

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

In re:

RHODIUM ENCORE LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-90448 (ARP)

Jointly Administered

**PROOF OF ADMINISTRATIVE CLAIM AND, IN THE ALTERNATIVE, CLAIM FOR DAMAGES RELATING TO REJECTION OF INDEMNIFICATION OBLIGATIONS, ASSERTED BY CHARLES R. TOPPING**

1. This Proof of Administrative Claim (the “Administrative Claim”) or, in the alternative, claim for damages relating to the rejection of certain indemnification and other obligations (as described in more detail below) (the “Rejection Damages Claim” and, collectively with the Administrative Claim, the “Claim”) is asserted by Charles R. Topping, in his capacity as a former officer of Rhodium Enterprises, Inc., one of the debtors and debtors-in-possession in the above-captioned chapter 11 cases (“Rhodium Enterprises”).

2. Pursuant to this Claim, Mr. Topping asserts a claim against the debtors and debtors-in-possession in these chapter 11 cases and their estates (together jointly or each severally, the “Debtors”) pursuant to section 503(b) of title 11 of the United States Code (the “Bankruptcy Code”). This Claim seeks payment of any and all amounts owed by the Debtors, their estates, and

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<sup>1</sup> 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).



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successors (including, without limitation, the Wind Down Debtor, as that term is defined in 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. 2062) (the “Plan”)) to Mr. Topping in connection with any costs, expenses or other liabilities he may incur on account of any and all claims or causes of action that have been or may be asserted by Lehotsky Keller Cohn LLP (“LKC”) against the Debtors, any of the Debtors’ directors and officers, the Special Committee, any of the Special Committee’s members, and the Special Committee’s counsel, Barnes & Thornburg LLP, including those specified in LKC’s Application for Allowance of Chapter 11 Administrative Expense Claims which LKC filed with the Court on February 12, 2026 (Docket No. 2299) (the “LKC Admin Claim”) and those threatened in that certain demand letter sent by LKC to (now former) Independent Director David Eaton and others dated as of January 8, 2026 (the “Demand Letter”).<sup>2</sup>

3. This Claim also seeks payment of any and all amounts owed by the Debtors, their estates, and successors (including, without limitation, the Wind Down Debtor (as defined in the Plan)) to Mr. Topping in connection with any costs, expenses or other liabilities he may incur on account of certain Retained Causes of Action, as is more fully described below.<sup>3</sup>

### **GENERAL BACKGROUND**

4. On August 24 and 29, 2024 (collectively, the “Petition Date”), Rhodium Enterprises and certain of its affiliates commenced voluntary cases under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

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<sup>2</sup> Mr. Topping believes that counsel to the Plan Administrator is already in possession of the Demand Letter. To the extent required to reconcile this Claim, Mr. Topping will provide a copy upon request.

<sup>3</sup> Capitalized terms not defined in this Claim shall have the meanings ascribed to them in the Plan.

5. On December 19, 2025, the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) confirmed the Plan through entry of that certain Order Approving the Disclosure Statement for, and Confirming, Second Amended Joint Plan of Liquidation for Rhodium Encore LLC and its Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code (Docket No. 2170) (the “Confirmation Order”). In connection with confirmation of the Plan, the Bankruptcy Court also entered that certain Order (I) Setting Bar Date for Filing Proofs of Administrative Expense Claims and (II) Approving Notice of the Administrative Expense Claims Bar Date, and (III) Granting Related Relief, entered by the Bankruptcy Court on December 24, 2025 (Docket No. 2197) (the “Admin Bar Date Order”). The Admin Bar Date Order provides that Proofs of Administrative Expense Claims against the Debtors must be filed by 5:00 p.m. (prevailing Central Time) on the 30<sup>th</sup> day following the Effective Date of the Plan.

6. Similarly, the Plan provides that Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be Filed with the Bankruptcy Court by the later of thirty (30) days from (I ) the date of entry of an order of the Bankruptcy Court approving such rejection, (ii) the effective date of the rejection of such Executory Contract or Unexpired Lease, and (iii) the Effective Date (the “Rejection Bar Date”).

