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)

REPLY IN SUPPORT OF THE EMERGENCY MOTION OF THE SAFE AHG TO COMPEL PRODUCTION BY IMPERIUM PARTIES AND DEBTORS

The Ad Hoc Group (the "SAFE AHG") of parties to Simple Agreements for Future Equity ("SAFEs") with Debtor Rhodium Enterprises, Inc. ("REI") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") of Rhodium Encore LLC and its affiliated debtors and debtors in possession (the "Debtors" or "Rhodium"), respectfully submits this reply to the May 16, 2025 Opposition to Motion to Compel and Emergency Motion for a Protective Order regarding Requests for Production of Documents from Ad Hoc Group of SAFE Parties (the "Submission") to the SAFE AHG's motion (the "Motion") to compel the production of documents by Imperium Holdings LLC ("Imperium") and insiders Chase Blackmon, Cameron Blackmon, Nathan Nichols, and Nicholas Cerasuolo (collectively with Imperium, the "Imperium Parties") and the Debtors, including the Special Committee of REI's board of directors (the "Special Committee") as appropriate.

[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), 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 the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

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ARGUMENT

1. The insider-dominated plenary board of directors of REI (the "Conflicted Board"), which authorized the Submission,[2] has been openly hostile to the SAFE AHG since it first appeared in these cases. The SAFE AHG's main offense, it seems, is having the incentive, and resources, necessary to challenge attempts by the Conflicted Board and Quinn to steer these cases towards an outcome they prefer, as opposed to one that benefits the estates' actual creditors and other stakeholders.

2. Notably, much of the Submission runs afoul of the Debtors' charter requiring the Conflicted Board to recuse itself from matters in which insiders have an interest, in favor of the Special Committee and its separate, allegedly independent counsel, Barnes & Thornburg LLP ("Barnes"). Such Conflict Matters include the investigation of claims against Imperium and its founders (some of whom are current Conflicted Board members), and the relative priorities of the SAFEs versus the common stock holdings of Conflicted Board members like Jonas Norr (whose investment vehicles are collectively one of the largest holders of REI equity). Indeed, the risks posed by these conflicts were the express basis for the formation of the Special Committee, without which a trustee likely would have been sought early in these cases. Unfortunately, the existence of the Special Committee has not restrained the Conflicted Board from inserting itself in the middle of Conflict Matters, as illustrated most recently by the bombastic (though utterly unsupported) attacks in the Submission on the SAFE AHG's investigation of members of the Conflicted Board and others, and on the SAFE agreements themselves (arguments which are incorrect, but if adopted, would benefit the individual economic interests of members of the Conflicted Board).

3. To the extent it contains any substance, the Submission is utterly meritless. As a preliminary matter, most of the Submission is devoted to complaining about productions the Debtors made ***in the past***. According to the Submission, those prior productions, with respect to which the Debtors never sought a protective order, and that are not the subject of the motion currently before the Court, were unduly

[2] The Submission was signed by Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn"), the firm that was hired by and reports to the Conflicted Board.

burdensome. But production of 92,000 documents in a case involving the complex issues and sums at issue here is not remotely disproportional. Critically, moreover, most of the documents at issue – ***over 70%*** – already had been produced by the Debtors to Whinstone and other parties in digital form before they were produced to the SAFE AHG. Thus, they should have been transferred to the SAFE AHG at the push of a button, with no material burden of any kind to the Debtors.

4. The disclosures actually sought by the motion before the Court and addressed in the Submission are minimally burdensome, as the Submission tacitly concedes. As relevant to the Submission, the SAFE AHG's motion seeks documents and correspondence concerning a discrete post-petition transaction in December 2024, correspondence with insurance carriers, and information regarding pre-petition invoices from, and payments to, law firms that received substantial sums from the Debtors during the preference period. In total, the documents currently sought by the SAFE AHG from the Debtors likely total no more than a few hundred pages at most, and are manifestly relevant to these cases, as discussed below. Contrary to the Submission, the SAFE AHG does not seek production of ***any*** documents that were previously produced – why would it? – though the SAFE AHG does ask the Court to require the removal of inappropriate confidentiality designations from certain produced documents so they can be utilized appropriately in these cases. The relief sought by the SAFE AHG is plainly warranted and minimally burdensome and should be granted.[3]

1. The Submission's Attacks on the SAFE Agreements, and the SAFE AHG's Investigation of Insider Misconduct Violate the Special Committee Charter

5. Members of the plenary board are deeply conflicted in these cases. As the Court is aware, the Debtors have liquidated, and the only task remaining is to determine priority of distributions of the proceeds of the liquidation. Because the SAFE holders are creditors with a liquidation preference over equity, they represent a threat to recoveries of the REI common stock interests of certain conflicted board members, such as Jonas Norr, who invested in entities that collectively own approximately 12.7% of REI

