Docket #0941 Date Filed: 04/11/2025

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)

OBJECTION OF THE AD HOC GROUP OF SAFE PARTIES TO NICHOLAS CERASUOLO'S MOTION FOR AN ORDER ALLOWING LATE FILED CLAIM TO BE TREATED AS TIMELY FILED

The Ad Hoc Group of SAFE Parties (the "**SAFE AHG**")[2] in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**") of Rhodium Encore LLC and its affiliated debtors and debtors in possession (collectively, the "**Debtors**"), by and through its undersigned counsel, respectfully submits this objection (the "**Objection**") to *Nicholas Cerasuolo's Motion for an Order Allowing Late Filed Claim to be Treated as Timely Filed* [Docket No. 881] (the "**Motion**"). In support of this Objection, the SAFE AHG respectfully represents as follows:

PRELIMINARY STATEMENT

1. By the Motion, Nicholas Cerasuolo asks this Court to deem his claim which was filed more than four months late, as timely. This despite the fact that, as detailed in the Debtors' Objection to the Motion [Docket No. 932], Cerasuolo has been an active participant in these cases

[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.

[2] As defined in *First Supplemental Verified Statement of Ad Hoc Group of SAFE Parties Pursuant to Bankruptcy Rule 2019* [Docket No. 607].

since day one. Cerasuolo's Motion should be denied for failure to demonstrate "excusable neglect." Cerasuolo is not only the Debtors' former Chief Financial Officer ("**CFO**") but also one of the Debtors' founders and former board members. He admits that he was well-aware of the Debtors' bankruptcy filing and has participated in these bankruptcy cases through his management of and substantial ownership interest in Imperium Investment Holding LLC ("**Imperium**") and was interviewed multiple times by the Special Committee of Rhodium Enterprises' Board of Directors (the "**Special Committee**") prior to the November 22, 2024 bar date (the "**Bar Date**").

2. Cerasuolo's late-filed claim seeks indemnification in connection with a recent lawsuit filed against him, but he fails to disclose that a prior litigation had been filed against him in 2022 for his actions as the Debtors' CFO and director in connection with the same purported self-dealing transaction that is the subject of the new suit. The Indemnification Agreement giving rise to Cerasuolo's claim was entered into precisely because such litigation was expected.

3. Cerasuolo's primary argument in his Motion is that he was not served with notice of the Bar Date. But he neglects to inform the Court that Imperium, which he manages and is a substantial owner of, was served with notice of the Bar Date. As was his crypto tax firm, Blockchain Tax Partners, which is owned by and was founded by Cerasuolo and which has continued to do business with the Debtors up to and during these bankruptcy cases.

4. In other words, Cerasuolo had more than sufficient reason, method and opportunity to learn of the Bar Date for himself to protect his rights as a potential creditor. Instead, Cerasuolo sat on his rights despite his ongoing relationship with the Debtors, including an inexplicable 2.5-month delay in filing his Motion after retaining personal counsel in January 2025. Under these circumstances, Cerasuolo's reasons for missing the Bar Date are not credible nor sufficient to demonstrate excusable neglect.

BACKGROUND

5. Cerasuolo played a key role in the Debtors' business before his departure from the company in August 2023. He was the CFO of Debtors Rhodium Enterprises (*see* Docket No. 881 ¶ 4) and Rhodium Holdings.[3] He was also a board member and one of the co-founders of Debtor Rhodium Enterprises.[4] Cerasuolo, along with other Rhodium founders Nathan Nichols, Chase Blackmon and Cameron Blackmon, "collectively control Imperium"[5] which owns approximately 62.1% of the equity in Debtor Rhodium Technologies; in turn, Rhodium Technologies owns, directly, or indirectly, the operating subsidiaries of the company.[6] Imperium is also the manager and holder of 100% of the Class B Voting Units of Debtor Rhodium Enterprises.[7] Cerasuolo is a co-manager, and one of the four equity holders, of Imperium.[8]

6. On November 15, 2022—two years before the Petition Date (as defined herein)—Cerasuolo, Imperium and other Rhodium founders were named as defendants in a litigation filed in the Court of Chancery in the State Delaware, captioned *Trine Mining, LLC et. al. v. Nichols et. al.*, C.A. No. 2022-1029-PAF, for allegedly engaging in a self-dealing roll-up corporate restructuring transaction at the expense of Rhodium Enterprises' minority shareholders (the "**Trine Mining Lawsuit**").[9] The litigation has not been dismissed and remains pending to this day.

---

3 Rhodium Enterprises Inc., Amendment No. 1 to Registration Statement (Form S-1), at 94-95 (Nov. 16, 2021).

4 *Id.*; Silversun Technologies, Inc., Amendment No. 2 to Registration Statement (Form S-4) at 154 (Feb. 14, 2023).

5 Silversun Technologies, Inc., Amendment No. 2 to Registration Statement (Form S-4) at 53 & 179 (Feb. 14, 2023).

6 Docket No. 35 (First Day Declaration) ¶ 61.

7 *Id.* at 44 (Exhibit A of First Day Declaration).

8 *See* Rhodium Enterprises Inc., Amendment No. 1 to Registration Statement (Form S-1), at 94-95 (Nov. 16, 2021); Silversun Technologies, Inc., Amendment No. 2 to Registration Statement (Form S-4) at 179 (Feb. 14, 2023); Docket No. 881 ¶ 7.

9 *See* Verified Shareholder Derivative Complaint at ¶¶ 1-7, 16 & 20, *Trine Mining, LLC et. al. v. Nichols et. al.*, C.A. No. 2022-1029-PAF (Del. Ch. 2022).

7. Three months after the Trine Mining Lawsuit was filed, Cerasuolo entered into an Indemnification Agreement with Rhodium Enterprises on February 10, 2023. According to the explicit terms of the Indemnification Agreement, which is the basis for his late-filed claim, Cerasuolo received indemnification because "directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation" requiring "adequate protection against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation."[10]

8. In addition to his ownership and control of Imperium, Cerasuolo also founded, owns and operates Blockchain Tax Partners, a tax strategy firm specializing in cryptocurrency transactions.[11] Blockchain Tax Partners has provided the Debtors with tax services prior to and during the bankruptcy.[12] Indeed, on November 19, 2024, Debtor Rhodium Encore LLC filed a declaration and disclosure statement on Blockchain Tax Partners' behalf for the tax firm's retention and payment, announcing the agreement for Blockchain Tax Partners to provide tax consulting services to the Debtors.[13] According to that declaration, Blockchain Tax Partners is also party to an indemnification agreement with the Debtors that would be modified during the pendency of the Debtors' chapter 11 cases.[14]

9. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on August 24, and August 29, 2024 (collectively, the "**Petition Date**"). The Debtors'

---

10 Docket No. 881-1, Attachment 2 (Indemnification Agreement) at 1.

11 Rhodium Enterprises Inc., Amendment No. 1 to Registration Statement (Form S-1), at 94-95 (Nov. 16, 2021); Nick Cerasulo, LinkedIn (April 4, 2025), https://www.linkedin.com/in/nick-cerasuolo-95835650/details/experience/.

12 For example, Blockchain Tax Partners received payments from Debtor Rhodium Shared Services LLC for services before the petition date on August 16, 2024. Docket No. 258 at 46. Blockchain Tax Partners is an approved Ordinary Course Professional in these cases. Docket No. 289.

13 Docket No. 452 ¶ 2.

14 *Id.* ¶¶ 7-8.

bankruptcy was well-advertised in industry publications,[15] and Cerasuolo admits he was aware of the bankruptcy case through his continued management and ownership of Imperium, the Debtors' parent, which "has been participating in these chapter 11 cases" as "a manager, member, or other equity holder" of the Debtors.[16] Imperium is also listed as a creditor in the Debtors' creditor matrix.[17]

10. Furthermore, Cerasuolo was interviewed by the Special Committee in connection with its investigation.[18] Specifically, counsel for the Special Committee "conferred with Mr. Cerasuolo . . . on August 24, 2024, September 6, 2024, September 23, 2024, September 24, 2024, and October 24, 2024, including regarding Mr. Cerasuolo's claims for indemnity."[19]

11. On October 18, 2024, this Court issued an order setting a general Bar Date of November 22, 2024 for non-governmental entities to file their claims against the Debtors.[20] The Debtors published notice of the Bar Date in prominent publications including the New York Times and the Houston Chronicle on October 24, 2024.[21] The Bar Date is also listed on the homepage of the website of these cases.[22] Critically, Imperium and Blockchain Tax Partners were both sent notices of the Bar Date on October 24, 2024.[23]

---

15 *See*, *e.g.*, Ana Paula Pereira, *Bitcoin Miner Rhodium files for bankruptcy in Texas court*, COIN TELEGRAPH (Aug. 26, 2024), https://cointelegraph.com/news/bitcoin-miner-rhodium-files-bankruptcy-texas; Anna Kharton, *Miners' bad luck: Rhodium goes bankrupt*, CRYPTO.NEWS (Aug. 27, 2024), https://crypto.news/miners-bad-luck-rhodium-goes-bankrupt/.

16 Docket No. 881 ¶ 7.

17 Docket No. 881-2 at 2.

18 Docket No. 881 ¶¶ 16-17.

19 Docket No. 932 ¶ 1.

20 *See* Docket No. 284.

21 *See* Docket No. 356.

22 Rhodium Encore LLC, et al., Case Number: 24-90448, https://www.veritaglobal.net/rhodium (April 3, 2025).

23 Docket No. 355, Ex. F at 1.

12. Cerasuolo did not file a proof of claim for indemnification by the Bar Date. Instead, four months later, Cerasuolo filed his claim and Motion asking the Court to treat his claim as timely filed. The Motion is not supported by any declaration or other evidence. In his Motion, Cerasuolo asserts that he was not aware that he needed to file a proof of claim until he retained counsel on January 2, 2025, after he had been named in a lawsuit brought by certain Rhodium investors, captioned *345 Partners SPV2 LLC et al. v. Nathan Nichols et al.*, Adv. Proc. No. 25-04008-elm (the "**Fairbairn Lawsuit**").[24]

13. The underlying complaint in the Fairbairn Lawsuit was filed in the 342nd Judicial District of Tarrant County, Texas on December 12, 2024, before being removed for referral to the U.S. Bankruptcy Court for the Northern District of Texas on January 21, 2025.[25] Cerasuolo is named in the Fairbairn Lawsuit for his involvement as an officer and director of Rhodium Enterprises and a managing member of Imperium in a purported deceptive investment scheme.[26] The claims asserted in the complaint arise, at least in part, from the same purported self-dealing roll-up corporate restructuring transaction alleged in the Trine Mining Lawsuit.[27]

14. Cerasuolo's Motion does not offer any explanation as to why (or even acknowledge that) he waited 2.5 months after securing his present bankruptcy counsel to file the Motion.

OBJECTION

15. For creditors, no date in a bankruptcy is "more important than the 'bar date,' a deadline set by the bankruptcy court for them to file claims against, or request payment from, the debtor." *Ellis v. Westinghouse Elec. Co., LLC*, 11 F.4th 221, 226 (3d Cir. 2021).

---

[24] *See* Docket No. 881 ¶¶ 6-7, fn. 9.

[25] *See* Notice of Removal, *345 Partners SPV2 LLC et al. v. Nathan Nichols et al.*, Adv. Proc. No. 25-04008-elm (Bankr. N.D. Tex. 2025).

[26] *See* Plaintiffs' Original Petition 2-4 & ¶¶ 18-20, *345 Partners SPV2 LLC et al. v. Nathan Nichols et al.*, Adv. Proc. No. 25-04008-elm (Bankr. N.D. Tex. 2025).

[27] *Id.* ¶¶ 35-47.

16. "Bar dates are critical to the timely resolution of bankruptcy cases because they enable a debtor and creditor to know, reasonably promptly, each claim and the amount being asserted against the estate." *In re Hard-Mire Rest. Holdings, LLC*, 2019 WL 3801861, at *2 (Bankr. N.D. Tex. Aug. 12, 2019), *aff'd*, 619 B.R. 165 (N.D. Tex. 2020). Otherwise, "participants in the reorganization process would be hindered by undue caution in their negotiations and in voting on the plan." *Westinghouse Elec.*, 11 F.4th at 232 (quoting *In re Energy Future Holdings Corp.*, 619 B.R. 99, 118 n. 109 (Bankr. D. Del. 2020)).

17. "Therefore, a bar date order does not function merely as a procedural gauntlet . . . but as an integral part of the reorganization process." *Hard-Mire Rest. Holdings*, 2019 WL 3801861, at *2 (internal citations omitted). For those reasons, "a bar date is akin to a statute of limitations and generally must be strictly observed." *Id.*

18. However, Federal Rule of Bankruptcy Procedure 9006(b)(1) provides a limited exception to creditors who miss the bar date "where the failure [of the creditor] to act was the result of excusable neglect." Fed. R. Bankr. P. 9006(b)(1). "[E]xcusable neglect is a high standard that the movant has the burden of proving." *In re Orosco*, 2020 WL 6054695, at *1 (Bankr. N.D. Tex. Oct. 13, 2020).

19. "When determining whether excusable neglect exists under Rule 9006(b), a court must consider: (i) the danger of prejudice to the debtor; (ii) the length of the delay and its potential impact on judicial proceedings, (iii) the reason for the delay (including whether it was in the reasonable control of the movant); and (iv) whether the movant acted in good faith." *In re Cornerstone Valve LLC*, 2021 WL 1731770, at *3 (Bankr. S.D. Tex. Apr. 27, 2021) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assoc.*, 507 U.S. 380, 395 (1993)).

20. This Court, as well as courts in other circuits, have held that "[t]he third factor, fault in the delay, is the most important aspect of excusable neglect analysis." *Id.* at *4. "If an explanation does not exist or is not credible, both the reason for delay and the length of the delay factors might weigh in favor of the debtor, even if the delay is quite short." *Id.* *See also In re Seadrill Ltd.*, 2019 WL 7580175, at *3 (Bankr. S.D. Tex. Dec. 19, 2019) (same).

I. Cerasuolo Fails to Establish Excusable Neglect

21. For the reasons set forth below, Cerasuolo has not met his burden under the four *Pioneer* factors to show that his late filing occurred as a result of excusable neglect.

A. Cerasuolo's Reasons for Delay Do Not Establish Excusable Neglect

22. Cerasuolo has not offered a valid reason for his failure to timely file a claim. He makes two general arguments concerning the reason for his delay, but neither is compelling.

23. First, Cerasuolo claims that his delay was the result of his general ignorance of the bankruptcy process and his confusion regarding the status of his representation through his counsel for Imperium. But it is well established that ignorance, confusion or mistake are not sufficient reasons for delay under *Pioneer*. *See Pioneer*, 507 U.S. at 392 ("inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect"); *ValuePart*, 802 F. App'x at 148 (finding the "reasons offered for [claimant's] delay in filing"—claimant's purported language barrier, the debtors' failure to include claimant on its schedules despite the existence of a foreign litigation between the parties, and claimant's mistaken reliance on another creditor's proof of claim—to be unpersuasive); *Cornerstone Valve*, 2021 WL 1731770 at *4 ("[Claimant's] justifications for the delay [were] unpersuasive" despite claimant's argument that "it is an Italian business which is unfamiliar with chapter 11 proceeding" and "did not retain its present counsel until after the general bar date expired"); *Unit Corp. v. Gilmore*, 2022 WL 956226, at *8 (S.D. Tex. Mar. 30, 2022) (finding that delay for filing proof of claims were "within

[claimant's] reasonable control" when "explanations for the additional 65-day delay [bespoke] nothing more than inadvertence or ignorance of bankruptcy procedure").

24. Second, Cerasuolo claims that he failed to file a proof of claim because he never received personal service of notice of the Bar Date. But such service is not required where the creditor has reason and opportunity to ascertain the Bar Date and protect his rights, including due to his awareness of the bankruptcy case. *See In re Profco, Inc.*, 339 B.R. 614, 618 (Bankr. S.D. Tex. 2005) ("If the IRS did not receive this Notice, the IRS nevertheless knew about the existence of the chapter 11 case as early as June 6, 1995, and the IRS therefore had a duty to investigate and check the docket sheet to determine when the bar date was for filing proofs of claims."); *Gilmore*, 2022 WL 956226, at *7 ("The bankruptcy court did not err in concluding that Fifth Circuit law required [claimant] to take steps to ascertain the General Bar Date when he learned about [debtor's] bankruptcy").

