

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

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

**JOINT EXHIBIT LIST FOR
 HEARINGS SCHEDULED FOR DECEMBER 3, 2025**

Main Case No: 24-90448 (ARP)	Name of Debtor: Rhodium Encore LLC, <i>et al.</i>
Witnesses:	Judge: Alfredo R. Perez
Michael Robinson	Courtroom Deputy: Akeita House
David Eaton	Hearing Date and Time: December 3, 2025, at 9:30 a.m.
Jeffrey Miller	
Mitchell Hurley	
Any witness called or designated by any other party	Party’s Name: Rhodium Encore LLC, <i>et al.</i> , Ad Hoc Group of SAFE Parties, and the Special Committee of the Board of Directors of Rhodium Enterprises, Inc. (the “Parties”)
Any witness necessary to rebut the evidence or testimony of any witness offered or designated by any other party	Attorneys’ Name: Patricia B. Tomasco, Razmig Izakelian, Sarah A. Schultz, Mitchell Hurley, Trace Schmeltz, Kenneth Kansa

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.



	Attorneys' Phone: 713-221-7000
	Nature of Proceeding: Confirmation hearing on the First Amended Joint Chapter 11 Plan of Liquidation for Rhodium Encore LLC and its Affiliated Debtors Proposed by Debtors and Ad Hoc Group of SAFE Parties (Docket No. 1821)

EXHIBITS

EXHIBIT NO.	DESCRIPTION	O F F E R E D	O B J E C T I O N	ADMITTED/ NOT ADMITTED	DISPOSITION
1	Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief (Filed by Rhodium Encore LLC) (Docket No. 0035)				
2	First Amended Joint Chapter 11 Plan of Liquidation for Rhodium Encore LLC and its Affiliated Debtors Proposed by Debtors and Ad Hoc Group of Safe Parties (Docket No. 1821)				
3	Disclosure Statement for First Amended Joint Chapter 11 Plan of Liquidation of Rhodium Encore LLC and its Affiliated Debtors (Docket No. 1832)				
4	Notice of Filing of Liquidation Analysis Related to the Disclosure Statement for the Joint Chapter 11 Plan of Liquidation of Rhodium Encore LLC And its Affiliated Debtors (Docket No. 1813)				
5	Order (A) Conditionally Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation Procedures and Solicitation Packages; (C) Scheduling Combined Hearing; (D) Establishing Procedures for Objecting to the Plan and Final Approval of the Disclosure Statement; (E) Approving the Form, Manner, and Sufficiency of Notice of the Combined Hearing, and (F) Granting Related Relief. (Docket No. 1834)				
6	Notice of Filing Plan Supplement For First Amended Joint Chapter 11 Plan of Liquidation For Rhodium Encore LLC And Its Affiliated Debtors Proposed by Debtors and Ad Hoc Group of Safe Parties (Docket No. 2001)				
7	Notice of Filing Second Plan Supplement for First Amended Joint Chapter 11 Plan of Liquidation for Rhodium Encore LLC and its Affiliated Debtors				

EXHIBIT NO.	DESCRIPTION	O F F E R E D	O B J E C T I O N	ADMITTED/ NOT ADMITTED	DISPOSITION
	Proposed by Debtors and Ad Hoc Group of Safe Parties (Docket No. 2051)				
8	Notice of Filing of Settlement Stipulation by and Between the Debtors, Acting Through the Special Committee, the Safe AHG, the Transcend Group, and the Other Encore Parties (Docket No. 2006)				
9	Certification of Jeffrey Miller Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the First Amended Joint Chapter 11 Plan of Liquidation for Rhodium Encore LLC and its Debtor Affiliates Proposed by Debtors and Ad Hoc Group of SAFE Parties (Docket No. 2050)				
10	Declaration of Michael Robinson in Support of Confirmation of the Second Amended Joint Chapter 11 Plan of Liquidation for Rhodium Encore LLC and its Affiliated Debtors Proposed by Debtors and Ad Hoc Group of SAFE Parties (Docket No. 2063)				
11	Declaration of David Eaton in Support of Plan Confirmation (Docket No. 2074)				
12	OMITTED				
13	Order Overruling Debtors' Omnibus Objection at ECF No. 1126 to the Safe Proofs of Claim (Docket No. 1593)				
14	Debtors' Second Omnibus Objection to Certain Claims Pursuant to Bankruptcy Code Sections 502(B), Bankruptcy Rule 3007, and Local Rule 3007-1 Because Claims Have Been Satisfied and Based on Other Substantive Grounds (Docket No. 1764)				
15	SAFE Agreement by and between Rhodium Enterprises, Inc. and Celsius Core LLC dated June 2, 2021				
16	September 29, 2022, Warrant Issued to Imperium Investments Holdings LLC				
17	July 2, 2021, Purchase Agreement between Rhodium Enterprises, Inc. and GRF Tiger Trust				
18	July 2, 2021, Purchase Agreement between Rhodium Enterprises, Inc. and Kingdom Trust Co-Emily IRA				

EXHIBIT NO.	DESCRIPTION	O F F E R E D	O B J E C T I O N	ADMITTED/ NOT ADMITTED	DISPOSITION
19	July 2, 2021, Purchase Agreement between Rhodium Enterprises, Inc. and Kingdom Trust Co-Malcolm IRA				
20	July 2, 2021, Purchase Agreement between Rhodium Enterprises, Inc. and Kintz Family Trust				
21	July 2, 2021, Purchase Agreement between Rhodium Enterprises, Inc. and NCF Eagle Trust				
22	October 1, 2021, Warrant to Purchase Shares of Common Stocks Issued to GRF Tiger Trust				
23	October 1, 2021, Warrant to Purchase Shares of Common Stocks Issued to Kingdom Trust C-Emily IRA				
24	October 1, 2021, Warrant to Purchase Shares of Common Stocks Issued to Kingdom Trust C-Malcolm IRA				
25	October 1, 2021, Warrant to Purchase Shares of Common Stocks Issued to Kintz Family Trust				
26	October 1, 2021, Warrant to Purchase Shares of Common Stocks Issued to NCF Eagle Trust Warrant				
27	Notice of Filing Plan Support Agreement (Docket No. 1747)				
28	Joint Chapter 11 Plan of Liquidation for Rhodium Encore LLC and its Affiliated Debtors Proposed by Debtors and Ad Hoc Group of SAFE Parties (Docket No. 1749)				
29	Amended Joint Chapter 11 Plan of Liquidation for Rhodium Encore LLC and its Affiliated Debtors Proposed by Debtors and Ad Hoc Group of SAFE Parties (Docket No. 1750)				
30	Disclosure Statement for Joint Chapter 11 Plan of Liquidation of Rhodium Encore LLC and Its Affiliated Debtors (Docket No. 1751)				
31	Emergency Motion of the Debtors and the Ad Hoc Group of SAFE Parties for Entry of an Order (A) Conditionally Approving the Adequacy of the Disclosure Statement; (B) Approving the Solicitation Procedures and Solicitation Packages; (C) Scheduling a				

EXHIBIT NO.	DESCRIPTION	O F F E R E D	O B J E C T I O N	ADMITTED/ NOT ADMITTED	DISPOSITION
	Combined Hearing; (D) Establishing Procedures for Objecting to the Plan and Final Approval of the Disclosure Statement; (E) Approving the Form, Manner, and Sufficiency of Notice of the Combined Hearing; and (F) Granting Related Relief (Docket No. 1752)				
32	Disclosure Statement for First Amended Joint Chapter 11 Plan of Liquidation of Rhodium Encore LLC and its Affiliated Debtors (Docket No. 1822)				
33	OMITTED				
34	Declaration of Mitchell P. Hurley in Support of Plan Confirmation				
35	Akin Gump Strauss Hauer & Feld LLP (“Akin”) Invoice to Blockchain Recovery Investment Consortium, LLC (“BRIC”) for September 2024 – CONFIDENTIAL – Subject to 502(d) Order				
36	Akin Invoice to BRIC for October 2024 – CONFIDENTIAL – Subject to 502(d) Order				
37	Akin Invoice to BRIC for November 2024 – CONFIDENTIAL – Subject to 502(d) Order				
38	Akin Invoice to BRIC for December 2024 – CONFIDENTIAL – Subject to 502(d) Order				
39	Akin Invoice to BRIC for January 2025 – CONFIDENTIAL – Subject to 502(d) Order				
40	Akin Invoice to BRIC for February 2025 – CONFIDENTIAL – Subject to 502(d) Order				
41	Akin Invoice to BRIC for March 2025 – CONFIDENTIAL – Subject to 502(d) Order				
42	Akin Invoice to BRIC for April 2025 – CONFIDENTIAL – Subject to 502(d) Order				
43	Akin Invoice to BRIC for May 2025 – CONFIDENTIAL – Subject to 502(d) Order				
44	Akin Invoice to BRIC for June 2025 – CONFIDENTIAL – Subject to 502(d) Order				

EXHIBIT NO.	DESCRIPTION	O F F E R E D	O B J E C T I O N	ADMITTED/ NOT ADMITTED	DISPOSITION
45	Akin Invoice to BRIC for July 2025 – CONFIDENTIAL – Subject to 502(d) Order				
46	Akin Invoice to BRIC for August 2025 – CONFIDENTIAL – Subject to 502(d) Order				
47	Akin Invoice to BRIC for September 2025 – CONFIDENTIAL – Subject to 502(d) Order				
48	Akin Invoice to BRIC for October 2025 – CONFIDENTIAL – Subject to 502(d) Order				
49	Letter from Celsius Holdings US LLC (“Celsius”) to the United States Trustee (September 19, 2024) (Docket No. 1356-77)				
50	Letter from Quinn Emanuel to the United States Trustee (September 25, 2024) (Docket No. 1394-14)				
51	Letter from Akin to United States Trustee (November 25, 2024)				
52	Engagement Letter Between Akin and BRIC (September 14, 2024) – HIGHLY CONFIDENTIAL – PROFESSIONALS’ EYES ONLY				
53	Engagement Letter Between Akin and the Ad Hoc Group of Safe Parties (November 13, 2024) (redacted) - HIGHLY CONFIDENTIAL – PROFESSIONALS’ EYES ONLY				
54	Letter from the SAFE AHG to the Debtors (October 8, 2024) (Docket No. 1079-15, Ex. N)–CONFIDENTIAL				
55	Letter from the SAFE AHG to Debtors (November 7, 2024) (Docket No. 1079-16, Ex. O)				
56	Notice of the Ad Hoc Group of SAFE Parties’ Subpoenas Duces Tecum and Ad Testificandum to Imperium Investment Holdings LLP (March 1, 2025)				
57	Letter from the Debtors to the SAFE AHG (October 21, 2024)				

EXHIBIT NO.	DESCRIPTION	O F F E R E D	O B J E C T I O N	ADMITTED/ NOT ADMITTED	DISPOSITION
58	Letter from the SAFE AHG to the Debtors and Special Committee (January 21, 2025)				
59	Letter from the SAFE AHG to the Debtors (January 23, 2025) –CONFIDENTIAL				
60	Letter from the SAFE AHG to Debtors and the Special Committee (April 5, 2025)				
61	Email from the SAFE AHG to Debtors re “Rhodium – Diligence Requests” (January 6, 2025) – CONFIDENTIAL				
62	Email from the Debtors to the SAFE AHG re “Rhodium – Diligence Requests” (January 8, 2025) – CONFIDENTIAL				
63	Email Chain between the SAFE AHG and the Special Committee (January 14-15, 2025)				
64	Letter from the SAFE AHG to the Debtors (January 27, 2025) (Docket No. 1079-17, Ex. P)				
65	Letter from the SAFE AHG to Debtors and the Special Committee (December 26, 2024) (Docket No. 1079-21, Ex. T) – CONFIDENTIAL				
66	Letter from the Special Committee to the SAFE AHG (December 30, 2024) – CONFIDENTIAL				
67	Letter from the SAFE AHG to Debtors and the Special Committee (January 10, 2025) (Docket No. 1079-18, Ex. Q) – CONFIDENTIAL				
68	Email with Notice of Claim from Claims Advocate to Rhodium’s Insurance Carriers re: SAFE AHG Letters (January 22, 2025) (Docket No. 1493-1, Ex. A) – CONFIDENTIAL				
69	Email from the SAFE AHG to the Special Committee (July 23, 2025) – CONFIDENTIAL				
70	Email from Debtors to the SAFE AHG (January 10, 2025) – CONFIDENTIAL				

EXHIBIT NO.	DESCRIPTION	O F F E R E D	O B J E C T I O N	ADMITTED/ NOT ADMITTED	DISPOSITION
71	Email from Debtors to the SAFE AHG (January 10, 2025) – CONFIDENTIAL				
72	Email from the Debtors to the SAFE AHG (January 16, 2025) – CONFIDENTIAL				
73	Email Chain between the SAFE AHG and the Special Committee (January 27-30, 2025)				
74	Email Chain between the Debtors and the SAFE AHG (May 28, 2025) – CONFIDENTIAL				
75	Email from the SAFE AHG to the Special Committee (January 23, 2025) – CONFIDENTIAL				
76	Email from the Special Committee to the SAFE AHG (February 5, 2025) (Docket No. 1079-19, Ex. R) – CONFIDENTIAL				
77	Letter from the Special Committee to the Founders (April 5, 2025) (Docket No. 1246-9, Ex. I) – CONFIDENTIAL				
78	Letter from the Special Committee to the Founders (April 19, 2025) (Docket No. 1246-8, Ex. H) – CONFIDENTIAL				
79	Letter from the SAFE AHG to the Debtors and Special Committee (August 26, 2025)				
80	Email from Province to the SAFE AHG, Debtors, Special Committee, and Imperium (February 6, 2025) CONFIDENTIAL				
81	Transcript of Chase Blackmon Deposition (October 22, 2025) – MEDIATION CONFIDENTIAL				
82	Letter from SAFE AHG to Debtors (March 5, 2025) – MEDIATION CONFIDENTIAL				
83	Email from Judge Mullin to the SAFE AHG and Debtors (March 23, 2025) – MEDIATION CONFIDENTIAL				
84	Email from the SAFE AHG to Debtors (February 20, 2025) with attached Slide Deck				

EXHIBIT NO.	DESCRIPTION	O F F E R E D	O B J E C T I O N	ADMITTED/ NOT ADMITTED	DISPOSITION
	re: Riot Deal from Whinstone Mediation – MEDIATION CONFIDENTIAL				
85	Email from the SAFE AHG to Riot (February 27, 2025) with attached Akin Term Sheet re: Riot Settlement – MEDIATION CONFIDENTIAL				
86	SAFE AHG Letter to the Special Committee (February 26, 2025) – MEDIATION CONFIDENTIAL				
87	Special Committee Letter to the SAFE AHG (March 3, 2025) – MEDIATION CONFIDENTIAL				
88	SAFE AHG Letter to the Special Committee (March 5, 2025) – MEDIATION CONFIDENTIAL				
89	Email Chain between the SAFE AHG, Special Committee, Transcend, and Other Creditors (April 2025) - MEDIATION CONFIDENTIAL				
90	Whinstone US, Inc. v. Imperium Inv. Holdings LLC, et al., Case No. 24-03240 (ARP), Mar. 19, 2025 Hearing Transcript (Docket No. 48)				
91	Email Chain between Province and SAFE AHG (May 30-June 1, 2025) – MEDIATION CONFIDENTIAL				
92	OMITTED				
93	Letter from the SAFE AHG to Debtors and Counsel for the Founders (March 10, 2025)				
94	OMITTED				
95	May 27, 2025 Hearing Transcript (Docket No. 1215)				
96	June 20, 2025 Hearing Transcript (Docket No. 1359)				
97	Letter from the SAFE AHG to Debtors and the Special Committee (November 24, 2025) - CONFIDENTIAL				

EXHIBIT NO.	DESCRIPTION	O F F E R E D	O B J E C T I O N	ADMITTED/ NOT ADMITTED	DISPOSITION
98	Email from SAFE AHG to Counsel for Transcend Group and Special Committee (August 18, 2025) (Docket No. 1564-6, Ex. F) – CONFIDENTIAL				
99	OMITTED				
100	Email from SAFE AHG to Special Committee, M. Robinson, UCC, and Transcend Group (August 9, 2025) (Docket No. 1564-4, Ex. D) – CONFIDENTIAL				
101	Email from Special Committee to SAFE AHG (August 3, 2025) (Docket No. 1564-2, Ex. B) – CONFIDENTIAL				
102	Aug. 4 Status Conference Hearing Transcript (Docket No. 1514)				
103	Email from SAFE AHG to Special Committee and Transcend Group (August 14, 2025) (Docket No. 1564-5, Ex. E) – CONFIDENTIAL				
104	First Amendment to the Fourth Amended and Restated Operating Agreement of Rhodium Technologies LLC (Docket No. 1564-8, Ex. H) – CONFIDENTIAL				
105	345 Partners SPV2 LLC v. Nichols, Adv. No. 25-03413 (ARP) (Bankr. S.D. Tex. Jan. 21, 2025) (Docket No. 1-3)				
106	Email from the SAFE AHG to Province, Debtors, Imperium, and the Special Committee (February 6, 2025) – CONFIDENTIAL				
107	Chart of Categorized Akin Gump Strauss Hauer & Feld LLP Time Entries – CONFIDENTIAL				
	Rebuttal exhibits (if any)				
	Any other pleading filed by a party in this case				
	Any exhibit identified or offered by any other party				

The Parties reserve the right to supplement or amend this Witness and Exhibit List at any time before the Hearing.

Respectfully submitted this 1st day of December, 2025.

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

/s/ Patricia B. Tomasco

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-and-

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*Counsel for the Special Committee of the Board
of Directors of Rhodium Enterprises, Inc.*

-and

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Attorneys for the Ad Hoc Group of SAFE Parties

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Exhibit List was served on the 1st day of December, 2025, via the Clerk of the Court through the CM/ECF system to all parties who have appeared in this case through counsel or who have submitted a request for service by CM/ECF.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

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November 25, 2024

VIA E-MAIL

Ha Nguyen, Esq.
C. Ross Travis, Esq.
Office of the United States Trustee
515 Rusk Street, Suite 3516
Houston, Texas 77002

Re: *In re Rhodium Encore LLC, et al.*, Case No. 24-90448 (ARP)

Dear Messrs. Nguyen and Travis:

I hope you have been well. We saw the notice on the docket on Friday, November 22, 2024, that the U.S. Trustee's office has decided to appoint an unsecured creditors committee in the above-referenced Rhodium bankruptcy cases. We write to ask that the U.S. Trustee consider reforming the committee with SAFE agreement parties, or at least adding SAFE holders, whose claims against the Debtors' collectively amount to not less than \$87 million, as members.

As you may recall from our prior correspondence, debtor Rhodium Enterprises, Inc. ("REI") is required to provide cash or other Proceeds to SAFE parties depending on the occurrence of certain triggering events identified in the SAFE agreements. For example, upon the occurrence of a Dissolution Event, which is defined to include any "liquidation, dissolution or winding up," the Cash Out Amount equal to the Purchase Amount becomes "due and payable" to the SAFE holder. Upon the occurrence of a Liquidity Event, which is defined to include any "reorganization," and any sale of "all or substantially all" of REI's assets, the SAFE holder is entitled to "the greater of" the Cash Out Amount, or the Conversion Amount. To the extent the SAFEs have not already been triggered (for example by the filing of the bankruptcy petition, or the recently announced proposed Temple sale), an event triggering SAFE holders' rights to receive the Cash Out Amount is virtually certain to occur in these cases. The Cash Out Amount is identified as a "preference payment" in the SAFE, and is expressly senior to claims on par with common stock, but subordinated to payment of other indebtedness.

As holders of claims under their respective SAFE agreements, the SAFE holders are creditors qualified to serve on an unsecured creditors committee. Indeed, the Debtors' own



Ha Nguyen, Esq.
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financial statements account for the SAFEs as “long term debt.” *See, e.g.*, Condensed Consolidated Financial Statements, dated June 20, 2023. Whether the SAFE claims are current or contingent, SAFE parties are qualified to sit on the committee. *See, e.g., In re JNL Funding Corp.*, 438 B.R. 356 (Bankr. E.D.N.Y. 2010); *see also* attached Exhibit A (Celsius proof of claim (Claim #111) filed on November 22, 2024, amending Claim #111). In *JNL*, the court rejected the debtor’s argument that holders of contingent notes could not be seated on its creditors committee. As the *JNL* court recognized, “Congress was clear in defining ... 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). Congress was also clear in defining 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). “Thus, a contingent right to payment constitutes a claim ... the holder of such a contingent right is a creditor,” and holders of the contingent notes were properly seated on the committee. *Id.* The same logic applies here. Each of the SAFE holders was party to its SAFE when the Rhodium bankruptcy cases were filed, and thus each held a claim against the Debtors (whether or not their entitlement to the Cash Out Amount had then been triggered) “at the time or before the order for relief.” Each SAFE holder therefore qualifies as a creditor, and as prospective member of a creditors’ committee.

And the SAFE holders are not just any unsecured creditors, they are the largest class of unsecured creditors in these cases by far. Together, they constitute claims with a face amount of at least \$87 million in the aggregate.¹ In comparison, the promissory noteholders who comprise 6 of the 7 members of the Committee represent a class with a grand total of approximately \$14.5 million in outstanding obligations (the “Noteholders”), with a seventh member whose trade claim is for a little more than \$30,000 (with the Noteholders, the “Members”). Significantly, the Noteholders claims are secured by shares in Debtor Rhodium Technologies LLC (“Technologies”) that are owned by Imperium Investments Holdings LLC, the investment vehicle for Rhodium’s insiders. But even without that collateral, the Noteholders are all but guaranteed to recover 100 cents on the dollar in these cases. The Debtors’ first day declaration claimed Debtor assets worth more than \$225 million. Even if the Debtors’ actual value was less than half that amount, and even if the Noteholders were not secured by any valuable collateral, they still would recover in full

¹ Many SAFE parties are individuals and other small holders, with claims of just \$100,000 or less.



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in these cases, since only about \$54 million in secured promissory notes and the \$30 million DIP have priority over them.²

Critically, none of the Members has claims at REI,³ and therefore the current Members may not be incentivized to consider causes of action that would benefit the REI unsecured creditors including questions regarding whether the insiders' interests (through non-debtor Imperium's ownership interests in Technologies) should be subordinated or consolidated to ensure the insiders' equity does not prime claims of the SAFEs at REI. In light of, among other things, very serious allegations that have been made concerning insider misconduct in these cases, including in connection with transactions that may unfairly have favored Imperium and the insiders, it is essential that any official committee include SAFE holders.

Please let us know if you have any questions. We are available to discuss this request at your convenience.

Sincerely,

/s/ Mitchell P. Hurley

Mitchell P. Hurley

Cc: Sarah A. Schultz

² Nothing herein constitutes a waiver of any of our clients' rights, remedies, claim and defenses, including their right to asset challenges to the approximately \$53.7 million in putatively secured debt that is actually held by insiders of the Debtors.

³ Proof Capital Alternative Income Fund asserted an unsecured claim at REI in the amount of \$1,804,662.74 for "[m]oney loaned" in its proof of claim, without identifying any further basis for that claim. This amount matches the amount of the Rhodium Technologies LLC promissory note held by Proof Capital Alternative Income Fund listed in Rhodium Technologies LLC's schedules. We believe that this claim likely was asserted against REI by mistake. Further, it appears that the only interest at REI held by any Member is as a party to a "warrant purchase agreement" for Class A common stock, as described on REI's schedules, which list Sing Family Enterprise Limited, Proof Capital Alternative Income Fund, SCM Worldwide LLC, C5 Capital LLC, and Vesano Ventures LLC as parties to warrant purchase agreements with REI. Unlike the SAFEs, there is no scenario under which such Members or any other warrant party ever could be entitled to anything other than equity in REI. *See* 11 U.S.C. § 101(16), (17). In Debtors' June 2023 financial statements, they categorized these warrants as "equity." In those same financial statements, as previously noted, the Debtors categorized the SAFEs as long-term liabilities.

EXHIBIT 52
FILED UNDER SEAL

EXHIBIT 53

FILED UNDER SEAL

EXHIBIT 54
FILED UNDER SEAL

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November 7, 2024

VIA E-MAIL (pattytomasco@quinnemanuel.com)

Patricia B. Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana Street, Suite 3900
Houston, Texas 77002

Re: *In re Rhodium Encore, LLC, et al.*, Case No. 22-10964 (MG) (Bankr. S.D.N.Y.)

Dear Ms. Tomasco:

We write on behalf of the BRIC to seek certain additional diligence information in connection with the above referenced chapter 11 proceedings (the "Chapter 11 Cases"). The requests below are not intended to be exhaustive, nor to modify or limit any prior requests.¹

1. All agreements, including any purchase options or similar contracts, entered into by Rhodium Enterprises, Inc. or any of its debtor or non-debtor affiliates, including but not limited to Imperium Investment Holdings LLC ("Imperium"), for or relating to the purchase of mining rigs ("Rig Agreements"), including but not limited to any such agreement(s) in which MicroBT or Inshingle are counterparties;
2. Documents sufficient to identify any transactions involving, pursuant to, or relating to any Rig Agreements, including any purchase, sale or re-sale of any mining rigs, the assignment or other disposition of any Rig Agreements, and the disposition and current location of any proceeds of such transactions.
3. Documents sufficient to identify, on an at least quarterly basis, any travel or entertainment expenses in connection with any activities involving any insiders of Rhodium, and the purpose for each such expense;
4. Document sufficient to identify any payments made by Rhodium to or on behalf of insiders with respect to any tax obligations, including in connection with any sale by insiders of interests in Rhodium, and tax returns for Rhodium insiders for

¹ Capitalized terms used but not defined here have the meanings ascribed to them in the BRIC's October 8, 2024 diligence request. We understand that this letter is subject to the Debtors' prior agreement that it will not require a formal 2004 motion, notice or order in connection with the BRIC's diligence requests, but please advise us immediately if Debtors disagree.



Patricia B. Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
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the year(s) in which proceeds for any sales of Rhodium interests by insiders were reported;

5. Documents sufficient to identify any power credits, payments, or other value of any kind that were or could have been provided to or claimed by Rhodium in connection with Winter Storm Uri ("Credits"), and all documents concerning or relating to any sale, transfer, release, or other disposition of such Credits, including the disposition and current location of any proceeds relating to the Credits;
6. Marketing materials and subscription agreements (or similar materials memorializing any purchases) concerning or relating to the Rhodium Renewables capital raise in 2022;
7. Documents and communications concerning or relating to the discovery by any Rhodium insider that Riot would or might acquire Winstone, and any communications concerning the potential impact of the acquisition on Rhodium, its business and affairs, fundraising, equity, and investors;
8. All communications concerning valuation analyses, reports or similar prepared by Teknos Associates or any other person or entity concerning the value of any of the Debtors or their assets;
9. Board and other materials, including any minutes or other recordings, concerning the departure of Nick Cerasuolo, and the departure and return of Nathan Nichols, and communications concerning the actual or potential appointment of independent members to Rhodium's board, including such communications with investors;
10. Communications concerning putative Rhodium secured debt, including any potential defaults, changes in terms of any securities issued by Rhodium, or conversions of debt to equity, perfection issues, and any board materials concerning same;
11. Documents concerning or relating to any SAFE Agreement, including any actual, contemplated or potential transactions or events that did or could constitute a Liquidation Event, Dissolution Event, or other "trigger" event of the SAFE.
12. Documents sufficient to identify any use of insurance policy proceeds or erosion of insurance policy limits.

As you know, we still are waiting for productions that the Debtors previously committed to providing in connection with our October 8, 2024 diligence request and follow-ups. Please advise when



Patricia B. Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
November 7, 2024
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we can expect to receive those materials, and your availability to discuss delivery of the materials identified above. Nothing herein constitutes a waiver or relinquishment of any of BRIC's claims, defenses, rights, or remedies, all of which are expressly reserved.

We look forward to hearing from you.

Sincerely,

/s/ Mitchell Hurley
Mitchell P. Hurley

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

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

**NOTICE OF THE AD HOC GROUP OF SAFE PARTIES’ SUBPOENAS DUCES
TECUM AND AD TESTIFICANDUM TO
IMPERIUM INVESTMENT HOLDINGS LLP**

Please take notice that pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Local Rule 2004-1 of the United States Bankruptcy Court for the Southern District of Texas (the “Local Rules”), and the agreement among the parties dated February 5, 2025, the ad hoc group of parties to Simple Agreements for Future Equity with Debtor Rhodium Enterprises, Inc. (the “SAFE AHG”), in connection with the above-captioned chapter 11 cases of Rhodium Encore LLC and its affiliated debtors and debtors in possession (the “Debtors”), directs Imperium Investments Holdings LLP (“Imperium”) to produce the originals or copies of all documents requested in **Exhibit A** to the attached *subpoena duces tecum* to this notice **on or before March 15, 2025, at 5:00 p.m. CT, to Roxanne Tizraves, Esq., Akin Gump Strauss Hauer & Feld LLP, 1111 Louisiana St., 44th Floor, Houston, TX 77002.**

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.

In addition, please take notice that, in accordance with the notices attached as **Exhibit B** to the *subpoena duces tecum*, the SAFE AHG intends to take depositions of the following directors, officers and managing agents of Imperium and the Debtors: Nathan Nichols, Chase Blackmon, and Cameron Blackmon on the dates and times set forth in those notices (or such other time that may be agreed by the parties). The examination will take place either by Zoom or at Akin Gump Strauss Hauer & Feld LLP, 1111 Louisiana St., 44th Floor, Houston, TX 77002, unless otherwise agreed, and will continue from day to day until completed. The examination will be taken before a court reporter authorized by law to administer oaths and will be recorded stenographically and by audio and visual means.

Please take further notice that the SAFE AHG reserves its rights under title 11 of the United States Code (the “Bankruptcy Code”), the Bankruptcy Rules, the Local Rules, and any applicable law regarding the subject matter of this Notice and to amend, supplement, and/or modify the attached in accordance with the Bankruptcy Code, Bankruptcy Rules, the Local Rules, and other applicable law.

Dated: March 1, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

Sarah Link Schultz (State Bar No. 24033047;
S.D. Tex. 30555)

Elizabeth D. Scott (State Bar No. 24059699; S.D.
Tex. 2255287)

2300 N. Field Street, Suite 1800

Dallas, TX 75201-2481

Telephone: (214) 969-2800

Email: sschultz@akingump.com

Email: edscott@akingump.com

- and -

Mitchell P. Hurley (admitted *pro hac vice*)

One Bryant Park

New York, NY 10036-6745
Telephone: (212) 872-1000
Email: mhurley@akingump.com

*Counsel to the Ad Hoc Group of SAFE
Parties*

CERTIFICATE OF SERVICE

The undersigned certifies that on March 1, 2025, a true and correct copy of the foregoing and its attachments were served on counsel for Debtors and counsel for Imperium Investment Holdings, LLP, by email.

/s/ Sarah Link Schultz

Sarah Link Schultz

UNITED STATES BANKRUPTCY COURT

Southern

District of Texas

In re Rhodium Encore, et al. Debtor

Case No. 24-90448

Chapter 11

SUBPOENA FOR RULE 2004 EXAMINATION

To: Imperium Investment Holdings LLP (Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure. A copy of the court order authorizing the examination is attached.

Table with 2 columns: PLACE (See Ex. B.) and DATE AND TIME (March 15, 2025)

The examination will be recorded by this method: stenographic recording and audiovisual recording.

Production: You, or your representatives, must also bring with you to the examination the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See Ex. A.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 3/1/2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) The Ad Hoc Group of SAFE Parties, who issues or requests this subpoena, are:

Sarah Link Schultz, 2300 N. Field St., Suite 1800, Dallas, TX 75201, sschultz@akingump.com, (214) 969.4367

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DOCUMENTS TO BE PRODUCED

DEFINITIONS

The following definitions shall apply to the terms used in Exhibit A, regardless of whether they are capitalized or uncapitalized. All terms not otherwise defined shall have their ordinary and common meanings. Unless the context indicates otherwise, terms used herein shall have the following meanings:

1. **“5MW Agreements”** shall mean the series of twenty hosting service agreements entered into between Rhodium JV LLC and Whinstone US, Inc. on July 9, 2020.
2. **“30MW Agreement”** shall mean the hosting service agreement entered into between Rhodium 30MW LLC and Whinstone US, Inc. on July 7, 2020.
3. **“Accounting Professional”** shall mean any individual or entity, including but not limited to certified public accountants (CPAs), enrolled agents, bookkeepers, tax preparers, or accounting firms, who provides or has provided accounting, bookkeeping, tax preparation, or related financial services to the individual(s) or entity(ies) identified in this request. This definition includes any person or organization that has prepared, reviewed, or assisted in the preparation of financial statements, tax returns, or other financial documents, whether on a full-time, part-time, or consulting basis.
4. **“Affiliate”** or **“Affiliates”** shall have the meaning ascribed to the term “affiliate” under 11 U.S.C. § 101(2).
5. The term **“Agent”** shall mean any Person or entity and his Professionals acting for or on behalf of another Person or entity.

6. The terms “all,” “any,” and “each” shall each be construed as encompassing any and all of these terms.

7. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of a Request all Documents or responses that might otherwise be construed to be outside of its scope.

8. “Bankruptcy Court” shall mean the United States Bankruptcy Court for the Southern District of Texas.

9. “Building D” shall mean the proposed development of a new building at the Rockdale facility known as “Building D,” which was to house an additional 100MW of mining capacity for Debtors through a joint venture with Whinstone US, Inc.

10. “Communication” or “Communications” shall mean any transmission of information, the information transmitted, and any process by which information is transmitted, including oral, written, and electronic mail communications, including but not limited to emails, text messages, instant messages, chat logs, and memoranda.

11. “Concerning” shall mean directly or indirectly relating to, referring to, reflecting, containing, pertaining to, showing, constituting, evidencing, describing, discussing, or mentioning.

12. “Control Premium” shall mean the increase in Imperium’s ownership in the Debtors’ operating companies from 55.5% to 62% after the Rollup Transaction, representing an increase of 6.5% in the equity owned by Imperium.

13. “Debtors” shall refer to the debtors in the above-captioned chapter 11 proceeding, and any Affiliates, assigns, agents, directors, employees, officers, parents, partners, representatives, subsidiaries, or any other Persons acting or purporting to act on their behalf, and any predecessor or successor of the foregoing.

14. **“Document”** or **“Documents”** is intended to have the broadest possible meaning under Rule 34(a) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7034 and 9014 of the Bankruptcy Rules, and includes, but is not limited to, all originals, non-identical copies and copies with marginal notations or interlineations of any written Communications, writings, sworn statements, deposition transcripts, affidavits, recordings, photographs, phone records, computer data, electronic mail or other items containing information of any kind or nature, however produced or reproduced, whatever its origin or location and regardless of the form maintained. The term “Document” also includes all Electronically Stored Information. The term “Document” further means any document in the possession, custody or control of the entities and individuals to whom the document request is directed (together with any employees, agents, and attorneys). Without limitation to the term “control” as used in the preceding sentence, an entity or individual is deemed to be in control of a document if that entity or individual has the right or practical ability to secure the document or a copy thereof from another entity or individual having actual possession thereof. A draft or non-identical copy is a separate Document within the meaning of this term.

15. **“Imperium”** shall mean Imperium Investment Holdings LLC.

16. **“Insiders”** shall mean Imperium, Nathan Nichols, Chase Blackmon, Cameron Blackmon, and Nicholas Cerasuolo, and any other Imperium directors, officers, members, employees or agents.

17. The term **“including”** shall mean “including, but not limited to.”

18. **“Person”** shall mean any individual, firm, partnership, corporation, proprietorship, association, governmental body, or any other organization or entity.

19. “**Professional**” shall mean any Person or entity engaged to provide or involved in providing professional services of any kind at any time, including without limitation, any attorneys, consultants (including independent consultants), independent contractors, advisors, and testifying or non-testifying experts.

20. “**Proceedings**” shall mean the above-captioned proceedings in the Bankruptcy Court.

21. “**Rollup Transaction**” shall mean the Debtors’ corporate restructuring that consolidated ownership of Debtors’ operating companies into a single entity, Rhodium Technologies, LLC, and which was completed between April 2021 and July 2021.

22. “**SAFE AHG**” shall mean the ad hoc group of parties to Simple Agreements for Future Equity with Debtor Rhodium Enterprises, Inc.

23. “**Tax Returns**” shall mean any and all tax submissions, whether federal, state, local or otherwise including all returns, schedules, attachments, W-2s, 1099s and supporting documentation, submitted to, filed with or required to be filed with any taxing authority. This includes, but is not limited to, Form 1040 and its variations for individuals, Form 1120 for corporations, Form 1065 for partnerships, and any other relevant forms or documents that report income, expenses, deductions, credits, and tax liabilities for the applicable tax years.

24. “**Winter Storm Uri**” shall refer to the severe winter weather event that occurred in February 2021, commonly known as Winter Storm Uri, which impacted the State of Texas. This term includes, but is not limited to, the extreme cold temperatures, ice, and snow that resulted in widespread power outages, infrastructure failures, water supply disruptions, property damage, and any related governmental, regulatory, or corporate responses, including actions taken by the

Electric Reliability Council of Texas (ERCOT), utility providers, state and local agencies, and any other entities involved in emergency response, disaster relief, or mitigation efforts.

25. **“Work Papers”** shall mean Accounting Professionals’ working papers, audit documentation, and other related materials, including but not limited to notes, calculations, adjustments, reconciliations, and supporting documentation, prepared, reviewed, or relied upon in connection with the preparation or filing of any Tax Returns.

26. **“You”** or **“Your”** shall mean Imperium Investment Holdings LLP, its managing members, and all affiliates, representatives, predecessors, successors, and all persons acting in concert with or on behalf of Imperium Investment Holdings LLP.

27. Any references to a Person shall be deemed to include such Person’s Agents, accountants, advisors, employees, attorneys and other Professionals, officers, directors, direct or indirect shareholders, members, managers, representatives, Affiliates, subsidiaries, predecessors, successors, assigns, trustees, fiduciaries, settlors, donors, beneficiaries, or any other individual or entity acting or purporting to act on behalf of such Person.

28. The use of any singular noun shall be construed to include the plural, and vice versa, and a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

1. These instructions incorporate by reference the requirements and duties of the Bankruptcy Rules and the Local Rules.

2. The Debtors have advised the SAFE AHG that the Debtors' law firm, Stris & Maher LLP ("Stris") is in the possession of all emails, texts, and centrally maintained files from custodians Cameron Blackmon, Chase Blackmon, Nicholas Cerasuolo, Nathan Nichols, Brendan Cottrell, Alex Peloubet, and Pete Richison, without any date range or other restrictions, including all Imperium-domained emails for these custodians, as well as their text messages, WhatsApp messages and Teams messages (together with the other electronically stored information gathered in connection with the assumption litigation, the "Litigation ESI"). The SAFE AHG provided initial proposed search terms for the Litigation ESI to the Debtors on January 15, 2025, but the Debtors failed to run those terms, and failed to engage with the SAFE AHG in the iterative process of identifying and narrowing Litigation ESI for production. On February 5, the SAFE AHG agreed to defer certain discovery on the condition that, among other things, the Debtors transfer the Litigation ESI to a Quinn server and run the requested hit report on or before February 19, 2025. The Debtors violated their agreement, and still have not completed the transfer or provided a hit report to the SAFE AHG. The SAFE AHG intends soon to move the Court to compel the Debtors to engage with it in good faith in connection with searching and producing Litigation ESI. As a consequence, and subject to a full reservation of its rights, remedies, claims and defenses, including to the extent information provided to it by the Debtors is inaccurate or incomplete, the SAFE AHG anticipates that responding to these requests should impose a comparatively modest burden on Imperium, as Imperium's ESI allegedly already is in the possession, custody or control

of the Debtors, and must be produced by the Debtors in accordance with applicable rules in response to the SAFE AHG's pending requests.

3. Each Request is continuing in nature. If at any time additional Documents responsive to the Requests come into Your possession, custody, or control or are brought to Your attention, prompt supplementation of Your response to these Requests is required.

4. You are requested to produce all Documents and information requested herein that are within Your possession, custody, or control or in the possession, custody, or control of Your current and former officers, directors, Agents, employees, representatives, Affiliates, Professionals, members, managers, trustees, subsidiaries, or any other Person or entity acting or purporting to act on Your behalf.

5. You are requested to produce Documents and information requested herein on a rolling basis.

6. If You cannot fully respond to one or more of the Requests after exercising due diligence to secure the information requested thereby, please so state, and specify: (a) the portion of each Request that cannot be responded to fully and completely; (b) what efforts were made to obtain the requested information; (c) the facts relied upon that support Your contention that the Request(s) cannot be answered fully and completely; and (d) any knowledge, information, or belief You have concerning the unanswered portion of any such Request(s).

7. All Documents shall be produced with metadata in TIFF format with OCR images, provided, however, that documents in Excel format shall be provided in native format. All Documents shall be produced with metadata, including but not limited to the date and time created/sent, author, recipients, cc-copies, bcc-blind copies, family member information, MD-5 hash, subject line and title, and whether the document contains redactions.

8. If the response to any Request consists, in whole or in part, of an objection on the basis of or including undue burden, then provide those documents that can be produced without undue burden. For such documents that are too unduly burdensome to produce, describe the process or method required to obtain said documents, the quantity and location of the documents involved, and the estimated costs of the search.

9. If You intend to withhold any responsive Document or other information on the basis of a claim of attorney-client privilege, work product protection, bank examination privilege, or any other ground of non-disclosure, You shall identify such Document or information in writing by date of the Document's creation, title/file name/"re line"/subject, addressee/to/cc/bcc, addressor/from, Document type, and topic covered and listed with a statement of the grounds alleged for withholding such Document or other information, including any privilege claimed.

10. If Your response to any Request is any other objection, You must indicate if Documents are being withheld based on the objection(s), provide all Documents not covered by the objection, and state the specific basis of the objection.

11. If any Document responsive to these Requests has been destroyed, lost, or discarded, state when the Document was destroyed, lost, or discarded; identify the Person who destroyed, lost, or discarded the Document; and, in the event the Document was destroyed or discarded, identify the Person who directed that it be destroyed or discarded. Additionally, detail the reasons for the destruction, loss, or discarding; describe the nature of the Document; identify the Persons who created, sent, received, or reviewed the Document; and state in as much detail as possible the contents of the Document.

12. Subject to Instruction No. 7 above, Documents should be produced in the manner they are kept in the ordinary course of business. In producing Documents, all Documents that are

physically attached to each other, or segregated or separated from other Documents, when originally located, should be produced as is.

13. All Documents shall be produced in such fashion as to identify the custodian or department in whose possession the Document was found and the business address of each Document's custodian(s).

14. The fact that a Document is produced by another party does not relieve You of the obligation to produce Your copy of the same Document, even if the two Documents are identical.

15. Unless otherwise specified, the Requests call for the production of Documents created, drafted, copied, or otherwise obtained from January 1, 2020, to the present.

16. By serving these Requests, the SAFE AHG reserves all rights, does not waive any of its rights, and expressly reserves the right to amend, to modify, or otherwise to supplement these Requests.

DOCUMENT REQUESTS

1. All Tax Returns and Work Papers for Imperium Investment Holdings LLP and its members, including Nathan Nichols, Chase Blackmon, Cameron Blackmon, and Nick Cerasuolo (collectively the “Imperium Taxpayers”), for any tax year (“Tax Year”) in which any of the Imperium Taxpayers sold interests of any kind in the Debtors or any of Debtors’ predecessors, or in which the Imperium Taxpayers were the recipients or beneficiaries of distributions or other transfers by the Debtors for the purpose of paying taxes, and all communications concerning all tax payments made by or on behalf of the Imperium Taxpayers in respect of any Tax Year, and the source of funds for such tax payments.

2. All documents and communications concerning or relating to Winter Storm Uri, including but not limited to all documents and communications concerning or relating to any related agreements to which any of the Debtors are a party; communications concerning the actual or potential financial or contractual consequences of Winter Storm Uri; electricity sales by Whinstone during or related to Winter Storm Uri; Debtors’ rights under Section 4.8 of the 5MW Agreements and Section 5.8 of the 30MW Agreement related to Winter Storm Uri; the May 19, 2021 agreement among Whinstone US, Inc., Rhodium 30MW LLC, and Jordan HPC LLC; the April 2021 Qualified Scheduling Entity Letter Agreement Whinstone signed; and all United States Securities and Exchange Commission filings or submissions by Riot Blockchain, Inc. concerning or relating in any part to any of the foregoing or the April 8, 2021 Stock Purchase Agreement by and among Northern Data AG, Whinstone US, Inc. and Riot Blockchain, Inc.

3. All documents and communications concerning or relating to the acquisition of Whinstone US, Inc. by Riot Blockchain, Inc. (the “Acquisition”) including, without limitation, all documents and communications concerning notice to Imperium and the Insiders that the

Acquisition would or might occur, and all communications concerning the potential impact of an Acquisition on the affairs of any of the Debtors, and any obligation of Imperium and the Insiders to disclose such information to investors or potential investors in the Debtors.

4. All documents and communications concerning the Rollup Transaction, including any communications exchanged with current or potential investors related to the Rollup Transaction, including but not limited to all investor presentations, investor update emails, and private placement memoranda, including any and all drafts thereof.

5. All documents and communications concerning or relating to the “control premium” received by Imperium in connection with the Rollup Transaction.

6. All documents and communications concerning or relating to the funding, planning, development, or construction of “Building D,” including but not limited to any related contracts, memoranda of understanding, agreements, budgets, cost projections, timelines, financing arrangements, vendor agreements, invoices, progress reports, financial records, and internal analyses.

7. All documents and communications concerning or relating to any potential or actual sales of Imperium’s ownership interest in Rhodium Enterprises LLC (later renamed Rhodium Technologies LLC) (the “Private Sales”), and all documents or communications concerning efforts of any kind by the Debtors to raise funds or identify investors in Debtors at any time, including during the period(s) of the Private Sales.

8. All documents and communications concerning or relating to any potential or actual sales of Imperium’s or the Insiders’ ownership interest(s) in Debtor Rhodium Enterprises Inc.

9. All documents and communications concerning or relating to the tax liabilities of Imperium or any of the Insiders that arose from the Private Sales, including but not limited to all documents and communications concerning or relating to the payment of any such tax liabilities.

10. All documents and communications concerning or relating to any actual or potential revisions or amendments to operating agreements of any of the Debtor entities (or their predecessors) including Rhodium Technologies LLC, Rhodium Enterprises LLC, or Rhodium Enterprises Inc.

11. All documents and communications concerning or relating to any distributions, dividends, or other disbursements from any Debtor entity directly or indirectly to Imperium or any of the Insiders and/or from Imperium to any of the Insiders.

12. All documents and communications concerning or relating to the Debtors' acquisition of energy contracts for its Bitcoin mining facility in Temple, Texas and concerning or relating to any sale or potential sale of the Temple facility or any assets relating to the Temple facility, including but not limited to any potential acquisition relating to the Temple facility.

13. All documents and communications concerning or relating to the purchase of mining rigs ("Rig Agreements").

14. All documents and communications concerning or relating to the sale, re-sale, assignment, or other disposition of any mining rigs or Rig Agreements, including but not limited to any sale contracts or frame contracts and the disposition and current location of any proceeds of such transactions, contracts, or other dispositions.

15. All documents and communications concerning or relating to Debtors' purchase, sale, re-sale, assignment, or any other disposition of any mobile mining unit(s).

16. All documents and communications concerning or relating to any valuation of any Debtor entity or any of the Debtors' assets, including, without limitation, the value of any power contracts, and the value of any third-party claims.

17. All documents and communications concerning or relating to the selection of directors, officers or other fiduciaries of any of the Debtors, formation of the Special Committee, responsibilities of the Special Committee, the selection of advisors to represent the Debtors and the Special Committee, and any involvement by Insiders and/or their professionals in matters delegated to the Special Committee, including, without limitation, consideration of the matters identified in the SAFE AHG's letter to the Special Committee, copied to Patricia Tomasco and dated February 26, 2025.

18. All communications between Imperium or any of the Insiders on the one hand, and the Debtors or the Special Committee on the other, concerning or relating to the SAFE AHG and/or any of the SAFE AHG's correspondence with the Debtors and the Special Committee.

EXHIBIT B

NOTICES OF DEPOSITION

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

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

NOTICE OF RULE 2004 DEPOSITION OF CAMERON BLACKMON

PLEASE TAKE NOTICE THAT, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 2004-1 of the United States Bankruptcy Court for the Southern District of Texas (the “Local Rules”), the Ad Hoc Group (“AHG”) of parties to Simple Agreements for Future Equity with Debtor Rhodium Enterprises, Inc. will take the oral deposition of Cameron Blackmon on **March 25, 2025**, starting at **9:30 a.m. Central Time** at the offices of Akin Gump Strauss Hauer & Feld LLP, 1111 Louisiana St. #44, Houston, TX 77002, or at such other date, time, and place as the parties may agree. The deposition will be recorded by stenographic means and may also be recorded by audio or audiovisual means and shall continue day-to-day until completed.

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.

Dated: March 1, 2025

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

Sarah Link Schultz (State Bar No. 24033047;
S.D. Tex. 30555)

Elizabeth D. Scott (State Bar No. 24059699; S.D.
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*Counsel to the Ad Hoc Group of SAFE
Parties*

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

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

NOTICE OF RULE 2004 DEPOSITION OF CHASE BLACKMON

PLEASE TAKE NOTICE THAT, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 2004-1 of the United States Bankruptcy Court for the Southern District of Texas (the “Local Rules”), the Ad Hoc Group (“AHG”) of parties to Simple Agreements for Future Equity with Debtor Rhodium Enterprises, Inc. will take the oral deposition of Chase Blackmon on **March 26, 2025**, starting at **9:30 a.m. Central Time** at the offices of Akin Gump Strauss Hauer & Feld LLP, 1111 Louisiana St. #44, Houston, TX 77002, or at such other date, time, and place as the parties may agree. The deposition will be recorded by stenographic means and may also be recorded by audio or audiovisual means and shall continue day-to-day until completed.

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.

Dated: March 1, 2025

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

Sarah Link Schultz (State Bar No. 24033047;
S.D. Tex. 30555)

Elizabeth D. Scott (State Bar No. 24059699; S.D.
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*Counsel to the Ad Hoc Group of SAFE
Parties*

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

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

NOTICE OF RULE 2004 DEPOSITION OF NATHAN NICHOLS

PLEASE TAKE NOTICE THAT, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 2004-1 of the United States Bankruptcy Court for the Southern District of Texas (the “Local Rules”), the Ad Hoc Group (“AHG”) of parties to Simple Agreements for Future Equity with Debtor Rhodium Enterprises, Inc. will take the oral deposition of Nathan Nichols on **March 27, 2025**, starting at **9:30 a.m. Central Time** at the offices of Akin Gump Strauss Hauer & Feld LLP, 1111 Louisiana St. #44, Houston, TX 77002, or at such other date, time, and place as the parties may agree. The deposition will be recorded by stenographic means and may also be recorded by audio or audiovisual means and shall continue day-to-day until completed.

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.

Dated: March 1, 2025

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

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S.D. Tex. 30555)

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WRITER'S EMAIL ADDRESS
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October 21, 2024

VIA ELECTRONIC MAIL

MHURLEY@AKINGUMP.COM

Mitchell P. Hurley

Akin Gump Strauss Hauer & Feld LLP

One Bryant Park

Bank of America Tower

New York, NY 10036

Re: **Rhodium Encore LLC, et al., Case No. 24-90448**

Dear Counsel:

We write in response to your letter dated October 8, 2024, in which the BRIC requested that the Debtors submit to numerous burdensome requests for documents, many of which bear little relation to the SAFE holders' interests. The Office of the United States Trustee ("UST") has declined to appoint an official SAFE committee, and the Debtors will not waste resources humoring the BRIC's requests for broad and unfettered discovery, especially as many of these requests appear to be based on incorrect information and rumors.

A number of your concerns are misinformed:

- After months of allegations and defamatory comments by certain compromised creditors, investigation to date reveals no evidence supporting various claims that Rhodium insiders engaged in illicit activity or otherwise breached their fiduciary duties. Regardless, equity interests and claims based on contracts to receive equity fall below creditor recoveries both under the Bankruptcy Code and the structural seniority of unsecured creditors at the operating company levels.
- The truncated challenge period only applies to The "Consenting Prepetition Secured Parties" and the approximate principal amount of notes issued by Rhodium 2.0 held by as follows: (i) Private Investor Club Feeder Fund 2020-G LLC, \$10.19 million; (ii) Private Investor Club Feeder Fund 2020-H LLC, \$8.06 million; (iii) Stadlin Group Investments–Series Rockdale LLC, \$735,000, (iv) Shane Blackmon, \$1,052,000; and (v) Elysium Mining, \$1,242,000.

Letter to M. Hurley

October 21, 2024

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- Rhodium 2.0 has no unsecured creditors, and it is also structurally superior to Rhodium Technologies and REI. Therefore, whether or not the property within Rhodium 2.0 is subject to a lien will not affect distributions to any other creditor, and it will certainly not affect distributions to the SAFES or vested equity. Any attempt to challenge these liens (totaling \$22 million) would only serve to waste time and resources. Further, both QE's and Orrick's lien review demonstrate that these liens have been perfected through the filing of UCC-1 financing statements.
- The discovery and trial schedule for the Whinstone litigation has been argued to the Court and found to be appropriate under the circumstances. An extended litigation would substantially risk in the Debtor's ability to reorganize. For further context, the Debtors direct you to the DIP budget, which makes clear the financial concerns underlying the pace of the Whinstone litigation. Regarding the other aspects of the bankruptcy, the Debtors have not indicated that restructuring "may be complete in as little as two months."

The Debtors have already shared documents on an informal basis with several creditors and equity holders, and they already provided those documents to the BRIC as well. However, the BRIC's document request is not reasonable, and it seeks information that is not relevant to the SAFE holders' narrow concerns. Subject to Celsius and the BRIC's agreement to and the execution of a protective order to protect Rhodium's confidential information, the Debtors will provide available, non-privileged documents sufficient to assess financial status.

Below are responses and objections to the BRIC's specific document requests:

1. All documents and information concerning or relating to any valuation of the Debtors or any of the Debtor entities, including any reports, presentations or other analyses prepared by the Debtors or their financial advisors concerning the value of the Debtors, their business or assets, or any portion thereof;

Subject to the protective order, Debtors will provide available, non-privileged documents.

2. Unredacted copies of the following agreements signed between Whinstone and the Debtors: (1) the Water Supply Agreement signed between Whinstone and the Debtors in August 2021, (2) the operating agreements signed between the parties in July 2020 ("the "5MW Agreements" and "30MW Agreement"), and (3) the Colocation Agreement signed between the parties in November 2020.

Subject to the protective order, Debtors will provide available, non-privileged documents.

Letter to M. Hurley

October 21, 2024

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3. Copies of all of the Debtors' debt obligations and related agreements and other documentation, including, without limitation, such materials relating to the Consenting Prepetition Obligations, Collateral and Liens;

The Debtors will provide available, non-privileged documents.

4. Copies of all private placement memoranda, marketing materials or other documentation related to any Debtor fundraising or offering activity of any kind, including copies of all recordings, transcripts, and materials relating to any presentations, webinars, or similar materials prepared by the Debtors or provided to potential investors;

The Debtors object to this request on the basis that: i) the request is overbroad and unduly burdensome; and ii) the request seeks documents that are not relevant. Subject to the forgoing objections and the protective order, the Debtors will provide available, non-privileged documents.

5. Board materials, board minutes or agendas, management presentations, written policies and procedures and any similar materials concerning (a) appointment or removal of any directors, (b) any SAFE, any activities or transactions relating to SAFEs and use of funds raised via SAFEs, (c) valuation of the Company or any of its assets, (d) any actual or potential third party lending or financing transaction involving any Debtor; (e) any distributions, (f) any matter as to which approval rights are provided under Section 6 of the Celsius side letter; (g) any payments or other transactions involving lenders during the year preceding the petition date and (h) Riot or Whinstone.

The Debtors object to this request on the basis that: i) the request seeks documents that are not relevant; ii) the request is premature; iii) the request is overbroad and unduly burdensome; and iv) the request is vague and ambiguous. Further, the Debtors note that the BRIC lacks standing to make this request and direct BRIC to the Debtors' Statement of Financial Affairs which lists "any distributions, ... any payments or other transactions involving lenders during the year preceding the petition date and Riot or Whinstone." Subject to the foregoing objections and the protective order, the Debtors will provide available, non-privileged documents.

6. Documents and information sufficient to identify all debt instruments, SAFE agreements, and/or any other type of interest in the Debtors, including the identity of the holder, and whether he, she or it is, or is affiliated with, any current and/or former officers, directors, or high-level management of any Debtor entity or their family members;

The Debtors direct BRIC to the Debtors' Schedules and Statements of Financial Affairs.

Letter to M. Hurley

October 21, 2024

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7. All pleadings and submissions in connection with any arbitration between or among any Debtor entity or affiliate and any Whinstone entity or affiliate, including without limitation *Rhodium JV LLC, et. al. v. Whinstone US, Inc.*, Case No. 01-23-0005-7116, with the American Arbitration Association (“AAA”) on December 11, 2023, and unredacted copies of any pleadings involving Debtors that are available publicly only in redacted form, including an unredacted copy of the Complaint filed in *Trine Mining, LLC, et. al. v. Nichols, et. al.*, No. 2022-1029-PAF (Del. Ch. Nov. 18, 2022);

Subject to the protective order, the Debtors will provide available, non-privileged documents.

8. The May 13, 2021 presentation that Rhodium executives made to non-Imperium investors regarding the proposed Rollup Transaction;

Subject to the protective order, the Debtors will provide available, non-privileged documents.

9. Copies of all documents produced or received and, to the extent not available on the public docket, unredacted pleadings and other submissions filed, in connection with the ongoing assumption litigation between Rhodium and Whinstone in these bankruptcy cases;

Subject to the protective order, the Debtors will provide available, non-privileged documents.

10. All documents, communications and information of the Debtors relating to the following topics:
 - a. Riot Blockchain, Inc.’s acquisition of Whinstone US, Inc. and its affiliates;
 - b. Fundraising, development, and construction of expansion facilities at the Rockdale Site, referred to as “Building D”;
 - c. Valuation and other modeling provided by Teknos Associates to the Debtors.

The Debtors object to this request on the basis that: i) the request seeks documents that are not relevant; and ii) the request is overbroad and unduly burdensome. These requests concern subjects that currently fall under the investigation being conducted by the Independent Directors in response to allegations made by the Fairbairn parties. These document requests appear to be regurgitations of the Fairbairn allegations.

11. Copies of all relevant insurance policies, including any policies providing directors and officers liability insurance.

Letter to M. Hurley

October 21, 2024

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Subject to the protective order, the Debtors will provide available, non-privileged documents.

12. Copies of Quinn's engagement agreements and any related materials concerning its contemporaneous representation of the Debtors on the one-hand, and Whinstone and Riot on the other, the Debtors' adversaries in the referenced lease assumption litigation, and any privilege is claimed, a log thereof).

The Debtors object to this request on the basis that: i) the request seeks documents that are not relevant; ii) the request seeks information protected by the attorney client privilege. The Debtors also object to this request as moot because the Court has already entered an order approving Quinn's employment application. As a result of an ethical wall, Debtor's counsel is unable to access or provide the requested information with respect to clients behind the wall.

13. Copies of Quinn's engagement agreement and any related materials concerning its contemporaneous representation of the Debtors on the one-hand, and Fairbairn, one of the Debtors' "Top Shareholders," on the other, and any communications with Fairbairn concerning or relating to the Debtors and/or these cases (or, if privilege is claimed, a log thereof).

The Debtors object to this request on the basis that: i) the request seeks documents that are not relevant; ii) the request seeks information protected by the attorney client privilege. The Debtors also object to this request as moot because the Court has already entered an order approving Quinn's employment application. As a result of an ethical wall, Debtor's counsel is unable to access or provide the requested information.

14. Documents sufficient to identify the nature of Quinn's work for DLT (another "Top Shareholder" of Debtors) and Elysium Mining, LLC, and the date upon which that engagement ended.

The Debtors object to this request as moot because the Court has already entered an order approving Quinn's employment application. DLT Entertainment was a former client of Quinn Emanuel sometime in 2008 and bears no relation to DLT Data Center. Quinn Emanuel previously represented Elysium Management, not Elysium Mining; to the extent relevant, the representation ended in 2021.

15. Documents sufficient to determine fees earned by Quinn from its engagements with Whinstone, Riot and Fairbairn, and the terms of any ethical wall or other measures taken by Quinn in connection with their concurrent representations, and the identity of any professionals representing those parties in connection with these cases.

Letter to M. Hurley

October 21, 2024

Page 6

The Debtors object to this request on the basis that: i) the request seeks documents that are not relevant; ii) the request seeks information protected by the attorney client privilege. The Debtors also object to this request as moot because the Court has already entered an order approving Quinn's employment application. As a result of an ethical wall, Debtor's counsel is unable to access or provide the requested information. As represented in the Declaration, none of the concurrent clients represents more than 1% of Quinn's annual revenues (\$2 billion plus).

The Debtors maintain that BRIC's intervention in this case is unnecessary, costly and designed to hinder the Debtors' ability to achieve a successful outcome and recovery for all Rhodium's creditors. However, as a sign of good faith, the Debtors are willing to discuss information sharing of non-privileged information on a weekly scheduled call. Participation by the attorneys directly involved in the litigation may impede their preparation for the Whinstone motion to assume litigation and will be limited accordingly. Rhodium will enter into an appropriate joint defense agreement by separate correspondence.

Sincerely,

A handwritten signature in blue ink that reads "Patricia Tomasco". The signature is written in a cursive, flowing style.

Patricia Tomasco

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January 21, 2025

VIA E-MAIL

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Trace Schmeltz
Barnes & Thornburg LLP
One N. Wacker Drive
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Re: *In re Rhodium Encore, LLC, et al.*, Case No. 24-90448 (ARP) (Bankr. S.D. Tex.)

Dear Patty and Trace:

We represent the ad hoc group (“SAFE AHG”) of parties to Simple Agreements for Future Equity (“SAFE”) with Debtor Rhodium Enterprises, Inc. (“REI”). We write concerning your failure to produce and/or obtain information critical to a thorough investigation of alleged misconduct by insiders of the Debtors (“Insiders”), including misconduct by Imperium Holdings LLC (“Imperium”) and the REI directors and officers who own and control Imperium. As discussed below, we appear to be at an impasse, and reserve the right to seek immediate relief from the Court.

As you know, Rhodium Insiders are alleged (among other things) (a) to have usurped Debtors’ corporate opportunity by selling their Rhodium stock while Rhodium was actively fundraising, and (b) to have caused Rhodium to pay the Insiders’ personal tax obligations relating to the sale of their stock. More than 2 ½ months ago, the SAFE AHG sent requests to both of your firms seeking documents relevant to these very serious allegations, including requests for copies of the Insiders’ tax returns (“Tax Returns”). See Nov. 7, 2024 Diligence Request No. 4 (seeking documents “sufficient to identify any payments made by Rhodium to or on behalf of insiders with respect to any tax obligations, *including ... tax returns for Rhodium insiders*”) (emphasis added). By definition, the Tax Returns are in the possession, custody or control of the Debtors’ directors, officers and owners, and are therefore readily available to you. Nevertheless, despite repeated promises, you still have not produced the Tax Returns. For example, the Debtors agreed during a December 11, 2024 meet and confer call to produce the Tax Returns “within a couple of days.” Debtors did not do so. On January 8, 2025, Debtors again promised to produce the Tax Returns, this time committing to do so by January 9, 2025. Debtors again did not do so.



January 21, 2025

Page 2

Remarkably, in an email dated January 17, 2025, Debtors claimed (for the first time) that they were unaware the SAFE AHG had previously asked for Insider Tax Returns. *See* Jan. 17, 2025 Email from Quinn to Akin (“It appears what you are now asking for are *non-debtor* documents, i.e., the personal tax returns of the Debtors’ employees. We will search for them.”) (emphasis in original). That claim is not credible. As noted, the Debtors expressly agreed to produce non-debtor Tax Returns on December 11, 2024, and again on January 8, 2025. Additionally, the SAFE AHG’s requests for Tax Returns have always *expressly* sought “insider” tax returns. *See, e.g.*, Nov. 7, 2024 Letter from Akin to Quinn at No. 4 (seeking, among other documents “*tax returns for Rhodium insiders*”) (emphasis added); Dec. 3, 2024 Email from Akin to Quinn at No. 10 (reiterating request for “*tax returns for Rhodium insiders* for the years in which proceeds for any sales of *Rhodium insiders* were reported”) (emphasis added). As the Debtors well know, each of the Debtors’ fiduciaries and Imperium are Insiders. *See* Bankruptcy Code § 101(31)(B) (defining “*Insider*” as any “director of the debtor” “officer of the debtor” or other “person in control of the debtor”). Moreover, in these cases, the Debtors themselves have expressly identified Imperium and its principals, including Chase Blackmon, Cameron Blackmon and Nathan Nichols as “Insiders.” *See, e.g.*, ECF Nos. 258 at 50-53 (Blackmon, Blackmon, Nichols); 259 at 48 (Imperium). The Debtors’ offer “to search for” Tax Returns that they twice agreed to produce by agreed deadlines, but did not produce, is insufficient, particularly in light of the Debtors’ failure to follow through on prior commitments concerning the Tax Returns.

We note that the Debtors’ fiduciaries, who also own and control Imperium (the Debtors’ majority shareholder), apparently have failed to produce the Tax Returns *even to the Debtors’ own Special Committee*. In multiple telephone calls, counsel for the Special Committee assured us that the allegations concerning Imperium’s private sale and alleged improper payment of Insider taxes were a “big focus” of its investigation. And the Special Committee apparently propounded requests to Debtors for “tax returns,” and documents concerning “payments Rhodium made to Imperium” relating to those returns dating back at least to October 21, 2024. On October 28, 2024, the Special Committee advised it exchanged follow up “emails with Company ... regarding additional requests including tax returns.” Yesterday, however, the Special Committee advised us that they still have not obtained copies of any of the Tax Returns – again, Tax Returns that by definition are in the immediate possession and control of the Debtors’ own fiduciaries – and apparently have no intention of doing so. Instead, we were advised that counsel for the Special Committee has offered to visit the Debtors’ fiduciaries and “take notes” concerning the contents of the Tax Returns, rather than demand their production. As we made clear yesterday, the approach proposed by the Special Committee is not acceptable to the SAFE AHG. We advised in our January 15, 2025 email to you that we reserved our right to seek relief from the Court without further notice to you if the Tax Returns were not produced to us by January 16. We will proceed accordingly.¹

¹ In addition to the Tax Returns, the AHG is still waiting for additional documents that the Debtors previously committed to producing in response to the AHG’s October 8, 2024, November 7, 2024, and December 3, 2024 diligence requests and numerous follow-up communications, and nothing herein constitutes a waiver or relinquishment of the AHG’s rights with respect to those additional categories of documents.



January 21, 2025

Page 3

We turn now to the Debtors' refusal to run a hit report across ESI that the Debtors already have gathered on a review platform. As you know, Imperium and the other Insiders are alleged to have engaged in substantial fraudulent and inequitable conduct in addition to the private sale and tax issues described above. In connection with its investigation of these allegations, the SAFE AHG asked the Debtors to run the SAFE AHG's search terms against ESI previously gathered by the Debtors and available on the Debtors' review platform (the "Litigation ESI").² The Debtors have refused to engage in this nearly burden-free exercise, pointing to the fact that they plan to make available to the SAFE AHG *some* of the information gathered by the Special Committee (the "Special Committee Documents") in its investigation of Imperium and the other Insiders.³ As you know, however, the Special Committee Documents exclude categories of information of critical relevance to the allegations against Imperium and the other Insiders. For example, the Litigation ESI includes Insider emails from Imperium domains. In contrast, according to Debtors' January 10, 2025 email, the Special Committee limited its review of Insider emails to Rhodium domains. Similarly, the Litigation ESI includes all Insider texts, Whatsapp messages and Teams messages (collectively "Chats"), including Chats between and among Insiders. But the Special Committee Documents were limited only to Chats that also included a Whinstone participant. Messages that the Insiders believed were not being shared externally are likely to be among the most pertinent to the allegations of fraud and other inequitable conduct of which they stand credibly accused. Certainly, there can be no cogent basis for excluding these "insider only" communications from the disclosures being made to the SAFE AHG, and none has been offered. Finally, the Litigation ESI includes documents from seven critical Insider custodians, while the Special Committee limited its review to emails from just four custodians (Rhodium domains only), and Chats from just three custodians (but only if also including Whinstone).

The burden associated with the SAFE AHG's request is minimal. The Debtors acknowledge that they already have gathered the Litigation ESI, including the Imperium emails and Chats that the Special Committee overlooked. For the moment, the SAFE AHG has not asked the Debtors to actually review or produce any additional Litigation ESI, instead seeking just a hit report using the SAFE AHG's search terms. Debtors have refused, claiming that the Litigation ESI is hosted on a different review platform than the Special Committee Documents, and that de-duplication would therefore require migrating one of the sets of ESI to the platform where the other is currently hosted. Even if true, that would be no basis for refusing

² The Debtors recently advised the SAFE AHG that they collected the Litigation ESI in connection with their litigation against Whinstone, and that the Litigation ESI includes all emails, native texts, WhatsApp messages, and Teams messages from seven Rhodium custodians (Chase Blackmon, Cameron Blackmon, Nathan Nichols, Nick Cerasuolo, Brendan Cottrell, Alex Peloubet and Pete Richison), including to the extent applicable both their Rhodium email domains as well as their Imperium email domains, with no date or other restrictions.

³ The Debtors have refused to produce all of the Special Committee Documents to the SAFE AHG. Despite the Special Committee previously providing material to the SAFE AHG on an express "common interest" basis, the Debtors have insisted on culling documents that the Debtors provided to the Special Committee for its investigation but that the Debtors claim are "privileged." To the extent any privilege exists in the first place, it could be protected at no expense to the estates by producing the documents in question subject to common interest. Without any coherent explanation, the Debtors have refused to so proceed, and instead are withholding hundreds of Special Committee documents on privilege grounds.



January 21, 2025

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to run a hit report. For one thing, we know with certainty that important categories of information will not need to be de-duplicated against the Special Committee Documents, because those categories were excluded from the material the Debtors initially made available for the Special Committee to review. In any case, we believe that the Debtors have overestimated the burden associated with de-duplication, and would be happy to make our IT specialists available to discuss a potential de-duplication solution that does not involve migration. But even if data migration were required, the Special Committee Documents include only about 15,000 documents, a volume that could be added to the Litigation ESI platform without significantly increasing hosting fees or taking an unduly long period of time to load. We understand, however, that the Debtors will not run the SAFE AHG search terms against the Litigation ESI, or otherwise engage with the SAFE AHG in the iterative process of seeking to identify an agreed group of Litigation ESI for review. That puts us at an impasse, and we will proceed accordingly.

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

We look forward to hearing from you.

Sincerely,

/s/ Mitchell Hurley
Mitchell P. Hurley

EXHIBIT 59
FILED UNDER SEAL

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New York, NY 10036

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Akin

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mhurley@akingump.com

April 5, 2025

VIA E-MAIL

Patricia Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana Street, Suite 3900
Houston, Texas 77002

Trace Schmeltz
Barnes & Thornburg LLP
One N. Wacker Drive
Chicago, IL 60606

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.



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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, following the February 19, 2025 mediation, Ms. Tomasco and other representatives of the conflicted Plenary Board made repeated false claims concerning the SAFE AHG's conduct at the mediation, requiring Judge Mullin to expressly refute their claims, including

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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in writing. The aversion of the Plenary Board 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



April 5, 2025

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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 A

Eaton Declaration

**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

**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.**

I, David Eaton, being duly sworn, hereby state as follows:

1. I am an independent director on the board of directors (the “Enterprises Board”) of Rhodium Enterprises, Inc. (“Rhodium Enterprises”). I am one of two members of the Special Committee of the Enterprises Board, which was formed on August 28, 2024 (the “Special Committee”). I am over the age of 18 years and am competent to make this declaration (the “Declaration”).

2. I submit this Declaration in connection with the application (the “Application”)² of Rhodium Encore LLC and its debtor-affiliates in the above-captioned chapter 11 cases, as debtors and debtors-in-possession (collectively, the “Debtors”) for the Special Committee to retain and

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 shall have the meaning set forth in the Application.

employ Barnes & Thornburg LLP (“B&T”) as special counsel pursuant to section 327(e) of the Bankruptcy Code in connection with the above-referenced chapter 11 cases. Except as otherwise noted, I have personal knowledge of the matters set forth herein.

Background of Declarant

3. I am a restructuring advisor with over four decades of experience in guiding companies through sophisticated financings, restructurings, and special situations. Previously, I was a partner at the law firm of Kirkland and Ellis, LLP as well as a Managing Director at PriceWaterhouseCoopers Corporate Finance. I regularly serve as an independent director to companies undergoing liability management and restructurings.

Establishment of Special Committee

4. On August 24 and 29, 2024 (collectively, the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

5. On August 28, 2024, the Enterprises Board determined that in connection with the Debtors’ chapter 11 filing, it was advisable and in the best interests of the Debtors and their stakeholders to establish the Special Committee. In connection with that determination, the Enterprises Board appointed me as the initial member of the Special Committee in light of the Enterprises Board’s finding that I did not have material business or other relationships or affiliations with any parties that might cause me to be unable to exercise independent judgment based on the best interests of Rhodium Enterprises. A copy of the resolutions of the Enterprises Board establishing the Special Committee is attached hereto as Exhibit 1. On September 20, 2024, the Enterprises Board appointed Spencer Wells, another independent director, as a second member

of the Special Committee. A copy of the Enterprises Board resolutions appointing Mr. Wells to the Special Committee and further delineating the scope of the Special Committee's authority and responsibilities is also included as part of Exhibit 1 to this Declaration.

6. As set forth in the Application, the Special Committee has been appointed to (a) explore various potential strategic and/or financial alternatives, which may include, without limitation, refinancing or new capital raising transactions, amendments to or restructuring of the existing indebtedness and other obligations of the Debtors, a potential sale of one or more of the Debtors or any of their assets, a business combination or change of control transaction, and implementation of a restructuring and recapitalization transaction for the corporate, or any combination of the foregoing, to the extent any of the foregoing may involve a Conflict Matter (as defined below); (b) exercise authority on behalf of Rhodium Enterprises to investigate, resolve, settle, or take other action with respect to any claims belonging to Rhodium Enterprises that may constitute Conflict Matters (as defined below); and (c) certain other rights, authority, and powers in connection with any Conflict Matter, and the authority to investigate, resolve, settle, or take other action with respect to any past or current matter or transaction that may involve a Conflict Matter (as defined below). For all such purposes, a "Conflict Matter" is a 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"). These matters are The Enterprises Board has additionally empowered the Special Committee to investigate and determine on behalf of Rhodium Enterprises whether, in the Special Committee's business judgment, any matter constitutes a Conflict Matter.

See id.

7. The Special Committee is empowered to take actions on behalf of the Enterprises Board with respect to the Conflict Matters, including but not limited to:³

- a. exploring and making any and all decisions respecting all or part of any transaction to the extent it constitutes a Conflict Matter;
- b. the investigation, resolution, settlement, or taking of other action with respect to any past or current matter or transaction that may involve a Conflict Matter;
- c. the investigation, resolution, settlement, or taking of other action with respect to any potential claims or causes of action of Rhodium Enterprises or its subsidiaries, if any, against any of the Related Parties, to the extent such claims or causes of action constitute a Conflict Matter;
- d. 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;
- e. interviewing and soliciting information and views from management, representatives, consultants, advisors, or any other party in connection with any past or current matter or transaction which may involve a Conflict Matter that the Special Committee deems necessary and appropriate; and
- f. requesting documentation and information regarding Rhodium Enterprises' business, assets, properties, liabilities, and business dealings with respect to any past or current matter or transaction which may involve a Conflict Matter that the Special Committee deems necessary and appropriate to review.

See Exhibit 1.

Selection of B&T

8. The Enterprises Board authorized the Special Committee to retain legal, financial, and other advisors to advise and assist the Special Committee in the performance of its duties, subject to the approval of the Court. The Debtors will be responsible for paying the reasonable

³ The Debtors and the Special Committee are mindful that, as a result of the Debtors' commencement of their chapter 11 cases, the consummation of any use, sale, or lease of property of the Debtors' estates outside of the ordinary course of business is subject to approval by the Court. Nothing in the Enterprises Board's delegation of powers to the Special Committee is intended to conflict with that requirement.

fees, expenses, and disbursements of such advisors, again subject to Court approval. *See* Exhibit 1.

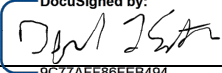
9. Consistent with that authority, the Special Committee has determined that retaining B&T to advise and assist it in the performance of its duties is necessary and appropriate. B&T previously represented the Enterprises Board in connection with an independent investigation of certain conflict-related matters since February 2024. That investigation was ongoing as of the Petition Date. In light of the delegation by the Enterprises Board to the Special Committee of responsibility for all Conflict Matters such as the independent investigation, the Debtors and Special Committee believe it is necessary and appropriate for B&T to represent the Special Committee with respect to that investigation and the other matters to be addressed by the Special Committee.

10. In light of B&T's extensive experience in matters relevant to the scope of the Special Committee's duties, the breadth of the firm's practice, its representations of boards of directors, special committees, and independent directors in situations comparable to those here, its prior experience in connection with the investigation respecting certain Related Parties, and its familiarity with the Debtors and their affairs, I believe B&T is well qualified to represent the Special Committee as counsel in this matter.

11. On September 22, 2024, the Special Committee and B&T agreed to the engagement letter that was attached to the Application as Exhibit A (the "Engagement Letter"). Via the Application, the Debtors seek entry of an order authorizing the retention and employment of B&T as counsel to the Special Committee in accordance with the terms and conditions of the Engagement Letter.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 22, 2024.

DocuSigned by:
/s/ 
9C77AFF86FEB494...

David Eaton

Independent Director and member of the Special
Committee of Rhodium Enterprises Inc.

EXHIBIT B

March 16, 2025 Email Exchange

Yang, Karen

From: Hurley, Mitchell
Sent: Sunday, March 16, 2025 6:08 PM
To: Patty Tomasco; Scott, Elizabeth D.; Razmig Izakelian; Schultz, Sarah A.; Yang, Karen
Cc: QE-DebtorTeam; Michael Robinson; David Dunn
Subject: RE: ESI protocol stipulation
Attachments: Redline - Rhodium - Proposed Stipulation and Agreed Order Between Debtors and SAFE AHG 4925-4879-1337 1 (003)-15698930-v1 and Rhodium - Proposed Stipulation and.pdf; Rhodium - Proposed Stipulation and Agreed Order Between Debtors and SAFE AHG (AG Updated Draft) 4933-3262-1098, 4.docx

Dear Patty:

Ordinarily I do not respond to the insults and false assertions that you and your colleagues routinely include in your correspondence. Unfortunately, I have to make an exception regarding your email this afternoon. For you to equate the SAFE parties with “terrorists” – because they are seeking to enforce a discovery agreement, of all things – is extraordinarily inappropriate, and was deeply and personally offensive to my clients. Please try to do better. Also, the SAFE AHG has not “withdrawn” any of its requests for discovery, and reserves its rights in full with respect to all such outstanding requests. Regarding the other disparaging and false remarks in your email (of which there are many), suffice to say they are rejected in material part.

I am attaching here a revised version of the stipulation. Aside from defining the Litigation ESI and attaching the February 6 agreement, we have removed most of the recitals. Debtors indicated on March 12 that they could provide hit reports by the middle of the week, but we are prepared to push the deadline to Friday March 21, as a further accommodation (and have been told multiple times by Debtor reps that the hit report can be provided by that date). Follow up hit reports are a fundamental part of our agreement, not optional, and we restored the word “shall.” Running hit reports takes minutes or a few hours, not days, but we are willing to compromise at 2 business days on hit report cadence. Finally, we removed from the expedited procedures the initial court conference, a step that we understand Judge Perez has not adopted.

Provided that you confirm by reply email by 12:00 p.m. Central time on Monday, March 17, 2025 that (i) the Debtors consent to this version of the stipulation, and (ii) the seven custodians whose names you struck from the stipulation are Chase Blackmon, Cameron Blackmon, Nathan Nichols, Nick Cerasuolo, Brendan Cottrell, Alex Peloubet and Pete Richison, the SAFE AHG will stand down on its motion.

All of our rights, remedies, claims and defenses are reserved.

Regards,

Mitchell P. Hurley

Akin

Direct: [+1 212.872.1011](tel:+12128721011)

From: Patty Tomasco <pattytomasco@quinnemanuel.com>
Sent: Sunday, March 16, 2025 2:37 PM
To: Hurley, Mitchell <mhurley@AkinGump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Yang, Karen <KYang@akingump.com>

Cc: QE-DebtorTeam <qe-deborteam@quinnemanuel.com>; Michael Robinson <mrobinson@provincefirm.com>; David Dunn <ddunn@provincefirm.com>

Subject: RE: ESI protocol stipulation

Mitch,

As you know, the Debtors have kept the SAFE AHG apprised of the difficulty in moving the Litigation ESI from the Stris to the QE platform after multiple attempts to run Akin's complex search terms. As you are also aware, QE produced to the SAFE AHG all of the information it received from the Special Committee, subject to review for privilege, including message data that the Special Committee had pulled from the Imperium and Rhodium systems. In sum, the Litigation ESI comprises the larger set of both data pulls and overlaps entirely because it was pulled without date or search terms. We don't intend to duplicate this effort with respect to the Special Committee data and don't understand why this is even being sought. In any event, further discovery from Imperium should be sought through Imperium's counsel. Also, as discussed, any information regarding LKC's other clients should be sought from LKC.

You sent a letter demanding entry into a stipulation on a Friday afternoon at 3:43 p.m. central time threatening to file a motion to compel on the docket by 5 p.m. on a Saturday, presumably for the terrorist leverage of putting your view of dirty laundry on public display to thwart the Debtors' value maximizing efforts. In response, we have prepared and are ready to file a motion for protective order that details the threatening, abusive and stay-violating behavior of your client and the many instances of false emergencies imposed by the SAFE AHG over the past few months. We also intend to espouse the view, with significant and detailed research, why the SAFE AHGs have no payment priority. We are reluctant to do this, but certainly will if pushed, given that it will make court approval of any compromise between our clients more difficult if one were reached.

Of course, you also know that your demand that this stipulation be returned within 24 hours (with utterly no basis to do so) meant that the Debtors had little time to vet its contents, and in particular, communicate with the QE litigation support regarding what timetable is possible. However, we provide the attached markup after authorizing overtime pay for the LTAS team to give us feedback on the timetable. This, again, created an estate expense for no apparent reason for which the Debtors reserve all rights.

The stipulation you provided also tells the history from your myopic perspective, and espousing your view that the associates working on this were purposefully slow rolling the production of this gargantuan and duplicative set of search terms, as you have accused (without evidence) previously. We will not tolerate further abuse of this kind. Having seen the back and forth between associate and LTAS throughout this effort, I know that we have done everything possible to perform this bespoke search on a very large and diverse set of data after trying and failing to run the complex search terms on the Stris database and efforts to electronically transmit the data failed.

That said, if you do not want to include any history (yours or mine), we can delete those background paragraphs entirely. But the coin has two sides.

The stipulation contains technical specifications about the contours of the hit report (e-mail threading, deduplication, "near" duplicates, etc.) and we need to have consulted our litigation support to see what is feasible. As has been the case all along, what we think will work does not always work. Also, as we have already informed you, the data is expected to be finished uploading and ready for searching mid-next week. No amount of threat is going to change how quickly the data uploads. Even if you went to Court to beat this dead horse, it would not change the facts.

With respect to the cat and dog discovery items not included in the Litigation ESI issue (second stipulated paragraph now deleted), we will provide those to you either today or tomorrow. You have withdrawn your improper request for the privileged LKC email. We do not believe that this Stipulation need be filed at all as it will only engender unprincipled tagalongs and lead to increased estate costs on top of what has already been incurred. Our revisions attempt to minimize that effect but it will not be fully mitigated once filed.

But even more fundamentally, as we have told you several times, you are not the only constituency in this case. There is a special committee of the board, an official creditors' committee, multiple groups of secured creditors, a litigation counterparty, and working with lenders to finalize of exit financing, all of which we are dealing with at the same time. Many of those matters actually have the potential to create value for the estate. The issue you seem to be so focused on (i.e., getting a difficult and time-consuming hit report when you already have over 67K documents produced at \$600K estate expense) does not create any value – all it does is drive up expenses to your client's detriment. And if we are forced to respond to a motion, that is also obviously going to take priority over getting you a hit report.

Please enjoy what's left of the weekend. We look forward to resolving these issues amicably.

Patty Tomasco
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

700 Louisiana Street, Suite 3900 | Houston, TX 77002
T +1 713 221 7227 | F +1 713 221 7100 | M +1 512 695 2684

295 5th Avenue | New York, New York 10016-7103
T +1 212 849 7000 | F +1 212 849 7100

From: Hurley, Mitchell <mhurley@AkinGump.com>
Sent: Saturday, March 15, 2025 2:20 PM
To: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Yang, Karen <KYang@akingump.com>
Cc: QE-DebtorTeam <qe-debtorteam@quinnemanuel.com>; Michael Robinson <mrobinson@provincefirm.com>; David Dunn <ddunn@provincefirm.com>
Subject: ESI protocol stipulation

[EXTERNAL EMAIL from mhurley@akingump.com]

Debtor team:

I am writing again concerning the parties' February 6, 2025 agreement regarding ESI. As you can see from the attached email, the Debtors' co-CRO Mike Robinson agreed in writing on behalf of the Debtors to complete the migration of the Litigation ESI and provide an initial hit report on or before February 19, 2025. In exchanged, the SAFE AHG "paused" certain discovery it had planned to proceed with on or around February 6, 2025.

The Debtors did not provide the hit report on February 19, and still have not. Until recently, the Debtors ignored my February 25, 2025 demand that the initial report be provided without further delay. On Wednesday, March 12, 2025, Razmig Izakelian wrote that the Litigation ESI migration would not be finished and ready for searches to be run until "next week" i.e., the week of March 17, 2025, **approximately six weeks after Mr. Robinson's email agreement, and one month after the agreed deadline.**

As you know, the SAFE AHG would vigorously dispute any contention that migrating data from one law firm server to another should require the time Debtors claim here, and of course Debtors were aware of the amount of data at issue when they agreed to complete the migration by February 19. Nor would the SAFE AHG accept another mere promise from the Debtors to finally provide the agreed hit report next week (not that one has yet been offered by the Debtors). However, in an effort to avoid motion practice, yesterday, my colleague Lizzy Scott sent you a draft stipulation to be so-ordered by the Court that would require delivery of the overdue hit report (and engagement in the promised protocol) beginning on March 17, 2025. We have not received a response.

EXHIBIT 61

FILED UNDER SEAL

EXHIBIT 62
FILED UNDER SEAL

From: [Hurley, Mitchell](#)
To: [Underwood, Charlotte](#); [Schultz, Sarah A.](#); [Yang, Karen](#); [Taylor, Benjamin](#); [Porter, Katherine](#); [Scott, Elizabeth D.](#); [Crawford, Ashley Vinson](#)
Cc: [Rhodium Bankruptcy Investigation](#); [Schmeltz, Trace](#); [Matsoukas, Kathleen](#)
Subject: RE: Rhodium
Date: Wednesday, January 15, 2025 10:29:49 AM

I will send you an invite for 1:00. To be clear, we did send you the draft common interest agreement directly, and we were copied on an email in which the stipulation was provided to you on January 9. Talk to you at 1:00. Thx.

Mitchell P. Hurley

Akin

Direct: [+1 212.872.1011](tel:+1212.872.1011)

From: Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Sent: Wednesday, January 15, 2025 9:16 AM
To: Hurley, Mitchell <mhurley@AkinGump.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Yang, Karen <KYang@akingump.com>; Taylor, Benjamin <taylorb@akingump.com>; Porter, Katherine <kporter@akingump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Crawford, Ashley Vinson <avcrawford@akingump.com>
Cc: Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>; Matsoukas, Kathleen <Kathleen.Matsoukas@btlaw.com>
Subject: RE: Rhodium

Good morning Mitch,

Let me know if you have time for a quick call today, and I can explain the Special Committee's position on the common interest agreement. I will just note that I don't believe we actually ever received the stipulation or the common interest agreement from you directly; we received the stipulation we marked up from Quinn. I know it's getting to be a lot of email traffic, but I wanted to just say for the record that we're not trying to be difficult. As to the interview memoranda, at this point we're not willing to change the designation. If you want to summarize the relevant information for your clients, you can do so.

I'm open this morning before 11 AM ET, or between 1-4 PM ET for the call. Let me know what works best and what number you'd like me to use. Also happy to speak with Sarah or anyone else on your team about it.

Thanks,

Charlotte

Charlotte H. Underwood | Counsel

Direct: (646) 746-2192 | Mobile: (518) 321-3498

New York, NY

From: Hurley, Mitchell <mhurley@AkinGump.com>
Sent: Tuesday, January 14, 2025 8:07 PM
To: Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Yang, Karen <KYang@akingump.com>; Taylor, Benjamin <taylorb@akingump.com>; Porter, Katherine <kporter@akingump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Crawford, Ashley Vinson <avcrawford@akingump.com>
Cc: Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: [EXTERNAL] RE: Rhodium

Caution: This email originated from outside the Firm.

Charlotte:

As you know, we were told by Quinn that the Special Committee will not enter into a common interest agreement with the SAFE AHG. I had understood based on subsequent communications that the Special Committee may have a different position on that question. However, (i) in the comments you sent us yesterday to our draft cooperation stipulation (see your email attaching markup), the paragraph we included in the stip that proposed a common interest agreement (“The Special Committee and the SAFE AHG promptly will enter into a common interest agreement (‘CIA’) in the form attached hereto”) was stricken, and (ii) although we included a draft proposed common interest agreement with our January 6 email proposing the stipulation, you have not agreed to it, or marked it up.

Below you provide a link to certain interview memoranda, and state that they are being provided “on a common interest and attorneys’ eyes only basis.” I take it this means the Special Committee does wish to enter into a common interest agreement? If that is right, would you please advise whether you have any comments to the draft we circulated previously (copied again here)?

Also, we ask that you please remove the “attorneys’ eyes only” designation on this material. Our clients need appropriate access to pertinent information of this kind to help them make informed decisions in connection with the cases.

Thanks, and we look forward to hearing from you.

Mitchell P. Hurley
Akin
Direct: [+1 212.872.1011](tel:+1212.872.1011)

From: Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Sent: Monday, January 13, 2025 1:15 PM
To: Schultz, Sarah A. <sschultz@AkinGump.com>; Yang, Karen <KYang@akingump.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Taylor, Benjamin <taylorb@akingump.com>; Porter, Katherine <kporter@akingump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Crawford, Ashley

Vinson <avcrawford@akingump.com>

Cc: Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>

Subject: Rhodium

****EXTERNAL Email****

Good afternoon,

You can access our memoranda using this link:

<https://btfileshare.btlaw.com/#/folder/2f65842f-06bc-499d-aeaa-951ed5636b9b> Please let me know if you have any issues accessing the folder.

To emphasize, these are being provided on a common interest and attorneys' eyes only basis.

We expect to circulate our proposed edits to the draft stipulation later today.

Thank you,

Charlotte

Charlotte H. Underwood | Counsel

Direct: (646) 746-2192 | Mobile: (518) 321-3498

New York, NY

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Mitchell P. Hurley
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mhurley@akingump.com

January 27, 2025

VIA E-MAIL

Patricia Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana Street, Suite 3900
Houston, Texas 77002

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

Dear Patty:

We write on behalf of the ad hoc group of parties to Simple Agreements for Future Equity (“SAFE AHG”) with Debtor Rhodium Enterprises, Inc. (“REI”), in response to your letter dated January 23, 2025 (the “Letter”), and to further identify the issues we spoke about briefly during our telephone call this morning.

Tax Returns

As you know, the SAFE AHG is investigating a host of alleged inequitable and other wrongful conduct by the Debtors’ insiders, including the Debtors “ultimate parent” and controlling shareholder, Imperium Holdings LLC (“Imperium”), and the Debtor directors and officers who own and control Imperium (“Insiders”). Among other things, the Insiders are alleged to have sold their personal stockholdings in the Debtors at a time when the Debtors were actively fundraising, and to have caused the Debtors to pay the personal capital gains taxes of the Insiders relating to those sales. As part of its 2004 examination of the Debtors, on November 7, 2024, the SAFE AHG asked the Debtors to produce the Tax Returns. As detailed in our prior correspondence, the Debtors agreed to do so on multiple occasions, but the Tax Returns were never delivered. In their January 23, 2025 Letter, the Debtors argue for the first time that they are not required to produce the Tax Returns because they are not in the Debtors’ immediate possession. Apparently, the Debtors never even asked their Insiders for the Tax Returns.

In any case, the Debtors have incorrectly identified the standard applicable to the SAFE AHG’s outstanding discovery requests. The Debtors are required to produce responsive documents in their “possession, custody or control.” *Mir v. L-3 Communications Integrated Systems, L.P.*, 319 F.R.D. 220, 230 (N.D. Tex. 2016). The “definition of ‘possession, custody, or



Patricia Tomasco
January 27, 2025
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control,’ includes more than actual possession or control of the materials; it also contemplates a party’s legal right or practical ability to obtain the materials from a nonparty to the action.” *Id.* (internal citations omitted); *see also Mirlis v. Greer*, 80 F.4th 377, 382 (2d Cir. 2023) (“Control” does not require “actual physical possession of the documents at issue”). “A business entity has the legal right and practical ability to obtain documents from its employees and agents,” and from its directors, officers and affiliates. *See, e.g., Calsep A/S v. Intelligent Petroleum Software Solutions, LLC*, No. 4:19-CV-1118, 2020 WL 10759435, at *1 (S.D. Tex. 2020) (compelling defendant to produce documents in the possession of one of its shareholders who referred to himself as the defendant’s Chief Technology Officer); *Arconic Inc. v. Novelis Inc.*, No. 17-1434, 2018 WL 4958976, at *2-3 (W.D. Pa. Oct. 15, 2018) (holding that a corporation must search a board member’s electronic communications housed on non-party emails and servers when responding to document requests, reasoning that the company’s directors had a fiduciary duty to produce the documents, and the documents were, therefore, within the company’s control); *CA, Inc. v. AppDynamics, Inc.*, No. 13-2111 (WFK) (SIL), 2014 WL 12860591, at *3-4 (E.D.N.Y. Sept. 8, 2014) (similar).

The Tax returns are in the immediate possession of the Debtors’ current and former directors and officers, as well as the Debtors’ “ultimate parent,” *see* Decl. of David M. Dunn in Support of First Day Relief, ¶ 99, and are therefore in the Debtors’ “possession, custody or control.” *See, e.g., First Am. Bankcard, Inc. v. Smart Bus. Tech., Inc.*, No. 15-CV-638, 2017 WL 2267149, at *3 (E.D. La. May 24, 2017) (“As former owners and top officers of defendant, Fuente and Romero are precisely the kind of individuals who owe an obligation to their ex-corporate employer to provide the requested materials upon request and from whom the corporate defendant would be expected to have a practical ability to obtain them.”); *see also Arconic Inc.*, 2018 WL 4958976, at *2-3; *CA, Inc.*, 2014 WL 12860591, at *3-4. Indeed, as discussed below, the Debtors acknowledge that they gathered all Imperium emails and director-maintained texts and chat messages for production in connection with the Whinstone litigation. It seems clear, in other words, that the Debtors do in fact have “the practical ability to obtain” documents in the immediate possession of Imperium and the other Insiders. They are required to do so. *See, e.g., Ruby Slipper Café v. Belou*, No. 18-1548, 2020 WL 4905796 (E.D. La. Jan. 15, 2020) (“The meaning of possession, custody, and control” includes “whether the responding party could come into possession of the requested document upon reasonable inquiry,” and places the “onus on the responding party to check with its sources to determine whether they have any documents responsive.”)



Patricia Tomasco
January 27, 2025
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Documents Not Included in Special Committee Review

Important categories of information were not made available to the Special Committee in connection with its investigation of the Insiders. For example, in connection with the Whinstone litigation, the Debtors gathered (i) all Imperium emails and (ii) all telephone-based texts, WhatsApp messages and Teams messages for seven custodians (“Chats”) and loaded that material on a Debtor review platform (the “Litigation ESI”).¹ We understand, however, the Special Committee did not run its investigation-related search terms against the Litigation ESI. Instead, the Special Committee ran its investigation searches against a substantially more limited universe of ESI. For example, the Special Committee searched only Rhodium-hosted email addresses (no Imperium domains) for just four custodians, and searched Chats for only three custodians, and then only to the extent the Chat also included a Whinstone employee. That means, among other things, that the Special Committee ran its investigation-related searches against ESI that excluded Insider-only Chats, and thus excluded communications likely to reflect the Insiders’ most candid and unguarded statements concerning the topics under investigation by the Special Committee.²

Immediately upon learning of the key information overlooked by the Special Committee, the SAFE AHG provided the Debtors with search terms specific to the allegations against the Insiders, and asked the Debtors to run a hit report against the Litigation ESI. Although the SAFE AHG’s request is virtually burden-free, the Debtors still have not complied. In your Letter, you also indicate that the Debtors will not produce any of the ESI overlooked by the Special Committee, no matter what any hit report discloses. You say only that you *might* consider requests for additional documents, but only *after* the Special Committee produces a report of its investigation on some unspecified date in the future. By definition, however, any Special Committee report will be based on information that omits sources likely to include the most probative evidence concerning the allegations against Imperium and the other Insiders that are under review. And given the pace at which the Debtors have said they wish to move these cases,

¹ Quinn advised the SAFE AHG on January 17, 2025, that the Litigation ESI includes all Imperium and Rhodium emails, native texts, WhatsApp messages, and Teams messages, with no date or other restrictions, from Chase Blackmon, Cameron Blackmon, Nathan Nichols, Nick Cerasuolo, Brendan Cottrell, Alex Peloubet and Pete Richison. *See* Email from Razmig Izakelian to Counsel to the SAFE AHG dated January 17, 2025.

² Running investigation-specific search terms against the Litigation ESI is required, whether or not the Debtors made available to the Special Committee documents produced to Whinstone in the contract assumption litigation, including because the investigation of Insiders covers issues unlikely to have been explored in the Whinstone litigation. And to the extent any duplication does exist between the investigation-related Litigation ESI and Whinstone-related Litigation ESI, that duplication can be eliminated at the press of a button.



Patricia Tomasco
January 27, 2025
Page 4

it would be imprudent and impractical to wait even another day longer than necessary to run investigation-specific searches against this critical material and identify additional documents for review.

As you know, members of the Special Committee agreed this morning to join a call with us and their counsel tomorrow to discuss our concerns relating to the Tax Returns and ESI. We view resolution of these issues as critically urgent, and hope that agreement can be reached during tomorrow's call.

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

Sincerely,

/s/ Mitchell P. Hurley
Mitchell P. Hurley

Cc: Trace Schmeltz

EXHIBIT 65
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EXHIBIT 66

FILED UNDER SEAL

EXHIBIT 67
FILED UNDER SEAL

EXHIBIT 68

FILED UNDER SEAL

EXHIBIT 69

FILED UNDER SEAL

EXHIBIT 70
FILED UNDER SEAL

EXHIBIT 71
FILED UNDER SEAL

EXHIBIT 72
FILED UNDER SEAL

From: Schmeltz, Trace[TSchmeltz@btlaw.com]
Sent: Thur 1/30/2025 9:36:56 PM (UTC)
To: Hurley, Mitchell[mhurley@AkinGump.com]; David Eaton[deatondirector@gmail.com]; Schultz, Sarah A.[sschultz@AkinGump.com]
Cc: Patty Tomasco[pattytomasco@quinnemanuel.com]; Underwood, Charlotte[Charlotte.Underwood@btlaw.com]; Spencer Wells[swells4802@me.com]
Subject: Re: Call with Akin and BT

Mitch —

Our document collection has been broader than you suggest—and our effort always has been to cast the broadest net possible. When we have learned of data we did not receive or limitations in what we were given, we have sought to address them as quickly as possible. We have reviewed hundreds of thousands of documents and chats and will continue to review documents as we receive them (as we have discussed with you). We are not going to spend the Estate’s money justifying our investigation to you—and our report will be out by mid-February.

With that said, the Company and the Special Committee have continued to press for tax returns and the SAFE group’s participation in upcoming interviews. Here is what we have an agreement to at this point: (i) The SAFE group can participate in upcoming interviews—providing it withdraws its current 2004 requests and at a minimum delays trying to enforce them until after the Special Committee has issued its report summary—with ground rules for that participation to be worked out; and (ii) we are pushing to get production of the tax returns.

We are working to provide a detailed description of the documents we have received and when we received them.

Regards,

Trace
312-731-1980 (mobile)
312-214-4830 (desk)

From: Hurley, Mitchell <mhurley@AkinGump.com>
Sent: Thursday, January 30, 2025 11:50:47 AM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>; David Eaton <deatondirector@gmail.com>; Schultz, Sarah A. <sschultz@AkinGump.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Spencer Wells <swells4802@me.com>
Subject: [EXTERNAL] RE: Call with Akin and BT

Caution: This email originated from outside the Firm.

Trace:

I won't respond in kind to the hostile and insulting tone of your email.

We intend to seek relief from the Court promptly, including based on the information provided by your firm during our call on January 28, 2025, which was summarized faithfully in my email of the same date. If you believe any part of my summary is inaccurate, we invite you again to identify it specifically and to explain specifically how you believe the actual record of the Special Committee's investigation differs from the summary. We will consider any response you provide in good faith.

Also, we ask again that you please provide the information requested on January 28, including the Additional SC Search Terms (and hit report), the date on which Imperium produced New Documents to the Special Committee, and any memoranda or records of your interview of Nathan Nichols on January 23.

Thanks in advance.

Mitchell P. Hurley

Akin

Direct: [+1 212.872.1011](tel:+12128721011)

From: Schmeltz, Trace <TSchmeltz@btlaw.com>

Sent: Tuesday, January 28, 2025 9:08 PM

To: Hurley, Mitchell <mhurley@AkinGump.com>; David Eaton <deatondirector@gmail.com>; Schultz, Sarah A. <sshultz@AkinGump.com>

Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Spencer Wells <swells4802@me.com>

Subject: Re: Call with Akin and BT

Mitch --

This is largely inaccurate. We will address our investigation in our report. Your effort to create a fake record of our investigation is a waste of everyone's time, money, and candle power.

On behalf of the Special Committee, we will continue to work to perform an independent, thorough, and aggressive investigation. As we have always said, the day you have actionable intelligence that might help aid in recovery for creditors, give it to us. Despite several calls and countless letters, we haven't seen anything yet.

Sincerely,

Trace Schmeltz | Partner

Barnes & Thornburg LLP

One North Wacker Drive Suite 4400, Chicago, IL 60606

Direct: (312) 214-4830 | Mobile: (312) 731-1980

From: Hurley, Mitchell <mhurley@AkinGump.com>
Sent: Tuesday, January 28, 2025 7:47:28 PM
To: David Eaton <deatondirector@gmail.com>; Schultz, Sarah A. <sschultz@AkinGump.com>
Cc: Schmeltz, Trace <TSchmeltz@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>
Subject: [EXTERNAL] RE: Call with Akin and BT

Caution: This email originated from outside the Firm.

David and Trace:

Thank you for the time this morning. I am writing to memorialize a few points, including certain requests we made for additional information that you said you would consider and come back to us on.

1. Special Committee ESI searches.

a. *Original Special Committee ESI.* You confirmed that, initially, the Special Committee applied its search terms (identified in the attached January 10, 2025 email from Quinn, the "Original SC Search Terms") against a universe of ESI that included Rhodium emails (but not Imperium emails) from four custodians (Nick Cerasuolo, Cameron Blackmon, Chase Blackmon, and Nathan Nichols) ("Emails"), and texts, WhatsApp and Teams messages ("Chats") from three custodians (Chase Blackmon, Cameron Blackmon and Nick Cerasuolo), but only to the extent the Chats also included certain Whinstone personnel (the Emails and Chats together are the "Original Special Committee ESI").

- i. You confirmed that the Original Special Committee ESI did not include all of the ESI gathered by the Debtors in connection with the Whinstone litigation (as defined in my January 21, 2025 letter, the "Litigation ESI"). Among other things, you confirmed that:
1. Although Imperium-domained emails were included in the Litigation ESI for Chase Blackmon, Cameron Blackmon, Nathan Nichols, Nick Cerasuolo, Brendan Cottrell, Alex Peloubet and Pete Richison, the Original Special Committee ESI included no Imperium-domained emails for any custodians, and no emails from any domain for Cottrell, Pelloubet or Richison.
 2. The Original Special Committee ESI did not include any Chats with Cerasuolo, Cottrell, Peloubet or Richison as a custodian, and did not include any Chats from any custodians, unless a Whinstone employee was also a Chat recipient.

b. *Additional ESI from Imperium.* You advised that, at some point earlier this month, Imperium agreed it would provide to the Special Committee, on a confidential basis, documents hit by another set of Special Committee search terms when run against certain additional Imperium ESI ("Imperium ESI").

- i. You told us the Imperium ESI is a subset of the Litigation ESI.
 1. You represented that the Imperium ESI includes Imperium-domained emails from the same seven custodians as the Litigation ESI, and includes all of the Imperium custodian Chats included in the Litigation ESI:
 2. Except that Imperium's counsel apparently culled from Imperium ESI "personal" documents.
- i. *Additional Search Terms.* You told us you negotiated search terms with Imperium's counsel for application against the Imperium ESI (the "Additional SC Search Terms"). We asked you to provide us with the Additional SC Search Terms. You did not agree to do so, but said you would take our request under advisement. Please provide us with the resulting de-duplicated hit report as well.
- ii. *Receipt by Special Committee of New Documents.*
 - a. You advised that Imperium has produced to the Special Committee certain Imperium ESI returned by the Additional SC Search Terms ("New Documents").
 - b. We asked you when the Special Committee received the New Documents from Imperium. You did not agree to tell us the date the New Documents were received, but said you would take our request for that date under consideration.
- iii. *Limitations on Use of New Documents Obtained from Imperium ESI*
 3. You advised that Imperium provided the New Documents to the Special Committee on the condition that the Special Committee not disclose the New Documents to anyone else without Imperium's further consent.
 4. You accepted this limitation. To the extent you wish to provide the New Documents (or any of them) to the SAFE AHG or any other party, you advised that you will first provide such documents to counsel for Imperium, and will turn them over to us only if Imperium's counsel agrees.
- iv. *Decision Not to Run Search Terms Against Litigation ESI.* We noted on our call this morning that the Litigation ESI already is loaded on a Debtor review platform, and asked why you did not just run special committee search terms against the Litigation ESI.
 5. You told us that the Litigation ESI is in the immediate possession of Stris, the Debtors' law firm, rather than the Debtors. You seemed to suggest, without explanation, that perhaps documents in the immediate possession of Debtors' counsel are not in the Debtors' possession, custody or control.
 6. We do not believe documents collected by the Debtors' counsel (Stris), for a litigation in these bankruptcy cases in which Stris is

representing the Debtors, and where Stris' very substantial fees are being paid by the bankruptcy estates, somehow could be deemed outside the Debtors possession, custody or control.

7. To be sure, you never claimed to have asked the Debtors to make the Litigation ESI available to the Special Committee for its searches. Nor did you claim the Debtors took the position that the Litigation ESI is out of the Debtors possession, custody or control. It seems, instead, you turned to Imperium without first making any of these inquiries of the Debtors.

2. Tax Returns.

a. You confirmed the Special Committee never asked the Debtors for copies of tax returns of the Debtors' Insiders, including their current and former directors and officers, and Imperium, the Debtors "ultimate parent."

b. You advised that the Special Committee asked Imperium's counsel to provide the tax returns, but Imperium's counsel refused.

i. You again advised that the Special Committee will not seek copies of the tax returns from Imperium.

ii. Instead, you intend to visit the Debtors' insiders at their offices, and take notes concerning their tax returns.

iii. You did not say whether Imperium has agreed to this approach, or whether Imperium has consented for you to share any information you get from your tax return visit with the SAFE AHG or any other party

iv. You indicated that you have not yet scheduled your visit, but hope to do so soon.

c. We were clear, again, that the SAFE AHG does not believe your proposed approach is an acceptable substitute for production of the tax returns, and will proceed accordingly.

3. Interviews.

a. You confirmed that the SAFE AHG is not invited to attend the Special Committee's witness interviews unless it waives its right to take sworn depositions of those witnesses. You said you want to avoid the cost and distraction of depositions.

b. We suggested that, by refusing to allow creditors to participate in the informal interviews now underway (except under conditions unacceptable to them), you actually are making formal depositions inevitable. We asked you to reconsider your position, and you said you would take our request under advisement.

c. You confirmed you interviewed Mr. Nichols on January 23, 2025, and that the UCC did not attend. If you have an interview memo you are willing to share, we ask that you do so, subject of course to a full reservation of the SAFE AHG's rights.

4. Mining Rigs

- a. We described allegations that the Insiders maintained a spreadsheet or other records relating to the disposition of mining rigs and rig agreements separate from the Debtors' books and records ("Off Books Rig Records"), and asked whether you have obtained such materials.
- b. You said you have repeatedly asked the Insiders to provide you with copies of all documents relating to mining rigs, and that you have not received anything that constitute Off Books Rig Records.
- c. We understand from our call, however, that the Special Committee has not specifically confronted the Insiders with the allegation that they maintained Off Books Rig Records, or specifically asked whether the allegation is accurate.

Please advise immediately if you believe any of the foregoing is inaccurate. Thanks.

Mitchell P. Hurley

Akin

Direct: [+1 212.872.1011](tel:+12128721011)

From: David Eaton <deatondirector@gmail.com>

Sent: Tuesday, January 28, 2025 11:06 AM

To: Schultz, Sarah A. <sschultz@AkinGump.com>

Cc: Hurley, Mitchell <mhurley@AkinGump.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>

Subject: Re: Call with Akin and BT

Give us a minute

David L. Eaton

+312-953-1092

On Tue, Jan 28, 2025 at 10:05 AM Schultz, Sarah A. <sschultz@akingump.com> wrote:

Are we having this call?

Sarah Link Schultz

Akin

[2300 N. Field Street | Suite 1800 | Dallas, TX 75201 | USA](#) | Direct: +1 214.969.4367 | Internal: 14367

Fax: +1 214.969.4343 | Mobile: +1 214.729.9937 | sschultz@akingump.com | akingump.com | [Bio](#)

Pronouns: she/her/hers ([What's this?](#))

From: Schultz, Sarah A. <sschultz@AkinGump.com>
Sent: Monday, January 27, 2025 10:25:10 PM
To: Hurley, Mitchell <mhurley@AkinGump.com>; David Eaton <deatondirector@gmail.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>
Subject: Re: Call with Akin and BT

Trace, does that work for you?

Sarah Link Schultz

Akin

[2300 N. Field Street](#) | [Suite 1800](#) | [Dallas, TX 75201](#) | [USA](#) | Direct: +1 214.969.4367 | Internal: 14367
Fax: +1 214.969.4343 | Mobile: +1 214.729.9937 | sschultz@akingump.com | akingump.com | [Bio](#)

Pronouns: she/her/hers ([What's this?](#))

From: Schultz, Sarah A.
Sent: Monday, January 27, 2025 11:11:02 AM
To: Hurley, Mitchell <mhurley@AkinGump.com>; David Eaton <deatondirector@gmail.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>
Subject: RE: Call with Akin and BT

I can do 10 CT

Sarah Link Schultz

Akin

Direct: +1 214.969.4367
Pronouns: she/her/hers ([What's this?](#))

From: Hurley, Mitchell <mhurley@AkinGump.com>
Sent: Monday, January 27, 2025 10:42 AM
To: David Eaton <deatondirector@gmail.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Schultz, Sarah A. <sschultz@AkinGump.com>
Subject: RE: Call with Akin and BT

Thanks for following up, and for the time this morning. I can do any time in that window that works for Trace and Sarah. Thx.

Mitchell P. Hurley

Akin

Direct: [+1 212.872.1011](tel:+1212.872.1011)

From: David Eaton <deatondirector@gmail.com>
Sent: Monday, January 27, 2025 11:32 AM
To: Hurley, Mitchell <mhurley@AkinGump.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Schultz, Sarah A. <sschultz@AkinGump.com>
Subject: Call with Akin and BT

****EXTERNAL Email****

Mitchell,

Following up on your request, Trace and I will be available for a call to discuss the investigation matters you raised earlier today.

I'm traveling today but am available tomorrow from 10-2 ct. Does anything in that range work for you and Trace?

David

David L. Eaton

+312-953-1092

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EXHIBIT 74
FILED UNDER SEAL

EXHIBIT 75

FILED UNDER SEAL

EXHIBIT 75

FILED UNDER SEAL

EXHIBIT 77

FILED UNDER SEAL

EXHIBIT 78
FILED UNDER SEAL

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Akin

Mitchell P. Hurley
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mhurley@akingump.com

August 26, 2025

VIA E-MAIL

Patricia B. Tomasco
700 Louisiana St., Suite 3900
Houston, TX 77002

Trace Schmeltz
Barnes & Thornburg LLP
One N. Wacker Drive
Suite 4400
Chicago, IL 60606-2833

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

Dear Ms. Tomasco and Mr. Schmeltz:

We write on behalf of the ad hoc group of SAFE creditors (“SAFE AHG”) in the above-captioned chapter 11 cases of Rhodium Encore LLC and its affiliated debtors and debtors in possession (the “Debtors” or “Rhodium”). We write concerning the *Debtors’ Omnibus Objection to Certain Claims Pursuant to Bankruptcy Code Sections 502(B), Bankruptcy Rule 3007, and Local Rule 3007-1 Because Claims Have Been Satisfied and Based on Other Substantive Grounds* [Dkt. No. 1488] (“Objection”), including to demand that the Debtors withdraw the incorrect, superfluous and estate-damaging argument regarding the applicable statutes of limitations included in the Objection.

First, the Objection was signed by the Quinn firm, which reports to the plenary board of directors (the “Conflicted Board”). The Objection addresses clear Conflict Matters. Involvement by the Conflicted Board in connection with the preparation and filing of the Objection would therefore constitute a violation of the REI resolution delegating to David Eaton and Spencer Wells (the “Special Committee”) sole authority to act on behalf of the Debtors concerning Conflict Matters. Please advise immediately whether the filing of the Objection was authorized by the Special Committee, and what role was played in connection with the Objection by the Conflicted Board.

Second, please immediately withdraw the Objection’s incorrect argument that claims for breach of fiduciary duty relating to misconduct undertaken by the insiders – who continue to



August 26, 2025
Page 2

dominate and control the Conflicted Board – are subject to a three-year statute of limitations (the “SOL Contentions”). As an initial matter, the SOL Contentions are unnecessary to the Objection. The Debtors seek disallowance of proofs of claim filed against the Debtors by individual creditors because claims for breach of fiduciary duty belong to the estates, not individual creditors, and should be brought against fiduciaries, not debtor entities. The Debtors can prevail on their Objection on these grounds without recourse to the SOL Contentions.

The SOL Contentions also are flatly wrong. Breach of fiduciary duty claims relating to alleged misconduct in these cases (undertaken and/or directed by the insiders) are subject to a four-year statute of limitations, not a three-year statute of limitations. “Under the *Erie* doctrine, federal courts apply federal procedural law and state substantive law.” *Austin v. Baker & Hostetler, LLP (In re Uplift RX, LLC)*, 667 B.R. 665, 691 (Bankr. S.D. Tex. 2024) (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938)). “Federal courts treat the statute of limitations question as a matter of substantive law, so the Court looks to state law to decide which statute of limitations applies.” *Id.*; see also *U.S. Rest. Properties Operating L.P. v. Burger King Corp.*, No. CIV.A. 302CV0730P, 2003 WL 21448389, at *3 (N.D. Tex. June 16, 2003) (“In diversity lawsuits, a federal court is ordinarily bound to look to the choice of law rules of the state in which it sits to determine whether the state courts of that state would apply their own state’s statute of limitations or the statute of limitations of some other state.” (quoting *Long Island Trust Co. v. Dicker*, 659 F.2d 641, 644–45 n. 6 (5th Cir.1981)) (cleaned up))).

“Because Texas state law treats statute of limitations questions as procedural rather than substantive, federal courts sitting in Texas . . . simply appl[y] Texas’ limitations periods” to breach of fiduciary duty claims, regardless of which state’s law governs the merits of the underlying claims. *In re Uplift RX, LLC*, 667 B.R. at 691; *Janvey v. Adams & Reese, LLP*, 2013 WL 12320921 at *4 (N.D. Tex. 2013) (“[Regarding a breach of fiduciary duty claim,] Texas would apply Louisiana substantive law, but under Texas rules, Texas limitations generally apply regardless of what substantive law applies because in Texas limitations are procedural rules.”); see also *U.S. Rest. Props. Operating L.P.*, 2003 WL 21448389, at *3 (“In Texas, ‘[q]uestions of substantive law are controlled by the laws of the state where the cause of action arose, but matters of remedy and procedure are governed by the laws of the state where the action is sought to be maintained.’ Texas courts regard statutes of limitations as procedural, and therefore apply Texas’s statutes of limitations.” (alteration in original) (citation omitted) (quoting *Hill v. Perel*, 923 S.W.2d 636, 639 (Tex.App.—Houston [1st Dist.] 1995, no writ))). *Westcott v. Russ*, No. 1:22-CV-0785, 2023 WL 3483996, at *2 (W.D. Tex. May 15, 2023), report and recommendation adopted sub nom. *Westcott v. Russ*, No. 1:22-CV-00785-DII, 2023 WL 4095248 (W.D. Tex. June 20, 2023) (“The Fifth Circuit has held that Texas applies its own statute of limitations, regardless [of] what substantive law applies.” (alteration in original) (quoting *Woolley v. Clifford Chance Rogers & Wells, L.L.P.*, No. 3:01-CV-2185, 2004 WL 57215, at *3 (N.D. Tex. Jan. 5, 2004))).



August 26, 2025
Page 3

Therefore, even assuming that Delaware substantive law applies to the underlying claims, their timeliness will be governed by Texas' four-year statute of limitations. Were Debtors to persuade the Court to adopt their mistaken interpretation, it would risk undermining the estates' claims for breach of fiduciary duty against the insiders which, as you know, are among the estates' most valuable assets. Moreover, the insiders may try to argue that the Objection, if not withdrawn, constitutes some kind of admission by the Debtors with respect to the statute of limitations issue, which could itself threaten the value of these key estate assets. Indeed, since the Objection contains other, independent arguments for disallowance of individual creditor breach of fiduciary duty claims, the only parties who stand to benefit from inclusion of the erroneous and unnecessary SOL Contentions in the Objection are the insiders themselves. The SAFE AHG demands that the Debtors seek to mitigate any resulting harm by withdrawing the SOL Contentions immediately.

Nothing herein constitutes a waiver or relinquishment of any of the SAFE AHG's rights, remedies, claims, objections or remedies, all of which are expressly reserved, including any causes of action and objections arising in connection with the inclusion by the Debtors of the superfluous and mistaken SOL Contentions in the Objection in the first place.

Sincerely,

/s/ Mitchell P. Hurley
Mitchell P. Hurley

EXHIBIT 80
FILED UNDER SEAL

EXHIBIT 81
FILED UNDER SEAL

EXHIBIT 82
FILED UNDER SEAL

EXHIBIT 83
FILED UNDER SEAL

EXHIBIT 84
FILED UNDER SEAL

EXHIBIT 84
FILED UNDER SEAL

EXHIBIT 86
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EXHIBIT 87
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EXHIBIT 88

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EXHIBIT 89
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WHINSTONE US, INC., ET AL § CASE NO. 24-03240-ADV
 § HOUSTON, TEXAS
VERSUS § WEDNESDAY,
 § MARCH 19, 2025
IMPERIUM INVESTMENT HOLDINGS, §
LLC, ET AL § 1:00 P.M. TO 1:08 P.M.

MOTION FOR WITHDRAWAL OF THE REFERENCE

BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE
COURTROOM DEPUTY/ERO: AKEITA HOUSE

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APPEARANCES (VIA ZOOM) :

FOR THE DEBTORS: QUINN EMANUEL URQUHART
& SULLIVAN, LLP
Patricia B. Tomasco, Esq.
700 Louisiana St., Ste. 3900
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713-221-7227

FOR IMPERIUM INVESTMENT
HOLDINGS, LLC,
NATHAN NICHOLS, CHASE
BLACKMAN AND CAMERON
BLACKMAN: STREUSAND LANDON OZBURN
LEMMON, LLP
Stephen Lemmon, Esq.
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FOR WHINSTONE US, INC.: FOLEY & LARDNER, LLP
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GARDERE WYNNE SEWELL, LLP
Steven C. Lockhart, Esq.
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FOR THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS: MCDERMOTT WILL & EMERY, LLP
Charles Gibbs, Esq.
2501 North Harwood Street
Suite 1900
Dallas, TX 75201-1664
214-295-8000

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APPEARANCES (CONT'D - VIA ZOOM) :

FOR AD HOC GROUP OF
NOTEHOLDERS:

AKIN GUMP STRAUSS HAUER
& FELD, LLP
Sarah Shultz, Esq.
2300 N. Field Street
Suite 1800
Dallas, TX 75201-2481
214-969-2800

(Please also see Electronic Appearances.)

1 and we'll be asking the Court for the most efficient way to
2 get some of those deadlines abated.

3 As I said, this will be a settlement of all
4 litigation, termination of contracts, sale of certain
5 assets, and the settlement amount is going to be sufficient
6 -- more than enough to pay creditors in full, but because
7 Riot is a publicly-traded company, we're going to hold the
8 details until we settle on a 9019 motion and 9019/363 term
9 sheet that will be attached. Those are underway. We hope
10 to have them on file in a couple of days. That way, Riot
11 can control its own press.

12 We would like to thank very much Judge Mullen for
13 helping us mediate this, get us most of the way here. I
14 also want to express my gratitude to Mr. Moore and his
15 colleagues at Foley for helping us get the last part of the
16 way.

17 What this does is set us up for an easier Plan
18 confirmation, but I'm not going to say it's going to be
19 easy. To that end we've arranged for a date before Judge
20 Isgur to do a Plan mediation. The earliest he could give us
21 was May 20th. I plan on circulating a mediation order to
22 the Plan parties that are left that will not include
23 Whinstone or Riot. They will have exited stage left,
24 hopefully.

25 And I plan on circulating that and getting

1 I certify that the foregoing is a correct
2 transcript to the best of my ability from the electronic
3 sound recording of the ZOOM/video/telephonic proceedings in
4 the above-entitled matter.

5 /S/ MARY D. HENRY

6 CERTIFIED BY THE AMERICAN ASSOCIATION OF
7 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337
8 JUDICIAL TRANSCRIBERS OF TEXAS, LLC
9 JTT TRANSCRIPT #69720
10 DATE FILED: MARCH 31, 2025

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EXHIBIT 91
FILED UNDER SEAL

EXHIBIT 92
OMITTED

Akin Gump Strauss Hauer & Feld LLP
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New York, NY 10036

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Akin

Mitchell P. Hurley
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March 10, 2025

VIA E-MAIL (pattytomasco@quinnemanuel.com, mates@slollp.com)

Patricia B. Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana Street, Suite 3900
Houston, Texas 77002

Rhonda Mates
Streusand, Landon, Ozburn & Lemmon LLP
Spyglass Point, 1801 S. MoPac Expy. #320
Austin, TX 78746

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

Dear Ms. Tomasco and Ms. Mates:

We write on behalf of the ad hoc group of parties to Simple Agreements for Future Equity (the “SAFE AHG”) to seek from the Debtors¹ certain diligence information in connection with the above referenced chapter 11 proceedings (the “Chapter 11 Cases”). The requests below are not intended to be exhaustive, nor to modify or limit any prior requests.

1. All agreements between Lehotsky Keller Cohn (“LKC”) or Stris & Maher LLP (“Stris”) on the one hand, and any of the Debtors or any insiders (as defined in the Bankruptcy Code, and collectively with Debtors, the “Clients”) on the other.
2. All LKC and Stris invoices, billing correspondence or similar documents sent to any Client, and other documents sufficient to identify, for each month or other billing period, the relevant timekeepers billing to the matter, the periodic and

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.



Patricia Tomasco
Rhonda Mates
March 10, 2025
Page 2

cumulative number of hours each such timekeeper billed to the matter (including, without limitation, documents sufficient to identify the hours devoted to Client matters by Jonathan Cohn while LKC was receiving a monthly \$25,000 payment for Mr. Cohn's services), the periodic and cumulative value of time, and the period and cumulative amounts actually billed to the Client.

3. Documents sufficient to identify the dates and amounts of all payments made to LKC or Stris by any Client, including, without limitation, the dates and amounts of all "retainer" and "retainer replenishment" payments made by any Client to LKC or Stris, and copies of all invoices, agreements, or other similar documents related to such payments.
4. All documents and communications concerning any modified proposed engagement of LKC, such as the proposed modified terms provided in the March 4, 2025 engagement letter between LKC and Debtors (the "New Engagement Letter"), as attached at Exhibit A to the *Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* (the "New Retention Application").
5. The email dated May 16, 2023 that forms a part of the May 16, 2023 engagement letter, and apparently was attached to that letter, but that was not included with the Debtors' submission in connection with the New Retention Application.
6. Documents sufficient to identify projected LKC and Stris fees, and how they fit into (i) the Debtors' projections, and (ii) the 13-week budget filed by Debtors at Exhibit A to the *Notice of Filing of Exhibit A to the Emergency Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors' Use of Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* (the "Cash Collateral Budget").
7. Any disclosures from LKC or Stris to Debtors regarding any potential conflicts of interest, including whether LKC or Stris hold or represent any interests adverse to the estate.

Production of the requested materials is urgent, including in light of the Debtors' recent application concerning the engagement of LKC. We will make ourselves available to meet and confer concerning the foregoing requests at your reasonable convenience, including March 11 or 12, 2025 between 10:00 a.m. and 5:00 p.m. Central Time. Please advise your availability in those windows. Nothing herein constitutes a waiver or relinquishment of any of the SAFE AHG's claims, defenses, rights, or remedies, all of which are expressly reserved.

We look forward to hearing from you.

Akin

Patricia Tomasco
Rhonda Mates
March 10, 2025
Page 3

Sincerely,

/s/ Mitchell Hurley
Mitchell Hurley

Cc: Peter Stris, Jonathan Cohn

EXHIBIT 94
OMITTED

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	.	Case No. 24-90448
	.	Chapter 11
RHODIUM ENCORE LLC and	.	
AIR HPC LLC,	.	515 Rusk Street
	.	Houston, TX 77002
Debtors.	.	
	.	Tuesday, May 27, 2025
.	9:01 a.m.

TRANSCRIPT OF 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 [1056]; DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE ACCELERATED PAYMENT PROCEDURES; AND (II) GRANTING RELATED RELIEF [1057] BEFORE THE HONORABLE ALFREDO R. PEREZ UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors:	Quinn Emanuel Urquhart & Sullivan
	By: PATRICIA B. TOMASCO, ESQ.
	700 Louisiana Street, Suite 3900
	Houston, TX 77002
	(713) 221-7227

APPEARANCES CONTINUED.

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APPEARANCES (Continued):

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 MITCH HURLEY, ESQ.
 2300 North Field Street, Suite 1800
 Dallas, TX 75201
 (214) 969-4367

For the Official Committee of Unsecured Creditors: McDermott Will & Emery
 By: CHARLES R. GIBBS, ESQ.
 GRAYSON WILLIAMS, ESQ.
 2801 North Harwood Street
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 Dallas, TX 75201
 (214) 295-8063

McDermott Will & Emery
 By: DARREN AZMAN, ESQ.
 One Vanderbilt Avenue
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 (212) 547-5400

For DLT Data Center 1 LLC: Olshan Frome Wolosky LLP
 By: MICHAEL S. FOX, ESQ.
 1325 Avenue of the Americas
 New York, NY 10019
 (212) 451-2300

For the Special Committee: Barnes & Thornburg
 By: TRACE SCHMELTZ, ESQ.
 One North Wacker Drive, Suite 4400
 Chicago, IL 60606-2833
 (312) 357-1313

For Proof Capital Alternative Growth Fund, Proof Capital Alternative Income Fund, Proof Capital Special Situations Fund, and Proof Proprietary Investment Fund Inc.: Morris James LLP
 By: CARL N. KUNZ, III, ESQ.
 500 Delaware Avenue, Suite 1500
 Wilmington, DE 19801
 (302) 888-6800

Also Present: JAMESON GODSEY



1 (Proceedings commence at 9:01 a.m.)

2 THE COURT: All right. Good morning. It is Tuesday,
3 May 27th, 2025. We're here for the nine o'clock docket, Case
4 Number 24-90448. We have several -- two matters, Docket 1056
5 and Docket 1057, in connection with Rhodium Encore LLC.

6 So why don't we get the appearances of counsel in the
7 courtroom, and then we'll get appearances of counsel on the
8 phone.

9 MR. GIBBS: Good morning, Your Honor. Appearances
10 from counsel in the courtroom won't take long. Chuck Gibbs
11 with McDermott Will & Emery, counsel for the Committee.

12 THE COURT: Thank you. All right. Why don't we
13 start with Ms. Tomasco.

14 MS. TOMASCO: Thank you, Your Honor. This is Patty
15 Tomasco, counsel for the debtors and debtors in possession.

16 THE COURT: All right. Mr. Schmeltz.

17 MR. SCHMELTZ: Good morning, Your Honor, Trace
18 Schmeltz on behalf of the special committee to the board of
19 directors for Rhodium Enterprises.

20 THE COURT: Mr. Fox.

21 MR. FOX: I'm unmuting my phone now. Good morning.
22 Michael Fox from Olshan representing DLT, shareholders. Thank
23 you.

24 THE COURT: All right. Ms. Schultz.

25 MS. SCHULTZ: Good morning, Your Honor.



1 THE COURT: Not that I want to dislike Mr. Hurley,
2 but --

3 MS. SCHULTZ: Good morning, Your Honor. Sarah
4 Schultz and Mitchell Hurley, Akin Gump Strauss Hauer & Feld, on
5 behalf of the ad hoc group of stakeholders.

6 THE COURT: All right. Anyone else wish to make an
7 appearance?

8 MR. KUNZ: Yes, Your Honor. Carl Kunz from Morris
9 James on behalf of various Proof entities. Our pro hac should
10 be on file shortly.

11 THE COURT: All right.

12 MR. KUNZ: Thank you.

13 THE COURT: Thank you. Anyone else? All right.
14 Ms. Tomasco?

15 MS. TOMASCO: Your Honor, I -- as I have alerted
16 chambers, we reached, late last night, an agreement with the
17 SAFE ad hoc committee. And what I can do is sort of explain to
18 the Court how we got here, or we can go straight into putting
19 the exhibits on the docket for a record. But essentially, we
20 filed these motions on May 5th. That was after we had
21 previewed this release with the constituencies that are still
22 in mediation. So I'll call them "the mediation parties," but
23 this is not a mediation topic.

24 On April 28th, we circulated the list of proposed
25 payees to the mediation parties, and asked if there were going



1 to be any objections. And so it's been almost a month since we
2 started previewing the relief sought. So we feel like we have
3 covered the waterfront, in terms of the relief sought, which is
4 being sought solely for the purposes of reducing the amount of
5 interest that would have to be paid under a plan.

6 To that end, we've done a number of different
7 analyses, the most recent of which you can see in the exhibit
8 list that was filed on Friday, in particular the exhibit --
9 Exhibit Number 8, in other words, to show the SAFE ad hoc group
10 that the amounts that we're seeking to pay under these two
11 motions would be equivalent to what would be obtained in a
12 Chapter 11 plan or a Chapter 7 liquidation, given the fact that
13 we have proceeds in excess of the claim.

14 And so we've done further polling of the payees of
15 these two motions. That's reflected on Exhibits 9 and 10 that
16 were filed yesterday afternoon. We've eliminated anybody that
17 the SAFE ad hoc group believed to be the subject of either a
18 claim or a claim objection. And so what you see before you in
19 Exhibits 9 and 10 -- which will be further refined slightly on
20 any uploaded order. There's a couple more we need to take out
21 based on those negotiations.

22 But essentially what we've done is tried to save the
23 estate interest. It doesn't make any sense to try to save the
24 estate interest if we fight and incur attorneys' fees that are
25 going to offset those interest savings. And so what we've done



1 is essentially tried to do this without any contention or
2 expense to the estate, so that the savings are pure savings to
3 the estate on interest carried that would have to be paid under
4 a plan.

5 So we're currently targeting confirmation sometime in
6 the middle of August. We hope to have an effective date by
7 September 1 or September 15th. So we're really talking about a
8 significant amount of time, if everything goes well. And of
9 course, if everything doesn't go well, we really are saving a
10 lot of interest that would have to be paid under a Chapter 11
11 plan.

12 I could go ahead and move those exhibits into
13 evidence, Your Honor, unless there's some objection. We can
14 create that record. But that would be my plan for today's
15 hearing.

16 THE COURT: All right. Let me hear from anybody else
17 by way of opening statement and if you have an objection to
18 Exhibits 8 and 9.

19 MS. SCHULTZ: Your Honor, Sarah Schultz on behalf
20 of --

21 THE COURT: I'm sorry. 9 and 10. 9 and 10.
22 Go ahead, Ms. Schultz.

23 MS. SCHULTZ: Thank you, Your Honor. Sarah Schultz,
24 on behalf of the ad hoc SAFE group. Ms. Tomasco is correct
25 that we did reach an agreement last night. We appreciate the



1 accommodation of the Court and the accommodation of the debtors
2 and their professionals in working with us on this matter, and
3 providing us with the additional information requested. We
4 think that it was successful and that we identified some
5 additional parties. And again, we will appreciate the
6 additional time to work through this.

7 THE COURT: All right. Thank you. Mr. Gibbs?

8 MR. GIBBS: Good morning again, Your Honor. Chuck
9 Gibbs on behalf of the Committee. We filed yesterday -- it's
10 at Docket 1187, I believe -- a statement in support of --

11 THE COURT: Right.

12 MR. GIBBS: -- the entry of the orders today. I just
13 want the Court to know the Committee is supportive of what the
14 debtor is trying to do today in the entry of these orders.

15 THE COURT: Okay. I don't have -- I don't do that.

16 So Exhibit 9 deals with the unsecured creditors, and
17 Exhibit 10 is -- addresses the secured creditors. Is that
18 correct? Is that correct, Ms. Tomasco?

19 MS. TOMASCO: That's correct, Your Honor. We also
20 ask that the Court admit into evidence Exhibit 8, which is the
21 allocation analysis that shows that, based on the allocation of
22 assets consisting of the Whinstone settlement proceeds, the
23 Rowan sales proceeds, as well as the intercompany amounts that
24 existed on the petition date, each of the debtors from which
25 payment would be made to these creditors -- now, keep in mind



1 that the debtor has a relatively siloed debt structure.

2 THE COURT: Right.

3 MS. TOMASCO: And so the SAFE ad hoc committee had
4 raised the potential that there could be stranded claims if
5 there were not sufficient assets at those siloed debt buckets.
6 But we have gone back and done an analysis and shown that that
7 would be impossible under these circumstances. And so that's
8 what Exhibit 8 is designed to show.

9 THE COURT: Right.

10 MS. TOMASCO: And so any of the potential objections
11 that the parties have raised, either to the payees or to the
12 source of payment, have been resolved by the provision of
13 additional information. I will note that Exhibits 9 and --
14 Exhibit 9 will be further refined in the proposed orders. We
15 have provided the proposed orders to Mr. Laws as of last night.

16 The only change to those orders is to make clear that
17 because we've gone through so much negotiation over the payees,
18 the orders will only authorize the debtors to pay the payees
19 that are listed on an exhibit to the order, as opposed to any
20 implication that the orders would authorize the debtors to pay
21 payees that are not listed. And we're just clarifying that
22 we're only seeking to pay the parties that are listed on
23 Exhibits 9 and 10, as they have been agreed to by the parties.
24 And again, like I said, there's going to be a slight change to
25 Exhibit 9 before it's attached to an order.



1 THE COURT: All right. All right. So I'll admit
2 Exhibits 8, 9, and 10.

3 (Debtors' Exhibits 8, 9, and 10 admitted into evidence)

4 THE COURT: With respect to Exhibit 8, I think at the
5 confirmation hearing, in addition to this exhibit, I think
6 we're going to need some testimony that, in fact, there isn't
7 any stranded -- that there aren't any stranded creditors at
8 these entities, simply because if there are stranded creditors
9 at these entities that would otherwise not be paid, then equity
10 isn't getting as much as they would get in a Chapter 7
11 liquidation. So we -- I need -- we're going to need that
12 testimony, and not for purposes of today, because today we're
13 only, you know, dealing with specific amounts. But at the
14 confirmation hearing, we'll do that.

15 And also, I had an opportunity to review the plan and
16 the disclosure statement, and I have a lot of questions. For
17 instance, there's no pro forma, yet the plan purports to
18 continue the business. There -- so it's -- it looks to me like
19 it's really a plan of liquidation. And if that's the case,
20 then there's a lot of provisions in there that just simply
21 aren't applicable. In addition, obviously, the big question is
22 going to be -- and that's going to depend on whether the
23 company is solvent or not -- is whether the SAFE creditors are
24 creditors or equity holders.

25 To the extent that they're creditors, then this isn't



1 a solvent entity, or it might be, but I don't know the answer
2 to that. So those -- so at the time of the disclosure
3 statement hearing, I will -- I'll have lots of questions about
4 the plan and the disclosure statement, because a lot of the
5 provisions, I had a difficult time understanding.

6 Also, August 18th is going to be difficult. If we
7 could move that up to, like, the week before that, the 12th or
8 that Tuesday or Wednesday of the week before --

9 MS. TOMASCO: Uh-huh.

10 THE COURT: -- and so I could give you two days, and
11 then if we need more time, we could go to the 18th. But the
12 problem is I'm out the whole following week, so to the extent
13 we don't finish on the 18th, it's going to be much harder to
14 finish, and I'd much rather get it done. So I sent a note to
15 Mr. Laws about blocking time the week before the 18th, and I
16 think that still gives you plenty of time.

17 And the other thing, I also saw your motion to extend
18 -- to change the dates for exclusivity. What I don't
19 understand now -- am I correct that all the businesses have
20 been sold? There's no more operations?

21 MS. TOMASCO: I think that there are still
22 operations, Your Honor, and -- but albeit on a very small
23 scale.

24 THE COURT: Okay.

25 MS. TOMASCO: And so -- but I would mention one



1 thing. We did file an objection to the SAFE -- an omnibus
2 objection to the SAFE claims. It might be an appropriate thing
3 to gate confirmation with a hearing on the SAFE claim, so that
4 we can appropriately categorize that claim prior to
5 confirmation. Because I do think that, you know, that would
6 help streamline what needs to be decided at confirmation or may
7 change the plan altogether.

8 THE COURT: All right. Well, I'll wait to get a
9 response from Ms. Schultz, and then we'll probably set a status
10 conference, once I get her response about timing and what we
11 need to do in order to litigate that. Because remember, I
12 abated Mr. Cerasuolo's motion. And obviously, whether SAFEs
13 are debt or equity is going to be a big impact as to whether
14 that kind of comes back on the docket or not. And so I'm
15 not --

16 MS. TOMASCO: So should --

17 THE COURT: Go ahead.

18 MS. TOMASCO: Sorry, Your Honor. I don't mean to
19 interrupt. I would say that the issue of whether the SAFEs are
20 debt or equity should be a gating item for confirmation. If
21 they are equity, their sharing mechanism, vis-à-vis the other
22 Class A shareholders at Rhodium Enterprises, will be something
23 that can be tried at confirmation. But that would be the way
24 that I would -- or, if -- you know, that I would propose
25 bifurcating those issues. Are they debt or equity? Then, if



1 equity, what is their sharing proportion to the balance of the
2 equity at REI?

3 And so one of the reasons why we filed the objection
4 to the SAFE claim -- and now keep in mind that we also have an
5 equity bar date on June 20th, where they can file their proof
6 of interest. That is a -- and they're going to reserve all
7 rights if they still have a claim. But that is, to my way of
8 thinking, the \$68,000 question, if I've got that game show
9 right from the 1960s.

10 THE COURT: \$64,000 question.

11 MS. TOMASCO: So -- oh, okay.

12 THE COURT: You got it wrong.

13 MS. TOMASCO: Your Honor is correct. I got it wrong.
14 I'm perhaps a little too young to remember that show exactly.

15 UNIDENTIFIED: Yes, you are.

16 MS. TOMASCO: So that's -- and it is -- and it has
17 been, by and large, the thing that is perplexing all of the
18 constituents at the -- you know, I won't say what would happen
19 at the mediation, but it is a very complex issue. It affects
20 many, many of the decisions that need to be made in order to
21 close out this case. And so I do believe that is a primary
22 dating issue prior to confirmation.

23 THE COURT: All right. Well, I'll wait to hear from
24 Ms. Schultz, to decide whether to bifurcate or not, but we'll
25 deal with that in the ordinary course.



1 All right. Mr. Kunz, I think you raised your hand.

2 MR. KUNZ: Thank you, Your Honor. Can you hear me
3 okay?

4 THE COURT: I can hear you fine, sir.

5 MR. KUNZ: Thank you. Your Honor, I just wanted to
6 raise a question that was raised at the -- or raise an issue
7 that was raised at the last hearing, and that was I understood
8 that Your Honor had requested that the debtor provide you with
9 various documents related to what's been generally referred to
10 as "the Proof transaction."

11 THE COURT: Correct.

12 MR. KUNZ: I represent Proof, and to the extent that
13 Your Honor would like documents, we would like to be in a
14 position to provide you also with documents, just to make sure
15 you have the fulsome record on that. We were going to file an
16 emergency motion for that permission. But since we're on the
17 phone already today --

18 THE COURT: Yeah, it's -- you can go ahead and file
19 it. It's granted.

20 MR. KUNZ: Thank you. Thank you, Your Honor.

21 THE COURT: Yeah. I have not -- to my knowledge, I
22 haven't gotten them, so -- you know, so I would -- it be good
23 if we could get them.

24 The other thing, Ms. Tomasco, one of the things that
25 I didn't understand at the plan is that there is -- the



1 liquidation analysis is a per-plan liquidation analysis here,
2 as opposed --

3 THE COURT: Correct.

4 MS. TOMASCO: -- to a per-debtor. So in this
5 circumstance, I guess I would have expected a per-debtor
6 analysis, even if distributions were all together. So
7 obviously, to the extent that you want to do a per-plan, I'm
8 going to need some support for that. Because I was -- I would
9 have expected and I was looking for a per-debtor liquidation
10 analysis. But -- so I just wanted to let you know that was one
11 of the things that I was kind of wondering about.

12 MS. TOMASCO: Correct, Your Honor. It -- I will say
13 that we certainly have a per-debtor analysis that led to the
14 per-plan.

15 THE COURT: Right.

16 MS. TOMASCO: And so I don't think that will be
17 difficult to provide. We are in the process of -- you know,
18 obviously plan negotiations have been ongoing for at least a
19 month and a half, and so we definitely anticipate refining the
20 plan significantly prior to the disclosure statement hearing,
21 and that will be part of it.

22 THE COURT: Okay. All right. So, Ms. Schultz, when
23 is your response to the objection due?

24 MS. SCHULTZ: Your Honor, it was a 30-day response
25 deadline.



1 THE COURT: Right.

2 MS. SCHULTZ: I don't recall if they filed that on
3 the 14th or the 15th of May. We've got some time still. It
4 might have even been a little later than that when they filed
5 it, to be honest, Your Honor. So let me see.

6 THE COURT: All right. So I'll tell you what. Once
7 you file that, please let Mr. Laws know, and then we'll set a
8 telephonic status conference for about a week after that.

9 MS. SCHULTZ: Okay. Your Honor, they filed it on the
10 19th.

11 THE COURT: Okay.

12 MS. SCHULTZ: So if my rough-justice math is good,
13 June 18th is our response deadline.

14 THE COURT: Right. Okay. All right. So sometime
15 during the week of the 23rd, we'll have a, you know, brief
16 telephonic status conference, just really to talk about the
17 issues raised by Ms. Tomasco and timing more generally.

18 MS. SCHULTZ: Right.

19 THE COURT: All right. All right. So that addresses
20 -- does that address both motions, Ms. Tomasco, or just the
21 unsecured creditor motion? Does it also address the motion to
22 amend the DIP?

23 MS. TOMASCO: Yes. We -- well, the motion to amend
24 the cash collateral order --

25 THE COURT: Right.



1 MS. TOMASCO: -- is the secured payment motion.

2 THE COURT: Right.

3 MS. TOMASCO: The motion for payment procedures is
4 the unsecured. We will -- we have, I believe, agreed or
5 conformed orders to upload this afternoon. I was just -- I
6 wanted to go -- come to this hearing to see -- because they
7 were filed on an emergency basis, if we did not include folks
8 who wanted to be included on the post-hearing order upload, to
9 see if any of them had any comments on these. But as far as I
10 am -- as far as I know, we have satisfied all of the changes
11 that have been requested by the SAFE AHC, and that we can
12 upload those orders after the hearing, if no one else wants to
13 be included.

14 THE COURT: All right. So what I can do is, once I
15 get them and I've reviewed them, if I'm comfortable with them,
16 we can either enter them, you know, late today or we can
17 just -- I can sign them today, but they'll get entered at, you
18 know, 8 a.m. tomorrow morning, so that gives anybody an
19 additional time to review it. So I'll probably do that. I'll
20 get them so that they're on the docket first thing in the
21 morning, as opposed to later this afternoon. And that will,
22 you know, allow --

23 MS. TOMASCO: That would be --

24 THE COURT: -- you to cut off the interest expense.

25 Yes, Mr. Fox?



1 MR. FOX: I just would ask Ms. Tomasco to send the
2 list of the unsecured creditors being paid in advance. I know
3 that's moved many times, and we've given you comments, and I
4 don't want to cloud the record with who I have had problems
5 with. I just want to make sure that that's made its way into
6 the list or off from the list. So that would be my only
7 reservation.

8 THE COURT: All right. Well, to the extent that
9 there's --

10 MS. TOMASCO: But I --

11 THE COURT: -- an issue after it gets filed, Mr. Fox,
12 just call Mr. Laws, and I'll -- we'll address it, either in a
13 telephonic status conference or something else, so you can talk
14 to Ms. Tomasco, but I'm going to give you time to review it.

15 MR. FOX: Okay. Thank you very much.

16 THE COURT: Yes, sir, Mr. Kunz?

17 MR. KUNZ: Thank you, Your Honor. Just a
18 housekeeping matter. In terms of getting the documents to you,
19 should we arrange through chambers or --

20 THE COURT: I would file it on the docket, and if you
21 want to file them under seal --

22 MR. KUNZ: Okay.

23 THE COURT: -- you know, file a motion. And our
24 local rules say if you file a motion, it's -- you know, it's --
25 it'll be -- it'll -- it's automatically under seal. And then



1 under -- in 21 days, you know, the order will generally be
2 entered, unless somebody objects. But, yeah, file them on the
3 docket. I try to do everything on the docket.

4 MR. KUNZ: Understand, Your Honor. Thank you.

5 THE COURT: You're welcome. All right. If there's
6 nothing further, based on the evidence, the fact that there is
7 agreement with respect to both the motion at 1056 to pay
8 certain unsecured creditors, and 1057 for the secured
9 creditors, or maybe vice versa --

10 MS. TOMASCO: Vice versa.

11 THE COURT: -- vice versa -- I will go ahead and
12 approve those motions. I think reducing the interest cost in
13 an otherwise -- for an estate that otherwise is incurring those
14 costs, is a very -- exercise of the debtor's fiduciary duty.
15 So I will go ahead and approve those motions once entered.
16 I'll review them today, and if I'm okay with them, I will sign
17 them, and they will -- but they won't be entered until tomorrow
18 morning first thing.

19 All right. Thank you very much for taking care of
20 this. I really appreciate it. I did spend a lot of time
21 preparing, though, but -- all right. We're in recess till
22 the -- my eleven o'clock docket. Thank you.

23 MS. TOMASCO: Thank you.

24 (Proceedings concluded at 9:27 a.m.)

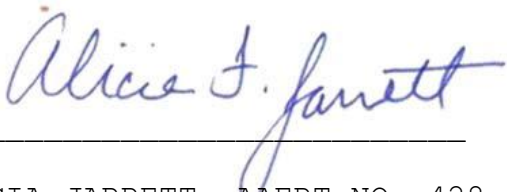
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C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



ALICIA JARRETT, AAERT NO. 428 DATE: May 30, 2025
ACCESS TRANSCRIPTS, LLC



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	.	Case No. 24-90448
	.	Chapter 11
RHODIUM ENCORE LLC, et al.	.	
	.	515 Rusk Street
	.	Houston, TX 77002
Debtors.	.	
	.	Friday, June 20, 2025
.	11:00 a.m.

TRANSCRIPT OF SAFE AHG AMENDED EMERGENCY MOTION TO
TERMINATE EXCLUSIVITY [1247];
DEBTORS' AND SPECIAL COMMITTEE'S EMERGENCY MOTION FOR STATUS
CONFERENCE CONCERNING AND MOTION TO STRIKE SAFE AHG AMENDED
EMERGENCY MOTION TO TERMINATE EXCLUSIVITY [1268]
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY COURT JUDGE

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1



1 Stakeholders.

2 MR. SCHMELTZ: Good morning, Your Honor. Trace
3 Schmeltz from Barnes and Thornburg, on behalf of the Special
4 Committee.

5 MS. FUNK: Good morning, Your Honor. Brenda Funk
6 with Munsch Hardt Kopf & Harr, for the Transcend parties.

7 THE COURT: Morning.

8 MS. MATES: Good morning, Your Honor. Rhonda Mates
9 for Imperium Investment Holding LLC, Chase Blackmon, Cameron
10 Blackmon and Nathan Nichols.

11 THE COURT: Morning.

12 MR. SHANNON: Good morning, Your Honor. R.J. Shannon
13 on behalf of Nicholas Cerasuolo.

14 MR. ALBERTO: Good morning, Your Honor --

15 THE COURT: Good morning.

16 MR. ALBERTO: Justin Alberto from Cole Schotz on
17 behalf of Proof Capital Special Funds.

18 THE COURT: Good morning.

19 MR. TRAVIS: And good morning, Your Honor. Ross
20 Travis for the U.S. Trustee.

21 THE COURT: All right. So Ms. Tomasco, you want to
22 lead us off?

23 MS. TOMASCO: Thank you, Your Honor. It appears to
24 me that what we have is a consensus that the SAFE claim
25 objection should exceed further consideration of the debtor's



1 plan and disclosure statement. And so we have a proposed form
2 of order that does just that. I caution though that in the
3 plan there is a -- there is an amount that's payable to the
4 SAFE claimant of 55 percent of all distributable cash. The
5 resolution of the SAFE claim objection is part of that
6 calculation.

7 And so we are going to proceed by consensus of the
8 parties on the SAFE claim objection and determine that first.
9 I'm not sure what that does to the party's view of the
10 settlement that's embodied in the current plan. Since we have
11 that consensus, I'm going to turn it over to Ben Roth, who's
12 been working with all of the parties on the proposed form of
13 order that he can discuss.

14 Mr. Alain Jaquet, if you can give him the presenter
15 role. He can -- he can put the red line up on the screen.

16 MR. HURLEY: Your Honor, it's Mitch Hurley. Can you
17 hear me?

18 THE COURT: I can. Go ahead, Mr. Hurley.

19 MR. HURLEY: May I just very briefly.

20 THE COURT: Sure.

21 MR. HURLEY: I -- I'm a little surprised at the
22 presentation. So we have been working, it is true, with the
23 debtors, right up until the last two minutes. So it's actually
24 why it's a little bit late appearing on screen. I apologize
25 for that, Your Honor. I wouldn't say -- I think we'll have an



1 | doesn't ultimately get confirmed.

2 | THE COURT: All right. Are we done? All right.

3 | I -- I'm not very happy about the way this has been handled. I
4 | actually thought that I had asked you all to, you know,
5 | coordinate on matters.

6 | Nevertheless, I think the debtor -- I'm not going to
7 | substitute my business judgment for the debtor's business
8 | judgment in terms of, you know, how it conducts a mediation,
9 | how it doesn't conduct a mediation. Obviously they're going to
10 | have -- you know, the fact that you haven't brought other
11 | people in is going to create a much more difficult 9019.

12 | And what it looks to me like is, we've now set up
13 | another -- you know, first, we're going to have a trial on the
14 | SAFE AG. And now looks like, if there's a settlement, we're
15 | going to have another trial on the settlement that's going to
16 | have to be done or not done before we ever go to plan
17 | confirmation. You know, it seems to me that, had there been,
18 | you know, buy-in at the beginning, you wouldn't have -- you
19 | know, you wouldn't have created that situation.

20 | Anyway, as I said, I'm not going to substitute my
21 | business judgment for the debtor's business judgment. The
22 | debtor can participate in mediation. I just think that, you
23 | know, the debtor's kind of created a big hole for themselves in
24 | terms of, you know, approval and being able to proceed with the
25 | case. And I'm not going to agree that within five business



1 apologize for the technical problems where I've lost all volume
 2 on anybody's comments. Unfortunately, I got it back just in
 3 time to hear Counsel for one of the shareholder groups to
 4 accuse us of being weaponized, which is a vastly overused and
 5 politically charged term. To the extent trying to maximize
 6 recovery for creditors in this case is weaponization, I stand
 7 guilty.

8 THE COURT: All right. All right. We're -- we'll be
 9 in recess. Thank you.

10 (Proceedings concluded at 12:22 p.m.)

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14 C E R T I F I C A T I O N

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I, Alicia Jarrett, court-approved transcriber, hereby
 certify that the foregoing is a correct transcript from the
 official electronic sound recording of the proceedings in the
 above-entitled matter.

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Alicia J. Jarrett

24 ALICIA JARRETT, AAERT NO. 428 DATE: June 25, 2025

25 ACCESS TRANSCRIPTS, LLC



EXHIBIT 97
FILED UNDER SEAL

EXHIBIT 98
FILED UNDER SEAL

EXHIBIT 99
OMITTED

EXHIBIT 100
FILED UNDER SEAL

EXHIBIT 101
FILED UNDER SEAL

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

IN RE: § CASE NO. 24-90448-11
§ HOUSTON, TEXAS
RHODIUM ENCORE, LLC, ET AL., § MONDAY,
§ AUGUST 4, 2025
DEBTORS. § 9:30 A.M. TO 9:08 A.M.

STATUS CONFERENCE

BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE
COURTROOM DEPUTY/ERO: AKEITA HOUSE

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(Please also see Electronic Appearances.)

1 MR. HURLEY: Of course.

2 (Pause in the proceedings.)

3 THE COURT: Okay. Go ahead.

4 MR. HURLEY: Okay. So starting with the good news,
5 as Your Honor is aware from the submission being made with our
6 request for a status conference in the first instance we had
7 concerns about representations that were made by the Debtor on
8 the Record on July 2 that appeared to be different than
9 figures that at least to us looked like they were implied by
10 material that was received on July 23.

11 And we, this morning, were able to reach agreement
12 with Special Committee that the Special Committee and the
13 Debtors are going to make their professionals available to us
14 on Friday to give us what sounds like a detailed presentation
15 on the waterfall, and it includes some elements of the
16 waterfall that they have -- that yesterday they referenced, we
17 don't have detail on yet, but it sounds like is going to
18 provide an explanation for the difference between what we
19 heard on July and what we saw on July 23 and will, we think
20 anyway based on our communication so far, that they'll provide
21 a bridge, and that's information obviously we don't -- haven't
22 had to date and won't have until Friday, but there now is a
23 plan for that information to be supplied to us on Friday.

24 And so on that basis I think we can, at least from
25 our perspective, move on from the portion of this status

1 conference request that was aimed at the July 2
2 representation. And I'll pause there to see if Mr. Schmeltz
3 or anyone else has anything to add.

4 MR. SCHMELTZ: Your Honor, I don't have anything
5 material to add except to note for the Court's benefit that
6 we've made representations to the Court about distributable
7 cash that are at all times estimates based on the best
8 understanding of the Debtors and the professionals working
9 with both the Debtors and the Special Committee and we
10 obviously have represented that as accurately as humanly
11 possible at all times.

12 The settlement agreement, the term sheet that is in
13 draft form that we've circulated confidentially at people's
14 request describe the but for world in which, presuming the
15 settlement didn't occur, there would be different expenses and
16 burdens, tax burdens particularly on the Debtors' estate that
17 would make that distributable cash meaningfully less. Our
18 view, one of the benefits of settling with the founders now is
19 to get that updraft of having more distributable cash, more in
20 line with the 100-ish million that we have estimated
21 previously before the Court as opposed to something much lower
22 in a non-settled world.

23 I think -- I think we can walk that through with
24 SAFE AHG relatively simply, and I'm hopeful -- we've committed
25 to giving to giving them all the information they need to be

1 satisfied and letting them talk to our professionals at
2 whatever length is needed. We hope that that will be both a
3 productive exercise and may, you know, may even lead to more
4 conversations of a better nature than -- you know, as Your
5 Honor's aware, you know, we've had a little bit of a head butt
6 of late and we'd like to resolve that with them if at all
7 possible.

8 THE COURT: All right. Thank you.

9 MR. HURLEY: Okay. Your Honor, and, you know, I
10 think it probably goes without saying, but some of the items
11 that have identified one of the reasons we feel like we have
12 to have this conversation is we just -- we don't understand
13 how the bridge could work. It's doesn't seem consistent with
14 our understanding of what the savings actually could be, but
15 that's not for today.

16 So, Your Honor, if it's okay with you, I'll move on
17 to the Imperium issue.

18 THE COURT: Go ahead.

19 MR. HURLEY: Okay. So the Imperium issue relates to
20 disclosures that were the subject of our motion to compel that
21 was heard May 21, 2025. At the hearing and the submission
22 provided to you earlier this morning, I apologize, you know,
23 the style, we've been working on these on these issues right
24 up to the moment before the hearing started. Your Honor, I
25 think there was an agreement that there were some documents

EXHIBIT 103
FILED UNDER SEAL

EXHIBIT 104
FILED UNDER SEAL

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs 345 Partners SPV2 LLC, Grant Fairbairn, as Trustee and on behalf of the Grant Fairbairn Revocable Trust, Nina Fairbairn, as Trustee and on behalf of the Nina Claire Fairbairn Revocable Trust, Richard Fullerton, William Ho, as Trustee and on behalf of the GR Fairbairn Family Trust, NCF Eagle Trust, GRF Tiger Trust, and NC Fairbairn Family Trust, Scott Kintz, as Trustee and on behalf of the Kintz Family Trust, Jacob Rubin, Transcend Partners Legend Fund LLC, Valley High LP, Jerald Weintraub, as Trustee and on behalf of the Jerald and Melody Howe Weintraub Revocable Living Trust DTD 02/05/98, as amended, and Mike Wilkins, as Trustee and on behalf of the Wilkins-Duignan 2009 Revocable Trust (collectively, “Plaintiffs”) file this Original Petition (“Petition” or “Pleading”) against Nathan Nichols, Chase Blackmon, Cameron Blackmon, Nicholas Cerasuolo, and Imperium Investments Holdings, LLC (collectively, “Defendants”)¹ in the above-referenced lawsuit (this “Action”) and, in support thereof, show as follows:

BRIEF SUMMARY OF THE FRAUD

Plaintiffs are the victims of a scheme of deception and brazen self-dealing. Defendants, the founders, executives, and management team of the Rhodium bitcoin mining enterprise, conned Plaintiffs into investing millions of dollars into Rhodium. Defendants intentionally misled and lied to Plaintiffs to secure their multi-million-dollar investment so that Defendants could personally enrich themselves and Imperium.

¹ Other parties involved in Defendants’ scheme include a group of companies that are now debtors in a chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of Texas, including Rhodium Enterprises Inc. (“Rhodium Enterprises”), Rhodium Encore LLC (“Rhodium Encore”), Rhodium JV LLC (“Rhodium JV”), Rhodium Renewables LLC (“Rhodium Renewables”), Rhodium Technologies LLC (“Rhodium Technologies”), Rhodium Shared Services LLC (“Rhodium Shared Services”) (collectively sometimes referred to as “Rhodium”).

Defendants set their scheme into motion before Plaintiffs even invested in Rhodium. Specifically, Defendants knew – *before Plaintiffs made their multi-million-dollar investment* – that Whinstone US Inc. (“Whinstone”), owner of the facilities for Rhodium’s bitcoin mining operations in Rockdale, Texas (“Rockdale Facility”), was being sold to one of Rhodium’s direct competitors – Riot Blockchain, Inc. (“Riot”).

Frankly, it is hard to imagine a more material disclosure event, and had Defendants disclosed this critical information, as they were required by law, Plaintiffs would not have invested in the first place. Defendants intentionally and wrongfully withheld this crucial fact (*i.e.*, that the Rockdale facility would be owned by a direct competitor of Rhodium) to secure Plaintiffs’ multi-million-dollar investment in Rhodium Encore. As they say, the proof is in the pudding. The wildly dysfunctional and adversarial relationship between Rhodium and Riot (which includes shutdowns led by Riot’s armed security) is one of, if not the, key reasons behind Rhodium’s bankruptcy filing and substantial harm to Plaintiffs.

Not satisfied with the original scheme, Defendants induced Plaintiffs to swap their economic interests at Rhodium Encore for interests at Rhodium Enterprises (the “Roll-up Transaction”) based on Defendants’ promises of further project completion at the Rockdale Facility. Defendants and Imperium directly benefitted from the Roll-up Transaction which, in essence, left Plaintiffs structurally subordinated to Imperium’s recoveries and gave Imperium an over-inflated “control premium” as part of the Roll-up Transaction.

Defendants consistently attempted to conceal their fraud and create the illusion of transparency by providing Plaintiffs false assurances – sending 10,000+ personal text messages to Plaintiffs in 2021 alone and over 1,000 e-mails from non-Rhodium e-mail addresses, among other forums. However, Defendants hid their fraudulent ruse by repeatedly denying Plaintiffs access to

books and records and intentionally creating a “black box” with respect to Rhodium’s financial condition – rejecting and resisting true and fair transparency at every turn.

In addition to the direct harm suffered by Plaintiffs at the hands of Defendants, as pled in this Petition, Plaintiffs have indirectly suffered harm as a result of Defendants’ mismanagement of, and self-dealing transactions with, Rhodium. Because Rhodium and its affiliates are debtors in a bankruptcy proceeding, Plaintiffs are not herein seeking to recover those indirect damages but make reference to Defendants’ misconduct in those transactions as further context for the direct harm suffered by Plaintiffs.

Put simply, Defendants lied to, and stole from, Plaintiffs. Defendants must be held accountable.

MONETARY CATEGORY

1. Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs state that they seek both monetary and non-monetary relief. The monetary relief sought by Plaintiffs *far exceeds* \$1,000,000.

2. At the time of filing this Pleading, the damages are continuing and increasing. Plaintiffs’ investigation is continuing. Accordingly, the monetary category is an estimate at this time and is subject to being increased, decreased, or otherwise amended.

DISCOVERY CONTROL PLAN

3. Discovery should be conducted under Level 3 pursuant to Texas Rule of Civil Procedure 190.4 and a motion is hereby made for entry of a Level 3 Scheduling Order.

THE PARTIES AND SERVICE

4. Plaintiff 345 Partners SPV2 LLC is a California limited liability company.
5. Plaintiff Grant Fairbairn is a trustee of the Grant Fairbairn Revocable Trust and, in

such representative capacity, is authorized to and brings the claims set forth herein on behalf of the Grant Fairbairn Revocable Trust.

6. Plaintiff Nina Fairbairn is a trustee of the Nina Claire Fairbairn Revocable Trust and, in such representative capacity, is authorized to and brings the claims set forth herein on behalf of the Nina Claire Fairbairn Revocable Trust.

7. Plaintiff Richard Fullerton is an individual and resident of the State of California.

8. Plaintiff William Ho is a trustee of the GR Fairbairn Family Trust, the NCF Eagle Trust, the GRF Tiger Trust, and the NC Fairbairn Family Trust and, in such representative capacity, is authorized to and brings the claims set forth herein on behalf of the GR Fairbairn Family Trust, the NCF Eagle Trust, the GRF Tiger Trust, and the NC Fairbairn Family Trust.

9. Plaintiff Scott Kintz is a trustee of the Kintz Family Trust and, in such representative capacity, is authorized to and brings the claims set forth herein on behalf of the Kintz Family Trust.

10. Plaintiff Jacob Rubin is an individual and resident of the State of California.

11. Plaintiff Transcend Partners Legend Fund LLC is a Delaware limited liability company.

12. Plaintiff Valley High LP is a Nevada limited partnership.

13. Plaintiff Jerald Weintraub is a trustee of the Jerald and Melody Howe Weintraub Revocable Living Trust DTD 02/05/98, as amended and, in such representative capacity, is authorized to and brings the claims set forth herein on behalf of the Jerald and Melody Howe Weintraub Revocable Living Trust DTD 02/05/98, as amended.

14. Plaintiff Mike Wilkins is a trustee of the Wilkins-Duignan 2009 Revocable Trust and, in such representative capacity, is authorized to and brings the claims set forth herein on

behalf of the Wilkins-Duignan 2009 Revocable Trust.

15. Defendant Chase Blackmon is an individual and resident of the State of Texas, and upon information and belief, resides at 4412 Summercrest Ct., Fort Worth, 76109 in Tarrant County, Texas, and may be served by serving the citation and a copy of this Petition on him at such address or wherever he may be found.

16. Defendant Cameron Blackmon is an individual and resident of the State of Texas, and upon information and belief, resides at 2204 Mistletoe Blvd., Fort Worth, 76110 in Tarrant County, Texas, and may be served by serving the citation and a copy of this Petition on him at such address or wherever he may be found.

17. Defendant Nathan Nichols is an individual and resident of the State of Texas, and upon information and belief, resides at 3000 Gracie Kiltz Ln, Apt 307, Austin, TX 78758, and may be served by serving the citation and a copy of this Petition on him at such address or wherever he may be found.

18. Defendant Nicholas Cerasuolo is an individual (and potentially a resident of the State of Texas) doing business in Texas, and upon information and belief, resides at 655 Ave Roberto H Todd, Suite 187, San Juan, PR 00907-3975 and/or in Texas, and may be served by serving the citation and a copy of this Petition on him at such address or wherever he may be found.

19. Imperium Investments Holdings LLC is a Wyoming limited liability company with, upon information and belief, Defendants Nathan Nichols, Chase Blackmon, Cameron Blackmon and Nicholas Cerasuolo serving as its managing members. Upon information and belief, Imperium maintains a principal office located at 7546 Pebble Drive, Fort Worth, Texas 76118. Imperium may be served with process through its registered agent: Corporation Service Company, 1821

Logan Avenue, Cheyenne, Wyoming 82001.

20. Each Defendant may be served by serving this Pleading, citation, and service under the Rules.

JURISDICTION AND VENUE

21. Numerous of the Defendants reside in Tarrant County. Moreover, Defendants were doing business in Tarrant County, Texas at all times relevant to this Action and did business in Tarrant County, Texas that caused, in whole or in part, the injuries and damages that are the subject of this Action. Therefore, jurisdiction and venue are proper in Tarrant County, Texas. Because there are multiple defendants, Plaintiffs' claims arise out of the same transaction, occurrence, or series of transaction or occurrences, and venue is proper as to one Defendant, venue is proper as to all Defendants. See TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1), 15.005. As a direct and proximate result of Defendants' actions and/or inactions, damages in excess of the minimum jurisdictional requirements of this Court were incurred. The damages suffered include, but are not limited to, the loss of the use of money.

22. All conditions precedent to all relief being sought by Plaintiffs in this Action were met, performed, occurred, and/or waived.

PUNITIVE DAMAGES – NO CAP

23. A plaintiff who successfully prosecutes a suit by proving malice by clear and convincing evidence can recover exemplary damages under Section 41.003(a)(2) of the Texas Civil Practice and Remedies Code. Punitive damages are sought for the fraud perpetrated by Defendants in this case. Accordingly, any statutory caps are inapplicable.

FACTUAL BACKGROUND

Rhodium's Bitcoin Mining Business

24. Rhodium Encore is part of a large bitcoin mining operation in Rockdale, Texas. Rhodium Encore secured investments, including from Plaintiffs, for costly equipment necessary to successfully mine bitcoin. Defendants wove a complicated web of Rhodium-related entities as holding companies, operating entities, or investment vehicles – which, in hindsight, helped them effectuate and conceal their fraudulent scheme.

25. The various Rhodium entities were controlled by Defendants, who fraudulently induced Plaintiffs' significant investment in promissory notes and equity issued by Rhodium Encore (the "Investment").

Material Information Withheld Prior to Investment: Whinstone Selling to Rhodium's Direct Competitor – Riot

26. Prior to the Investment, Whinstone's then owner, Northern Data, agreed to sell Whinstone – and, as a result, the Rockdale Facility – to Riot (the "Riot Transaction"). Below is the telling December 2020 text exchange between Defendant Nathan Nichols, the executive leader of Rhodium, and Chad Everett Harris, the then CEO of Whinstone:

Chad: ND is selling to Riot

Nathan: Oh s**t. You called it....

Nathan: Is it cool to tell the partners?

Chad: Tell your guys but stop it w Chase Cameron and Nick

Chad: They said yes to 19

Nathan: Will do. Nick and I will come over in 45 minutes to discuss if you're available?

27. As shown by the text message above (and others between Defendant Nichols and Harris), all Defendants knew about the Riot Transaction and *intentionally* concealed this material information from Plaintiffs – all while Defendants knew that their knowledge of the Riot Transaction made other representations they made to Plaintiffs, for the purpose of inducing Plaintiffs into making the multi-million-dollar Investment, untrue. This is a textbook example of fraudulent inducement.

28. Unlike Whinstone, which housed the facilities for actual bitcoin miners like Rhodium Encore (*i.e.*, just a landlord), Riot was a self-miner and, thus, a direct competitor of Rhodium Encore (*i.e.*, a landlord plus competitor). With the Riot Transaction, Rhodium Encore's long-term future at the Rockdale Facility would be tenuous, at best, given Riot's self-interested incentive to expand its own operations and take advantage of the cheap power contracts available from Whinstone. Indeed, Defendant Nichols' own communications with Chad Harris (then CEO of Whinstone) underscore Defendant Nichols and Rhodium's concerns regarding their position post-Riot purchase of Whinstone, and that it could "open a pandora's box of possibilities that could indirectly give you less control than you do now," "really complicate things for our growth trajectory," and was "the devil you know versus the devil you don't." After completion of its purchase, Riot crowed in a press release that the acquisition of Whinstone "created a very clear path for the Company's future growth" (*i.e.*, using the Rockdale Facility and its low power contracts for Riot to mine bitcoin profitably). Riot made clear that it was going to develop for itself – not Rhodium – most, if not all, of the Rockdale Facility. This information was knowingly and intentionally withheld from Plaintiffs to secure their significant Investment.

29. Plaintiffs had no way to discover the material information that was intentionally being withheld from them by Defendants until Riot issued a press release regarding the Riot

Transaction in April 2021 – unfortunately, a few months after Plaintiffs made their Investments.² Plaintiffs’ reaction to the news contained very serious questions and existential and destructive competitive concerns in writing including: (1) “Is Riot going to block you from expanding?” (2) “They will want your trade secrets right somehow?” [Response from Defendant Nichols: “Of Course.”] (3) “Maybe you need additional security measures” (4) “Maybe they will hire away your workers and supervisors” (5) “Riot can now claim they have far more miners because the public won’t know the profit split ... They have essentially hijacked your thunder and normal people don’t know.”

30. In response, Defendants provided false assurances: “(1) (in response to blocking expansion): “Not at all, but this is why we’re moving to Waco.” (2) “Riot wants us here, Whinstone wants us to build building D.” (3) “I think it’s a good thing though. Most importantly because I’ve talked to Jason and they will now have credit worthiness for TXU because it’s a US public company. Margin calls evaporate.”

31. If Plaintiffs had known of this crucial and highly material information about the Riot Transaction, then Plaintiffs would never have invested in the first place. If there was ever any doubt regarding the materiality of the Riot Transaction and corresponding obligation for Defendants to disclose same (there should not be), such doubt was put to rest by statements made by Rhodium in its bankruptcy proceedings. For example, Rhodium has accused Riot of “simply wanting to stamp out a competitor in Rhodium because it stands in the way of Riot being able to make more money. Riot searched high and low for any reason to justify terminating the valuable power contacts.” Rhodium further stated:

² To the extent necessary, Plaintiffs affirmatively plead that the discovery rule applies to the causes of action asserted by Plaintiffs in this lawsuit.

“After Riot purchased Whinstone, it started digging into Whinstone’s ‘legacy contracts’ and realized it did not like the terms. Riot then started a campaign to get out of the contract. Riot doesn’t want any tenants at Rockdale. Rather, Riot wants to expand its own mining operations, and to do that, it needs Rhodium’s power and the infrastructure Rhodium paid to build out. Riot has not been coy about this: It has repeatedly told its investors it is trying to get out of Whinstone’s ‘legacy contracts’ so it can use Rhodium’s power and space for itself.”

32. There is no question that the Riot Transaction was a material fact that (i) was known by Defendants, *and* (ii) Defendants (as individuals and not as officers and managers of Rhodium) were obligated to disclose to Plaintiffs. Had Plaintiffs been made aware that they were investing millions of dollars in a startup with limited capital (Rhodium) that was pitted against an industry behemoth with over \$1 billion in cash reserves (Riot) in a fight over the very power contracts that were being touted by Defendants as worth hundreds of millions of dollars and the security for Plaintiffs’ investment, Plaintiffs never would have invested in the first place. Defendants must be held responsible for their knowing failure to disclose, and intentional concealment of, this critically material information, including their subsequent direct misrepresentations to Plaintiffs.

Plaintiffs’ Investment in Rhodium Encore

33. In or about January 4 - February 5, 2021, Plaintiffs loaned to Rhodium Encore, via promissory notes (the “Notes”) backed by security agreements (“Security”):

Valley High LP	\$11,550,000.00
Richard Fullerton	\$2,100,000.00
Transcend Partners Legend Fund LLC	\$1,750,000.00
Jerald and Melody Howe Weintraub Revocable Living Trust DTD 02/05/98, as amended	\$1,400,000.00
The GR Fairbairn Family Trust	\$700,000.00
The Grant Fairbairn Revocable Trust	\$700,000.00

The Nina Claire Fairbairn Revocable Trust	\$700,000.00
The NCF Eagle Trust	\$700,000.00
The GRF Tiger Trust	\$700,000.00
The NC Fairbairn Family Trust	\$700,000.00
Wilkins-Duignan 2009 Revocable Trust	\$630,000.00
345 Partners SPV2 LLC	\$250,000.00
Jacob Rubin	\$200,000.00
Kintz Family Trust	\$140,000.00

The maturity date for the Notes was originally July 30, 2024, and with extension, August 30, 2024.

The total Investment (debt plus equity) was approximately \$33 million.

34. Rhodium Encore was initially very profitable in its first year or so of operations. Indeed, Rhodium Encore was so profitable that it generated enough cash in ten months of being online, by April 2022,³ to fully pay back Plaintiffs. Eventually, with bitcoin prices falling, Rhodium Encore mining operations started to flatten-out, which would normally necessitate capital preservation until bitcoin prices rebounded. In addition, it was represented to Plaintiffs, when making their investment, that Rhodium Encore would generate cash to pay back the debt and adequately preserve cash to refresh its machine fleet at the appropriate time (3-4 years after the initial machines were installed and used). But Defendants failed to direct Rhodium to take any reasonable actions: Rhodium did not pay back the debt holders, like Plaintiffs, when generating

³ This time period should have been even more lucrative for Rhodium Encore. In February 2021, during a deep, prolonged freeze that crippled the Texas electrical grid (Winter Storm Uri), Defendants settled/released Rhodium Encore's right to substantial compensation from the lost bitcoin mining (and leverage to negotiate with electricity spiking to \$9,000 per KWh) for just pennies on the dollar, or tens of millions of value to Rhodium Encore.

significant cash; and Rhodium did not preserve sufficient cash to weather volatility in bitcoin mining operation costs (*i.e.*, fluctuations in bitcoin prices). Instead, Defendants directed Rhodium to use Plaintiffs' secured Investment to prop-up other failing bets with little protection to Plaintiffs. Why? Because Defendants were solely concerned with their self-interests and preserving the chance for the “moon shot” that would propel Defendants into realms of untold personal wealth. Plaintiffs look forward to Rhodium pursuing its own causes of action against Defendants for mismanagement and self-dealing as a means to recover value for Rhodium's creditors, like Plaintiffs.

The Roll-up Scheme / Promise to Pay Notes / Defendants Increase Equity

35. In 2021, Defendants devised a scheme to inflate future growth projects – falsely promising Plaintiffs substantial upside from the expansion of operations both at the Rockdale facility (through Building D) and Temple – to induce Plaintiffs into converting part of their Investment to equity in Rhodium Enterprises in preparation for an imminent IPO or SPAC merger. As early as February 2021, Defendant Nicholas assured Plaintiffs that Building D was “100% a go.” On April 28, 2021, the same day Riot announced its acquisition of Whinstone, Defendant Nicholas falsely claimed that Whinstone was contractually obligated to build Building D and emphasized that the partnership between Rhodium and Whinstone had “never been stronger.” Moreover, before completing the Roll-up Transaction, Rhodium had a lengthy (approximately 5 hour) meeting with Riot about their inability to properly operate Building C. That was around the same time Defendants signed a release with respect to Winter Uri credits.⁴ To induce Plaintiffs to

⁴ During Winter Storm Uri, Whinstone sold power back to the grid at rates as high as \$9,000/MW, compared to Rhodium's \$17/MW contract. Defendants were very excited about the substantial amount of reimbursement that would result and led Plaintiffs and other investors to believe that a huge windfall was coming. But this soon morphed into the next chapter of Defendants' deception and shifting narratives. Despite Whinstone securing approximately \$125 million in cash and credits, Defendants represented to Plaintiffs that Whinstone was never paid, and Defendants signed a release for the Uri credits – allegedly to

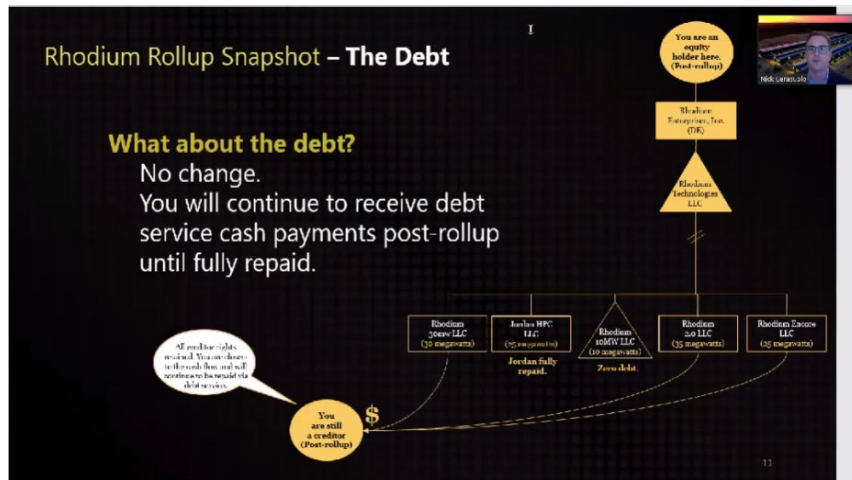
enter into the Roll-up Transaction, Defendants intentionally concealed and failed to disclose their increasing problems with Riot.

36. These misrepresentations, along with the others described in this section (the “Roll-up Fraudulent Statements”), intentionally created the illusion of growth for the purpose of enticing Plaintiffs into a transaction designed to strip Plaintiffs of crucial protections tied to their original investment agreements.

37. With this Roll-up Transaction moving a part of Plaintiffs’ Investment from Rhodium Encore to Rhodium Enterprises Inc., Defendants orchestrated the divestment of Plaintiffs’ economic interests in Rhodium Encore, as Rhodium Encore membership interests (previously held by Plaintiffs, among others) were ultimately transferred to Rhodium Technologies, an entity which Imperium controls.⁵ To induce Plaintiffs to agree to the Roll-up Transaction, and in addition to the material misrepresentations Defendants made regarding Building D, Defendants intentionally misrepresented to Plaintiffs that they would ensure the Roll-up Transaction did not impact Rhodium Encore’s commitment or ability to repay the Notes. In fact, Defendants represented to Plaintiffs that the Notes would be repaid in full “on or ahead of schedule” with Rhodium Encore’s cash/assets:

cover production losses (which raises serious doubts as to why a release was needed if no payment was made). Defendant Nichols texted Whinstone’s CEO, estimating they were making “\$20-\$30M by the end,” while telling Plaintiffs that Whinstone was “owed \$40-\$50M in credits.” Rather than investigate this discrepancy between up to \$50 million and Whinstone’s claim of \$0 in payments, Defendants were focused on selling \$50 million of their own stock and arranging miner arbitrage deals for their own self benefit, neglecting to secure up to \$62.5 million for their investors.

⁵ Around this time, Imperium, which is owned by Defendants, cashed out nearly \$45 million, creating a significant tax liability. Upon information and belief, in December 2020, Defendants changed Rhodium Technologies’ bylaws to shift the \$13.5 million tax burden onto the company, *i.e.*, the investors. This appears to have been disguised as a “distribution,” with Defendant Nichols dismissing it as “phantom income tax.”



38. While Defendants made false promises to Plaintiffs that Building D was “100% a go,” Rhodium’s “partnership” with Whinstone had “never been stronger,” and Rhodium had a signed contract related to Building D, recently discovered communications (specifically, communications between Defendants and third-parties during the relevant time) reveal the truth: Defendants knew – before the Roll-up Transaction – that Rhodium could not raise sufficient funding for the buildout of Building D. Defendants were acutely aware that the promise of expanding to Building D would induce Plaintiffs into the Roll-up Transaction, and Defendants flat out lied to Plaintiffs regarding same. For example, despite knowing that expansion into Building D would not happen, Defendants continued promoting Building D’s 100MW potential in presentations to hype, and double down on, Rhodium’s promised growth. Each of these misrepresentations directly benefited Defendants through enriching Imperium, to the detriment of Plaintiffs.

39. Notwithstanding the representations Defendants were making to Plaintiffs, by late April 2021, Defendant Nicholas was already admitting to Winstone’s CEO that the economics of Building D were unsustainable, stating: “I need it to make economic sense to build here, and

\$550k/megawatt (\$11.11MM) is not that.” Did Defendant Nicholas disclose his concerns to Plaintiffs? Of course not.

40. By early May 2021, Defendant Nicholas informed a third-party in the industry that Rhodium was abandoning Building D entirely. Unbelievably, in the same month during management presentations pitching the Roll-up Transaction (and to fraudulently induce Plaintiffs), Defendants falsely projected 300MW of growth – despite Rhodium only having 55MW of operational capacity. It was made clear that the 300MW of projected growth related to Building D, which – by the time of the May 2021 Roll-up presentations – Defendants already knew was a dead deal.

41. During these same presentations, Defendants further misrepresented that they projected \$3 billion as a base valuation for the next round of financing. Incredibly, despite knowing that the Building D buildout/expansion would *not* happen, Defendants represented that the \$3 billion valuation was conservative given the expected upside from Building D and Temple.⁶ With respect to Temple, Defendants misled Plaintiffs by claiming that Temple’s costs would mirror those of Rockdale – requiring minimal capital and no equity dilution. Defendants knew this was untrue (also failing to disclose that Temple lacked a competitive energy contract – a critical factor for investors) but created the false narrative to hide the reality of Temple’s economic impracticality (just like Defendants were doing with respect to Building D). It is truly hard to imagine more blatant and material misrepresentations to investors.

⁶ Unbeknownst to Plaintiffs, in March 2021, prior to the Riot Transaction announcement, Defendants sold approximately \$32 million of personal stock to another investor at approximately the \$3 billion valuation – so Defendants needed to maintain their artificial valuation to avoid jeopardizing their self-interested transaction.

42. Indeed, notwithstanding their representations to Plaintiffs to the contrary, Defendants never intended to, and did not, cause Rhodium to implement any protections to ensure that Rhodium Encore's secured cash/assets would be reserved for repayment of Rhodium Encore's debt. Instead, Defendants maneuvered to weaken Plaintiffs' rights and Investment protections. Defendants wanted to use Rhodium Encore's substantial cash/assets as a "piggy bank" for other, non-related projects, and tricked Plaintiffs into agreeing to the Roll-up Transaction as a means to that end. Moreover, given Defendants had already pocketed approximately \$32 million from their personal (and undisclosed) sale of stock and thus securing their own financial safety net, Defendants' plan was to "moonshot" and "go for broke" with their investors' money. Unfortunately, this type of malfeasance and self-dealing by Defendants is what landed the Rhodium enterprise in bankruptcy. As indicated above, Plaintiffs look forward to Rhodium seeking recoveries from Defendants related to damage caused to the Rhodium debtors.

43. Notably, in a similar Rhodium project (Rhodium 30MW) Defendants were creditors collectively investing approximately \$2.37 million. Following the Roll-up Transaction, unlike with Rhodium Encore, Defendants ensured that their Rhodium 30MW investment was fully paid back to them. Furthermore, Defendants (through Imperium), used the complicated Roll-up Transaction process as a means to extract and steal an additional 6.5% of the value of Rhodium Encore (and other similar Rhodium-related operating entities).

44. The Roll-up Transaction involved two steps. First, the non-Imperium investors in the operating companies Rhodium 30MW, LLC, Rhodium Encore, LLC, Rhodium 10MW, Rhodium 2.0, LLC, and Jordan HPC, LLC ("Operating Companies"), including Plaintiffs, and the non-Imperium investors in Rhodium Technologies exchanged their interests in the Operating Companies and Rhodium Technologies, respectively, for shares in Rhodium Enterprises. Second,

after all the non-Imperium interests in the Operating Companies were contributed to Enterprises, Defendants caused Rhodium Enterprises to contribute all its interests in the Operating Companies to Technologies in exchange for interests in Rhodium Technologies.

45. The Roll-up Transaction should not have altered the distribution of the economic interests in the Operating Companies between Imperium and the non-Imperium investors. Imperium owned approximately 55.6% of the value of the Operating Companies prior to the Roll-up Transaction, and it should have owned the same percentage afterwards. Indeed, in the run-up to the Roll-up Transaction, Defendants told the non-Imperium investors that they would have the same interest in the Operating Companies post-transaction as they did pre-transaction. That representation was knowingly false.

46. Unbeknownst to the non-Imperium investors, Defendants used the Roll-up Transaction to misappropriate, to themselves, around 6.5% of the value of the Operating Companies. That is, through the Roll-up Transaction, Imperium increased its ownership in the overall assets of the business from approximately 55.5% to 62%.

47. There is no justification for Defendants' decision to award themselves (through Imperium) approximately 6.5% more of the value of the Operating Companies as part of the Roll-up Transaction for no consideration. Defendants valued the Operating Companies at around at the time of the Roll-up Transaction; thus, Defendants (through Imperium) effectively stole around 6.5% from Rhodium Enterprises. The Rollup Transaction should have resulted in Rhodium Enterprises owning approximately 44.4% of the economics of the Operating Companies, but Defendants' self-dealing caused Rhodium Enterprises to own only around 37.9%.

Defendants' Other Frauds and Mismanagement

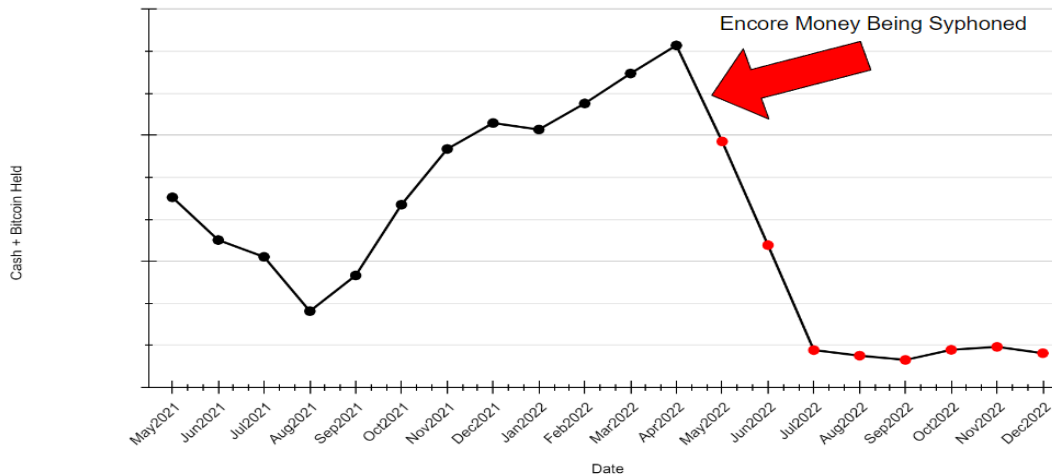
48. In 2021, Rhodium initiated plans to build-out a new, large bitcoin mining operation at the Temple Facility.⁷ The Temple Facility was principally funded/controlled through Rhodium Renewables. After Defendants shut-down an IPO following their own negligence,⁸ sharp reduction in the price of bitcoin (as well as an impending bitcoin “halving” event), cost overruns, and regulatory issues, the substantial funding needed to build-out the Temple Facility was drying up.

49. Desperate for Temple Facility funding, Defendants directed the movement of cash and assets (that could have been used to pay debt) from Rhodium-related entities, like Rhodium Encore. Rhodium Encore’s cash and bitcoin holdings tumbled by approximately **95%** in just a few months from April 2022 to July 2022:

⁷ In April 2021, Defendant Nichols also represented that the Temple Facility had a favorable energy contract on similar terms to those at the Rockdale Facility, which was false.

⁸ Some of the Plaintiffs introduced Defendants to bankers for a SPAC and IPO, helped them engage world class PR and IR efforts, and provided feedback throughout the roadshow. Yet, due to critical missteps driven by Defendants’ self-interest, the IPO was consistently delayed. Defendants’ insistence on an Up-C structure, designed solely to benefit Imperium, delayed the S-1 filing and involved attempts to sell TRA credits to hedge funds. Furthermore, failure to pass Jefferies’ audit committee, coupled with undisclosed insider equity sales through Imperium (both on the S-1 and to their bankers), further eroded investor trust. The S-1 filing in October 2021 triggered an IP violation claim for immersion cooling technology patent infringement – another issue Defendants concealed until it threatened their interests. The S-1 also resulted in Riot auditing Whinstone’s payments versus what the Rhodium entities made in profits. Ultimately, Defendants canceled the IPO one day after receiving a demand letter from Rhodium 2.0 investors accusing them of securities fraud and self-enrichment. Instead of disclosing the claims to potential investors, Defendants lied claiming it was their duty to secure a higher valuation than the \$1 billion being offered as part of the IPO. These actions, through which Defendants consistently prioritized personal gain over the interests of their investors, raise the question whether Defendants deliberately avoided raising \$100-\$150 million to close the IPO (while knowing the massive capital needs for the Temple facility) because Defendants already cashed out millions for their personal benefit in undisclosed private sales earlier in 2021 and did not want to publicly disclose the potential for a lawsuit against them. The pattern is unmistakable: Defendants fraudulently induced Plaintiffs into making their substantial Investment so Defendants could set off on a course of unchecked self-dealing and self-enrichment.

Cash + Bitcoin Held vs. Date



50. Without that financial lifeline, the Temple facility could not have survived with depressed bitcoin prices and cost overruns. Defendants continued transferring Rhodium Encore’s cash to provide life-support to Temple/Rhodium Renewables up until the filing of the bankruptcy proceeding.

51. But for the clear goal of Defendants to protect, and increase, their personal wealth at all costs, Rhodium Encore would have had enough liquidity to pay in whole (or substantially in whole) the Plaintiff’s Notes upon maturity.

52. Defendants mismanaged and defrauded Rhodium in numerous other ways, including: (i) Defendants embezzled \$13.5 million to pay a “phantom tax” in 2021 (through retroactive changes to operating agreements, which opened the door for Defendants to engage in the shocking self-dealing of using Rhodium funds to pay their personal taxes), and (ii) Defendants usurping a corporate opportunity by purchasing miners at below market rates and then, off books, selling those miners at market rates, which resulted in Defendants pocketing an estimated \$25

million (at minimum) in profits that should have gone to Rhodium Encore.⁹ The blatant self-dealing in which Defendants engaged truly shocks the conscience and knows no bounds.

53. Plaintiffs, again, hope for action by the Rhodium debtors' estates to recover from Defendants for their mismanagement and negligence. For Plaintiff's purposes, importantly, but for Defendants' lies, Plaintiffs would not have invested in Rhodium in the first place. Defendants should be held personally liable for intentionally procuring an investment from Plaintiffs through their rampant and intentional fraud.

**CAUSE OF ACTION: FRAUD/FRAUDULENT INDUCEMENT/FRAUD BY
NONDISCLOSURE
(THE RIOT TRANSACTION)**

54. Pursuant to Texas state law, a cause of action is pled against Defendants for fraud/fraudulent inducement/fraud by nondisclosure in relation to the Riot Transaction. The allegations contained in all of the paragraphs of this Pleading are hereby reaverred and realleged, for all purposes, and incorporated herein with the same force and effect as if set forth verbatim herein.

55. Defendants failed to disclose the Riot Transaction, which is material and which Defendants knowingly and intentionally withheld to induce Plaintiffs to make the Investment. Defendants knew that (i) Plaintiffs were unaware of the Riot Transaction (because Defendants intentionally withheld the information from Plaintiffs), and (ii) Plaintiffs did not have an equal opportunity to discover the withheld information. Defendants intended to induce Plaintiffs into making the Investment by concealing and failing to disclose the Riot Transaction. Defendants had

⁹ Defendants used investor funds to secure deposits on low-cost miners. When the Building D project vanished (as discussed herein) and Defendants had extra miners for delivery in 2021, Defendants exploited the price arbitrage by selling these miners (or the contract terms) at over three times the locked-in price – *solely for personal profit*. Estimated profits to Defendants are over \$25 million and could be as high as \$50 million. Later, when miner prices crashed, Defendants offloaded the entire \$72 million miner impairment loss on their investors in a classic “heads I win, tails you lose” plot.

a duty to disclose this material information to Plaintiffs. Had Plaintiffs known of the Riot Transaction, Plaintiffs would not have made the Investment. Plaintiffs have therefore suffered injury.

56. Plaintiffs have been damaged by Defendants' actions, and Defendants are liable to Plaintiffs for all recoverable damages, including interest at the highest legal rate, attorneys' fees, and costs. Plaintiffs are also entitled to, and seek, an award of exemplary damages under Section 41.003 of the Texas Civil Practice and Remedies Code because the harm with respect to which Plaintiffs seek recovery of exemplary damages resulted from Defendants' fraud and malice

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

**CAUSE OF ACTION: FRAUD/FRAUDULENT INDUCEMENT/FRAUD BY
NONDISCLOSURE
(THE ROLL-UP TRANSACTION)**

58. Pursuant to Texas state law, a cause of action is pled against Defendants fraud/fraudulent inducement/fraud by nondisclosure in relation to the Roll-up Transaction. The allegations contained in all of the paragraphs of this Pleading are hereby reaverred and realleged, for all purposes, and incorporated herein with the same force and effect as if set forth verbatim herein.

59. Defendants made the Roll-up Fraudulent Statements and other misrepresentations, which are material misrepresentations that they knew were false when they made them or that they made recklessly without any knowledge of their truth and as a positive assertion. Defendants made the material misrepresentations with the intent that the Plaintiffs act upon them, and Plaintiffs acted in reliance on the misrepresentations and suffered injury.

60. Plaintiffs have been damaged by Defendants' actions, and Defendants are liable to Plaintiffs for all recoverable damages, including interest at the highest legal rate, attorneys' fees, and costs. Plaintiffs are also entitled to, and seek, an award of exemplary damages under Section 41.003 of the Texas Civil Practice and Remedies Code because the harm with respect to which Plaintiffs seek recovery of exemplary damages resulted from Defendants' fraud and malice.

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

CONDITIONS PRECEDENT

62. All conditions precedent to Plaintiffs' claims for relief have occurred and been satisfied or have been excused or waived.

RULE 193.7 NOTICE

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

MISCELLANEOUS

64. The right to plead any and all claims, causes of action and/or theories in the alternative is invoked and all claims, causes of action, and/or theories of recovery are hereby pled, in the alternative, to the extent necessary. The right to bring additional causes of action against and to amend this Action as necessary is hereby specifically reserved.

PRAYER

Therefore, based on the foregoing, Plaintiffs respectfully request the following relief from the Court:

- a) Judgment in favor of Plaintiffs against Defendants, jointly and severally, for all actual damages, compensatory damages, exemplary damages, reasonable attorney's fees, reasonable paralegal fees, costs of court, and pre- and post-judgment interest at the highest rate allowed by law;
- b) All further relief whether general or special, at law or in equity, to which Plaintiffs show themselves to be entitled.

Respectfully submitted,

/s/ Chase J. Potter

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EXHIBIT 106
FILED UNDER SEAL

EXHIBIT 107
FILED UNDER SEAL