

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

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

RHODIUM JV LLC, RHODIUM 30MW
LLC, RHODIUM 2.0 LLC, RHODIUM
10MW LLC, RHODIUM ENCORE
LLC, AIR HPC LLC, JORDAN HPC
LLC, RHODIUM INDUSTRIES LLC,
AND RHODIUM RENEWABLES LLC,

Plaintiffs,

v.

WHINSTONE US, INC.,
RIOT PLATFORMS, INC.,

Defendants.

Adversary Proceeding No. 25-03047

Jury Trial Demanded

DEFENDANT RIOT PLATFORMS, INC.'S MOTION TO DISMISS

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT [HTTPS://ECF.TXSB.USCOURTS.GOV/](https://ecf.txsb.uscourts.gov/) WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

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).



A HEARING WILL BE CONDUCTED ON THIS MATTER ON APRIL 22, 2025 AT 8:30 A.M. (PREVAILING CENTRAL TIME) IN COURTROOM 400, 515 RUSK, HOUSTON, TEXAS 77002. YOU MAY PARTICIPATE IN THE HEARING EITHER IN PERSON OR BY AN AUDIO AND VIDEO CONNECTION.

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Defendant Riot Platforms, Inc. (“Riot”) submits this motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (made applicable in this adversary proceeding by Federal Rule of Bankruptcy Procedure 7012) the Complaint filed by Plaintiffs.

PRELIMINARY STATEMENT

1. Plaintiffs’ improper attempt to drag Riot into a dispute between Plaintiffs and a Riot subsidiary violates well-settled principles concerning corporate separateness and contract law, leaving Plaintiffs unable to plead core elements of their claims. Riot does not belong in this suit. It is not a party to any of the contracts that Plaintiffs claim were breached. Nor did Riot file or participate in the litigation that Plaintiffs say tortiously interfered with their preliminary negotiations to potentially sell an asset to an unnamed third party. Riot’s only connection to this case is that Whinstone US, Inc. (“Whinstone”), the signatory of those contracts and the plaintiff in that litigation, is Riot’s wholly owned subsidiary. But Plaintiffs allege no valid basis to hold Riot liable for its subsidiary’s alleged conduct. All of Plaintiffs’ claims against Riot fail as a matter of law.

2. *First*, Plaintiffs’ breach of contract claims fail because Riot is not a party to any of the contracts at issue. Plaintiffs’ attempt to nonetheless hold Riot accountable for Whinstone’s alleged breach of those contracts on an alter ego or agency basis falls far short of the purposefully high bar for piercing the corporate veil. Plaintiffs do not allege any facts indicating that Whinstone was under Riot’s exclusive domination and control, or that Riot exercised that alleged control over Whinstone solely to commit fraud. Indeed, the Complaint undermines Plaintiffs’ alter ego and agency theories, as it alleges that Whinstone runs a legitimate business providing services and electricity to bitcoin mining companies.

3. *Second*, the claim that Riot tortiously interfered with the contracts between Plaintiffs and Whinstone fails for the categorical reason that a parent company cannot tortiously interfere with the contracts of its wholly owned subsidiary.

4. *Third*, Plaintiffs' claim for tortious interference with a prospective business relationship fails because Plaintiffs do not adequately allege any of its elements. Plaintiffs were required to allege that Riot acted tortiously or unlawfully, but Riot *was not a party* to the predicate lawsuit that Plaintiffs claim *Whinstone* maliciously brought; and, regardless, Whinstone voluntarily dismissed that suit, dooming Plaintiffs' malicious prosecution argument as a matter of law. Plaintiffs likewise do not adequately plead that anything *Riot* did could have proximately caused Plaintiffs' claimed loss.

5. The Complaint should be dismissed in its entirety, with prejudice, against Riot.

STATEMENT OF FACTS²

I. The Parties.

6. Riot is one of the country's largest publicly traded bitcoin mining companies. (Compl. ¶ 4.) It mines bitcoin at data centers in Rockdale, Texas (the "Rockdale Facility"), and Corsicana, Texas. (Compl. ¶ 18.) In May 2021, Riot acquired Whinstone as a wholly owned subsidiary. (Compl. ¶¶ 4, 35.)

7. Whinstone holds the lease to the Rockdale Facility and "provides hosting services, including power, to bitcoin mining companies." (Compl. ¶ 3.)

8. Plaintiffs are nine affiliated bitcoin mining companies, collectively referred to as "Rhodium." (Compl. ¶¶ 1, 3.) Plaintiffs mine bitcoin at the Rockdale Facility. (Compl. ¶ 3.)

² The factual allegations in the Complaint are taken as true solely for the purposes of this motion. *See Tyson v. Kirby Inland Marine, LP*, 2025 WL 723031, at *2 (S.D. Tex. Mar. 6, 2025).

II. The Contracts Between Whinstone and Rhodium.

9. Beginning in 2019, certain Rhodium entities and Whinstone executed a series of contracts through which Whinstone agreed to provide hosting and other services at the Rockdale Facility. (Compl. ¶¶ 24-32.) Among these contracts was a January 7, 2021, “hosting agreement” between Whinstone and a Rhodium entity to provide power to Building D of the Rockdale Facility. (Compl. ¶ 31, Ex. F.)

10. Riot *is not* a party to any of these contracts. (*See* Compl., Exs. B-G.)

III. Litigation Between Whinstone and Rhodium.

11. On July 19, 2024, Whinstone sued several Rhodium entities, including three of the Plaintiffs – Rhodium Enterprises, Inc., Rhodium Technologies, LLC, and Rhodium Renewables, LLC (together, the “Rhodium Defendants”) – in the District Court of Tarrant County, Texas (the “Tarrant County Litigation”), alleging as relevant that the defendants had fraudulently obtained Whinstone’s interest in a joint venture to mine cryptocurrency at the Rockdale Facility. (*See* Ex. A, Whinstone US, Inc.’s Original Petition, *Whinstone US, Inc. v. Imperium Investment Holdings LLC*, Cause No. 153-354718-24 (Tarrant County, Tex., July 19, 2024) (the “Tarrant County Complaint”).)

12. On August 30, 2024, Whinstone voluntarily dismissed the Rhodium Defendants from the Tarrant County Litigation. (*See* Ex. B, Whinstone US, Inc.’s Notice of Nonsuit of Claims Against Rhodium Entities Only, *Whinstone US, Inc. v. Imperium Investment Holdings LLC*, Cause No. 153-354718-24 (Tarrant County, Tex., July 19, 2024) (the “Whinstone Voluntary Dismissal”).)³

³ This Court may consider the Tarrant County Litigation, including the Tarrant County Complaint and the Whinstone Voluntary Dismissal, because they are “subject to judicial notice, matters of public record,” and were “incorporated by reference” in Plaintiffs’ Complaint. *See Joubert on Behalf of Joubert v. City of Houston*, 2024 WL 1560015, at *2 (S.D. Tex. Apr. 10, 2024). (*See* Compl. ¶¶ 59, 120-22.)

13. Riot *is not* a party to the Tarrant County Litigation. (See Ex. A, Tarrant County Complaint.)

IV. Plaintiffs' Claims.

14. Plaintiffs commenced this action on February 11, 2025, asserting claims against Riot for breach of contract (Counts I-V), tortious interference with a prospective business relationship (Count VI), and tortious interference with contracts (Count VII).

15. Because Riot is not a party to any of the contracts at issue, Plaintiffs assert that Whinstone “acted as Riot’s agent and alter ego” and seek to hold Riot liable for Whinstone’s alleged breach of those contracts. (Compl. ¶¶ 18, 65-72.) Plaintiffs assert that Whinstone is a “mere pass-through entity” because Riot allegedly manages “Whinstone’s day-to-day power operations,” and it is “Riot employees who manage Whinstone’s day-to-day operations at Rockdale.” (Compl. ¶ 68.) Although Plaintiffs speculate that “Whinstone is undercapitalized,” they allege almost nothing about Whinstone’s finances. (Compl. ¶ 69.)

16. With respect to the tortious interference with contracts claim made by several Rhodium entities, these Plaintiffs incoherently assert that Riot allegedly interfered with the same contracts Plaintiffs accuse Riot of breaching. (Compl. ¶¶ 124-29.) In particular, Plaintiffs allege that Riot interfered with the contract concerning Plaintiffs’ use of Building D. (Compl. ¶¶ 31, 35.) The contract between Rhodium and Whinstone allegedly was signed on January 7, 2021, and terminated shortly after Riot acquired Whinstone. (Compl. ¶ 35.) Plaintiffs claim “upon information and belief” that Riot supposedly “told Whinstone to renege on its contractual obligations.” (Compl. ¶ 76.) Plaintiffs do not identify any facts supporting that “belief.”

17. The premise of the tortious interference with a prospective business relationship claim is that the Tarrant County Litigation allegedly caused Rhodium Renewables, one of the Rhodium entities, to “lose out on” a sale of Temple, a Rhodium-operated bitcoin mining facility.

(Compl. ¶ 122.) Although Plaintiffs imply that Riot participated in that suit, Riot was not a party to the suit and is not even mentioned in the complaint. (See Compl. ¶¶ 120-22; Ex. A, Tarrant County Complaint.) Plaintiffs assert that the lawsuit was “frivolous,” but no court has reached the same conclusion. (Compl. ¶ 113.)

ARGUMENT

I. Plaintiffs’ Breach of Contract Claims Fail Because Riot Is Not a Party to the Contracts.⁴

18. Plaintiffs’ breach of contract claims fail for the simple reason that Riot is not a party to any contract with Rhodium. (See Compl., Exs. B-G.) “It is hornbook law that, ordinarily, only parties to a contract may be liable for breach of that contract.” *Wenske v. Blue Bell Creameries, Inc.*, 2018 WL 5994971, at *3 (Del. Ch. Nov. 13, 2018) (citing 13 *Williston on Contracts* § 37.1 (4th ed. 2015)). It also is a matter of black letter law that Whinstone, the party to the contracts at issue, is “presumed to be a separate and distinct entity” from Riot. *Nieves v. Insight Bldg. Co., LLC*, 2020 WL 4463425, at *8 (Del. Ch. Aug. 4, 2020) (citation omitted).

19. Plaintiffs’ attempt to side-step these well-settled principles by arguing that Whinstone is Riot’s alter ego or agent comes nowhere close to the “high bar for blurring corporate separateness under Delaware law.” *Kodiak Bldg. Partners, LLC v. Adams*, 2022 WL 2455987, at *4 (Del. Ch. July 6, 2022). Delaware courts will disregard the corporate form only “in the ‘exceptional case’ where there is fraud or injustice through the misuse of the corporate form.” *Energy Coal v. CITGO Petroleum Corp.*, 836 F.3d 457, 462 (5th Cir. 2016) (quoting *MicroStrategy Inc. v. Acacia Rsch. Corp.*, 2010 WL 5550455, at *11 (Del. Ch. Dec. 30, 2010)); see also *Verdantus*

⁴ Riot incorporates by reference Whinstone’s arguments in its motion to dismiss that Plaintiffs’ breach of contract claims fail because (i) Plaintiffs’ contracts contain enforceable arbitration provisions; (ii) Plaintiffs’ claims are time-barred; (iii) Plaintiffs fail to plead necessary elements of each of their claims; and (iv) certain Plaintiffs lack standing.

Advisors, LLC v. Parker Infrastructure Partners, LLC, 2022 WL 611274, at *2 (Del. Ch. Mar. 2, 2022) (“Veil piercing is a tough thing to plead and a tougher thing to get, and for good reason.”).⁵

A. Whinstone Is Not Riot’s Alter Ego.

20. Plaintiffs’ alter-ego theory fails as a matter of law because Plaintiffs allege no facts demonstrating that Whinstone was in Riot’s “exclusive domination and control” and that, because of this domination, Whinstone is a “sham and exist[s] for no other purpose than as a vehicle for fraud.” *Wallace ex rel. Cencom Cable Income Partners II, Inc. v. Wood*, 752 A.2d 1175, 1183-84 (Del. Ch. 1999); *see also Nieves*, 2020 WL 4463425, at *8 (same). The Complaint itself undermines Plaintiffs’ theory of liability, as Plaintiffs admit that Whinstone is an operating company that holds a valid lease for the Rockdale Facility, “provides hosting services, including power, to bitcoin mining companies,” and receives revenue for providing such services. (Compl. ¶¶ 3, 69.)

1. Plaintiffs Fail to Allege That Whinstone Was Under Riot’s Exclusive Domination and Control.

21. The few innocuous allegations Plaintiffs cobble together to supposedly show that Riot had so much control over Whinstone that the corporate form can be set aside are categorically insufficient to do so. *First*, Plaintiffs’ assertion that Riot was allegedly involved in Whinstone’s “day-to-day operations” does “not show that [Whinstone] was a mere sham” but rather “describe a typical relationship between parent and subsidiary.” *In re RSL COM PRIMECALL, Inc.*, 2003 WL 22989669, at *16 (Bankr. S.D.N.Y. Dec. 11, 2003) (internal quotations omitted) (applying Delaware law). Courts will uphold corporate separateness even where, as here, plaintiffs allege

⁵ Delaware law applies to Plaintiffs’ effort to hold Riot liable under contracts it did not sign because Whinstone, Riot’s wholly owned subsidiary and the entity whose corporate separateness Plaintiffs seek to disregard, is incorporated in Delaware. (Compl. ¶ 17.) Under Texas’s choice-of-law rules, “where the claim seeks to hold a parent company liable for the obligations of a subsidiary, the subsidiary’s state of incorporation provides the applicable law.” *Greathouse v. Cap. Plus Fin. LLC*, 690 F. Supp. 3d 610, 635 (N.D. Tex. 2023).

that the parent “dominated and directed both the management and day-to-day actions of its subsidiary.” *Wenske*, 2018 WL 5994971, at *5; *see also Fletcher v. Atex, Inc.*, 861 F. Supp. 242, 245 (S.D.N.Y. 1994) (“It is entirely appropriate for a parent corporation to approve major expenditures and policies involving the subsidiary.”).

22. Plaintiffs’ baseless claim that Riot directed Whinstone to breach Whinstone’s contracts with Plaintiffs is immaterial because “domination and control must extend beyond causing [a] subsidiary to breach a contract and must, instead, reflect ‘exclusive domination and control . . . to the point that [the subsidiary] no longer has legal or independent significance of [its] own.’” *Wenske*, 2018 WL 5994971, at *7 n.47 (quoting *Sarn Energy LLC v. Tatra Defense Veh. AS*, 2018 WL 5794599, at *6 (Del. Super. Ct. Nov. 5, 2018)). In the absence of such allegations, Plaintiffs run headlong into the admonition that “[j]udicial disregard for the corporate form is not a remedy available to plaintiffs who merely wish to hold another entity liable in addition to the one with whom they contracted.” *Nieves*, 2020 WL 4463425, at *8.

23. *Second*, Plaintiffs’ conclusory assertion that Whinstone was “undercapitalized” – allegedly because Whinstone’s “hosting revenue at Rockdale has been ‘historically’ ‘less than’ the costs to provide such services” (Compl. ¶ 69) – is not “sufficient to pierce the corporate veil, because otherwise ‘the veil of every insolvent subsidiary or failed start-up corporation could be pierced.’” *In re BH S & B Holdings LLC*, 420 B.R. 112, 136 (Bankr. S.D.N.Y. 2009) (citation omitted) (applying Delaware law), *aff’d as modified*, 807 F. Supp. 2d 199 (S.D.N.Y. 2011). Allegations concerning a mere “shortage of capital” – which is all Plaintiffs allege – do not show undercapitalization; rather, the factor is relevant “for the inference it provides into whether the corporation was established to defraud its creditors or other improper purpose such as avoiding the risks known to be attendant to a type of business.” *Trevino v. Mescorp, Inc.*, 583 F. Supp. 2d 521,

529-30 (D. Del. 2008) (quoting *Trustees of Nat. Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 332 F.3d 188, 197 (3d Cir. 2003)). Plaintiffs do not allege that Whinstone’s hosting revenue was lower than its costs to run the Rockdale Facility because Whinstone was engaged in fraud or that any revenue shortfall “resulted from an improper attempt to silo liability [or] siphon funds.” See *vMedex, Inc. v. TDS Operating, Inc.*, 2020 WL 4925512, at *10 (D. Del. Aug. 21, 2020). Nor do Plaintiffs allege any basis to conclude that Riot caused any alleged revenue shortfall. See, e.g., *In re Moll Indus., Inc.*, 454 B.R. 574, 588-89 (Bankr. D. Del. 2011) (allegations of inadequate capitalization insufficient where plaintiff alleged only an “increase in [subsidiary’s] debt-to-equity ratio but d[id] not make any factual allegations to support a finding that this was caused by” defendant).

24. *Third*, that Riot’s and Whinstone’s officers and employees allegedly “substantially overlap” does not justify abandoning the corporate form. (Compl. ¶¶ 70-71.) Not only is this alleged overlap in personnel and resources “not . . . particularly damning,” but it is something courts “expect to see” in parent-subsidary relationships. See, e.g., *In re Foxmeyer Corp.*, 290 B.R. 229, 245-46 (Bankr. D. Del. 2003) (“certain overlap in ownership, officers, directors, and personnel . . . and that both entities used common office space, addresses, and telephone numbers” were things the “court would expect to see”); *Kodiak Bldg. Partners*, 2022 WL 2455987, at *4 n.39 (“common central management alone is not a proper basis for disregarding separate corporate existence”) (quoting *Skouras v. Admiralty Enters., Inc.*, 386 A.2d 674, 681 (Del. Ch. 1978); *In re RSL COM PRIMECALL, Inc.*, 2003 WL 22989669, at *16 (no veil-piercing where “Plaintiffs have alleged (i) extensive overlapping officers and directors; (ii) managerial and other services that [parent] provided to [subsidiary]”); *Nieves*, 2020 WL 4463425, at *8 (“The bare assertion that personnel use email accounts associated with one entity while conducting the business of another

does not indicate fraud”); *In re Ticketplanet.com*, 313 B.R. 46, 71 (Bankr. S.D.N.Y. 2004) (“An overlap in ownership, officers and directors and responsibilities is not uncommon or impermissible.”).

2. Plaintiffs Fail to Allege That Whinstone Is a Sham Entity That Exists Only as a Vehicle for Fraud.

25. Beyond Plaintiffs’ failure to plead domination and control, veil-piercing also is inappropriate because Plaintiffs do not allege that Whinstone is a sham entity that exists only as a vehicle for fraud. Plaintiffs’ “underlying cause[s] of action do[] not supply the necessary fraud or injustice” for veil-piercing. *Mobil Oil Corp. v. Linear Films, Inc.*, 718 F. Supp. 260, 268 (D. Del. 1989). “To hold otherwise would render the fraud or injustice element meaningless, and would sanction bootstrapping.” *Id.*; *see also Sears, Roebuck & Co. v. Sears plc*, 744 F. Supp. 1297, 1305 (D. Del. 1990) (“[T]he alleged fraud or inequity must be distinct from the tort alleged in the complaint.”); *Outokumpu Eng’g Enters., Inc. v. Kvaerner EnviroPower Inc.*, 685 A.2d 724, 729 (Del. Super. Ct. 1996) (“The ‘injustice’ must be more than the breach of contract alleged in the complaint”).

B. Whinstone Is Not Riot’s Agent.

26. Plaintiffs’ alternative assertion that Whinstone is Riot’s agent fails because Plaintiffs do not plead that (i) “an arrangement exist[ed]” between Whinstone and Riot “so that one acts on behalf of the other and within usual agency principles,” and (ii) “the arrangement [was] relevant to the plaintiff[s]’ claim of wrongdoing.” *Phoenix Can. Oil Co. v. Texaco, Inc.*, 842 F.2d 1466, 1477 (3d Cir. 1988). Courts are on to this trick and reject attempts to invoke the existence of an agency relationship to end-run the strict domination and fraud requirements needed to pierce the corporate veil. “Litigants cannot, simply by substituting the label ‘agency’ in place of ‘alter ego,’ also change the substantive law. Regardless of the label used, fraud or injustice is a necessary

element for the theory to apply.” *Mobil Oil Corp. v. Linear Films, Inc.*, 718 F. Supp. 260, 271 n.15 (D. Del. 1989).

II. Plaintiffs’ Claim for Tortious Interference with Contracts Fails as a Matter of Law.

27. Plaintiffs’ claim that Riot tortiously interfered with contracts between Whinstone and several Rhodium entities requires little discussion. (Compl. ¶¶ 124-29.) As a matter of Texas law, “a parent company” (Riot) “cannot tortiously interfere with the contracts of its wholly owned subsidiary” (Whinstone). *Cleveland Reg’l Med. Ctr., L.P.*, 323 S.W.3d 322, 348 (Tex. App. 2010); *see also ProTradeNet, LLC v. Predictive Profiles, Inc.*, 369 F. Supp. 3d 788, 791-92 (W.D. Tex. 2019) (collecting cases for the proposition that “a corporate parent is incapable of tortiously interfering with the contracts of its subsidiary”); *Villaverde v. Motores Electricos Sumergibles de Mexico, S. de R.L. de C.V.*, 2023 WL 12007137, at *8 (S.D. Tex. Feb. 15, 2023) (collecting cases for the same proposition).⁶

III. Plaintiffs Fail to Allege that Riot Tortiously Interfered with Plaintiffs’ Prospective Business Relationship.⁷

28. Plaintiffs’ nonsensical claim that Whinstone is Riot’s alter ego also permeates the tortious interference with prospective business relationship claim, rendering Plaintiffs unable to plead core elements of the claim against Riot. *See BHL Boresight, Inc. v. Geo-Steering Sols., Inc.*, 2016 WL 8648927, at *10 (S.D. Tex. Mar. 29, 2016), *modified on reconsideration on other grounds*, 2017 WL 1177966 (S.D. Tex. Mar. 29, 2017) (“In order to prevail on a tortious interference with prospective business relationships claim, the plaintiff must establish: (1) there

⁶ Texas law applies to the tortious interference claims, which are state law causes of action bearing the most significant relationship to Texas. *See In re iHeartMedia, Inc.*, 597 B.R. 339, 350-51 (Bankr. S.D. Tex. 2019).

⁷ Riot incorporates by reference Whinstone’s additional arguments in its motion to dismiss that Plaintiffs fail to allege tortious interference with a prospective business relationship.

was a reasonable probability that the plaintiff would have entered into a business relationship with a third party; (2) the defendant either acted with a conscious desire to prevent the relationship from occurring or knew the interference was certain or substantially certain to occur as a result of the conduct; (3) the defendant’s conduct was independently tortious or unlawful; (4) the interference proximately caused the plaintiff injury; and (5) the plaintiff suffered actual damage or loss as a result.”).

A. Plaintiffs Fail to Allege That Riot Performed Any “Independently Tortious or Unlawful” Acts.

29. The Court need go no further than the “independently tortious or unlawful” acts requirement to dismiss Plaintiffs’ claim as a matter of law. Plaintiffs do not allege that Riot engaged in *any conduct* that would have interfered with Rhodium Renewables’ business relationships. The premise of this claim is that *Whinstone* filed a suit against the Rhodium Defendants and that suit allegedly scared off a potential buyer for Rhodium’s Temple facility. (Compl. ¶¶ 54-59.) But Riot *is not* a party to the suit (*see* Ex. A, Tarrant County Complaint), and for the reasons explained above, there is no basis to attribute Whinstone’s alleged conduct to Riot.

30. Moreover, Whinstone’s initiation of the Tarrant County Litigation does not constitute malicious prosecution – the independent underlying tort Plaintiffs cite (Compl. ¶ 121) – because the proceedings did not “terminate in plaintiffs’ favor,” as required under Texas law to pursue such a claim. *See Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 207 (Tex. 1996). To the contrary, Whinstone voluntarily dismissed the Rhodium Defendants. (*See* Ex. B, Whinstone Voluntary Dismissal.) A voluntary dismissal is not a termination in favor of a party. *See KT Bolt Mfg. Co. v. Texas Elec. Cooperatives, Inc.*, 837 S.W.2d 273, 275 (Tex. App. 1992) (“A dismissal is in no way an adjudication of the rights of the parties Consequently, the voluntary nonsuit by [defendant] in the first lawsuit was not a termination of that lawsuit in favor of [plaintiff]. Thus,

an essential element of a cause of action for malicious prosecution, termination in favor of the plaintiff, was missing.”); *Duzich v. Advantage Fin. Corp.*, 395 F.3d 527, 530 (5th Cir. 2004) (voluntary dismissal from a bankruptcy proceeding did not support a “favorable termination . . . on the merits,” barring malicious prosecution claim).

31. Plaintiffs also fail to adequately allege the other elements of a malicious prosecution claim. Riot did not “institute[e] or continu[e] . . . civil proceedings against” Plaintiffs, let alone with “malice”; Whinstone alone filed suit. *See Texas Beef Cattle Co.*, 921 S.W.2d at 207. And business losses like Plaintiffs’ alleged failure to sell the Temple facility do not meet the strict criteria of special injury required under Texas law. *See Finlan v. Dall. Indep. Sch. Dist.*, 90 S.W.3d 395, 406 (Tex. App. 2002) (reputational and business loss damages, including economic losses that allegedly forced counterclaimant to close his Dallas office, “d[id] not satisfy the ‘special injury’ requirement for malicious prosecution claims”) (citation omitted).

B. Plaintiffs Fail to Plead the Other Elements of their Tortious Interference Claim.

32. The Complaint falls short on the remaining elements of a tortious interference claim as well. *First*, Plaintiffs do not adequately allege either cause in fact or foreseeability, as required to plead proximate causation. *See BHL Boresight, Inc.*, 2016 WL 8648927, at *12. Plaintiffs summarily claim the Tarrant County Litigation “caused Rhodium to lose out on the Temple sale,” but they do not explain how the Tarrant County Litigation impacted the unidentified potential buyer’s decision to not pursue a deal. (Compl. ¶ 122.) The Complaint suggests that the sale actually fell through “after this bankruptcy proceeding began.” (Compl. ¶ 59.) “Without clear allegations” from Plaintiffs of exactly how and why their early stages of negotiations failed, “the Court cannot reasonably infer proximate causation.” *See BHL Boresight, Inc.*, 2016 WL 8648927 at *12; *see also, e.g., Van Der Linden v. Khan*, 535 S.W.3d 179, 195 (Tex. App. 2017) (trial court

erred by not dismissing plaintiff’s claim of tortious interference where there was only circumstantial evidence that defendant’s actions caused a third party to not contract with plaintiff).

33. *Second*, Plaintiffs fail to allege “more than the fact that mere negotiations such as a preliminary firm offer have occurred,” as required to show a reasonable probability of contract formation. *See Domain Prot., LLC v. Sea Wasp, LLC*, 426 F. Supp. 3d 355, 388 (E.D. Tex. 2019), *aff’d*, 23 F.4th 529 (5th Cir. 2022). By Plaintiffs’ own admission, Rhodium Renewables was merely “contemplating” a deal with an unnamed buyer. (Compl. ¶ 120.) The existence of a term sheet and discussions concerning a purchase and sale agreement as part of these early-stage negotiations cannot show “a reasonable probability that a contract would have been entered into in the midst of an admittedly ongoing negotiation process.” (Compl. ¶ 56.) *See Domain Prot., LLC*, 426 F. Supp. at 388.

34. *Third*, with respect to intent, Plaintiffs’ conclusory allegation that “Riot and Whinstone sought to kill” Rhodium Renewables’ deal with the unnamed potential buyer cannot meet Plaintiffs’ burden of showing that Riot “desired to interfere with [Plaintiffs’] contract or believed that interference was substantially certain to result from its actions.” (Compl. ¶¶ 11, 56.) *See Sw. Bell Tel. Co. v. John Carlo Tex., Inc.*, 843 S.W.2d 470, 472 (Tex. 1992).

35. *Fourth*, aside from intoning conclusorily that they “suffered damages,” Plaintiffs do not “allege facts or explain how or whether [Plaintiffs] suffered any actual damage or loss.” (Compl. ¶ 122.) *See BHL Boresight, Inc.*, 2016 WL 8648927, at *12 (citation omitted).

CONCLUSION

36. For the reasons above, Riot respectfully requests that: (i) this Court recommend that the District Court dismiss all counts against Riot in the Complaint with prejudice; (ii) the

District Court enter an order dismissing all counts against Riot in the Complaint with prejudice; and (iii) this Court grant Riot such other and further relief to which it may be justly entitled.

Dated: Houston, Texas
March 17, 2025

JONES WALKER LLP

/s/ Sean T. Wilson

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Counsel to Riot Platforms, Inc.

CERTIFICATE OF SERVICE

I certify that on March 17, 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 on those parties required to receive service pursuant to the Bankruptcy Rules.

/s/ Sean T. Wilson _____

Sean T. Wilson

Exhibit A

CAUSE NO. 153-354718-24

WHINSTONE US, INC.,	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF,	§	
	§	
V.	§	
	§	
IMPERIUM INVESTMENT HOLDINGS LLC,	§	TARRANT COUNTY, TEXAS
NATHAN NICHOLS, CHASE BLACKMON,	§	
CAMERON BLACKMON, NICHOLAS	§	
CERASUOLO, RHODIUM ENTERPRISES, INC.,	§	
RHODIUM TECHNOLOGIES, LLC, AND	§	
RHODIUM RENEWABLES, LLC,	§	
	§	
DEFENDANTS	§	<u> </u> JUDICIAL DISTRICT

WHINSTONE US, INC.’S ORIGINAL PETITION

Plaintiff Whinstone US, Inc. files this Original Petition against the above-named defendants.

I. PARTIES

1. Plaintiff Whinstone US, Inc. (“Whinstone”) is a Delaware corporation with its principal place of business in Rockdale, Texas.

2. Defendant Imperium Investment Holdings LLC (“Imperium”), a Wyoming limited liability corporation formed in 2020, touts itself as “a private equity group that aims to bring worldwide application of high-performance computing through immersion cooling.” Its managing partners—Nathan Nichols, Chase Blackmon, Cameron Blackmon and Nicholas Cerasuolo (collectively, the “Individual Defendants”)—boast “a combined 40+ years of experience in industrial scale project management, venture capital, and private equity” having “completed over 1,200 projects/transactions ranging from \$5MM to \$7B with successful exits >\$300MM.” By virtue of owning 100% of the Class B common stock of Rhodium Enterprises, Imperium controls the voting power of Rhodium Enterprises and, thus, controls Rhodium

Technologies which is owned by Imperium (~62%) and Rhodium Enterprises (~38%). On information and belief, through its control of Rhodium Enterprises, Rhodium Technologies and Rhodium Renewables (collectively the “Rhodium Defendants”), Imperium directed, participated in, authorized, and/or ratified the complained of actions and conduct of the Rhodium Defendants. Although it has not qualified to transact business in Texas, Imperium maintains a principal office located at 7546 Pebble Drive, Fort Worth, Texas 76118. Imperium may be served with process through its registered agent: Corporation Service Company, 1821 Logan Avenue, Cheyenne, Wyoming 82001.

