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 THE DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO AMEND THE FINAL CASH COLLATERAL ORDER TO PROVIDE FOR PAYMENT TO PREPETITION SECURED LENDERS

The Ad Hoc Group of SAFE Parties (the "**SAFE AHG**")[2] in the above-captioned 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 *Debtors' Motion for Entry of an Order Authorizing the Debtors to Amend the Final Cash Collateral Order to Provide for Payment to Prepetition Secured Lenders* [Docket No. 1056] (the "**Amendment**"). In support of this Objection, the Ad Hoc Group submits 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] The members of the Ad Hoc Group of SAFE Parties are set forth in the *First Supplemental Verified Statement of Ad Hoc Group of SAFE Parties Pursuant to Bankruptcy Rule 2019* [Docket No. 607].

OBJECTION[3]

1. The Debtors seek, on hardly a week's notice, to disperse more than $54 million of estate cash to secured creditors outside of a plan process. As set forth herein, there is no justification for making these payments on this expedited timeline without further information, disclosure and process.

2. Under the guise of "adequate protection payments" the Debtors seek to repay approximately $54 million of secured debt within two days of the entry of an order authorizing such payments. However, these purported adequate protection payments are designed to do far more than simply protect the secured lenders' interests in their prepetition collateral from any diminution in value suffered during the pendency of the Chapter 11 Cases. Rather, the "Final Adequate Protection Payment" would satisfy in full the Debtors' prepetition secured debt.[4] While the payment of secured debt after the sale of collateral in and of itself is not extraordinary, in this case the Court and the stakeholders lack two key pieces of information: (i) the value of the collateral at each corporate box to ensure the secured claims proposed to be paid are fully secured and (ii) information sufficient to confirm that the secured claimholders are not affiliated with insiders whose claims may be subject to, among other things, equitable subordination. Absent this key information it is not appropriate to pay these claims, whether disguised as adequate protection or otherwise.

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[3] Capitalized terms used but not defined here in have the meanings ascribed to them in the Amendment or *Declaration of David M. Dunn In Support of Chapter 11 Petitions and First Day Relief* [Docket No. 35] (the "**First Day Declaration**"), as appropriate.

[4] The Debtors have represented that the prepetition secured claims of the Insiders (as defined herein) will not be paid. *Response to the Objection of the Ad Hoc Group of Safe Parties to the Emergency Setting of (A) Debtors' Motion for Entry of an Order Authorizing the Debtors to Amend the Final Cash Collateral Order to Provide for Payment to Prepetition Secured Lenders and (B) Debtors' Emergency Motion tor Entry of an Order (I) Approving The Accelerated Payment Procedures; And (II) Granting Related Relief* [Docket No. 1081], at ¶ 4.

3. The relief sought by the Amendment is not necessary at this time, is not appropriate at this time and should not be granted absent further disclosures and an opportunity for stakeholders to adequately evaluate the Amendment's effect on the Debtors' remaining stakeholders.

I. The "Final Adequate Protection Payment" Inappropriately Compensates the Secured Lenders for Far More Than Diminution In the Value of Collateral.

4. The Debtors' description of the relief they are seeking by the Amendment is misleading. The Debtors claim to be seeking Court approval to make an adequate protection payment to its prepetition Secured Lenders by amending the Final Cash Collateral Order. What the Debtors are actually seeking to do is to pay off in full all their prepetition secured creditors outside of the plan process. While this may be appropriate in certain circumstances, it is not appropriate in this case and is certainly not authorized by the Final Cash Collateral Order.

5. While it is not unusual for a debtor to seek to satisfy its secured debt following the liquidation of collateral, it is unusual for such payment to be couched as an adequate protection payment, and with a complete lack of disclosure regarding (i) the ultimate identity of the secured claim holders, (ii) whether the estates hold claims against such claim holders and (iii) affirmation that the value of the collateral exceeds the amount of the claim. In particular, without establishing a record on the foregoing, the Debtors seek to repay secured debt in the principal amounts of approximately $25.1 million incurred by Debtor Rhodium 2.0 LLC ("**2.0**"), $22.2 million incurred by Debtor Rhodium Encore LLC ("**Encore**") and $3.1 million incurred by Rhodium Technologies, LLC ("**Technologies**").[5] With the exception of the Technologies debt, each of these secured issuances is limited to the issuer and none of the issuances is guaranteed and/or otherwise

[5] In connection with the Note Exchange (as defined herein), Rhodium 30MW LLC provided certain of its assets as collateral for approximately $6.4 million of Technologies' secured notes. *See* First Day Declaration, at ¶ 52.

supported by the assets of the other Debtor entities. *See* First Day Declaration, at ¶¶ 72–76. Absent a factual record that each of the applicable entities have sufficient value to collateralize the secured debt, repayment is not appropriate.

6. At the status conference held on May 13, 2025, the Debtors indicated that they believe that paragraph 4(a) of the Final Cash Collateral Order provides the Secured Lenders with "blanket lien" on all of the Debtors assets, which somehow obviates the need for the Debtors to perform a box-by-box value allocation before making the Final Adequate Protection Payment. This overgeneralization of the language in the Final Cash Collateral Order is at best a misreading. Indeed, paragraph 4(a) of the Final Cash Collateral Order does grant the Prepetition Secured Parties (as defined in the Final Cash Collateral Order) adequate protection liens on "all property of the Debtors." However, paragraph 4 of the Final Cash Collateral Order expressly states that the Secured Lenders are entitled "to adequate protection of their Prepetition Note Liens in the Prepetition Notes Collateral (including Cash Collateral, if any), ***in each case solely to the extent of any Diminution in Value of their interests therein*** . . . ." Final Cash Collateral Order, at ¶ 4. Accordingly, a proper interpretation of the Final Cash Collateral Order makes clear that the Secured Lenders have only been granted blanket adequate protection liens if and to the extent that their collateral has diminished in value during the pendency of the Chapter 11 Cases. There has been no such evidentiary showing by the Debtors.

7. Bankruptcy Code section 507(b) provides that if a debtor grants adequate protection to a secured creditor, and that adequate protection proves insufficient to compensate the creditor for the diminution in the value of its collateral resulting from: (i) the stay of action against its collateral under Bankruptcy Code section 362; (ii) the use, sale or lease of its collateral under Bankruptcy Code section 363; or (iii) the granting of a lien against its collateral under Bankruptcy

Code section 364(d), then the creditor will be entitled to an administrative claim with priority over every other claim allowable under Bankruptcy Code section 507(a)(2). *See* 11 U.S.C. § 507(b); COLLIER ON BANKRUPTCY ¶ 507.14 (16th ed. 2019).

8. Courts interpreting Bankruptcy Code section 507(b) have held that secured creditors must first prove "that the aggregate value of their collateral diminished from the [p]etition [d]ate" as compared to the value of that collateral at the culmination of the case. *In re Residential Capital, LLC*, 501 B.R. 549, 591-92 (Bankr. S.D.N.Y. 2013); *see also, In re Scopac*, 624 F.3d 274, 282 (5th Cir. 2010); ("A secured creditor whose collateral is subject to the automatic stay may first seek adequate protection for diminution of the value of the property, 11 U.S.C. §§ 362(d)(1), 363(e), 364(d), and then, if the protection ultimately proves inadequate, a priority administrative claim under § 507(b).").

9. The question of whether a creditor's collateral has diminished in value is a question of fact. It requires evidence of the value of the collateral on the petition date and evidence regarding the value of the collateral at the date diminution is asserted. This is a burden plainly borne by the Debtors and/or the Secured Lender in the instant case.[6] On the evidentiary record currently before the Court, there is no basis to conclude that the Secured Lenders' collateral has suffered a decrease in value. The Debtors have offered no evidence that the collateral of the Secured Lenders has suffered *any* diminution in value—never mind a diminution in value equivalent to the full amount of the Secured Lender's claims—and the Secured Lenders cannot look to "all property of the Debtors" to satisfy their claims. No collateral valuations were included in the Debtors' exhibit list. No valuation expert was identified. And no valuation expert report

[6] *In re Bailey Tool & Mfg. Co.*, No. 16-30503, 2018 WL 550581, at *4 (Bankr. N.D. Tex., Jan. 3, 2018) (under section 507(b), secured creditors have the burden of proving diminution in value).

has been provided.[7] Accordingly, no evidence has been presented to support a contention that the adequate protection lien is available to support a blanket lien in favor of the Secured Lenders. To find otherwise would inappropriately favor the Secured Lenders to the detriment of other stakeholders. This is not the purpose of adequate protection.[8]

10. Without evidence of diminution of value and access to the blanket lien provided for in Paragraph 4(a), the Secured Lenders do not currently have a recourse against "all property of the Debtors" and may only look to the collateral at each specific Debtor entity to satisfy their claims. In the absence of necessary information to determine that the Secured Lenders' collateral is sufficient to pay the Secured Lender claims—particularly at 2.0 and Encore—it is inappropriate for the Debtors to pay such parties in full, especially with such payment characterized as an adequate protection payment. In the event the collateral at the relevant Debtor entities is insufficient to pay Secured Lenders, allowing the Final Adequate Protection Payment would result in a windfall to the Secured Lenders.

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[7] Local Rule 9013-2(c) requires any exhibit and witness lists to explicitly delineate whether a witness is to be called as an expert or as a fact witness. Local Rule 9013-2(g) further requires any expert report to be delivered in advance of the hearing.

[8] Adequate protection is designed to shield a secured creditor from diminution in the value of its interest over a case. The legitimate purposes of adequate protection relief are narrowly focused. The law is well established that adequate protection should not improve the position of secured creditors in relation to other creditors but should only protect against actual losses suffered by the secured creditor as a result of the aggregate diminution in collateral value during the reorganization process. *See, e.g.*, *Official Comm. of Unsecured Creditors v. UMB Bank, N.A. (In re Residential Capital)*, 501 B.R. 549, 592 (Bankr. S.D.N.Y 2013); *In re WorldCom, Inc.*, 304 B.R. 611, 618-19 (Bankr. S.D.N.Y. 2004); *In re Geijsel*, 480 B.R. 238, 265 (Bankr. N.D. Tex. 2012) ("fluctuations here offset in a way that resulted in the aggregate collateral value of the hard collateral remaining generally stable" and, thus, "the so-called adequate protection payments were, in a sense, unnecessary."). The prohibition against granting windfalls in the form of adequate protection is rooted in "the equitable principle that unencumbered assets of a debtor's estate will not be used to benefit one class of creditors at the expense of another class." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs. (In re Timbers of Inwood Forest Assocs.)*, 793 F.2d 1380, 1387 (5th Cir. 1986).

II. The Amendment Should Not Be Granted Because the Debtors Have Provided Insufficient Information for Parties to Appropriately Evaluate the Impact of the Final Adequate Protection Payment on Treatment of Remaining Stakeholders.

11. As this Court has heard, the SAFE AHG and other stakeholders including the Debtors' own Special Committee, agree that valuable estate claims and causes of action exist against most, if not all, of the Debtors' insider parties (the "**Insiders**"). Accordingly, not even the Debtors propose to prepay purportedly secured notes held by Insiders, including Cameron Blackmon, Chase Blackmon, Nathan Nichols, Kirk Blackmon, trusts affiliated with the Nacol family and others. *Compare Schedules of Assets and Liabilities for Rhodium Technologies LLC Case No. 24-90455 (ARP)*, Schedule D (scheduling Technologies' secured noteholders) *with* Amendment, Ex. A (listing Technologies noteholders proposed to be paid pursuant to the Amendment).

12. The SAFE AHG simply wants to ensure that such Insiders do not indirectly and clandestinely receive pre-payments through interests in one or more of the numerous holders of secured claims that are limited liability companies, partnerships, corporations or are otherwise named or organized in a manner that obscures their beneficial owners. The SAFE AHG has sought information regarding the relationships, if any, of these secured claimholders to the Insiders both from the Debtors and the Secured Lenders themselves. The SAFE AHG expressed concerns regarding the Amendment prior to its filing and then again to Debtors' counsel as early as May 7, 2025. At that time the SAFE AHG was informed that the Debtors advisors had performed an Insider analysis in connection with the Amendment.

13. In response, the SAFE AHG wrote to the Debtors, the Special Committee and the Debtors' co-CROs the very next day, on May 8, requesting a call to understand this process. *See* Exhibit A. The Debtors declined the SAFE AHG's invitation for a call. While the Debtors provided a schedule of holders to the SAFE AHG, the Debtors designated that document as subject

to mediation privilege and Federal Rule of Evidence 408. The SAFE AHG therefore cannot describe the schedule, other than to say it is not sufficient to establish that potential payees are not Insiders. Indeed, the SAFE AHG is aware of no evidence the Debtors could present, consistent with hearsay and other applicable rules, that could even be probative of the question, and reserves all of its rights and objections in that regard. Perhaps with additional time and cooperation from the Debtors these types of evidentiary issues could have been avoided, but the Debtors insisted on proceeding on an "emergency" basis with the Amendment and declined the requested call to discuss these Insider issues when the SAFE AHG asked.

14. Recognizing that the Debtors were not in possession of information regarding the ultimate owners of the entities asserting these claims, commencing on May 7, 2025, the SAFE AHG served the first of 4 document subpoenas on secured claim holders, with the limited purposes of determining what, if any, connection the claimholders may have with the Insiders. While it may ultimately be determined that no connections exist, sitting here today, neither the Court nor the Debtors' stakeholders have sufficient information to affirm that the Amendment is not seeking to directly or indirectly transfer estate assets to Insiders (except with respect to the payments the Debtors have agreed to withhold to known Insiders).

15. Additionally, as mentioned in the First Day Declaration, there was a Note Exchange in July 2024 (just prior to filing the Chapter 11 Cases) by which certain—but not all—Encore and 2.0 noteholders exchanged their notes for approximately $6.4 million of secured notes of Technologies. The SAFE AHG is still seeking to understand how the participants in the Note Exchange were selected and, more importantly, why they were selected. Allowing repayment in full to these claim holders, when vital questions such as these remain unanswered, is not

appropriate, especially where early payment is not necessary and provides minimal value to the estate.

RESERVATION OF RIGHTS

16. 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 Motions, and without in any way limiting any other rights of the SAFE AHG to further respond to the Motions, on any grounds, as may be appropriate.

CONCLUSION

17. For the reasons set forth in this Statement, the SAFE AHG respectfully requests that the Court (i) deny the Motions or, in the alternative, schedule a hearing on the Motions for such a time that parties-in-interest have received adequate information and disclosures; and (ii) and grant such relief as may be just and appropriate.

[*Remainder of page intentionally left blank*]

Dated: May 14, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ *Sarah Link Schultz*
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- and -

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Counsel to the Ad Hoc Group of SAFE Parties

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 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

From: Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Sent: Thursday, May 8, 2025 2:17 PM
To: Schultz, Sarah A.
Cc: Michael Robinson; Andrew Popescu; Schmeltz, Trace; David Dunn; Patty Tomasco; Hurley, Mitchell
Subject: RE: Rhodium | Payment Motions
Attachments: [redacted]

EXTERNAL Email

Mediation Privilege / Subject to FRE 408

Sarah,

Please see attached.

Thank you,

Charlotte

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Thursday, May 8, 2025 9:37 AM
To: Schultz, Sarah A. <sschultz@AkinGump.com>; David Dunn <ddunn@provincefirm.com>; Michael Robinson <mrobinson@provincefirm.com>
Cc: Hurley, Mitchell <mhurley@AkinGump.com>; pattytomasco@quinnemanuel.com
Subject: RE: Rhodium | Payment Motions

Sarah –

I don't know that a call is needed. We will send over a schedule.

Many thanks.

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornbu

From: Schultz, Sarah A. <sschultz@AkinGump.com>
Sent: Thursday, May 8, 2025 8:17 AM
To: David Dunn <ddunn@provincefirm.com>; Michael Robinson <mrobinson@provincefirm.com>
Cc: Hurley, Mitchell <mhurley@AkinGump.com>; pattytomasco@quinnemanuel.com; Schmeltz, Trace <TSchmeltz@btlaw.com>
Subject: [EXTERNAL] Rhodium | Payment Motions

Caution: This email originated from outside the Firm.

David and Michael

When I spoke to Patty yesterday afternoon regarding the SAFE AHG's objection to the expedited treatment of the motions to pay the secured and unsecured claims, Patty mentioned that Province has prepared an analysis regarding the holders of the claims proposed to be paid and the potential insider nature of same. Can we set up a call ASAP so we can understand your analysis?

Thank you,

Sarah

Sarah Link Schultz
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Mobile: +1 214.729.9937 | sschultz@akingump.com | akingump.com | Bio
Pronouns: she/her/hers (What's this?)

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