

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

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

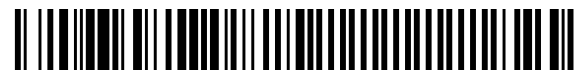
**NICHOLAS CERASUOLO’S EMERGENCY MOTION TO QUASH NOTICE OF RULE
2004 EXAMINATION BY THE TRANSCEND GROUP AND FOR RELATED RELIEF**

**EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS
REQUESTED NOT LATER THAN 9:00 A.M. ON APRIL 23, 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.**

Nicholas Cerasuolo, a creditor in the above-captioned chapter 11 cases, by and through his undersigned counsel, hereby files this motion (the “Motion”) requesting an order, substantially in the form of the proposed order attached hereto (the “Proposed Order”), quashing the Notice of Rule 2004 Deposition of Nicholas Cerasuolo filed by Transcend Partners Legend Fund LLC, Valley High LP, GR Fairbairn Family Trust, Grant Fairbairn Revocable Trust, Nina Claire Fairbairn Revocable Trust, NCF Eagle Trust, GRF Tiger Trust, and NC Fairbairn Family Trust (collectively, the “Transcend Group”) and ordering the Transcend Group to comply with

¹ The debtors and debtors-in-possession in these chapter 11 cases (the “Debtors”) 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.



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Bankruptcy Local Rule 2004-1 for any alternative Bankruptcy Rule 2004 examination of Cerasuolo. In support of the Motion, Cerasuolo respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief sought are sections 105 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2004-1 of the Bankruptcy Local Rules for the U.S. Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Local Rules”).

BACKGROUND AND BASIS FOR RELIEF

4. On April 9, 2025, Cerasuolo agreed to an examination pursuant to Bankruptcy Rule 2004 set for April 23, 2025, and noticed by the SAFE AHG. After negotiations among various parties, the SAFE AHG group sought to reschedule the noticed examination of Cerasuolo to May 8, 2025. The re-noticed SAFE AGH Bankruptcy Rule 2004 examination is reflected in **Exhibit A** hereto.²

5. Apparently dissatisfied with the SAFE AHG’s decision to reschedule Cerasuolo’s examination, the Transcend Group filed with the Court a document titled “Notice of Rule 2004 Deposition of Nicholas Cerasuolo” (the “Transcend Notice of Deposition”) the evening of April 19, 2025, seeking to conduct a separate Bankruptcy Rule 2004 examination of Cerasuolo on April 23, 2025. The Transcend Group filed two other notices of Rule 2004 examinations for other parties.

² Cerasuolo intends to request that the SAFE AHG Bankruptcy Rule 2004 examination held remotely as neither Cerasuolo, his counsel, nor these chapter 11 cases are located in Dallas. However, the date of the examination is in line with what Cerasuolo originally requested.

A. The Transcend Notice of Deposition should be quashed for failing to comply with Bankruptcy Local Rule 2004-1.

6. The Transcend Notice of Deposition is defective under the Bankruptcy Local Rules. First, the Transcend Group failed to conference with Cerasuolo, as required by Bankruptcy Local Rule 2004-(c). The rule expressly provides that “failure to confer is grounds for a motion to quash and sanctions.” Second, the Transcend Group did not provide at least 14 days’ written notice of a proposed examination, as required by Bankruptcy Local Rule 2004-1(d). Only four (4) days’ notice was provided, and that was over a holiday weekend. The rule provides parties seven (7) days to *object* after the filing according to Bankruptcy Local Rule 2004-1(f). Third, the Transcend Group did not apprise Cerasuolo of the scope of the examination, as required by Bankruptcy Local Rule 2004-1(d). The Transcend Notice of Deposition nearly completely fails to satisfy the requirements under the Bankruptcy Local Rules.

7. This failure, and particularly with respect to the notice and conference requirements, is grounds for quashing the notice without a hearing.³ By itself, Bankruptcy Rule 2004 requires a motion and order for an examination. Bankruptcy Local Rule 2004-1 obviates the need for the motion and order but imposes certain additional procedural requirements. These additional requirements are a necessary part of obtaining an examination without a motion and order. Absent Local Bankruptcy Rule 2004-1, an examination under Bankruptcy Rule 2004 requires an affirmative order of the Court. This motion would require ordinary notice and service, and no such motion has been filed. Although Bankruptcy Local Rule 2004-1 obviates the need for motion and a hearing, that is only if its requirements are met. Because the Bankruptcy Local Rule requires at least fourteen (14) days’ notice to be operative and expressly provides that failure to confer is grounds for a motion to quash, the Transcend Notice of Deposition should be quashed.

³ See *In re Galleria 2425 Owner, LLC*, Case No. 23-34825 (Bankr. S.D. Tex.), ECF Nos. 129, 134, and 139.

8. Quashing the Transcend Notice of Deposition would not leave the Transcend Parties without the ability to obtain information from Cerasuolo. As a party in the chapter 11 cases, they are of course entitled to participate in the SAFE AHG's Rule 2004 examination scheduled for May 8, 2025. To the extent that there are areas not covered in the SAFE AHG's examination, the Transcend Group would be able to obtain that information through specific discovery pursuant to the relevant Federal Rules of Civil Procedure. But they should not be allowed to use discovery as a vehicle to harass parties in contravention of the Bankruptcy Local Rules.

B. An instruction to the Transcend Group to comply with Bankruptcy Local Rule 2004-1 on any further Bankruptcy Rule 2004 examination of Cerasuolo is warranted.

9. Bankruptcy Local Rule 2004-1(g) provides that the Court may impose sanctions to the extent that any party is unreasonable in seeking discovery under Bankruptcy Rule 2004. The Transcend Group has been manifestly unreasonable in failing to confer, seeking a Bankruptcy Rule 2004 examination on four (4) days' notice over a holiday weekend (i.e., two (2) business days' notice), and failing to identify the scope of the examination. The provision of Bankruptcy Local Rule 2004-1(f) providing seven (7) days to respond or objection—in this case *after* the noticed examination—demonstrates that Transcend Notice of Deposition is well outside the scope contemplated by the rule and inherently unreasonable. And Bankruptcy Local Rule 2004-1 expressly provides that failure to confer is grounds for sanctions.

10. However, sanctions should be imposed only to the extent required to deter the conduct by the party and similarly situated litigants in the future. It is possible that the Transcend Group is merely mistaken about the requirements of Bankruptcy Local Rule 2004-1. In any event, their counsel indicated a belief that the Transcend Notice of Deposition complied with the Bankruptcy Local Rules. Cerasuolo therefore requests only that the Court specifically order the

Transcend Group to comply with Bankruptcy Local Rule 2004-1 on any further noticed Bankruptcy Rule 2004 examination of Cerasuolo.⁴

BASIS FOR EMERGENCY CONSIDERATION

11. The Transcend Group filed the patently deficient Transcend Notice of Deposition the evening of April 19, 2025. They seek to conduct Cerasuolo's deposition at 9:30 a.m. CT on April 23, 2025, a mere four (4) days later. Unless the Court enters an order quashing the Transcend Notice of Deposition without a hearing—as Cerasuolo submits would be appropriate given the clear requirements of Bankruptcy Local Rule 2014-1—an emergency hearing is required.

CONCLUSION

WHEREFORE, Cerasuolo respectfully requests that the Court enter an order, substantially in the form of the Proposed Order attached hereto, quashing the Transcend Notice of Deposition and instructing the Transcend Group to comply with Bankruptcy Local Rule 2004-1 for any further noticed Bankruptcy Rule 2004 examination for Cerasuolo.

Dated: April 20, 2025

Respectfully submitted,

SHANNON & LEE LLP

/s/R. J. Shannon

R.J. Shannon

State Bar No. 24108062

Kyung S. Lee

State Bar No. 12128400

2100 Travis Street, STE 1525

Houston, Texas 77002

Email: rshannon@shannonleellp.com

klee@shannonleellp.com

Phone: (713) 714-5770

Counsel to Nicholas Cerasuolo

⁴ For the avoidance of doubt, Cerasuolo believes that multiple Bankruptcy Rule 2004 examinations of Cerasuolo about the same topics would be inappropriate. There is already an agreed-upon examination to be conducted by the SAFE AHG, in which the Transcend Group can participate as a party in interest. If there *are* grounds for further examination of Cerasuolo, however, it should be after a conference required by Bankruptcy Local Rule 2004-1(c) and have a specified scope as required by Bankruptcy Local Rule 2004-1(d).

CERTIFICATE OF SERVICE

I hereby certify that the forgoing document was served (a) by the Court's CM/ECF System on all parties registered to receive such service at the time of filing and (b) by U.S.P.S. first class mail on the following persons within one business day:

Attn: Brenda L Funk & John Cornwell
Munsch Hardt Kopf & Harr, P.C.
700 Milam St., Suite 800
Houston, TX 77002

-and-

Attn: Chase J. Potter
Iacuone McAllister Potter PLLC
4925 Greenville Ave., Suite 1112
Dallas, Texas 75206

/s/R. J. Shannon

R. J. Shannon

EXHIBIT A

SAFE AHG Revised Notice of Rule 2004 Examination

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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)
	§	

REVISED NOTICE OF RULE 2004 DEPOSITION OF NICHOLAS CERASUOLO

PLEASE TAKE NOTICE THAT, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 2004-1 of the United States Bankruptcy Court for the Southern District of Texas (the “Local Rules”), the Ad Hoc Group (“AHG”) of parties to Simple Agreements for Future Equity with Debtor Rhodium Enterprises, Inc. will take the oral deposition of Nicholas Cerasuolo on **May 8, 2025**, starting at **9:30 a.m. Central Time** at the offices of Akin Gump Strauss Hauer & Feld LLP, 1111 Louisiana St. #44, Houston, Texas 77002, or at such other date, time, and place as the parties may agree. The deposition will be recorded by stenographic means and may also be recorded by audio or audiovisual means and shall continue day-to-day until completed.

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Dated: April 18, 2025

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

Sarah Link Schultz (State Bar No. 24033047;
S.D. Tex. 30555)

Elizabeth D. Scott (State Bar No. 24059699; S.D.
Tex. 2255287)

2300 N. Field Street, Suite 1800

Dallas, TX 75201-2481

Telephone: (214) 969-2800

Email: sschultz@akingump.com

Email: edscott@akingump.com

- and -

Mitchell P. Hurley (admitted *pro hac vice*)

One Bryant Park

New York, NY 10036-6745

Telephone: (212) 872-1000

Email: mhurley@akingump.com

*Counsel to the Ad Hoc Group of SAFE
Parties*

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

In re:)	
RHODIUM ENCORE, LLC, et al., ¹)	Chapter 11
)	
Debtor.)	Case No. 24-90448 (ARP)
)	
)	Jointly Administered

ORDER QUASHING RULE 2004 EXAMINATION BY THE TRANSCEND GROUP

Upon consideration of Nicholas Cerasuolo's Emergency Motion to Quash Second Rule 2004 Examination by the Transcend Group and for Sanctions (the "Motion"), any response thereto, and for good cause shown, it is hereby ORDERED as follows:

1. The Notice of Rule 2004 Deposition of Nicholas Cerasuolo [ECF No. 962] is hereby QUASHED.

2. Transcend Partners Legend Fund LLC, Valley High LP, GR Fairbairn Family Trust, Grant Fairbairn Revocable Trust, Nina Claire Fairbairn Revocable Trust, NCF Eagle Trust, GRF Tiger Trust, and NC Fairbairn Family Trust shall comply with Bankruptcy Local Rule 2004-1 with respect to any further notice of Bankruptcy Rule 2004 examination of Nicholas Cerasuolo.

Signed _____, 2025

UNITED STATES BANKRUPTCY JUDGE

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.