3. Defendant Rhodium Enterprises, Inc. (“Rhodium Enterprises”), a Delaware corporation formed April 22, 2021, characterizes itself as “a founder-led, Texas based, digital asset technology company utilizing proprietary tech to self-mine bitcoin.” In reality, Rhodium Enterprises is but a holding company, its only assets being 100% control over, and an approximately 38% ownership interest in the economic value of, Rhodium Technologies. Rhodium Enterprises maintains its principal place of business in Rockdale, Texas and may be served with process through its registered agent: Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

4. Defendant Rhodium Technologies, LLC f/k/a Rhodium Enterprises, LLC (“Rhodium Technologies”), a Delaware limited liability company formed October 23, 2020, now directly or indirectly owns all outstanding equity interests in various subsidiaries through which the Rhodium Defendants operate. Rhodium Technologies maintains its principal place of business in Rockdale, Texas and may be served with process through its registered agent: Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

5. Defendant Rhodium Renewables, LLC, a Delaware limited liability company formed March 17, 2021, engages in cryptocurrency mining operations at a facility leased from Temple Green Data LLC. Rhodium Renewables is, upon information and belief, a wholly-owned subsidiary of Rhodium Technologies. Rhodium Renewables maintains its principal place of business in Rockdale, Texas and may be served with process through its registered agent: Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

6. Nathan Nichols (“Nichols”), a Texas resident, controls 25% of the voting interests in Imperium. Through Imperium, Nathan Nichols indirectly owns voting and/or non-voting equity interests in Rhodium Enterprises and Rhodium Technologies. He also serves as an officer and/or director of Rhodium Enterprises and Rhodium Technologies. On information and belief, Nathan Nichols personally directed, participated in, authorized, and/or ratified the complained of actions and conduct of Imperium and the Rhodium Defendants. Nathan Nichols can be served at his residence located at 3000 Gracie Kiltz Lane #307, Austin, Texas 78758.

7. Chase Blackmon (“Ch. Blackmon”), a Texas resident, controls 25% of the voting interests in Imperium. Through Imperium, Chase Blackmon indirectly owns voting and/or non-voting equity interests in Rhodium Enterprises and Rhodium Technologies. He also serves as an officer and/or director of Rhodium Enterprises and Rhodium Technologies. On information and belief, Chase Blackmon personally directed, participated in, authorized, and/or ratified the complained of actions and conduct of Imperium and the Rhodium Defendants. Chase Blackmon can be served at his residence located at 4412 Summercrest Ct., Fort Worth, Texas 76109.

8. Cameron Blackmon (“Ca. Blackmon”), a Texas resident, controls 25% of the voting interests in Imperium. Through Imperium, Cameron Blackmon indirectly owns voting

and/or non-voting equity interests in Rhodium Enterprises and Rhodium Technologies. He also serves as an officer and/or director of Rhodium Enterprises and Rhodium Technologies. On information and belief, Cameron Blackmon personally directed, participated in, authorized, and/or ratified the complained of actions and conduct of Imperium and the Rhodium Defendants. Cameron Blackmon can be served at his residence located at 2204 Mistletoe Blvd., Fort Worth, Texas 76110.

9. Nicholas Cerasuolo (“Cerasuolo”), a Puerto Rican resident, controls 25% of the voting interests in Imperium. Through Imperium, Nicholas Cerasuolo indirectly owns voting and/or non-voting equity interests in Rhodium Enterprises and Rhodium Technologies. At all relevant times, he also served as an officer and/or director of Rhodium Enterprises and Rhodium Technologies. On information and belief, Nicholas Cerasuolo personally directed, participated in, authorized, and/or ratified the complained of actions and conduct of Imperium and the Rhodium Defendants. Nicholas Cerasuolo can be served at his residence located at 655 Ave., Roberto H. Todd, Suite 187, San Juan, Puerto Rico 00907.

II. JURISDICTION AND VENUE

10. The Court has jurisdiction over the petition because: (1) the Court has jurisdiction over the parties (who have purposefully availed themselves of the benefits and protections of Texas law as detailed herein); (2) the Court has jurisdiction over the subject matter of the petition; and (3) the Court has jurisdiction to enter the relief requested herein. Further, the amount in controversy exceeds this Court’s minimum jurisdictional limits.

11. Venue is proper in this Court because: (1) the subject matter of this Petition involves claims in which all or a substantial part of the events or omissions giving rise to the potential claim or suit occurred in Tarrant County; (2) the witnesses for Defendants reside in

and/or work in the State of Texas and within the jurisdiction of this Court; and (3) because there are multiple defendants, Whinstone's claims arise out of the same transaction, occurrence, or series of transaction or occurrences, and venue is proper as to one defendant, venue is proper as to all defendants. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1),15.005. Further still, Whinstone asserts two or more claims arising from the same transaction, occurrence, or series of occurrences and one of the claims is subject to a mandatory venue provision contained in the at-issue redemption pursuant to the Withdrawal, Dissociation, and Membership Interest Redemption Agreement dated December 31, 2020 (the "Redemption Agreement"):

"The Parties agree that any litigation arising in connection with this Agreement shall be conducted in Tarrant County, Texas."

TEX. CIV. PRAC. & REM. CODE § 15.004.

III. DISCOVERY CONTROL PLAN AND RULE 47 DISCLOSURE

12. Whinstone will conduct discovery under Texas Rule of Civil Procedure 190.4, Level 3. Pursuant to Texas Rule of Civil Procedure 47, Whinstone seeks monetary relief of more than \$1,000,000.00. The requested monetary relief will likely increase after discovery is completed.

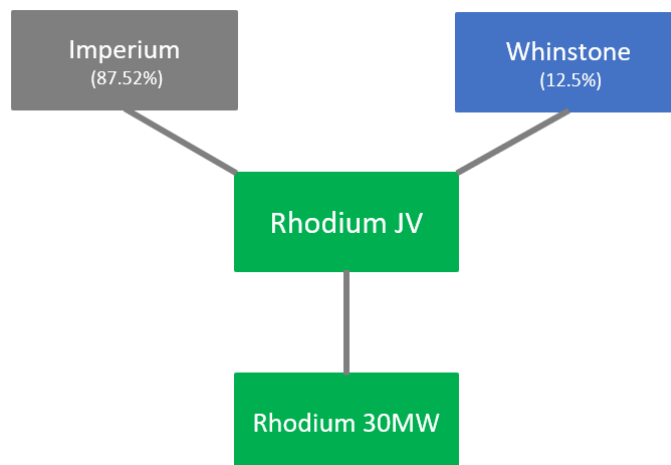
IV. FACTUAL BACKGROUND

13. In 2019, Whinstone commenced development of the largest Bitcoin hosting facility in North America (the "Facility"). After securing power agreements at below market rates to power the Facility's operations, Whinstone constructed preeminent infrastructure to support cryptocurrency hosting operations. With below market power rates and its best-in-class construction, development, and operations organization, Whinstone supports high volumes of cryptocurrency mining equipment available to customers that have, or desire to obtain, such equipment at an off-premises location.

14. In 2020, Imperium and Whinstone agreed to joint venture (Rhodium JV LLC (“Rhodium JV”)) to mine cryptocurrency in Building C of the Facility. Imperium would fund the infrastructure build-out and acquire the equipment necessary to mine. In return, Whinstone agreed to contribute a portion of the Facility, provide services and make available up to 130 megawatts (“MW”) of electricity at a rate below Whinstone’s own discounted rate. Imperium and Whinstone would receive an 87.5% and 12.5% of “all the underlying economics”, respectively, in Rhodium JV.

15. To memorialize their joint venture, Imperium and Whinstone executed that Operating Agreement for Rhodium JV LLC (“Operating Agreement”) dated effective as of March 6, 2020. With supermajority voting control, Imperium designated itself Manager of Rhodium JV.

