

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

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

**DEBTORS' EMERGENCY MOTION FOR STATUS CONFERENCE TO  
ADDRESS SCOPE AND SCHEDULING OF PHASE 2 HEARING ON DEBTORS'  
MOTION TO ASSUME**

**Emergency relief has been requested. Relief is requested not later than January 10, 2025.**

**If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

---

<sup>1</sup> 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.



2490448250107000000000005

Debtors (referred to as “Rhodium”) move this court for an emergency order setting a status conference to address the scope and scheduling of Phase 2 of the hearing on Debtors’ Motion to Assume Certain Executory Contracts with Whinstone US, Inc. (ECF Nos. 7, 32).

### **BACKGROUND**

1. On December 16, 2024, the Court issued its decision resolving the Phase 1 issues and holding that (1) Debtors satisfied the business judgment rule and (2) the 25 contracts at issue remain in force and were not terminated pre-petition. Interim Order, ECF No. 579, at 14-38. The Court explained the issues resolved in Phase 1, and to be addressed in Phase 2, as follows:

The issues during the Phase 1 hearing addressed which agreements control the relationship between the parties, whether any of the agreements were superseded by other agreements, the existence of defaults, whether any agreements were terminated as a result of a breach, and whether any defaults have continued or have been cured. Phase 2 will address issues of cure, compensation, and adequate assurance.

*Id.* at 4. The Court directed the parties to confer regarding the scope of the Phase 2 hearing. *Id.* at 38.

2. Debtors have, on multiple occasions, attempted to confer with Whinstone regarding the scope of Phase 2, but to date, the parties have been unable to confer or reach agreement on the matters to be addressed in Phase 2. Specifically, although Whinstone has confirmed that it will not assert any non-monetary breaches in Phase 2, Whinstone has declined to specify what monetary amounts it believes are owed by Debtors and thus potentially in dispute in Phase 2. Further, Whinstone has indicated that it intends to assert (as yet unspecified) alleged monetary breaches and amounts due that were not asserted in Phase 1. That is, Whinstone appears to be taking the

(incorrect) position that it can re-litigate the “existence of defaults” and inject new claims of monetary default at this late date. It cannot.<sup>2</sup>

### **ARGUMENT**

3. Phase 2 must be scheduled promptly because Debtors will seek a hearing on conditional approval of their disclosure statement later this month, and will seek confirmation of a plan by the end of February. This schedule emanates from the drastically increased professional fee accruals imposed by the newly appointed Unsecured Creditors’ Committee. Debtors have attempted in good faith to confer with Whinstone and resolve the issues necessary to schedule Phase 2, but those efforts have not succeeded and further delay is prejudicial to Debtors. Whinstone must promptly disclose the specific monetary amounts that it contends are owed by Rhodium and in dispute in Phase 2. Until that happens, Rhodium cannot plan for witnesses or evidence, estimate the length of the hearing, or proceed with any needed remaining depositions. It also appears likely, based on Whinstone’s representations to date, that the Court will need to clarify the limited scope of Phase 2 and resolve disputes regarding the issues that can be litigated in Phase 2. Again, however, those scope issues cannot be addressed and resolved until Whinstone identifies the specific monetary amounts that it contends are owed by Rhodium and in dispute in Phase 2.<sup>3</sup>

---

<sup>2</sup> The parties have exchanged multiple emails but have not conferred in person, although Debtors have offered to do so several times. Debtors understand that holiday plans made scheduling difficult for part of this time period. On December 31, 2024, Debtors’ counsel again emailed Whinstone’s counsel asking for Whinstone to disclose the amounts it claims are owed by Rhodium and offering to confer on January 2 or 3. Whinstone’s counsel indicated that they would suggest times to confer on January 6 or 7, but never did so. Debtors’ counsel emailed Whinstone’s counsel again on the afternoon of January 7, indicating that Debtors intended to file this motion and remain available to confer.

<sup>3</sup> To be clear, Rhodium’s position is that the scope of Phase 2 is straightforward and that the monetary amounts potentially in dispute are limited to specific items noted in the Court’s order resolving Phase 1.

4. For these reasons, and in the interest of avoiding further delay, Rhodium asks the Court to set a status conference no later than January 10, 2025, to address the scheduling and scope of Phase 2.

### **CONCLUSION**

For the foregoing reasons, the Court should set an emergency status conference not later than January 10, 2025.

Respectfully submitted this 7<sup>th</sup> day of January, 2025.

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Patricia B. Tomasco

Patricia B. Tomasco (SBN 01797600)

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: 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

-and-

STRIS & MAHER, LLP

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

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

**RULE 37(a)(1) CERTIFICATION**

I, Bridget Asay, counsel for Debtors in this matter, certify that Debtors have corresponded repeatedly with Whinstone and attempted to confer with Whinstone on the matters addressed herein and were unable to reach a resolution.

/s/ Bridget Asay  
Bridget Asay

**CERTIFICATE OF ACCURACY**

I, Bridget Asay, hereby certify on the 7<sup>th</sup> day of January, 2025, that pursuant to Local Rule 9013-1(i), the foregoing statements regarding the nature of the emergency set forth in the foregoing Emergency Motion are true and accurate to the best of my knowledge.

/s/ Bridget Asay  
Bridget Asay

**CERTIFICATE OF SERVICE**

I, Patricia B. Tomasco, hereby certify that on the 7th day of January, 2025, a copy of the foregoing was served via the Clerk of the Court through the ECF system to the parties registered to receive such service.

/s/ Patricia B. Tomasco  
Patricia B. Tomasco

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

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

**ORDER GRANTING THE DEBTORS' EMERGENCY MOTION FOR  
STATUS CONFERENCE TO ADDRESS SCOPE AND SCHEDULING  
OF PHASE 2 HEARING ON DEBTORS' MOTION TO ASSUME**

(Relates to ECF No. \_\_\_\_)

CAME ON FOR CONSIDERATION, the Debtors' Emergency Motion for Status Conference to Address Scope and Scheduling of Phase 2 Hearing on Debtors' Motion to Assume (the "Emergency Motion") and the Court after review of the Emergency Motion hereby

1. GRANTS the Emergency Motion;
2. A status conference is hereby scheduled for January \_\_\_, 2025, at \_\_\_\_\_.m. via audio and video connections; and

---

<sup>1</sup> 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.

3. The Debtors shall file and serve a Notice of Hearing with a Certificate of Service to all parties registered to receive service via the Court's Electronic Case Filing System of the United States Bankruptcy Court for the Southern District of Texas.

Dated:

---

ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE