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)
	§	

REPLY IN SUPPORT OF DEBTORS' AMENDED OMNIBUS OBJECTION TO CLAIM NUMBERS 004, 062, AND 068-072 FILED BY MIDAS GREEN TECHNOLOGIES LLC AND MOTION FOR SUMMARY JUDGMENT BRIEFING SCHEDULE

Rhodium Encore LLC, and its affiliates, as debtors and debtors in possession (collectively, the "Debtors" or "Rhodium") in the above-captioned chapter 11 cases, hereby file this reply ("Reply") in support of *Debtors' Amended Omnibus Objection To Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC* (the "Objection") (ECF Nos. 952, 953).[2] In support of this Reply, the Debtors respectfully state as follows:

Introduction

1. Midas' Claims have already been litigated, and Midas cannot dispute that fact. Midas' proof of claim attached the same complaint it previously filed in district court, and it concedes that its Claims are based on the same patent infringement issues already considered and rejected by the District Court.

[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 otherwise defined herein have the meaning ascribed to them in the Objection.

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2. After filing a proof of claim in these cases and thereby submitting itself to the jurisdiction of this Court, Midas now protests the Debtors' attempts to resolve its Claims, advocating indefinite delay (and leverage) as the parties await the District Court's formal written order. The Debtors requested that the automatic stay be lifted so that the parties could resolve Midas's meritless patent claim and the District Court could memorialize its ruling, preventing Midas from inserting ambiguity into the District Court's ruling where none exists. But delay outside Debtors' control has left this claim as an impediment to disallowance and resolution of this claim.

3. On the day of its ruling, the District Court cancelled the trial and declined to hear motions in limine. In the year since, the District Court did nothing to indicate it would allow further briefing or an amendment to Midas' expert report, which it excluded even before reaching its summary judgment ruling of noninfringement. The District Court clearly indicated its resolution of the case in the Debtors' favor.

4. These cases cannot be held indefinitely hostage to Midas' alleged $25-43 million Claims—claims that are large enough to impair the Debtors' ability to efficiently effectuate its plan of liquidation. In light of the District Court's oral ruling, this Court should deny Midas's Claims in their entirely, or in the alternative, limit further litigation to summary judgment briefing based on the existing, well-developed records of the District Court litigation and these bankruptcy cases.

Reply

I. The District Court's Summary Judgment Ruling Is A Final Ruling That Bars Midas Green's Claims

A. Issue Preclusion Bars Midas' Claims

5. The first two elements of collateral estoppel cannot be disputed: Midas agrees that its Claims concern the same issues the parties already litigated in the District Court, and it admits that the District Court issued an "oral ruling,"[3] which holds the same preclusive effect as a written order. *Ueckert v. Guerra*, 38 F.4th 446, 449, 450 (5th Cir. 2022) ("A bench ruling can be effective without a written order … if it is final" and it is final if the district court "intended that its order be effective immediately."). But in a final salvo, Midas latches onto one element of the issue preclusion analysis—finality, arguing that the District Court's clear statement that "the Court is going to Grant the motion for summary judgment of noninfringement. I think that fully takes care of the case for the time being" somehow does *not* constitute a final ruling. To support this argument, Midas points to selective quotes from the April 9, 2024 hearing transcript, reasoning that because the District Court did not follow its "fairly severe ruling" with an unequivocal rebuke, the District Court opted to reverse its grant of summary judgment immediately after ruling.[4]

6. Midas's argument defies the record, and omits key context concerning the events at the dispositive motions hearing. At the hearing, the District Court considered multiple issues, two of which are relevant here: (i) Rhodium's *Daubert* motion to exclude Midas' technical expert and, later, (ii) Rhodium's summary judgment motion. The District Court heard the *Daubert* motion first, ruled to exclude portions of Midas' expert report (on infringement), and granted Midas leave

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[3] *Midas Green Technologies, LLC's Response to Debtors' Amended Omnibus Objection to Claim Numbers 004, 062 and 068-072 Filed by Midas Green Technologies, LLC* [ECF No. 1069] (the "Response") ¶ 9.

[4] *Id.*

to amend the report.[5] Only then did the District Court hear summary judgment arguments.[6] After granting summary judgment, the District Court made clear that its ruling superseded its previous statement that it would allow amendment to Midas' expert report. In response to Midas' request to "readdress" the issue of summary judgment after amending its expert's report, the District Court said, "you've had your chance" and that it "d[id]n't think it [an amendment] would" benefit the court, but that it would let Midas know.[7]

7. In the year since its summary judgment ruling, the District Court never requested that Midas provide an amended expert report, nor has it allowed further argument. Instead, the District Court cancelled the scheduled trial and declined to rule on any related motions in limine.[8] Then, in January 2025, the District Court instructed the parties to "submit a joint proposed order reflecting the parties' understandings of **Judge Albright's rulings at the 4/9/2024 hearing**," and stated that it intended to "enter the order **reflecting those rulings** shortly thereafter."[9] The District Court never indicated, as Midas claims, that it was considering how to rule. This email from chambers shows that it intends to memorialize its existing ruling that bars Midas' claim. These actions make clear that the case is over. *Ueckert*, 38 F.4th at 450 (a court's ruling is final "if the judge intends to have nothing further to do—with … the case") (cleaned up). Accordingly, the District Court definitively resolved the core issue of Rhodium's infringement of Midas' cooling systems patents by a final judgment and Midas's proofs of claim must be disallowed. *See Ohio*

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5 Apr. 9, 2024 Tr., 13:12-18:6, 20:9-23.

6 *Id.*, 32:7-54:13.

7 *Id.*, 54:19-55:3.

8 *Id.*, 54:14-16.

9 *See* Jan 30, 2025 email from Clerk Corey Brown to counsel attached hereto as **Exhibit A.**

Willow Wood Co. v. Alps S., LLC, 735 F.3d 1333, 1342 (Fed. Cir. 2013) ("it is the identity of the issues that were litigated that determines whether collateral estoppel should apply.").

B. Claim Preclusion Bars Midas' Claims

8. In addition to implicating the same issues considered in the District Court Litigation, Midas' Claims rely on causes of action identical to those brought in the District Court. As a result, the Claims are barred under the doctrine of res judicata. Res Judicata—or claim preclusion—relieves parties from litigating claims that were adjudicated in in prior litigation. *SimpleAir, Inc. v. Google LLC*, 884 F.3d 1160, 1165 (Fed. Cir. 2018). As with issue preclusion, claim preclusion promotes the twin public policy goals of judicial economy and finality of court judgments. *Senju Pharm. Co. v. Apotex Inc.*, 746 F.3d 1344, 1348 (Fed. Cir. 2014).

9. Claim preclusion applies when "(1) the parties in the later action are identical to, or in privity with, the parties in the earlier action; (2) the judgment in the earlier case was rendered by a court with proper jurisdiction; (3) there has been a final judgment on the merits; and (4) the earlier case and later case involve the same cause of action." *Duffie v. United States*, 600 F.3d 362, 372 (5th Cir. 2010). These elements significantly overlap with those already established in the context of issue preclusion. As outlined above, the District Court's summary judgment ruling was a final judgment addressing the merits of Midas' patent infringement claim. Undisputedly, the District Court litigation involved identical parties, and the District Court had jurisdiction to enter a final judgment. And because Midas' Claims rely on the same complaint originally filed in the District Court litigation, it follows that its present Claims encompass the exact same causes of action.

10. Midas cannot require the Debtors to relitigate successive patent infringement claims against the exact same systems. *Indivior Inc. v. Dr. Reddy's Lab'ys, S.A.*, 752 F. App'x

1024, 1034 (Fed. Cir. 2018) (claim preclusion bars further litigation "if the scope of the asserted patent claims in the two suits is essentially the same"); *Mars Inc. v. Nippon Conlux Kabushiki-Kaisha*, 58 F.3d 616, 620 (Fed. Cir. 1995) ("The injury claimed by Mars in the two complaints therefore does not give rise to separate causes of action for purposes of claim preclusion analysis…every act underlying Mars' cause of action in this suit is intimately intertwined with events that were litigated in *Conlux USA.*'").

C. Law of the Case and the *Kessler* Doctrine Bars Midas' Claims

11. If the doctrines of collateral estoppel and res judicata were not enough, other preclusion doctrines apply. As discussed in the Objection, courts generally do not reopen questions that have been decided. And to fill in any gap left by other preclusion doctrines, courts apply the *Kessler* doctrine, a type of preclusion specific to patent law. *SimpleAir, Inc. v. Google LLC*, 884 F.3d 1160, 1170 (Fed. Cir. 2018) (the Kessler doctrine "protects 'an adjudged non-infringer' from 'repeated harassment for continuing its business as usual post-final judgment.'").

