

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, <i>et al.</i> , ¹	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

**DEBTORS' REPLY IN SUPPORT OF
MOTIONS TO ASSUME
(Relates to Docket Nos. 7, 32)**

¹ The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



24904482411040000000000001

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
ARGUMENT	2
I. The Profit Sharing Agreements did not supersede any other contracts.	3
II. There was no underpayment because Whinstone has no right to a share of the profits of the operating companies.....	6
III. Whinstone’s other amorphous and constantly changing theories of breach are factually unsupported and provide no basis for denying the motions to assume.....	8
CONCLUSION.....	10

PRELIMINARY STATEMENT

For the past 18 months, Whinstone has pursued a relentless campaign to drive Rhodium out of business. Rhodium has long-term contracts with Whinstone that give Rhodium the right to operate at the Rockdale facility and draw low-cost power. Whinstone was happy to make those deals in 2020, when it was trying to get tenants and entice Rhodium to invest \$150 million in the facility, which Rhodium did in reliance on those 10-year contracts. But then Whinstone was acquired by Riot, another Bitcoin miner, and Riot decided that it wanted the space and cheap power for itself.

Driven by Riot's overarching goal to get rid of Rhodium, Whinstone has invented pretextual claims of breach of contract and even engaged in vigilante-style self-help, using armed security to evict Rhodium from Rockdale. Rhodium repeatedly needed emergency legal relief to redress Whinstone's misconduct—relief that was granted by three different neutral decisionmakers. But Whinstone's tactics have imposed a high cost on Rhodium, in terms of lost income, profits, and investment opportunities. Whinstone's accusations of mis-management and its claim that Debtors filed Chapter 11 to avoid a discovery deadline (Dkt. No.144 at 2, 4) are the height of irony. Whinstone knows full well that its purported contract terminations and litigation have cost Rhodium millions and undermined its business across the board.

Whinstone is desperate to avoid a court ruling that allows Rhodium to continue operating at Rockdale under the parties' Power and Profit Sharing Agreements. It does not, however, have a coherent legal and factual theory to support what has been, from the outset, a pretextual campaign to evict Rhodium. Its opposition (Dkt. No. 144) to Debtors' motions to assume cobble together a host of meritless accusations in the hope that something, anything, will suffice as a material breach. After 15 depositions and the production of over 27,000 documents, and despite repeated efforts by Debtors to understand Whinstone's theories, nothing has changed. Whinstone refused to provide

intelligible responses to Debtors’ straightforward contention interrogatories. Its witnesses say one thing, its discovery responses say another. Whinstone has demanded discovery into matters well beyond the scope of the motions to assume, such as Rhodium’s separate operations at its Temple facility and the minutiae of Debtors’ tens of thousands of individual miners. In short, Whinstone has tried to shift the conversation to *anything* other than the parties’ twenty-five contracts—what those contracts actually say, the context in which they were executed, and Rhodium’s satisfaction of its contractual obligations.

Those latter issues, however, will be the focus of the upcoming hearing on Debtors’ motions to assume. Debtors still do not know which of Whinstone’s ever-shifting theories will be the focus of Whinstone’s presentation at the hearing. What is clear, however, is that nothing in the grab bag of issues that Whinstone has raised warrants denying Debtors’ motions to assume. Whinstone’s arguments are based on a flawed reading of the contracts, are demonstrably incorrect, and are pretextual attempts to get out of the contracts so Whinstone’s parent company, Riot, can use the power and space provided for in the contracts instead.

ARGUMENT

Even in this contentious matter, some issues are not in dispute. Whinstone agrees that it executed each of the twenty-five contracts that Debtors seek to assume. Dkt. No. 144 at 6-7. Further, Whinstone does not dispute that, to the extent the contracts remain in effect, they are executory contracts for purposes of 11 U.S.C. § 365. Nor does Whinstone dispute that, to the extent the contracts are in effect, assuming them “will be advantageous to the estate” and that the decision to assume is “based on sound business judgment.” *E.g., In re TM Vill., Ltd.*, 598 B.R. 851, 859 (Bankr. N.D. Tex. 2019). Whinstone’s opposition to assumption rests entirely on its potpourri of flawed theories for why the contracts have either been superseded or terminated. None has merit.

I. The Profit Sharing Agreements did not supersede any other contracts.

Whinstone's case hangs almost entirely on its theory that the two Profit Sharing Agreements between Whinstone and Rhodium JV and Whinstone and Air HPC, respectively, upended the parties' entire business arrangement and *sub silentio* superseded twenty-two other contracts, including contracts between different parties. Whinstone has advanced this theory several times during the parties' litigation, but has yet to come up with a legal argument that supports it.² That's because Whinstone's position is both legally untenable and contradicted by a wealth of relevant evidence.

A. Whinstone's legal theory is incoherent. To begin with, Whinstone ignores the plain language of the *third* contract signed simultaneously with the Profit Sharing Agreements. In that contract, the Redemption Agreement whereby Whinstone relinquished its equity stake in Rhodium JV, Whinstone agreed that the parties' prior hosting contracts remained in force:

4. Continuation of Business Relationship. Whinstone and Rhodium JV agree that all the terms and conditions of any other agreements, entered into between them, including but not limited to the duties and obligations of the Parties to each other under *any hosting or colocation agreements, shall continue as set forth in such agreements. . . .*

Dkt. No. 208-9 (Ex. 7) at 2 (emphasis added). That provision alone proves that Rhodium is right and Whinstone is wrong.

Along with ignoring the Redemption Agreement, Whinstone also ignores a raft of other flaws in its supersession theory. Debtors briefed those issues in their opposition to Whinstone's motion for partial summary judgment, and incorporate those arguments here. *See* Dkt. No. 332 at

² Whinstone's partial summary judgment motion advanced an unpersuasive merger theory to argue that the 20 5MW Power Agreements were superseded by the Rhodium JV Profit Sharing Agreement. Although insisting that the other Power Agreements were also superseded, Whinstone did not explain that argument. *See* Dkt. No. 208 at 8-10, 13. Debtors fully briefed the numerous flaws in Whinstone's merger theory in their opposition memorandum. *See* Dkt. No. 332 at 7-15.

7-19. In short, the parties always understood that the various contracts related to different “subject matter[s]” and did not supersede one another. The parties also understood that the prior agreements could not be terminated absent an express statement, which never happened here. *Id.* at 7-8.

Rhodium highlights just one additional fatal flaw in Whinstone’s argument. According to Whinstone, the Profit Sharing Agreements “expressly replaced” the twenty-two Power Agreements and set forth the “complete” terms of Whinstone’s relationship with Rhodium. Dkt. No. 144 at 7. But the Profit Sharing Agreements are only with Rhodium JV and Air HPC. Although Whinstone has said countless times that the Profit Sharing Agreements supersede all of the Power Agreements, *e.g., id.*, it has yet to articulate *any* legal argument for how a contract between Rhodium JV and Whinstone could supersede a contract between Rhodium 30MW and Whinstone; or how a contract between Air HPC and Whinstone could supersede a contract between Jordan HPC and Whinstone. The Jordan HPC and Rhodium 30MW Power Agreements don’t allow that and the Profit Sharing Agreements nowhere say that. The “entire agreement” clauses that Whinstone brandishes have no application whatsoever to contracts with other parties.

Once it is understood that Whinstone has no argument for supersession of the Jordan HPC and Rhodium 30MW contracts, anything left of Whinstone’s theory makes even less sense than it did before. Whinstone knew that operating companies such as Jordan HPC and Rhodium 30MW would be drawing power under Power Agreements and mining bitcoin. *See, e.g.,* Dkt. No. 332 12-15. And it knew that Air HPC and Rhodium JV, the holding companies, only owned a partial stake in those operating companies. *Id.* The notion that the Profit Sharing Agreements overrode some Power Agreements, but not others, and put Rhodium JV in a position of being partly a holding company and partly an operating company makes no sense as a practical matter. And it requires an impossibly strained interpretation of the “entire agreement” clause, where the “subject matter” of

the contract is partly a revenue share for the profits flowing up to Rhodium JV from subsidiaries and partly for power draw to some operations but not others. There's no plausible basis for interpreting the Profit Sharing Agreements this way.

B. As a factual matter, Whinstone's position is indefensible. It has no explanation for why Rhodium would have relinquished twenty-two long-term Power Agreements that formed the basis of its business model merely because Whinstone wanted, for "business and tax reasons" (Dkt. No. 208 at 4), to exchange its equity ownership in the joint venture for a synthetic dividend. Essentially, Whinstone's position is that it needed a favor from its business partner, to restructure the joint venture for *Whinstone's* business reasons, and that Rhodium not only granted that favor but in doing so, gave up all of the Power Agreements that it was using to build out its Rockdale operation in phases, with outside investment; overrode the interests of those outside investors and agreed to pay Whinstone far more than Whinstone would have received as an equity partner; and gave up its rights to the power credits promised in the Power Agreements. Whinstone explains why such changes would have benefitted Whinstone. *E.g.*, Dkt. No. 144 at 9 (claiming "it no longer made sense for Whinstone . . . to share these power credits"). But it doesn't even try to answer the salient question: Why would Rhodium give up all that value, in exchange for nothing at all, and without any discussion at all?

C. The short answer is: Rhodium didn't do that. Both the contracts themselves and the facts and circumstances of their execution show the parties did not intend the Profit Sharing Agreements to supersede the Power Agreements. *See* Dkt. No. 332 at 7-19. Accepting Whinstone's position would mean finding that the Profit Sharing Agreements accomplish the opposite of what the parties discussed and intended, and also finding that Whinstone sent invoices to, took payments from, referred to, acknowledged contracts with, and made new agreements with entities (the operating

companies) that had no contractual right to operate at Rockdale. *See id.* Rhodium’s position is supported by overwhelming evidence of the parties’ intent and understanding, which Whinstone ignores completely based on its zany view that the phrase “subject matter” is unambiguous and that the standard integration clause in the Profit Sharing Agreements was somehow intended to terminate twenty-two prior contracts, including ones with different parties.

