

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

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

**LEHOTSKY KELLER COHN LLP’S RESPONSE TO AMENDED DECLARATION OF  
MARK CHRISTOPHER WHEELER AND BRIEF IN SUPPORT OF  
ITS OBJECTION TO DEBTORS’ PROPOSED PLAN  
(Relates to ECF Nos. 1821, 2001, 2010, 2140)**

Lehotsky Keller Cohn LLP (“**LKC**”) files this response (the “**Response**”) to the *Amended Declaration of Mark Christopher Wheeler* (ECF No. 2140) (the “**Amended Declaration**”), and brief in support of *Lehotsky Keller Cohn LLP’s Limited Objection to Plan and Reservation of Rights* (ECF No. 2010) (the “**Objection**”) and respectfully states as follows:

**RESPONSE**

1. The Amended Declaration of Mr. Mark Christopher Wheeler confirms that for months, the Special Committee has deceived the Court, defamed LKC, and improperly delayed payment of LKC’s success fee. Over the course of several briefs, the Special Committee repeatedly insisted that LKC and the Court must wait for the “agreed upon” tax allocation with Whinstone, ECF No. 1614 at 3, which would “*determine* how the [\$185 million] settlement payment will be allocated as between a Damages Amount and an Asset Purchase Amount,” ECF No. 1732 at 17

<sup>1</sup> 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 (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 Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



(emphasis added). According to the Special Committee: “Only *after* that allocation is complete can the Debtors and LKC (*or the Court*) negotiate the amount of the success fee, which is *dependent on* the amount allocated to the settlement of legal claims.” ECF No. 1665 at 2 (second and third emphases added).

2. The Special Committee further claimed that “LKC breached its fiduciary duty” by not waiting for “the actual figures” determined by Whinstone. ECF No. 1732 at 21-22. Supposedly, LKC created “a false audit trail,” *id.* at 4, violated “the rules of professional conduct,” *id.* at 4, 10, and “put[] the Debtors . . . in a terrible situation,” *id.* at 21. The Special Committee represented that “[m]aking the payment that LKC demands would cause Rhodium to breach the PSA and possibly violate the Internal Revenue Code and Treasury Regulations Thereunder.” *Id.* In six separate briefs, the Special Committee made a slew of incendiary comments, accusing LKC of “acting in utter disregard to its clients’ need to comply with the Whinstone settlement agreement and the Internal Revenue Code,” ECF No. 1530 at 2, and violating its “ethical and fiduciary obligations,” *id.* at 3, warranting “sanctions,” *id.* at 15; *see also* ECF Nos. 1614, 1626, 1665, 1732, 1733.

3. But Mr. Wheeler’s Amended Declaration shows that none of this was remotely true, and the Special Committee knew it. The Whinstone allocation had nothing to do with allocating settlement proceeds to litigation value. ECF No. 2140 ¶¶ 10, 14. The tax allocation “is not connected to LKC at all.” Hearing Tr. Dec. 3, 2025 at 94:15-16 (statement by Debtors’ bankruptcy counsel, Ms. Patty Tomasco). Instead, as Mr. Wheeler explained, the Whinstone tax allocation pertains only to “tangible assets,” ECF No. 2140 ¶ 10, which were a tiny portion of the \$185 million settlement, with no impact on the LKC success fee. Thus, for months, the Special Committee was peddling a pure fiction to the Court.

4. This was no harmless mistake. The Special Committee attacked LKC's professionalism and reputation and forced the small firm to spend over \$200,000 in outside counsel expenses and more than \$1 million of its own attorneys' time defending itself and its success fee. Compounding the harm, LKC has had to wait eight months after the Whinstone settlement to recover its success fee due to the Special Committee's deceit and delay tactics.

5. It is unclear at this point why the Special Committee would willfully raise frivolous claims, make false statements to the Court, or attempt to maliciously smear an adversary. But the answer to that question can wait for another day. At this time, LKC merely reiterates its request that the Court sustain LKC's objection to the proposed plan (ECF No. 2010) and deny the Special Committee and the Debtors the exculpation they seek.

### **BACKGROUND**

**A. The Special Committee baselessly accuses LKC of professional impropriety for seeking its success fee instead of waiting for the "agreed upon" Whinstone tax allocation.**

6. The Court is well-familiar with the Special Committee's onslaught of invectives and repeated refrain that the "agreed upon" Whinstone tax allocation would "determine how the settlement payment will be allocated as between a Damages Amount and an Asset Purchase Amount," ECF No. 1732 at 17. Starting in August, the Special Committee accused LKC of "acting in utter disregard to its clients' need to comply with the Whinstone settlement agreement and the Internal Revenue Code." ECF No. 1530 at 2. The Special Committee asserted that, merely by seeking document discovery, LKC committed "violation[s] of ethical and fiduciary obligations," *id.* at 3, and sought sanctions against LKC for its supposedly "unreasonable, unethical, . . . bad faith, and sanctionable" conduct. *Id.* at 14-15. LKC supposedly "put[] Debtors at audit risk with the IRS" and "could create a negative record for the Debtors with the IRS," "in violation of the Texas Disciplinary Rules of Professional Conduct." *Id.* at 3, 11; *see also id.* at 14 ("LKC created

an artificial emergency . . . on a non-existent dispute . . . in *blatant violation of its ethical obligations.*”) (emphasis added); ECF No. 1614 at 1 (“This unnecessary ‘dispute’ results solely from *irrational impatience.*”) (emphasis added); *id.* at 2 (“LKC ratchets up its improper behavior to an alarming new level by ignoring its ethical obligations . . . .”)

7. The Special Committee then insisted that “[a]bsent a final Allocation Statement” which “is finalized between the Debtors and Whinstone,” the “Debtors cannot properly determine the fees owed each of its professionals,” ECF No. 1530 at 8; “*it is impossible* to determine how much of those assets could be considered ‘power credits’ or ‘damages,” *id.* at 10. According to the Special Committee, the Whinstone tax “allocation *must* be determined first, and agreed upon with Whinstone,” and the “amount of money to be allocated toward the settlement of claims therefore *cannot be determined*” before then. ECF No. 1614 at 3 (emphases added). “[A]llocating a multi-million-dollar payment *inconsistently* with the way the payments must be allocated and reported to the IRS creates potential violations of federal tax law and potential federal income tax liability.” *Id.* at 7 (emphasis in original).

8. The Special Committee soon went even further, declaring that until there was an “agreed upon” tax allocation with Whinstone there was “nothing to discover,” because the evidence necessary to determine the LKC success fee “*d[id] not yet exist,*” *id.* at 3, 10 (emphasis added). In other words, according to the Special Committee, the only thing that mattered was the supposedly forthcoming Whinstone tax allocation. Nothing else was even “evidence.”

9. The Special Committee reiterated its position—and its malignant accusations against LKC—in multiple briefs. *See, e.g.,* ECF No. 1665 at 2 (“Here, the Debtors and Whinstone first have to agree . . . . Only *after* that allocation is complete can the Debtors and LKC (*or the Court*) negotiate the amount of the success fee, which is *dependent on* the amount allocated to the

settlement of legal claims”) (second and third emphasis added); *id.* at 3 (“discussions between the Debtors and LKC regarding the amount of the success fee due to the LKC would be futile and improper *unless and until* the Debtors and Whinstone reach agreement on how, for tax purposes, to allocate the money paid by Whinstone to Debtors”) (emphasis in original); ECF No. 1732 at 2, 10 (asserting LKC was “putting its own interests ahead of the clients’ interests and its duties to the Debtors as their current counsel” and was acting “in violation of several Model Rules of Professional Conduct and Texas Disciplinary Rules of Professional Conduct”); ECF No. 1733 at 6 (“*Instead of waiting for the accurate allocation to be reached, LKC fabricated a premature fee dispute* for the purpose of submitting this incorrect, privileged, and likely higher amount to the Court in pursuit of the highest success fee possible, because it would be unable to submit this higher, incorrect amount if it waited for the accurate allocation.”) (emphasis added); *id.* (“this fee dispute puts Debtors in jeopardy by increasing their risk of audit by the IRS or the State”); *id.* at 8 (“LKC has no credible basis on which to calculate its Success Fee because it is premature, since Debtors have not yet agreed on the Damages Amount”).

10. Putting a fine point on it, the Special Committee argued in its objection to LKC’s fee application: “The Fee Application is premature because the calculation of LKC’s success fee cannot take place until the Debtors and Whinstone determine what portion of the Settlement Amount is the Damages Amount and what portion is the Asset Purchase Amount.” ECF No. 1732 at 17. The Special Committee contended, again, that “[t]he Success Fee can only be calculated after the Debtors and Whinstone determine how the settlement payment will be allocated as between a Damages Amount and an Asset Purchase Amount.” *Id.*

11. But that was not enough for the Special Committee. In its objection to LKC’s fees, the Special Committee publicly declared: “The Debtors hold and assert a claim against LKC for

breach of fiduciary duty in connection with the Fee Application.” *Id.* at 20. The Committee contended that “LKC breached its fiduciary duty by demanding fees before they are due—and by making that demand in such a manner that, if Rhodium acquiesced, would create substantial liability.” *Id.* at 21. Supposedly, “[m]aking the payment LKC demands would cause Rhodium to breach the PSA and possibly violate the Internal Revenue Code and the Treasury Regulations thereunder.” *Id.*; *see also id.* (“LKC is putting the Debtors—its own *clients*—in a terrible situation as part of what looks like an effort to leverage a favorable result.”) (emphasis in original). And, the Committee argued: “Further demonstrating its breach of fiduciary duty, LKC bases the amount of its current fee demand on preliminary, *projected* numbers, *rather than waiting for the actual figures* that would accurately shape its entitlement.” *Id.* at 21-22 (second emphasis added).

12. Worse, the Special Committee insisted on making these accusations *publicly* even after LKC requested that the Committee make the accusations under seal to avoid the public impact on the firm’s reputation. *See* Ex. A (Sept. 10, 2025 email from T. Schmeltz to J. Wolfshohl); Ex. B (Sept. 30, 2025 email from T. Schmeltz to J. Wolfshohl).<sup>2</sup> Even though the Special Committee had demanded that LKC place much of its filings under seal, the Special Committee consciously chose to publicly flail LKC.

13. Only after months of leveling baseless attacks against LKC did the Special Committee retreat. On November 1, 2025, just two days before trial, the Special Committee withdrew its “arguments and/or claims related to any breach of privilege, ethical obligations, fiduciary duty or other misconduct by Lehotsky Keller Cohn.” ECF No. 1930 at 1.

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<sup>2</sup> Attached hereto as **Exhibit C** is the *Declaration of Joshua W. Wolfshohl in Support of Lehotsky Keller Cohn LLP’s Response to Amended Declaration of Mark Christopher Wheeler and Brief in Support of Its Objection to Debtors’ Proposed Plan.*

**B. The Debtors and Whinstone fail to agree on a tax allocation because the Debtors drastically overvalued the assets of their business.**

14. One might think that, after demanding that LKC and the Court wait for the decisive “agreed upon” Whinstone tax allocation, there would actually be an “agreed upon” allocation. But such was not the case.

15. The Special Committee and Whinstone could not agree because the Special Committee and the Debtors drastically overvalued the assets of the business that were sold. Mr. Wheeler’s Amended Declaration reveals a significant gulf between the parties’ valuations of the Debtors’ tangible assets. The Debtors’ tax consultants valued those assets at more than \$43.5 million dollars, *six times higher* than the \$7.2 million valuation Whinstone proposed during negotiations. ECF No. 2140 ¶¶ 6, 8.

16. The parties also ascribed vastly different values to the intangible assets. In negotiations with Whinstone, “[t]he Debtors ascribed \$56.89 million to intangible assets.” *Id.* ¶ 8. But Whinstone valued the intangible assets at *zero*. *Id.*

17. If there was going to be an “agreed upon” allocation, the Special Committee and the Debtors would have had to retreat from their extreme position. Two weeks before the Special Committee’s first brief demanding that LKC wait for the Whinstone allocation, Whinstone’s parent company, Riot Platforms, Inc., filed its Form 10-Q on July 31, 2025, disclosing Whinstone’s position to the market: “The fair market value of the tangible assets acquired was estimated to be \$7.3 million and was determined using the cost approach, which utilizes replacement cost as an indicator of fair value.”<sup>3</sup> As for its assessment of intangible assets, Riot stated, “[n]o identifiable intangible assets were acquired, no goodwill was recognized, and no liabilities were assumed in

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<sup>3</sup> Riot Platforms, Inc., Form 10-Q (July 31, 2025), <https://perma.cc/A4Q8-CYJW>, at 9.

connection with the transaction.” *Id.* Riot also “recognized a loss of \$158.1 million” in connection with its settlement with the Debtors.<sup>4</sup> *See also* Hearing Tr. Dec. 3, 2025 at 123:21-125:9 (testimony of Mark Wheeler regarding the Riot 10-Q).

18. Thus, by this point, it was clear where Whinstone stood. Whinstone stated its view of the proper allocation in a public SEC filing. But the Debtors and the Special Committee refused to agree with Whinstone’s publicly stated allocation. Ironically, they continued to push for different numbers contradicting the public filing despite simultaneously representing to the Court that inconsistent numbers from LKC would create audit risk. *See, e.g.*, ECF No. 1530 at 3 (claiming LKC’s discovery requests “put[] the Debtors at audit risk with the IRS”); ECF No. 1732 at 4 (asserting LKC’s fee application created “a false audit trail”). As the Court is aware, internal emails show that the Special Committee and the Debtors did not want to relent.

**C. Having failed to obtain an agreement, Debtors move the Court to approve Debtors’ tax allocation.**

19. Whinstone never agreed to the Special Committee’s inflated numbers. Without an agreement, the Debtors eventually filed a motion to enforce the Purchase and Sale Agreement between the Debtors and Whinstone. But the Debtors failed to identify any of the necessary background. ECF No. 1881. The Court held a hearing on the motion on November 25, 2025, and noted the lack of background and the need for a declaration providing it. *See* Hearing Tr. Dec. 3, 2025 at 90:23-91:1.

20. The Debtors failed to follow the Court’s direction. Instead, On December 2, 2025, they filed a truncated version of a declaration from Mr. Wheeler previously submitted in

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<sup>4</sup> Perhaps coincidentally, \$158 million is the same number that attorneys from Stris & Maher LLP and LKC had previously come up with as the expected value of Debtors’ litigation claims against Whinstone. *See* Hearing Tr. Nov. 3, 2025 at 47:25-48:5 (testimony of Jonathan Cohn) (“Q. [...] So just to be clear, what does that \$158 million figure represent? A. That represents the amount that the litigation team collectively thought we would get if we litigated these claims. If we litigated and we had a judgment, our expected value of that was \$158 million.”).

connection with the LKC fee dispute. *Compare* ECF No. 2090 (December 2, 2025 declaration) *with* ECF No. 1943-2 (declaration submitted November 3, 2025, in the LKC fee dispute).

21. The next day, the Court reiterated its request for a declaration providing the requisite background. Hearing Tr. Dec. 3, 2025 at 88:21-24 (“I’ve read Mr. Wheeler’s declaration and it really didn’t tell me what the issues were that resulted in the need to file a motion as opposed to having agreement with the parties.”); *id.* at 90:17-91:1 (“[W]hat I really need is a declaration from somebody with knowledge that goes through what the dispute was, what happened back and forth or put a witness on. Because right now I have no evidence to that effect. [...] I thought I was going to get a full declaration as to what happened, who said what, you know, and everything.”).

22. The Debtors and the Special Committee again resisted. Trying to explain why a declaration was unnecessary, Debtors’ bankruptcy counsel, Ms. Patty Tomasco, contended that the Debtors’ tax allocation with Whinstone “is not connected to LKC at all.” *Id.* at 94:15-16. The Court still required an amended declaration. *Id.* at 95:11-16.

23. Finally, on December 11, 2025, the Debtors provided the Amended Declaration. ECF No. 2140. It reveals why the Debtors and the Special Committee strenuously resisted providing the background the Court had requested: *Mr. Wheeler’s declaration shows that the Special Committee’s prior statements and attacks on LKC were plainly false.* Not only was there never an “agreed upon” tax allocation, but Mr. Wheeler declared under penalty of perjury that the sought-after tax allocation has nothing to do with LKC, its success fee, or the proper division of the \$185 million settlement between business value and damages. Instead, “the Debtors and Whinstone agreed that the *only item* to be reported on Form 8594, Asset Acquisition Statement Under Section 1060, was *the tangible assets.*” *Id.* ¶ 10 (emphasis added), *see also* ¶ 14 (no

allocation to litigation value). And the Debtors “were at an impasse on tangible asset valuation.”

*Id.* ¶ 10.<sup>5</sup>

**D. LKC timely objects to the exculpation clause proposed by Debtors and the Special Committee in the proposed plan.**

24. After the Debtors filed their proposed plan and plan supplement (ECF Nos. 1821 and 2001), LKC filed a timely limited objection and reservation of rights. ECF No. 2010. LKC explained that it “is not opposed in principle to the Plan, but the Plan’s release and exculpation provisions inhibit LKC’s right to assert claims and causes of action against the Debtors, the Special Committee, and their respective counsel related to postpetition breaches of the March 2025 engagement letter, . . . LKC’s Success Fee, defamation, and sanctions.” *Id.* at 1. LKC accordingly “request[ed] that any confirmation order approving the Plan preserves LKC’s claims and causes of action described in [its] Objection.” *Id.* at 7.

25. At the Court’s December 3, 2025 hearing, counsel for LKC further explained its objection to the proposed plan, namely that “the Debtors and the Special Committee are beneficiaries of an exculpation provision that would eliminate” LKC’s potential claims against them if the plan were confirmed, even though the parties still had a “pending dispute” over the LKC success fee. Hearing Tr. Dec. 3, 2025 at 80:4-13. The crux of LKC’s objection is that it should not “be subject to the exculpation provision that benefits the Debtors and the Special Committee to the extent of claims that relate to . . . LKC, its retention, its success fee, and many

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<sup>5</sup> Although Mr. Wheeler’s Amended Declaration states that it is based “on personal knowledge,” ECF No. 2140 ¶ 3, counsel for the Debtors and the Special Committee previously suggested to the Court that Mr. Wheeler did not have personal knowledge of all relevant conversations between the Debtors and Whinstone. *See* Hearing Tr. Dec. 3, 2025 at 93:8-15 (statement by Mr. Schmeltz) (“I think there’s an interim conversation that both Patty and I have had separately I think with Whinstone’s lawyer, which is that the missing piece of the puzzle where they have said to us, we can’t agree to your position, but we’ll agree to a court order. Mr. Wheeler may not have been on that particular call with that missing puzzle piece. I know I’d testify to it if it’s appropriate.”); 93:16-17 (statement by Ms. Tomasco) (“I would testify as well. We were all on the calls.”).

of the things that were done in connection with the LKC fee application and some of the pleadings and things like that that were filed.” *Id.* at 81:13-22.

26. The Special Committee agreed that “the real focus of [the parties’] dispute is whether the Debtors and the Special Committee themselves can get the benefit of releases and exculpation under th[e] plan,” which the Special Committee claimed was “appropriate in this circumstance.” *Id.* at 82:14-18. When pressed by the Court on whether the plan language would preclude LKC from bringing a defamation claim against the Special Committee, the Special Committee responded that such a claim would be “subject to . . . meeting the requirements of an administrative claim,” and could not definitively answer whether the exculpation provisions would bar, for example, a defamation claim against the Special Committee. *Id.* at 82:22-83:12. But LKC should not have to shoehorn its claims against the Special Committee and the Debtors for their postpetition conduct into the administrative claim requirements or else risk losing the ability to bring those claims. The Special Committee and the Debtors have made their own bed through their deceitful tactics and undue delay. They should not be permitted to hide behind an exculpation provision now.

### **ARGUMENT**

27. The Court should sustain LKC’s objection to the proposed plan. Neither the Special Committee nor the Debtors should be exculpated from the claims LKC may have against them. Several months of filings confirm that the Special Committee, its individual directors, and its counsel, in coordination with the Debtors and their counsel, have engaged in a spurious and malicious assault against LKC that includes the filing of a frivolous claim for breach of fiduciary duty, repeated false accusations of professional misconduct, and a baseless refusal even to negotiate the LKC success fee, delaying payment for almost eight months. LKC respectfully

requests the Court deny exculpation so LKC can explore, and, if necessary and appropriate, pursue its claims against the Special Committee and the Debtors.

**A. The Court should reject proposed plan language exculpating the Special Committee from potential claims relating to the LKC fee dispute.**

28. For months, the Special Committee repeatedly and falsely claimed that LKC and the Court had to wait for the Whinstone tax allocation, which would dictate LKC's fees. *See* ECF No. 1626 at 2; ECF No. 1665 at 2, 3; ECF No. 1732 at 2, 4. And the Special Committee publicly maligned LKC for refusing to wait for the non-existent "agreed upon" tax allocation with Whinstone, ECF No. 1614 at 3, claiming that LKC's conduct was "unreasonable, unethical, . . . bad faith, and sanctionable," and accusing LKC of "violation[s] of ethical and fiduciary obligations." ECF No. 1530 at 3, 14-15; *see also* ECF No. 1614 at 2, 7; ECF No. 1732 at 4, 10, 21-22. Not until the eve of trial did the Special Committee withdraw its litany of misconduct allegations levied against LKC. ECF No. 1930 at 1.

29. But as the Amended Declaration lays bare, the Whinstone tax allocation has nothing to do with the LKC success fee. Ms. Tomasco likewise admitted the Whinstone tax allocation "is not connected to LKC at all." Hearing Tr. Dec. 3, 2025 at 94:15-16. The Special Committee was fully aware that the tax allocation with Whinstone had no bearing on the LKC success fee. Instead, the tax allocation pertained only to "the tangible assets." ECF No. 2140 ¶ 10; *see also id.* ¶ 14 (no allocation to litigation value); ¶ 7 (quoting section 2.3 of the Purchase and Sale Agreement) (the required allocation is not binding on other "stakeholders" and is just "[f]or tax purposes").

30. It is unclear why the Special Committee and its counsel from Barnes & Thornburg would deceive the Court and malign LKC. But, regardless of their reasons, parties cannot make frivolous filings, defame adversaries with spurious claims, or make willfully false statements to the Court.

31. LKC respectfully requests that the Court deny the Special Committee exculpation so LKC can explore and, if need be, pursue claims against the Special Committee and its individual directors.

**B. The Court should also reject proposed plan language exculpating the Debtors from potential claims relating to the LKC fee dispute.**

32. Likewise, the Court should reject the Debtors' request for exculpation. Although the Debtors did not sign the frivolous briefs, it is "[t]he Debtors" who supposedly "hold and assert a claim against LKC for breach of fiduciary duty in connection with the Fee Application." ECF No. 1732 at 20. Further, the Debtors retained Mr. Wheeler, ECF No. 1229 ¶ 5, and the Debtors' counsel (who also apparently retained Mr. Wheeler directly) worked together with the Special Committee's counsel on the tax allocation, Hearing Tr. Dec. 3, 2025 at 93:2-17. The Debtors' counsel also took the position at the December 3, 2025 hearing that the Debtors were already "adverse" to LKC back in July in the context of the tax allocation. *Id.* at 210:9-18.

33. It would also be extremely hard to believe that the Special Committee and the Debtors were working independently, especially considering that the Special Committee has relied upon the Debtors' General Counsel and Chief Financial Officer as witnesses in the Special Committee's opposition to the LKC success fee. Both the General Counsel and Chief Financial Officer filed declarations, and both testified at the hearing. *See* Hearing Tr. Nov. 3, 2025 at 184-222 (testimony of Debtors' General Counsel, Mr. Chuck Topping); Hearing Tr. Dec. 3, 2025 at 134-228 (testimony of Debtors' Chief Financial Officer, Mr. Kevin Hays).

34. Regardless, the question now is not who should be liable. The question is simply whether the Debtors and the Special Committee should receive a blanket exculpation. Certainly not.

## CONCLUSION

Accordingly, LKC respectfully requests that the Court sustain its Objection to the Debtors' proposed plan (ECF No. 2010) and deny exculpation for the Debtors and the Special Committee with respect to LKC's potential claims and causes of action against them.

Dated: December 15, 2025

Houston, Texas

Respectfully submitted,

/s/ Joshua W. Wolfshohl

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Michael B. Dearman (TX Bar No. 24116270)

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*Counsel to Lehotsky Keller Cohn LLP*

## CERTIFICATE OF SERVICE

I, Joshua W. Wolfshohl, certify that on the 15th day of December, 2025, a copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on all parties registered to receive ECF notice in the above-captioned case.

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl

**EXHIBIT A**

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**Subject:** Re: 2025-09-09 DRAFT Special Committee's Motion for Extension(48910439.2).docx  
**Date:** Wednesday, September 10, 2025 at 6:11:37 AM Eastern Daylight Time  
**From:** Schmeltz, Trace  
**To:** Wolfshohl, Joshua W.  
**CC:** Lohse, Paige  
**Attachments:** Image.png



But you didn't just file a fee application, did you? You made it a fight about allocation. Your client made up a fight before the allocation was done and drew attention to countervailing evidence that puts my client in a potentially bad position with the IRS. Again, as we discussed on the phone, a fee application would have been the fee agreement and evidence of a \$185 million transaction that appears to fit the fee agreement, along with a WAG of \$10 million as your fee. Because—by the way—your client had ample time to supplement or amend the application later OR it could have waited altogether before filing because there was not a deadline for your application.

**Trace Schmeltz**

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



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**From:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Sent:** Tuesday, September 9, 2025 9:37:25 PM  
**To:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Cc:** Lohse, Paige <[Paige.Lohse@btlaw.com](mailto:Paige.Lohse@btlaw.com)>  
**Subject:** [EXTERNAL] Re: 2025-09-09 DRAFT Special Committee's Motion for Extension(48910439.2).docx

**Caution: This email originated from outside the Firm.**

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My client filed its fee application. That is what happens at the conclusion of representation in bankruptcy. That is not picking a fight.

Joshua W. Wolfshohl  
Porter Hedges LLP  
1000 Main St., 36th Floor  
Houston, Texas 77002

On Sep 9, 2025, at 9:32PM, Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)> wrote:

We are not inclined to file under seal. Your client doesn't get to pick a fight and then define the terms of engagement.

Let's talk in the morning.

**Trace Schmeltz**

Partner

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

Chicago, IL

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**From:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>

**Sent:** Tuesday, September 9, 2025 6:48:40 PM

**To:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>

**Subject:** [EXTERNAL] RE: 2025-09-09 DRAFT Special Committee's Motion for Extension(48910439.2).docx

**Caution: This email originated from outside the Firm.**

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Thanks for sending and for the revisions.

My client still asks that this be filed under seal and we would file our response that way too.

I'm on a call the next hour or so. I can discuss if necessary later tonight or in the morning.

