

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

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

**EMERGENCY MOTION TO QUASH THE NOTICES OF RULE 2004 EXAMINATIONS
OF NICHOLAS CERASUOLO, CHASE BLACKMON, AND NATHAN NICHOLS**

Emergency relief has been requested. Relief is requested not later than April 23, 2025.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on April 23, 2025, at 8:30 a.m. in Courtroom 400, 4th Floor, 515 Rusk Avenue, Houston, Texas 77002.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Perez's conference code number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge's home page. The meeting code is "JudgePerez." Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Perez's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

¹ The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



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Rhodium Encore LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), respectfully represent as follows in support of this *Emergency Motion to Quash the Notices of Rule 2004 Examination of Nick Cerasuolo, Chase Blackmon, and Nathan Nichols* (the “Motion”).

RELIEF REQUESTED

1. The Debtors hereby seek entry of an order, substantially in the form attached hereto (the “Proposed Order”), (i) quashing the Notices of Rule 2004 examinations of Nicholas Cerasuolo, Nathan Nichols, and Chase Blackmon (the “2004 Notices”) noticed by Transcend Group on April 19, 2025² and (ii) granting such other and further relief as the Court deems just and proper.

BACKGROUND

A. General Background

2. On August 24 and August 29, 2024 (the “Petition Dates”), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Court”). The cases are jointly administered.

3. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On November 22, 2024, the U.S. Trustee appointed the Official Committee of Unsecured Creditors (the “Creditors’ Committee”). No trustee or examiner has been appointed in these Chapter 11 Cases.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the 2004 Notices.

4. Further details of the Debtors’ business, capital structure, governing bodies, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief* (the “First Day Declaration”) (ECF No. 35).

B. The Pending Proceeding

5. On December 12, 2024, Transcend Group filed suit against Nathan Nichols, Chase Blackmon, Cameron Blackmon, Nicholas Cerasuolo, four current and former officers of the Debtors, and Imperium Investments Holdings, LLC (“the Imperium Defendants”) in the 342nd Judicial District Court in Tarrant County, Texas (the “Imperium Litigation”). The law firm Iacuone McAllister Potter PLLC (“IMP”) represents Transcend Group in the Imperium Litigation.

6. The Imperium Litigation purports to benefit Transcend Group for alleged harm caused by the Imperium Defendants. The Special Committee of Rhodium Enterprises’ Board of Directors, consisting of Independent Directors David Eaton and Spencer Wells, has appeared in the Imperium Litigation through its counsel, Barnes & Thornburg LLP. Specifically, the Special Committee has filed a motion to intervene in that litigation, noting that the claims asserted by Transcend Group in the Imperium Litigation are claims belonging to the Debtors’ estates, and accordingly fall within the Special Committee’s purview to investigate, prosecute, and/or resolve for the benefit of all stakeholders in these cases. (Adv. Pro. No. 25-04008, in the Bankruptcy Court for the Northern District of Texas, ECF No. 16, p. 5) (“Plaintiffs lack standing to bring derivative claims, even when they are incorrectly—and improperly—restyled as direct claims. *See*

In re Highland Cap. Mgmt., L.P., No. 19-34054-SGJ-11, 2025 WL 854623, at **12-13 (Bankr. N.D. Tex. Mar. 18, 2025).”

C. Transcend Group’s Prior Discovery

7. Throughout these bankruptcy cases, the Debtors have engaged in multiple rounds of informal discovery to avoid involvement of the Court and to provide parties in interest with sufficient documentation to understand the Debtors assets, liabilities and capital structure.

8. In the past month, the Debtors produced over 40,000 documents to Transcend Group, complied with repetitive ad hoc demands that the Debtors locate and identify individual documents within its production, and responded to Transcend Group’s numerous threats of immediate motion practice absent the Debtors’ response or capitulation within a day if not mere hours. The 2004 Notices represent yet another iteration of the Transcend Group’s frenzied approach untethered to the Local Rules and the burden on the estates and other parties.

9. Nonetheless, the Debtors provided Transcend Group with all requested documents, conditioned only on Transcend Group’s compliance with the pending proceeding rule, which prohibits the use of 2004 discovery in the Imperium Litigation. To this end, the Debtors produced documents subject to the “Stipulated Protective Order” (ECF No. 152) and instructed that the documents not be used in the Imperium Litigation or shared with Transcend Group’s counsel prosecuting the Imperium Litigation (IMP).

10. Transcend Group has repeatedly expressed its belief that it should be exempted from the pending proceeding rule, stating that the Debtors’ concerns are “[t]otal crap” because “the Debtors aren’t a party to the [Imperium Litigation].” But the Transcend Group ignores legions of cases that preclude 2004 examinations even where the pending proceeding is between two non-debtors. The instant 2004 Notices continue this effort to misuse the 2004 process to further the

Transcend Group’s litigation against non-debtors, or worse, proves that the Imperium Litigation implicates and diminishes claims that are property of the estate that should be preserved for the benefit of all stakeholders, not coopted and commandeered by one aggressive creditor.

D. The 2004 Notices

11. On April 19, 2004, Transcend Group filed three 2004 Notices seeking to examine Imperium defendants Nick Cerasuolo, Nathan Nichols, and Chase Blackmon. Transcend Group did not consult the Debtors before filing the 2004 Notices.

12. The 2004 Notices were served (i) four days prior to the examination of Mr. Cerasuolo; (ii) five days prior to the examination of Mr. Nichols; and (iii) six days prior to the examination of Mr. Blackmon. The 2004 Notices provide no information regarding the scope or subject matter of the examinations in violation of the .

JURISDICTION

10. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

11. The statutory predicates for the relief sought herein are sections 105(a) of title 11 of the United States Code (“Bankruptcy Code”), rule 2004 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule[s]”), rule 26 of the Federal Rules of Civil Procedure, and rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (“Local Rule[s]”).

ARGUMENT

12. The Court has discretion to quash the 2004 Notices. *See In re Immudyne, Inc.*, 218 B.R. 860, 861 (Bankr. S.D. Tex. 1998) (“The court has wide discretion to determine the manner

and course of discovery”). Here, there are multiple grounds to quash Transcend Group’s 2004 Notices.

A. The 2004 Notices Fail to Comply with Local Rule 2004-1

13. The Local Rules govern requirements that must be followed prior to noticing any Rule 2004 examinations. Pursuant to Local Rule 2004-1, “[c]onferences to arrange for an agreeable examination schedule are required.” L.R. 2004-1(c). “Failure to confer is grounds for a motion to quash and sanctions.” *Id.* The Rule further requires that “[n]ot fewer than 14 days written notice of a proposed examination must be given to the person or entity to be examined, its counsel, and to affected parties under BLR 9013-1(a). The notice must apprise the party of the scope of the examination and categories of documents to be produced.” L.R. 2004-1(d).

14. The Transcend Group did not confer with the Debtors or any other party in interest in these cases before noticing these examinations, nor did they comply with the fourteen-day notice requirement. Transcend Group filed the 2004 Notices (i) four days prior to the examination of Mr. Cerasuolo; (ii) five days prior to the examinations of Mr. Nichols; and (iii) six days prior to the examination of Mr. Blackmon. The 2004 Notices provide no information regarding the scope of the examinations, making fulfillment of the “need” requirement a dead letter.

15. Local Rule 2004-1 recognizes that establishing need cannot be assumed and sufficient notice to third parties must occur in order to afford others a chance to participate. If examinations could occur without conference and coordination, the Debtors would be forced to attend multiple examinations of the same deponent without a corresponding showing of need.

16. In these bankruptcy cases, there are many parties in interest who have a right to participate in examinations, and parties should confer broadly to avoid duplicative examinations that would waste time and estate resources. Mr. Cerasuolo has already been scheduled for an

examination on May 8, 2025, a date that allows parties to dedicate the next five days to preparing for the upcoming plan mediation. Transcend Group neither pleads nor prove any reason for its arbitrarily truncated timeline. Moreover, Transcend Group's noticed dates give parties limited time to prepare or coordinate, increasing the risk that other parties in interest will demand future, duplicative examinations. Transcend Group's complete disregard of Local Rule 2004-1 and its underlying principles requires that the 2004 Notices be quashed.

B. The 2004 Notices Lack Even Allegations of Good Cause

17. Although Rule 2004 discovery is broad, "its scope is not limitless." *Snyder v. Soc'y Bank*, 181 B.R. 40, 41-42 (S.D. Tex. 1994), *aff'd sub nom. In re Snyder*, 52 F.3d 1067 (5th Cir. 1995) (denying Bankruptcy Rule 2004 discovery when party seeking discovery offered "no explanation of the need" for the documents). Rule 2004 discovery should only be granted upon a finding of good cause, meaning the discovery must be "necessary to establish the claim of the party seeking the examination." *In re Metiom, Inc.*, 318 B.R. 263, 268 (S.D.N.Y. 2004) (citations omitted); *see also In re SunEdison, Inc.*, 562 B.R. 243, 250 (Bankr. S.D.N.Y. 2017) (narrowing the scope of Bankruptcy Rule 2004 discovery, and noting that "[d]iscovery has become an increasingly expensive aspect of civil litigation. . .").

18. Here, the 2004 Notices fail to contain any indication of (1) the subject matter of the examinations or (2) any allegation of need or "good cause" for the examinations. It follows inexorably that the Transcend Group fails to provide "good cause" and that the examinations should be quashed.

C. The 2004 Notices Violate the Pending Proceeding Rule

19. The 2004 Notices also violate the pending proceeding rule by targeting the same individual defendants that the Transcend Group targeted in the Imperium Litigation. The pending

proceeding rule establishes “a well-recognized rule that once an adversary proceeding or contested matter is commenced, discovery should be pursued under the applicable Federal Rules of Civil Procedure, and not Rule 2004.” *In re Cambridge Analytica LLC*, 600 B.R. 750, 752 (Bankr. S.D.N.Y. 2019). Pursuant to that rule, once an actual adversary proceeding has been initiated, “the discovery devices provided for in Rules 7026–7037 ... apply and Rule 2004 should not be used.” *In re Kipp*, 86 B.R. 490, 491 (Bankr. W.D. Tex. 1988) (“Rule 2004 may not be used to circumvent the protections offered under the discovery rules, 7026 to 7037.”). Courts have exhibited similar concerns when confronted with the propriety of Rule 2004 examinations where the party requesting the Rule 2004 examination may use the examination to benefit pending litigation, including litigation where the debtor is not a party. *See Snyder v. Soc’y Bank*, 181 B.R. 40, 42 (S.D. Tex. 1994), *aff’d sub nom. In re Snyder*, 52 F.3d 1067 (5th Cir. 1995) (holding that “[t]he use of Rule 2004 [by the party seeking discovery] to further its case in state court constitutes an abuse of Rule 2004.”); *In re Cambridge Analytica LLC*, 600 B.R. 750, 752 (Bankr. S.D.N.Y. 2019).

20. As with Local Rule 2004-1, the pending proceeding rule serves an essential purpose; it “reflects a concern that a party to litigation could circumvent his adversary’s rights by using Rule 2004 rather than civil discovery to obtain documents or information relevant to the lawsuit.” *In re Sunedison, Inc.*, 572 B.R. 482, 490 (Bankr. S.D.N.Y. 2017) (denying debtors’ Rule 2004 discovery against a party in a state court action because, in part, the debtors “appear[ed] to be using Rule 2004 to help [its non-debtor subsidiaries and parties in the state court action] get through Rule 2004 what [they] should instead seek in [that action].”); *In re Bibhu LLC*, 2019 WL 171550 at *2 (Bankr. S.D.N.Y. Jan. 10, 2019) (denying Rule 2004 discovery because it would serve “the improper purpose of obtaining discovery for the pending state court civil litigation.”).

More importantly here, the pending proceeding rule also funnels discovery to the pending adversary proceeding instead of burdening the Debtors' main case with discovery more efficiently handled between two non-debtors in their more limited dispute.

21. Transcend Group cannot be allowed to misuse Rule 2004 to get premature discovery in the Imperium Litigation that is currently abated pending transfer to this Court even though no Debtor is currently a party (but where the Special Committee seeks to intervene to protect claims that are property of the Debtors' estates). *See In re Cambridge*, 600 B.R. at 752-53 (denying Rule 2004 discovery because the creditor seeking such discovery aimed to use in a state derivate action where the debtor was not a defendant). Because Transcend Group fails to articulate any good cause for the 2004 Notices, and because they inherently seek to advance Transcend Group's interests in the Imperium Litigation, the 2004 Notices should be quashed outright. *See In re Enron Corp.*, 281 B.R. 836, 841–42 (Bankr. S.D.N.Y. 2002) (denying Rule 2004 discovery because, among other things, “even the most finely crafted Rule 2004 examination could not avoid delving into issues that would be raised in the adversary proceeding,” and “it appeared that the parties and subject matter of the Rule 2004 exam would be inseparable from the adversary proceeding because of the complex relationship between the parties, thereby creating an unavoidable and unintentional back door through which [the party seeking the Rule 2004 examination] could avoid using the Federal Rules of Civil Procedure by using Rule 2004.”) (cleaned up).

22. Here, the Transcend Group's 2004 Notices (1) violate the Local Rules by failing to provide adequate notice; (2) violate the Local Rules by failing to meet and confer; (3) fail to articulate good cause as required by Bankruptcy Rule 2004; and (4) violate the pending proceeding rule by targeting the same parties that are defendants in the Imperium Litigation.

EMERGENCY CONSIDERATION

23. Under Local Rule 9013-1, the Debtors respectfully request emergency consideration of this Motion because relief is necessary to avoid the immediate and irreparable harm caused by the upcoming Rule 2004 examinations.

NOTICE

24. Notice of this Motion will be served on any party entitled to notice pursuant to Bankruptcy Rule 2002 and any other party entitled to notice pursuant to Local Rule 9013-1(d).

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

Respectfully submitted this 22nd day of April, 2025.

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

/s/ Patricia B. Tomasco

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Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge.
This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Patricia B. Tomasco

Patricia B. Tomasco

Certificate of Service

I, Patricia B. Tomasco, hereby certify that on the 22nd day of April, 2025, a copy of the
foregoing Motion was served via the Clerk of the Court through the ECF system to the parties
registered to receive such service.

/s/ Patricia B. Tomasco

Patricia B. Tomasco

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

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

**ORDER GRANTING DEBTORS' EMERGENCY MOTION TO QUASH THE NOTICES
OF RULE 2004 EXAMINATIONS OF NICHOLAS CERASUOLO, CHASE
BLACKMON, AND NATHAN NICHOLS
(Relates to ECF No. ____)**

Upon consideration of Debtors' *Emergency Motion to Quash the Notices of Rule 2004 Examination of Nick Cerasuolo, Chase Blackmon, and Nathan Nichols* (the "Motion"), the Court having jurisdiction to consider this matter and relief requested therein pursuant to 28 U.S.C. § 1334; consideration of this Motion being a core proceeding pursuant to 28 U.S.C. § 157; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing; it is hereby:

1. ORDERED that the 2004 Notices² of the examinations of Nicholas Cerasuolo, Chase Blackmon, and Nathan Nichols are quashed.
2. ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; it is further

¹ The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

² Capitalized terms used herein shall have the meanings ascribed to them in the Motion.

3. ORDERED that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

DATED:

ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE