

**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 AD HOC GROUP OF SAFE  
PARTIES’ RESPONSE AND JOINDER TO THE SPECIAL COMMITTEE’S  
EMERGENCY MOTION FOR EXTENSION OF TIME**

[Relates to ECF Nos. 1515, 1529, 1530, 1626, 1638, and 1666]

Lehotsky Keller Cohn LLP (“**LKC**”) files this response (the “**Response**”) to the *Response and Joinder of the Ad Hoc Group of SAFE Parties (“SAFE AHG”) to the Special Committee’s Emergency Motion for an Extension of Time to File a Response to Lehotsky Keller Cohn LLP’s Final Application for Payment of Compensation and Reimbursement of Expenses and Limited Objection to Lehotsky Keller Cohn’s Motion to Seal Final Fee Application* (ECF No. 1638) and respectfully states as follows:

**RESPONSE**

1. No party to these bankruptcy proceedings has timely objected to LKC’s final fee application, and no one has presented any evidence contradicting LKC’s fee request. The Special Committee candidly admits the evidence “does not yet exist.” ECF No. 1614 at 10 ¶ 32. And, as LKC has explained, the Special Committee’s prior argument that LKC is bound by the Whinstone

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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.



tax allocation,<sup>2</sup> ECF No. 1530, at 6-12, ¶¶ 17, 23, 31, 39; ECF No. 1614 at 6-13, ¶¶ 8-9, 16, 19 (asserting that tax allocation is “binding” and must be completed “*before* Debtors know how much money remains” for LKC allocation), is contradicted by the plain terms of the LKC engagement letter and the testimony of the Debtors’ General Counsel, ECF No. 1633 at 3, 8-10 ¶¶ 4, 21-27.

2. Like the Special Committee, the SAFE AHG has now made an eleventh-hour request for an indefinite extension. ECF No. 1638. Also like the Special Committee, the SAFE AHG asserts that it wishes to wait for the “as-yet-unfinished” Whinstone tax allocation. *Id.* at 3 ¶ 4. Because that future allocation does not dictate LKC’s success fee, *see* ECF No. 1633 at 3, 8-10 ¶¶ 4, 21-27, the SAFE AHG’s first argument for an extension fails.

3. The SAFE AHG’s only other argument for an extension—the “broad redactions” required by the Special Committee in the fee application—fails as well. ECF No. 1638 at 3 ¶ 6.

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<sup>2</sup> The Special Committee appears to have recanted this argument. In its reply, the Special Committee finally recognizes that the two allocations can be different. ECF No. 1666 at 3 ¶ 4. The Special Committee’s new argument is that the Whinstone tax allocation is at least “relevant” to the LKC success fee allocation and, for that reason, LKC should wait indefinitely for its former adversary’s views, however biased they might be. *Id.* According to the Special Committee, “the Debtors have a duty to steer clear of avoidable tax liability and penalties that could arise from taking contradictory allocation positions.” *Id.* at 4.

But if the Special Committee were truly concerned about having two inconsistent allocations, it would presumably work together with LKC in “good faith” (as the Court required it to do, *see* ECF No. 1418 at 6, and reach an allocation based on the actual evidence, [REDACTED], and similarly follow the evidence in simultaneous discussions with Whinstone. Instead, the Special Committee has refused to have any discussions with LKC, [REDACTED], refused to produce any documents (either informally or through discovery), insisted that no evidence currently exists, and attempted to broker a deal with LKC’s former adversary without regard to any existing evidence [REDACTED]. It is the Special Committee that is creating the risk of “contradictory allocation positions,” all but ensuring more litigation and more expenses for the estate.

In any event, because LKC and the Debtors are not bound by the Whinstone tax allocation, the Special Committee’s prior claims that LKC acted improperly by not acquiescing to this future allocation and instead relying on highly “relevant,” if not dispositive, evidence filed under seal, ECF No. 1530 at 3 ¶ 3, were specious. *See* ECF No. 1587 at 5-6 ¶¶ 11-12. So were the Special Committee’s many attacks, threats, and invectives, *see, e.g.*, ECF No. 1530 at 2 ¶ 1; *id.* at 3 ¶ 1; *id.* at 11 ¶ 36; *id.* at 14 ¶ 46; ECF No. 1614 at 2 ¶ 3; *id.* at 8 ¶ 26; *id.* at 10 ¶ 31, and its purported investigation of LKC, ECF No. 1628 at 4-7. The Special Committee even accused LKC of violating its “ethical and fiduciary obligations by filing a Motion for a Status Conference to further discuss its legal fees before the Court.” ECF No. 1530 at 3 ¶ 1. Instead of agreeing to a status conference, the Special Committee filed a motion to quash, sought sanctions, and precipitated unnecessary litigation that depleted estate assets and imposed costs and delay on LKC. *See id.* at 3 ¶ 4.

After the Special Committee asserted privilege, the SAFE AHG did not seek the Court's timely assistance. The SAFE AHG knew about the redactions for three weeks but never challenged them until the day its opposition brief was due. The SAFE AHG could not expect to file a timely opposition to LKC's fee application when it failed to challenge the redactions until its brief was due.

4. Moreover, the SAFE AHG's insistence on transparency and the sharing of information, ECF No. 1638 at 4 ¶ 9, is belied by the SAFE AHG's wholesale refusal to respond to LKC's prior discovery requests. The SAFE AHG's prior refusal to engage in discovery is especially troubling considering it has received at least one relevant document from the Special Committee—a waterfall document showing where the Special Committee expected the funds to go, *including to LKC*—which neither the SAFE AHG nor the Special Committee have been willing to share with LKC.<sup>3</sup>

5. Finally, the SAFE AHG's complaint that LKC is seeking an “extraordinarily large success fee” is unsupported by any evidence and, in fact, is contradicted by the Debtors' General Counsel's testimony—at the deposition taken by the SAFE AHG. *See* ECF No. 1588 at 3 ¶ 5 (“The Debtors' General Counsel has already testified under oath that [REDACTED] [REDACTED] [REDACTED]. LKC relied on [REDACTED] [REDACTED] [REDACTED]. ECF No. 1561 at 13-16 ¶¶ 25, 29-34. LKC took a conservative approach, as described in its fee application. *Id.* at 15-16 ¶¶ 32-34.”)

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<sup>3</sup> The Special Committee, which represented to this Court that it shared nothing with the SAFE AHG, ECF No. 1614 at 11 ¶ 36 (“LKC is misinformed if it believes that the Special Committee has shared allocation information with the SAFE AHG but not with LKC.”), is well aware that the waterfall analysis was provided to the SAFE AHG and yet has refused to share it with LKC or disclose it to the Court.

6. To be clear, LKC has no objection to unsealing its fee application, aside from the Special Committee's assertion of privilege. Disclosure would hopefully put to rest any concern that LKC is seeking more than what it is owed. But the Special Committee has opposed disclosure and, worse, has taken the untenable position that LKC should have concealed highly relevant (if not dispositive) evidence from the Court and instead waited for whatever tax allocation that Whinstone and the Special Committee eventually come up with—which itself should have no bearing on the calculation of LKC's fees.

### **CONCLUSION**

The Court should reject the SAFE AHG's and the Special Committee's eleventh-hour motions for extensions. The Special Committee has delayed payment of LKC's success fee long enough. No one has presented contrary evidence, and the Special Committee admits that no such evidence exists.

Dated: September 22, 2025  
Houston, Texas

Respectfully submitted,

/s/ Joshua W. Wolfshohl

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**CERTIFICATE OF SERVICE**

I hereby certify that, on September 22, 2025, a true and correct copy of the foregoing document was served via email through the Bankruptcy Court's Electronic Case Filing System on the parties that have consented to such service.

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl

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

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Debtors.	§	(Jointly Administered)
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**ORDER DENYING AD HOC GROUP OF SAFE PARTIES’ RESPONSE AND JOINDER  
TO THE SPECIAL COMMITTEE’S EMERGENCY MOTION FOR AN EXTENSION  
TO FILE A RESPONSE TO LEHOTSKY KELLER COHN LLP’S  
FINAL APPLICATION FOR PAYMENT OF COMPENSATION AND  
REIMBURSEMENT OF EXPENSES  
(Relates to ECF Nos. 1638)**

Upon the response and joinder (ECF No. 1638) (the “***Joinder***”) of the Ad Hoc Group of SAFE Parties to the Special Committee’s emergency motion for an extension to file a response to Lehotsky Keller Cohn LLP’s (“***LKC***”) final application for payment of compensation and reimbursement of expenses, 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 and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408; and this Court having reviewed the Motion and responses thereto and having considered any statements at the hearing, if any (the “***Hearing***”); and this Court having determined that the legal and factual bases set forth in the Joinder do not establish just cause for the relief requested therein; and upon all of

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the proceedings had before this Court; and after due deliberation, it is HEREBY ORDERED  
THAT:

1. The Joinder is DENIED.

Houston, Texas

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

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HONORABLE ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE