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

In re: **RHODIUM ENCORE, LLC**, et al., Debtors,	Chapter 11 Case No. 24-90448 (ARP) (Jointly Administered)

MIDAS GREEN TECHNOLOGIES, LLC'S OPPOSITION TO DEBTORS' MOTION FOR SANCTIONS RELATING TO CLAIM NUMBERS 004, 062, AND 068-072 FILED BY MIDAS GREEN TECHNOLOGIES LLC

(Relates to ECF Nos. 953, 954, 1069, 1413, 1793)

Midas Green Technologies, LLC ("Midas") hereby submits this Opposition to Debtors' Motion for Sanctions Relating to Claim Numbers 004, 062, and 068-072.

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I. INTRODUCTION

1. District Court Judge Albright issued his final written order on May 4, 2026. Prior to that date Midas had a good faith understanding that the District Court may grant Midas leave to amend its infringement expert report. As a consequence, Midas had the ethical duty to protect its financial interests in this bankruptcy proceeding. It was only on May 4, 2026, that Midas learned it could not amend the expert report. (Decl. of Joseph E. Thomas ("Thomas Decl.") ¶¶ 8–9.) It is clear that the District Court case was still active when Midas filed its Proof of Claims. As such, the entire basis for the Debtors' motion for sanctions is gone, and their motion should be denied.

2. Debtors are statutorily barred from seeking any sanctions from Midas under Federal Rule of Bankruptcy Procedure 9011 or setting sanctions amounts under 35 U.S.C. § 285. The Fifth Circuit has a strict rule regarding notice requirements prior to filing a motion for sanctions. *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d 580, 588 (5th Cir. 2008). The Debtors failed to follow those requirements so their motion must be stricken. The Debtors served a single safe-harbor draft and filed it as their sanctions motion on September 4, 2025 (ECF 1602). After Midas opposed that motion and identified its defects, the Debtors did not cure by serving a new draft and observing a fresh twenty-one-day period; instead, they re-filed a substantially identical sanctions motion as ECF 1793 on October 14, 2025. A safe-harbor service is exhausted once the movant files the motion it supports, and it cannot be recycled to underwrite a later, re-filed motion.

3. The sequence is undisputed. The Debtors served one draft sanctions motion. They then filed that motion on September 4, 2025. (ECF 1602). Midas opposed it on September 19, 2025 (ECF 1662). Instead of serving a corrected draft and waiting through

a new safe-harbor period, the Debtors let the September motion lapse and filed the current motion, ECF 1793, on October 14, 2025—more than two months after the single safe-harbor service and after intervening proceedings in this Court had changed the posture in which that service was made. The safe harbor was therefore neither fresh nor live when ECF 1793 was filed.

4. As a result of its utter failure to comply with the Fifth Circuit's safe harbor provisions, the sanctions motion is barred in its entirety. The safe harbor exists to give the challenged party a real and contemporaneous opportunity to withdraw or correct before the motion is filed. A service made more than two months before filing, and already consumed by a since-abandoned motion, gave Midas no such opportunity with respect to ECF 1793, and strict compliance under *Pratt* was not satisfied.

5. Debtors are fully barred from seeking § 285 damages under § 11. The U.S. Constitution, the patent statutes, and case law are black-letter clear: This is a claim-objection proceeding, not a § 285 patent case, and Debtors are not a § 285 "prevailing party" in this forum; the court that presided over the patent action is the only court that may make an exceptional-case determination. 35 U.S.C. § 285; *Octane Fitness, LLC v. ICON Health & Fitness, Inc.,* 572 U.S. 545, 548 (2014) ("Section 285 of the Patent Act authorizes ***a district court*** to award attorney's fees in patent litigation."(*emphasis added*)); see also *Amneal Pharms. LLC v. Almirall, LLC*, 960 F.3d 1368, 1371 (Fed. Cir. 2020). It is abundantly clear that it is only the district court that has such authority. See *Octane Fitness, LLC*, 572 U.S. at 548. This Court should decline to make any exceptional-case determination under 35 U.S.C. § 285. Motion at ¶¶ 19-20.

6. Debtors continue to seek damages pursuant to § 285 despite having no law

or facts permitting even requesting § 285 prevailing party attorney's fees as a result of Midas' filing proofs of claim before this Court. As a result, Midas filed a Motion[1] to have this Court determine if Debtors are even allowed to seek § 285 damages in this Court. Further, now that the District Court has issued its final written ruling, it is clear that the only forum where Debtors can seek any § 285 damages is with the District Court. To be clear, Midas is not asserting that Debtors do not have the right to seek § 285 damages, but if they do seek them, the only court that can make that determination is the District Cout that heard and presided over the patent case. Consistent with this understanding, Midas has requested that the Court withdraw the reference to the § 285 issue to the District Court under 28 U.S.C. § 157(d).

7. Midas has repeatedly asked Debtors' counsel for any legal support for it seeking § 285 damages in this Court. They have never responded or provided any such support.

8. Further, if this Court intends to allow Debtors to proceed under § 285, then Midas will need to reschedule the June 30, 2026, hearing to arrange for extended expert testimony. Also, the Court indicated this would be to a 2-hour hearing. However, if § 285 is to be considered, then Midas requests that the Court set aside 2 days for the evidentiary hearing.

9. Debtors have no factual basis to assert Midas acted in bad faith when it filed its Proof of Claims. The District Court did not issue its written final rulings until May 4, 2026, which Judge Albright entered on May 5, 2026, finally resolving the patent matters

[1] MIDAS GREEN TECHNOLOGIES, LLC'S REQUEST TO DENY OR DEFER THE DEBTORS' REQUEST FOR ATTORNEY'S FEES UNDER 35 U.S.C. § 285, TO LIMIT ANY SANCTIONS TO FEES INCURRED IN THESE CASES, AND, IN THE ALTERNATIVE, TO WITHDRAW THE REFERENCE OF THE § 285 ISSUE (ECF No. 2397), Filed June 4, 2026.

pending before him. Judge Albright's written final order conclusively shows that the patent case was active when Midas filed its Proof of Claims with this Court. Debtors' Motion for Sanctions is fully reliant on the sole argument that Midas filed its Proof of Claims after the District Court allegedly issued an oral final judgment that dismissed the case in its entirety. Debtors filed this Motion on November 14, 2025, and argued that Judge Albright had dismissed the underlying patent case at an oral hearing on April 9, 2024. Midas vehemently disagreed with the Debtors' assertion and cited Judge Albright's actual words and his post-hearing actions to show the underlying patent case was active when Midas filed its Proof of Claims. Midas was proven correct, as it was not until May 5, 2026, that the underlying motion for summary judgment was finally resolved when Judge Albright entered his written final ruling. (Thomas Decl. ¶ 9.)

10. From April 9, 2024 (the final pretrial conference) to May 5, 2026, (the final ruling) Midas had a good-faith and reasonable belief that the underlying patent case was active. (Thomas Decl. ¶ 8.) Consequently, Midas had to protect its rights, which included filing Proof of Claims against Rhodium. Indeed, Midas' counsel reasonably understood that it was obligated to protect Midas' rights, and the prudent course while the patent case remained pending was to file.

11. Further, this Court has already indicated it believed the patent case was still active prior to May 5, 2026. On October 28, 2025, this Court issued its ruling sustaining the Debtors' Objections to Midas' Proofs of Claim or alternatively estimating the claim at zero. (ECF 1878). (Thomas Decl. ¶ 16.) In its ruling, this Court acknowledges that the District Court case is active and proactively seeks to accept this Court's report and recommendation. This Court found that:

> *"Continuing to wait indefinitely for a final resolution of the dispute will inevitably dissipate estate resources and possibly result in smaller distributions to stakeholders." (ECF 1878 at 20).*
> *"To the extent the District Court determines the reference should be withdrawn, this Memorandum Opinion will serve as a report and recommendation." (ECF 1878 at 21.).*

12. This Court clearly understood and articulated that the District Court still had to resolve the underlying patent issues, thereby further acknowledging that the case has not been dismissed. This Court even understood that if the District Court did not remove the reference, then this Court's Order would merely be a report to the District Court.