12. Pursuant to the Kessler doctrine, when a court finds that a product does not infringe a patent—as happened here when the Court granted summary judgment—its noninfringing status runs with the product and bars relitigation of whether that product infringes the same patent. *Wisconsin Alumni Rsch. Found. v. Apple Inc.*, 112 F.4th 1364, 1384–85 (Fed. Cir. 2024) (quoting *Rubber Tire Wheel Co. v. Goodyear Tire & Rubber Co.*, 232 U.S. 413, 418 (1914)) (the non-infringer's right to have the product "freely bought and sold without restraint or interference" …. "attaches to its product—to a particular thing—as an article of lawful commerce") (cleaned up). The doctrine also protects the product from subsequent actions alleging infringement of substantially similar patents. *See Corning Inc. v. Wilson Wolf Mfg. Corp.*, 569 F. Supp. 3d 920, 933 (D. Minn. 2021). Therefore, Rhodium's accused liquid immersion cooling systems at its

Temple and Rockdale facilities enjoy a "non-infringing status" that cannot be undone in or made the subject of a second action. The Response fails to address—and thus concedes—these arguments.

II. Midas Cannot Recover Damages for Anticipated Future Infringement

13. Consistent with Midas' plan to force an expensive and time-consuming redo of the District Court Litigation in this new forum, Midas claims damages based on a calculation method that the District Court already rejected. The asserted value of Midas's patent claim is greatly overstated for several reasons, including that Midas roughly doubled its alleged damages by impermissibly including future infringement—that is, acts of infringement it assumes will occur subsequent to the previously scheduled District Court trial, and to the Petition Date.[10] As the District Court noted, in granting-in-part Rhodium's Daubert motion to exclude Midas's damages expert, Midas was barred from seeking post-trial damages. Additionally, this sort of anticipatory damages cannot be used as the basis of its Claims against the Debtors. *See Porretto v. City of Galveston Park Bd. of Trs.*, 113 F.4th 469, 487 (5th Cir. 2024) ("…Porretto's claims all allege post-bankruptcy petition conduct. Generally, post-petition claims are not dischargeable in bankruptcy and, therefore, do not affect the estate.").

14. The unique context of these cases reveal the particularly odious nature of Midas' attempts to deplete estate resources based on future infringement that has not and will never occur. With this Court's approval, the Debtors have sold both the Temple and Rockdale cryptocurrency mining sites, as well as the purportedly infringing miners. As a result, there can be no ongoing infringement as the Midas patent claim presumes.

[10] Apr. 9, 2024 Tr., 21:19-24, 22:3-23:23.

III. Alternatively, the Court Should Issue a Summary Judgment Scheduling Order

15. The Debtors maintain that Midas' Claims have been resolved, but if the Court requires more information, the Debtors request that the Court enter a scheduling that limits further litigation to summary judgment briefing before the Court and to further insure that meritless claims do not further delay distributions to stakeholders. *See In re Canoco Inc.*, 323 F. App'x 306, 308 (5th Cir. 2009) ("Cimerring's objection to the Trust's proof of claim, although it did not initiate an adversary proceeding, created a contested matter under Bankruptcy Rule 9014. Bankruptcy courts can render summary judgment in contested matters.").

16. The Response makes much of the multiple years of resources already invested in this case, and on that point, the Debtors agree. It would be an exorbitant waste of estate resources to require the parties to engage in duplicative discovery, expert testimony, and trial of claims that have already been thoroughly litigated. Courts have recognized that patent litigation can prove uniquely costly, and this case is no exception. *See Studiengesellschaft Kohle mbH v. Eastman Kodak Co.*, 616 F.2d 1315, 1327 (5th Cir. 1980) ("…the courts have noted that patent litigation is often unusually complex, lengthy, and expensive…"); *Intell. Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1328 (Fed. Cir. 2016) (Mayer, J., concurring) (citing Shawn P. Miller, "*Fuzzy*" *Software Patent Boundaries and High Claim Construction Reversal Rates*, 17 Stan. Tech. L. Rev. 809, 810 (2014)) ("Patent litigation is so expensive it has been described as the sport of kings.").

17. When the District Court granted Rhodium's summary judgment motion, the parties were mere weeks from trial. The parties had already engaged in extensive discovery, including 25 depositions totalling over 130 hours, 6 expert reports, 699 pages of written discovery, and over 700,000 pages of production documents. The Debtors estimate that attorneys and experts spent close to 10,000 hours on the case, and a conservative estimate of the total combined fees and costs

for both sides exceeds $5 million. Relitigating the claims could cost the parties another seven-figure sum and would certainly delay the estate's emergence from bankruptcy.

18. Rather than require the parties to engage in further expensive discovery and argument, the Debtors request that the Court approve the scheduling order filed contemporaneously with this Reply. Summary judgment is appropriate where, as here, the record establishes "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *In re Pilgrim's Pride Corp.*, 453 B.R. 684, 687 (N.D. Tex. 2011); Bankr. R. 7056. The adjudication of Midas' Claims turn on the purely legal questions of preclusion and patent infringement, and no material fact is contested. Moreover, the parties and the Court have the benefit of an already developed record, and the Debtors will not object to the use of documents previously produced in the District Court Litigation. The Debtors may also seek estimation of Midas's Claims consistent with this same schedule pursuant to 11 U.S.C. §502(c).

Reservation of Rights

19. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Notice

20. Notice of this Reply will be provided to (i) the Office of the United States Trustee; (ii) counsel to the Creditors' Committee; (iii) Midas, (iv) any other party that has requested notice pursuant to Bankruptcy Rule 2002; and (v) any other party entitled to notice pursuant to Local Rule 9013-1(d).

WHEREFORE, the Debtors respectfully request entry of the proposed order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 7th day of July, 2025.

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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Counsel to the Debtors and Debtors-In-Possession

CERTIFICATE OF SERVICE

I, Patricia B. Tomasco, hereby certify that on the 7th day of July, 2025, a copy of the foregoing Objection was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and to Midas Green Technologies, LLC, c/o Joseph Thomas, 18101 Von Karman Avenue, Suite 230, Irvine, CA 92612, email jthomas@twtlaw.com.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

From: Corey Brown <Corey_Brown@txwd.uscourts.gov>
Sent: Thursday, January 30, 2025 2:25 PM
To: becca.skupin@solidcounsel.com; Elizabeth Brannen; gthomas@twtlaw.com; henry.pogorzelski@klgates.com; travis@gillamsmithlaw.com; jthomas@twtlaw.com; Ken Halpern; melissa@gillamsmithlaw.com; michael.smith@solidcounsel.com; Peter Brody; Sarah Rahimi; bkolegraff@twtlaw.com
Subject: Omnibus Order for 6.22.cv.0050

[External Email]
Counsel,

Given the time that has passed, it is necessary that the parties in this case submit a **joint** proposed order reflecting the parties' understandings of Judge Albright's rulings at the 4/9/2024 hearing (if there are disputes, please include proposed language in different colors). Please submit an omnibus order for all of the pretrial motions and a separate single order comprising all of the MILs. The Court will compare with its internal notes and enter the order reflecting those rulings shortly thereafter. Please prepare and submit these orders via response to this email (in Word form) by the end of day on February 7, 2024.

This will help this case begin to progress towards a resolution.

Regards,

Corey W. Brown
Law Clerk for the Honorable Alan D Albright
United States District Court, Western District of Texas
Direct: 254-750-1517
Corey_Brown@txwd.uscourts.gov

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)
	§	

SCHEDULING ORDER FOR CONTESTED MATTER
(Relates to ECF Nos. 952, 953)

The Court enters this Scheduling Order regarding the *Debtors' Amended Omnibus Objection To Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC* ("the Objection") (ECF Nos. 952, 953). It is hereby ORDERED that the following deadlines and settings shall apply to this contested matter:

EVENT	DEBTOR DATE
Deadline for Parties to file Summary Judgment Motions	**Tuesday, July 29, 2025**
Deadline for Parties to Respond to Summary Judgment Motions	**Tuesday, August 12, 2025**
Deadline for Parties to Reply to Summary Judgment Motions	**Thursday, August 21, 2025**
Summary Judgment Hearing	**Tuesday, August 26, 2025**

It is further ORDERED that Federal Rule of Civil Procedure 8 shall apply to this matter.

[1] The Debtors in these chapter 11 cases and the last four digits of their corporate identification 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

It is further ORDERED that the Court's approval and entry of this Scheduling Order shall constitute authority for the Parties to file documents, in connection with the deadlines and settings set forth in this Scheduling Order, designated as confidential under seal without the necessity of filing a separate motion under 9037-1 of the Bankruptcy Local Rules for the Southern District of Texas. Parties filing such documents under seal shall, to the extent feasible, also file redacted documents simultaneously.

It is further ORDERED that changes to the deadlines in this Scheduling Order may only be made by further order of this Court.

Dated: _____ 2025

ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE