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

In re:	§	Chapter 11
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)

OBJECTION OF THE AD HOC GROUP OF SAFE PARTIES TO DEBTORS' APPLICATION FOR AN UPDATED ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL

The Ad Hoc Group of SAFE Parties (the "**SAFE AHG**")[2] in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**") of Rhodium Encore LLC and its affiliated debtors and debtors in possession (collectively, the "**Debtors**"), by and through its undersigned counsel, respectfully submits this objection (the "**Objection**") to the *Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 835] (the "**New Retention Application**"). In support of this Objection, the SAFE AHG respectfully represents as follows:

[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), Air HPC LLC (0387), 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] As defined in *First Supplemental Verified Statement of Ad Hoc Group of SAFE Parties Pursuant to Bankruptcy Rule 2019* [Docket No. 607].

PRELIMINARY STATEMENT[3]

1. The SAFE AHG respectfully asks the Court to deny the Debtors' New Retention Application seeking to pay a windfall contingency fee to Lehotsky Keller Cohn LLP ("**LKC**"). The New Retention Application is based on a March 4, 2025 engagement letter that the Debtors purported to enter into ***after*** the work LKC was retained to do largely was completed. But LKC already is subject to a retention order entered by this Court on October 14, 2024, and has provided services to the Debtors in these Chapter 11 Cases pursuant to that order for more than seven months. *See Order Granting the Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 263] (the "**LKC Retention Order**"). The LKC Retention Order permitted the Debtors to "retain and employ" LKC for the assumption litigation with Whinstone US, Inc. (alongside two other firms) "in accordance with" LKC's "normal hourly rates and disbursement policies." *See id.* at ¶ 2. The Debtors did so, and LKC since has incurred about $2.5 million in hourly fees for its work on the (now concluded) assumption litigation with Whinstone US, Inc. (the "**Whinstone Litigation**").

2. The Debtors' original application to retain LKC, dated September 22, 2024, referenced a prepetition "contingent fee" agreement from May 16, 2023 (the "**2023 Letter**") as part of LKC's potential compensation, but nowhere disclosed any of the specific terms of the putative contingent fee contained in the 2023 Letter. *See Application to Employ Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 173] (the "**Original Retention Application**"). Critically, moreover, the Debtors did not submit a copy of the 2023 Letter with

[3] Capitalized terms used but not defined in this Preliminary Statement shall have the meanings given to them in this Objection, the New Retention Application or the *Declaration of David M. Dunn In Support of Chapter 11 Petitions and First Day Relief* [Docket No. 35], as appropriate.

the Original Retention Application, or at any time prior to filing the New Retention Application.[4] The Original Retention Application, in other words, did not support entry of an order allowing payment of a contingent fee to LKC. Consequently, no such order was entered. It would therefore be impossible for LKC to recover a contingent fee based on the Original Retention Application and LKC Retention Order.

3. The Debtors and LKC know this, and therefore have moved for what they call an "update" to the LKC Retention Order that would provide for a contingent fee. But the deadlines to seek to modify the LKC Retention Order under Bankruptcy Rules 9023 or 9024 have long passed, and the Debtors and LKC must live with the terms of that order. In reality, moreover, the Debtors do not seek to merely "update" the existing agreement; they seek to replace it entirely with the March 4, 2025 agreement, the terms of which purportedly "supersede" all prior engagements. There is no reasoned basis for doing so.

4. For one thing, the proposed new agreement is far less favorable to the estates than the existing arrangement. Unlike the existing LKC Retention Order, the new agreement purports to authorize Debtors to use estate assets to pay a potentially substantial contingent fee to LKC, including under circumstances that would not have triggered a success fee even under the Debtors' (undisclosed) 2023 Letter with LKC. Notably, the triggers in the March 4, 2025 proposed agreement are tailored to match the terms of Debtors' recently announced sale transaction with Whinstone US, Inc. and Riot Platforms, Inc. (the "**Whinstone Transaction**"). As the Debtors have acknowledged in open court, the Whinstone Transaction emerged from the February 19, 2025 mediation at which LKC was present.

[4] The LKC Retention Order expressly states, "[to] the extent the Application is inconsistent with this Order, the terms of this Order shall govern." *See* LKC Retention Order, at ¶ 8.

5. It is manifestly ***not*** "reasonable"—the touchstone for professional retentions under the Bankruptcy Code—for the Debtors to attempt to set aside the existing LKC Retention Order in favor of brand-new LKC engagement terms that are less favorable to the Debtors' estates, and that were crafted by LKC ***after*** conclusion of the Whinstone Litigation and ***after*** development of the structure of the Whinstone Transaction. Moreover, under at least one proposed new provision to the engagement terms, the Debtors would have discretion to award success payments to LKC in amounts that are not identified, and under circumstances that are not disclosed, anywhere in the New Retention Application or the proposed new March 2025 Agreement. The SAFE AHG respectfully requests that the Court deny the New Retention Application and reject LKC's bid for a post-hoc success fee grab.

BACKGROUND

6. On September 22, 2024, the Debtors filed the Original Retention Application seeking to retain LKC "as special litigation counsel in its dispute with Whinstone US, Inc." Original Retention Application, at ¶ 6. The Original Retention Application indicated LKC would bill hourly and appended a table detailing the "Hourly Professional Service Rates" of twenty-four LKC partners, counsel, associates and other timekeepers. *Id.* at Schedule 3. The Original Retention Application asserted that "there is also a contingent fee depending on the outcome of litigation." *Id.* at ¶ 26. However, nowhere in the Original Retention Application did the Debtors disclose any aspect of the putative contingent fee, nor describe any of the circumstances under which it could be triggered. In connection with the New Retention Application, the Debtors disclosed for the first time an engagement letter dated May 16, 2023 (previously defined as the "2023 Letter"), which the Debtors say is the document that "provid[es] the details of the . . .

contingency arrangement" supposedly referenced in the Original Fee Application.[5] Critically, however, the Debtors did not attach the 2023 Letter to the Original Retention Application, nor were its terms otherwise identified anywhere in the Original Retention Application. Indeed, even now, the Debtors have not disclosed all of the terms of the 2023 Letter.[6]

7. On October 14, 2024, the Court entered the LKC Retention Order. The LKC Retention Order authorizes the Debtors to retain LKC, along with Stris & Maher LLP ("**Stris**"), "to represent Debtors in all matters in which the Whinstone Dispute is at issue, including specifically in the Motions to Assume Contracts with Whinstone . . . ." *See* LKC Retention Order, at ¶ 1(a). The LKC Retention Order says nothing about payment of any contingent or success fee. Instead, it expressly provides that the Debtors may "retain and employ [LKC] under a general retainer ***in accordance with [LKC's] normal hourly rates and disbursement policies.***" *See id.* at ¶ 2. The LKC Retention Order provides that "to the extent the Application is inconsistent with this Order, the terms of this Order shall govern." *Id.* at ¶ 7. The Debtors did not move to alter or amend the LKC Retention Order within the time contemplated by applicable rules. *See* Fed. R. Bankr. P. 9023 & 9024.

8. LKC has provided services pursuant to the terms of the LKC Retention Order throughout these Chapter 11 Cases primarily, if not exclusively, by aiding Stris and Quinn Emanuel Urquhart & Sullivan, LLP ("**Quinn**") in connection with the Debtors' motion to assume certain agreements with Whinstone US, Inc. Indeed, LKC's fee applications indicate that virtually

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[5] *See Amended Declaration of Jonathan F. Cohn In Support of the Application for an Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP* [Docket No. 835], dated March 6, 2025 ("**Second Cohn Declaration**"), at ¶ 7.

[6] The 2023 Letter specifically incorporates by reference the terms of a May 16, 2023 email (the "**Additional Terms**") that apparently was attached to the 2023 Letter when signed by the Debtors. *See* New Retention Application, Ex. A (referencing the success fee trigger "identified by the attached email dated May 16, 2023"). The Debtors refused the SAFE AHG's request for a copy of the May 16, 2023 email identifying the Additional Terms of the 2023 Letter, and did not include the Additional Terms even with the New Retention Application.

all of the hours incurred on these matters by LKC were devoted to the Whinstone Litigation, which was resolved pursuant to this Court's orders dated December 16, 2024 (Phase I) [Docket No. 579] and February 22, 2025 (Phase II) [Docket No. 800]. LKC has filed requests for payment of fees in these Chapter 11 Cases pursuant to the LKC Retention Order on at least seven occasions.[7] Through February, LKC has applied for approximately $2,399,806.93 in fees for its role assisting Stris and Quinn with the Whinstone Litigation.

9. Beginning on February 19, 2025, the Debtors, Whinstone US, Inc., Riot Platforms, Inc., and the SAFE AHG participated in a mediation led by Judge Mark X. Mullin of the Bankruptcy Court for the Northern District of Texas. On March 19, 2025, the Debtors announced in open court that they had reached agreement with Whinstone and Riot Platforms, Inc. (together, "**Whinstone**") to sell all or substantially all of the Debtors' assets to Whinstone, and to exchange mutual general releases. Two days later, the Debtors disclosed that Whinstone would purchase the Debtors' tangible assets "located at Rockdale" and contracts for consideration worth $185 million. *See Emergency Motion for Entry of an Order (I) Approving Settlement Between Debtors and Whinstone Us, Inc.; (II) Authorizing the Use, Sale, or Lease of Certain Property of the Debtors' Estate Pursuant to 11 U.S.C. § 363; and (III) Granting Related Relief* [Docket No. 880] (the "**Whinstone Transaction Motion**").

[7] *Lehotsky Keller Cohn LLP's First Monthly Fee Statement for the Period August 28, 2024 Through September 30, 2024* [Docket No. 382]*; Lehotsky Keller Cohn LLP's Second Monthly Fee Statement for the Period October 1, 2024 Through October 31, 2024* [Docket No. 425]; *Lehotsky Keller Cohn LLP's Third Monthly Fee Statement for the Period November 1, 2024 Through November 30, 2024* [Docket No. 538]; *Lehotsky Keller Cohn LLP's Fourth Monthly Fee Statement for the Period December 1, 2024 Through December 31, 2024* [Docket No. 730]; *Lehotsky Keller Cohn LLP's First Interim Application for Payment of Compensation and Reimbursement of Expenses for the Period August 28, 2024 Through November 30, 2024* [Docket No. 765]; *Lehotsky Keller Cohn LLP's Fifth Monthly Fee Statement for the Period January 1, 2025 Through January 31, 2025* [Docket No. 790]; *Lehotsky Keller Cohn LLP's Sixth Monthly Fee Statement for the Period February 1, 2025 Through February 28, 2025* [Docket No. 847].

10. As Debtors' lead counsel specifically observed at the hearing on March 19, 2025, the February 19, 2025 mediation "got [the Debtors] most of the way" to the $185 million Whinstone Transaction. Audio Rec. of Mar. 19, 2025 Hearing, *Whinstone US, Inc. v. Imperium Inv. Holdings LLC, et al.*, Case No. 24-03240 (ARP) [Docket No. 46]. As an active participant in the mediation, the SAFE AHG can confirm Ms. Tomasco's on-the-record statement that the February 19 mediation with Judge Mullin did indeed get the deal "most of the way there." On March 4, 2025, nearly seven months after the Petition Date, and just over two weeks after the February 19 mediation, the Debtors abruptly entered into a new engagement letter with LKC (the "**March 2025 Letter**") which purports to "supersede" all prior agreements with LKC. On March 6, 2025, the Debtors filed the New Retention Application, asking that the Court adopt the terms of the March 2025 Letter in lieu of the terms of the engagement that the Court approved on October 15, 2024, and that have governed the Debtors engagement of LKC in these cases for over seven months.