II. There was no underpayment because Whinstone has no right to a share of the profits of the operating companies.

In the 18 months of this litigation, Whinstone has tried to bootstrap its underpayment theory to unspecified and shifting claims of fraud, deceit, hidden transactions, and financial misconduct. But all of that is posturing. Whinstone really has only one underpayment theory:³ That Debtors should have been paying Whinstone 12.5% (or 50%, for Jordan HPC) of the profits of the *operating companies*, instead of paying the profit share based on the profits that flowed up to the holding companies, Rhodium JV and Air HPC. What Whinstone is demanding is not the deal the parties struck in 2020, and makes no sense. The Profit Sharing Agreements are with Rhodium JV and Air HPC, and those holding companies only have a partial stake in the operating companies. Whinstone could not have contracted with the holding companies for a share of profits that the holding companies do not get. Debtors addressed this issue in their motion for partial summary judgment and incorporate those arguments here. *See* Dkt. No. 272 at 15-20.

As with its supersession theory, Whinstone’s underpayment theory assumes a dramatic change in the parties’ joint business venture *that never happened*. It is undisputed that, as a partner

³ Consistent with its “try anything” approach to alleging theories of breach, Whinstone sometimes alludes to other supposed payment defaults—including, as one example, producing work invoices for the first time just days before trial that it now claims were not paid. As explained below and in Debtors’ motion for partial summary judgment, however, Whinstone only purported to terminate the Profit Sharing Agreements based on its claim of entitlement to a share of the operating companies’ profits. *See* Dkt. No. 272 at 14.

in the joint venture, Whinstone originally had a 12.5% equity stake in Rhodium JV. *See* Dkt. No. 332 at 4. Rhodium JV, in turn, only owned part of the operating companies—for example, it had only a 70% stake in Rhodium 30MW, which was formed in mid-2020. *See* Dkt. No. 272 at 6. Whinstone never had an ownership stake in the operating companies or any right to share directly in their profits. Further, there can be no genuine dispute that what the parties were trying to do, in December 2020, was to replace Whinstone’s equity stake in Rhodium JV with an equivalent synthetic dividend. *See* Dkt. No. 332 at 4. What Whinstone is now insisting it should get is *not* equivalent to an equity stake in Rhodium JV. Whinstone wants to reach down and get its share directly from partially owned operating companies. It has no contractual right to that. Whinstone has no right to a share of the money that goes to outside investors.⁴

Because Whinstone is wrong about how the profit share works, its underpayment theory fails. And that necessarily means that the November 2023 Notice of Termination—which was based solely on this claimed underpayment—was invalid and ineffective. *See* Dkt. No. 272 at 20-23.

⁴ In its summary judgment filings, Whinstone misleadingly claims that the remainders of the operating subsidiaries are not actually owned by “outside investors.” Dkt. No. 358 at 19. Debtors will address and rebut this claim in their forthcoming summary judgment reply brief. In short, Whinstone is trying to use Rhodium’s rollup transaction to confuse the issues and pretend that the outside investors have disappeared. To the contrary, the outside investors merely agreed to participate in a “rollup” transaction in which each outside investor transferred his direct interest in a particular operating subsidiary to Rhodium Enterprises in exchange for shares of Rhodium Enterprises. But the outside investors did not disappear. They hold economically equivalent indirect interests in a parent company and still have to be paid. The rollup transaction thus does not affect Whinstone’s profit share at all: It does not change Rhodium JV’s or Air HPC’s percentage interests in the operating subsidiaries, and it does not change Whinstone’s percentage interest in Rhodium JV or Air HPC.

III. Whinstone's other amorphous and constantly changing theories of breach are factually unsupported and provide no basis for denying the motions to assume.

It is clear from discovery that Whinstone will proffer other theories of contract breach and termination at trial. It is not at all clear what those theories will be. Its April 2024 Notice of Termination proffered a laundry list of 45 separate contract provisions as grounds for termination, without providing any details about the alleged breaches. *See* Dkt. No. 208-15 (Ex. 13). Debtors have explained why the April 2024 Notice failed to comply with contractually required notice and cure provisions and otherwise was invalid and ineffective and incorporate those arguments here. *See* Dkt. No. 272 at 20-33. Because the April 2024 Notice is invalid, Whinstone has no argument that it terminated the contracts pre-petition for any of the reasons it now proffers.

Whinstone nonetheless seems to believe that by issuing the facially invalid Notice of Termination that incorporates dozens of contract provisions, it has preserved the right to assert that it terminated the contracts for virtually any reason it can come up with. And it has steadfastly refused to identify its specific claims of breach. Its original responses to Debtors' contention interrogatories disclosed almost nothing. *See* Dkt. No. 335-2 (Ex. 2). After being compelled to amend those responses, Whinstone still did not explain its position. Instead, it listed literally thousands of pages of hearing transcripts, legal filings, entire case dockets, correspondence, and years' worth of financial documents. *See* Declaration of Bridget Asay ("Asay Decl.") Ex. 1 (Whinstone's Supplemental Response to Debtors' First Set of Interrogatories) For good measure, Whinstone threw in a list of supposedly unpaid invoices that it hadn't even produced before. *Id.*

Whinstone's new discovery responses are no more compliant than the original ones. And Debtors had no opportunity to explore in deposition how the scores of documents cited in the new responses establish a breach of contract. In fact, Whinstone's amended discovery responses contradict what their witnesses said in their depositions. Whinstone's corporate representative

Jeffrey McGonegal testified that the April 2024 Notice of Termination did not identify unpaid invoices, other than possibly incorporating by reference a handful of invoices that were attached to an April 2023 Whinstone letter. *See* Asay Decl. Ex. 2 (Jeff McGonegal deposition transcript) at 62:21-64:5; *see also id.* 55:11-25 (Rhodium paid those invoices shortly after receiving that letter. *See* Dkt. No. 208-20 (Ex. 18)). But Whinstone's supplemental interrogatory responses list invoices not previously disclosed by Whinstone. *See* Asay Decl. Ex. 1. It appears that just days before trial, Whinstone is trying to shoehorn new breach theories into a termination notice it sent six months ago.

These frantic efforts to find some justification for termination merely prove Rhodium's point that this whole exercise is a pretext. Whinstone may think that haphazardly listing thousands of pages of documents and claiming that any missing bolt or drip of liquid is a material breach somehow strengthens its case. But what it really shows is that Whinstone is making it up as it goes along. The real reason that Whinstone wants out of these contracts has nothing to do with Rhodium's operations or safety record. Riot wants Rhodium's power for its own operations and it wants its competitor out of Rockdale and out of business.

Rhodium fully expects that Whinstone will spend hours of hearing time discussing *de minimis* incidents of the kind that routinely occur at complex industrial sites. Whinstone cannot show, however, that any of these matters were the subject of a valid notice of termination. Nor can it show, as it must, any material breach. The Court should disregard this sideshow and grant the motions to assume.

* * *

In sum, Rhodium has not breached any of the Whinstone contracts. But even if the Court finds it has, none of those breaches prevent Debtors from assuming all twenty-five contracts.

CONCLUSION

For the reasons stated above, Debtors respectfully request that the Court enter an order granting their motions to assume and granting all other relief requested therein.

Respectfully submitted this 4th day of November, 2024.

STRIS & MAHER, LLP

/s/ Colleen R. Smith

Peter K. Stris (*pro hac vice*)
Victor O'Connell (*pro hac vice*)
John Stokes (*pro hac vice*)
Peter Brody (*pro hac vice*)
Helen Marsh (*pro hac vice*)
777 S. Figueroa Street, Suite 3850
Los Angeles, California 90017
Phone: (213) 995-6800
Fax: (213) 261-0299
pstris@stris.com
voconnell@stris.com
jstokes@stris.com
pbrody@stris.com
hmarsh@stris.com

Bridget C. Asay (*pro hac vice*)
15 E State Street, Suite 2
Montpelier, VT 05602
Phone: (802) 858-4285
basay@stris.com

Colleen R. Smith (*pro hac vice*)
1717 K St NW Suite 900
Washington, DC 20006
Phone: (202) 800-5749
cmith@stris.com

- and -

LEHOTSKY KELLER COHN LLP

William T. Thompson (*pro hac vice*)
Todd Disher (*pro hac vice*)

Alexis Swartz (*pro hac vice*)
will@lkcfirm.com
todd@lkcfirm.com
alexis@lkcfirm.com
408 W. 11th Street, 5th Floor
Austin, TX 78701

- and -

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Patricia B. Tomasco (SBN 01797600)
Joanna D. Caytas (SBN 24127230)
Cameron Kelly (SBN 24120936)
Alain Jaquet (*pro hac vice*)
700 Louisiana Street, Suite 3900
Houston, Texas 77002
Telephone: 713-221-7000
Facsimile: 713-221-7100
Email: pattytomasco@quinnemanuel.com
Email: joannacaytas@quinnemanuel.com
Email: cameronkelly@quinnemanuel.com
Email: alainjaquet@quinnemanuel.com

Eric Winston (*pro hac vice*)
Razmig Izakelian (*pro hac vice*)
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: 213-443-3000
Facsimile: 213-443-3100
Email: ericwinston@quinnemanuel.com
Email: razmigizakelian@quinnemanuel.com

*Counsel to the Debtors and
Debtors-In-Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Colleen R. Smith

Colleen R. Smith

Certificate of Service

I, Colleen R. Smith, hereby certify that on the 4th day of November, 2024, a copy of the foregoing was served by the Electronic Case Filing System for the United State Bankruptcy Court for the Southern District of Texas.

/s/ Colleen R. Smith

Colleen R. Smith

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
RHODIUM ENCORE LLC, <i>et al.</i> , ¹	§	Case No. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)
	§	

**DECLARATION OF BRIDGET ASAY IN SUPPORT OF
DEBTORS' REPLY IN SUPPORT OF MOTIONS TO ASSUME**

I, Bridget Asay, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney with the firm Stris & Maher LLP. I am an attorney at law, admitted to practice in this matter pro hac vice. I represent Rhodium Encore LLC and its debtor affiliates in the above-captioned chapter 11 cases.

2. I submit this Declaration in support of Debtors' Reply in Support of Motions to Assume.²

3. Attached hereto as Exhibit 1 is a true and correct copy of Whinstone's Supplemental Amended Objections and Responses to Debtors' Interrogatories, Set One.

¹ Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Debtors' Reply in Support of Motions to Assume.

4. Attached hereto as Exhibit 2 is a true and correct copy of excerpts of the transcript of Jeff McGonegal, which was taken as part of this proceeding on October 25, 2024.

5. I hereby declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: November 4, 2024


Signed by:

23261256ADE3410...
Bridget Asay

EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Case No. 24-90448-ARP
	§	
RHODIUM ENCORE LLC, <i>et al.</i>¹	§	Chapter 11
	§	
Debtor.	§	
	§	

**WHINSTONE’S SUPPLEMENTAL AMENDED OBJECTIONS AND RESPONSES TO
DEBTORS’
INTERROGATORIES, SET ONE**

Pursuant to Federal Rules of Civil Procedure 26 and 33 (made by applicable to this matter by Federal Rules of Bankruptcy Procedure 7033 and 9014), Whinstone US, Inc. (“Whinstone”) serves its Supplemental Amended Objections and Responses to Debtors’ Interrogatories, Set One.

¹ The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

DATED: October 30, 2024

Respectfully submitted by:

/s/ Andrew A. Howell

Robert T. Slovak (TX 24013523)

Steven C. Lockhart (TX 24036981)

J. Michael Thomas (TX 24066812)

Mark C. Moore (TX 24074751)

Brandon C. Marx (TX 24098046)

Andrew A. Howell (TX 24072818)

FOLEY & LARDNER LLP

2021 McKinney Avenue, Suite 1600

Dallas, TX 75201

Telephone: (214) 999-3000

Facsimile: (214) 999-4667

rslovak@foley.com

slockhart@foley.com

jmthomas@foley.com

mmoore@foley.com

bmarx@foley.com

ahowell@foley.com

COUNSEL TO WHINSTONE US, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 30, 2024, a true and correct copy of the above and foregoing document was served via ECF and/or email to counsel for the Debtors.

/s/ Andrew A. Howell

Andrew A. Howell

INTERROGATORIES

INTERROGATORY NO. 2:

For any alleged payment defaults that You contend underlie the November 27, 2023 Notice of Termination, identify the amount of each alleged default and alleged defaulting entity, the amount to cure such alleged default, explain in detail Your methods of identifying and calculating such alleged defaults and the amount to cure the same, and state all facts and evidence underlying, warranting, justifying, or evidencing Your contention that a payment default occurred.

RESPONSE:

In addition to the documents identified in Whinstone's response to Interrogatory No. 2, Whinstone states that Rhodium JV and Air HPC were in payment default for their failure to make timely payment of the following invoices:

- 5751-R: \$4,734.32 due on 3/12/22
- 5752-R: \$31.52 due on 3/26/22
- 5754-R: \$9,336.75 due on 4/9/22
- 5758-R: \$300.00 due on 4/23/22
- 5771: \$7,225 due on 6/25/22
- 5809-A: \$10,008.75 due on 10/8/22
- 5810-A: \$2,486.25 due on 10/15/22
- 5811-A: \$1,827.50 due on 10/22/22
- 5812-A: \$5,822.50 due on 10/29/22
- 5837-A: \$6,141.25 due on 12/10/22
- 5813-A: \$1,441.13 due on 10/29/22
- 6736R: \$367,569.45 due on 2/23/22
- 7747R: \$72,211.58 due on 4/12/22
- RFPO-RH2013: \$95,770.22 due on 5/15/22
- RFP-RH2010: \$90,452.42 due on 5/16/22
- 5821-A: \$69,703.17 due on 10/30/22
- 5834-A: \$84,117.89 due on 11/30/22
- INV63: \$91,883.17 due on 12/31/22
- INV71: \$88,208.88 due on 1/15/23
- 5794-A: \$11,199.35 due on 8/30/22
- INV 5838: \$1,552.10 due on 6/2/23
- INV 162: \$382,271.40 due on 8/18/23
- INV 5867: \$1,530.00 due on 10/14/23
- INV 5876: \$148.75 due on 11/10/23
- INV 5822: \$737.81 due on 3/30/23

- INV 5823: \$170.00 due on 3/31/23
- INV 5825: \$260.75 due on 3/31/23
- INV 5827: \$2,325.00 due on 4/28/23
- INV 5826: \$2,305.00 due on 4/28/23
- INV 5829: \$3,452.50 due on 4/28/23
- INV 5837: \$3,420.00 due on 6/2/23
- INV 148: \$85,560.65 due on 6/30/23
- INV 161: \$69,517.00 due on 7/30/23
- INV 5858: \$2,106.10 due on 8/25/23
- INV 171: \$73,120.66 due on 8/30/23
- INV 186: \$67,848.89 due on 9/30/23
- INV 192: \$74,264.69 due on 10/30/23
- WHIN_0011781
- RHOD-BK-00063982
- RHOD-BK-00043737
- RHOD-BK-00043973
- RHOD-BK-00044774
- RHOD-BK-00089819
- RHOD-BK-00070576
- RHOD-BK-00040050
- RHOD-BK-00040270

INTERROGATORY NO. 3:

For any alleged payment defaults that You contend underlie the April 22, 2024 Notice of Termination, identify the amount of each alleged default and alleged defaulting entity, the amount to cure such alleged default, explain in detail Your methods of identifying and calculating such alleged defaults and the amount to cure the same, and state all facts and evidence underlying, warranting, justifying, or evidencing Your contention that a payment default occurred.

RESPONSE:

In addition to the documents identified in Whinstone's response to Interrogatory No. 3, Whinstone states that Debtors were in payment default for their failure to make timely payment of the following invoices:

- 5751-R: \$4,734.32 due on 3/12/22
- 5752-R: \$31.52 due on 3/26/22
- 5754-R: \$9,336.75 due on 4/9/22
- 5758-R: \$300.00 due on 4/23/22
- 5771: \$7,225 due on 6/25/22

- 5809-A: \$10,008.75 due on 10/8/22
- 5810-A: \$2,486.25 due on 10/15/22
- 5811-A: \$1,827.50 due on 10/22/22
- 5812-A: \$5,822.50 due on 10/29/22
- 5837-A: \$6,141.25 due on 12/10/22
- 5813-A: \$1,441.13 due on 10/29/22
- 6736R: \$367,569.45 due on 2/23/22
- 7747R: \$72,211.58 due on 4/12/22
- RFPO-RH2013: \$95,770.22 due on 5/15/22
- RFP-RH2010: \$90,452.42 due on 5/16/22
- 5821-A: \$69,703.17 due on 10/30/22
- 5834-A: \$84,117.89 due on 11/30/22
- INV63: \$91,883.17 due on 12/31/22
- INV71: \$88,208.88 due on 1/15/23
- 5794-A: \$11,199.35 due on 8/30/22
- INV 5838: \$1,552.10 due on 6/2/23
- INV 162: \$382,271.40 due on 8/18/23
- INV 5867: \$1,530.00 due on 10/14/23
- INV 5876: \$148.75 due on 11/10/23
- INV 5886: \$425.00 due on 1/13/24
- INV 5892: \$191.25 due on 1/13/24
- INV 5895: \$339.15 due on 1/13/24
- INV 5898: \$170.00 due on 1/26/24
- INV 5822: \$737.81 due on 3/30/23
- INV 5823: \$170.00 due on 3/31/23
- INV 5825: \$260.75 due on 3/31/23
- INV 5827: \$2,325.00 due on 4/28/23
- INV 5826: \$2,305.00 due on 4/28/23
- INV 5829: \$3,452.50 due on 4/28/23
- INV 5837: \$3,420.00 due on 6/2/23
- INV 148: \$85,560.65 due on 6/30/23
- INV 161: \$69,517.00 due on 7/30/23
- INV 5858: \$2,106.10 due on 8/25/23
- INV 171: \$73,120.66 due on 8/30/23
- INV 186: \$67,848.89 due on 9/30/23
- INV 192: \$74,264.69 due on 10/30/23
- INV 204: \$86,665.43 due on 11/30/23
- INV 215: \$83,965.54 due on 12/30/23
- INV 5893: \$594.15 due on 1/13/24
- INV 5894: \$765.00 due on 1/13/24
- INV 5896: \$1,020.00 due on 1/26/24
- INV 5897: \$1,090.55 due on 1/26/24
- INV 226: \$93,143.85 due on 1/30/24

- INV 5900: \$3,584.45 due on 2/11/24
- INV 232: \$36,871.32 due on 3/1/24
- INV 233: \$22,074.92 due on 2/29/24
- INV 237: \$119.52 due on 3/10/24
- WHIN_0011781
- RHOD-BK-00063982
- RHOD-BK-00043737
- RHOD-BK-00043973
- RHOD-BK-00044774
- RHOD-BK-00089819
- RHOD-BK-00070576
- RHOD-BK-00040050
- RHOD-BK-00040270

INTERROGATORY NO. 4:

For each alleged material breach that You contend underlies the April 22, 2024 Notice of Termination, identify the alleged material breach, the date the alleged material breach occurred, explain in detail the alleged breach, and state all facts and evidence underlying, warranting, justifying, or evidencing Your contentions that a breach occurred and that the alleged breach was material.

RESPONSE:

In addition to the documents identified in Whinstone's response to Interrogatory No. 4, Whinstone states that Debtors were in payment default, including, but not limited to, their failure to make timely payment of the following invoices:

- 5751-R: \$4,734.32 due on 3/12/22
- 5752-R: \$31.52 due on 3/26/22
- 5754-R: \$9,336.75 due on 4/9/22
- 5758-R: \$300.00 due on 4/23/22
- 5771: \$7,225 due on 6/25/22
- 5809-A: \$10,008.75 due on 10/8/22
- 5810-A: \$2,486.25 due on 10/15/22
- 5811-A: \$1,827.50 due on 10/22/22
- 5812-A: \$5,822.50 due on 10/29/22
- 5837-A: \$6,141.25 due on 12/10/22
- 5813-A: \$1,441.13 due on 10/29/22
- 6736R: \$367,569.45 due on 2/23/22
- 7747R: \$72,211.58 due on 4/12/22
- RFPO-RH2013: \$95,770.22 due on 5/15/22

- RFP-RH2010: \$90,452.42 due on 5/16/22
- 5821-A: \$69,703.17 due on 10/30/22
- 5834-A: \$84,117.89 due on 11/30/22
- INV63: \$91,883.17 due on 12/31/22
- INV71: \$88,208.88 due on 1/15/23
- 5794-A: \$11,199.35 due on 8/30/22
- INV 5838: \$1,552.10 due on 6/2/23
- INV 162: \$382,271.40 due on 8/18/23
- INV 5867: \$1,530.00 due on 10/14/23
- INV 5876: \$148.75 due on 11/10/23
- INV 5886: \$425.00 due on 1/13/24
- INV 5892: \$191.25 due on 1/13/24
- INV 5895: \$339.15 due on 1/13/24
- INV 5898: \$170.00 due on 1/26/24
- INV 5822: \$737.81 due on 3/30/23
- INV 5823: \$170.00 due on 3/31/23
- INV 5825: \$260.75 due on 3/31/23
- INV 5827: \$2,325.00 due on 4/28/23
- INV 5826: \$2,305.00 due on 4/28/23
- INV 5829: \$3,452.50 due on 4/28/23
- INV 5837: \$3,420.00 due on 6/2/23
- INV 148: \$85,560.65 due on 6/30/23
- INV 161: \$69,517.00 due on 7/30/23
- INV 5858: \$2,106.10 due on 8/25/23
- INV 171: \$73,120.66 due on 8/30/23
- INV 186: \$67,848.89 due on 9/30/23
- INV 192: \$74,264.69 due on 10/30/23
- INV 204: \$86,665.43 due on 11/30/23
- INV 215: \$83,965.54 due on 12/30/23
- INV 5893: \$594.15 due on 1/13/24
- INV 5894: \$765.00 due on 1/13/24
- INV 5896: \$1,020.00 due on 1/26/24
- INV 5897: \$1,090.55 due on 1/26/24
- INV 226: \$93,143.85 due on 1/30/24
- INV 5900: \$3,584.45 due on 2/11/24
- INV 232: \$36,871.32 due on 3/1/24
- INV 233: \$22,074.92 due on 2/29/24
- INV 237: \$119.52 due on 3/10/24
- WHIN_0011781
- RHOD-BK-00063982
- RHOD-BK-00043737
- RHOD-BK-00043973
- RHOD-BK-00044774

- RHOD-BK-00089819
- RHOD-BK-00070576
- RHOD-BK-00040050
- RHOD-BK-00040270

Furthermore, Whinstone also identifies documents evidencing the following material breaches:

- April 2021 spill (*E.g.*, WHIN_0002689)
- June 2021 spill (*E.g.*, WHIN_0002690, WHIN_0027376)
- July 2022 spill (*E.g.*, WHIN_0002698, RHOD-BK-00062721)
- January 2023 spill (*E.g.*, WHIN_0002701)
- January 2024 spill (*E.g.*, WHIN_0039832)
- RHOD-BK-00063982
- Consistent and systematic failures to implement spill control and maintenance plans (*E.g.*, RHOD-ARB-00001326, RHOD-BK-00083458, RHOD-BK-00064682, WHIN_0000615-624, RHOD-BK-00073465, WHIN_0002690, WHIN_0027377, RHOD-BK-00066394, WHIN_0011227, WHIN_0012600, WHIN_0012966, WHIN_0006038, WHIN_0004625, RHOD-BK-00062635, RHOD-BK-00062956, RHOD-BK-00062955, WHIN_0002741, RHOD-BK-00066903, RHOD-BK-00062288, RHOD-BK-00073992, RHOD-BK-00073468)
- Consistent and systematic failures to adequately staff site for maintenance (*E.g.*, RHOD-BK-00062692)
- Consistent and systematic failures to maintain Guntner dry coolers (*E.g.*, RHOD-BK-00062652, RHOD-BK-00083559, RHOD-BK-00085191, RHOD-BK-00085168-85183, RHOD-BK-00083942, WHIN_0012828, WHIN_0012960, WHIN_0012961, RHOD-BK-00065790)
- Installing aftermarket fans onto the Guntner dry coolers (*E.g.*, RHOD-BK-00066906, WHIN_0049225-49227, RHOD-BK-00062652)
- Failures to obtain required approvals before delivering fluids and materials (*E.g.*, WHIN_0028779)
- Failures to obtain required approvals for site visitors (*E.g.*, WHIN_0011602, RHOD-BK-00063734)
- Consistent and systematic equipment leaks (*E.g.*, RHOD-BK-00065656, RHOD-BK-00062627, RHOD-BK-00062624, RHOD-BK-00035464, RHOD-BK-00071110)
- Consistent and systematic failures to comply with OSHA, safety, and Data Access Rules (*E.g.*, WHIN_0025819, RHOD-BK-00065656, RHOD-BK-00062509, RHOD-BK-00062631, RHOD-BK-00050960, RHOD-BK-00069592, RHOD-BK-00070903, RHOD-BK-00071167, WHIN_0027379, WHIN_0016897-16901, RHOD-BK-00066534, WHIN_0011602, WHIN_0011781, RHOD-BK-00063711, RHOD-BK-00063764, RHOD-BK-00058504, WHIN_0002691, WHIN_0025822, WHIN_0011704, WHIN_0025895, RHOD-BK-00062890, WHIN_0027911, WHIN_0006691, RHOD-BK-00062717, WHIN_0004947, WHIN_0005039)
- Installing fan catches over Guntner's objection (*E.g.*, RHOD-BK-00085191)

- Loans secured by equipment
- UCC-1s
- Operating Agreements for each subsidiary
- December 5, 2023 Temporary Injunction Hearing Transcript and exhibits
- March 1-2, 2024 Temporary Injunction Hearing Transcripts and exhibits
- April 2, 2024 Temporary Injunction Hearing Transcript and exhibits
- November 28, 2023 Motion for Emergency Order in Support of Arbitration, Temporary Injunction, and Temporary Restraining Order and exhibits attached thereto
- November 30, 2023 Opposition to Whinstone's Emergency Motion for Discovery
- February 8, 2024 Emergency Motion for a New Temporary Injunction and exhibits attached thereto
- February 15, 2024 Application for Emergency Relief Pursuant to R-39 of the AAA Commercial Rules and exhibits attached thereto
- February 21, 2024 Second Request for Immediate Appointment of an Arbitrator and Emergency Relief Pursuant to R-39 and exhibits attached thereto
- February 23, 2024 Response in Opposition to Whinstone's Motion for Discovery
- March 5, 2024 Response in Opposition to Whinstone's Cross-Application for Emergency Relief and exhibits attached thereto
- March 28, 2024 Request to Modify Order Granting Emergency Relief and Request for Immediate Temporary Administrative Relief Pursuant to R-39 and exhibits attached thereto
- April 1, 2024 Reply in Support of Motion to Modify Order Granting Emergency Relief and exhibits attached thereto
- The additional invoices identified in response to Interrogatory Nos. 2-4 that certain Debtors failed to pay
- *Trine Mining, LLC, et al. v. Nathan Nichols, et al.*, Case 2022-1029, in the Delaware Court of Chancery
- July 31, 2024 Email (RIOT_0001366)
- August 8, 2024 Email (RIOT_0001367)
- August 11, 2023 Letter (RIOT_0001370)
- August 11, 2023 Letter (RIOT_0001372)
- August 11, 2023 Letter (RIOT_0001376)
- January 25, 2021 Joinder Agreement (RIOT_0001946)
- August 7, 2024 Email (RIOT_0000642)
- August 8, 2024 Email (RIOT_0001380)
- July 31, 2024 Email (RIOT_0000673)
- July 30, 2024 Notice of Default (RIOT_0000674)
- RHOD-BK-00016037
- Intercompany Loan Tracker (RHOD-BK-00065591)
- Cash Intercompany Transfers (RHOD-BK-00065643)
- Revenue Share Calculations (*E.g.*, RHOD-BK-00089094)
- Debtors' trial balances (*E.g.*, RHOD-BK-00064916, RHOD-BK-00064923)
- Debtors' financial statements (*E.g.*, RHOD-BK-00016037, RHOD-BK-00064953)

- Debtors' Revolving Credit Facility Agreements (*E.g.*, RHOD-BK-00074649, RHOD-BK-00074919)
- Debtors' Revolving Credit Facility Agreements (*E.g.*, RHOD-BK-00074649, RHOD-BK-00074919)
- June 2023 Board of Director Presentation (RHOD-BK-00089454)

INTERROGATORY NO. 5:

For each alleged insolvency that You contend underlies the April 22, 2024 Notice of Termination, explain in detail the alleged insolvency, the date the alleged insolvency occurred, and state all facts and evidence underlying, warranting, justifying, or evidencing Your contention that the alleged insolvency occurred.

RESPONSE:

In addition to the documents identified in Whinstone's response to Interrogatory No. 5, Whinstone (which still does not have all relevant information on the subject) states that, as evidenced by the following documents, Debtors were insolvent:

- December 5, 2023 Temporary Injunction Hearing Transcript and exhibits
- March 1-2, 2024 Temporary Injunction Hearing Transcripts and exhibits
- April 2, 2024 Temporary Injunction Hearing Transcript and exhibits
- November 28, 2023 Motion for Emergency Order in Support of Arbitration, Temporary Injunction, and Temporary Restraining Order and exhibits attached thereto
- November 30, 2023 Opposition to Whinstone's Emergency Motion for Discovery
- February 8, 2024 Emergency Motion for a New Temporary Injunction and exhibits attached thereto
- February 15, 2024 Application for Emergency Relief Pursuant to R-39 of the AAA Commercial Rules and exhibits attached thereto
- February 21, 2024 Second Request for Immediate Appointment of an Arbitrator and Emergency Relief Pursuant to R-39 and exhibits attached thereto
- February 23, 2024 Response in Opposition to Whinstone's Motion for Discovery
- March 5, 2024 Response in Opposition to Whinstone's Cross-Application for Emergency Relief and exhibits attached thereto
- March 28, 2024 Request to Modify Order Granting Emergency Relief and Request for Immediate Temporary Administrative Relief Pursuant to R-39 and exhibits attached thereto
- April 1, 2024 Reply in Support of Motion to Modify Order Granting Emergency Relief and exhibits attached thereto
- The additional invoices identified in response to Interrogatory Nos. 2-4 that certain Debtors failed to pay
- *Trine Mining, LLC, et al. v. Nathan Nichols, et al.*, Case 2022-1029, in the Delaware Court of Chancery

- July 31, 2024 Email (RIOT_0001366)
- August 8, 2024 Email (RIOT_0001367)
- August 11, 2023 Letter (RIOT_0001370)
- August 11, 2023 Letter (RIOT_0001372)
- August 11, 2023 Letter (RIOT_0001376)
- January 25, 2021 Joinder Agreement (RIOT_0001946)
- August 7, 2024 Email (RIOT_0000642)
- August 8, 2024 Email (RIOT_0001380)
- July 31, 2024 Email (RIOT_0000673)
- July 30, 2024 Notice of Default (RIOT_0000674)
- RHOD-BK-00016037
- Intercompany Loan Tracker (RHOD-BK-00065591)
- Cash Intercompany Transfers (RHOD-BK-00065643)
- Revenue Share Calculations (*E.g.*, RHOD-BK-00089094)
- Debtors' trial balances (*E.g.*, RHOD-BK-00064916, RHOD-BK-00064923)
- Debtors' financial statements (*E.g.*, RHOD-BK-00016037, RHOD-BK-00064953)
- Debtors' Revolving Credit Facility Agreements (*E.g.*, RHOD-BK-00074649, RHOD-BK-00074919)
- Debtors' Revolving Credit Facility Agreements (*E.g.*, RHOD-BK-00074649, RHOD-BK-00074919)
- June 2023 Board of Director Presentation (RHOD-BK-00089454)
- RHOD-BK-00089454

INTERROGATORY NO. 7:

For any Debtor that You contend is presently in default on a payment obligation to You under any of the Whinstone Contracts, identify the contract under which the default occurred, the amount of each alleged default, the amount to cure such default, the alleged defaulting entity, the date each alleged default occurred, and explain in detail Your methods of identifying and calculating such alleged defaults and amount to cure the same, and state all facts and evidence underlying, warranting, justifying, or evidencing Your contention that a payment default occurred.

RESPONSE:

In addition to the documents identified in Whinstone's response to Interrogatory No. 7, Whinstone states that Debtors were in payment default for their failure to make timely payment of the following invoices:

- 5751-R: \$4,734.32 due on 3/12/22
- 5752-R: \$31.52 due on 3/26/22
- 5754-R: \$9,336.75 due on 4/9/22
- 5758-R: \$300.00 due on 4/23/22

- 5771: \$7,225 due on 6/25/22
- 5809-A: \$10,008.75 due on 10/8/22
- 5810-A: \$2,486.25 due on 10/15/22
- 5811-A: \$1,827.50 due on 10/22/22
- 5812-A: \$5,822.50 due on 10/29/22
- 5837-A: \$6,141.25 due on 12/10/22
- 5813-A: \$1,441.13 due on 10/29/22
- 6736R: \$367,569.45 due on 2/23/22
- 7747R: \$72,211.58 due on 4/12/22
- RFPO-RH2013: \$95,770.22 due on 5/15/22
- RFP-RH2010: \$90,452.42 due on 5/16/22
- 5821-A: \$69,703.17 due on 10/30/22
- 5834-A: \$84,117.89 due on 11/30/22
- INV63: \$91,883.17 due on 12/31/22
- INV71: \$88,208.88 due on 1/15/23
- 5794-A: \$11,199.35 due on 8/30/22
- INV 5838: \$1,552.10 due on 6/2/23
- INV 162: \$382,271.40 due on 8/18/23
- INV 5867: \$1,530.00 due on 10/14/23
- INV 5876: \$148.75 due on 11/10/23
- INV 5886: \$425.00 due on 1/13/24
- INV 5892: \$191.25 due on 1/13/24
- INV 5895: \$339.15 due on 1/13/24
- INV 5898: \$170.00 due on 1/26/24
- INV 5822: \$737.81 due on 3/30/23
- INV 5823: \$170.00 due on 3/31/23
- INV 5825: \$260.75 due on 3/31/23
- INV 5827: \$2,325.00 due on 4/28/23
- INV 5826: \$2,305.00 due on 4/28/23
- INV 5829: \$3,452.50 due on 4/28/23
- INV 5837: \$3,420.00 due on 6/2/23
- INV 148: \$85,560.65 due on 6/30/23
- INV 161: \$69,517.00 due on 7/30/23
- INV 5858: \$2,106.10 due on 8/25/23
- INV 171: \$73,120.66 due on 8/30/23
- INV 186: \$67,848.89 due on 9/30/23
- INV 192: \$74,264.69 due on 10/30/23
- INV 204: \$86,665.43 due on 11/30/23
- INV 215: \$83,965.54 due on 12/30/23
- INV 5893: \$594.15 due on 1/13/24
- INV 5894: \$765.00 due on 1/13/24
- INV 5896: \$1,020.00 due on 1/26/24
- INV 5897: \$1,090.55 due on 1/26/24

- INV 226: \$93,143.85 due on 1/30/24
- INV 5900: \$3,584.45 due on 2/11/24
- INV 232: \$36,871.32 due on 3/1/24
- INV 233: \$22,074.92 due on 2/29/24
- INV 237: \$119.52 due on 3/10/24
- WHIN_0011781
- RHOD-BK-00063982
- RHOD-BK-00043737
- RHOD-BK-00043973
- RHOD-BK-00044774
- RHOD-BK-00089819
- RHOD-BK-00070576
- RHOD-BK-00040050
- RHOD-BK-00040270

INTERROGATORY NO. 8:

For any Debtor that You contend is currently in breach of any of the Whinstone Contracts on grounds other than default on a payment obligation, identify the alleged breach, the date the alleged breach occurred, and explain in detail the alleged breach and whether You contend the breach is material, and state all facts and evidence underlying, warranting, justifying, or evidencing Your contentions.

RESPONSE:

In addition to the documents identified in Whinstone's response to Interrogatory No. 8, Whinstone also identified documents evidencing the following material breaches and documents evidencing Debtors' insolvency:

- April 2021 spill (*E.g.*, WHIN_0002689)
- June 2021 spill (*E.g.*, WHIN_0002690, WHIN_0027376)
- July 2022 spill (*E.g.*, WHIN_0002698, RHOD-BK-00062721)
- January 2023 spill (*E.g.*, WHIN_0002701)
- January 2024 spill (*E.g.*, WHIN_0039832)
- RHOD-BK-00063982
- Consistent and systematic failures to implement spill control and maintenance plans (*E.g.*, RHOD-ARB-00001326, RHOD-BK-00083458, RHOD-BK-00064682, WHIN_0000615-624, RHOD-BK-00073465, WHIN_0002690, WHIN_0027377, RHOD-BK-00066394, WHIN_0011227, WHIN_0012600, WHIN_0012966, WHIN_0006038, WHIN_0004625, RHOD-BK-00062635, RHOD-BK-00062956, RHOD-BK-00062955, WHIN_0002741, RHOD-BK-00066903, RHOD-BK-00062288, RHOD-BK-00073992, RHOD-BK-00073468)

- Consistent and systematic failures to adequately staff site for maintenance (*E.g.*, RHOD-BK-00062692)
- Consistent and systematic failures to maintain Guntner dry coolers (*E.g.*, RHOD-BK-00062652, RHOD-BK-00083559, RHOD-BK-00085191, RHOD-BK-00085168-85183, RHOD-BK-00083942, WHIN_0012828, WHIN_0012960, WHIN_0012961, RHOD-BK-00065790)
- Installing aftermarket fans onto the Guntner dry coolers (*E.g.*, RHOD-BK-00066906, WHIN_0049225-49227, RHOD-BK-00062652)
- Failures to obtain required approvals before delivering fluids and materials (*E.g.*, WHIN_0028779)
- Failures to obtain required approvals for site visitors (*E.g.*, WHIN_0011602, RHOD-BK-00063734)
- Consistent and systematic equipment leaks (*E.g.*, RHOD-BK-00065656, RHOD-BK-00062627, RHOD-BK-00062624, RHOD-BK-00035464, RHOD-BK-00071110)
- Consistent and systematic failures to comply with OSHA, safety, and Data Access Rules (*E.g.*, WHIN_0025819, RHOD-BK-00065656, RHOD-BK-00062509, RHOD-BK-00062631, RHOD-BK-00050960, RHOD-BK-00069592, RHOD-BK-00070903, RHOD-BK-00071167, WHIN_0027379, WHIN_0016897-16901, RHOD-BK-00066534, WHIN_0011602, WHIN_0011781, RHOD-BK-00063711, RHOD-BK-00063764, RHOD-BK-00058504, WHIN_0002691, WHIN_0025822, WHIN_0011704, WHIN_0025895, RHOD-BK-00062890, WHIN_0027911, WHIN_0006691, RHOD-BK-00062717, WHIN_0004947, WHIN_0005039)
- Installing fan catches over Guntner's objection (*E.g.*, RHOD-BK-00085191)
- Loans secured by equipment
- UCC-1s
- Operating Agreements for each subsidiary
- December 5, 2023 Temporary Injunction Hearing Transcript and exhibits
- March 1-2, 2024 Temporary Injunction Hearing Transcripts and exhibits
- April 2, 2024 Temporary Injunction Hearing Transcript and exhibits
- November 28, 2023 Motion for Emergency Order in Support of Arbitration, Temporary Injunction, and Temporary Restraining Order and exhibits attached thereto
- November 30, 2023 Opposition to Whinstone's Emergency Motion for Discovery
- February 8, 2024 Emergency Motion for a New Temporary Injunction and exhibits attached thereto
- February 15, 2024 Application for Emergency Relief Pursuant to R-39 of the AAA Commercial Rules and exhibits attached thereto
- February 21, 2024 Second Request for Immediate Appointment of an Arbitrator and Emergency Relief Pursuant to R-39 and exhibits attached thereto
- February 23, 2024 Response in Opposition to Whinstone's Motion for Discovery
- March 5, 2024 Response in Opposition to Whinstone's Cross-Application for Emergency Relief and exhibits attached thereto
- March 28, 2024 Request to Modify Order Granting Emergency Relief and Request for Immediate Temporary Administrative Relief Pursuant to R-39 and exhibits attached thereto

- April 1, 2024 Reply in Support of Motion to Modify Order Granting Emergency Relief and exhibits attached thereto
- The additional invoices identified in response to Interrogatory Nos. 2-4 that certain Debtors failed to pay
- *Trine Mining, LLC, et al. v. Nathan Nichols, et al.*, Case 2022-1029, in the Delaware Court of Chancery
- July 31, 2024 Email (RIOT_0001366)
- August 8, 2024 Email (RIOT_0001367)
- August 11, 2023 Letter (RIOT_0001370)
- August 11, 2023 Letter (RIOT_0001372)
- August 11, 2023 Letter (RIOT_0001376)
- January 25, 2021 Joinder Agreement (RIOT_0001946)
- August 7, 2024 Email (RIOT_0000642)
- August 8, 2024 Email (RIOT_0001380)
- July 31, 2024 Email (RIOT_0000673)
- July 30, 2024 Notice of Default (RIOT_0000674)
- RHOD-BK-00016037
- Intercompany Loan Tracker (RHOD-BK-00065591)
- Cash Intercompany Transfers (RHOD-BK-00065643)
- Revenue Share Calculations (*E.g.*, RHOD-BK-00089094)
- Debtors' trial balances (*E.g.*, RHOD-BK-00064916, RHOD-BK-00064923)
- Debtors' financial statements (*E.g.*, RHOD-BK-00016037, RHOD-BK-00064953)
- Debtors' Revolving Credit Facility Agreements (*E.g.*, RHOD-BK-00074649, RHOD-BK-00074919)
- Debtors' Revolving Credit Facility Agreements (*E.g.*, RHOD-BK-00074649, RHOD-BK-00074919)
- June 2023 Board of Director Presentation (RHOD-BK-00089454)
- RHOD-BK-00089454

INTERROGATORY NO. 19:

Identify all individuals who have participated in conversations at Whinstone U.S., Inc., Riot Blockchain, Inc., or Riot Platforms, Inc. regarding, relating to, or concerning any decision to remove Legacy Hosting Customers from the Rockdale Site or any decision to terminate any agreement with Legacy Hosting Customers, the dates those conversations occurred, and whether those conversations occurred orally or in writing.

RESPONSE:

Whinstone states that David Schatz, Ryan Werner, Jeff McGonegal, William Jackman, Alex Travis, Chad Harris, and/or Patrick Wooding were involved in decision to terminate hosting agreements at the Facility. The substance of those conversations is protected by attorney-

client privilege and work-product and occurred prior to and around the time those hosting agreements were terminated.

INTERROGATORY NO. 22:

Does “Riot’s 345MW Long-Term 24/7 Fixed-Price Power Contract” referenced in Riot Platforms, Inc.’s April 18, 2024 Investor Presentation (available at <https://d2ghdaxqb194v2.cloudfront.net/2865/193757.pdf>) include the power that is the subject matter of the Base Contract for Supply of Electricity entered into by Whinstone US Inc. and Txu Energy Retail Company LLC on or about May 11, 2020?

RESPONSE:

Whinstone states that the “345MW Long-Term 24/7 Fixed-Price Power Contract” includes the amount of power provided by the “Base Contract for Supply of Electricity entered into by Whinstone US Inc. and TXU Energy Retail Company LLC on or about May 11, 2020.”

INTERROGATORY NO. 24:

Explain in detail, with all supporting calculations, how You calculated the estimated \$24.2 million in power credits and \$7.4 million in demand response credits referenced in press releases from Riot Platforms Inc. dated September 6, 2023 (available at <https://www.riotplatforms.com/riot-announces-august-2023-production-and-operations-updates/>) and September 8, 2023 (available at <https://www.riotplatforms.com/riot-responds-to-recent-inquiries-regarding-its-power-strategy/>).

RESPONSE:

Whinstone states that the \$24.2 million in power credits and \$7.4 million in demand response credits was an estimate based on not yet finalized data. However, the final figures are calculated by adding the \$405,736.81 and \$13,432,405.98 listed in the “Under Usage Credit” columns in the July and August 2023 TXU Excel Account Summary (*i.e.*, RIOT_0000143) and the \$10,311,240 in gross forward hedge sales contained in the PPM QSE August 2023 Invoice (*i.e.*, WHIN_0029768) and the \$7,567,802.60 in gross demand response credits listed in the in the PPM QSE August 2023 Invoice (*i.e.*, WHIN_0029768), respectively,

INTERROGATORY NO. 25:

Explain in detail, with all supporting calculations, how You calculated the values for “hedge optimization,” “economic curtailment,” “ancillary services,” and “4CP transmission savings” provided at page 24 of Riot Platforms, Inc.’s April 18, 2024 Investor Presentation (available at <https://d2ghdaxqb194v2.cloudfront.net/2865/193757.pdf>).

RESPONSE:

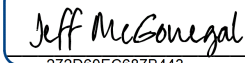
Whinstone states that the “hedge optimization,” “economic curtailment,” and “ancillary services” categories are full year power credits identified in the PPM monthly invoices and the “4CP transmission savings” is calculated by subtracting “Transmission Cost Recov Factor” kilowatts from the “Distribution System Charge” kilowatts and multiplying the difference by the “Transmission Cost Recov Factor” rate identified in the monthly TXU Account Summary.

VERIFICATION

Jeffrey McGonegal, being first duly sworn, deposes and states as follows:

I am a designated corporate representative of Whinstone US, Inc. (“Whinstone”). I have reviewed the supplemental answers to Interrogatory Nos. 2-5, 7-8, and 22, which were prepared in reliance, in whole or in part, upon my personal knowledge, officers, agents, employees, or records of Whinstone. These answers are subject to inadvertent or undiscovered errors, and are necessarily limited by the records and information still in existence, presently recollected, and thus far discovered. I reserve the right to make changes in the answers if it appears that omissions or errors have been made or that more accurate information is available. Subject to these limitations, the answers are true to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Signed by:

272D60EC687B443...
Jeffrey McGonegal

VERIFICATION

David Schatz, being first duly sworn, deposes and states as follows:

I am a designated corporate representative of Whinstone US, Inc. (“Whinstone”). I have reviewed the supplemental answers to Interrogatory Nos. 4, 8, and 19, which were prepared in reliance, in whole or in part, upon my personal knowledge, officers, agents, employees, or records of Whinstone. These answers are subject to inadvertent or undiscovered errors, and are necessarily limited by the records and information still in existence, presently recollected, and thus far discovered. I reserve the right to make changes in the answers if it appears that omissions or errors have been made or that more accurate information is available. Subject to these limitations, the answers are true to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DocuSigned by:

951624C89F1B4FF...
David Schatz

VERIFICATION

Kevin Haugen, being first duly sworn, deposes and states as follows:

I am a designated corporate representative of Whinstone US, Inc. (“Whinstone”). I have reviewed the supplemental answers to Interrogatory Nos. 24-25, which were prepared in reliance, in whole or in part, upon my personal knowledge, officers, agents, employees, or records of Whinstone. These answers are subject to inadvertent or undiscovered errors, and are necessarily limited by the records and information still in existence, presently recollected, and thus far discovered. I reserve the right to make changes in the answers if it appears that omissions or errors have been made or that more accurate information is available. Subject to these limitations, the answers are true to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Signed by:

01DD0E647EE64CB...
Kevin Haugen

EXHIBIT 2

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

_____))
IN RE:) CHAPTER 11
RHODIUM ENCORE LLC, et al.,) CASE NO 24-90448(ARP)
DEBTORS.)
) (Jointly Administered)
_____))

ORAL DEPOSITION OF

JEFF MCGONEGAL

OCTOBER 25, 2024

ORAL DEPOSITION OF JEFF MCGONEGAL, produced as a witness at the instance of the Rhodium Entities, and duly sworn, was taken in the above-styled and numbered cause on October 25, from 9:15 a.m. to 5:37 p.m., taken at the Offices of Foley & Lardner, LLP, 600 Congress, 14th Floor, Suite E, Austin, Texas, 78701, before Mary Lou Taylor, CSR in and for the State of Texas, reported by machine shorthand method, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

1 Q. I see. So this isn't a new termination of the
2 Rhodium JV December 2020 Hosting Agreement based on
3 payment defaults, correct?

