TC, Dkt. No. 21 at 13.]

13. On August 9, 2021, the Court granted in part the Receiver’s Motion for Partial Summary Judgment in the *Hafen v. Evans* ancillary action, finding that “the Receivership Defendants operated the Silver Pool which constituted a Ponzi scheme since at least 2008.” [*Evans*, 2:19-cv-00895-TC, Dkt. No. 38 at 10.]

14. On December 20, 2021, Gaylen Rust pled guilty to wire fraud conspiracy, money laundering conspiracy, and securities fraud in connection with operation of the Silver Pool. [Criminal Proceedings, Dkt. Nos. 132, 134.]

15. On March 8, 2022, Gaylen Rust was sentenced to 19 years’ imprisonment, followed by 36 months’ supervised release. [Criminal Proceedings, Dkt. No. 156.]

16. On March 8, 2022, Joshua Rust pled guilty to misprision of wire fraud conspiracy in connection with the Silver Pool.³ [Criminal Proceedings, Dkt. Nos. 159, 162.]

Receivership Defendants’ Fraudulent Scheme

17. Since at least 2008, Receivership Defendants operated an investment scheme promoted as a “silver trading program.” [Ex. A, Statement by Defendant in Advance of Plea of Guilty and Plea Agreement (“G.Rust Guilty Plea”), at 5.]

18. In operating the scheme, Receivership Defendants “knowingly and willfully” conspired “to defraud investors by inducing them to invest in RRC’s ‘silver trading program’ through material misrepresentations and omissions of material fact about the program.” [*Id.*]

19. G.Rust promoted the Silver Pool as “a lucrative investment that involved the buying and selling of actual physical silver bullion.” [*Id.*]

20. G.Rust falsely represented to investors “[t]hat 100% of investor funds would be used to buy actual, physical silver; when in fact [G.Rust] diverted nearly all investor funds

³ Joshua Rust is set to be sentenced on May 31, 2022. [Criminal Proceedings, Dkt. No. 159.]

received to unrelated businesses, to personal uses, and to make payments to other investors.”

[*Id.*]

21. G.Rust falsely represented to investors “[t]hat only half the amount of silver bought for the investor would be ‘traded’ with the other half stored for safekeeping to minimize investment risk; when in fact, there was no significant actual silver trading occurring and no meaningful amount of investor money was used to purchase and store actual silver.” [*Id.* at 6.]

22. G.Rust falsely represented to investors “[t]hat the profit generated in trades would be used to repurchase a larger amount of silver at a lower price, thereby continually increasing the amount of silver for investors; when in fact, there was no actual silver trading occurring.”

[*Id.*]

23. G.Rust falsely claimed “[t]hat by using algorithms, the silver trading program never experienced a losing month, much less a losing year, that the worst year had generated a 12% return, and that the average rate of return was 20 to 25% per year; when in fact, RRC traded almost no silver and had no trading mechanism that could generate such returns, and [Receivership Defendants] used investor money in a way that only ever resulted in losses of the invested funds.” [*Id.*]

24. G.Rust expressly admitted that he “used investor funds for [his] own personal use and benefit, for unrelated businesses that all operated at significant losses, and to pay other investors.” [*Id.*]

25. G.Rust further admitted that “[t]o convince investors and potential investors that their investments were profitable and to convince potential investors that the silver trading program was earning money, [he] used investment money from later investors to pay the promised returns to earlier investors” and that this “created the false impression that the silver

trading program was profitable, that the investments were safe and secure, and that the promised returns were being generated through trading.” [*Id.* at 6-7.]

26. In addition to G.Rust’s express admissions in his Guilty Plea, the Receiver’s own investigation confirms that Receivership Defendants operated the Silver Pool as a Ponzi scheme since at least 2008 and that G.Rust’s admissions are corroborated by substantial additional evidence.

27. Receivership Defendants solicited funds from investors by representing that they would use such funds to trade physical silver, thereby generating returns for investors. [Hafen Report, at pp. 12-13, and Exhibit A thereto, ¶ 98.]

28. Specifically, the Receivership Defendants represented that one-half of invested funds would be used to purchase physical silver, which would be stored at Brink’s facilities. According to the Receivership Defendants’ representations, the remaining one-half of the invested funds would be used to buy and sell physical silver on the commodities market, thereby increasing the investor’s silver holdings over time and generating returns on the investment. [Hafen Report, at p. 12, and Exhibit A thereto, ¶¶ 20, 98.]

29. In reality, investor funds were not used to purchase physical silver. [Hafen Report, at pp. 13-14, and Exhibit A thereto, ¶ 22.]

30. G.Rust expressly admitted that new investor funds were used to pay returns to existing investors and to fund other businesses that were unrelated to the Silver Pool. [Strong Report, at pp. 13-15.]

31. Although the Receivership Defendants represented that they managed over \$80 million of physical silver and that approximately one-half of that amount was stored at Brink’s locations in Salt Lake City and Los Angeles, there is no evidence that the Receivership

Defendants ever stored significant amounts of physical silver at Brink's or any other facility.

[*Id.*, at pp. 9-10, 48.]

32. G.Rust expressly admitted that there was no significant amount of silver stored at Brinks at the time of the Receiver's appointment. [Hafen Report, at p. 13, and Exhibit A thereto, ¶ 99.]

33. There is no evidence that the Receivership Defendants ever traded significant amounts of physical silver on a regular basis in the manner represented to investors. [Hafen Report, at p. 13, and Exhibit A thereto, ¶ 99.]

34. Since 2008, the Receivership Defendants raised at least \$225 million from investors and paid out at least \$175 million to investors. [Strong Report, at pp. 6-7.]

35. Even as early as tax year 2008 ("TY2008"), the net operating income obtained through the Receivership Defendants' limited business operations was insufficient to make payments to investors:

- a. The total net operating income of RRC—Rust's only profit-generating business—in TY2008 was at best \$259,154.
- b. During TY2008, the Receivership Defendants took in at least \$3.2 million in payments from investors.
- c. During TY2008, the Receivership Defendants made payments to investors in excess of \$1.6 million.
- d. During TY2008, the Receivership Defendants also made payments to other RRC-affiliated businesses in excess of \$1.5 million.
- e. From at least TY2008, the income generated from operations of the Receivership Defendants was grossly insufficient to finance the substantial payments promised

to investors. New funds contributed by unsuspecting investors provided the only funding source large enough to facilitate these payments.

[Strong Report, at pp. 6, 23-24.]

36. The payments made to investors since 2008 could only have been sourced from funds raised from other investors; there was no other source of funds from which these payments could have been made. [*Id.*, at p. 76.]

37. From 2008 through the appointment of the Receiver in 2018, the Receivership Defendants continued to take in ever-increasing funds from investors and to pay out exorbitant returns. Between January 1, 2018, and November 15, 2018, the Receivership Defendants paid more than \$37 million to investors. [*Id.*, Exhibit 25, p. EX194 (summarizing amounts raised from and paid to investors on a year-by-year basis).]

38. The Receivership Defendants represented that the Silver Pool was “risk free,” “no risk,” or “virtually risk free” because the investment was backed by physical silver, which would always have value. [Hafen Report, at p. 6, and Exhibit A thereto, ¶ 125.]

39. The Receivership Defendants guaranteed “no loss of principle [sic]” invested. [Strong Report, Exhibit 8, p. EX104.]

40. The Receivership Defendants represented that the Silver Pool paid an average return of 20-25%. [*Id.*, at p. 44.]

41. The Receivership Defendants represented that returns between 2012 and 2017 exceeded 40%. [*Id.*, Exhibit 35, pp. EX235-36.]

42. The Receivership Defendants represented that the lowest return on the Silver Pool investment during a thirty-year period was 12%. [Strong Report, at p. 44.]

43. Investor statements provided by the Receivership Defendants reflected that every silver trade was profitable and that the Receivership Defendants had never lost money on a trade. [*Id.*, at p. 7.]

44. The Receivership Defendants promoted the Silver Pool as an exclusive program offered only to those investors G.Rust knew personally. [*Id.*, at pp. 58-59.]

45. The Receivership Defendants falsely claimed to have a trading relationship with HSBC, one of the world’s largest banks, and to employ a proprietary trading algorithm that allowed the Receivership Defendants to beat the market. [Hafen Report, at p. 21, and Exhibit A thereto, ¶¶ 122, 129-30.]

46. The Receivership Defendants paid exorbitant returns to investors for years, creating the false impression that profits were being earned and thereby attracting new investors to the scheme and convincing existing investors to increase their investment. [Strong Report, at p. 7.]

47. Investors have likely suffered in excess of \$100 million in net principal losses. [*Id.*, at p. 77.]

ARGUMENT

I. Factors Governing Ponzi Determination

A Ponzi scheme is “an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments.” *Jobin v. McKay*, 84 F.3d 1330, 1332 n.1 (10th Cir. 1996); accord *S.E.C. v. Management Solutions, Inc.*, No. 2:11-cv-1165-BSJ, 2013 WL 4501088, at *19 (D. Utah Aug. 22, 2013). “In order to show that an investment scheme falls within the definition of a Ponzi scheme, the Receiver must prove by a preponderance of the evidence the *sine qua non* of a Ponzi scheme: that returns to earlier investors were paid by funds from later investors.”

Management Solutions, 2013 WL 4501088, at *19. In addition, Ponzi schemes typically—though not always—exhibit the following characteristics:

- Investors are promised substantial returns;
- Investors are promised returns with little or no risk;
- Investors are promised consistent returns;
- Investors are paid the promised returns for at least some time, which attracts new investors to the program;
- The scheme is generally insolvent from the beginning;
- The scheme is secret, exclusive, and/or highly complex.

Id. As explained in detail herein, it is undisputable that the Silver Pool operated as a Ponzi scheme since at least 2008.

II. Receivership Defendants’ Guilty Pleas Conclusively Establish the Existence of a Ponzi Scheme.

Receivership Defendants’ guilty pleas and factual admissions conclusively establish that the investment scheme operated by Receivership Defendants was a Ponzi scheme. Numerous courts have concluded that a guilty plea or a criminal conviction of the operator of a Ponzi scheme conclusively establishes that a Ponzi scheme occurred. *See, e.g., In re Slatkin*, 525 F.3d 805, 814 (9th Cir. 2008) (“We now hold that a debtor’s admission, through guilty pleas and a plea agreement admissible under the Federal Rules of Evidence, that he operated a Ponzi scheme with the actual intent to defraud his creditors conclusively establishes the debtor’s fraudulent intent . . . and precludes relitigation of that issue.”); *In re AFI Holding, Inc.*, 525 F.3d 700, 704 (9th Cir. 2008) (holding that the Ponzi operator’s guilty plea “demonstrates the existence of fraudulent intent and a Ponzi scheme”); *In re Fin. Federated Title & Trust, Inc.*, 347 F.3d 880,

886 n.5 (11th Cir. 2003) (“[T]he guilty pleas of ABS and Ray Levy undisputably establish that this Debtor’s operations were nothing more than a massive fraud and Ponzi scheme.”); *Scholes v. Lehmann*, 56 F.3d 750, 762 (7th Cir. 1995) (accepting Ponzi scheme operator’s guilty plea as evidence establishing existence of a Ponzi scheme); *Wiand v. Morgan*, 919 F. Supp. 2d 1342, 1361 (M.D. Fla. 2013) (collecting cases); *In re Barnard L. Madoff Inv. Securities LLC*, 445 B.R. 206, 220-21 (S.D.N.Y. 2011) (collecting cases and finding existence of a Ponzi scheme “particularly in light of Madoff’s criminal admission”); *In re Rothstein Rosenfeldt Adler, P.A.*, 2010 WL 5173796, at *5 (S.D. Fla. Dec. 14, 2010) (“Criminal plea agreements are admissible to establish the existence of a Ponzi scheme and a wrongdoer’s fraudulent intent.”); *Wing v. Alvey*, No. 2:08-cv-796, 2009 WL 223612, at *1 (D. Utah Jan. 29, 2009) (“[N]umerous courts have also held that a criminal conviction for operating a Ponzi scheme establishes the operator’s fraudulent intent.”); *In re McCarn’s Allstate Finance, Inc.*, 326 B.R. 843, 851 (M.D. Fla. 2005) (“Even if the information or indictment did not specifically label the fraud a ‘Ponzi scheme,’ if the allegations in the information establish that the debtor ran a scheme whereby the debtor intended to defraud the debtor’s creditors, evidence of a guilty verdict or plea agreement admitting the charges can establish the existence of a Ponzi scheme.”).

G.Rust’s Guilty Plea does not merely admit to the operation of a Ponzi scheme. G.Rust admits to specific facts conclusively establishing that Receivership Defendants’ investment program operated as a Ponzi scheme, including but not limited to the following:

1. That Receivership Defendants “diverted nearly all investor funds received to unrelated businesses, to personal uses, and to make payments to other investors”;

2. That, despite G.Rust's representations to investors, "there was no significant actual silver trading occurring and no meaningful amount of investor money was used to purchase and store actual silver";
3. That "RRC traded almost no silver and had no trading mechanism that could generate such returns, and we used investor money in a way that only ever resulted in losses of the invested funds";
4. That G.Rust "used investor funds for [his] own personal use and benefit, for unrelated businesses that all operated at significant losses, and to pay other investors";
5. That "[t]o convince investors and potential investors that their investments were profitable and to convince potential investors that the silver trading program was earning money, [G.Rust] used investment money from later investors to pay the promised returns to earlier investors."

[Ex. A, G.Rust Guilty Plea at 5-7.]

Thus, the G.Rust Guilty Plea conclusively establishes the *sine qua non* of a Ponzi scheme: that newly invested funds were used to pay returns to existing investors. *See S.E.C. v. Management Solutions, Inc.*, No. 2:11-cv-1165-BSJ, 2013 WL 4501088, at *19 (D. Utah Aug. 22, 2013). The Receiver's independent investigation is entirely consistent with the G.Rust Guilty Plea and confirms that Receivership Defendants operated their investment program as a Ponzi Scheme.

III. Receivership Defendants' Investment Program Was a Ponzi Scheme.

Pursuant to the Court's instructions, the Receiver has extensively investigated the business dealings of Receivership Defendants. The Receiver's investigation also conclusively establishes that Receivership Defendants operated their investment program as a Ponzi scheme.

As an initial matter, as in the G.Rust Guilty Plea, G.Rust expressly admitted when interviewed by investigators that he used newly invested funds to pay returns to existing investors. *See* Hafen Report at 15 & Ex. F at 11:8-18. Similarly, G.Rust admitted that—despite his representations to investors—Receivership Defendants engaged in little to no trading and that what little trading was conducted had generated net losses to investors. *See* Hafen Report, Ex. F at 30:12-31:2.

These admissions are consistent with the Receiver’s review of the books and records of Receivership Defendants. The Receiver discovered no evidence of purchases of silver in the amounts necessary to correlate with G.Rust’s representations to investors. Hafen Report at 16. Nor has the Receiver discovered any evidence that Receivership Defendants ever stored significant amounts of physical metals at Brinks or any other facility. *Id.*

Mr. Stong’s analysis confirms that Receivership Defendants used newly invested funds to pay returns to existing investors. Since 2008, the Receivership Defendants raised at least \$225 million from and paid out at least \$175 million to investors. Strong Report, at pp. 6-7. Mr. Strong also opined that the net operating income of RRC—the only profit-making business—was insufficient to make payments to investors. *Id.* at 76.

For example, Mr. Strong’s analysis revealed that RRC’s total operating income in TY2008 was, at best, \$259,154. *Id.* at 6, 23-24. During that same year, RRC took in at least \$3.2 million from investors and made payments in excess of \$1.6 million to investors. *Id.* RRC also made payments to its affiliated business entities in excess of \$1.5 million. *Id.* None of the other RRC-affiliated entities was a net cash-positive operation and all were heavily subsidized by RRC. *Id.* Based on the finances of RRC and its affiliated entities, it is clear that the payments made to investors in 2008 could only have come from other investors’ funds. *Id.* There was simply no other source of funds from which to pay these investor returns.

Moreover, from 2008 until the appointment of the Receiver in November 2018, Receivership Defendants' financial condition continued to deteriorate. As Mr. Strong's analysis makes clear, Receivership Defendants continued to take in ever-increasing funds from investors and to pay out exorbitant returns without any legitimate underlying business activity. Strong Report, EX194 (summarizing amounts raised from and paid to investors on a year-by-year basis).

The Receiver's preliminary analysis has revealed that investors likely suffered net principal losses in excess of \$100 million related to the Receivership Defendants' actions.⁴ [*Id.* at 77.] At the time the Enforcement Action commenced, the assets of RRC were grossly inadequate to repay the amounts owed to investors, and RRC had no reasonable expectation of ever generating sufficient funds to repay those amounts.

In short, the Silver Pool exhibited the classic characteristics of a Ponzi scheme:

- (1) newly attracted investor funds were used to finance payments to existing investors;
- (2) investors were promised significant returns with little to no risk;
- (3) investors were promised that these returns would be consistent;
- (4) the Receivership Defendants, in fact, paid substantial returns to early investors in order to entice new investment;
- (5) the Receivership Defendants promoted the Silver Pool as an exclusive, highly complex investment opportunity;

⁴ In the G.Rust Guilty Plea, G.Rust stipulated to a money judgment in the amount of \$153,073,328.32 and indicated that such a judgment represented "property acquired from or traceable to my offenses." G.Rust Guilty Plea at 10.

(6) the Receivership Defendants' assets were grossly inadequate to repay amounts owed to investors, and the Receivership Defendants had no reasonable expectation of being able to generate sufficient funds to meet those obligations.

OBJECTION PROCEDURE

As discussed above, the Court has previously determined in three separate ancillary proceedings that the investment scheme operated by Receivership Defendants was a Ponzi scheme. *See Hafen v. Famulary*, 2:19-cv-00627-TC, Dkt. No. 28; *Hafen v. Brimley*, 2:19-cv-00875-TC, Dkt. No. 21; *Hafen v. Evans*, 2:19-cv-00895-TC, Dkt. No. 38. The Receiver desires to obtain a definitive finding in this action that Receivership Defendants operated a Ponzi scheme, which will eliminate the need to continue re-litigating the issue in all of the outstanding ancillary proceedings or any future ancillary proceeding. In order to streamline other ancillary actions and conserve the resources of the Receivership Estate, the Receiver now seeks a conclusive determination that the Silver Pool operated as a Ponzi scheme since at least 2008, which will act to preclude further litigation of that issue.

Because the Receiver recognizes that certain interested parties may wish to object or respond to this Motion, the Receiver respectfully requests that the Court apply the Summary Disposition Procedure previously established by the Court to this Motion and all objections related thereto. [See Dkt. No. 165.] This will allow the Receiver to expeditiously and cost effectively resolve any challenges to the Ponzi scheme determination while preserving the due process rights of litigants in the ancillary proceedings and other interested parties. To that end, the Receiver proposes the following procedures:

1. Once the Receiver files this Motion, the Receiver will serve a copy of the Motion and accompanying exhibits on all parties to existing ancillary proceedings and any party

- with whom the Receiver has a tolling agreement. The Receiver will also serve a copy of the Motion and accompanying exhibits to all parties on the Receiver's master mailing matrix and post a copy to the Receiver's website at <http://rustrarecoinreceiver.com>.
2. As set forth in the Court's *Order Granting Motion to Allow Summary Disposition Procedure*, any party wishing to object or respond to this Motion must lodge their response or objection directly with the Receiver within 30 days. The objecting party will not become a party to the overall proceeding, will not intervene in the case, and will not file any pleadings or other documents directly with the Court unless otherwise authorized to do so by the Court.
 3. The Receiver shall provide copies of all objections received to Plaintiffs.
 4. If the objecting party specifically requests discovery, the parties will have an additional 30 days to complete discovery. Discovery will be conducted pursuant to the *Federal Rules of Civil Procedure*, except that written discovery must be responded to within 14 days. Either side may seek relief from the Court if the requested discovery is unduly burdensome or not proportional to the issues being determined.
 5. Following the close of any specifically requested discovery, the Receiver will lodge the objections with the Court and request a hearing on the matter. If an evidentiary hearing is needed, the Receiver will schedule additional deadlines regarding disclosure of witnesses and exhibits as needed.
 6. The Receiver and Plaintiffs may file a response to any objection five days before the hearing.

CONCLUSION

For the reasons discussed herein, the Receiver respectfully requests a conclusive determination that Receivership Defendants operated a Ponzi scheme since at least 2008. The Receiver requests that the Court adopt its previously approved summary disposition procedure as the objection procedure for any person objecting to this Motion. Such a streamlined process will obviate the need for the Receiver to continue to re-litigate the Ponzi issue, which will greatly reduce the financial impact on the Receivership Estate, while allowing interested parties a meaningful right to be heard.

A proposed order is submitted herewith.

DATED this 15th day of March, 2022.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Cynthia D. Love

Joseph M.R. Covey

Cynthia D. Love

Attorneys for the Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION FOR PONZI DETERMINATION AND TO ESTABLISH AN OBJECTION PROCEDURE** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on March 15, 2022, which sent notice of the electronic filing to all counsel of record, (2) posted on the Receiver's website (rustrarecoinreceiver.com), (3) emailed to all those on the Receiver's master mailing matrix, and (4) served on all parties to existing ancillary proceedings and any party with whom the Receiver has a tolling agreement.

/s/ Cynthia D. Lovei

EXHIBIT B

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,
v.

RUST RARE COIN INC., a Utah corporation,
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.

**ORDER ESTABLISHING PONZI
OBJECTION PROCEDURE**

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

District Judge Tena Campbell
Chief Magistrate Judge Dustin B. Pead

On March 15, 2022, Jonathan O. Hafen, the court-appointed Receiver in the above-captioned matter, filed a Motion for Ponzi Determination and to Establish an Objection Procedure. (ECF No. 448.) As its name suggests, the Motion asks for two things. The Receiver seeks a court determination that an investment program operated by Receivership Defendants was a Ponzi scheme since at least 2008. The Receiver also asks the court to adopt its prior summary disposition procedure (ECF No. 165) to allow for objections and to decide the Ponzi-

scheme issue. Having considered the Motion, the court will adopt its summary disposition procedure to decide the Ponzi-scheme issue, and it will defer deciding that issue pending the following objection procedure. The court ORDERS as follows:

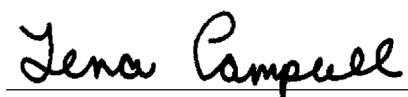
1. Any interested party wishing to object to the Receiver's Motion shall submit such objection in writing directly to the Receiver within thirty days of entry of this Order.
2. The Receiver shall provide copies of all objections received to Plaintiffs.
3. If an objecting party specifically requests discovery, the parties shall have an additional thirty days to complete such discovery, which will be conducted in accordance with the Federal Rules of Civil Procedure with the exception that written discovery must be responded to within fifteen days. Either side may seek relief from the court if the requested discovery is unduly burdensome or not proportional to the issues being determined. Any such discovery will be subject to the standard protective order.
4. After the deadline for objections passes and any specifically requested discovery is completed, the Receiver shall lodge all objections with the court and request a hearing at which such objections may be considered.
5. If an evidentiary hearing is required, the Receiver may request additional deadlines related to the disclosure of witnesses and exhibits as needed.
6. The Receiver and Plaintiffs may file a response to any objection five days prior to the hearing.

DATED this 30th day of March, 2022.

///

///

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

TENA CAMPBELL
United States District Judge

DUNN LAW FIRM

Adam C. Dunn, #10926
110 West Tabernacle
St. George, Utah 84770
Telephone No.: (435) 628-5405
Fax No.: (435) 628-4145
acdunn@dunnfirm.com

Attorneys for Gary Stillman

**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,
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.

**GARY STILLMAN'S
PARTIAL OBJECTION TO
MOTION FOR PONZI
DETERMINATION PURSUANT TO
Dkt. 451, ORDER ESTABLISHING
PONZI OBJECTION PROCEDURE**

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

Judge: Tena Campbell

Magistrate Judge: Dustin Pead

COMES NOW, the interested party, GARY STILLMAN, an individual (hereinafter sometimes "Stillman"), by and through his attorneys, Adam C. Dunn of the DUNN LAW FIRM, and hereby submits this PARTIAL OBJECTION TO MOTION FOR PONZI DETERMINATION

PURSUANT TO Dkt. 451, ORDER ESTABLISHING PONZI OBJECTION PROCEDURE, as follows:

PREFERRED DISPOSITION & REQUESTED RELIEF

Jonathan O. Hafen, as Court-Appointed Receiver (“Receiver”), has filed a Motion for Ponzi Determination and to Establish an Objection Procedure (hereinafter “Motion”) at Dkt. 448. The Court entered an order on that Motion, Dkt. 451, establishing the objection procedure for interested parties.

In that Motion, the Receiver specifically asks this Court to make a judicial determination that the “...Receivership Defendants [as defined in the Motion] operated a silver investment scheme (the “Silver Pool”) as a Ponzi scheme since at least 2008”. Motion at p. 2. In footnote number 2 on page 3 of the Motion, the Receiver states that “...the Receiver seeks a determination that none of the various iterations of Rust’s investment programs were legitimate and that all of the various programs touted by Rust were simply part of the larger Ponzi scheme.”

Stillman does not object to the Court entering a judicial determination that the “Silver Pool” operated as a Ponzi scheme; however, to the extent the Receiver seeks a judicial determination that would characterize all business operations of Rust Rare Coin, Inc. (“RRC”) or Gaylen D. Rust as a Ponzi scheme since 2008, Stillman objects. More specifically, to the extent that this Court’s determination lumps the consignment business of RRC or Gaylen Rust into “Rust’s investment programs”, Stillman objects to such determination and the adoption of any Ponzi presumption for such operations. As such, Stillman asks this Court to clarify that, while the Silver Pool may have been operated as a Ponzi Scheme, consignment operations by RRC were not part of the Ponzi scheme operations.

Further, insomuch as the Receiver may contend that the consignment business of RRC or Gaylen Rust did constitute a Ponzi scheme, discovery is requested on the limited scope of accounting for items consigned, monies paid for such consigned goods, and profits to RRC or Gaylen Rust for such goods. The Receiver, having access to all of the books and records of RRC and Gaylen Rust, should be able to produce such accounting records and should be required to do so through discovery. This request for limited discovery is consistent with the Order Establishing Ponzi Objection Procedure (Dkt. 451) at ¶ 3.

**RESPONSE TO RELEVANT MATERIAL FACTS PRESENTED
BY RECEIVER AND ADDITIONAL FACTS IN SUPPORT OF OBJECTION**

1. Stillman does not have sufficient information to either admit or deny the Relevant Material Facts presented by the Receiver that are numbered 1 through 47; however, for purposes of this Objection, Stillman does not dispute the facts as presented by the Receiver. Instead, Stillman presents additional facts below to illustrate that the consignment business of RRC and Gaylen Rust were not operated as a Ponzi Scheme.

2. In the early 1990's, Stillman began collecting various items of United States historical import, including Abraham Lincoln currency, as well as autographs from 1776 to 1899 of famous Americans. *See* Declaration of Gary Stillman ("Stillman Decl."), a copy of which is attached hereto as Exhibit A, at ¶ 3.

3. At that time, Stillman studied collectability of monies and spent considerable time determining where he wanted to focus his collecting efforts and focused almost entirely on early Americana collectibles. *See Id.* at 4.

4. In or about, 1995 Stillman connected with Alvin Rust. *See Id.* at 5.

5. Stillman understood that Alvin Rust focused his collecting efforts on similar collectibles, but also held a number of other collectibles, including a significant “Mormon Money” collection. *See Id.* at 6.

6. Stillman and Alvin Rust began sharing significant information with each other on their separate acquisitions and collections, including Stillman’s interest in currency from the early days of the United States and covering the revolutionary period of the U.S. *See Id.* at 7.

7. Stillman and Alvin Rust would share insights on collectability of items and new items for sale in the market that may interest the other. *See Id.* at 8.

8. Stillman learned that Alvin Rust had purchased items from the master forger Mark Hoffman. *See Id.* at 9.

9. Stillman learned that Alvin Rust had sold some of the items he had purchased from Mark Hoffman to various collectible stores and others prior to Hoffman’s fraud being discovered. *See Id.* at 10.

10. Once Hoffman was discovered as a fraud, the stores and others that had purchased some of the items from Alvin Rust that were creations of Hoffman demanded their money back from Alvin Rust. *See Id.* at 11.

11. Alvin Rust approached Stillman and told him of the damage that Hoffman’s fraud had done to Alvin Rust; he indicated to Stillman that he needed to raise funds to repay the stores and others that had purchased those fraudulent items from Alvin Rust that he had acquired from Hoffman. *See Id.* at 12.

12. Alvin Rust told Stillman that he had a very valuable “Mormon Money” collection and other valuable items from the early history of the Church of Jesus Christ of Latter-Day Saints. *See Id.* at 13.

13. Alvin Rust asked Stillman if he would be interest in purchasing that collection in order for Alvin Rust to raise funds to repay the various stores and other persons who had purchased fraudulent Hoffman items from Alvin Rust. *See Id.* at 14.

14. Stillman expressed interest in this collection of Alvin Rust, and began to sell his early Americana collection in order to raise capital to purchase the “Mormon Money” collection and other valuable items from the early history of the Church of Jesus Christ of Latter-Day Saints from Alvin Rust. *See Id.* at 15.

15. After a number of months, Stillman was able to sell enough of his early Americana collection to have the capital necessary to purchase Alvin Rust’s “Mormon Money” collection and other valuable items from the early history of the Church of Jesus Christ of Latter-Day Saints. *See Id.* at 16.

16. Because of this purchase, Stillman began collecting Mormon Money and other collectibles from the early days of the Church of Jesus Christ of Latter-Day Saints. *See Id.* at 17.

17. Stillman began to extensively study that field of collectibles; he read many books in that field and come to know many of those people that collected in that arena of collectibles. *See Id.* at 18.

18. Stillman learned who held what items, when they purchased those items, and possible sales of those items. *Id.* at 19.

19. It was around that time that Stillman met Gaylen Rust. *Id.* at 20.

20. Gaylen Rust knew that Stillman had purchased Alvin Rust's collection and told Stillman that if he ever wanted to sell the collection he purchased from Alvin Rust, then Gaylen Rust would buy it from Stillman for what he paid plus appreciation. *Id.* at 21.

21. At that time, collecting Mormon Money was a fairly new thing and had a very few followers at that time; due to that and the fact that Stillman purchased the collection from Alvin Rust, Stillman told Gaylen Rust that if Stillman ever sold the collection he purchased from Alvin Rust he would offer it first to Gaylen Rust. *Id.* at 22.

22. At that time, I also learned that Gaylen Rust would take many collectibles on consignment. *Id.* at 23.

23. Over time, Stillman purchased many items from customers of Gaylen Rust who had placed collectibles from the Church of Jesus Christ of Latter-Day Saints on consignment with Gaylen Rust. *Id.* at 24.

24. Stillman continued to learn the best auctions to attend, participated in phone bidding (and later online bidding), and bought and sold significant numbers of items. *Id.* at 25.

25. As he purchased more and more, his hobby grew and he would buy and sell numerous pieces, often culling out the very best from a collection he purchased and then selling off the rest. *Id.* at 26.

26. Stillman increased his income from these endeavors all the while growing his own collection which included, among other things, (a) first editions of the Book of Mormon, Pearl of Great Price, (b) an Emma Smith Hymnal, (c) Mormon Gold Pieces, (d) a Parley Pratt letter, (e) an Erastus Snow letter, and (f) significant holdings of Mormon Money. *Id.* at 27.

27. Stillman's collection continued to grow and he continued to earn income from his buying and selling of collectibles from the Church of Jesus Christ of Latter-Day Saints until, in May of 2010, he suffered an Ischemic Stroke. *Id.* at 28.

28. After suffering his stroke, Stillman no longer was actively buying and selling collectibles; instead, he was focused on therapy and efforts to restore his health. *Id.* at 29.

29. By November of 2010, Stillman determined to sell a portion of his collection to provide income to him and his wife. *Id.* at 30.

30. Around that time, Stillman approached Gaylen Rust to assist him in consigning a portion of his collection, including a first edition Book of Mormon. *Id.* at 31.

31. Then, in 2011, Stillman suffered another stroke. *Id.* at 32.

32. Due to these strokes, Stillman consigned more of his collectibles with Gaylen Rust or his company RRC. *Id.* at 33.

33. From the end of 2010 through the latter portion of 2011, Stillman consigned collectibles relating to the Church of Jesus Christ of Latter-Day Saints to Gaylen Rust that were valued in excess of \$1,094,100. *Id.* at 34.

34. Stillman understood that the sale of high dollar collectibles takes time due to the need to find the right buyer and in light of the then economic challenges plaguing much of Utah and our country. *Id.* at 35.

35. Stillman trusted Gaylen Rust and would periodically check in with Gaylen Rust about the sale of the consigned collectibles. *Id.* at 36.

36. Over the course of the years from 2010 to 2013, Gaylen Rust continued to hold the portion of Stillman's collection that Stillman had delivered to him for consignment, and he would periodically pay Stillman funds from the sale of the collectible. *Id.* at 37.

37. As of the Spring of 2013, Gaylen Rust told Stillman that he had been able to sell approximately half of the collection that Stillman had consigned to RRC or Gaylen Rust. *Id.* at 38.

38. Based on the values that Stillman asked for the consigned collectibles, Gaylen Rust and/or RRC still held \$541,430 worth of collectibles on consignment as of the Spring of 2013. *Id.* at 39.

39. Over the latter part of 2011 and into 2012, Stillman continued to suffer mini strokes and thus, due to his deteriorating health, asked Gaylen Rust if he would be willing to consign the balance of Stillman's collection in the Spring of 2013. *Id.* at 40.

40. Stillman trusted Gaylen Rust to consign the collectibles and ensure that they would not sell below the value that Stillman wanted. *Id.* at 41.

41. In or around the Spring of 2013, Gaylen Rust came to the home of Stillman and inspected the remaining portion of the collection of early items from the Church of Jesus Christ of Latter-Day Saints. *Id.* at 42.

42. Gaylen Rust was pleased with the collection and agreed to consign the balance of Stillman's collection. *Id.* at 43.

43. At that meeting, Stillman expressed to Gaylen that he was concerned about the time that it was taking to sale the portion of the collection that Stillman had delivered in 2010 and 2011. *Id.* at 44.

44. Stillman told Gaylen Rust that I needed income from the collection. *Id.* at 45.

45. After some discussion, Gaylen Rust proposed to Stillman that Gaylen Rust and/or RRC would pay Stillman a minimum of \$30,000 per month for the items on consignment; if more items sold in a month, those funds would be paid to Stillman, if less sold in a month, then Rust would still pay Stillman \$30,000 per month but would keep track of any shortfall and that shortfall would then be made up with the future sale of items on consignment. *Id.* at 46.

46. Stillman and Gaylen Rust discussed that there would not be interest on the consigned items because they would most likely increase in value over time as he held them on consignment for sale. *Id.* at 47.

47. In the Spring of 2013, Stillman and Gaylen Rust agreed that the value of the collection that Stillman was consigning with Gaylen Rust, including both the value of the items delivered to Gaylen Rust prior to 2013 that were then, according to Gaylen Rust, unsold, and those delivered in 2013 was \$2,039,580. *Id.* at 48.

48. Gaylen Rust agreed on that valuation and Gaylen Rust agreed that due to appreciation of the consigned items that he would not sell the collection for less than \$2,160,000. *Id.* at 49.

49. Stillman and Gaylen Rust agreed that Gaylen Rust would ensure that he and/or RRC would use their best efforts to sale the collection (which included the remaining items on consignment from 2010 as well as the new items to be consigned in 2013). *Id.* at 50.

50. Stillman and Gaylen Rust also agreed that even though Gaylen Rust and/or RRC would work diligently on selling the collection, that even if there were not many collectibles sold in a given month, that Gaylen Rust and/or RRC would pay the fixed amount of \$30,000 each month to Stillman to ensure that he had income for he and his wife while Stillman was facing his challenging health problems. *Id.* at 51.

51. Stillman and Gaylen Rust agreed that if less items sold in a month, then Rust would still pay Stillman \$30,000 per month, but would keep track of any shortfall and that shortfall would then be made up with the future sale of items on consignment. *Id.* at 52.

52. Stillman and Gaylen Rust agreed that if more items sold in a month than \$30,000 worth of collectibles, those funds would be used to cover any prior shortfall and then would be paid to Stillman. *Id.* at 53.

53. Stillman and Gaylen Rust agreed that because Gaylen Rust would not sale Stillman's collection for less than \$2,160,000, it may take time to find the right buyers; however they agreed that under no circumstances would Gaylen Rust miss a monthly payment and that he therefore would pay the minimum sale amount of \$2,160,000 over six years (which was essentially payments of \$30,000 per month for six years). *Id.* at 54.

54. Any amounts that Gaylen Rust and/or RRC received above that amount of \$2,160,000 from selling the collection would be payment to Gaylen Rust for his sale of the Stillman Collection. *Id.* at 49. *Id.* at 55.

55. Based on the agreement between the parties, Stillman's wife delivered the balance of the collection of items from the early history of the Church of Jesus Christ of Latter-Day Saints to Gaylen Rust and/or RRC in or about April of 2013. *Id.* at 56.

56. After a few months Gaylen Rust had not paid Stillman the agreed upon \$30,000 per month. *Id.* at 57.

57. Stillman, through his difficult health, made the journey to RRC because of the missed payments to speak with Gaylen Rust about the missed payments. *Id.* at 58.

58. Gaylen Rust indicated that he had in fact sold \$396,836 worth of the collection, but that he had invested those funds in Silver for Stillman. *Id.* at 59.

59. Initially, Stillman was upset; Gaylen Rust then told Stillman of a silver buying enterprise that he started with four or five friends and that they were making very good returns. *Id.* at 60.

60. Gaylen Rust told Stillman that he had thought it was such a good deal that he had invested the \$396,836 for Stillman in silver. *Id.* at 61.

61. Gaylen Rust assured Stillman that his \$396,836 that was supposed to have been paid to Stillman for the sale of a portion of Stillman's collection was completely secure because it was invested in actual silver. *Id.* at 62.

62. Gaylen Rust told Stillman that he could liquidate the silver and Gaylen Rust would pay Stillman the \$396,836, or that Stillman could leave those funds invested in the silver and that he was sure Stillman would make a very nice return. *Id.* at 63.

63. Stillman discussed the option with his wife, and they decided to leave the \$396,836 invested in silver to see how it did. *Id.* at 64.

64. Stillman trusted Gaylen Rust and agreed to leave the \$396,836 invested in silver but that all of the sale proceeds from remaining collectibles on consignment with him needed to be paid to Stillman as previously agreed, and not invested in the silver. *Id.* at 65.

65. Gaylen Rust agreed that he would pay Stillman for all proceeds from the sale of the consigned collection going forward and not invest any further proceeds from the consigned collection in silver. *Id.* at 66.

66. Stillman told Gaylen Rust that he may still ask that Gaylen Rust liquidate the silver if Stillman felt like it was not performing or that he needed the funds. *Id.* at 67.

67. Then, after Stillman received paperwork from Gaylen Rust showing the increase in the value of the Silver, Stillman and his wife determined to leave the \$396,836 invested in silver long term. *Id.* at 68.

68. Neither Gaylen Rust nor RRC ever paid Stillman any funds from the \$396,836 that Gaylen Rust originally claimed was used to purchase silver in Stillman's name and that Stillman and his wife decided to leave invested in silver. *Id.* at 69.

69. Gaylen Rust and/or RRC paid fund to Stillman from the sale of consigned collectibles for a time. *Id.* at 70.

70. Stillman was shocked in November 2018 when he heard that RRC was shut down. *Id.* at 71.

71. At that time, Gaylen Rust and/or RRC still owed stillman \$561,000.00 on his collection of items from the early period of the Church of Jesus Christ of Latter-Day Saints that were consigned with Gaylen Rust and/or RRC. *Id.* at 72.

72. According to paperwork that Stillman received from RRC and/or Gaylen Rust, Stillman's silver collection that started at a value of \$396,836 in 2013 was valued by Gaylen Rust at over \$3,000,000. *Id.* at 73.

73. The Receiver has previously acknowledged that Gaylen Rust and/or RRC operated, at least in part, as legitimate consignees of personal property. *See* Motion for Permission to Return Consigned Items, Dkt. 359, generally.

74. The Court has also acknowledged that Gaylen Rust and/or RRC had “...valid consignment agreements...” and thus operated, at least in part, as legitimate consignees of personal property. *See* Order Granting Permission to Return Items to Consignors, Dkt. 374, generally.

ARGUMENT

I. The Consignment Business of Rust¹ was not a Ponzi scheme.

Here, Stillman does not object to the classification of the “Silver Pool” itself as a Ponzi scheme. However, by the Motion, the Receiver seeks “... a determination that none of the various iterations of Rust’s investment programs were legitimate and that all of the various programs touted by Rust were simply part of the larger Ponzi scheme”. Inasmuch as this relief in the Motion could be construed so as to include the consignment business of Rust as an “investment program”, Stillman objects to the Motion. Stillman does not believe that the consignment business of Rust was an “investment program” and therefore should not be categorically included in the “Ponzi scheme” determination sought in the Motion.

In his Motion, the Receiver points out that “[a] Ponzi scheme is ‘an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments.’” Motion, at p. 11 (citing *Jobin v. McKay*, 84 F.3d 1330, 1332 n.1 (10th Cir. 1996); accord *S.E.C. v. Management Solutions, Inc.*, No. 2:11-cv-1165-BSJ, 2013 WL 4501088, at *19 (D. Utah Aug. 22, 2013). The Receiver continues that “[i]n order to show that an investment scheme falls within the definition of a Ponzi scheme, the Receiver must prove by a preponderance of the evidence the *sine qua non* of a Ponzi scheme: that returns to earlier investors were paid by funds from later investors.”

¹ Rust is defined in this Objection as Gaylen Rust and Rust Rare Coin, Inc.

Beginning in 2010, Stillman consigned a significant collection of items from the early history of the Church of Jesus Christ of Latter-Day Saints with (“Rust”). Black’s Law Dictionary, 7th Ed., defines “to consign” as “(1) to transfer to another’s custody or charge, (2) to give (goods) to a carrier for delivery to a designated recipient, or (3) to give (merchandise or the like) to another to sell, usually with the understanding that the seller will pay the owner for the good from the proceeds”. Black’s Law Dictionary, 7th Ed., defines “investment” as “[a]n expenditure to acquire property or assets to produce revenue; a capital outlay”. Stillman was not acquiring anything from Rust. On the contrary, he was placing goods with Rust so that Rust could sell those goods to third parties and repay Stillman for those goods. There is no factual or legal basis for determining that the consignment of materials with Rust constituted an investment.

That collection of Stillman that he consigned to Rust consisted of very valuable items, including first edition Books of Mormon and the Pearl of Great Price, Mormon gold, and other valuables. Initially, Stillman was not investing in silver nor was he investing in any other business enterprise of Gaylen Rust. Stillman was simply a consignor delivering goods to a consignee who was selling those goods. In 2010, Stillman consigned a considerable amount of items with Rust. Rust had sold and paid Stillman for a portion of those valuables from 2010 to 20113. In the Spring of 2013, Stillman understood that Rust still held items of valued in excess of \$541,000 for consignment. Because Rust had paid Stillman when, as Stillman understood, those items sold, Stillman then consigned more goods with Rust.

By the Spring of 2013, Rust had agreed to consign, and was then consigning, over \$2,000,000 worth of memorabilia from Stillman. Instead of paying Stillman for the first items

Rust had sold (equaling \$396,836 of value), Rust unilaterally “invested” those funds in silver. Only after he did this did he receive permission from Stillman to leave those funds invested in “actual silver”. However, Rust continued to sell items consigned to it by Stillman and paid Stillman from the sale of those goods.

While Rust duped Stillman into investing in the Silver Pool, Stillman did not “invest” his valuable collection. The sale of Stillman’s collection funded payments to Stillman, not monies taken in by Rust in a so called “silver investment”. When a person purchased a consigned good from Rust, they were not investing in the Silver Pool; instead, they were buying a valuable piece of personal property. Therefore, funds paid for items consigned from Stillman were not from investors but rather purchasers. Because of the nature of consignment, it was not and cannot be construed as a Ponzi scheme.

Here, the Receiver presents very limited financial evidence relative to the general business operations of RRC. Stillman acknowledges that the Receiver has illustrated very dire financial information from 2008, but the Receiver does not appear to differentiate between Rust’s consignment and the Silver Pool. Again, to the extent the Motion is truly limited to a determination on the “Silver Pool” being deemed a Ponzi scheme, Stillman does not object. However, to the extent that the determination can be broadened to include the consignment business of Rust, it should be denied.

II. Gaylen Rust’s guilty plea does not provide evidence that the consignment business of Rust was a Ponzi scheme.

The Receiver argues that Gaylen Rust’s guilty plea and 2008 financial data are sufficient evidence for the Court to grant the Motion. Again, Stillman does not dispute this position as it relates to the Silver Pool, but objects that this evidence supports a finding that the consignment

business of Rust can be found to be a Ponzi scheme. None of the admissions cited by the Receiver address the consignment business of Rust. Each of the admissions go directly to the investors and using funds from investors to pay other investors. In fact, Rust took advantage of Stillman and pilfered \$396,836 from Stillman to purchase “actual silver”. According to Rust, that investment by Stillman, for which he was never paid, grew to exceed \$3,000,000. Further, none of the financial data presented shows how the consignment business of Rust was an investment scheme.

From the face of the Motion, the Receiver is seeking to invoke the Ponzi presumption for transactions from 2008 through the takeover of Rust by the Receiver. The case of *In re Indep. Clearing House* stands for the proposition that only where there is no other inference that can be ascertained from the facts of a case, can a court rule on summary judgment that a Ponzi scheme existed. 77 B.R. 843, 860 (D. Utah, 1987). In that case, the Court said that “[t]he perpetrator must know that the scheme will eventually collapse as a result of the inability to attract new investors ... He must know all along from the very nature of his activities, that the investors at the end of the line will lose their money.” *Id.* The testimony evidence of Gaylen Rust presented in the Motion shows that Gaylen Rust believed his “Silver Pool” would collapse. Stillman concedes that Rust admitted that “...RRC traded almost no silver and had no trading mechanism that could generate such returns, and we used investor money in a way that only ever resulted in losses of investor funds”. Motion at p. 14.

However, the admissions of Gaylen Rust do not address consigned items for which there was actual value given for monies actually paid. Indeed, there is no evidence that Gaylen Rust believed the consignment business was any kind of investment scheme. Items taken by Rust on

consignment were believed to be sold. Funds from those sales were paid. Stillman believed that he was being paid from the proceeds of the sale of his personal collection. For instance, the consignment of a first edition Book of Mormon no doubt resulted in a sale and monies were paid to the true owner, Stillman. Because of the lack of factual evidence regarding the consignment business of Rust, there is no factual basis before the Court that would warrant a finding that the consignment business was a Ponzi scheme.

III. The Receiver has not presented other evidence supporting a conclusion that the consignment business of Rust was a Ponzi scheme.

The Receiver presents evidence from 2008 stating that the total operating income of RRC in TY2008 was, at best, \$259,154. *See* Motion at p. 15. The Receiver also argues that RRC took in at least \$3.2 million from investors and made payments to investors in excess of \$1.6 million. *See Id.* However, the receiver has not presented evidence in its motion delineating the funds that were paid for actual collectibles on consignment with Rust. The Receiver has not detailed in the Motion a factual basis for determining that the consignment business was “an investment scheme” or that it was part of the broad Silver Pool for which the Receiver seeks a blanket determination.

Indeed, the Receiver’s Motion is akin to a summary judgment motion, and he has not carried his burden to present evidence that the consignment portion of the Rust business was part of the Ponzi scheme. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (stating that “...a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.”). Not only has the Receiver failed to present any facts that would show that the consignment business of Rust was a Ponzi scheme, the Receiver has acknowledged the legitimacy of the consignment business by moving this Court for return of

consigned items (Dkt. 359). This Court has also countenanced the legitimacy of the consignment business by approving the return of consigned items (Dkt. 374).

IV. Consistent with the Order Establishing Ponzi Objection Procedure, Stillman requests discovery on the limited scope of the consignment business.

Absent any evidence showing that the consignment business of Rust was a Ponzi scheme, the Court should limit its ruling to the specific determination that only the Silver Pool investment program was a Ponzi scheme and not the consignment portion of the business of Rust. However, in accordance with the Order Establishing Ponzi Objection Procedure (Dkt. 451), Stillman requests limited discovery on accounting for items consigned, monies paid for such consigned goods, and profits to RRC or Gaylen Rust for such goods. This information would assist in showing that the consignment business of Rust was not operated as a Ponzi scheme and that parties that consigned their valuables with Rust were not “investing” in any program and instead were simply placing goods with Rust so that Rust could sale those goods to third-parties. This request for limited discovery is consistent with the Order Establishing Ponzi Objection Procedure (Dkt. 451) at ¶ 3.

CONCLUSION

Because of all of the foregoing, and based on the other pleadings and papers in this action, Gary Stillman requests that this Court clarify that, while the Silver Pool may have been operated as a Ponzi Scheme, consignment operations by RRC and Gaylen Rust were not part of a Ponzi scheme. Alternatively, Stillman requests discovery so that information related to the consignment business of RRC and Gaylen Rust, which are available to the Receiver, may be presented to the Court.

///

DATED this 29th day of April, 2022.

DUNN LAW FIRM

/s/ Adam C. Dunn
ADAM C. DUNN
Attorneys for Gary Stillman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of Dunn Law Firm and that on the 29th day of April, 2022, she caused to be served a true and correct copy of the foregoing PARTIAL OBJECTION TO MOTION FOR PONZI DETERMINATION PURSUANT TO Dkt. 451, ORDER ESTABLISHING PONZI OBJECTION PROCEDURE upon the parties below, via email as follows:

Attorneys for Johnathan O. Hafen as Receiver for the Rust Rare Coin Receivership

PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, Utah 84111

Joseph M.R. Covey (7492) emailed to: jcovey@parrbrown.com
Cynthia D. Love (14703) copied email to: clove@parrbrown.com

/s/ Melissa Strate
Employee of Dunn Law Firm

Exhibit A

DUNN LAW FIRM

Adam C. Dunn, #10926
110 West Tabernacle
St. George, Utah 84770
Telephone No.: (435) 628-5405
Fax No.: (435) 628-4145
acdunn@dunnfirm.com
Attorneys for Gary Stillman

**IN THE UNITED STATES DISTRICT COURT
IN AND 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, 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.

**DECLARATION OF GARY STILLMAN
IN SUPPORT OF OBJECTION TO THE
MOTION FOR PONZI
DETERMINATION AND TO
ESTABLISH AN OBJECTION
PROCEDURE**

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

Judge: Tena Campbell

Magistrate Judge: Dustin Pead

STATE OF UTAH)
)
) :ss.
COUNTY OF SALT LAKE)

The undersigned declarant, GARY STILLMAN, in support of the Objection to The Motion for Ponzi Determination and to Establish an Objection Procedure, pursuant to 28 U.S. Code § 1746 hereby states and declares as follows:

1. I am over twenty-one years of age and am of sound mind and am competent to testify to the matters stated herein.
2. I am an interested party to the above-captioned action.
3. In the early 1990's, I began collecting various items of United States historical import, including Abraham Lincoln currency, as well as autographs from 1776 to 1899 of famous Americans.
4. At that time, I studied collectability of monies and spent considerable time determining where I wanted to focus my collecting efforts, and at that time, I focused almost entirely all of my collecting efforts on early Americana collectibles.
5. In or about 1995, I connected with Alvin Rust.
6. I understood that Alvin Rust focused his collecting efforts on similar collectibles, but also held a number of other collectibles, including a significant "Mormon Money" collection.
7. Alvin Rust and I began sharing significant information with each other on our separate acquisitions and collections, including my interest in currency from the early days of the United States and covering the revolutionary period of the U.S.
8. Alvin Rust and I would share insights on collectability of items and new items for sale in the market that may interest each of us.
9. After some time, I learned that Alvin Rust had purchased items from the master forger Mark Hoffman.

10. I also learned that Alvin Rust had sold some of the items he had purchased from Mark Hoffman to various collectible stores and others prior to Hoffman's fraud being discovered.

11. I learned that once Hoffman was discovered as a fraud, the stores and others that had purchased some of the items from Alvin Rust that were creations of Hoffman demanded their money back from Alvin Rust.

12. Alvin Rust approached me and told me of the damage that Hoffman's fraud had done to him; he indicated to me that he needed to raise funds to repay the stores and others that had purchased those fraudulent items from Alvin Rust that he had acquired from Hoffman.

13. Alvin Rust told me that he had a very valuable "Mormon Money" collection and other valuable items from the early history of the Church of Jesus Christ of Latter-Day Saints.

14. Alvin Rust asked me if I would be interest in purchasing that collection in order for Alvin Rust to raise funds to repay the various stores and other persons who had purchased fraudulent Hoffman items from Alvin Rust.

15. I expressed interest in this collection of Alvin Rust, and I began to sell my early Americana collection in order to raise capital to purchase the "Mormon Money" collection and other valuable items from the early history of the Church of Jesus Christ of Latter-Day Saints from Alvin Rust.

16. After a number of months, I was able to sell enough of my early Americana collection to have the capital necessary to purchase Alvin Rust's "Mormon Money" collection and other valuable items from the early history of the Church of Jesus Christ of Latter-Day Saints.

17. Because of this purchase, I began collecting Mormon Money and other collectibles from the early days of the Church of Jesus Christ of Latter-Day Saints.

18. I began to extensively study that field of collectibles; I read many books in that field, and came to know many of the people that collected in that arena of collectibles.

19. I learned who held what items, when they purchased those items, and possible sales of those items.

20. It was around that time that I met Gaylen Rust.

21. Gaylen Rust knew that I had purchased Alvin Rust's collection and told me that if I ever wanted to sell the collection I purchased from Alvin Rust, then Gaylen Rust would buy it from me for what I paid plus appreciation.

22. At that time, collecting Mormon Money was a fairly new thing and had very few followers at that time; due to that and the fact that I purchased the collection from Alvin Rust, I told Gaylen Rust that if I ever sold the collection I purchased from Alvin Rust, I would offer it first to Gaylen Rust.

23. At that time, I also learned that Gaylen Rust would take many collectibles on consignment.

24. Over time, I purchased many items from customers of Gaylen Rust who had placed collectibles from the Church of Jesus Christ of Latter-Day Saints on consignment with Gaylen Rust.

25. I continued to learn about the best auctions to attend, participated in phone bidding (and later online bidding), and bought and sold significant numbers of items.

26. As I purchased more and more, my hobby grew and I would buy and sell numerous pieces, often culling out the very best from a collection I purchased and then selling off the rest.

27. I increased my income from these endeavors all the while growing my own collection which included, among other things, (a) first editions of the Book of Mormon and Pearl of Great Price, (b) an Emma Smith Hymnal, (c) Mormon Gold Pieces, (d) a Parley Pratt letter, (e) an Erastus Snow letter, and (f) significant holdings of Mormon Money.

28. My collection continued to grow, and I continued to earn income from buying and selling collectibles from the Church of Jesus Christ of Latter-Day Saints until, in May of 2010, I suffered an Ischemic Stroke.

29. After suffering his stroke, I no longer was actively buying and selling collectibles; instead, I was focused on therapy and efforts to restore my health.

30. By November of 2010, I determined to sell a portion of my collection to provide some income to me and my wife.

31. Around that time, I approached Gaylen Rust to assist in consigning a portion of my collection, including a first edition Book of Mormon.

32. Then, in 2011, I suffered another stroke.

33. Due to these strokes, I consigned more of my collectibles with Gaylen Rust and/or his company Rust Rare Coin (“RRC”).

34. From the end of 2010 through the latter portion of 2011, I consigned collectibles relating to the Church of Jesus Christ of Latter-Day Saints to Gaylen Rust that were valued in excess of \$1,094,100.

35. I understood that the sale of high dollar collectibles takes time due to the need to find the right buyer and in light of the then economic challenges plaguing much of Utah and our country.

36. I trusted Gaylen Rust and would periodically check in with Gaylen Rust about the sale of the consigned collectibles.

37. Over the course of the years from 2010 to 2013 Gaylen Rust continued to hold the portion of my collection that I delivered to him for consignment, and he would periodically pay me funds from the sale of the collectibles.

38. As of the Spring of 2013, Gaylen Rust told me that he had been able to sell approximately half of the collection that I had consigned to RRC or Gaylen Rust.

39. Based on the values that I asked for the consigned collectibles, Gaylen Rust and/or RRC still held \$541,430 worth of collectibles on consignment as of the Spring of 2013.

40. Over the latter part of 2011 and into 2012, I continued to suffer mini strokes and thus, due to my deteriorating health, I asked Gaylen Rust if he would be willing to consign the balance of my collection in the Spring of 2013.

41. I trusted Gaylen Rust to consign the collectibles and ensure that they would not sell below the value that I wanted.

42. In or around the Spring of 2013, Gaylen Rust came to my home and inspected the remaining portion of my entire collection of early items from the Church of Jesus Christ of Latter-Day Saints.

43. Gaylen Rust was pleased with the collection and agreed to consign the balance of my collection.

44. At that meeting, I expressed to Gaylen that I was concerned about the time that it was taking to sale the portion of the collection that I had delivered in 2010 and 2011.

45. I told Gaylen Rust that I needed income from the collection.

46. After some discussion, Gaylen Rust proposed to me that Gaylen Rust and/or RRC would pay me a minimum of \$30,000 per month for the items on consignment; if more items sold in a month, those funds would be paid to me, if less sold in a month, then Rust would still pay me \$30,000 per month but would keep track of any shortfall and that shortfall would then be made up with the future sale of items on consignment.

47. We discussed that there would not be interest on the consigned items because they would most likely increase in value over time as he held them on consignment for sale.

48. In the Spring of 2013, we agreed that the value of the collection that I was consigning with Gaylen Rust, including both the value of the items delivered to Gaylen Rust prior to 2013 that were then, according to Gaylen Rust, unsold, and those delivered in 2013 was \$2,039,580.

49. Gaylen Rust agreed on that valuation and Gaylen Rust agreed that due to appreciation of the consigned items that he would not sell the collection for less than \$2,160,000.

50. We agreed that Gaylen Rust would ensure that he and/or RRC would use their best efforts to sale the collection (which included the remaining items on consignment from 2010 as well as the new items to be consigned in 2013).

51. We also agreed that even though Gaylen Rust and/or RRC would work diligently on selling the collection, that even if there were not many collectibles sold in a given month, that Gaylen Rust and/or RRC would pay the fixed amount of \$30,000 each month to me to ensure that I had income for me and my wife while I was facing my challenging health problems.

52. We agreed that if less items sold in a month, then Rust would still pay me \$30,000 per month, but would keep track of any shortfall and that shortfall would then be made up with the future sale of items on consignment.

53. We agreed that if more items sold in a month than \$30,000 worth of collectibles, those funds would be used to cover any prior shortfall and then would be paid to me.

54. We agreed that because he would not sale my collection for less than \$2,160,000, it may take time to find the right buyers; however we agreed that under no circumstances would he miss a monthly payment and that he therefore would pay the minimum sale amount of \$2,160,000 over six years (which was essentially payments of \$30,000 per month for six years).

55. Any amounts that Gaylen Rust and/or RRC received above that amount of \$2,160,000 from selling the collection would be payment to Gaylen Rust and/or RRC for his efforts in the sale of my Collection.

56. Based on that agreement between us, my wife delivered the balance of my collection of items from the early history of the Church of Jesus Christ of Latter-Day Saints to Gaylen Rust and/or RRC in or about April of 2013.

57. After a few months, Gaylen Rust had not paid me the agreed upon \$30,000 per month.

58. In spite of my difficult health, I made the journey to RRC in order to speak with Gaylen Rust about the missed payments.

59. Gaylen Rust told me that he had in fact sold \$396,836 worth of the collection, but that he had invested those funds in Silver for me.

60. Initially, I was upset, but Gaylen Rust told me of a silver buying enterprise that he started with four or five friends and that they were making very good returns.

61. Gaylen Rust told me that he had thought it was such a good deal that he had invested the \$396,836 for me in buying actual silver.

62. Gaylen Rust assured me that the \$396,836 that was supposed to have been paid to me for the sale of a portion of my collection was completely secure because it was invested in actual silver.

63. Gaylen Rust told me that he could liquidate the silver, and that he would pay me the \$396,836, or that I could leave those funds invested in the silver and that he was sure I would make a very nice return.

64. I discussed the option with my wife, and we decided to leave the \$396,836 invested in silver to see how it did.

65. I trusted Gaylen Rust and agreed to leave the \$396,836 invested in silver for a time, but I made clear to him that all of the sale proceeds from remaining collectibles on consignment with him needed to be paid to me as previously agreed and not invested in the silver.

66. Gaylen Rust agreed that he would pay me for all proceeds from the sale of the consigned collection going forward and not invest any further proceeds from the consigned collection in silver.

67. I told him that I may still ask that he liquidate the silver if I felt like it was not performing or that I needed the funds.

68. Then, after I received paperwork from Gaylen Rust showing the increase in the value of the silver, my wife and I determined to leave the \$396,836 invested in silver long term.

69. Neither Gaylen Rust nor RRC ever paid me any funds from the \$396,836 that he originally claimed was used to purchase silver in my name and that I and my wife decided to leave invested in silver.

70. Gaylen Rust and/or RRC continued to pay me from the sale of consigned collectibles for a time.

71. I was shocked in November 2018 when I heard that RRC was shut down.

72. At that time, Gaylen Rust and/or RRC still owed me \$561,000.00 on my collection of items from the early period of the Church of Jesus Christ of Latter-Day Saints that were consigned with Gaylen Rust and/or RRC.

73. According to paperwork that I received from RRC and/or Gaylen Rust, my silver collection that started at a value of \$396,836 in 2013 was valued by Gaylen Rust at over \$3,000,000.

The undersigned declares under penalty of perjury of the laws of the State of Utah that the foregoing is true and correct to the best of declarant's knowledge and belief.

DATED this 28 day of April, 2022.

A handwritten signature in black ink, appearing to read "Gary Stillman", written over a horizontal line.

GARY STILLMAN