11. As discussed below, the LKC Retention Order does not authorize payment to LKC of a success fee of any kind, and the Debtors' bid for relief from that order is both untimely and meritless. Certainly, the Debtors should not be permitted to effectively terminate the LKC Retention Order in favor of the new terms to which they purported unilaterally to agree pursuant to the March 2025 Letter, after conclusion of the Whinstone Litigation. This is particularly so given that the terms of the March 2025 Letter are even less favorable to the Debtors' estates than the undisclosed 2023 Letter, and appear deliberately tailored to trigger a success fee based on the deal structure negotiated in connection with the February 19 mediation, at which LKC was present.

OBJECTION

12. Bankruptcy Rule 2014(a) provides that a professional retention order only can be granted based on an application that "state[s] the specific facts showing the necessity for the

employment . . . the professional services to be rendered, [and] any proposed arrangement for compensation. The terms of the proposed employment must be "reasonable," and "the burden is on the party seeking to employ the professional to provide evidence" sufficient to establish "the reasonableness of the requested fees." *See, e.g., In re MMA L. Firm, PLLC*, 661 B.R. 548, 555 (Bankr. S.D. Tex. 2024) (holding that the "primary inquiry is assessing whether the terms and conditions of [the professional's retention] are reasonable under the circumstances"); *In re Energy Partners, Ltd.*, 409 B.R. 211, 226 (Bankr. S.D. Tex. 2009) (the party "seeking the employment of professionals under § 328(a) must establish that the terms and conditions of employment are reasonable, and evidence, not conclusory statements, is required to satisfy that burden."); *In re Frontier Commc'ns Corp.*, 623 B.R. 358, 363 (Bankr. S.D.N.Y. 2020) ("[T]he burden of proof to establish that the proposed compensation terms are reasonable rests with the applicant."). The Debtors have not satisfied Bankruptcy Rule 2014, and the terms they seek to adopt in lieu of the existing LKC Retention Order are manifestly ***un***reasonable, as discussed in more detail below.

I. The LKC Retention Order Is Final and Binding, Not Subject to "Update," and Does Not Authorize Payment to LKC of A Contingent or Success Fee

13. The Debtors style their motion as one for an "Updated Order" authorizing the retention of LKC. That relief is not available. The Original Retention Application was made pursuant to Bankruptcy Code sections 327(e), 328(a) and 1107(b), and the LKC Retention Order was entered on October 14, 2024. The period of time within which to move to modify the LKC Retention Order pursuant to Bankruptcy Rule 9023 expired on October 28, 2024, nearly five months ago. Any motion to seek relief from the LKC Retention Order under Bankruptcy Rule 9024 would likewise be untimely. More than 143 days passed between the date the LKC Retention Order was entered and the date of the New Retention Application, a period of time that is not "reasonable" within the meaning of Bankruptcy Rule 9024 (incorporating Federal Rule of Civil

Procedure 60 by reference). In any case, Debtors do not even try to establish any of the factors that ordinarily must be present for relief from an order, such as "excusable neglect," "newly discovered evidence" or "fraud." *See* Fed. R. Civ. P. 60. In short, LKC Retention Order is not subject to "update" or other modification, and the Debtors and LKC must live with it as written, just as they have over the first seven months of these cases.

14. It is crystal clear that the LKC Retention Order does ***not*** authorize the Debtors to pay LKC a success or contingent fee. As noted above, the LKC Retention Order provides expressly that the Debtors may retain LKC pursuant to its "***normal hourly rates and disbursement policie***s," and says nothing about a contingent or success fee award under any circumstances. *See* LKC Retention Order, at ¶ 2. The Debtors may point to the fact that the Original Retention Application mentioned the possibility of payment of an undefined "contingent fee" pursuant to the 2023 Letter, but that is not good enough. The Original Retention Application did not attach the 2023 Letter, or provide a single detail about how the contingent fee arrangement was meant to operate or to be earned. A contingent fee arrangement cannot be approved without the terms and triggers for the fee being disclosed in advance in connection with the professional's fee application, including so the Court and stakeholders can consider whether those terms and triggers are reasonable. *See, e.g.*, Bankruptcy Rule 2014(a) (providing that professional retention only can be granted upon an "application," and that the application must disclose "any proposed arrangement for compensation").

15. The Debtors and LKC elected not to attach the 2023 Letter to the Original Retention Application or describe the putative success fee provisions contained in that document in the Original Retention Application. As a result, the LKC Retention Order simply cannot be read to authorize contingent fee terms, as the Debtors and LKC well know; indeed, that is why they filed

the New Retention Application. The Debtors and LKC also know that a contingent fee cannot be paid if the associated retention order does not provide explicit authorization. Hence, in the New Retention Application, the Debtors purport to attach and incorporate by reference the March 2025 Letter, a step they deliberately omitted when they filed the Original Retention Application (without a copy of the 2023 Letter).

16. Notably, if the Debtors and LKC had disclosed the putative contingent fee terms in connection with the Original Retention Application, it may have provoked an objection. In an unusual decision, the Debtors in these cases sought to retain three different law firms to assist in their contract dispute with Whinstone—Quinn, Stris and LKC. In the Original Retention Application, LKC does little to explain why two different boutique commercial litigation firms (apparently with virtually indistinguishable practices, and the same tenure with Rhodium and the Whinstone disputes) would be necessary to handle a contract dispute, particularly given additional participation by Quinn. Perhaps LKC feared that if it disclosed to stakeholders its hope for a substantial contingent fee in addition to payment of material hourly fees, and in addition to the millions likely to be paid to the Debtors' other firms relating to the same Whinstone Litigation, LKC's application might fail (or at least garner objections and closer scrutiny from parties-in-interest). Whether such a concern animated LKC's choice or would have been justified is unknown. We know only that the terms of the desired success fee were not disclosed to stakeholders or the Court in connection with the LKC Retention Order, and that the LKC Retention Order therefore could not, and did not, authorize payment of a success fee. The Debtors and LKC must live with the choice they made, and the limits on LKC's compensation that go along with that choice.

II. Replacing the Terms of the LKC Retention Order with New Terms Less Favorable to the Estates Cannot Be Justified

17. As noted, the Debtors style their motion as one for an "update" to their existing engagement of LKC, relief that is not available under applicable rules. In any case, the Debtors do not really seek to modify (or "update") the terms of the engagement approved under the LKC Retention Order. Rather, they seek to ***replace*** those terms whole cloth with brand-new, and less favorable, terms provided in the March 2025 Letter. The Debtors' intention is clear from the face of the March 2025 Letter, which provides specifically that "this engagement letter ***supersedes***" all previous engagement terms with LKC. *See infra* Exhibit A (attaching redline comparing 2023 Letter to March 2025 Letter) (emphasis added); *see also* Merriam-Webster Online, https://www.merriam-webster.com (last visited Mar. 27, 2025) (defining "supersede" (v.) as "1(a): to cause to be set aside, 1(b): to force out of use as inferior; 2: to take the place or position of; 3. to displace in favor of another.").

18. Nor can there be any doubt that the new terms the Debtors wish to adopt are far less favorable to the estates than the current terms. As discussed at length above, the LKC Retention Order does not authorize payment of a contingent or success fee to LKC under ***any*** circumstances, a feature which could save millions of dollars for distribution to stakeholders compared to the replacement terms for which the Debtors now advocate.

19. In fact, the terms of the March 2025 Letter are much worse for the Debtors' estates even than the terms embodied in the 2023 Letter that the Debtors and LKC failed to disclose in connection with their Original Retention Application. *See infra* Exhibit A (attaching "redline" comparing the March 2025 Letter to the terms of the March 2023 Letter).[8] The 2023 Letter was

[8] Except for the Additional Terms of the 2023 Letter, which were never disclosed by the Debtors or LKC.

between LKC and just four Rhodium entities: Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC and Jordan HPC LLC (collectively, the "**Four Entities**"). *See* New Retention Application, Exh. A. The March 2025 Letter, in contrast, purportedly is between LKC and ***eighteen*** identified Rhodium entities, with each expressly "jointly and severally liable to pay all fees." *See* New Retention Application, at Exh. B, n.1. The previously undisclosed 2023 Letter contemplated payment of a $600,000 success fee if the Four Entities were "acquired by Whinstone or an affiliate." The March 2025 Letter, in contrast, purports to add a new trigger for the $600,000 payment: the acquisition by Whinstone or an affiliate of "all or substantially all of the Rockdale assets." It cannot be a coincidence that the Debtors used a markedly similar phrase to describe the Whinstone Transaction just days later.

20. The March 2025 Letter also adds another success fee trigger not contained in the previously undisclosed 2023 Letter. The 2023 Letter contemplated additional success payments only if the Four Entities recovered "energy credits" or "damages" from the Whinstone litigation. LKC was entitled to nothing under these provisions where, as here, Whinstone acquired Debtor assets. But the March 2025 Letter adds a new paragraph (d) that is triggered by "Whinstone or an affiliate" acquiring "all or substantially all of the Rockdale assets … in a transaction that resolves or otherwise terminates the matter." *See* New Retention Application, at Exh. B. Regardless of whether any related consideration ***actually*** was paid by Whinstone in connection with "energy credits" or "damages," new paragraph (d) empowers the Debtors to arbitrarily "allocate" transaction consideration to those categories, which would trigger success fee payments to LKC potentially worth millions.

21. Paragraph (d) provides no guardrails for the contemplated allocation, and leaves stakeholders and the Court to guess at the amount and circumstances of any award to LKC. This

disclosure failure alone warrants denial of the New Retention Application. *See, e.g.* Bankruptcy Rule 2014 (a)(e) (requiring that any retention application "must state specific facts showing . . . any proposed arrangement for compensation . . ."). Moreover, under the Debtors' preferred formulation, the Court (and the estates' economic stakeholders) could have input in the first instance on the allocation (and thus the amount of the success fee), only if the Debtors and LKC first fail to cut their own backroom deal. If the New Retention Application were granted, applicable bankruptcy rules could render toothless any challenges to a subsequent allocation (and resulting success fee) decreed by the Debtors. In short, the Debtors seek advance permission to pay a contingent fee based on terms that have not yet been disclosed, an approach expressly forbidden by the Bankruptcy Rules and case law.

22. The Debtors make no serious effort to explain why they would even try to adopt the March 2025 Letter, whose terms are vastly inferior to the terms of the existing LKC Retention Order (and even the terms of the undisclosed 2023 Letter), and which are plainly tailored to trigger a success fee based on the Whinstone Transaction. All, or virtually all, of the services LKC agreed to provide pursuant to the LKC Retention Order already were finished, and the Whinstone Transaction had already been advanced to nearly its current form (according to the Debtors' counsel), ***before*** the Debtors purported to enter into the March 2025 Letter. The Debtors' failure to explain ***why*** they propose to provide a contingent fee windfall to LKC under these circumstances is fatal to their motion. *See* Fed. R. Bankr. P. 2014(a) ("An order approving employment of attorneys … shall be made ***only***" if based on an application that "state[s] the specific facts showing the necessity for the employment" and "the professional services to be rendered") (emphasis added). Exactly what services the Debtors expect LKC to provide from March 4, 2025 forward (the date of the proposed new agreement), and how those services could possibly justify the new

contingent fee arrangement, is addressed nowhere by the Debtors in their motion, which should therefore be denied.

23. Nor can the Debtors satisfy the legal standard for granting their motion. Indeed, it is manifestly ***un***reasonable to agree to pay professionals ***more*** than that to which they previously agreed, for services they already have rendered. This is particularly so where, as here, the new terms were crafted ***after*** the parties learned that the triggering event was all but certain to occur. *See In re Energy Partners, Ltd.*, 409 B.R. 211, 226 (Bankr. S.D. Tex. 2009) (the party "seeking the employment of professionals under § 328(a) must establish that the terms and conditions of employment are reasonable, and evidence, not conclusory statements, is required to satisfy that burden."); *In re Frontier Commc'ns Corp.*, 623 B.R. 358, 363 (Bankr. S.D.N.Y. 2020) ("[T]he burden of proof to establish that the proposed compensation terms are reasonable rests with the applicant."). The Debtors cannot carry their "burden of proof to establish that the proposed" March 2025 "compensation terms are reasonable" under the circumstances, and their application accordingly must fail.

RESERVATION OF RIGHTS

24. This Objection is submitted without prejudice to, and with a full reservation of, the SAFE AHG's rights, claims, defenses and remedies, including the right to amend, modify or supplement this Objection to raise additional objections and to introduce evidence at any hearing relating to the New Retention Application, and without in any way limiting any other rights of the SAFE AHG to further respond to the New Retention Application on any grounds, as may be appropriate.

25. Additionally, on March 10, 2025, the SAFE AHG requested discovery regarding issues related to the New Retention Application. While certain documents have been received, the

SAFE AHG has not received all documents responsive to its requests. The SAFE AHG reserves all rights to continue to seek information concerning the New Retention Application and to present such issues to the Court, as and when appropriate.

CONCLUSION

26. For the foregoing reasons, the SAFE AHG respectfully requests that the Court deny the New Retention Application, and enter such other and further relief as the Court may deem just, proper and equitable.

Dated: March 27, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ *Sarah Link Schultz*
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Counsel to the Ad Hoc Group of SAFE Parties

CERTIFICATE OF CONFERENCE

I hereby certify that on March 27, 2025, counsel to the SAFE AHG conferred with counsel for the Debtors in a good faith effort to resolve the SAFE AHG's objections to the New Retention Application. I hereby certify that we have engaged in good faith discussion in an attempt to address the SAFE AHG's concerns. The dispute remains unresolved.

/s/ Sarah Link Schultz
Sarah Link Schultz

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Sarah Link Schultz
Sarah Link Schultz

EXHIBIT A

ENGAGEMENT LETTER REDLINE

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

~~May 16~~March 4, ~~2023~~2025

Cameron Blackmon
~~4146 W US Highway 79~~

2617 Bissonnet Street, Ste 234
~~Rockdale~~Houston, TX ~~76567~~77005

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium ~~30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC~~ entities listed below[1] ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, ~~Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC~~ (et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, "this Matter").

[1] Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.

~~Our attorney-client relationship will commence when you have agreed to the material terms of our engagement.~~

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) ~~a $25,000 monthly fixed fee for all work by Jonathan Cohn; (2)~~ discounted hourly rates ~~for all other timekeepers~~; and (~~3~~2) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

- Jonathan Cohn, Scott Keller and Steve Lehotsky: $~~1,300~~1,400
- Other partners, including Will Thompson: $~~1,200~~1,300
- Counsels: $~~900~~1000
- Associates: $~~750~~850

These standard rates were in effect on January 1, 2024, and were increased on January 1, 2025. Nonetheless, as an accommodation to you, we will maintain the same rates for this Matter for 2025.

We will continue to provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees~~, the $25,000 monthly fixed fee,~~ and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee ~~has three components~~is calculated as follows:

(a) $600,000 if (i) the ~~contracts at issue in the Matter (including those you seek to enforce) are not terminated and, if addressed by a court, your interpretation of key contractual provisions (as identified by the attached email dated on May, 16, 2023) is upheld or (ii) you~~ Bankruptcy Court's order on Debtor's Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after ~~settlement of the Matter,~~ the closing of such acquisition~~, or a non-appealable final judgment~~;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, ~~to be paid~~payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and

(c) 10% of any additional ~~amounts~~damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, ~~to be paid~~payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates~~.~~;

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You ~~shall post~~have posted a retainer of $200,000. Insofar as the retainer is used to pay ~~monthly~~ invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

~~Jonathan F. Cohn~~

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:
~~Rhodium 30MW LLC~~

Rhodium JV LLCBy:
Air HPC LLC

Cameron Blackmon

Title: Authorized Signatory

Date: 5/16/2023 _____