4 MR. MARX: Objection, form.

5 A. It is a new Notice of Termination, but it is
6 just -- it is similar to the -- from my standpoint, the
7 payment defaults listed in the November agreement would
8 be the same type of defaults, maybe not the same dollar
9 amounts.

10 Q. Okay. So what were the dollar amounts of any
11 payment defaults that Whinstone contends underlie this
12 termination based on this first sub-bullet point?

13 MR. MARX: Objection, form.

14 A. I think our position is those -- those contracts
15 had already been terminated.

16 Q. If Whinstone contends that the Rhodium JV
17 December 2020 agreement had already been terminated, why
18 did it send an April 2024 Notice of
19 Termination pertaining to that agreement?

20 MR. MARX: Objection, form. And I'm just going
21 to instruct the witness not to answer to the extent it
22 invokes attorney-client privilege. You can answer if you
23 know outside of that.

24 Q. To be clear, I'm not asking you to tell me what
25 Mr. Marx or any other lawyer told you. I just want to

1 know Whinstone's understanding.

2 A. Okay. So repeat your question.

3 Q. Sure. Why did Whinstone send an April 2024
4 Notice of Termination regarding the Rhodium JV December
5 2020 agreement if Whinstone contends that that agreement
6 had already been terminated?

7 A. I think it was along the lines of a belts and
8 suspenders covering, you know, all the bases, and
9 excluding prior agreements that Whinstone's position was
10 they had been superceded, but just in case they had not
11 been, or the court finds they had not been, this includes
12 them in this termination notice.

13 Q. Okay. So I want to ask you about kind of the
14 belts and suspenders assertions.

15 A. Okay.

16 Q. I understand you said that Whinstone believes
17 that agreement was already terminated. But, insofar,
18 perhaps pursuant to a belts and suspenders approach,
19 Whinstone was terminating the agreement again.

20 What were the alleged Rhodium JV payment
21 defaults in that first basis of termination?

22 MR. MARX: Objection, form.

23 A. They related to revenue share payments. They
24 related to services. They related to ancillary services,
25 probably some other categories that I'm not thinking of

1 at the present time.

2 Q. So you're not sure what payment defaults were
3 included in the first basis for termination?

4 MR. MARX: Objection, form.

5 A. In the first notice?

6 Q. I'm sorry, when I say first, I'm talking about
7 the first bullet point on this page. So, sorry, let me
8 reask the question.

9 A. Okay.

10 Q. Looking at the April 2024 Notice of Termination,
11 the purported termination of the Rhodium JV December 2020
12 Hosting Agreement, and in that first sub-bullet point
13 that says, Termination pursuant to Section 17.1.1 due to
14 Rhodium JV's payment defaults, can you please give me a
15 comprehensive list of the Rhodium JV payment defaults
16 that support this item in the Notice of Termination?

17 MR. MARX: Objection, form.

18 A. I would go back to the header paragraph that
19 says, In addition to the reasons detailed in the
20 termination notice, Whinstone reaffirms its termination
21 of the Rhodium JV December 2020 Hosting Agreement, and
22 the Air HPC December 2020 Hosting Agreements for the
23 following reasons.

24 So, it -- it's just repeating the prior
25 termination provisions that were contained in the

1 November 2023 termination notice.

2 Q. Okay. So there are no additional payment
3 defaults beyond what was addressed in the November 2023
4 termination notice that underlie this portion of the
5 April 2024 termination notice, correct?

6 MR. MARX: Objection, form.

7 A. Factually, the numbers had changed. So this is
8 a broad point that said payment defaults detailed in the
9 termination notice, but the amounts would have changed
10 between November and April.

11 Q. So, as of April 2024, what amounts does
12 Whinstone contend were due?

13 MR. MARX: Objection, form.

14 A. I can't answer that question.

15 Q. Because Whinstone doesn't know the answer to
16 that question, or for some other reason?

17 A. I -- I don't -- I just don't have that -- that
18 number sitting here today.

19 Q. And you cannot figure out that number from the
20 April 2024 Notice of Termination, correct?

21 A. Other than what's identified in the -- the prior
22 defined termination notice, I can't.

23 Q. All right. And you're referring to the November
24 2023 notice, right?

25 A. Correct.

1 Q. Okay. And I think you still have the November
2 2023 Notice of Termination in front of you if you want
3 it. It's marked as Exhibit 3.

4 A. Yep.

5 Q. Based on the November 2023 Notice of
6 Termination, can you figure out what amount of payment
7 Whinstone contends Rhodium JV had defaulted on for the
8 April 2024 Notice of Termination?

9 MR. MARX: Objection, form.

10 A. Not beyond what -- what's contained in the
11 November 27, 2023, notice, other than of the amounts that
12 changed after those -- after that date.

13 Q. All right. So, sitting here today, you can't
14 tell me what Whinstone contends Rhodium JV owed it in
15 terms of payment defaults at the time of April 2024
16 Notice of Termination, correct?

17 MR. MARX: Objection, form.

18 A. I believe that agreement had already been
19 terminated. This is just a summary of the -- the five
20 buckets of contracts and their status as of the date of
21 this 2024 termination notice.

22 Q. So I understand there may be a contention in the
23 alternative. Do you know the phrase in the alternative?

24 A. No.

25 Q. It's sort of like belts and suspenders.

1 So I absolutely understand your point that
2 Whinstone believes this agreement had already been
3 terminated. But I'm just asking about, insofar as it's
4 terminating again, I want to know the basis for that.

5 So, as you sit here today, can you tell me the
6 amounts of any payment defaults by Rhodium JV that
7 Whinstone contends underlie this April 2024 Notice of
8 Termination of the Rhodium JV agreement?

9 MR. MARX: Objection, form.

10 A. I think if we go back to the first page of the
11 letter, it -- it basically says, Whinstone stands on its
12 termination notice and it's position that all of the
13 above referenced agreements have either been terminated,
14 superceded, and/or replaced.

15 So that would cover this contract that we're
16 looking at right here.

17 Q. Okay. The April 2024 Notice of Termination does
18 not provide Rhodium notice of any additional payment
19 defaults beyond those that were alleged in the November
20 2023 Notice of Termination, correct?

21 MR. MARX: Objection, form.

22 A. Because -- because they had already been
23 terminated.

24 Q. Is that a yes, because they had already been
25 terminated?

1 MR. MARX: Objection, form.

2 A. There was not additional amounts provided
3 because the agreements had been previously terminated.

4 Q. Okay.

5 MR. MARX: And, Will, we've been going for about
6 an hour and a half, so when you reach a stopping point.

7 MR. THOMPSON: Let's go off the record.

8 THE VIDEOGRAPHER: We are going off the record
9 at 10:39 a.m.

10 (Off the record)

11 THE VIDEOGRAPHER: We are going back on the
12 record at 10:49 a.m.

13 MR. THOMPSON CONTINUES:

14 Q. Okay, Mr. McGonegal -- excuse me, Mr. McGonegal,
15 before we broke, we were on Exhibit 4, the April 2024
16 Notice of Termination.

17 Do you still have that in front of you?

18 A. I do.

19 Q. Okay. So I'm going to, I'm still on the section
20 about the Rhodium JV December 2020 Hosting Agreement.
21 I'm looking at the second sub-bullet point that says,
22 Termination pursuant Section 17.1.3, due to Rhodium JV's
23 material breaches of certain listed sections.

24 Do you see that?

25 A. Yes.

1 Q. I understand that you are the 30(b)(6) witness
2 for alleged monetary breaches and not the non-monetary
3 breaches. Do I understand your division of labor
4 correctly?

5 A. Exactly.

6 Q. Okay. Which, if any, of the listed sections in
7 that sub-bullet point pertain to monetary breaches for
8 which you are the 30(b)(6) witness?

9 A. I don't know offhand. I think there's another
10 document that's been produced or circulated with that
11 information.

12 Q. I'm sorry. What other document are you talking
13 about?

14 A. Where -- which breaches as corporate
15 representative I'm responsible for, or I'm addressing.

16 Q. Okay. What is your understanding of which
17 alleged breaches you are addressing as a corporate
18 representative?

19 A. The financial provisions under the Hosting
20 Agreement.

21 Q. Okay. So what are the alleged financial
22 breaches under the Hosting Agreement that underlie this
23 termination of the December 2020 Hosting Agreement?

24 A. Nonpayment.

25 Q. Anything else?

1 A. From a financial standpoint?

2 Q. Yeah, for anything where you're the 30(b)(6)
3 witness.

4 A. I think nonpayment and financial condition.

5 Q. Anything other than nonpayment and financial
6 condition?

7 A. Not that I recall, sitting here today.

8 Q. Okay. When you say -- I'm going to ask you
9 about each of those. When you say nonpayment, nonpayment
10 of what?

11 A. Amounts due under the contracts.

12 Q. Okay. And what amounts were due under the
13 contracts at the time this April 2024 Notice of
14 Termination was sent?

