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

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

JOINDER OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE SAFE CLAIMANT'S RESPONSE TO THE SAFE CLAIM OBJECTION

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned chapter 11 cases (the "Chapter 11 Cases") of Rhodium Encore LLC, *et al*. and its affiliated debtors and debtors in possession (collectively, the "Debtors"), hereby files its joinder (the "Joinder") to the *SAFE Claimant Response to Claim Objection* [Docket No. 1301] (the "Response") filed in response to the *Debtors' Omnibus Objection to Claims Pursuant to Bankruptcy Code Sections 502(b), Bankruptcy Rule 3007, and Local Rule 3007-1 Because SAFE Holders Do Not Hold Claims* [Docket No. 1126] (the "Claim Objection").[2] In further support of this Joinder, the Committee respectfully states as follows:

[1] The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Claim Objection.

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(2). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

BACKGROUND

3. On August 24 and August 29, 2024, each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The cases are jointly administered.

4. On November 22, 2024, the Office of the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed the Committee in these Chapter 11 Cases. *See The United States Trustee's Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 488]. The Committee was originally comprised of seven members: (i) Sing Family Enterprise Limited; (ii) Proof Capital Alternative Income Fund; (iii) SCM Worldwide LLC; (iv) C5 Capital LLC; (v) Vesano Ventures LLC; (vi) Daniel Garrie; and (vii) Queue Associates, Inc.

5. On May 5, 2025, the Debtors filed the *Debtors' Emergency Motion for Entry of an Order (I) Approving the Accelerated Payment Procedures; and (II) Granting Related Relief* [Docket No. 1057] (the "Unsecured Creditors Payment Motion"). In relevant part, the Unsecured Creditors Payment Motion sought approval of certain procedures that would permit, but not require, unsecured creditors to opt-in and receive payment-in-full on behalf of their claims (the "Accelerated Payment Procedures"). On May 27, 2025, the Court entered an order approving the Unsecured Creditors Payment Motion and the Accelerated Payment Procedures. *See* Docket No. 1198.

6. Five of the original seven Committee members opted into the Accelerated Payment Procedures and received full payment on behalf of their claims. As a consequence and as discussed below, SAFE Holders now constitute a near-complete majority of the outstanding unsecured claims.

7. On June 9, 2025, the U.S. Trustee formally reconstituted the Committee by adding Infinite Mining, LLC ("Infinite") as a member alongside the two remaining Committee members that did not opt into the Accelerated Payment Procedures: (i) Proof Capital Alternative Income Fund; and (ii) Daniel Garrie. *See The United States Trustee's Notice of Reconstitution of Committee of Unsecured Creditors* [Docket No. 1255].

8. Infinite holds two claims against Rhodium Enterprises, Inc. totaling at least $1,650,000 in the aggregate. See Claim Nos. 197 and 198. These claims relate to two separate SAFE Agreements executed between Infinite and Rhodium Enterprises, Inc. ("REI") on September 7, 2021, and September 15, 2021, in the amounts of $1,450,000 and $200,000, respectively. *See id*. Therefore, the SAFE Holders now have representation on the Committee.[3]

JOINDER

9. The Committee joins the Response for the simple reason that the SAFE Holders hold liquidated claims by virtue of the consummated sale to Whinstone.US ("Whinstone"), which triggered cash payment obligations to SAFE Holders under the plain terms of the SAFE agreements. Accordingly, the Objection is not correct that SAFE Holders hold "contingent equity rights." There is no longer any possibility for the SAFE Holders to receive equity on account of

[3] Proof Capital Special Situations Fund, a party to a SAFE Agreement executed with REI on September 3, 2021, in the face amount of $2,250,000, is the Proof representative on the Committee following Proof Capital Alternative Income Fund executing the Plan Support Agreement in its capacity as a holder of Class A Common Stock. Proof Capital Special Situations Fund is not a party to, or bound by, the Plan Support Agreement, see FN 1 to Plan Support Agreement.

their holdings. For this reason and as discussed in greater detail below, the Committee joins the Response and incorporates the arguments therein.

10. The Committee files this Joinder to affirm for the Court that the Committee has independently analyzed the appropriate treatment of claims arising from the SAFE Agreements and believes such claims to be properly classified as unsecured claims (albeit contractually subordinated to other creditor claims) and not equity-related interests. Incorporating the arguments contained in the Response herein, the Committee respectfully believes that the following additional points of emphasis will assist the Court's determination as to the status of the SAFE Holders' claims. And while it may not be frequent for an Official Committee of Unsecured Creditors to weigh in on an objection to claims, the Committee felt compelled to do so here where the Objection is not to a particular claim but to the entire class of SAFE Holders. Accordingly, the determination of whether the SAFE Holders hold claims or equity is critical to shaping the trajectory of these cases and the contours of a confirmable plan of liquidation.

11. The Bankruptcy Code defines a creditor as an "entity that has a claim against the debtor that arose at the time of or before the order of relief." 11 U.S.C. § 101(10)(A). The Bankruptcy Code defines a "claim" to include any "***right to payment***, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. 101(5)(A) (emphasis added). "A claim is contingent as to liability if the debtor's legal duty to pay does not come into existence until triggered by the occurrence of a future event and such future occurrence was within the actual or presumed contemplation of the parties at the time the original relationship of the parties was created." *In re All Media Properties, Inc.*, 5 B.R. 126, 133 (Bankr. S.D. Tex 1980), *aff'd*, 646 F.2d 193 (5th Cir. 1981).

12. Further, the UST Manual states that "holders of disputed, unliquidated, and contingent claims may serve on a committee, as may those in litigation with the debtor or even those hostile to reorganization. Any rule otherwise could give the debtor control of committee membership by simply labeling a claim as disputed." *See generally In re Barney's, Inc.*, 197 B.R. 431 (Bankr. S.D.N.Y. 1996).

I. The Whinstone Sale Triggered the Liquidity Event or Dissolution Event, Entitling SAFE Holders to the Cash-Out Amount

13. As set forth in the SAFE Agreements, Liquidity Events include "sale lease, or other disposition of all or substantially all of the assets of the Company." SAFE Agreement § 2.[4] The Whinstone Sale, however – as both a sale of substantially all of Debtors' assets and the moment Debtors' operations ceased to exist – removed any argument regarding potential "contingent interests" and turned the SAFE Holder claims into liquidated and non-contingent claims. In other words, the SAFE Holders' right to a cash payment crystalized and they no longer retain any possible equity-driven upside in the company moving forward and there is no possibility of the SAFE Agreements being converted into equity.

14. Pursuant to the SAFE Agreement, certain triggering events (e.g., "Liquidity Events" and "Dissolution Events," as described below) automatically convert the SAFE Claims into subordinated unsecured claims. The Whinstone Sale constitutes such triggering events and thus, the SAFE Claims are now unsecured claims.

A. The Whinstone Sale is a "Liquidity Event" and "Dissolution Event"

15. As set forth in the SAFE Agreement, "Liquidity Events" are an event where there is a "Change of Control," including, among others, a sale, lease, or other disposition of all or

[4] For avoidance of doubt, any reference to the "SAFE Agreement" shall mean the SAFE Agreement attached as Exhibit 2 to the Claim Objection.

substantially all of the assets of the Company. SAFE Agreement, § 2.[5] The SAFE Agreement defines a "Dissolution Event" as, among other things, "(i) a voluntary termination of operations" and "(iii) any other liquidation, dissolution or winding up of the Company" to the extent not a "Liquidity Event."

16. The Whinstone Sale unequivocally falls into the above definitions. Whinstone purchased all or substantially all of the Debtors' assets (i.e., a "Change of Control" under subsection (iii)), and as a result of the sale, the Debtors are voluntarily terminating their operations (i.e., a "Dissolution Event").

B. Because of the "Liquidity Event" and "Dissolution Event," the SAFE Holders are Unsecured Creditors

17. If a "Liquidity Event" or "Dissolution Event" occurs prior to termination of the SAFE Agreement, SAFE Holders are entitled to the "Proceeds" of such events,[6] which is referred to in the SAFE Agreement as the "Cash-Out Amount."[7] SAFE Agreement, §§ 1(b)-(c). "Proceeds" is defined as "cash and other assets (including without limitation stock consideration) that are proceeds from the Liquidity Event or the Dissolution Event, as applicable, and legally available for distribution." *Id*. at § 2. The Proceeds of the Whinstone Sale, according to Debtors, and after repayment of senior creditors and administrative costs, is approximately $100 million in cash.

18. To summarize, the Whinstone Sale constituted a "Liquidity Event" and a "Dissolution Event" under the SAFE Agreement. As a result, the Debtors are obligated to pay the

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[5] For avoidance of doubt, any reference to the "SAFE Agreement" shall mean the SAFE Agreement attached as Exhibit 2 to the Claim Objection.

[6] In a "Liquidity Event," SAFE holders are entitled to either the "Cash-Out Amount" or an amount calculated by taking the amount payable on the number of shares of common stock equal to the "Purchase Amount" (i.e., the underlying purchase amount for each SAFE) divided by the "Liquidity Price."

[7] The "Cash-Out Amount" is defined as the "Purchase Amount" (i.e., the underlying purchase amount for each SAFE).

SAFE Holders the "Cash-Out Amount"—not some form of equity. The SAFE Agreement is unambiguous on this issue. Pursuant to §§ 1(b) (Liquidity Event) and 1(c) (Dissolution Event), if either event occurs, SAFE Holders "will *automatically* be entitled to receive a portion of Proceeds equal to the Cash-Out Amount." For these reasons, the SAFE Claims are unsecured claims.

II. The Cash-Out Amount Is Only Subordinated To Other Creditor Claims

19. SAFE Holders receiving the Cash-Out Amount have lower priority than currently recognized creditor claims (which even the SAFE Holders acknowledge), but higher priority than holders of Common Stock. The Debtors contend the SAFE Agreements are clear in stating the Cash-Out Amount priority is on par with Common Stock, but the Liquidation Priority provision actually provides the opposite. *See* Claim Objection at ¶¶ 7-8; see also SAFE Agreement §1(d).

20. It is undisputed that the Liquidation Priority provision in the SAFE Agreement places the Cash-Out Amount priority "[j]unior to payment of outstanding indebtedness and creditor claims[.]" SAFE Agreement §1(d). The SAFE Agreement states that the agreements are "intended to operate like standard Common Stock." *Id*. The Liquidation Priority achieves this statement by treating all SAFE Holders as junior to creditors (thus operating like Common Stock), but distinguishes the priority of Cash-Out Amount recipients as greater than Conversion Amount recipients and Common Stock holders. *Id*. The Conversion Amount priority is explicitly on par with Common Stock holders but junior to creditors and Cash-Out Amount recipients. *Id*. As such, the Liquidation Priority provision does not work without elevating the Cash-Out Amount recipients above Common Stock holders. Notably, the Claim Objection fails to address this operative provision that creates the distinction in priority between the Cash-Out Amount and Conversion Amount and Common Stock recipients:

(d) **Liquidation Priority**. In a Liquidity Event or Dissolution Event, this Safe is intended to operate like standard Common Stock. The Investor's right to receive its Cash-Out Amount is:

(i) Junior to payment of outstanding indebtedness and creditor claims, including contractual claims for payment and convertible promissory notes (to the extent such convertible promissory notes are not actually or notionally converted into Capital Stock); and

(ii) On par with payments for other Safes, and if the applicable Proceeds are insufficient to permit full payments to the Investor and such other Safes, the applicable Proceeds will be distributed pro rata to the Investor and such other Safes in proportion to the full payments that would otherwise be due.

The Investor's right to receive its Conversion Amount is (A) on par with payments for Common Stock and other Safes who are also receiving Conversion Amounts or Proceeds on a similar as-converted to Common Stock basis, and (B) junior to payments described in clauses (i) and (ii) above (in the latter case, to the extent such payments are Cash-Out Amounts or similar liquidation preferences).

21. This provision makes clear that (a) there is a priority difference between the Conversion Amount and the Cash-Out Amount, and that the former sits *pari passu* with Common Stock. This language ensures that the Cash-Out Amount is (a) subordinated to general unsecured creditors yet (b) has priority over common stock.

III. Section 510(b) is Inapplicable to the SAFE Claims

22. Section 510(b) is applicable in scenarios dealing with "a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor," or "for damages arising from the purchase or sale of such a security." 11 U.S.C. § 510(b). In the Fifth Circuit, this rule requires that the subordination of claims relating to a "purchase or sale of a security" falls into two categories: 1) "the rescission category" and 2) "the damages category." *In re SeaQuest Diving, LP*, 579 F.3d 411, 418 (5th Cir. 2009). But, as discussed in the Response, neither is applicable here.

23. The intention of Section 510(b) is to prevent securities' holders from elevating their claims to the level of an unsecured creditor either through a recission of the contract or by asserting a damage claim arising in tort. *Id.* at 419. That is not what is happening here. The SAFE Holders did not take any action outside the four corners of their agreements, which automatically convert their rights into unsecured claims upon triggering events—terms that the Debtors agreed to when

accepting funds from the SAFE Holders. Accordingly, these circumstances fall outside the bounds of the theories of relief contemplated under section 510(b). In other words, SAFE Holders are not equity holders (and never were). They are parties to contracts that explicitly grant them a right to cash payment in the event of a Liquidity Event or Dissolution Event, paid as a "liquidation preference" ahead of Common Stock. That preference was part of the original deal that SAFE Holders struck in order to mitigate certain risks – which was prudent as such risks did materialize here to crystallize their claims. The fact the SAFE Holders hold claims now should not be subject to Section 510(b), but merely the liquidation priority contemplated in the SAFE agreements (whereby they acknowledge they are junior to other unsecured claims but senior to equity interests). Section 510(b) might be applicable if the SAFE Holders were attempting to leapfrog the priority scheme to be *pari passu* with other unsecured creditors, but the SAFE instruments provide unmistakably that SAFE Holders are junior to other unsecured creditors (and senior to Common Stock holders).

24. For the foregoing reasons, the Committee submits that the SAFE Claims are subordinated unsecured claims entitled to payment in full prior to any distributions to equity holders.

RESERVATION OF RIGHTS

25. The Committee reserves the right to supplement or amend this Joinder in all respects prior to the hearing on the Claim Objection. The Committee further reserves the right to address any other issues or arguments raised by the Debtors or third parties in connection with the Claim Objection, prior to or at any hearing on the Claim Objection.

WHEREFORE, the Committee respectfully requests the Court deny the Claim Objection and grant any related relief.

Dated: June 19, 2025
Dallas, Texas

MCDERMOTT WILL & EMERY LLP

/s/ Charles R. Gibbs

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Counsel to the Official Committee of Unsecured Creditors

CERTIFICATE OF SERVICE

I certify that, on June 19, 2025, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Gibbs
Charles R. Gibbs