

**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) |
| | § | |

**LEHOTSKY KELLER COHN LLP’S STATEMENT
IN CONNECTION WITH APRIL 25, 2025 STATUS CONFERENCE**

Lehotsky Keller Cohn LLP (“**LKC**”), by and through its undersigned counsel, files this Statement in connection with the April 25, 2025 Status Conference related to the *Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* (the “**Updated Application**”).²

1. First, for almost two years, LKC has provided heavily discounted rates in exchange for a success fee, the existence of which was disclosed in LKC’s original application (the “**Original Application**”)³ and described in LKC’s engagement letter with the Debtors.⁴ No one disputes any of this. Indeed, the Original Application and supporting declarations specifically mentioned the contingency fee *eleven times*, and every one of LKC’s interim fee statements provided the agreed-

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), Rhodium Enterprises, Inc. (6290), Rhodium Technologies 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 Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

² Docket No. 835.

³ Docket No. 173.

⁴ The Updated Application attaches the original engagement letter between the Debtors and LKC, dated May 16, 2023 as Exhibit A (the “**Original Engagement Letter**”) and the updated engagement letter between the Debtors and LKC, dated March 4, 2025 as Exhibit B (the “**Updated Engagement Letter**”).



upon discounted rates.⁵ LKC’s first interim fee application likewise mentions the success fee and fee discounts.⁶ Nor does anyone dispute that LKC helped the Debtors achieve extraordinary successes over the last two years, including by obtaining a temporary restraining order and three injunctions that allowed the Debtors to remain in business, and then by prevailing at trial before this Court. As a result of LKC’s efforts, all creditors will be paid in full, and there will be over \$100 million for other stakeholders.

2. Second, the Ad Hoc Group of SAFE Parties’ (the “*Ad Hoc Group*”) belatedly raised a technical issue with LKC’s original application on the eve of the mediation held on February 19, 2025. According to the Ad Hoc Group, although LKC disclosed the existence of the contingency eleven times, the firm needed to disclose further details regarding the contingency fee, and the Court’s order approving the application needed to explicitly mention the fee. However, as the Ad Hoc Group knows full well, LKC did disclose those details in a draft of the Original Application, but the Debtors and their counsel, Patty Tomasco, instructed LKC to remove those details. LKC should not be penalized by following the direction of its clients and the Debtors’ counsel, especially because LKC is not bankruptcy counsel, has no bankruptcy practice, and reasonably relied on Debtor’s counsel for reviewing, signing, and filing the Original Application. LKC will fully address this issue in its forthcoming brief on the merits. But, in any event, the Debtors filed the Updated Application to put to rest the Ad Hoc Group’s belatedly expressed concern.

3. Third, the Ad Hoc Group asserted in a meet and confer today that it is challenging the contingency fee so that there will be more money for *other* stakeholders. The Ad Hoc Group

⁵ Docket Nos. 382, 425, 538, 730, 790, and 847

⁶ Docket No. 765, ¶ 19, n. 3.

invited LKC to negotiate down its fee to the Ad Hoc Group's satisfaction. But, in addition to several other concerns with this request, LKC notes that the Ad Hoc Group may not even be a stakeholder that can receive proceeds from the Whinstone settlement. The question is whether the Ad Hoc Group's "future equity" is triggered by the settlement with Whinstone. Regardless of where the Debtors, equity holders, and the Court come out on this issue—which presumably will be discussed at the upcoming mediation—the Ad Hoc Group is not the proper party at this time to be demanding a one-on-one negotiation to bargain down LKC's fee. The Ad Hoc Group does not speak for any other parties in these bankruptcy cases. Further, negotiating with the Ad Hoc Group would be extremely difficult, to say the least, because counsel for the Ad Hoc Group has refused to include the Debtor's new counsel on this matter, Stris & Maher, LLP, in any discussions.

4. Fourth, insofar as attorneys in this matter should be forced to accept post-hoc haircuts on their fees, it is completely unclear why LKC alone, and no other law firm retained pursuant to the Bankruptcy Code, should be subject to such reduction. There is no reason why LKC should be the only firm accepting a haircut—especially in light of LKC's extraordinary successes and the heavily discounted rates LKC has provided for almost two years, and which discounts total over \$1 million.

5. Fifth, in all events, LKC needs to be at the mediation on Monday, July 28, when the various stakeholders and the Ad Hoc Group carve up the \$185 million that LKC helped obtain for the estate. As this Court stated at the April 8 status conference: "I want to make sure that the outcome of [LKC's] contingent fee interest is not going to be impacted by the mediation." But LKC's interest would inevitably be compromised by the other parties carving up the proceeds in LKC's absence—especially considering the Ad Hoc Group's stated goal of reducing LKC's fees to increase the pot for itself and others. Indeed, as LKC understands it, other parties intend to base

mediation negotiations on a waterfall calculation that itself depends upon a contested estimate of LKC's contingency fee. This highlights the danger that parties with interests apparently adverse to LKC will attempt to use LKC's absence from the mediation to their advantage.

6. LKC respectfully requests the Court's consideration in this matter.

Dated: April 24, 2025
Houston, Texas

Respectfully submitted,

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl (TX Bar No. 24038592)

Michael B. Dearman (TX Bar No. 24116270)

PORTER HEDGES LLP

1000 Main Street, 36th Floor

Houston, Texas 77002

Telephone: (713) 226-6000

Facsimile: (713) 226-6295

jwolfshohl@porterhedges.com

mdearman@porterhedges.com

Counsel to Lehotsky Keller Cohn LLP

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on April 24, 2025, I caused a true and correct copy of the foregoing document to be served on all parties entitled to notice via the CM/ECF system in the United States Bankruptcy Court for the Southern District of Texas.

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl