

**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)
	§	
Debtor.	§	(Jointly Administered)

**STATEMENT OF ISSUES ON APPEAL  
PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, Transcend Partners Legend Fund LLC; Valley High LP; GR Fairbairn Family Trust; Grant Fairbairn Revocable Trust; Nina Claire Fairbairn Revocable Trust; NCF Eagle Trust; GRF Tiger Trust; and NC Fairbairn Family Trust (collectively, “Appellants”), by and through undersigned counsel, hereby identify the following issues to be presented on appeal of the *Order Overruling Debtors' Omnibus Objection at ECF No. 1126 to the SAFE Proofs of Claim* (the “Order”), entered by the Bankruptcy Court on August 30, 2025 [Dkt. # 1593] in the above-captioned bankruptcy case.

1. Whether the Bankruptcy Court erred in issuing its Order Overruling Debtor’s Omnibus Objection at ECF No. 1126 to the SAFE Proofs of Claim [Dkt. # 1593].
2. Whether the Bankruptcy Court erred in issuing its Memorandum Opinion Overruling Debtors’ Omnibus Objection at ECF No. 1126 to the SAFE Proofs of Claim [Dkt. # 1592].

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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). 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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3. Whether the Bankruptcy Court erred in finding that the SAFE Agreements represent a contingent claim against Debtor Rhodium Enterprises, Inc.

4. More specifically, whether the Bankruptcy Court erred in finding that the SAFE Agreements represent a contingent claim against Debtor Rhodium Enterprises, Inc. because the SAFE Agreements also contain enforceable provisions for conversion of the SAFE Agreements to common stock in Debtor Rhodium Enterprises, Inc.

5. Whether the Bankruptcy Court erred in finding that the SAFE Agreements do not represent an equity interest in Debtor Rhodium Enterprises, Inc.

6. More specifically, whether the Bankruptcy Court erred in finding that the SAFE Agreements do not represent an equity interest in Debtor Rhodium Enterprises, Inc. because the SAFE Agreements satisfy the factors under applicable Delaware law for treatment as equity, and the SAFE Agreements state that any right to distribution under the SAFE Agreements is “[j]unior to payment of outstanding indebtedness and creditor claims,” which is contradictory to treatment as a “Claim” under 11 U.S.C. § 101(5)(A).

7. Whether the Bankruptcy Court erred in finding 11 U.S.C. § 510(b) inapplicable to any right to distribution to counterparties to the SAFE Agreements from the estate of Debtor Rhodium Enterprises, Inc.

8. Whether the Bankruptcy Court erred in its interpretation and application of section 1(d) of the SAFE Agreements as creating a liquidation priority over distributions in respect of common stock of Debtor Rhodium Enterprises, Inc.

9. Whether the Bankruptcy Court erred in declining to consider extrinsic evidence and, instead, determining that the SAFE Agreements are unambiguous and fully integrated.

10. Whether the Bankruptcy Court erred in the exclusion of any proffered exhibit from admission as evidence.

11. Whether the Bankruptcy Court erred in failing to consider and/or address any argument made in the briefing submitted to the Bankruptcy Court and/or presented to the Bankruptcy Court during any hearing.

12. Any sub-issues or related issues relevant to determine the issues stated above.

13. Moreover, Appellants fully incorporate by reference herein the nine issues set forth in the Designation of Record and Statement of Issues on Appeal filed by the Debtors [Dkt. # 1724], which include the following (many of which overlap with, and/or are similar to, the issues stated above):

- a. Did the Bankruptcy Court err in overruling the Omnibus Objection?
- b. Did the Bankruptcy Court err in concluding that the SAFE Holders have “claims” within the meaning of the Bankruptcy Code?
- c. Did the Bankruptcy Court err in concluding that the SAFE Holders are “creditors” within the meaning of the Bankruptcy Code?
- d. Did the Bankruptcy Court err in concluding that the SAFE Holders do not have “interests” within the meaning of the Bankruptcy Code?
- e. Did the Bankruptcy Court err in concluding that the SAFE Agreement is clear and unambiguous?
- f. Did the Bankruptcy Court err in concluding that the SAFE Agreement is fully integrated?
- g. Did the Bankruptcy Court err in failing to consider uncontroverted and admissible evidence that the SAFE Agreements represented an “equity investment”?
- h. Did the Bankruptcy Court err in concluding that 11 U.S.C. § 510(b) is not applicable to the SAFE Agreements?

- i. Did the Bankruptcy Court err in concluding that 11 U.S.C. § 510(b) does not require subordination of claims arising from the SAFE Agreement?

RESPECTFULLY SUBMITTED this 29th day of September, 2025.

**MUNSCH HARDT KOPF & HARR, P.C.**

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**ATTORNEYS FOR APPELLANTS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on September 29, 2025, a true and correct copy of this document was electronically served via the Court's CM/ECF system on all parties entitled to such notice.

By: /s/ Chase J. Potter  
CHASE J. POTTER