[3] The Submission's request for a preemptive protective order concerning discovery that has not been served, and may never be served, by the SAFE AHG, which hardly warrants a response, should be denied. *See infra* Section 4.

equity. In addition, the primary target of the SAFE AHG's discovery about which the Submission rages is Imperium, who appointed the Conflicted Board, and its founders, all of whom are current or former members of the Conflicted Board and senior officers of the Company. The allegations against Imperium and the other insiders warrant equitable subordination of any claims they otherwise might have in these cases. As such, the Debtors' full board of directors is hopelessly conflicted when it comes to matters involving claims against the insiders (including the investigation of such claims), and competing interests in the liquidation proceeds now available for distribution.

6. Absent the formation of a Special Committee, appointment of a trustee likely would have been necessary, given the full board's myriad conflicts. According to the independent director David Eaton, the members of the Special Committee were selected because they have no "material business or other relationships or affiliations" with, among others, Imperium, the founders and the Conflicted Board. *See* Declaration of David Eaton in Support of the Application for an Order Authorizing the Retention of Barnes &Thornburg LLP as Counsel to the Special Committee of the Board of Directors of Rhodium Enterprises, Inc. [ECF No. 184] (the "Eaton Decl.") at ¶ 5. The Special Committee in turn hired a separate law firm (Barnes), again based on its alleged "independence" from the Conflicted Board. *See id* at ¶¶ 8-11. Among other things, the Special Committee and their separate counsel are supposed to be the sole estate-paid actors in these cases with respect to "any decisions or ***taking any actions*** respecting any other matter involving Rhodium Enterprises or its subsidiaries ***in which a Related Party has an interest***." *See id*. at ¶ 7.[4] That precludes the Conflicted Board and counsel reporting to the Conflicted Board from spending estate assets arguing against the priority of SAFEs and in favor of interests owned by members of the Conflicted Board, and from seeking to limit discovery concerning claims arrayed against members of the Conflicted Board. Actions concerning such matters are supposed to be the sole province of the Special Committee and its separate counsel.[5]

[4] The definition of "Related Party" encompasses Imperium and the members of the Conflicted Board, among others.

[5] The Submission mostly hurls unsupported invective at the SAFE AHG and the SAFE agreements, knowing that the Conflicted Board could never win an argument on the merits concerning the SAFE AHG's status as creditors, entitled based on the Whinstone Transaction to payment in full of the Cash Out Amount, with a "liquidation preference" over

7. The conduct of the Conflicted Board has long been an issue in these cases. Indeed, on April 5, 2025, the SAFE AHG was forced to send a letter to the Special Committee demanding confirmation of their recusal from all Conflict Matters (the "Recusal Demand Letter"). Ex. A (April 5, 2025 letter to Debtors and counsel for the Special Committee). Incredibly, Patty Tomasco had recently advised one of Imperium's founders, Nick Cerasuolo, ***in writing*** how to avoid an estate objection to his late-filed claim. *See* Ex. B (March 22, 2025 email from Ms. Tomasco (counsel reporting to the Conflicted Board) to Cerasuolo mistakenly advising him that he could assert a claim after the bar date in these cases based on an inapplicable provision of the Bankruptcy Code).[6] Unfortunately, the SAFE AHG's Recusal Demand Letter and its other requests to the Special Committee have not reined in the Conflicted Board. Certainly, the SAFE AHG holds out hope that the Special Committee will demonstrate its own independence, including by ensuring that no plan goes forward that provides a release to Imperium and the insiders absent full subordination of their claims, and satisfaction of the many tens of millions of dollars in affirmative claims arrayed against them.[7]

common stock. But that does not make the use of estate resources to attack the SAFEs, in favor of their own parochial interests, any less inappropriate. The Submission also attaches correspondence from September 2024, apparently in an (unsuccessful) bid to undermine the SAFEs' liquidation priority, but does not bother to mention that in 2024, Quinn repeatedly advised the SAFE AHG that Quinn agreed that, if the SAFEs were triggered (as they have been by the Whinstone Transaction), the SAFEs would be entitled to recover the Cash Out Amount ahead of any recoveries to REI equity.

[6] The SAFE AHG did not learn about Ms. Tomasco's email until after April 5, 2025. However, because Ms. Tomasco recently had disclosed that she did not plan to raise a complete objection to Mr. Cerasuolo's claim based on Bankruptcy Code Section 726, the Recusal Demand Letter also explained that Section 726 is inapplicable in Chapter 11 cases. The Debtors ultimately submitted a complete objection to Mr. Cerasuolo's claim, and did so, we are advised, based on the information supplied by the SAFE AHG to the Special Committee and Ms. Tomasco in its April 5, 2025 letter. Counsel to Mr. Cerasuolo later disclosed Ms. Tomasco's email to Mr. Cerasuolo to the SAFE AHG, and has now included that email on the list of exhibits he intends to use as evidence in support of his motion to have his late-filed claim allowed. ECF No. 1120, Ex. 24. For the avoidance of doubt, the SAFE AHG does not concede that Ms. Tomasco's email to Mr. Cerasuolo does or could revive his claim, but reserves all of its rights, remedies, claims and defenses, including concerning any harm to the estates that may have been caused by Ms. Tomasco's ill-conceived advise to Mr. Cerasuolo.

[7] The SAFE AHG reserves all of its rights, remedies, claims and defenses, including in respect of the conduct of all Debtor actors in these cases.

2. The Debtors' Breathless Claims of Burden Are Exaggerated: Most of the Debtors' Prior Productions Simply Transferred Material the Debtors Already Produced to Other Parties

8. The Submission tacitly concedes that producing the very limited additional materials currently sought by the SAFE AHG would be minimally burdensome. Instead, the Submission complains that productions Debtors made in the past, and that are not subject to the current motion, were unduly burdensome. While largely irrelevant to the application before the Court, the Submission's assertion is also untrue. First, producing 92,000 documents in a case of this complexity, involving eight-figure distributions and a host of valuable claims against insiders, is commonplace and nowhere close to "disproportional." *See, e.g.*, *In re Mills*, No. 3:18-CV-866-CWR-FKB, 2023 WL 9188007, at *4 (S.D. Miss. Mar. 10, 2023) (granting in part motion to compel requiring defendant to produce additional documents, despite defendant having already produced over 100,000 documents); *Palmer v. Cognizant Tech. Sols. Corp.*, No. CV 17-6848-DMG (PLAx), 2021 WL 12302254, at *24 (C.D. Cal. Dec. 29, 2021) (granting in part motion to compel despite defendants already producing more than 270,000 documents and data for more than 100,000 employees); *Freedom Coal. of Doctors for Choice v. Centers for Disease Control & Prevention*, No. 2:23-CV-102-Z, 2024 WL 69084, at *6 (N.D. Tex. Jan. 5, 2024) (ordering production of 7.8 million texts and explaining that "while the burden to produce the requested free-text responses may be heavy, this Court does not find that it is unreasonable").

9. The Debtors also describe their production of documents in a manner that would falsely lead one to believe that the entire 92,000 document production was the result of requests made by the SAFE AHG. That is simply untrue. In fact, over 70% of those documents were previously produced (almost all digitally) in response to requests made by other parties, long before they were produced to the SAFE AHG. For example, over 28,000 of the documents Debtors produced were merely reproductions of documents produced in connection with the Whinstone dispute, and over 37,000 of the documents Debtors produced were reproductions of documents Debtors had produced to the Special Committee. Debtors additionally reproduced documents that had previously been collected and provided in response to pre-petition shareholder requests, reformatted or Bates-numbered versions of prior productions, and other Whinstone

dispute-related pleadings, transcripts, and exhibits. Another material set of documents were hit on by the SAFE AHG's search terms across litigation ESI gathered by the Debtors in connection with the Whinstone litigation, but those were turned over without Debtor review, except for ESI that hit on "privilege screen" search terms chosen by the Debtors. Repeatedly, the SAFE AHG asked the Debtors to identify the terms they were using to screen documents in an effort to reduce the Debtors' review burden, but each time the Debtors' refused.

3. The SAFE AHG Motion To Compel Should Be Granted

a. Debtors Should De-Designate and Produce Proof Capital Equitization Documents

10. On April 28, 2025, the Debtors notified the SAFE AHG for the first time that they purported, post-petition, to have entered into a transaction "equitizing" a note belonging to Proof Capital Alternative Growth Fund ("Proof"). Although few details have been provided to the SAFE AHG, the Debtors may have violated the Bankruptcy Code by failing to provide notice and a hearing before entering into the Proof transaction. In any event, immediately after the Debtors referenced the transaction on April 28, the SAFE AHG sought production of related materials. On May 9, 2025, a copy of the Resolutions of the Board of Directors of Rhodium Enterprises, Inc. approving the equitization of debt of Proof Capital Alternative Growth Fund was produced, along with a copy of the Binding Agreement to Equitize Debt, but was expressly designated as subject to "Mediation Privilege." According to the Submission, another version of the Binding Agreement was produced on December 20, 2024. But the version cited by the Submission also bears a restrictive designation. The relief sought by the SAFE AHG is to require removal of that designation from the Proof transaction documents that have been produced, not their re-production.

11. The Debtors also should be required to produce all communications and other materials *relating* to the Proof transaction, including any email or other communications with Proof, any board minutes or materials, and any internal analysis concerning the transaction and its effects. Bizarrely, the Debtors claim that the SAFE AHG has not asked for "additional documents" relating to the transaction, but that is false. For example, on May 8, 2025, the SAFE AHG specifically asked for the Proof transaction documents and "all related documents." As noted above, the Debtors produced on May 9, 2025 only certain

documents evidencing the Proof transaction itself, but subject to Mediation Privilege, and without any related communications or other documents. The SAFE AHG wrote back, including to note again that the Debtors had "failed to produce the 'related' documents and correspondence sought by the SAFE AHG," and reserved its rights. Notably, the Submission does not bother even to argue that the materials sought either are irrelevant, or would be burdensome to produce. Their production should be required without further delay.

b. The Debtors Must De-Designate Their General Ledgers

12. The Debtors should be required to remove their "professional eyes only" designation from their general ledgers. These documents contain information directly relevant to the claim that members of the Conflicted Board caused the Debtors to distribute Debtor assets to Imperium in order to allow insiders to pay their personal capital gains taxes arising from the Private Sale in 2021. The insiders pocketed more than $33 million in connection with that sale—which itself was a rank breach of the duty of loyalty – and so the sums necessary to pay their capital gains taxes were likewise hefty, around $13 million or more. The SAFE AHG must be able to share the Debtors' general ledgers and other financial information with its client, including because it has no financial advisor and relies on members of its group to help it interpret complex financial information. The material in question was never even close to the kind of sensitive information that would have warranted the restrictions placed on its use here, and that is doubly so considering that much of the information in question is years out of date and relates to a company that has since liquidated and ceased all operations. *See, e.g.*, *ABH Nature's Products, Inc. v. Supplement Manufacturing Partner, Inc.*, No. 19-CV-5637, 2020 WL 13542014, at *1 (E.D.N.Y. July 20, 2020) (denying movants' motion for a protective order and finding that movants had failed to satisfy heightened showing to justify an AEO restriction for general ledger documents where movants were "no longer conducting business" and therefore could not "credibly argue that their general ledgers reveal current confidential information or trade secrets"); *JTS Choice Enterprises, Inc. v. E.I. Du Pont De Nemours & Co.*, No. 11-CV-03143-WJM-KMT, 2013 WL 791438, at *4 (D. Colo. Mar. 4, 2013) (concluding that documents predating defendant's change in business model had "little to do with the current competitive

practices of" defendant and were therefore entitled only to a "confidential" and not "highly confidential" designation and explaining that "[a]s a general rule, business information that is substantially out of date is unlikely to merit protection under Rule 26(c). A party seeking to protect outdated information must make a specific showing of present harm."); *United States v. International Business Mach. Corp.*, 67 F.R.D. 40 (S.D.N.Y. 1975) (information three to fifteen years old not entitled to protection because it revealed little, if anything, about the contemporary operations of the party resisting disclosure).

c. D&O Correspondence Should Be Produced Without Further Delay

13. The Submission claims that the D&O carrier correspondence sought by the SAFE AHG already has been produced, but once again that contention is false. The SAFE AHG seeks production of communications with the Debtors' D&O carriers concerning claims asserted against members of the Conflicted Board and other insiders. The correspondence the Debtors reference as having been produced relates to the Whinstone litigation and is irrelevant to this motion, except to demonstrate that the Debtors have no basis for treating differently the correspondence with insurance carriers relating to insiders (which they have refused to produce). The SAFE AHG understands that its own letters to the Debtors outlining claims against the insiders were supplied by the Debtors to insurance carriers to provide notice of those claims, and that the carriers have responded. That, and all related correspondence, should be turned over to the SAFE AHG as requested.

d. Information Concerning the Debtors' Payments to Law Firms Is Material

14. Again, the Submission falsely claims that these materials already have been produced. The "Debtor's monthly operating reports and statements of financial affairs" cited by the Submission address only ***post-petition*** invoices and payments. The SAFE AHG request includes documents and information concerning ***pre-petition*** invoices and payments exchanged amongst the Debtors and LKC and Stris. That material is relevant, among other things, to any defenses those law firms may seek to raise to potential preference claims related to the millions of dollars each firm received during the 90 days before the bankruptcy petition was filed. The LKC invoice and payment information also is relevant to LKC's contention that its alleged practice of providing a discount to Debtors pre-petition justifies it taking a post-

petition success fee based on a March 4, 2025 engagement letter that did not exist when the LKC retention order was entered in October 2024, or until after virtually all LKC work was concluded, and the structure of the Whinstone transaction established. The Debtors should be ordered to produce these documents without further delay.

4. The Bid for a Pre-Emptive "Protective Order" Should Be Denied

15. Nothing more clearly violates the Special Committee charter than the demand in the Submission – prepared by Quinn at the direction of the Conflicted Board – to preemptively preclude the SAFE AHG from serving discovery on the Debtors, including discovery concerning the gross misconduct of members of the Conflicted Board and other Related Parties and Insiders. Clearly, those parties have an "interest" in cutting off the SAFE AHG's investigation of estate claims against them and claiming falsely that the SAFEs entitlement to the $87 million Cash Out Amount somehow constitutes "equity" on par with stock held by certain of the members of the Conflicted Board.[8] This is exactly the sort of conflicted act that the appointment of the Special Committee was formed to address. *See* September 20, 2024 Written Consent to Action of the Board of Directors of Rhodium Enterprises, Inc., Eaton Decl. Ex. 1 at 3 (charter delegating to Special Committee the taking of "any actions respecting any [] matter involving [REI] or its subsidiaries in which a Related Party has an interest"). The Submission's violation of the Special Committee's charter in seeking a self-interested, preemptive protective order is reason enough to deny the relief.

16. But that relief would be plainly unwarranted even absent the abiding conflicts of interest on display in the Submission. The relief currently sought by the SAFE AHG's motion to compel imposes virtually no burden on the Debtors, the discovery it has taken to date is well within ordinary parameters for a case of this complexity, and most of the material the Debtors have provided to the SAFE AHG consisted of mere "re-productions" of documents the Debtors already had gathered in response to the requests of others. The draconian relief sought by the Submission (at the direction of the Conflicted Board) cutting off the SAFE AHG's access to discovery under applicable rules in connection with its investigation of members

[8] Contrary to repeated statements by counsel to the Conflicted Board in 2024 that if the SAFEs were triggered, the Cash Out Amount would be senior to common stock recoveries.

of the Conflicted Board is plainly inappropriate and should be denied.[9] *See, e.g.*, *Wright v. Old Gringo, Inc.*, No. 17CV1996-BAS (MSB), 2020 WL 9173088, at *2 (S.D. Cal. Mar. 30, 2020) ("Although Rule 26(c) provides that '[a] party or any person from whom discovery is sought may move for a protective order in the court where the action is pending,' (Fed. R. Civ. P. 26), it does not permit a party to seek protective order from discovery that may be sought in the future. . . . The Court is not prepared to begin resolving potential discovery disputes. As this Court has done previously in this case, it now refuses Defendants' request to render an advisory opinion on an issue that is not ripe for review.") (emphasis in original); *Al Otro Lado, Inc. v. Wolf*, No. 317CV02366BASKSC, 2020 WL 4336064, at *3 (S.D. Cal. July 27, 2020) ("Defendants' requested relief is also "prospective" and therefore "improper." Plaintiffs have not yet deposed the witness. Although defendants disavow a 'formal[ ] assertion of privilege', the basis for their requested relief is that plaintiffs' counsel's questioning could result in inadvertent revelation of privileged information. The Court cannot prospectively enter an advisory opinion upholding the law of privileges based on defendants' speculation about questions that might touch on privileged matters." (internal citations omitted)); *McGary v. Cunningham*, No. C13-5130 RBL-JRC, 2013 WL 5913115, at *2 (W.D. Wash. Nov. 4, 2013) (denying defendant's request for a protective order on future discovery requests); *Samuel R. Jahnke & Sons v. Blue Cross & Blue Shield of Kansas, Inc.*, No. 10-4098-JTM, 2011 WL 1466449, at *2 (D. Kan. Apr. 18, 2011) (refusing to grant protective order on prospective future discovery and explaining that "whether additional discovery is warranted turns, as it does in every case, on relevance and the issues in the case" and that future motions should address the specific discovery requests at issue in detail).

CONCLUSION

For the foregoing reasons and those set forth in the Motion, the SAFE AHG respectfully requests that the Court enter an orders substantially in the form of the proposed order attached to the Motion, compelling the production of the materials described in more detail herein and in the Motion.

[9] The Submission's request that the Court prospectively require the SAFE AHG to pay attorneys' fees associated with discovery requests that have not yet been made is even more obviously impermissible.

Dated: May 20, 2025

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

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CERTIFICATE OF SERVICE

I certify that on May 20, 2025, I caused a true and correct copy of the foregoing document to be 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

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April 5, 2025

VIA E-MAIL

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Re: *In re Rhodium Encore, LLC, et al.*, No. 24-90448 (ARP) (Bankr. S.D. Tex.)

Dear Ms. Tomasco and Mr. Schmeltz:

As you know, we represent the ad hoc group of SAFE parties ("SAFE AHG"). We write to seek confirmation that the plenary board of directors of the Debtors (the "Plenary Board") will be recused from determining the economic terms of any proposed plan of reorganization ("Plan"), and from negotiating, mediating or litigating issues concerning any proposed Plan and/or the division of the Debtors' assets amongst the Debtors' stakeholders. Furthermore, we seek confirmation that Quinn Emanuel Urquhart & Sullivan LLC (the "Firm"), counsel that we understand reports to the Plenary Board, will not participate in the Plan Activities (as defined below) and that the Special Committee and its counsel will be the Debtors' representative in any Plan-related mediation.

Debtors' Liquidation of Remaining Assets

As you know, the Debtors recently agreed to enter into a transaction (the "Liquidating Transaction") with Whinstone US Inc. ("WUS") and Riot Platforms, Inc. ("Riot," and with WUS, "Whinstone") pursuant to which (i) Whinstone will acquire substantially all of the Debtors' assets, (ii) the Debtors and Whinstone will exchange mutual general releases, and (iii) Whinstone will contribute $185 million in cash and Riot stock to the estates (together with cash on hand, the estates' litigation claims and other intangible assets not being sold to Whinstone, the "Estate Assets"). The primary substantive task remaining in these cases is determining the appropriate allocation of the Estate Assets to the Debtors' stakeholders ("Asset Allocation"). Among the stakeholders competing for a share of the Estate Assets are current Plenary Board members Chase Blackmon, Cameron Blackmon and Jonas Norr, as well as former Debtor CEO and Plenary Board member Nathan Nichols and other insiders, as well as Imperium

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Holdings LLC ("Imperium"), the investment vehicle owned and managed by the insiders (collectively, the "Related Parties"). Upon information and belief, the other members of the Plenary Board all were appointed by Imperium and/or other Related Parties. Asset Allocation will be the primary focus of the anticipated Plan mediation ("Plan Mediation," discussed below), as well as the negotiation and preparation of the substantive terms of any Plan and potential Plan-related litigation ("Plan Activities").

Allocation of Assets and Plan Activities Present Unmistakable Conflict for Plenary Board

Asset Allocation and Plan Activities constitute Conflict Matters from which the Plenary Board and the Firm must be recused. Indeed, the Special Committee was formed, and the Special Committee retained separate counsel, specifically in anticipation of significant conflicts arising between the interests of Rhodium Enterprises, Inc. ("Rhodium Enterprises") and its non-insider stakeholders on the one hand, and the Related Parties on the other. Mr. Eaton was specifically selected as the original Special Committee director because it was determined that he does not "have material business or other relationships or affiliations" with, among others, the Related Parties who dominate the Plenary Board. The Rhodium Enterprises resolutions (the "Resolutions") establishing the Special Committee define "Conflict Matter" to include any:

> matter in which a conflict of interest exists or is reasonably likely to exist between Rhodium Enterprises, on the one hand, and any of its direct or indirect equity holders, affiliates, subsidiaries, directors, officers, or other stakeholders, or any affiliate or other related party of the foregoing (each a "Related Party" and, collectively, the "Related Parties").

Eaton Decl. ¶ 6 (copy attached hereto as Ex. A). The Special Committee was formed to "take actions on behalf of the Board" with respect to any Conflict Matter, specifically including, among other things, (i) "making any decisions or taking any actions respecting any other matter involving Rhodium Enterprises or its subsidiaries in which a Related Party has an interest," (ii) the "investigation, resolution or taking of other action" with respect to any estate claims against the Related Parties, and (iii) "exploring and making all decisions respecting all or part of any transaction" that is a Conflict Matter.

Asset Allocation and other Plan Activities will turn on disputes with the Related Parties that unmistakably constitute Conflict Matters. For example, the Related Parties own most of their equity at Rhodium Technologies LLC ("RTL"), while the SAFEs and outside common stock are owned at Rhodium Enterprises, RTL's parent. Contribution agreements between Rhodium Enterprises and RTL provide for payment by RTL to Rhodium Enterprises of $87 million, including based on the Whinstone Liquidating Transaction ("Intercompany Obligations"). Enforcement of that aspect of the Contribution Agreements would benefit all stakeholders except the Related Parties (who sit on the Plenary Board). Ms. Tomasco, who reports to the Plenary Board, has argued that RTL is not required to satisfy these Intercompany Obligations even if the Liquidating Transaction results in liquidation or dissolution of the Company (as it clearly does). This outcome is contrary to the plain terms of the governing documents and would benefit the Related Parties only, at the direct expense of Rhodium Enterprises' stakeholders.

Akin

However, the merits of Ms. Tomasco's position are not, for purposes of this letter, the point. The point is that the conflicted Plenary Board and counsel that reports to the conflicted Plenary Board should not be permitted to advocate for the Related Parties' parochial interests at the expense of the estates, and in the name of the Debtors. Indeed, as noted, the Special Committee was formed and retained its own counsel to protect the estates from precisely this kind of threat.

Breaches of Fiduciary Duty and Inequitable Conduct of the Related Parties

The Related Parties' alleged breaches of fiduciary duty and inequitable conduct also will be matters of critical concern in connection with Asset Allocation and Plan activities. Indeed, as the SAFE AHG will prove if required, the Related Parties have engaged in rank fraud and other misconduct, including in connection with (i) the roll-up transaction, (ii) solicitation of SAFE investments, (iii) usurpation of Rhodium Enterprises' corporate opportunities by selling their own interests in RTL for approximately $33 million while Rhodium Enterprises was actively fundraising (iv) causing the Debtor to use its own assets to pay capital gains taxes incurred by the insiders related to the private sale, (v) gross negligence (at least) in settling Winter Storm Uri claims worth $65 million or more for a pittance, and (vi) a host of other matters and transactions. Overwhelming evidence demonstrating the merits of these allegations preclude the Related Parties from recovering any Estate Assets unless and until all other innocent stakeholders are first repaid in full. Nevertheless, Ms. Tomasco in the past has disparaged Rhodium Enterprises' common stockholders as "unsophisticated" and "opportunistic" for suggesting otherwise and has impugned the SAFE holders' motivations for seeking to investigate the Related Parties' misconduct. It is only appropriate that the Special Committee and its counsel, as opposed to the conflicted Plenary Board, determine the Debtors' position concerning the merits and consequences of the serious claims arrayed against the Related Parties in connection with Asset Allocation, Plan Activities or otherwise.[1] This is particularly so given that substantial estate resources were devoted to an investigation of Related Party misconduct by the Barnes firm, counsel that the Special Committee indicated it hired due to its independence from the Related Parties and Plenary Board.

Notably, counsel has been openly hostile to the SAFE AHG, as well as to representatives of Rhodium Enterprises' outside stockholders, throughout these cases. For example, in a meet-and-confer email exchange, Ms. Tomasco called the SAFE AHG "terrorists" for seeking to enforce a written discovery stipulation pursuant to which the Debtors agreed to provide an ESI hit report to the SAFE AHG. This kind of vituperation would be inappropriate no matter the audience, but members of the SAFE AHG were particularly and personally offended by counsel's characterization. *See* Ex. B (attaching relevant email string). Similarly [redacted]

[1] The SAFE AHG does not object to the Firm continuing to advance the Whinstone Liquidating Transaction, as long as it avoids straying into any related Conflict Matters. Likewise, provided the substantive economic terms of a Plan are agreed on by outside stakeholders and the Special Committee, the SAFE AHG does not object to the Firm preparing Plan and disclosure documents consistent with those terms.

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[redacted] The aversion of the Plenary Bord to non-insider stakeholders was on display again in connection with the proposed Plan mediation. After announcing the Debtors' agreement to the Liquidating Transaction with Whinstone, Debtors' counsel should have contacted the SAFE AHG and other necessary parties to discuss the merits and logistics of a potential Plan mediation. Instead, after apparently consulting only with the conflicted Plenary Board, Ms. Tomasco announced unilaterally, in open court and with no prior notice to the SAFE AHG or any other non-insider stakeholders, that the Plenary Board had determined to convene a Plan mediation before a new mediator (Judge Isgur) on May 20, 2025.

Incredibly, moreover, the parties failed to highlight the fact that Judge Isgur's son-in-law is a partner at Lehotsky Keller Cohn ("LKC"). LKC is subject to a dispute over a potential success fee that could directly impact Asset Allocation and may be a subject of Plan Mediation or otherwise impacted by Plan Mediation. To be clear, LKC candidly identified the relationship between its firm and Judge Isgur when LKC and the SAFE AHG had an initial meet-and-confer concerning the SAFE AHG's objection to LKC's Second Retention Application on April 2, 2025. Unfortunately, by that time, a proposed stipulation already had been circulated to the SAFE AHG and others, and submitted to and entered by Judge Perez. When confronted with these facts recently, though she later apologized, Ms. Tomasco at first insisted that she had no obligation to raise the LKC relationship with the SAFE AHG in connection with the proposed plan mediation because it was disclosed in a declaration filed by LKC in November 2024 – more than four months before anyone ever suggested Judge Isgur might act as Plan mediator. Ms. Tomasco has a narrower view of her duties to estate stakeholders than does the SAFE AHG.

A new example of the Plenary Board's insider-favoritism was supplied just recently. Imperium co-founder and owner Nick Cerasuolo failed to timely file a proof of claim and recently filed a motion to have his late claim deemed timely. On Thursday, April 3, Ms. Tomasco advised that the Debtors do not currently intend to object to this Related Party's motion except to the extent Rhodium's timely unsecured claims are not paid in full. Ms. Tomasco argued that Mr. Cerasuolo will be permitted to recover on his claim whether or not it was timely filed because even late-filed claims are entitled to a recovery after general unsecured claims are paid in full pursuant to Section 726(a)(3). But that Section does not apply in Chapter 11 cases. *See, e.g., In re Provident Royalties, LLC*, No. 09-33886, 2010 WL 2404278, at *7 (Bankr. N.D. Tex. June 10, 2010) ("Section [726(a)] of the Bankruptcy Code, providing for a priority of distributions including tardily filed claims, does not apply in Chapter 11 cases."); *In re Trib. Co.*, 506 B.R. 613, 618 (Bankr. D. Del. 2013) ("[T]he best interests of creditors test is applied in chapter 11 when considering a plan's treatment of allowed claims, but this does not answer the question of whether a claim should be allowed. Claims allowance is governed by Bankruptcy Code § 502. The plain language of § 502(b)(9) does not extend allowance of certain tardy claims under § 726(a) to cases other than those filed under chapter 7."); *In re Manhattan Jeep Chrysler Dodge, Inc.*, 602 B.R. 483, 492–94 (Bankr. S.D.N.Y. 2019) ("As a holder of late-filed claims the Fund is not a member of any 'class' of claims under the Plan and is not entitled to the protections of section 1129(a)(7)."). Instead, if a late-filing creditor in a Chapter 11 case cannot demonstrate "excusable neglect," his claim will be disallowed. Debtors apparently are aware of no excuse for Mr. Cerasuolo's tardy filing, and their decision to file only a limited objection

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(based on a code provision not applicable to these cases) would favor a Related Party to the detriment of the estates and their valid creditors and other stakeholders.[2]

Full Recusal From Conflict Matters Is Imperative

If necessary, the SAFE AHG will marshal additional examples of the conflicted Plenary Board's hostility to the SAFE AHG and other non-insider stakeholders, and further explain why recusal is urgently required. We hope that will not be necessary, however, and that you will confirm promptly that the Special Committee and its counsel will lead any Debtor involvement (to the extent such involvement is even necessary or appropriate) in Asset Allocation and Plan Activities going forward.

Nothing herein constitutes a waiver or relinquishment of any of the SAFE AHG's rights, remedies, claims or defenses, all of which specifically are reserved.

Sincerely,

/s/ Mitchell P. Hurley
Mitchell P. Hurley

[2] Even if Section 726 did apply (and it does not), if the motion were granted, Cerasuolo arguably would be advantaged by having his claim treated under Section 726(a)(2) along with timely claims (like those of the SAFEs) rather than under 726(a)(3), which governs priority of payment of untimely claims in Chapter 7 proceedings.

EXHIBIT B

Yang, Karen

From: Patty Tomasco <pattytomasco@quinnemanuel.com>
Sent: Saturday, March 22, 2025 9:03 PM
To: R. J. Shannon
Cc: Joanna Caytas; Cameron Kelly; Alain Jaquet; Eric Winston; Razmig Izakelian; Kyung S. Lee
Subject: Re: Rhodium - Nick Cerasuolo's Claim No. 12 (Rhodium Enterprises) & Motion to Allow Late Filed Claim
Attachments: 24-90448.zip

No issue here. You should also argue, if someone objects, that in a 100 cent plan, late claims are allowed before equity anyway.

Patty Tomasco
Partner
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On Mar 22, 2025, at 8:33 PM, R. J. Shannon <rshannon@shannonleellp.com> wrote:

[EXTERNAL EMAIL from rshannon@shannonleellp.com]

Patty & Team,

In light of your view that Rhodium's indemnity obligations to Nick Cerasuolo are general unsecured claims rather than administrative expenses, we put together a proof of claim and motion to deem timely filed. Mr. Cerasuolo was not served the Bar Date Order or Notice of Bar Date. I suspect that is because the claims were contingent on the Petition Dates. Kyung and I only became involved in January and stayed out of the Rhodium cases until we had to dig into it w/r/t to the motion to remand in the NDTX case.

Let me know if you have any questions or think we missed something.

Thanks,
R. J.

--
R. J. Shannon
Partner
SHANNON & LEE LLP

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