13. Further, on October 28, 2025, this Court issued its "Report and Recommendation to the District Court regarding Midas Green Technologies, LLC's Motion to Withdraw the Reference." (ECF 1880). This report made recommendations to Judge Albright on how to rule in the pending patent case. This Court recognized that Judge Albright still had sole jurisdiction over patent matters, and that the underlying patent case was still active. (Thomas Decl. ¶ 16.)

14. This Court further stated, "*The Court recommends that the District Court conclude that mandatory withdrawal of the reference is not required."* (ECF 1880 at pg. 12). As is clear from this Court's own words, this Court understood and acknowledged that the District Court must undertake an analysis of Midas's Motion for Mandatory Withdrawal. (ECF 1579) and reach its own independent conclusion as to whether it will accept this Court's recommendation.

15. There had been no final adjudication of the merits in the pending case before Judge Albright, therefore, there was no basis for Debtors to claim Midas's conduct in filing Proof of Claims was sanctionable. For this reason, Midas respectfully requests this Court deny this second attempt to seek sanctions against Midas for simply doing what it was

ethically required to do.

16. When Midas filed its Proof of Claims, Midas had an active pending patent case against the Debtors with a reasonable and good-faith belief that the Debtors' immersion cooling systems infringed Midas's patent. Based on this infringement and the status of the case, Midas estimated the Debtors' liabilities to be $12,306,387. (Thomas Decl. ¶ 12.) Midas was ethically bound to file its Proof of Claims in this Court to protect its interests. There is no improper purpose, no unnecessary delay, and the claims were fully supported by evidence. Further, the patent case status fully supports the fact that the District Court was not over, and it was preparing a written ruling with regard to the issues taken up at the April 9, 2024, Pretrial Conference. For these reasons, Midas has conducted no sanctionable acts. In fact, Midas even filed *Amended* Proof of Claims to reduce the Debtors' exposure and to provide more clarity to damages to allow the bankruptcy plan to proceed timely. (Thomas Decl. ¶ 14.)

17. As Midas expected, Judge Albright issued his final ruling on May 5, 2026. (Thomas Decl. ¶ 9.) In that written ruling, Judge Albright acknowledged that important issues in the patent case had not been resolved in his oral statements on April 9, 2024. At the oral hearing, Judge Albright left open the possibility that he would grant Midas' request to allow its infringement expert to amend his report to address the infringement issues raised at the hearing with regard to summary judgment. In his May 4, 2026, written order, Judge Albright states: "*The Court therefore clarifies that the expert report and infringement contentions may not be amended in an attempt to re-address the summary judgment of noninfringement issue*." Thus, from April 9, 2024, until May 4, 2026, Midas was correct in understanding that the District Court might permit amendment of the

infringement expert's report. As a consequence, Midas's filing of the Proof of Claims during this period was not merely reasonable and in good faith; had the District Court ultimately permitted amendment of the expert report, a failure to preserve Midas's position could have exposed counsel to a claim that it failed to protect its client's rights.

18. Midas filed a patent infringement lawsuit against Rhodium on January 13, 2022. (Thomas Decl. ¶ 4.) This patent case was active and pending and the parties were waiting for the District Court to issue its final written ruling regarding the issues taken up at the Pretrial Conference, including Rhodium's pending Motion for Summary Judgment on non-infringement. The District Court issued its final written order on May 4, 2026, which entered on May 5, 2026. Prior to making that ruling, Judge Albright had requested and received detailed proposed orders from both parties and had indicated that a written final ruling is forthcoming.

19. The prior last communication from the District Court was on January 30, 2025, where it said that the parties' submission of draft proposed orders "[*w*]*ill help this case begin to progress towards a resolution*." Clearly, the case was active as of that date. (Thomas Decl. ¶ 8.)

20. Midas filed its original Proof of Claims in this bankruptcy action to protect its interest in the pending District Court litigation against the Debtors. (Thomas Decl. ¶ 13.) Contrary to the Debtors' repeated assertion, Midas was not seeking to affirmatively reassert its patent claims against the Debtors in a different forum. Instead, Midas simply intended to ensure that its existing rights in the pending District Court litigation were not extinguished by adjudication in the Debtors' bankruptcy matter without a final written judgment on the merits in *Midas Green Technologies, LLC v. Rhodium Enterprise, Inc.et*

al, Case No. 6:22-CV-00050-ADA.

21. As discussed in the Introduction, at the time Midas filed its Proof of Claims, (1) there was no written final ruling regarding the MSJ; (2) the patent case was still active, (3) Midas believed the District Court could allow it to amend the expert infringement report; and (4) the District Court case had not been dismissed. (Thomas Decl. ¶¶ 8–9, 12.) As Midas acted in good faith in filing its Proof of Claims, this Court has no basis for finding any sanctionable conduct. On the contrary, Midas acted reasonably and prudently in filing its Proof of Claims to protect its rights in enforcing a possible future judgment in the patent case. Further, after Judge Albright gave guidance at the Pretrial Conference, Midas filed leave to amend its Proof of Claims to reduce the Debtors' potential liability. Midas's original and amended Proof of Claims were part of a good faith effort to pursue its claims for damages for patent infringement in the District Court. Midas's continued pursuit of its claims is consistent with the procedural history of the case and the rights afforded to it by the District Court.

II. BACKGROUND

22. On January 13, 2022, Midas filed a patent infringement suit against the Debtors in the Western District of Texas. In its Third Amended Complaint ("TAC") Midas asserted U.S. Patent No. 10,405,457 ('457 Patent) and US Patent No. 10,820,446 ('446 Patent), alleging that the Debtors' immersion cooling systems at both its Temple and Rockdale facilities infringe both patents. (Thomas Decl. ¶ 4.)

23. It is disturbing that the Debtors attempt to mislead this Court by misrepresenting the record in the District Court. In particular, the Debtors repeatedly assert to this Court that Midas "abandoned" a patent and several claims and portrays this as

concrete evidence of Midas's bad faith and shows a pattern of bad behavior. This misinterpretation is due to an unfamiliarity with patent law in general, or with the District Court local rules specifically, but Midas was REQUIRED by the local rules to simplify the case by reducing the number of asserted claims. Just prior to Markman briefing, Midas reduced the number of asserted claims to simplify and streamline the jury trial as directed by the District Court. The '457 and '446 are related patents, that is, they share a common specification and drawings, the claims are slightly different, but largely duplicative. As a result, Midas withdrew all of the '446 patent claims, as well as duplicative claims of the '457 patent. This withdrawal had no effect on the number of infringing products or the damages claim, and the reduction was required by the District Court. It is disingenuous for the Debtors to portray this court-required reduction of claims as some sinister "abandonment." (Thomas Decl. ¶ 5.)

24. The District Court held a pre-trial conference on April 9, 2024, and the Court excluded a portion of the Midas's damages report regarding lost profits, but the sections regarding reasonable royalty remained intact. As found in the Motion for Leave to File Amended Proof of Claims, Midas adjusted its damage model to portray only the reasonable royalty calculation model. The Court also excluded a portion of Midas's infringement report but appeared to grant the opportunity to amend and resubmit it. (Thomas Decl. ¶ 6.)

25. Immediately after the pre-trial conference, the Court issued a brief Minute Entry which states:

Minute Entry for proceedings held before Judge Alan D Albright: ZOOM FINAL Pretrial Conference held on 4/9/2024. PARTIES ANNOUNCE READY. STATEMENTS AND ARGUMENTS OF COUNSEL HEARD. WRITTEN ORDER FORTHCOMING. [ECF

186]. (Thomas Decl. ¶ 7.)

26. Importantly, the above Minute Entry makes no reference to any ruling made regarding the MSJ and certainly does not indicate that anything Judge Albright said at the oral hearing was made final. As such, no dismissal was issued either. Instead, the Minute Entry makes it abundantly clear that the Court has more work to do prior to making a final ruling, as there is a "written order forthcoming."

27. On January 7, 2025, the debtors filed with this Bankruptcy Court: Debtors' Motion for Entry of An Order Granting Limited Relief from Automatic Stay to Continue District Court Litigation. [ECF 611]. In paragraph 1 of this motion, the Debtors told this Court:

> By this Motion, the Debtors seek entry of an order (the "Proposed Order"), pursuant to sections 362 and 105(a) of the Bankruptcy Code and Bankruptcy Rule 4001, granting limited relief from the automatic stay solely to permit the resolution of the patent infringement claim Midas Green Technologies, LLC v. Rhodium Enterprises, Inc., 6:22-cv-00050 (the "District Court Litigation") filed in the Western District of Texas (the "District Court") by Midas Green Technologies, LLC ("Midas") against the Debtors and certain non-debtor affiliates (collectively, "Rhodium"). Specifically, Debtors ask that the stay be lifted for the limited purpose of allowing the District Court to enter an order and judgment memorializing its April 9, 2024, bench ruling granting summary judgment to Rhodium. (emphasis added). (Thomas Decl. ¶ 15.)

28. The Debtors already admitted to this Court that the oral ruling was not a final ruling, and that Judge Albright needed to take additional steps to make it final in order to permit resolution of the patent infringement claims. This does not indicate a dismissal! Even the Debtors are fully aware that the District Court needed to "enter an order" for finality. But now the Debtors backtrack trying to convince this Court that the District Court does not need to "enter an order."

29. On January 30, 2025, the District Court, recognizing it needed to do more work to issue a final ruling, requested the Parties submit detailed proposed orders. The

clerk stated:

> Given the time that has passed, it is necessary that the parties in this case submit a joint proposed order reflecting the parties' understandings of Judge Albright's rulings at the 4/9/2024 hearing (if there are disputes, please include proposed language in different colors). Please submit an omnibus order for all of the pretrial motions and a separate single order comprising all of the MILs. The Court will compare with its internal notes and enter the order reflecting those rulings shortly thereafter. (Thomas Decl. ¶ 8.)

30. The District Court acknowledged that its oral comments were ambiguous and subject to differing interpretations, noting that it had only "notes" requiring comparison with the parties' submissions before entering a final order "shortly." The law clerk further confirmed that additional steps remained before resolution, emphasizing that the oral comments were neither binding nor final. This was the last communication from the Court, making clear that Judge Albright remains engaged with the case and is working toward a written ruling.

31. On February 5, 2025, this Court granted the motion for lifting the stay and agreed with the Debtors that the District Court needs to enter a final written ruling.

32. On February 7, 2025, the Parties submitted their proposed orders with regard to the issues at the pretrial conference. As indicated above, the District Court stated that it planned to issue its final written ruling "shortly" after getting the Parties' dueling proposed orders. However, those proposed orders were submitted almost 18 months ago, and the District Court has yet to issue its written order. If the District Court had planned to merely memorialize its discussion at the hearing, it would have done so promptly. Instead, it appears that the District Court was doing a full and careful analysis of the summary judgment and intended to issue a complete and thoughtful written opinion.

33. On May 4, 2026, the District Court issued its long-awaited written final ruling. In that ruling, Judge Albright acknowledged that important issues in patent case

had not been resolved in his oral statements on April 9, 2024. At that hearing, Judge Albright left open the possibility that he would grant Midas' request to allow its expert to amend his report to address infringement issues raised at the hearing. In his final ruling, Judge Albright states: "The Court therefore clarifies that the expert report and infringement contentions may not be amended in an attempt to re-address the summary judgment of noninfringement issue." (Thomas Decl. ¶ 9.)

34. From April 9, 2024, until May 4, 2026, Midas was correct in understanding that the District Court might permit amendment of the infringement expert's report -which left the case still pending. As a consequence, Midas's filing of the Proof of Claims during this period was reasonable and made in good faith; had the District Court permitted amendment of the expert report, a failure to preserve Midas's position could have exposed counsel to a claim that it failed to protect its client's rights.

III. STATEMENT OF LAW

35. The Fifth Circuit's notice requirement is strict and absolute failure to comply requires dismissal of the sanctions motion. *Cadle Co. v. Pratt (In re Pratt),* 524 F.3d 580, 588 (5th Cir. 2008). Here, the Debtors' motion falls squarely within that prohibition because the single safe-harbor service the Debtors made was not a live, contemporaneous predicate for the motion they ultimately filed. The Debtors served one draft, filed it as ECF 1602 on September 4, 2025, and then—after that motion was opposed and abandoned—re-filed substantially the same motion as ECF 1793 on October 14, 2025, without serving a new draft or affording Midas a fresh twenty-one-day period to withdraw or correct. The safe harbor is not a one-time formality that, once observed, licenses any number of successive motions; it is a withdrawal window that must precede the particular motion

filed.

36. Federal Bankruptcy Rule 9011(c)(1)(A), like Federal Rule of Civil Procedure 11(c)(2), requires that a sanctions motion be served on the opposing party and then withheld from filing for at least twenty-one days, during which the challenged paper may be withdrawn or corrected. Fed. R. Civ. P. 11(c)(2). Compliance with this safe-harbor procedure is a mandatory prerequisite to any award of sanctions, and the burden of demonstrating strict compliance rests entirely on the movant. *Elliott v. Tilton*, 64 F.3d 213, 216 (5th Cir. 1995) (prefiling service is a mandatory procedural prerequisite); *Whatley v. Great Lakes Ins. SE*, NO. 1:19-CV-444, 2020 WL 8455150, 2020 U.S. Dist. LEXIS 249585, *4-8 (E.D. Tex. Dec. 15, 2020); *Bell v. Dunn, Johnston & Brown*, No. 3:10-CV-1-M, 2011 WL 759473, 2011 U.S. Dist. LEXIS 19964, *9-13 (N.D. Tex. Feb. 7, 2011); *Cadle Co. v. Pratt (In re Pratt),* 524 F.3d 580, 588 (5th Cir. 2008).

37. The Fifth Circuit further requires "identicality" between the motion served during the safe-harbor period and the motion ultimately filed; a filed motion that differs in substance from the served version is procedurally deficient and cannot support sanctions. *Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc.*, 46 F.4th 374, 389 (5th Cir. 2022). Strict compliance is mandatory, and neither substantial compliance nor informal notice will satisfy the rule. *Id.*; *Cadle Co. v. Pratt (In re Pratt),* 524 F.3d 580, 588 (5th Cir. 2008). It follows that where a movant serves one draft, files a non-conforming motion, withdraws it, and then files a different motion without separately serving that motion twenty-one days before filing, the safe harbor is not satisfied as to the later motion. See *OrchestrateHR, Inc. v. Trombetta*, 178 F. Supp. 3d 476, 498–500 (N.D. Tex. 2016) (safe harbor strictly construed; movant must file the motion that was served, and substantial compliance and

informal notice are insufficient); *In re Enable Commerce, Inc.*, 256 F.R.D. 527, 533 (N.D. Tex. 2009) (motion defective under Rule 11(c)(2) where it was not made separately and was not served twenty-one days before filing); see also Fed. R. Civ. P. 11 advisory committee's note to 1993 amendment (safe harbor protects a party that withdraws the challenged contention "after receiving the motion"). Serving an earlier draft does not excuse the failure to serve—in identical form and with a fresh twenty-one-day period—the motion actually filed with the court.

38. The Debtors' current motion is barred because the only safe-harbor service the Debtors made was already spent on their September 4, 2025, motion (ECF 1602) and was, by the time ECF 1793 was filed on October 14, 2025, stale. A safe-harbor service does not run in perpetuity; it authorizes the single motion for which it was given. Having consumed that service on a motion they did not pursue, the Debtors were required to serve a new draft and observe a new twenty-one-day period before filing ECF 1793. They did neither. As a result, the motion does not strictly comply with Rule 9011, and the Court lacks authority to impose sanctions on that basis.

39. Rule 9011(c)(1)(A) of the Federal Rules of Bankruptcy Procedure states that a "motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion. . . the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected." *Cadle Co. v. Pratt (In re Pratt),* 524 F.3d 580, 588 (5th Cir. 2008). "Rule 9011 is substantially identical to Federal Rule of Civil Procedure 11," therefore, we may refer to Rule 11 jurisprudence when considering sanctions under Rule 9011. *Id*. "Strict compliance with Rule 11 is mandatory." *Id.* (Finding Rule 9011 sanctions motion that failed to strictly comply with Rule 11

procedure was barred.)

40. Section 28 U.S.C. § 1927 does not provide the authority to grant sanctions in this matter. There has been no duplication, let alone unnecessary duplication, of proceedings in this case. First, Midas only filed its proof of claims to ensure that its rights were not extinguished by the filing of the bankruptcy claim. Second, the Proofs of claim are a mere continuation of the unresolved litigation pending in the District Court.

41. A district court may shift reasonable fees to "[a]ny attorney. . . who. . multiplies the proceedings in any case unreasonably and vexatiously." 28 U.S.C. § 1927. Under the plain terms of that statute, then, these sanctions are imposed only on offending attorneys -- clients may not be ordered to pay such awards. *Vanderhoff v. Pacheco*, 344 Fed. Appx. 22, 27 (5th Cir. 2009); citing *Proctor & Gamble Co. vs. Amway Corp*., 280 F.3d 519, 525 (5th Cir. 2002). To impose sanctions against an attorney, the district court must find that the sanctioned attorney multiplied the proceedings both "unreasonably" and "vexatiously." *Id*. This requires "evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court." *Id*.; citing *Edwards v. Gen. Motors Corp*., 153 F.3d 242, 246 (5th Cir. 1998). Section 1927 only authorizes shifting fees that are associated with "the persistent prosecution of a meritless claim." *Id*. citing *Browning v. Kramer*, 931 F.2d 340, 345 (5th Cir. 1991). "To shift the entire cost of defense, the claimant must prove, by clear and convincing evidence, that every facet of the litigation was patently meritless, . . . and counsel must have lacked a reason to file the suit and must wrongfully have persisted in its prosecution through discovery, pre-trial motions, and trial . . . ." *Proctor & Gamble Co,* 280 F.3d at 526 (citations omitted).

42. Any sanctions against Midas for legal fees unrelated to this bankruptcy action

would be punitive rather than compensatory, which is beyond the authority of this Court. Awarding sanctions for the underlying litigation, which Midas has moved for withdrawal, is not within this Court's jurisdiction. Further, punishing Midas for filing an unresolved lawsuit would be beyond this Court's jurisdiction and authority.

43. A fee-shifting sanction… is supposed to be compensatory. *Fund, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.),* 98 F.4th 170, 175 (5th Cir. 2024); citing *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 137 S. Ct. 1178, 197 L. Ed. 2d 585 (2017).

44. In *Goodyear Tire*, the Court reversed the sanction in question because the district court failed to "establish a causal link [] between the litigant's misbehavior and legal fees paid by the opposing party." *Id*. The required causal link means that a bankruptcy court may shift "only those attorney's fees incurred because of the misconduct at issue." *Id*. at 109; (fee shifting awards "may go no further than to redress the wronged party for losses sustained" (quotation and citation omitted)); ibid. (courts must "calibrate[]" fee shifting awards "to the damages caused by the bad-faith acts on which [they are] based" (quotation and citation omitted)).

45. Absent that because-of link, the sanction is punitive rather than compensatory and hence falls outside the bankruptcy court's statutorily limited powers. Thus, if a contempt movant "would have incurred an expense" even absent the non-movant's contumacious conduct, "he has suffered no incremental harm . . . and so the court lacks a basis for shifting the expense." *Fund, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.),* 98 F.4th 170, 175 (5th Cir. 2024).

46. The authority to determine that a patent case is exceptional under 35 USC §

285 resides only in the District Court. *Samsung Elecs. Co. v. Ramus Inc* (523 F.3d 1374, 1379). In its entirety, it provides: "The court in exceptional cases may award reasonable attorney fees to the prevailing party." This section of Title 35 provides attorney fees in exceptional cases. The statute requires the trial court to find a case "exceptional" before proceeding to consideration of attorney fees. Thus, exceptionality is an element or precondition for the imposition of attorney fees. The statute does not make a finding of exceptionality a separate sanction. Thus, a trial court does not retain jurisdiction to make an "exceptional case" finding.

IV. ARGUMENT

A. The Motion Should Be Denied; the District Court Case is Active when Midas Filed its Proof of Claims

47. Debtors' sole basis for seeking sanctions in its Motion is they had the mistaken belief that Judge Albright had dismissed the underlying patent case before Midas filed its original Proof of Claims. The Debtors wrongly allege that Midas had conclusively lost in front of Judge Albright but was now trying to take another bite of the apple in bankruptcy court, to undo the finality of the District Court ruling. Debtors had previously presented this issue to this Court. However, in its October 28, 2025, Order, this Court made no such finding, and in fact expressed its understanding that Judge Albright still had work to do to resolve the underlying patent case in the District Court. This Court found that:

> *"Continuing to wait indefinitely for a final resolution of the dispute will inevitably dissipate estate resources and possibly result in smaller distributions to stakeholders." (ECF 1878 at 20).*
>
> *"To the extent the District Court determines the reference should be*

withdrawn, this Memorandum Opinion will serve as a report and recommendation." (ECF 1878 at 21.).

48. In its ruling, this Court acknowledges that the District Court case was active and proactively sought to accept the District Court's report and recommendation on this matter. However, to protect the creditors in the bankruptcy matter, the Court exerted its power to protect assets. As a result, this Court has already confirmed that when Midas filed its original Proof of Claims, Midas had a good faith belief that the District Court case was active, and that it had a reasonable expectation to be awarded damages.

49. Further, on October 28, 2025, this Court issued its "Report and Recommendation to the District Court regarding Midas Green Technologies, LLC's Motion to Withdraw the Reference." (ECF 1880). This report makes recommendations to Judge Albright on how to rule in the pending patent case. Clearly, this Court recognizes that Judge Albright still had sole jurisdiction over patent matters, and that the underlying patent case is still active.

50. With Judge Albright not fully resolving the hearing issues until May 4, 2026, the District Court case was still active when Midas filed its Proof of Claims. (Thomas Decl. ¶ 9.) As such, the entire basis for the Debtors' motion for sanctions is gone, and their motion should be denied.

B. The Motion Should Be Denied Because the Debtors Failed to Comply with the Safe Harbor Provisions

51. The Fifth Circuit demands strict compliance with its Safe Harbor rule regarding filing a motion for sanctions. *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d at 588. Failure to comply mandates the motion to be dismissed. *Id*. The Debtors' conduct is a

textbook example of bad faith. The Debtors made a single safe-harbor service and then attempted to make it do double duty, and the attempt fails under either view of the record. First, the Debtors filed that service as their September 4, 2025, motion (ECF 1602)—a motion that was not identical to the draft they had served, because it added grounds under Rule 11 and Section 105 that the served draft never contained. A filed motion that differs in substance from the served version is procedurally deficient and cannot support sanctions. *Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc.*, 46 F.4th 374, 389 (5th Cir. 2022) (Rule 11 safe harbor requires "identicality" between the served and filed motion). Second, to the extent the Debtors now rely on that same August service to support ECF 1793 because the two are alike, the service had already been consumed by the September filing. A single safe-harbor service authorizes the one motion for which it was given; it does not run in perpetuity to license a movant to file, withdraw, and re-file successive motions. The Debtors never served ECF 1793 and never afforded Midas a fresh twenty-one-day period before filing it on October 14, 2025. Strict compliance is mandatory, and the burden of demonstrating it rests on the Debtors. *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d at 588; *Bell v. Dunn, Johnston & Brown*, 3:10-CV-1-M, 2011 WL 759473, 2011 U.S. Dist. LEXIS 19964, *9-13 (N.D. Tex. 2011 Feb. 7, 2011). That the served draft may resemble ECF 1793 does not cure the defect: serving an earlier draft is not a substitute for serving the motion actually filed, and neither substantial compliance nor informal notice will satisfy the rule. *OrchestrateHR*, 178 F. Supp. 3d at 498–500. That re-service in October would have been futile—because the claims the motion targets had already been heard and orally disposed of at the September 23–24, 2025 hearing—does not excuse the Debtors' non-compliance. The Fifth Circuit requires strict compliance and does not accept that serving the motion

would have been a vain act. Any such futility is, moreover, of the Debtors' own making: they spent their one timely safe-harbor service, made while the claims were still live, on the abandoned September motion, and then waited to file ECF 1793 until after the hearing had overtaken the dispute. The Debtors cannot make an excuse for skipping the safe harbor provision out of a circumstance they themselves created. The Debtors cannot carry their burden of strict compliance for the motion now before the Court, and it must be dismissed in its entirety.

C. This Court Has No Jurisdiction to Decide Under 35 U.S.C. § 285.

52. Midas has separately filed a motion directed specifically at the Debtors' § 285 request: *Midas Green Technologies, LLC's Motion to Deny or Defer the Debtors' Request for Attorney's Fees Under 35 U.S.C. § 285, to Limit Any Sanctions to Fees Incurred in These Cases, and, in the Alternative, to Withdraw the Reference of the § 285 Issue* (ECF No. 2397) (the "§ 285 Motion"), filed June 4, 2026. (Thomas Decl. ¶ 18.) Midas incorporates the § 285 Motion by reference. As set out more fully there, the Debtors' § 285 request fails because (i) § 285 applies only to patent-infringement actions and may be awarded only by the court that presided over such an action, not a bankruptcy court adjudicating the allowance and disallowance of claims; (ii) the request is not ripe, because the patent action has reached no final judgment and there is as yet no prevailing party; and (iii) in all events, any sanction must be limited to the fees and costs incurred in these chapter 11 cases, not the fees of the separate patent litigation.

53. The Debtors have repeatedly urged this Court to dive deep into the underlying patent case to evaluate the complex technology, judge claim scope, make infringement determinations, and assess a reasonable patent royalty. These determinations are all

required to be made by the District Court, as fully set out in Midas's Motion for Mandatory Withdrawal. (ECF 1579). But now the Debtors take it even further and ask this Court to make a determination that Midas's actions in the District Court patent case make it an exceptional case under 35 USC § 285. The law on § 285 is crystal clear: only the District Court can make a determination that a case is exceptional. *Amneal Pharms. LLC v. Almirall, LLC*, 960 F.3d 1368, 1371 (Fed. Cir. 2020). (Courts have recognized a district court's ability to award attorney fees under section 285 for work done in district court patent infringement actions.) This is clear from the words of § 285 itself, and by court interpretation. It is also clear that a § 285 determination can only be made by an Article III judge, which does not include bankruptcy judges. *Id.* see also *Bowmar Instr. Corp. v. Tex. Instr., Inc*., No. F74-137, 1978 U.S. Dist. LEXIS 16234, 1978 WL 21733, at *1 (N.D. Ind. Aug. 1, 1978) (explaining that, under *Reddy and Meitzner*, § 285 does "not authorize it to award fees to a party prevailing in that court in an interference proceeding" before the USPTO). Moreover, § 285 shifts fees against the losing party, not its attorneys. To the extent the Debtors seek § 285 fees against Midas's counsel, that request is defective on the face of the statute, which authorizes an award only to the prevailing party and only against the opposing party.

54. Debtors argue "A bankruptcy court hearing a patent claim is empowered to apply section 285." (ECF 1793 at ¶ 10). For this proposition, Debtors cite *in re Roeder*, No. ADV 07-009189S, 2009 WL 4907014, at *13 (Bankr. N.D. Iowa Dec. 14, 2009) (finding case exceptional and awarding attorney fees under § 285); *In re AI Realty Mktg. of New York, Inc.,* 293 B.R. 586, 620 (Bankr. S.D.N.Y. 2003), adhered to on reconsideration, 304 B.R. 622 (Bankr. S.D.N.Y. 2004). Both cases deal with adversarial proceedings filed the patent holder against a debtor during the

course of bankruptcy. They do not address contingent proofs of claim submitted to preserve rights in pending litigation. Further, both predate the Supreme Court's mandate in *Octane* that "[s]ection 285 of the Patent Act authorizes a district court to award attorney's fees in patent litigation." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. at 548. Finally, Debtors cite *Sunbeam Prods., Inc. v. Wing Shing Prods.* (BVI) Ltd., 311 B.R. 378 (S.D.N.Y. 2004), *aff'd, 153 F. App'x 703* (Fed. Cir. 2005) (recognizing authority to award fees under § 285 but declining on the merits to award them). (ECF 1793 at ¶ 10). These cases do not ever mention Section 285! They do not stand for the proposition cited and the inclusion of this citation and the statements regarding its holdings are a complete fabrication.

55. As a result, this Court must ignore all the Debtors' assertions and arguments it makes with respect to 35 U.S.C. § 285, which would at least include paragraphs 10-11 of the Motion as filed.

56. Two further grounds, developed in the § 285 Motion, independently defeat the request. First, § 285 "applies only to [patent] infringement actions," *California Eastern Labs. v. Gould*, 896 F.2d 400, 403 (9th Cir. 1990); see also *Machinery Corp. of Am. v. Gullfiber AB*, 774 F.2d 467, 475 (Fed. Cir. 1985), and this Court presided only over the allowance and disallowance of claims, not a patent-infringement action. A creditor's filing of a proof of claim invokes the bankruptcy court's equitable claims-allowance power, *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990), but does not transform this proceeding into patent-infringement litigation within the meaning of Title 35. Second, even where § 285 applies, fees incurred in a separate, parallel proceeding are not recoverable, because a court should not be asked to evaluate the exceptionality of conduct in a proceeding in which it had no involvement. *Dragon Intell. Prop. LLC v. DISH Network L.L.C.*, 101 F.4th 1366,

1372 (Fed. Cir. 2024). The Debtors seek more than $5 million in fees incurred over two years of litigation before Judge Albright that this Court never presided over; those fees are not recoverable here. (Thomas Decl. ¶ 17.)

57. The Debtors' § 285 request is also premature. Section 285 authorizes fees only to a "prevailing party," 35 U.S.C. § 285, and such a request is made by motion in the patent case after entry of final judgment. Fed. R. Civ. P. 54(d)(2)(B); *IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3d 1377, 1386 (Fed. Cir. 2005). No final judgment has been entered in the patent action. Although the District Court entered summary judgment of noninfringement, Rhodium's affirmative counterclaim that the '457 Patent is invalid remains pending and unadjudicated, and a judgment of noninfringement neither moots nor resolves a counterclaim of invalidity. (Thomas Decl. ¶ 10.)*Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 93–98 (1993). Until that counterclaim is resolved and final judgment enters, the patent action is not over and no party has prevailed. *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. 419, 422 (2016). The Debtors' effort to obtain § 285 fees now—before any prevailing party exists, and in this Court rather than the patent court—is premature and supplies no basis for fees. See § 285 Motion.

D. Section 1927 Provides No Basis for Sanctions Against Midas

58. The Debtors cite 28 U.S.C. § 1927 but develop no argument under it, and a bare invocation cannot support an award. In all events, § 1927 fails here for independent reasons, and this Court need not resolve the unsettled question whether it may award § 1927 sanctions at all.

59. First, § 1927 authorizes fee-shifting only against "[a]ny attorney . . . or other person admitted to conduct cases" who multiplies proceedings; by its terms it reaches

counsel, not parties. *Vanderhoff v. Pacheco*, 344 F. App'x 22, 27 (5th Cir. 2009)); *Proctor & Gamble Co. v. Amway Corp.*, 280 F.3d 519, 525–26 (5th Cir. 2002). The Debtors seek sanctions against "Midas Green Technologies LLC and its counsel." To the extent they seek § 1927 sanctions against Midas itself, the request is defective on the face of the statute.

60. Second, § 1927 reaches only the unreasonable and vexatious multiplication of proceedings, and requires bad faith, improper motive, or reckless disregard of the duty owed to the court. *Edwards v. Gen. Motors Corp.*, 153 F.3d 242, 246 (5th Cir. 1998); see *In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90, 101 (3d Cir. 2008). Filing protective proofs of claim to preserve rights in an active, undismissed patent case does not multiply proceedings, much less vexatiously. As shown above, the District Court did not enter its final ruling until May 2026; until then, Midas's filings were a reasonable effort to protect its client's interests, not a churning of the docket.

61. Third, and in any event, this Court need not rest sanctions on § 1927, because its very availability to a bankruptcy court is unsettled and disputed. A bankruptcy court is a unit of the district court. 28 U.S.C. § 451. Section 451 defines a "court of the United States" to include courts "the judges of which are entitled to hold office during good behavior," 28 U.S.C. § 451—a description that does not fit bankruptcy judges, who serve fourteen-year terms. Courts are divided on the consequence. Some treat the bankruptcy court as a unit of the district court, as empowered to award § 1927 sanctions. See *In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90, 103–05 (3d Cir. 2008); *In re Osborne*, 375 B.R. 216, 220 (Bankr. M.D. La. 2007). Others hold that, because § 451's definition does not include bankruptcy courts, they are not "court[s] of the United States" with authority under § 1927. See *Jones v. Bank of Santa Fe (In re Courtesy Inns, Ltd.)*, 40 F.3d 1084, 1086 (10th

Cir. 1994); *In re DeVille*, 361 F.3d 539, 546 (9th Cir. 2004). The Fifth Circuit has not resolved the question, and bankruptcy courts confronting the split have declined to rest decisions on § 1927. See *In re Lopez*, No. 21-10343/21-10098/21-10246, 2022 WL 2080187, 2022 Bankr. LEXIS 1619, at *10 (E.D. Tex. Jun. 9, 2022)(declining to rely on § 1927 in light of the split). Because § 1927 fails for the independent reasons set forth above, this Court should likewise decline to award sanctions under that statute.

E. Midas Filed Its Proofs of Claim in Good Faith

62. As will be more fully discussed below, Midas's filing of its original Proof of Claims and its Motion for Leave to Amend its Proof of Claims are both done in good faith. It is clear from the record and the court docket that the underlying patent case had not been dismissed, and that no final ruling had been made at the time Midas filed its Proof of Claims. As a result, Midas had a good faith belief that any issues raised in the pretrial hearing can be resolved, and that Midas would get to present its case to a jury. Midas believed it would prevail at trial, and that the jury will award substantial damages for the Debtors' years of infringement of the Midas '457 Patent.

i. **Sanctions Cannot Be Imposed for Actions Midas Took While the Patent Action was Still Active**

63. As discussed fully above, it was not until May 4, 2026, that Judge Albright finally ruled on all the issues raised at the April 9, 2024, hearing. As a result of the patent case still pending at the time it filed the Proofs of Claims, Midas had a good faith belief that it would be allowed to amend the expert infringement report, could win an infringement determination at a jury trial, and that the Debtors would be found liable for substantial patent damages.

ii. The District Court's Minute Order Entry Was Not Final

64. Until May 4, 2026, the Court had not entered a final judgment as required by Federal Rule of Civil Procedure 58, nor had it issued a minute order granting the Debtors' Motion for Summary Judgment under Rule 79(a). In the absence of either a final written order or a qualifying minute order, the limited exception in Rule 58(d) which permits appeal 150 days after entry of a compliant minute order — does not apply. As a result, Midas was left without any avenue for review. Simply put, there was no final judgment under Rule 58 or Rule 79(a) until May 4, 2026, and without one, appellate rights cannot be triggered.

65. A "final decision is one by which a district court disassociates itself from a case" and "terminate[s] an action." *Hignell-Stark v. City of New Orleans*, 46 F.4th 317, 329 (5th Cir. 2022); citing *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 408-09, 135 S. Ct. 897, 190 L. Ed. 2d 789 (2015). "[A]n order resolving liability without addressing a plaintiff's requests for relief is not final." *Riley v. Kennedy*, 553 U.S. 406, 419, 128 S. Ct. 1970, 170 L. Ed. 2d 837 (2008).

66. "To understand whether an order is final, we look chiefly to the language the district court used. For example, we noted in Logue that a district court's memorandum saying that "'[a] preliminary injunction will be issued' . . . did not reflect the district court's intent that the opinion act as an operable judgment."…" *Ueckert v. Guerra*, 38 F.4th 446, 450 (5th Cir. 2022). In *Midas v. Rhodium*, the Court's oral ruling mirrored the wording, "will grant," to the wording "will issue" which is recognized as being nonfinal. Further, "the test for finality is whether the District Court intended that its order be 'effective immediately'. Said another way, a court's ruling is only final if a judge 'intends to have

nothing further to do' with the motion or the case. *Id.* (citations removed).

67. Here, Midas had a reasonable understanding that the District Court did not intend his comments at the oral hearing to be effective immediately and had left the issue regarding amendment of the expert report open. Indeed, Judge Albright made those comments over 2 years ago and did not act to finalize the pretrial hearing until May 4, 2026. The only action he had taken prior to that was to request the parties submit proposed orders, which again leads to the conclusion that his discussion at the hearing was never intended to be "effective immediately," particularly with the outstanding issue of whether Midas could amend the infringement expert report.

68. Further, the Court's words and actions reasonably showed that the Court intended to do more with the case and clearly did not intend to have "nothing further to do" with the case. As shown by the words and actions of the Court prior to May 4, 2026, the underlying patent case had not been dismissed, and Judge Albright's discussions at the pretrial conference were not intended to have any final effect.

a. In his April 9, 2024, discussion at the pretrial conference, the Court indicated it was going to meet with his law clerks and determine if Midas could amend its expert report.

b. At the end of the hearing, the Judge indicated to Midas he had not determined the basis or scope of any ruling.

c. In its minute entry of April 9, 2024, the Court indicated it was going to have a "written order forthcoming."

d. On January 10, 2025, the District Court requested the Parties submit proposed orders regarding the pretrial conference and indicated the Court

would compare the proposed orders to the Court's own internal notes.

e. The last communication from the District Court was on January 30, 2025, where it said that the Parties submission of draft proposed orders "will help this case begin to progress towards a resolution." Clearly, the District Court is still working toward a resolution, and the case is active.

f. On February 7, 2025, the Court received the Parties' proposed orders for review.

69. No final, appealable order or judgment had been issued in this case prior to May 4, 2026. The District Court expressly stated it would confer with its clerks before deciding whether to grant summary judgment or permit amendment of the Midas expert report, and it never articulated any reasoning or basis for a finding of non-infringement on the record, as required by Rule 56(a). Moreover, the Court had not entered a final written judgment under Rule 58, nor had it entered a docket entry granting summary judgment as required by Rule 79(a). Without such an entry, the narrow exception under Rule 58(d) does not apply, and the appellate court lacks jurisdiction under 28 U.S.C. § 1291. Accordingly, the case remained pending when Midas filed its Proof of Claims. The Court's oral comments were tentative, nonfinal, and expressly conditioned on further review of its notes and comparison with the proposed orders, with a final written order still "forthcoming," particularly as it related to amending the expert opinion.

F. This Court Does Not Have Jurisdiction to Decide Underlying Patent Issues

70. Once again, the Debtors wrongly ask this Court to do a deep dive into the extremely complex and difficult technology of immersion cooling, and to then apply patent law to determine infringement under 35 USC §271, damages under 35 USC §284, and

sanctions under 35 USC §285. As fully set out in *Midas Green Technologies, LLC's Motion to Deny or Defer the Debtors' Request for Attorney's Fees Under 35 U.S.C. § 285, to Limit Any Sanctions to Fees Incurred in These Cases, and, in the Alternative, to Withdraw the Reference of the § 285 Issue* (ECF No. 2397), Midas respectfully requests this Court to deny or abate adjudication of the prevailing party fees under § 285.

71. "Once subject matter jurisdiction vests with the district court, bankruptcy judges then have authority by reference under 28 U.S.C. § 157. Section 157 states that each district court may provide that "proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges." 28 U.S.C. § 157(a). The statute distinguishes between cases directly under or arising under title 11 and cases which are only "related to" a case under title 11. *Id.* at § 157(c); *Wood v. Wood (In Re Wood),* 825 F.2d 90, 95 (5th Cir. 1987). A case which is arising under or arising in a case under title 11 is a core proceeding. *Id.* at § 157(b); *Wood, 825 F.2d at 97* (a "proceeding is core under *section 157* if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case."); see also *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*; 764 F.3d 512, 526-528 (5th Cir. 2014). The statute provides [*6] a nonexclusive list of sixteen matters considered "core." 28 U.S.C. § 157(b)(2)(A) - (P). A matter is considered non-core if it is "related to" a case under title 11. *Id.* at *§ 157(c)(1).*" *In re Electro-Mechanical Indus. 2008 Bankr. Lexis 5177 at *5-7 (SDTX 2008).*

72. *Electro-Mechanical* is very much on point to the facts presented here. Universal had a pending patent infringement case against Electro-Mechanical ("EMI"). EMI filed for chapter 11 in the Southern District of Texas, Houston Division. Universal filed proof of claim for over $5M, and EMI filed a Motion to Estimate. Universal then filed a Motion to Withdraw the

reference to the extent it called for a determination of liability under patent law. (*Id.* at *2-4) The court granted the Motion, finding that withdrawal was mandatory of the determination of infringement in a patent case. (Id. at *10-11)

73. *Electro*-Mechanical at *7-9 states Section 157(d) states that the "district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d) (emphasis added). Patent infringement claims such as “this proceeding involves a question of non-Bankruptcy federal law, and, as set forth above, a question of Title 11.”

74. [C]ourts have generally held that a mandatory withdrawal of reference is warranted where "substantial and material consideration" of federal statutes other than the Bankruptcy Code is "necessary" to the resolution of a case or proceeding. *In re Nat'l Gypsum*, 145 B.R. at 541.

75. Patent “infringement analysis will likewise require substantial application of Title 35. Indeed, examining claim construction to determine the invention's scope has been held to be a matter of law reserved to the court.” citing *Markman v. Westview Instruments*, 517 U.S. 370 (1996).

76. As noted by Justice Souter in *Markman*, "the claims of patents have become highly technical in many respects as the result of special doctrines relating to the proper form and scope of claims that have been developed by the courts and the Patent Office." *Id.* at 388 (quoting Woodward, Definiteness and Particularity in Patent Claims, 46 MICH. L.REV. 755, 765 (1948). Unique aspects of claim construction have developed based on

the dictates of Title 35. See e.g. *Tech. Prop. Ltd. v. Matsushita Elec. Indus*, 514 F. Supp. 2d 916, 921-22 (E.D. Tex. 2007) (explaining the "guideposts" for courts to follow in construing claims).

77. The Court found that a finding of infringement was subject to mandatory removal: "The Court, therefore, finds the determination of patent validity and infringement falls under the mandatory withdrawal provision of § 157(d) and recommends the reference be withdrawn accordingly." *Electro-Mechanical* at *10.

78. As in Electro-*Mechanical*, the Debtors are improperly asking this Court to evaluate the underlying patent case and make both legal and factual determinations on infringement liability. The issues here involve highly technical questions concerning complex immersion cooling systems, and any determination of infringement of the Midas '457 Patent necessarily requires a substantial and material application and interpretation of Title 35 of the U.S. Code. This is not a routine application of federal law to straightforward facts, and such determinations fall outside the jurisdiction and authority of the Bankruptcy Court. This Court does not have jurisdiction to make a determination as to infringement of the '457 Patent, amounts of damages due to an infringement, or the application of sanctions as an exceptional case under 35 USC § 285.

V. CONCLUSION

79. The Debtors' Motion should be denied in its entirety for the Debtors' failure to comply with the Safe Harbor provisions of Rule 9011.

80. This Court does not have jurisdiction to make a determination that a case is exceptional under 35 U.S.C. § 285, something we would have expected the Debtors' counsel to be aware of.

81. Midas's filing of its Proof of Claims was done in good faith, and it was not sanctionable. Indeed, Midas was ethically obligated to file the Proof of Claims, and it would have been attorney malpractice not to have filed them.

82. This Court should not consider any sanctions related to the underlying patent case, as it lacks jurisdiction to find an exceptional case.

83. For the reasons set forth above, this Court should deny the Debtors' Motion for Sanctions in its entirety.

DATED: June 17, 2026

Respectfully submitted,
/s/ Joseph E. Thomas

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. The CM/ECF system will send notification of such filing to all counsel of record who are registered CM/ECF users.

I further certify that all participants in this case who are registered CM/ECF users will be served by the CM/ECF system pursuant to the Federal Rules of Civil Procedure and the Local Rules of this Court.

Dated: June 17, 2026

Respectfully submitted,

THOMAS WHITELAW & KOLEGRAFF LLP

By: /s/ Joseph E. Thomas
Joseph E. Thomas
Attorneys for Midas Green Technologies

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

In re: **RHODIUM ENCORE, LLC**, et al., Debtors,	Chapter 11 Case No. 24-90448 (ARP) (Jointly Administered)

DECLARATION OF JOSEPH E. THOMAS IN SUPPORT OF MIDAS GREEN TECHNOLOGIES, LLC'S OPPOSITION TO DEBTORS' MOTION FOR SANCTIONS RELATING TO CLAIM NUMBERS 004, 062, AND 068-072 FILED BY MIDAS GREEN TECHNOLOGIES LLC

(Relates to ECF Nos. 953, 954, 1069, 1413, 1793)

I, Joseph E. Thomas, declare as follows:

1. I am the managing partner at Thomas Whitelaw & Kolegraff LLP, counsel of record for Midas Green Technologies, LLC ("Midas") in this action. The facts stated in this declaration are true to my knowledge, and if called as a witness, I can and would testify competently to them.

2. I submit this declaration in support of Midas Green Technologies, LLC's Opposition to Debtors' Motion for Sanctions Relating to Claim Numbers 004, 062, and 068-072.

3. The facts stated in this declaration are based on my personal involvement in the patent litigation styled Midas Green Technologies, LLC v. Rhodium Enterprises, Inc., et al., Case No. 6:22-cv-00050-ADA, pending in the United States District Court for the Western District of Texas, and in the related bankruptcy proceedings.

4. Midas filed the patent infringement action against Rhodium on January 13, 2022. In that action, Midas asserted U.S. Patent No. 10,405,457 and U.S. Patent No. 10,820,446 concerning alleged infringement by Rhodium's immersion cooling systems.

5. In connection with the patent action, Midas retained Dr. Himanshu Pokharna as its independent technical expert on infringement. Dr. Pokharna holds a Ph.D. in Nuclear Engineering from Purdue University and an M.B.A. from the Wharton School of the University of Pennsylvania, is a named inventor on more than 120 issued or pending patents, previously led thermal-management engineering teams at Intel Corporation, and has served as a testifying expert in numerous liquid-cooling and thermal-management patent disputes. He was retained at his standard hourly consulting rate, and his opinions were not contingent on the substance of his conclusions or the outcome of the litigation.

6. On December 22, 2023, Dr. Pokharna served a detailed expert report under Federal Rule of Civil Procedure 26 which is Attorneys Eyes Only and filed Under Seal as EXHIBIT A. The report was based on, among other things, his personal inspection of Rhodium's Temple and Rockdale mining facilities, his review of Rhodium's technical documents and deposition testimony, and his analysis of the '457 patent and its file history. Applying the district court's claim constructions on an element-by-element basis, Dr. Pokharna opined that Rhodium's R30 and R70 immersion cooling systems infringe Claims 1 and 5 of the '457 patent, both literally and under the doctrine of equivalents. I reviewed that report.

7. Dr. Pokharna's report provided me, as counsel for Midas, with an objective, expert-supported basis to believe that Midas held a meritorious infringement claim against Rhodium. The existence of a qualified expert's detailed, element-by-element infringement opinion confirmed my good-faith belief that the patent action was substantively supported and that maintaining it was proper. I did not understand the patent action, or the infringement claim underlying it, to be baseless, frivolous, or pursued for any improper purpose.

8. During the district court litigation, and in accordance with the district court's patent procedures and case-management requirements, Midas reduced and streamlined the claims it was pursuing. Based on my understanding and participation in that matter, this narrowing of claims was done as part of the court-required simplification of the issues for trial and was not intended as an abandonment of the case.[1]

[1] Judge Albright has strict guidelines requiring the Plaintiff to reduce the number of patents and claims asserted. His **Standing Order Governing Proceedings-Patent Cases** states: *26 weeks after Markman hearing is the deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art*

9. On April 9, 2024, Judge Alan D. Albright held a final pretrial conference in the district court action. I attended or otherwise closely monitored that proceeding as counsel for Midas.

10. At that hearing, the court addressed a number of pretrial matters, including issues relating to expert opinions, damages, and Rhodium's summary judgment position on non-infringement. My understanding from the hearing was that the court excluded part of Midas's lost-profits theory, while reasonable royalty remained in the case. My understanding was also that the court addressed issues relating to the infringement report, but did not enter a final written order that day.

11. Based on the court's statements at the April 9, 2024 hearing, my good-faith understanding was that the district court had not entered a final written order or final judgment disposing of the patent case. The Court previously stated on the record that it had granted leave to amend both Midas' infringement expert Himanshu Pokharna and Midas' damages expert Duross O'Bryan

12. My understanding after that hearing was also that the district court had left open the possibility that Midas might be allowed to amend or supplement its infringement expert report to address issues raised by the court.

13. Further, the oral ruling at the April 9, 2024 hearing could not have been a final ruling because the oral ruling failed to state the reasoning for granting summary judgment on the record, which is required for a ruling to be final. Further, the Court stated plainly that the Court intended to discuss with his clerks whether summary judgment would be reconsidered after leave to amend Midas' infringement expert Himanshu Pokharna.

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references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court to arrange a teleconference with the Court to resolve the disputed issues.

14. That understanding was reinforced by the district court's minute entry entered after the April 9, 2024 hearing, which stated in substance that a written order was forthcoming.

15. In my professional judgment, the April 9, 2024 hearing did not result in a final written judgment under Federal Rule of Civil Procedure 58, nor did it otherwise finally terminate the case in a form that would have made clear to me that Midas no longer had a live patent claim to protect.

16. Thereafter, the district court continued to take actions showing that the case remained active. On or about January 30, 2025, the district court requested that the parties submit proposed orders reflecting their understandings of the court's rulings from the April 9, 2024 hearing, with disputed language identified for the court's review.

17. I understood that request to mean that the district court was still considering how to formalize and resolve the matters discussed at the hearing and that additional judicial action remained necessary before final resolution.

18. The district court's request for proposed orders further confirmed my understanding that the court's prior oral comments were not the final operative disposition of the patent case.

19. On or about February 7, 2025, the parties submitted proposed orders to the district court in response to that request.

20. Before the district court issued its final written order, Midas filed proofs of claim in this bankruptcy case in order to preserve and protect its rights arising out of the pending patent litigation.

21. In my professional judgment, the district court action remained active and

unresolved, and Midas needed to protect its ability to recover on its claims in light of the bankruptcy proceedings. Because I understood the patent case to be active until the district court's written ruling, filing proofs of claims in the bankruptcy action was necessary to preserve its interest in the pending litigation. Without filing proofs of claims prior to the cut of date, all interest in the pending litigation would have been forfeit. Based on the lack of a final order and the Court's inconsistent statements on the record, I believed it was necessary and proper to file these proofs of claims to ensure that Midas maintained its rights. I did not believe that filing proofs of claim on Midas's behalf was improper, vexatious, or undertaken in bad faith.

22. Midas did not file proofs of claim for any improper purpose, including to harass the Debtors, increase litigation costs, or relitigate a finally decided patent matter in a different forum.

23. To the contrary, filing the proofs of claim was a necessary and prudent step to protect Midas's interests while the patent case remained unresolved.

24. At all relevant times, I believed in good faith that Midas had a potentially viable right to recovery arising from the pending patent action and that failure to preserve that claim in the bankruptcy case could prejudice Midas.

25. In addition, after receiving guidance from the district court concerning damages issues, Midas took steps to amend and reduce aspects of its claim presentation in an effort to clarify and narrow the claimed exposure. In my view, those actions were consistent with good-faith litigation conduct.

26. On January 7, 2025, the Debtors filed a motion in this bankruptcy court seeking limited relief from the automatic stay so that the district court could enter an order

and judgment memorializing its April 9, 2024 bench ruling.

27. I reviewed that filing, and I understood it to be an acknowledgment by the Debtors themselves that further district court action was required before there would be a final written order and judgment.

28. In my view, that filing was inconsistent with any suggestion that the patent case had already been finally terminated before Midas filed its bankruptcy proofs of claim.

29. On October 28, 2025, this Court issued rulings that, as I understood them, likewise recognized that the district court litigation still required final resolution by the district court.

30. Those events further reinforced my understanding that the underlying patent action had remained active at the time Midas filed its proofs of claim.

31. On May 4, 2026, Judge Albright issued the district court's written order, which was entered on May 5, 2026.

32. I reviewed that written order. In my understanding, that order confirmed that important issues had remained unresolved after the April 9, 2024 hearing, including whether Midas could amend its expert report and infringement contentions to address the non-infringement issues.

33. In particular, the district court stated that the expert report and infringement contentions could not be amended in an attempt to re-address the summary judgment of non-infringement issue. Until that written clarification was issued, I believed there remained a possibility that amendment might be permitted.

34. Based on the district court's written order, I believe my prior understanding was reasonable and held in good faith.

35. Accordingly, from April 9, 2024 until the district court's written ruling in May 2026, I believed that the patent action had not been finally resolved and that Midas was required to preserve its rights in the bankruptcy case.

36. I also understand that the Debtors seek sanctions under Federal Rule of Bankruptcy Procedure 9011. Based on my review of the procedural history described in Midas's opposition, it is my understanding that the Debtors served a sanctions draft, filed a sanctions motion on September 4, 2025, and later filed the present motion on October 14, 2025.

37. Debtors did not serve a new Rule 9011 motion and then waited a fresh twenty-one-day safe-harbor period before filing the later motion. Therefore, the filing of the this brief did not comply with the procedural requirements of Rule 11 and Rule 9011.

38. In defending against the sanctions request, Midas has also argued that any request for fees under 35 U.S.C. § 285 belongs, if at all, in the district court that presided over the patent litigation. Midas had a good faith basis to file its patent infringement case against the Debtors. The issue at the heart of the Debtors Motion for Summary Judgment was that the claim language "control facility adapted to coordinate the operation of the primary and secondary fluid circulation facilities as a function of the temperature of the dielectric fluid in the tank". My reading of the claim language: "as a function of the temperature of the dielectric fluid in the tank" differed from the Court's claim language interpretation which, in my opinion, added an additional element that requirement the Midas patent to take a temperature measurement inside of the tank, rather than a system which coordinated the operation of the circulation facilities with a mathematical calculation capable of controlling the temperature of the tank, was not reasonably

foreseeable prior to the Court's ruling. My understanding of the claim language was supported by my expert Himanshu Pokharna, who confirmed from the patent specification that Midas' own invention measured temperature outside of the tank in its proposed embodiments. Therefore, it was not reasonably foreseeable to Midas that in prosecuting Midas' claims that the claim language would be interpreted so narrowly.

39. At no time did I act with bad faith, improper purpose, or reckless disregard of my duties to the Court.

40. At all relevant times, I acted based on my professional judgment, my understanding of the procedural posture of the district court patent action, and my obligation to protect my client's rights.

41. If Midas had not filed proofs of claim while the patent action remained unresolved, I was concerned that Midas's rights against the bankruptcy estates could be impaired or lost.

42. For that reason, I believed that filing the proofs of claim was not only reasonable, but necessary.

43. Everything I did in connection with Midas's filing and pursuit of the proofs of claim was done in good faith and in the ordinary discharge of my duties as counsel. Because Midas's proofs of claim were filed to preserve and estimate the value of that same infringement claim, Dr. Pokharna's report likewise furnished a good-faith, expert-supported basis for filing the original and amended proofs of claim. The report gave me a reasonable and well-founded basis to conclude that Midas held a genuine, expert-supported claim against the Debtors worth preserving through the bankruptcy claims process, and it informed my professional judgment that filing the proofs of claim was a prudent and

necessary step to protect Midas's interests while the district court action remained unresolved.

44. The Debtors filed for bankruptcy on August 29, 2024. Midas was required under the bankruptcy rules to file any Proof of Claim by November 22, 2024, and if it missed that date, any right to collect from the Debtors would be extinguished. Midas filed its Proof of Claims on September 18, 2024, approximately 1 month before the drop dead bar date. At the time of filing the Proofs of Claim, Midas had a good faith understanding that the District Court patent case was active, and the court was considering allowing Midas to amend its technical expert report.

45. To the best of my knowledge, information, and belief, Midas's proofs of claim were filed to preserve rights in an unresolved dispute and not to multiply proceedings or pursue a claim known to be meritless.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

DATED: June 17, 2026

Respectfully submitted,
/s/ Joseph E. Thomas

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