

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

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

**LIMITED RESPONSE OF THE AD HOC GROUP OF SAFE PARTIES TO DEBTORS’
OMNIBUS OBJECTION TO CERTAIN CLAIMS PURSUANT TO BANKRUPTCY
CODE SECTIONS 502(B), BANKRUPTCY RULE 3007, AND LOCAL RULE 3007-1**

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 limited response (the “**Limited Response**”) to the *Debtors’ Omnibus Objection to Certain Claims Pursuant To Bankruptcy Code Sections 502(B), Bankruptcy Rule 3007, and Local Rule 3007-1 Because Claims Have Been Satisfied and Based on Other Substantive Grounds* [Docket No. 1488] (the “**Objection**”). In support of this Limited Response, the SAFE AHG respectfully represents as follows:

DISCUSSION

1. The SAFE AHG submits this Limited Response in an effort to safeguard valuable

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 *Third Supplemental Verified Statement of Ad Hoc Group of SAFE Parties Pursuant to Bankruptcy Rule 2019* [Docket No. 1346].



litigation assets of the estates, including from a superfluous and incorrect statute of limitations argument raised by the Debtors in the Objection. For the avoidance of doubt, the SAFE AHG does not dispute the Objection in its entirety. For example, the SAFE AHG agrees that creditors whose claims already have been satisfied should not be paid a second time. *See, e.g.*, Obj. ¶ 30. Likewise, the SAFE AHG agrees that derivative claims cannot now be brought by individual creditors, and that breach of fiduciary duty claims should be disallowed to the extent no Debtor entity is a proper defendant. *See* Obj. at 18, n.19.

2. However, the Debtors go on to needlessly (and incorrectly) argue that breach of fiduciary duty claims relating to misconduct carried out by the Debtors' insiders are subject to a three-year statute of limitations. In fact, Texas' four-year statute of limitations applies.³ The Debtors' mistake could materially undermine the value of estate assets in these cases and inure to the benefit of the insiders who still dominate and control the Debtors' plenary board of directors (the "Conflicted Board"). The Debtors' own Special Committee has estimated that the estates' claims against the insiders are worth at least \$70 million or more. Certain of those claims are for breach of fiduciary duty, and allege insider misconduct undertaken between three and four years prior to the petition date. Hence, if the Debtors' argument concerning the statute of limitations were adopted, the Court's ruling on the Objection might be seized upon by the insiders to try to attack the estates' claims against the insiders based on some of the same alleged misconduct.⁴

3. The SAFE AHG submits that the Debtors' argument should not be adopted,

³ The statute of limitations for breach of fiduciary duty claims in Texas is four years. TEX. CIV. PRAC. & REM. CODE § 16.004(a)(5)).

⁴ The Objection was signed by counsel reporting to the Conflicted Board, despite the fact that the Objection addresses Conflict Matters within the meaning of the Board resolutions of Rhodium Enterprises, Inc. establishing the role of the Special Committee (the "Resolutions"). *See, e.g., Written Consent to Action of the Board of Directors of Rhodium Enterprises, Inc.* (Sept. 20, 2024) [Dkt. No. 175], Ex. C. The SAFE AHG continues to reserve all rights, remedies, claims and objections with respect to the Objection, including concerning any activity in violation of the Resolutions.

however, not only because it is superfluous, but also because it is simply wrong. “Under the *Erie* doctrine, federal courts apply federal procedural law and state substantive law.” *Austin v. Baker & Hostetler, LLP (In re Uplift RX, LLC)*, 667 B.R. 665, 691 (Bankr. S.D. Tex. 2024) (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938)). “Federal courts treat the statute of limitations question as a matter of substantive law, so the Court looks to state law to decide which statute of limitations applies.” *Id.* “Because Texas state law treats statute of limitations questions as procedural rather than substantive, federal courts sitting in Texas . . . simply appl[y] Texas’ limitations periods.” *Id.*; *Janvey v. Adams & Reese, LLP*, No. 3:12-CV-0495-N, 2013 WL 12320921, at *4 (N.D. Tex. 2013) (“[Regarding a breach of fiduciary duty claim,] Texas would apply Louisiana substantive law, but under Texas rules, Texas limitations generally apply regardless of what substantive law applies because in Texas limitations are procedural rules.”); *see also U.S. Rest. Properties Operating L.P. v. Burger King Corp.*, No. CIV.A. 302CV0730P, 2003 WL 21448389, at *3 (N.D. Tex. June 16, 2003) (“In Texas, ‘[q]uestions of substantive law are controlled by the laws of the state where the cause of action arose, but matters of remedy and procedure are governed by the laws of the state where the action is sought to be maintained.’ Texas courts regard statutes of limitations as procedural, and therefore apply Texas’s statutes of limitations.” (alteration in original) (citation omitted) (quoting *Hill v. Perel*, 923 S.W.2d 636, 639 (Tex.App.—Houston [1st Dist.] 1995, no writ))).

4. Thus, even though Texas follows the internal affairs doctrine (such that Delaware law may apply to the substance of the breach of fiduciary duty claims), courts in Texas still would apply Texas’ statutes of limitations regardless of what substantive law applies to the claim. *Janvey*, 2013 WL 12320921 at *4 (applying Louisiana law to merits of breach of fiduciary duty claim due to the internal affairs doctrine, but applying Texas law for the statute of limitations); *Westcott v.*

Russ, No. 1:22-CV-0785, 2023 WL 3483996, at *2 (W.D. Tex. May 15, 2023), *report and recommendation adopted sub nom. Wescott v. Russ*, No. 1:22-CV-00785-DII, 2023 WL 4095248 (W.D. Tex. June 20, 2023) (“The Fifth Circuit has held that Texas applies its own statute of limitations, regardless [of] what substantive law applies.” (alteration in original) (quoting *Woolley v. Clifford Chance Rogers & Wells, L.L.P.*, No. 3:01-CV-2185, 2004 WL 57215, at *3 (N.D. Tex. Jan. 5, 2004))). The Debtors’ argument concerning the statute of limitations should be rejected accordingly.

RESERVATION OF RIGHTS

5. This Limited Response is submitted without prejudice to, and with a full reservation of, the SAFE AHG’s rights, claims, defenses and remedies, including the right to amend, modify or supplement this Limited Response to raise additional responses and to introduce evidence at any hearing relating to the Objection, and without in any way limiting any other rights of the SAFE AHG’s to further respond to the Objection, on any grounds, as may be appropriate.

CONCLUSION

For the foregoing reasons, the SAFE AHG respectfully requests that the Court overrule the portion of the Objection concerning purported statute of limitations bars to the asserted claims to the extent that it reaches that issue in ruling on the Debtors’ Objection. In the alternative, the SAFE AHG respectfully requests that the Court specifically find that nothing in its order on the Debtors’ Objection shall be deemed to be a ruling with respect to the purported statute of limitations.

Dated: August 29, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

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Certificate of Service

I hereby certify that on August 29, 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