16. Consistent with the Operating Agreement, Whinstone executed a series of hosting agreements that provided for up to 130MW of electrical capacity at Building C. Specifically, Whinstone and Rhodium JV executed twenty hosting agreements, each for up to 5 megawatts (“MW”) of power. Another hosting agreement executed by Whinstone and Rhodium 30mw LLC (“Rhodium 30MW”) (believed to be a wholly owned subsidiary of Rhodium JV) provided for up to 30MW of electrical capacity. The below diagram illustrates the structure of the deal:

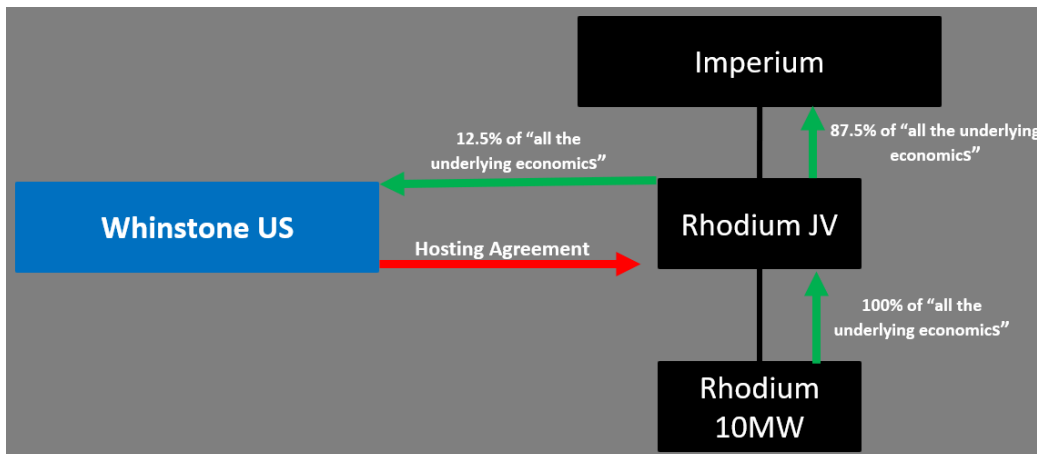


17. On information and belief, Imperium contributed little, if any, of its own capital to the joint venture. Instead, to fund the infrastructure build-out and acquire the necessary equipment, Imperium and the Individual Defendants (collectively, the “Imperium Defendants”) sought capital from investors. But with no existing operations nor any track record in cryptocurrency mining, the Imperium Defendants could not quickly raise the needed capital from investors.

18. In December 2020, Whinstone agreed to redeem its voting and non-voting units and withdraw from membership in the joint venture, leaving the Imperium Defendants, whether directly or indirectly, the sole members of Rhodium JV.

19. Critical to its decision to withdraw as a member of Rhodium JV was the Imperium Defendants’ assurance that, going forward, Whinstone would receive 12.5% of “all the underlying economics” generated from cryptocurrency mined from Building C. In exchange, Whinstone agreed to continue providing services and up to 130MW of electricity capacity at a rate below Whinstone’s own discounted rate.

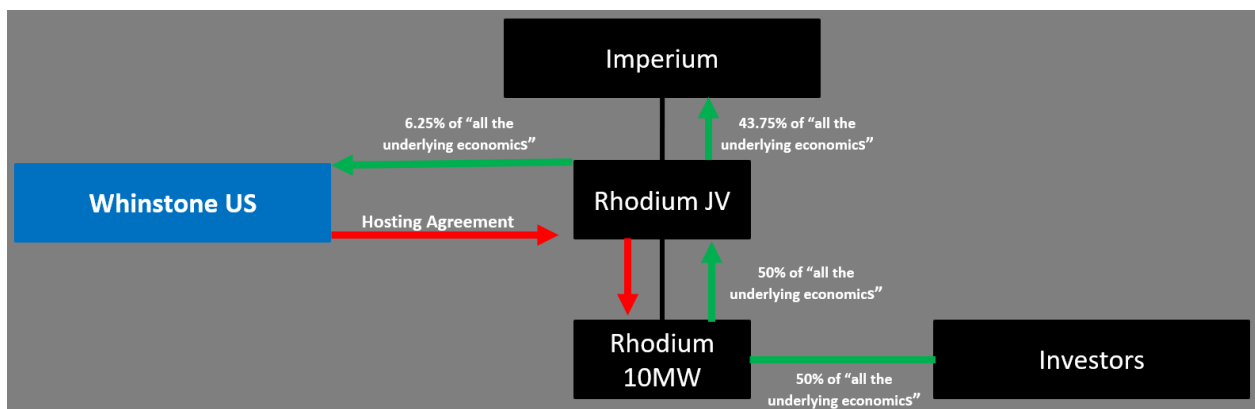
20. By way of illustration, below is a depiction of how “all the underlying economics” for Rhodium JV’s operations should work following the redemption of Whinstone’s membership stake:



21. Absent the Imperium Defendants’ promises to pay Whinstone 12.5% of “all the underlying economics” generated from cryptocurrency mined from Building C, Whinstone would never agree to provide 130MW of power at a rate below its own cost of power—effectively subsidizing the Imperium Defendants’ operation. After all, without “all the underlying economics” the Imperium Defendants promised, providing power to Building C results in approximately \$2 million per month net loss to Whinstone. That neither makes economic sense, nor is it sustainable.

22. But, when the Imperium Defendants made this representation—repeatedly—they had no intention of honoring it. Instead, unbeknownst to Whinstone, the Imperium Defendants were laying the groundwork to dilute Whinstone’s share of “all the underlying economics.” The Imperium Defendants used newly and later formed entities to divert revenue away from Whinstone.

23. For example, the Imperium Defendants purportedly sold to investors 50% of the membership interests in Rhodium 10MW LLC (“Rhodium 10MW”), an entity formed after the redemption. If true, the illustration below reflects the ownership structure and flow of the underlying economic value of Rhodium 10MW:



24. The result—Whinstone does not receive 12.5% of “all the underlying economics”

as represented. Rather, it only receives, at best, 6.25% (not 12.5%) of “all the underlying economics” generated from operations conducted in Building C.

25. The Imperium Defendants repeated this exercise again and again. Using Rhodium 30MW, the Imperium Defendants stripped Whinstone of 30% of “all the underlying economics” from cryptocurrency mining operations conducted in part of Building C. That reduced Whinstone’s 12.5% share to 8.75% for the profits generated by Rhodium 30MW. Next, the Imperium Defendants used Rhodium 2.0 LLC (“Rhodium 2.0”), formed immediately prior to the redemption, to gut 35% of “all the underlying economics” from cryptocurrency mining operations conducted in another portion of Building C. That dropped Whinstone’s 12.5% share to 8.125% for the profits generated by Rhodium 2.0. Then, Rhodium Encore LLC (“Rhodium Encore”), formed after the redemption, was used to divert 50% of “all the underlying economics” due Whinstone from cryptocurrency mining operations conducted in a different part of Building C. The effect is, instead of 12.5%, Whinstone receives, at most, 6.25% for the profits generated by Rhodium Encore.

26. The Individual Defendants directed and/or controlled these transactions or were otherwise involved in the scheme to dilute Whinstone. But, by their own admissions, Whinstone never received, and the Imperium Defendants never intended for Whinstone to receive, 12.5% of the underlying economic value generated from cryptocurrency mining operations conducted in any portion of Building C.

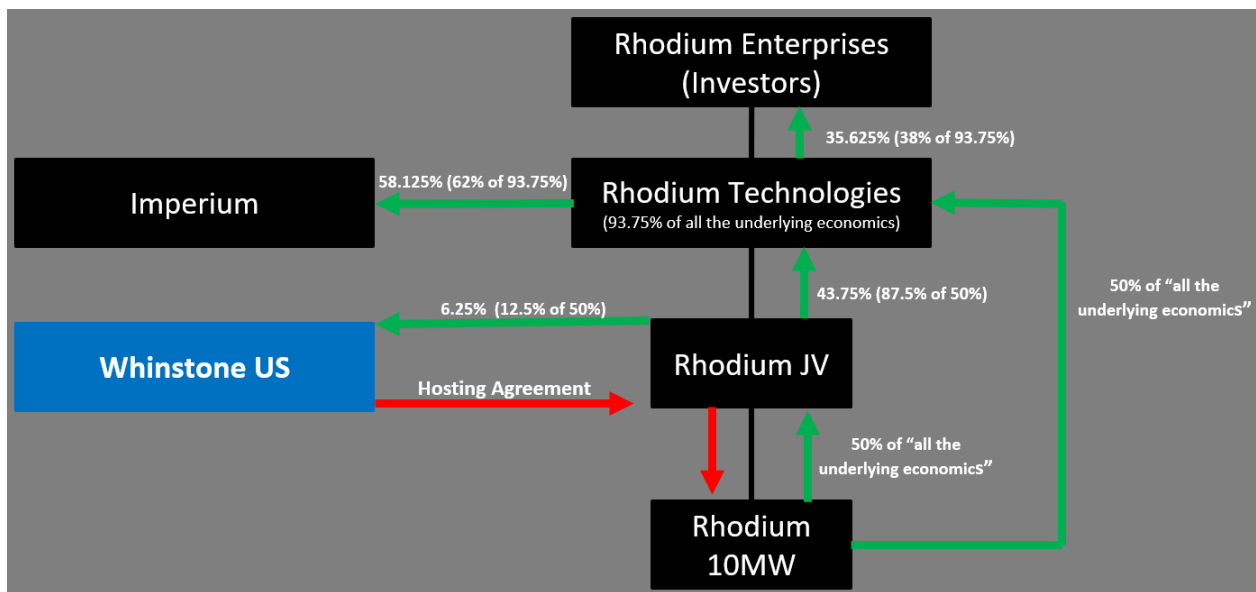
27. But just diluting Whinstone was not enough for the Imperium Defendants; they wanted more. To that end, the Imperium Defendants intended to (and did) restructure the Rhodium organization (the “Rollup Transaction”) to further enrich themselves.

28. Prior to the Rollup Transaction, the Imperium Defendants, directly or indirectly,

held economic interests in cryptocurrency generated from mining operations conducted in Building C ranging from 43.75% (Rhodium Encore, Rhodium 10MW) to 56.875% (Rhodium 2.0) to 61.25% (Rhodium 30MW). Collectively, upon information and belief, that economic interest stood at approximately 55.5%.

29. Using Rhodium Enterprises, the Imperium Defendants orchestrated the divestment of the individual investors’ economic interests in, at least, Rhodium 30MW, Rhodium 2.0, Rhodium Encore, and Rhodium 10MW—membership interests that were transferred to Rhodium Technologies, an entity which the Imperium Defendants controlled and, directly or indirectly, maintained a membership interest. After completing the Rollup Transaction, the Imperium Defendants, directly or indirectly, held economic interests in cryptocurrency generated from mining operations conducted in Building C totaling approximately 62%, an approximately 6.5% increase.

30. As illustrated below, while leaving Whinstone at a diluted 6.25%, the Imperium Defendants used the Rollup Transaction to increase their economic interest in Rhodium 10MW’s operations from 43.75% to 58.125% — a 32.86% increase:



31. Not satisfied, Defendants further diluted Whinstone by, upon information and belief, funneling revenues generated from cryptocurrency mining operations conducted in Building C to prop up other financially distressed and floundering Rhodium Enterprises subsidiaries. For instance, Defendants used revenue generated from operations at the Facility to keep Rhodium Renewables operations at its Temple, Texas cryptocurrency mining facility afloat. Without that support, Rhodium Renewables—which experienced devastating losses believed to run in excess of \$2 million per month—could not have survived with pre-halving Bitcoin prices at or below \$40,000.00. Even now, with post-halving Bitcoin prices hovering around \$60,000.00, upon information and belief, Defendants continue to siphon revenues generated at the Facility to provide life-support to Rhodium Renewables.

V. CAUSES OF ACTION

A. **Count I – Primary Liability under Section 33(B) of the Texas Securities Act (Against Imperium)**

32. Whinstone incorporates and re-alleges in full the preceding paragraphs, as applicable.

33. Whinstone’s 12.5% passive membership interest in Rhodium JV constitutes a security under Section 2(a)(1) of the Securities Act (*i.e.*, an investment contract).

34. Pursuant to the Redemption Agreement, Imperium “bought” (as defined by the Texas Securities Act) Whinstone’s interest in Rhodium JV by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statements made true.

35. Specifically, Imperium’s promise that Whinstone would receive 12.5% of “all the underlying economics” generated from cryptocurrency mined from Building C was false when made.

36. Imperium further failed to disclose its scheme to use affiliated or subsidiary companies to circumvent Rhodium JV's payment obligations to Whinstone so that it could prop up other failing business ventures and enrich itself and the Individual Defendants.

37. Imperium's promises and omissions of fact were material.

38. Whinstone has suffered damages as a result of Imperium's false promises. Whinstone is entitled to recover its damages, costs, attorneys' fees, and pre- and post-judgment interest arising from Whinstone's sale of its membership interests in Rhodium JV to Imperium via the Redemption Agreement.

B. Count II – Control Liability under Section 33(F) of the Texas Securities Act (Against the Individual Defendants)

39. Whinstone incorporates and re-alleges in full the preceding paragraphs, as applicable.

40. Whinstone's 12.5% membership interest in Rhodium JV constitutes a security under Section 2(a)(1) of the Securities Act.

41. The Individual Defendants qualify as control persons under Section 33(F) of the Texas Securities Act. Through their positions of control over Imperium as directors, officers, shareholders, and/or members, they had the power to (and did) directly or indirectly influence and control the activities of Imperium.

42. While in their positions of control, the Individual Defendants caused Imperium to violate Section 33(B) of the Texas Securities Act by making false promises to Whinstone in the acquisition of Whinstone's 12.5% interest in Rhodium JV.

43. Therefore, the Individual Defendants are jointly and severally liable to Whinstone for damages, costs, attorneys' fees, and pre- and post-judgment interest arising from the Whinstone's Rhodium JV membership interests sold to Imperium via the Redemption

Agreement.

C. Count III – Aiding Liability under Section 33(F) of the Texas Securities Act (Against the Individual Defendants)

44. Whinstone incorporates and re-alleges in full the preceding paragraphs, as applicable.

45. Whinstone’s 12.5% membership interest in Rhodium JV constitutes a security under Section 2(a)(1) of the Securities Act.

46. The Individual Defendants qualify as control persons under Section 33(F) of the Texas Securities Act. Through their positions Imperium as directors, officers, shareholders, and/or members, they had the power to (and did) directly or indirectly influence and control the activities of Imperium.

47. While in their positions of control, the Individual Defendants caused Imperium to violate Section 33(B) of the Texas Securities Act by making false promises to Whinstone in the acquisition of Whinstone’s 12.5% interest in Rhodium JV pursuant to the Redemption Agreement.

48. Therefore, the Individual Defendants are jointly and severally liable to Whinstone for damages, costs, attorneys’ fees, and pre- and post-judgement interest.

D. Count IV – Fraud/Fraudulent Inducement (Against the Imperium Defendants)

49. Whinstone incorporates and re-alleges in full the preceding paragraphs, as applicable.

50. Each of the Imperium Defendants misrepresented to Whinstone that Whinstone would receive 12.5% of “all the underlying economics” generated from cryptocurrency mined from Building C. The Imperium Defendants made these misrepresentations so that Whinstone

would agree to transfer its interest in Rhodium JV to Whinstone via the Redemption Agreement.

51. The Imperium Defendants' (mis)representations were material because without them, Whinstone would not have agreed to provide the "Rhodium" entities rent-free access to the Facility, continued to provide the "Rhodium" entities below-market power, or have agreed to transfer its ownership interest in Rhodium JV to Imperium and entered into the Redemption Agreement.

52. Each of the Imperium Defendants knew that their representations were false or recklessly disregarded the truth of their representations when they made them.

53. Each of the Imperium Defendants intended for Whinstone to rely upon their representations and Whinstone justifiably relied on the Imperium Defendants' (mis)representations.

54. As a result of the Imperium Defendants' fraud, Whinstone has been significantly harmed in an amount to be proven at trial and Whinstone is entitled to damages, including benefit-of-the-bargain damages.

E. Count V – Conspiracy (Against all Defendants)

55. Whinstone incorporates and re-alleges in full the preceding paragraphs, as applicable.

56. Defendants combined to accomplish an unlawful purpose, and had a meeting of the minds as to that purpose—namely to obtain Whinstone's interest in Rhodium JV through a fraudulent promise that Whinstone would still receive the economic benefit of its ownership in Rhodium JV as described herein.

57. Defendants committed an unlawful, overt act to further the course of action by fraudulently inducing Whinstone into transferring its interest in Rhodium JV to Imperium, and,

as a result, Whinstone experienced injury.

58. Defendants are jointly and severally liable because they conspired together to accomplish their unlawful purpose.

VI. CONDITIONS PRECEDENT

59. All conditions precedent to Whinstone's claims for relief have been performed or have occurred.

VII. PUNITIVE DAMAGES

60. Whinstone also invokes Texas Civil Practice and Remedies Code Section 41.003 and seeks recovery of punitive damages against the Defendants for their fraud, malice, and/or gross negligence.

VIII. ATTORNEYS' FEES

61. Whinstone is entitled to its reasonable attorneys' fees and costs incurred through trial and final appeal in accordance with Texas Civil Practice and Remedies Code § 38.001 and Section 12 of the Redemption Agreement.

IX. RULE 193.7 NOTICE

62. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, this shall serve as actual notice that Whinstone intends to use produced documents against the Imperium Defendants in pretrial proceedings and at trial. Accordingly, production of a document or documents in response to discovery requests by Whinstone authenticates the document or documents for use against the Imperium Defendants in any pretrial proceeding or at trial unless they object to the authenticity of any produced document or documents within the time limits particularly set out in Rule 193.7 of the Texas Rules of Civil Procedure.

X. PRAYER

63. For the foregoing reasons, Whinstone US, Inc. prays that this:
- (i) Enter judgment against the Imperium Defendants on a joint and several basis on all of Whinstone's claims and award Whinstone damages, punitive damages, costs, attorneys' fees, and pre- and post-judgment interest; and
 - (ii) Award Whinstone all such other and further relief that law and equity require.

Date: July 19, 2024

Respectfully submitted,

/s/ Robert T. Slovak

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Automated Certificate of eService

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Barbara Hodges on behalf of Robert Slovak

Bar No. 24013523

bhodges@foley.com

Envelope ID: 89995259

Filing Code Description: Petition

Filing Description: Whinstone v Enterprises et al Original Petition

Status as of 7/22/2024 9:30 AM CST

Associated Case Party: Whinstone US, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Rob Slovak		rslovak@foley.com	7/19/2024 9:18:31 PM	SENT
Steven Lockhart		slockhart@foley.com	7/19/2024 9:18:31 PM	SENT
Jonathan MichaelThomas		jmthomas@foley.com	7/19/2024 9:18:31 PM	SENT
Brandon C.Marx		bmarx@foley.com	7/19/2024 9:18:31 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Tanya Durham		tdurham@foley.com	7/19/2024 9:18:31 PM	SENT
Barbara Hodges		bhodges@foley.com	7/19/2024 9:18:31 PM	SENT

Exhibit B

153-354718-24

FILED
TARRANT COUNTY
8/30/2024 1:02 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 153-354718-24

WHINSTONE US, INC.,

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IN THE DISTRICT COURT OF

PLAINTIFF,

v.

IMPERIUM INVESTMENT HOLDINGS LLC,
NATHAN NICHOLS, CHASE BLACKMON,
CAMERON BLACKMON, NICHOLAS
CERASUOLO, RHODIUM ENTERPRISES, INC.,
RHODIUM TECHNOLOGIES, LLC, AND
RHODIUM RENEWABLES, LLC,

TARRANT COUNTY, TEXAS

DEFENDANTS

153RD JUDICIAL DISTRICT

WHINSTONE US, INC.’S NOTICE OF NONSUIT OF CLAIMS AGAINST RHODIUM ENTITIES ONLY

Pursuant to Texas Rule of Civil Procedure 162, Plaintiff Whinstone US, Inc. (“Whinstone”) files this notice of nonsuit that dismisses its claims against Defendants Rhodium Enterprises, Inc., Rhodium Technologies, LLC, and Rhodium Renewables, LLC (collectively, “Rhodium”) only without prejudice. All other claims by and against all other parties shall proceed without interruption.

WHEREFORE, Whinstone requests that the Court enter the order attached hereto, non-suiting without prejudice as detailed herein all of Whinstone’s claims brought against Rhodium only and all other claims by and against all other parties shall proceed without interruption.

Date: August 30, 2024

Respectfully submitted,

/s/ Robert T. Slovak

Robert T. Slovak
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Facsimile: 214.999.3334

Attorneys for Plaintiff Whinstone US, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record and parties in accordance with the Texas Rules of Civil Procedure on August 30, 2024.

/s/ Brandon C. Marx

Brandon C. Marx

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Tanya Durham on behalf of Robert Slovak

Bar No. 24013523

tdurham@foley.com

Envelope ID: 91522917

Filing Code Description: Notice

Filing Description: Whinstone US, Inc.'s Notice of Nonsuit of Claims Against Rhodium Entities Only

Status as of 8/30/2024 2:00 PM CST

Associated Case Party: CAMERONBLACKMON

Name	BarNumber	Email	TimestampSubmitted	Status
Alexis Swartz		alexis@lkcfirm.com	8/30/2024 1:02:35 PM	SENT
William Thompson		will@lkcfirm.com	8/30/2024 1:02:35 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Steven Lockhart		slockhart@foley.com	8/30/2024 1:02:35 PM	SENT
Rob Slovak		rslovak@foley.com	8/30/2024 1:02:35 PM	SENT
Tanya Durham		tdurham@foley.com	8/30/2024 1:02:35 PM	SENT
Brandon C.Marx		bmarx@foley.com	8/30/2024 1:02:35 PM	SENT
Jonathan MichaelThomas		jmthomas@foley.com	8/30/2024 1:02:35 PM	SENT

**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)

RHODIUM JV LLC, RHODIUM 30MW LLC, RHODIUM 2.0 LLC, RHODIUM 10MW LLC, RHODIUM ENCORE LLC, AIR HPC LLC, JORDAN HPC LLC, RHODIUM INDUSTRIES LLC AND RHODIUM RENEWABLES LLC,

Plaintiffs,

v.

WHINSTONE US, INC.,
RIOT PLATFORMS, INC.,

Defendants.

Adversary Proceeding No. 25-03047

Jury Trial Demanded

**REPORT AND RECOMMENDATION REGARDING
DEFENDANT RIOT PLATFORMS, INC.’S MOTION TO DISMISS**

Upon consideration of Defendant Riot Platforms, Inc.’s (“Riot”) *Motion to Dismiss* (the “Motion”) requesting that the Court dismiss all counts against Riot contained in the *Complaint* [Adv. No. 1] (the “Complaint”) filed by Plaintiffs Rhodium JV LLC, Rhodium 30MW LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium Encore LLC, Air HPC LLC, Jordan HPC LLC, Rhodium Industries LLC, and Rhodium Renewables LLC, in the above-captioned adversary

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).

proceeding, this Court having reviewed the Motion; this Court having found that Riot's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, the Court recommends that the District Court grant the Motion, and dismiss all counts against Riot contained in the Complaint with prejudice.

Signed: _____, 2025

THE HONORABLE ALFREDO R. PÉREZ
UNITED STATES BANKRUPTCY JUDGE