15 A. Again, we get circular with, I believe the
16 Rhodium JV December 31, 2020, Hosting Agreement had
17 already been terminated prior to this point in time.

18 Q. Got it. So, are the nonpayment alleged breaches
19 that support this April 2024 Notice of Termination the
20 same as the payment defaults that support the November
21 2023 Notice of Termination?

22 MR. MARX: Objection. You can answer to the
23 extent you know on the non-monetary from a personal
24 aspect.

25 A. I think the -- the top section of this page

1 dealing with the Rhodium JV and the Air HPC are
2 replicated but were originally terminated under the
3 November 2023 agreement. So, other than recite what
4 that -- what those provisions were and adding anything
5 else that had come up, I don't believe that there was our
6 ability to compute what the financial update of that
7 information was.

8 Q. Sorry, I guess your phrase add anything else
9 that had come up, that's what I'm trying to ask about.

10 A. Uh-huh.

11 Q. Is there any new monetary breach that supports
12 the April 2024 Notice of Termination that did not also
13 support the November 2023 Notice of Termination?

14 A. Other than the reference to Section 17.1.2,
15 nothing comes to mind on the other financial sections.

16 Q. Okay. And when you say the reference to Section
17 17.1.2, you're talking about the insolvency issue?

18 A. That's correct.

19 Q. Okay. So I'm just going to break it down by
20 bullet point to organize it in my head.

21 A. Okay.

22 Q. So, as to the first bullet point about Rhodium
23 JV's payment defaults, there were no new payment defaults
24 supporting the April 2024 Notice of Termination that had
25 not supported the November 2023 Notice of Termination,

1 correct?

2 MR. MARX: Objection, form.

3 A. When we terminated the November -- under the
4 November 2023 agreement, we shut the facility down and
5 Rhodium's portion of the facility, Building C and B. And
6 I -- that led to court hearings about the status of that
7 shutdown. And I believe there was a temporary
8 restraining order that was the subject of a court hearing
9 that was issued. So during the period subsequent to
10 November, additional power was provided, additional
11 services were rendered, all under the terms of the
12 November -- excuse me, the December 31 Rhodium JV and Air
13 HPC contracts.

14 But, as I sit here today, and this notice does
15 not reference those, because we had the -- we did not
16 have enough information to compute them.

17 Q. Does Whinstone contend that Rhodium failed to
18 pay -- I'm sorry, Rhodium JV failed to pay for any power
19 between November of 2023 and April of 2024?

20 A. I don't believe so.

21 Q. Does Whinstone contend that there was any amount
22 of money due to Whinstone that Rhodium JV failed to pay
23 between November of 2023 and April of 2024, other than
24 the Annex 2 profit share payments?

25 A. Yes, I believe there were some invoices that

1 were billed but not paid that, I think, remain
2 outstanding, and that you -- you excluded the Annex 2
3 computations.

4 Q. So what are the invoices that were billed but
5 not paid?

6 A. Several of the service and work order invoices
7 that had been billed as the services were requested and
8 performed.

9 Q. Any other, anything else besides the service and
10 work order invoices you just mentioned?

11 A. There might have been some ancillary services
12 invoices.

13 Q. Do you know one way or the other whether there
14 were?

15 A. I -- I don't know for sure.

16 Q. None of those invoices are mentioned in the
17 April 2024 Notice of Termination, correct?

18 A. The -- yes, the ones we just kind of went in
19 summary form, or the Annex 2 ones that we're not
20 discussing at this point. That's all I'm aware of. And
21 -- they're in detail not listed in this because the
22 position is they had already -- the contracts had been
23 previously terminated.

24 Q. Sure, I understand that --

25 A. Okay.

1 Q. -- position. Are they lifted at all anywhere in
2 this Notice of Termination?

3 A. No, other than just referring back to the prior
4 termination agreement where those two contracts --
5 contracts were noticed as terminating.

6 Q. Did Whinstone send any Notice of Termination or
7 Notice of Default to Rhodium JV about these service or
8 work order invoice or the ancillary services invoices
9 that you mentioned?

10 MR. MARX: Objection, form.

11 A. I believe there were communications between the
12 two finance staffs about following up on invoices that
13 were unpaid requesting payment.

14 Q. Anything else?

15 A. Not that I'm aware of.

16 Q. And those communications between the finance
17 staffs weren't Notices of Termination pursuant to the
18 December 2020 agreements, correct?

19 MR. MARX: Objection.

20 A. Repeat that. I missed -- kind of missed the
21 last part.

22 Q. Let me make sure I understand correctly.

23 I wanted to know about whether there were any
24 notices from Whinstone to Rhodium JV about alleged
25 failure to pay for these service invoices, work order

1 invoices, or ancillary services invoices. And you
2 mentioned some communications between the finance staff
3 on both sides?

4 A. Correct.

5 Q. Were those communications between the finance
6 staffs emails between employees for the two companies?

7 A. For the most part they would have been emails,
8 yes.

9 Q. And were there any other communications between
10 the finance staffs about these invoices?

11 A. I suspect there could have been phone calls, but
12 I'm not sure about that.

13 Q. Does Whinstone contend that any of the
14 communications between the finance staffs about these
15 invoices that you mentioned constitute notice of default
16 under the December 2020 Rhodium JV agreement?

17 A. I guess it's communication on nonpayment or late
18 payment of invoices.

19 Q. I'm sorry. That's not quite my question. I'm
20 asking whether Whinstone contends that those
21 communications between the finance staffs
22 constitute Notice of Default under the December 2020
23 Rhodium JV agreement?

24 MR. MARX: Objection, form.

25 A. I -- I would think they would, yeah.

1 Q. What is the factual basis for that contention?

2 A. Just it was a communication under the contract
3 for amounts that had not been paid.

4 Q. Were any of the communications that you're
5 referring to involving these issues of nonpayment
6 directed to Cameron Blackmon?

7 A. I don't believe so. He might have been copied
8 on it, but I, I can't say specifically.

9 Q. Okay. So we were talking about the alleged
10 monetary breaches that Whinstone asserts. And you had
11 two -- two of them in category, I guess, nonpayment of
12 amounts due under the contract, and the other one was
13 financial condition.

14 So I'm asking you now about the second bucket,
15 financial condition. When you say financial condition,
16 are you referring to the third bullet point, termination
17 pursuant to Section 17.1.2 due to Rhodium JV's
18 insolvency?

19 A. Correct.

20 Q. Does Whinstone contend that Rhodium JV was
21 insolvent at the time it sent the April 2024 Notice of
22 Termination?

23 A. Yes.

24 Q. What is the basis for Whinstone's contention?

25 A. That, when you say Rhodium, are we talking

1 specifically about Rhodium JV, or Rhodium as the
2 relationship?

3 Q. Sorry. I'm talking about the third bullet under
4 the Rhodium JV December 2020 Hosting Agreement.

5 A. Okay.

6 Q. I'll read it to you just to make sure we're
7 straight. It says, Termination pursuant to Section
8 17.1.2 due to Rhodium JV's insolvency.

9 A. Okay.

10 Q. So does Whinstone contend that Rhodium JV was
11 insolvent at the time it sent this April 2024 Notice of
12 Termination?

13 A. Yes.

14 Q. And what is the basis for that contention?

15 A. I probably can't remember all of them
16 specifically, but we obtained financial statements of
17 Rhodium that indicated deteriorating financial condition
18 over time. The -- Rhodium's auditor in the last set of
19 audited financial statements that we saw provided a going
20 concern qualification in their audit report after their
21 review of the -- of the entities' financial position.

22 They, originally under the relationship, they
23 paid pretty consistently every quarter of our revenue
24 share -- of the revenue share they computed. And, as
25 time went on, that got slower and slower. It lagged into

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

_____))
IN RE: _____) CHAPTER 11
RHODIUM ENCORE LLC, et al.,) CASE NO 24-90448(ARP)
DEBTORS. _____))
_____) (Jointly Administered)
_____)

REPORTER'S CERTIFICATE
ORAL DEPOSITION OF JEFF MCGONEGAL
OCTOBER 25, 2024

I, Mary Lou Taylor, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the JEFF MCGONEGAL, was duly sworn and by the
officer and that the transcript of the oral deposition is
a true record of the testimony given by the witness:

That the deposition transcript was duly submitted on
_____ to the witness or to the attorney for
the witness for examination, signature, and return to me
by _____.

That the amount of time used by each party at the
deposition is as follows:

MR. WILL THOMPSON - (6h18m)

1 MR. BRANDON MARX - (0h0m)

2 I further certify that I am neither counsel for,
3 related to, nor employed by any of the parties in the
4 action in which this proceeding was taken, and further
5 that I am not financially or otherwise interested in the
6 outcome of this action.

7 Further certification requirements pursuant to Rule
8 203 of the Texas Code of Civil Procedure will be complied
9 with after they have occurred.

10 Certified to by me on this 31st day of
11 October, 2024.

12 
13 _____

14 MARY LOU TAYLOR
15 TEXAS CSR NO. 2215
16 ACE COURT REPORTING SERVICE
17 & DIGITAL VIDEOGRAPHY
18 220 E. UNIVERSITY DRIVE
19 EDINBURG, TEXAS 78539
20 (956) 380-1100
21 info@acecourtreporting.com
22
23
24
25

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to _____, Custodial Attorney;

That \$_____ is the deposition officer's charges to the Party for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this 31st day of October, 2024.

Mary Lou Taylor

MARY LOU TAYLOR
TEXAS CSR NO. 2215
ACE COURT REPORTING SERVICE
& DIGITAL VIDEOGRAPHY
220 E. UNIVERSITY DRIVE
EDINBURG, TEXAS 78539
(956) 380-1100
info@acecourtreporting.com