Josh

**Joshua W. Wolfshohl** | Partner

**Porter Hedges LLP**

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[Bio](#) • [Web](#) • [V-Card](#)

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**From:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>

**Sent:** Tuesday, September 9, 2025 4:21 PM

**To:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>

**Subject:** 2025-09-09 DRAFT Special Committee's Motion for Extension(48910439.2).docx

**Trace Schmeltz**

Partner

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**EXHIBIT B**

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**Subject:** Re: 2025-09-09 DRAFT Special Committee's Motion for Extension(48910439.2).docx  
**Date:** Tuesday, September 30, 2025 at 3:00:13 PM Eastern Daylight Time  
**From:** Schmeltz, Trace  
**To:** Wolfshohl, Joshua W.  
**CC:** Lohse, Paige, Matsoukas, Katie  
**Attachments:** image001.png, Image.png



Tomorrow, we will be filing our objection to your client's application and our affirmative claim for breach of fiduciary duty. We do not intend to file this document under seal. We are asking to strike paragraphs 29 through 32 of your fee application, as well, as filing under seal does not protect the privilege.

**Trace Schmeltz**

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



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**From:** Schmeltz, Trace  
**Sent:** Tuesday, September 9, 2025 4:20:55 PM  
**To:** Wolfshohl, Joshua W. <[jwolfshohl@porterhedges.com](mailto:jwolfshohl@porterhedges.com)>  
**Subject:** 2025-09-09 DRAFT Special Committee's Motion for Extension(48910439.2).docx

**Trace Schmeltz**

Partner  
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[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)  
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**EXHIBIT C**

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

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

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**DECLARATION OF JOSHUA W. WOLFSHOHL IN SUPPORT OF LEHOTSKY  
KELLER COHN LLP’S RESPONSE TO AMENDED DECLARATION OF MARK  
CHRISTOPHER WHEELER AND BRIEF IN SUPPORT OF  
ITS OBJECTION TO DEBTORS’ PROPOSED PLAN**

I, Joshua W. Wolfshohl, declare as follows:

1. I am a partner in the law firm of Porter Hedges LLP. I am admitted in, practicing in, and a member in good standing of the State Bar of Texas. I am bankruptcy counsel for Lehotsky Keller Cohn LLP (“*LKC*”) in this matter. This Declaration is given in support of *Lehotsky Keller Cohn LLP’s Response to Amended Declaration of Mark Christopher Wheeler and Brief in Support of Its Objection to Debtors’ Proposed Plan* (the “*Response*”)

2. Attached to LKC’s Response as **Exhibit A** is a true and correct copy of email correspondence between Trace Schmeltz of Barnes & Thornburg LLP and me on September 9 and September 10, 2025.

3. Attached to LKC’s Response as **Exhibit B** is a true and correct copy of email correspondence from Trace Schmeltz of Barnes & Thornburg LLP to me on September 30, 2025.

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<sup>1</sup> 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 (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 Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

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

Dated: December 15, 2025  
Houston, Texas

*/s/ Joshua W. Wolfshohl*  
\_\_\_\_\_  
Joshua W. Wolfshohl  
Partner, Porter Hedges LLP

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

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

**ORDER DENYING CONFIRMATION OF PLAN**  
**(Relates to ECF No. 1821)**

Upon consideration of 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* [ECF No. 1821] (together with any amendments, modifications, and supplemental thereto, the “**Plan**”), and the objections thereto; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding in this district is proper pursuant to 28 U.S.C. §§ 1408; and this Court having reviewed the Plan and having heard the statements in support of the Plan requested therein at a hearing before this Court, if any (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the objections to the Plan justify the relief set forth herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

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<sup>1</sup> 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 (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 Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

1. Confirmation of the Plan is DENIED.
2. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Houston, Texas**

**Dated: \_\_\_\_\_, 2025**

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**HONORABLE ALFREDO R. PEREZ**  
**UNITED STATES BANKRUPTCY JUDGE**