7. The Plan became effective in accordance with its terms on January 14, 2026 (the “Effective Date”) pursuant to that certain Notice of (I) Effective Date of Debtors’ Second Amended Joint Chapter 11 Plan of Reorganization and (II) Bar Dates for Certain Claims (Docket No. 2247). Accordingly, Proofs of Administrative Expense Claims are due by 5:00 p.m. (prevailing Central Time) on February 13, 2026. Because the indemnification and other obligations owed to Mr. Topping described herein were rejected by operation of the Plan on the Effective Date, the Rejection Bar Date for the Rejection Damages Claim is also February 13, 2026.

### BACKGROUND REGARDING THE CLAIM

8. From and after May 1, 2021, Mr. Topping has served as an officer (both as Secretary and as General Counsel) of Rhodium Enterprises. This service continued after the Petition Date and throughout the pendency of the above-captioned chapter 11 cases. Mr. Topping's service to Rhodium is memorialized in a prior Independent Contractor Agreement and a subsequent and more recent Employment Agreement.<sup>4</sup>

9. Mr. Topping's prior Independent Contractor Agreement provides, in pertinent part, as follows:

In the event the Contractor is made a party or threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a "**Proceeding**"), other than any Proceeding initiated by the Contractor or the Company (or any Company Affiliate) related to any contest or dispute between the Contractor and the Company (or any Company Affiliate) with respect to this Agreement or the Contractor's performance of duties and responsibilities hereunder, the Contractor shall be indemnified and held harmless by the Company to the fullest extent applicable to any other officer or director of the Company (or any Company Affiliate) from and against any liabilities, costs, claims and expenses, including all costs and expenses incurred in defense of any Proceeding (including attorneys' fees). Costs and expenses incurred by the Contractor in defense of such Proceeding (including attorneys' fees) shall be paid by the Company in advance of the final disposition of such litigation upon receipt by the Company of: (a) a written request for payment; (b) appropriate documentation evidencing the incurrence, amount and nature of the costs and expenses for which payment is being sought; and (c) an undertaking adequate under applicable law made by or on behalf of the Contractor to repay the amounts so paid if it shall ultimately be determined that the Contractor is not entitled to be indemnified by the Company under this Agreement.

Independent Contractor Agreement, at 4-5.

10. Mr. Topping's subsequent and more recent Employment Agreement also provides, in pertinent part, that:

In the event the Executive is made a party or threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative

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<sup>4</sup> Mr. Topping believes that counsel to the Plan Administrator is already in possession of his Independent Contractor Agreement and Employment Agreement. To the extent required to reconcile this Claim, Mr. Topping will provide a copy upon request.

(a “**Proceeding**”), other than any Proceeding initiated by the Executive or the Company (or any Company Affiliate) related to any contest or dispute between the Executive and the Company (or any Company Affiliate) with respect to this Agreement or the Executive’s performance of duties and responsibilities hereunder, the Executive shall be indemnified and held harmless by the Company to the fullest extent applicable to any other officer or director of the Company (or any Company Affiliate) from and against any liabilities, costs, claims and expenses, including all costs and expenses incurred in defense of any Proceeding (including attorneys’ fees). Costs and expenses incurred by the Executive in defense of such Proceeding (including attorneys’ fees) shall be paid by the Company in advance of the final disposition of such litigation upon receipt by the Company of: (a) a written request for payment; (b) appropriate documentation evidencing the incurrence, amount and nature of the costs and expenses for which payment is being sought; and (c) an undertaking adequate under applicable law made by or on behalf of the Executive to repay the amounts so paid if it shall ultimately be determined that the Executive is not entitled to be indemnified by the Company under this Agreement.

Employment Agreement, at 5.

11. The Bylaws of Rhodium Enterprises provide, in pertinent part, that:

Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “**Proceeding**”), by reason of the fact that he or she (or a person of whom he or she is the legal representative), is or was a director or officer of the Corporation or a director (or member of a similar governing body) or officer of any of its subsidiaries (any of the foregoing persons, a “**Mandatory Indemnatee**”) shall be indemnified and held harmless by the Corporation to the fullest extent which it is empowered to do so by the [Delaware General Corporation Law] ... against all expense (including court costs, attorneys’ fees, witness fees, fines (including but not limited to excise taxes assessed on a person with respect to an employee benefit plan), amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any Proceeding), liability and loss (including attorneys’ fees actually and reasonably incurred by such person in connection with such Proceeding) and such indemnification shall inure to the benefit of his or her heirs, executors and administrators ... The right to indemnification conferred in this Article VII shall be a contract right and, subject to Sections 7.03 and 7.06, shall include the right to payment by the Corporation of the expenses incurred in defending any such Proceeding in advance of its final disposition.