25. An analogous case involving strikingly similar facts, *In re Engage, Inc.*, 315 B.R. 217, 218 (Bankr. D. Mass. 2004), is instructive. In that case, four movants who had previously served as directors and officers of the debtors and the debtors' parent entity sought leave to file indemnity claims against the debtors despite the expiration of the claims bar date. *Id.* at *219-222. The movants had been sued after passage of the bar date for purportedly violating their fiduciary duties to the debtors while they were also serving as directors and officers of the debtors' parent. *Id.* at *222.

26. Seeking indemnification from the debtors, the movants argued that their failure to file timely proofs of claim was the result of excusable neglect because they were "not personally served with the Notice of Bar Date" and "had no reason to believe that they would be the subject of a lawsuit for actions taken in their capacities with [the debtors]." *Id.* at *222-24.

27. The court found that the movant's purported ignorance of the bar date and their potential exposure "def[ied] any reasonable belief." *Id.* at *224. The court noted that there had been a previously filed complaint against the debtors' parent for an insider transaction involving the debtors that had specifically named the Movants. *Id.* at *224-25. Given the "scope of their relationship with [the parent]," the court concluded that "it defies common sense to infer that [the movants] never had discussions about their potential personal liabilities." *Id.* at *224-26. "As members of [the parent's] board the only reasonable inferences to be drawn are that they were well informed about the [debtors'] bankruptcy and that by September 2004 when [the parent] was sued, they were aware of the complaint and its allegations, including those that expressly implicated them in [the parent's] alleged control over [the debtors]." *Id.* at *224.

28. One movant argued that he had left the debtors and the parent over a year before the petition date. *Id*. at *225. The court found his purported ignorance for that reason to be unconvincing, when that same movant had been "subpoenaed by the Committee in connection with the Adversary Proceeding bought against [the parent] in which he figures prominently," and possessed "knowledge of the bankruptcy". *Id.* As a result, the movant's supposed lack of "requisite notice" was "a position contradicted by the facts know[n] to the Court and the reasonable inferences to be draw[n] from them." *Id.* at *225-26. Ultimately, the court concluded that all four movants "failed to carry their burden to prove excusable neglect." *Id.* at *226.

29. Like the movants in the *Engage* case, Cerasuolo had more than sufficient reason to be aware of the Bar Date despite not being served personally with notice: (i) Cerasuolo is the co-manager and an equity holder of Imperium, the parent entity of the Debtors and an active participant in these cases served with actual notice of the Bar Date; (ii) Cerasuolo is also the owner, founder and operator of Blockchain Tax Partners, which has continued to provide the Debtors with

tax consulting services throughout the pendency of their chapter 11 cases and was served with actual notice of the Bar Date; (iii) Cerasuolo was well-aware of these bankruptcy cases and was interviewed by and conferred with the Special Committee on multiple occasions, including regarding his indemnity claims; (iv) Cerasuolo had reason to be aware of his liability, because he had been named as a defendant in 2022 in the Trine Mining Lawsuit, which involved allegations of self-dealing regarding the same roll-up corporate restructuring transaction at issue in the Fairbairn Lawsuit, and had entered into his Indemnification Agreement accordingly; and (v) Cerasuolo is a sophisticated party who co-founded the Rhodium business and has more than a decade of financial experience working as the Debtors' CFO and at prestigious firms such as Deloitte Tax LLP and Pricewaterhouse Coopers LLC.[28]

30. Cerasuolo's claimed ignorance of the Bar Date defies credibility. His position, like the position of the creditors in *Engage*, is "contradicted by the facts know[n] to the Court and the reasonable inferences to be draw[n] from them." *Engage*, 315 B.R. at 218.

B. Cerasuolo's Motion Fares No Better Under the Remaining *Pioneer* Factors

31. As noted, the absence of any plausible grounds for "excusable neglect" by itself dooms the Motion. And the remaining *Pioneer* factors—prejudice, length of delay, and good faith—also weigh against a finding of excusable neglect.

i. Prejudice

32. Cerasuolo claims there is no danger of prejudice to the Debtors because a plan of reorganization has not yet been formulated, negotiated, and consummated. Docket No. 881 ¶ 12. But as the Debtors point out, "the parties in these cases [have been] negotiat[ing] and have begun draft[ing] a plan—including extensive analysis and discussion of the allocation of funds,

[28] *See* Rhodium Enterprises Inc., Amendment No. 1 to Registration Statement (Form S-1), at 94-95 (Nov. 16, 2021)

heightening the prejudice from the late-filed claim by increase[ing] the overall burden to all constituencies." Docket No. 932 ¶ 16 (internal quotations omitted).

33. Moreover, the fact that a plan has not yet been filed "is not enough for movant to prevail" because "if a late claim was permitted so long as it was filed before the plan, the bar date would serve little purpose." *In re AMR Corp.*, 492 B.R. 660, 667 (Bankr. S.D.N.Y. 2013). "[E]ven a single late claim risks inspiring similar efforts from creditors who also missed the bar date." *In re Motors Liquidation Co.*, 598 B.R. 744, 758 (Bankr. S.D.N.Y. 2019). "The prejudice to the Debtors is not traceable to the filing of any single additional claim but to the impact of permitting exceptions that will encourage others to seek similar leniency." *In re Lehman Bros. Holdings Inc.*, 433 B.R. 113, 121 (Bankr. S.D.N.Y. 2010). That is sufficient reason to find prejudice. *In re Enron Corp.*, 419 F.3d 115, 132 n. 2 (2d Cir. 2005) ("[C]ourts in this and other Circuits regularly cite the potential 'flood' of similar claims as a basis for rejecting late-filed claims.").

ii. Length of Delay

34. Cerasuolo does not attempt to justify the length of his four-month delay, instead asserting merely that his delay will not affect "any judicial proceedings" and that "there remains ample time for this Motion and Cerasuolo's claims to be considered." Docket No. 881 ¶ 14. Where, as here, "the explanation [for the delayed filing] does not exist or is not credible," then "the length of the delay factor might weigh in favor of the debtor, even if the delay is quite short." *Cornerstone Valve*, 2021 WL 1731770, at *3; *In re Seadrill Ltd.*, 2019 WL 7580175, at *3.

35. The lack of explanation is particularly concerning here given Cerasuolo was sued by plaintiffs in the Fairbairn Lawsuit on December 12, 2024, retained counsel on January 2, 2025 (Docket No. 881 at fn. 9), but failed to file his proof of claim until March 22, 2025. Cerasuolo offers no excuse for this multi-month delay. Cerasuolo has not met the burden of demonstrating that the length of his delay justifies excusable neglect.

iii. Good Faith

36. Cerasuolo asserts that his failure to file a timely proof of claim was in good faith but offers nothing to support that assertion other than the self-serving statement that "he would have filed his proof of claim timely" if he "had been aware of the impending deadline after the Bar Date Order." Docket No. 881 ¶ 19. But "there is no formal presumption of good faith" when applying the *Pioneer* factors. *In re Lyondell Chemical Company*, 543 B.R. 400, 410 (Bankr. S.D.N.Y. 2016). And there is good reason to doubt Cerasuolo's good faith here where he fails to offer any explanation for the 2.5-month delay in filing his claim following retention of counsel and omits many facts relevant to the Court's consideration in his Motion—such as his connection with the Debtors through Blockchain Tax Partners, the service of the Bar Date upon Imperium and Blockchain Tax Partners, and the pre-existing litigation against him.[29]

37. For these reasons, Cerasuolo falls well short of his burden to show excusable neglect under Fed. R. Bankr. P. 9006(b)(1). His Motion should be denied.

II. Denial of the Motion Does Not Offend Due Process

38. In his Motion, Cerasuolo makes a half-hearted argument that he has been denied his due process rights in connection with the Bar Date. Docket No. 881 ¶ 15. Cerasuolo contends that "[w]hile the Court need not determine whether notice passed muster, the potential due process issue should weigh heavily in favor of finding any neglect by Cerasuolo to be excusable." *Id.* In fact, Cerasuolo's due process rights have not been violated because he had actual knowledge of the bankruptcy and ample reason, means and opportunity to discover the Bar Date.

---

[29] Even if Cerasuolo's Motion could demonstrate this last factor, "good faith cannot singlehandedly overcome the fact that it has failed to meet the other requirements of excusable neglect." *Motors Liquidation*, 598 B.R. at 759; *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355, 366 (2d Cir. 2003) ("And rarely in the decided cases is the absence of good faith at issue").

39. "'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re Palmaz Sci., Inc.*, 262 F. Supp. 3d 428, 436 (W.D. Tex. 2017) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, (1950)). "This standard applies to notifications of claims bar dates in bankruptcy proceedings, but entails a fact-specific, case-by-case inquiry to determine whether notice [was] reasonably calculated, given the factual circumstances, to inform claimants of a proceeding that affects their rights." *Id.* (internal citations omitted.) "Particularly important, but not necessarily dispositive, is whether a creditor has general awareness of the pending bankruptcy." *Id.* (citing *Matter of Robintech, Inc.*, 863 F.2d 393, 396 (5th Cir. 1989)).

40. Courts in the Fifth Circuit, including this Court, have held that due process is satisfied where a creditor has knowledge of the debtors' bankruptcy with sufficient time to protect his rights, even if the creditor did not receive notice of specific and relevant deadlines. *In re Texas Tamale Co., Inc.*, 219 B.R. 732, 741 (Bankr. S.D. Tex. 1998) ("Failure to give technical notice of the bar date, when the creditor has actual notice of the case" did not deprive creditor of due process because the creditor had actual notice of bankruptcy and "sufficient time to act in order to protect his rights"); *Palmaz Sci.*, 262 F. Supp. 3d at 437 (movant's "notice of the bankruptcy proceedings" and actual and circumstantial evidence of movant's "intricate knowledge of the bankruptcy proceeding," despite purported lack of knowledge of amended bar date, led court to conclude that movant "was not deprived of due process when the bankruptcy court shortened the proof of claims deadline"); *In re TLI, Inc.*, 1998 WL 684242, at *5 (N.D. Tex. Sept. 25, 1998) (same); *Matter of*

Christopher, 28 F.3d 512, 517 (5th Cir. 1994) (same); *Matter of Sam*, 894 F.2d 778, 782 (5th Cir. 1990) (same).

41. Of course, this is not a case where the late-filing creditor was merely *aware* of the debtor's bankruptcy. Cerasuolo is a co-founder of the Debtors who maintains a substantial equity interest, and he has been actively involved in these bankruptcy cases through his shareholding in Imperium and his multiple interviews and discussions with the Debtors' Special Committee. Entities in which he is deeply invested or owns outright were served with notice of the Bar Date. And he has been sued before in his capacity as a director and officer for the same transaction. Under these circumstances, there can be no question that he has been provided with "notice reasonably calculated, under all the circumstances, to apprise" him of his opportunity to file a claim before the Bar Date. *Palmaz Sci.*, 262 F. Supp. 3d. at 346.

CONCLUSION

42. For the foregoing reasons, the SAFE AHG respectfully requests that the Court deny the Motion and enter such other and further relief as the Court may deem just, proper and equitable.

Date: April 11, 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*)
Dean Chapman (admitted *pro hac vice*)
Michael Chen (admitted *pro hac vice*)
One Bryant Park
New York, NY 10036-6745
Telephone: (212) 872-1000
Email: mhurley@akingump.com
Email: dchapman@akingump.com
Email: mchen@akingump.com

Counsel to the Ad Hoc Group of SAFE Parties

CERTIFICATE OF CONFERENCE

I hereby certify that on April 10, 2025, counsel to the SAFE AHG conferred with counsel for Nicholas Cerasuolo in a good faith effort to resolve the SAFE AHG's objections to the Motion. I hereby certify that we have engaged in good faith discussion in an attempt to address the SAFE AHG's concerns. The dispute remains unresolved.

/s/ Sarah Link Schultz
Sarah Link Schultz

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2025, a true and correct 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.

/s/ Sarah Link Schultz
Sarah Link Schultz