Bylaws at § 7.02.

The Restated Certificate of Incorporation of Rhodium Enterprises (the “Certificate of Incorporation”), provides, in pertinent part, as follows:

The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding ... by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation...

Certificate of Incorporation at 4, clause EIGHTH.

12. Mr. Topping’s service as an officer of Rhodium Enterprises ceased as of the Effective Date pursuant to the Plan (including, without limitation, section 5.6 thereof).

### **THE DEMAND LETTER**

13. On January 8, 2026, LKC sent the Demand Letter. The Demand Letter makes numerous allegations concerning the conduct of the Special Committee and its counsel, asserts certain claims and causes of action, and indicates that LKC intends to pursue all available remedies.

14. Prior to LKC sending the Demand Letter, its limited objection to confirmation of the Plan was resolved by including language in the Confirmation Order providing that LKC is not a Releasing Party and that, “notwithstanding anything in the Plan to the contrary (including but not limited to section 10.6 of the Plan), no claims of LKC related to the LKC engagement, the LKC Success Fee, or the Special Committee’s motions, actions, and claims related to LKC are released under the Plan or Confirmation Order and such claims are fully preserved.” Confirmation Order at ¶ 5.

15. All of the purported conduct referenced in the Demand Letter occurred after the Petition Date and prior to the Effective Date.

### THE LKC ADMINISTRATIVE CLAIM

16. On February 12, 2026, LKC filed the LKC Admin Claim, in which LKC announces that it intends to file an adversary proceeding against the Special Committee and the Ad Hoc Group of SAFE Parties (the “SAFE AHG”) asserting claims for tortious interference with contract, abuse of process, and civil conspiracy. See LKC Admin Claim at ¶ 27. In the LKC Admin Claim, LKC alleges that such claims arise from post-petition conduct that took place during the administration of these bankruptcy cases. See id. at ¶ 2.

### THE RETAINED CAUSES OF ACTION

17. The Amended Plan Supplement filed on December 2, 2025 (Docket No. 2102) (the “Plan Supplement”), which was approved by the Court in the Confirmation Order, sets forth certain retained causes of action, including (i) claims against the Temple Green Parties (as defined therein) including “breaches of contract, tortious interference with contract, negligence, gross negligence, any claims or causes of action arising out of or related to any dealings with any Debtor (or Affiliate thereof), or any services provided by the Temple Green Parties to any Debtor (or Affiliate thereof)” (the “Temple Green Claims”) and (ii) claims against Kirkland & Ellis LLP “including for professional services to any Debtor (or Affiliate thereof) prior to the Petition Date related to K&E’s representation of, and/or services provided to, any Debtor (or Affiliate thereof), including claims or causes of action for negligence (or malpractice), gross negligence, breach of fiduciary duty, breach of contract, and any other claims or causes of action arising from or related to K&E’s representation of, and/or services provided to, any Debtor (or Affiliate thereof)” (the “Kirkland Claims”).

### **BASIS FOR THE ADMINISTRATIVE CLAIM**

18. Mr. Topping asserts a claim pursuant to section 503(b) of the Bankruptcy Code for indemnification, reimbursement, and/or advancement of costs and expenses pursuant to the Bylaws, and/or the Certificate of Incorporation, with respect to (i) the facts and circumstances alleged in the Demand Letter or relating to the facts and circumstances alleged therein or otherwise carved out of the Release provisions of the Plan, (ii) the LKC Admin Claim and the claims it seeks to preserve therein, and (iii) certain of the Retained Causes of Action.

19. It is reasonably foreseeable that Mr. Topping may be called to testify as a witness in connection with the adjudication of the allegations asserted by LKC in the Demand Letter and/or any claims of LKC that are not released under the Plan, including those that LKC seeks to preserve through the LKC Admin Claim. Mr. Topping has knowledge of at least some of the facts and circumstances relating to the LKC engagement, the LKC Success Fee, and the Special Committee's motions, actions, and claims related to LKC. For purposes of illustration and not limitation, Mr. Topping helped negotiate the LKC engagement and the LKC Success Fee, he previously testified concerning those matters, and he was also previously designated by Rhodium Enterprises as a 30(b)(6) witness and provided testimony in that capacity both at deposition and in court proceedings as part of the same fee dispute between Rhodium Enterprises and LKC that underlies some of the allegations set forth in the Demand Letter and the LKC Admin Claim.

20. It is also reasonably foreseeable that if the Plan Administrator undertakes to pursue either, or both, of the Temple Green Claims and Kirkland Claims, Mr. Topping may be called to testify as a witness in connection with the adjudication of such claims. The Temple Green Claims are situated within the framework of the landlord-tenant relationship between Temple Green Data LLC and Debtor Rhodium Renewables LLC and the rights and remedies arising therefrom. Mr.

Topping was involved in multiple negotiations between Temple Green and Rhodium over the course of several years, including those resulting in the original lease and energy supply agreement, the subsequent lease expansion and the subsequent lease modification. Mr. Topping was also involved in the investigation of potential wrongdoing by Temple Green and its affiliates. Similarly, Mr. Topping was involved in the engagement of Kirkland & Ellis and all the matters in which Kirkland & Ellis provided representation to the Debtors.

21. Because Mr. Topping's involvement in these matters was pursuant to his capacity as, and in furtherance of his duties as, an officer of Rhodium Enterprises, Mr. Topping is entitled to be indemnified and held harmless by Rhodium Enterprises if he incurs expenses on account of the adjudication of such matters.

22. This Administrative Claim is intended to include all claims Mr. Topping may have against the Debtors and/or their estates (and/or the Wind Down Debtor) relating to the adjudication of (i) any claims that may be asserted by LKC on account of any purported act or omission occurring between the Petition Date and the Effective Date, including, without limitation, claims based upon the allegations asserted by LKC in the Demand Letter, claims relating to the facts and circumstances alleged therein or otherwise carved out of the Release provisions of the Plan, and claims that LKC seeks to preserve through the LKC Admin Claim; (ii) the Temple Green Claims; and (iii) the Kirkland Claims.

23. The Administrative Claim is unliquidated. Although LKC has sought in the LKC Admin Claim to preserve certain causes of action, the amount and extent of preparation for and participation in discovery, deposition and trial testimony in connection with any such claims cannot be determined with certainty as of the present time. However, it is estimated that counsel fees and costs incurred on account of such activity would meet or exceed \$65,000. Further,

because no Temple Green Claims or Kirkland Claims have been asserted by the Plan Administrator as of the date hereof, the amount and extent of preparation for and participation in discovery, deposition and trial testimony in connection with any such claims also cannot be determined with certainty as of the present time. However, it is estimated that counsel fees and costs incurred on account of such activity would meet or exceed \$65,000 with respect to each of the Temple Green Claims and the Kirkland Claims. In sum, there are potential fees and costs that could meet or exceed \$195,000, depending on what claims are asserted and the scope of discovery associated with those claims.

#### **BASIS FOR THE REJECTION DAMAGES CLAIM**

24. In the alternative, Mr. Topping asserts a claim for the Debtors' rejection of indemnification agreements applicable between Mr. Topping and Rhodium Enterprises that may be deemed to be rejected by operation of section 8.4 of the Plan. Pursuant to section 8.4, "[a]ll Indemnification Obligations of the Debtors shall be deemed and treated as Executory Contracts to be rejected under the Plan." See also Confirmation Order at ¶ 24 ("[a]ll Claims for damages resulting from the rejection of an Executory Contract .... shall be asserted in accordance with Article 8.3 of the Plan and shall be treated as General Unsecured Claims, as applicable, pursuant to Article 4.6 of the Plan...").

25. The Plan further provides, at section 8.3, that proofs of claim arising from the rejection of Executory Contracts must be filed with the Bankruptcy Court "by the later of thirty (30) days from (i) the date of entry of an order of the Bankruptcy Court approving such rejection, (ii) the effective date of the rejection of such Executory Contract...and (iii) the Effective Date." This Claim is being filed with the Bankruptcy Court within thirty (30) days of the Effective Date.

26. The Debtors agreed to indemnify, reimburse and advance costs to Mr. Topping for his service as an officer pursuant to his prior Independent Contractor Agreement, his subsequent Employment Agreement, the Bylaws and the Certificate of Incorporation, as hereinabove described. Mr. Topping asserts a rejection damages claim against the Debtors and their estates (and/or the Wind Down Debtor) to the extent such indemnification obligations are deemed to have been rejected by the Debtors in their chapter 11 cases, whether pursuant to operation of the Plan, the Confirmation Order, or otherwise.

27. The Rejection Damages Claim is intended to include all claims Mr. Topping may have against the Debtors and/or their estates (including the Wind-Down Debtor) arising out of or in any way related to the rejection of the obligations owed to Mr. Topping as hereinabove described.

28. The Rejection Damages Claim is unliquidated. Although LKC has sought in the LKC Admin Claim to preserve certain causes of action, the amount and extent of preparation for and participation in discovery, deposition and trial testimony in connection with any such claims cannot be determined with certainty as of the present time. However, it is estimated that counsel fees and costs incurred on account of such activity would meet or exceed \$65,000. Further, because no Temple Green Claims or Kirkland Claims have been asserted by the Plan Administrator as of the date hereof, the amount and extent of preparation for and participation in discovery, deposition and trial testimony in connection with any such claims also cannot be determined with certainty as of the present time. However, it is estimated that counsel fees and costs incurred on account of such activity would meet or exceed \$65,000 with respect to each of the Temple Green Claims and the Kirkland Claims. In sum, there are potential fees and costs that could meet or

exceed \$195,000, depending on what claims are asserted and the scope of discovery associated with those claims.

### **RESERVATION OF RIGHTS**

29. This Claim is without prejudice and specifically made without any election of rights and remedies, and Mr. Topping hereby reserves all rights, remedies and claims against any person or entity, including all rights Mr. Topping may have to assert and collect any and all such additional amounts and other obligations due and payable to Mr. Topping, in addition to the filing and pursuit of this Claim. This Claim is not intended to be, and shall not be construed as, a waiver of any past, present or future benefits or a waiver or limitation of any claims or interests of Mr. Topping against any person, entity, or property, or a waiver of any rights, defenses or remedies Mr. Topping may have, including, without limitation, a right to a jury trial on any issue. Mr. Topping does not waive, and expressly reserves, all rights and remedies at law or in equity that he, individually or as the claimant, has or may have against any person or entity. Nothing set forth in this Claim shall be deemed to be a waiver of any right or remedy of Mr. Topping against any other person or entity in this or any other forum.

30. Mr. Topping reserves all rights to amend, modify and/or supplement this Claim at any time and in any respect, including, without limitation, for the purpose of (a) setting forth or changing the basis or the amount of the Claim described herein, (b) further describing said Claim, and (c) providing further evidence relating to said Claim.

31. The Demand Letter, Independent Contractor Agreement and Employment Agreement contain confidential information and are not attached to this Claim. Upon request and entry into appropriate safeguards to protect such confidential information, Mr. Topping will provide copies of such documents.

32. All notices respecting this Claim should be sent to:

Romano Law PLLC  
One Battery Park Plaza, 7th Floor  
New York, NY 10004  
Phone: (212) 865-9848  
[uzoma@romanolaw.com](mailto:uzoma@romanolaw.com)

Dated: February 13, 2026.

**Romano Law PLLC**

By: /s/ Uzoma Alexander Eze  
Uzoma Alexander Eze

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Attorneys for Charles R. Topping

**VERIFICATION**

I, Charles R. Topping, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

*Charles R. Topping*

Charles R. Topping (Feb 13, 2026 12:33:02 EST)

CHARLES R. TOPPING

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

In re:

RHODIUM ENCORE LLC, *et al.*,

Debtors.

Chapter 11

Case No. 24-90448 (ARP)

Jointly Administered

**CERTIFICATE OF SERVICE**

The undersigned certifies that on February 13, 2026, a true and correct copy of the foregoing document was filed via the Court's Electronic Case Filing (ECF) system and thereby served on all parties registered to receive electronic notice in this case.

*/s/ Uzoma Alexander Eze*

Uzoma Alexander Eze

Counsel for Charles R. Topping