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

In re:	§	Chapter 11
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)

THE WIND DOWN DEBTOR'S RESPONSE TO MIDAS GREEN'S REQUEST TO DENY OR DEFER ATTORNEY'S FEES UNDER 35 U.S.C. § 285 AND REPLY IN FURTHER SUPPORT OF ITS REQUEST TO GRANT SECOND SANCTIONS MOTIONS AGAINST MIDAS GREEN

Rhodium Enterprises, Inc., the wind down Debtor entity (the "**Wind Down Debtor**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**") of Rhodium Encore LLC and its affiliated debtors and debtors in possession ("**Debtors**") files this response to Midas Green Technologies, LLC's ("**Midas Green**" or "**Midas**") *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* [Docket No. 2397] ("**Section 285 Objection**"), *Opposition to Debtors' Motion for Sanctions Relating to Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC Pursuant to 11 U.S. Code § 105 and 35 U.S. Code § 285* [Docket No. 2421] ("**Further Opposition to Sanctions Motion 1794**"), and *Opposition to Debtors' Motion for Sanctions Relating to Claim Numbers 004, 062, and 068-072*

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

Filed by Midas Green Technologies LLC [Docket No. 2422] ("**Further Opposition to Sanctions Motion 1793**") and reply in further support of the Wind Down Debtor's request [Docket No. 2366] ("**Sanctions Request**") that the Court grant the Debtors' motions for sanctions [Docket Nos. 1793 and 1794] ("**Second Sanctions Motions**") against Midas Green.

ARGUMENT

1. Midas Green's vexatious litigation tactics have put the Debtors to great, unnecessary expense – first in defending against meritless patent claims before the United States District Court for the Western District of Texas (the "**District Court**"), and then in defending against those same claims filed again in these Chapter 11 Cases. As discussed in greater detail in the Sanctions Request and Second Sanctions Motions, which along with the Topping Declaration the Wind Down Debtor incorporates by reference herein, Midas Green's conduct cost the Debtors and their stakeholders millions of dollars in unnecessary legal fees and expenses, which Midas should be required to reimburse as a sanction for its misconduct, including pre-petition fees and costs the Debtors incurred totaling more than $5 million, Topping Decl. ¶¶ 2-3; post-petition fees and costs the Debtors incurred of an additional $1.2 million responding to the frivolous Midas Claims, including $755,988.72 through September 12, 2025, Topping Decl. ¶ 8; and approximately $480,000.00 the Debtors incurred from September 13, 2025 through the Effective Date, as well as approximately $90,000 the Wind Down Debtor has incurred since the Effective Date and through May 31, 2026, and approximately $50,000 the Wind Down Debtor anticipates it will incur on and after June 1, 2026 in preparation for the hearing on the Sanctions Request and Second Sanctions Motion scheduled for June 30, 2026, as reflected in the supplemental Declaration of Jordan Pietzsch in Support of Sanctions Request ¶¶ 6-7 (the "**Pietzsch Declaration**"), submitted in connection herewith.

I. The Written Order Confirms The District Court Granted Judgment In Rhodium's Favor Before Midas Green Refiled Its Meritless Claims Here.

2. The written *Order Granting Summary Judgment* (the "**Written Order**," filed in these Chapter 11 Cases at Docket No. 2385-1), entered on May 4, 2026 by the District Court, confirms beyond a doubt that the District Court granted summary judgment in Rhodium's[2] favor on Midas Green's patent claims ***before*** Midas filed proofs of claim in these Chapter 11 Cases in September and November 2024 seeking relief based on the exact same claims the District Court had just rejected. Indeed, the first substantive sentence of the Written Order states that "the Court heard oral argument and **GRANTED** this [Rhodium] motion [for summary judgment] at the April 9, 2024 final pre-trial conference. ECF No 186. This order memorializes the Court's ruling and reasoning." *See* Written Order at 2. The District Court's *Omnibus Order Regarding Pretrial Motions* (the "**Pretrial Motions Order**," filed in these Chapter 11 Cases at Docket No. 2385-2), entered the next day on May 5, 2026, says the same. *See* Pretrial Motions Order at 2 ("Additionally, the undersigned granted Defendants' Motion for Summary Judgment of Non-Infringement (ECF No. 155) orally at the pre-trial conference.").

3. Despite the District Court's clear ruling during the April 9, 2024 hearing, as confirmed in the Written Order and Pretrial Motions Order, Midas Green has nonetheless suggested it was not certain the District Court's decision was final because it believed it might be permitted to amend one of its expert reports to readdress certain summary judgment issues.[3] *See,*

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[2] In its third amended complaint before the District Court, Midas Green purported to allege claims of patent infringement against Rhodium Enterprises, Inc. Rhodium Technologies LLC, Rhodium 10MW LLC, Rhodium 2.0 LLC, Rhodium 30MW LLC, Rhodium Encore LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, and Rhodium Ready Ventures LLC (collectively, "**Rhodium**"). *See Third Amended Complaint for Patent Infringement, Midas Green Techs., LLC v. Rhodium Enters. Inc.*, No. 6:22-cv-00050-ADA (W.D. Tex. Mar. 29, 2023) [Docket No. 106].

[3] Midas cites an email from Judge Albright's law clerk requesting the submission of a joint proposed order as evidence the District Court's April 9, 2024 ruling was not final. But the District Court's email does not indicate that the Court

e.g., *In re Rhodium Encore LLC*, Case No. 24-90448 (ARP) [Docket No. 2400], May 18, 2026 Hearing Transcript at 8:9-19 ("**May 18, 2026 Hr'g Tr.**"). Midas claims it had an "ethical duty to protect its financial interests in this bankruptcy proceeding." Further Opposition to Sanctions Motion 1794 ¶ 1. But to the extent Midas wanted to "protect its financial interests" and believed there was some further action it could take before the District Court that might have somehow resulted in the District Court reconsidering its decision, it should have sought relief from this Court to lift the automatic stay so that it could pursue such action. It failed to do so.

4. Instead, Midas simply filed its proofs of claim (Claim Nos. 004, 062, and 068-72, collectively, the "**Midas Claims**"), seeking between approximately $25 and $43 million in alleged damages based on the exact same claims for which the District Court had already granted Rhodium summary judgment. Remarkably, Midas Green did not bother even to notify this Court in its proof of claim that the District Court had orally granted summary judgment against Midas Green on those very claims, not even to explain that Midas Green intended to seek some further relief in connection with the District Court's ruling.

5. When timely served with Debtors' objections to the Midas Claims [Docket Nos. 953-54] (collectively, the "**Claims Objection**") and requests for sanctions as a result of their filings, Midas Green doubled down, failing once again to seek relief from the stay to attempt to change the District Court's mind, while also refusing to withdraw the Midas Claims.

6. As a result of Midas's failure to withdraw its meritless claims, the Debtors were required to incur substantial, additional costs, briefing the Claims Objection and related request for summary judgment [Docket Nos. 1484 and 1486] (collectively the "**Summary Judgment Motion**") and to estimate contingent and unliquidated claims [Docket No. 1485] (the "**Estimation**

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was still considering how to rule. Rather, just as in the Written Order, the email specifically states that the District Court intended to enter an order reflecting the rulings it had already made during the April 9, 2024 hearing.

Motion"); briefing the First and Second Sanctions Motions[4] and the related *Declaration of Charles R. Topping* [Docket No. 1641] (the "**Topping Declaration**"); and preparing for and litigating the September 23 and 24, 2025 hearing on the Claims Objection, Summary Judgment Motion, Estimation Motion, and First Sanctions Motion (the "**Midas Claims Hearing**").

7. For its part, despite putting the Debtors to great expense, Midas Green showed up to the Midas Claims Hearing empty-handed. As the Court explained in its October 28, 2025 *Memorandum Opinion and Order on Debtors' Amended Omnibus Objection to Claim Numbers 004, 062, and 068-072 and Debtors' Motion to Estimate* [Docket No. 1878] (the "**Midas Claims Opinion**") sustaining the Claims Objection and estimating the Midas Claims at $0.00: "Midas Green had reasonable notice and opportunity to come to the September hearing prepared to present evidence, and for reasons unclear to this Court, chose not to." Midas Claims Opinion at 16-17.

8. Midas chose not to prepare for the Midas Claims Hearing because Midas knew it could not prevail (having lost already on the same issues at the District Court). Midas, in other words, chose not to throw (its own) good money after bad preparing for a hearing on claims it knew to be doomed. Midas showed no such concern for the estates' resources. At substantial expense, the Debtors made ready to litigate claims that Midas refused to withdraw, only to have Midas no-show the hearing and effectively drop those claims without the fight for which the Debtors reasonably had prepared.

9. Finally, neither the Midas Claims Opinion nor the Order Denying Withdrawal (defined below) indicate – as Midas suggests – that "[t]his Court recognized that Judge Albright still had sole jurisdiction over patent matters, and that the underlying patent case was still active." *See, e.g.*, Further Opposition to Sanctions Motion 1794 ¶ 11. The Court's note that its decisions

[4] Capitalized terms used but not defined herein shall have the meaning assigned to them in the Sanctions Request.

would serve as a report and recommendation, should the Southern District of Texas decide to withdraw the reference, were not "recommendations to Judge Albright on how to rule in the pending patent case." *Id.* To the extent the reference had been withdrawn, the case would be withdrawn to a district court sitting in the Southern District of Texas for which the Court's orders would serve as a recommendation – not to Judge Albright sitting in the Western District of Texas.

II. Midas Green's Section 285 Objection Should Be Overruled, and the Court Should Award the Debtors Section 285 Sanctions As Part of Its Award in Connection with the Sanctions Request.

10. While recognizing this Court's authority to award sanctions under Federal Rule of Bankruptcy Procedure ("**Bankruptcy Rule**") 9011, section 105 of the Bankruptcy Code, and the Court's inherent authority, Midas Green seeks to limit its exposure by claiming in its Section 285 Objection that the Court cannot or should not award sanctions pursuant to 35 U.S.C. § 285 of the Patent Act ("**Section 285**") or that the decision with respect to Section 285 sanctions should be deferred or delayed. Midas is mistaken on all accounts.

a. The Court Has Authority to Award Section 285 Sanctions.

11. As an initial matter, this Court has authority to award Section 285 sanctions. Midas Green claims in its Section 285 Objection that this Court does not have jurisdiction to award Section 285 fees[5] and asserts in the alternative that it does not consent to this Court's final adjudication of a Section 285 award and that the reference should be withdrawn with respect to the Section 285 request. However, this Court has already determined that it had authority to

[5] Midas Green also argues that this Court does not have the authority to award attorneys' fees based on conduct that occurred before a different adjudicator. *See, e.g.*, Further Opposition to Sanctions Motion 1793 at ¶ 42; Further Opposition to Sanctions Motion 1794 at ¶ 50. Not so. Courts regularly award attorneys' fees for conduct that occurs in other courts or adjudicative bodies. *See, e.g.*, *Apotex Inc. v. UCB, Inc.*, No. 12-cv-60706, 2015 WL 11622480 (S.D. Fla. Dec. 4, 2015) (district court awarding attorneys' fees based on inequitable conduct before the U.S. Patent and Trademark Office ("PTO"); *Energy Heating, LLC v. Heat On-The-Fly, LLC*, 15 F.4th 1378 (Fed. Cir. 2021) (affirming district court's decision to award Section 285 attorneys' fees based on exceptional conduct that had occurred before the PTO).

resolve the Claims Objection and Estimation Motion with respect to the validity of Midas Green's patent claims against Rhodium, which the Court determined were core matters pursuant to 28 U.S.C. § 157(b)(2)(B), *see Report and Recommendation to the District Court Regarding Midas Green Technologies, LLC's Motion to Withdraw the Reference* [Docket No. 1880] ("**Order Denying Withdrawal**"), and the request for attorneys' fees pursuant to Section 285 of the Patent Code is part and parcel of that determination, requiring nothing more than the further application of well-settled law.[6] *See, e.g.*, *Elan Pharms., LLC v. Sexton*, 421 F. Supp. 3d 1119, 1125 (D. Kan. 2019) (explaining that an award of attorneys' fees under Section 285 is not a separate claim or element of damages to be proved at trial but rather a fee-shifting decision for the judge following a determination of the patent claims); *Lokai Holdings LLC v. Twin Tiger USA LLC*, 306 F. Supp. 3d 629, 644 (S.D.N.Y. 2018) ("[A]n award of attorney's fees [under Section 285] is a remedy that underlies a cause of action, but does not give rise to a separate one.").[7]

12. Indeed, a number of bankruptcy courts have reached Section 285 attorneys' fees requests as part of their consideration of patent claims lodged against the debtor.[8] *See, e.g.*,

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[6] Midas's reliance on *In re Electro-Mechanical Industries, Inc.*, No. 07-36393, 2018 WL 6587299 (Bankr. S.D. Tex. Feb. 20, 2018) appears to be little more than an untimely attempt to seek reconsideration of the Order Denying Withdrawal to which the Court need pay no heed. *In re Electro-Mechanical Industries* concerned withdrawal of the reference with respect to the adjudication of infringement claims, not Section 285 sanctions, which are not even referenced in the opinion. This Court has already considered and rejected Midas Green's exact same arguments with respect to *Electro-Mechanical Industries* in connection with its request to withdraw the reference as to its meritless infringement claims against Rhodium, and the time for seeking reconsideration of that decision has long since passed. *See* Order Denying Withdrawal at 8-10.

[7] And for the same reasons set forth in the Order Denying Withdrawal, cause does not exist to permissively withdraw the reference here. *See* Order Denying Withdrawal at 13-15.

[8] Midas cites *Samsung Electronics Co. v. Rambus, Inc.*, 523 F.3d 1374, 1379 (Fed. Cir. 2008) for the proposition that "[t]he authority to determine that a patent case is exceptional under 35 U.S.C. § 285 resides only in the District Court." Further Opposition to Sanctions Motion 1794 ¶ 35. *Samsung Electronics* says no such thing. Rather, the court in *Samsung Electronics* merely held that after the plaintiff had offered the defendant "the entire amount of attorney fees in dispute, the case became moot," and "[t]he district court had no case or controversy to continue to consider." *Id.* at 1380. Midas has made no such offer here. Midas's reliance on *California Eastern Laboratories, Inc. v. Gould*, 896 F.2d 400, 403 (9th Cir. 1990), and *Machinery Corporation of America v. Gullfiber AB*, 774 F.2d 467, 475 (Fed. Cir. 1985), is similarly misplaced. Those cases stand only for the proposition that where patent and non-patent claims are alleged against a defendant, Section 285 fees are available only for the time spent litigating the patent claims. *Cal.*

Monsanto Co. v. Roeder (In re Roeder), Adv. No. 07-09189S, 2009 WL 4907014 (Bankr. N.D. Iowa Dec. 14, 2009) (awarding damages and Section 285 attorneys' fees related to patent claims against the debtor);[9] *Dynatron/Bondo Corp. v. Clausen Co. (In re Clausen Co.)*, 81 B.R. 285, 290 (Bankr. D.N.J. 1988) (deciding patent claims against debtor, which the court found were a core proceeding, and determining whether to award attorneys' fees pursuant to Section 285 of the Patent Act); *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), *and aff'd in part, rev'd in part sub nom. Sunbeam Prods., Inc. v. Wing Shing Prods. (BVI) Ltd*.,[10] 311 B.R. 378 (S.D.N.Y. 2004), *aff'd*, 153 F. App'x 703 (Fed. Cir. 2005) (same).[11]

East. Labs., 896 F.2d at 403; *Mach. Corp. of Am.*, 774 F.2d at 475. The only fees Debtors seek here relate to time spent litigating Midas's patent claims against Rhodium, both at the District Court and then again before this Court.

[9] Midas suggests *Roeder* and *AI Realty* are not persuasive because they "deal with adversarial proceedings filed [by] the patent holder against a debtor during the course of bankruptcy" and "do not address contingent proofs of claim submitted to preserve rights in pending litigation." Further Opposition to Sanctions Motion 1793 ¶ 54. But that's a distinction without a difference. Just as in *Roeder* and *AI Realty*, the Court here has already "spent substantial time on this case and has become familiar with the facts of the underlying dispute." Order Denying Withdrawal at 15.

[10] Midas accuses the Debtors of misciting *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), arguing *Sunbeam* does not even mention Section 285. Further Opposition to Sanctions Motion 1793 ¶ 54. But Midas is confused. *Sunbeam* is only referenced as part of the subsequent appellate history for *In re AI Realty Mktg. of New York, Inc*., 293 B.R. 586 (Bankr. S.D.N.Y. 2003), which addressed other issues on appeal but did not disrupt the bankruptcy court's Section 285 ruling.

[11] *Dragon Intellectual Property LLC v. DISH Network LLC*, 101 F.4th 1366, 1372 (Fed. Cir. 2024) is inapposite. In *Dragon Intellectual Property*, the Federal Circuit held that appellants could not recover attorneys' fees incurred in parallel *inter partes* review proceedings before the Patent Trial and Appeal Board because the appellants had ***voluntarily*** initiated such proceedings instead of arguing invalidity before the district court. *Id.* at 1371. The Federal Circuit explained that '[i]n cases where a party voluntarily elects to pursue an invalidity challenge through IPR proceedings, we see no basis for awarding IPR fees under § 285." *Id.* In reaching this conclusion, the court distinguished *Dragon Intellectual Property* from its prior holding in *PPG Industries v. Celanese Polymer Specialties Co.*, 840 F.2d 1565 (Fed. Cir. 1988), in which Section 285 fees were allowed for a defendant who participated in reissue proceedings, explaining that "the defendant's participation in the reissue proceedings was 'not optional' because the plaintiff had initiated the reissue proceedings and 'forced' the defendant to perform before the Board 'precisely the same type of work' the defendant would have performed at trial, so the defendant had no other option available." *Id.* at 1371-72 (quoting *PPG Industries*, 840 F.2d at 1568). Just as in *PPG Industries*, there was nothing voluntary or optional here about the Debtors' requirement to incur fees litigating Midas Green's meritless patent claims in both the District Court and the Bankruptcy Court – because Midas Green filed and refused to withdraw the Midas Green Claims, Rhodium was required to perform before this Court "precisely the same type of work" it performed before the District Court, and as in *PPG Industries*, the Debtors should be entitled to Section 285 fees as a result.

Midas's reliance on *Amneal Pharmaceuticals LLC v. Almirall, LLC*, 960 F.3d 1368, 1371 (Fed. Cir. 2020) is similarly inapt. *See* Further Opposition to Sanctions Motion 1794 ¶ 3. In *Amneal Pharmaceuticals*, the court rejected a request for Section 285 fees for work performed before the Patent Office before the patent litigation at issue was filed. *Id.* at

13. In addition, as with its prior effort, Midas Green's request to withdraw the reference with respect to Section 285 sanctions is untimely. Southern District of Texas General Order 2011-12 provides that in a contested matter, a request to withdraw the reference is due within 21 days of the pleading initiating the contested matter. The Debtors filed the First Sanctions Motion seeking Section 285 relief on September 4, 2025 [Docket No. 1602], the Second Sanctions Motions seeking Section 285 relief on October 14, 2025 [Docket No. 1793], and the Sanctions Request on April 7, 2026 [Docket No. 2366]. Midas filed its request to withdraw the reference on June 4, 2026, more than 21 days after all three. Indeed, the grounds for Midas's motion should have become apparent by the fall of 2025, *see, e.g.*, *J.T. Thorpe Co. v. Am. Motorists*, No. H-02-4598, 2003 WL 23323005, at *4 (S.D. Tex. June 9, 2003), and yet, Midas waited 8 months before moving to withdraw.

14. At a minimum, as Midas itself has acknowledged, this Court can (and should) make a recommendation that the Debtors be awarded Section 285 attorneys' fees as part of its ruling with respect to the Debtors parallel requests for sanctions pursuant to Bankruptcy Rule 9011, Bankruptcy Code Section 105, and the Court's inherent authority. The Court has already "spent substantial time on this case and has become familiar with the facts of the underlying dispute."[12] Order Denying Withdrawal at 15. The extensive delay and unnecessary cost to which the Debtors have already been subjected would be unnecessarily compounded were the Debtors' requests for Section 285 sanctions not taken up as part of the Court's consideration of its other bases for relief.

1372. In so holding, the court again distinguished the case from *PPG Industries*, where the court allowed Section 285 fees for proceedings before the Patent Office where such fees were incurred after the filing of a civil action. *Id.*

[12] In other words, the Court has already "live[d] with the case over a prolonged period of time" and is therefore well equipped to determine whether it "stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." *See Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563-64 (2014) (internal quotation marks and citation omitted).

b. Section 285 Sanctions Are Ripe for Consideration.

15. Midas is likewise incorrect in asserting Section 285 sanctions are not yet ripe for decision because the District Court has not yet resolved Rhodium's counterclaim for invalidity. Section 285 sanctions require only that there be a "prevailing party" – meaning that there has been a judicially sanctioned alteration of the legal relationship of the parties. *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. 419, 422 (2016). The District Court's request that Rhodium provide an update on its counterclaim for invalidity does not change Rhodium's status as a prevailing party on Midas's claims. *See, e.g.*, *Luv n' Care, Ltd. v. Laurain*, 98 F.4th 1081, 1106 (Fed. Cir. 2024) ("[A] party is not required to prevail on all claims in order to qualify as a prevailing party.") (internal quotation marks and citation omitted). Regardless of how Rhodium's counterclaim is adjudicated, it will not "alter the reality that [Rhodium] has already obtained [a] material alteration of its relationship with [Midas Green]" and is therefore a prevailing party for Section 285 sanctions purposes. *Id.*[13]

c. The June 30, 2026 Hearing Should Not Be Delayed.

16. Finally, Midas seeks to continue the June 30, 2026 hearing due to scheduling conflicts associated with expert witnesses it intends to present during the hearing, and to extend the time for the hearing from two hours to two days. Section 285 Objection at 16-17; Further Opposition to Sanctions Motion 1794 at 6-7. Midas's request is a transparent effort to further delay a reckoning for its sanctionable conduct and will only add to the waste already created by its misconduct. Midas raised no such concerns during the May 18, 2026 conference during which the June 30, 2026 hearing was scheduled, despite having been on notice Debtors were seeking Section

[13] While irrelevant to the motion pending before this Court, Rhodium has advised the District Court that Rhodium's invalidity counterclaims may be dismissed as moot in light of the summary judgment ruling in Rhodium's favor on infringement.

285 fees for over eight months.[14] May 18, 2026 Hr'g Tr. at 8:2-9. In fact, Midas indicated to the Court during the scheduling conference that it anticipated "one hour is probably enough" for the hearing, and when the Court indicated it would hold the hearing remotely because the hearing was going to be primarily argument (and not witness testimony), counsel for Midas readily agreed. *Id.* at 8:22-9:1.

17. Midas should not now be permitted to change course and continue the pattern of waste and delay to which the Debtors have already been subjected for nearly two years. Midas had "11 weeks' notice" of the Midas Claims Hearing during which it could have offered the expert testimony it now seeks to elicit, but chose to show up to that hearing "empty-handed." Midas Claims Opinion at 16-17, 21. Having put the Debtors to the cost of that hearing once already, Midas should not be entitled to a do-over now, nearly a year later and after having expressly represented to the Court that a one-hour, remote hearing would suffice.

III. Bankruptcy Code Section 105 Sanctions Are Appropriate Under the Circumstances Here.

18. Midas Green asserts that the Court may not rely on Bankruptcy Code section 105 as a basis to award sanctions because the Bankruptcy Code does not expressly provide for an award of attorneys' fees under Section 285. *See* Further Opposition to Sanctions Motion 1794 at ¶ 34.

19. Midas Green is mistaken that Bankruptcy Code section 105 does not authorize awards of attorneys' fees. As discussed in further detail in the Second Sanctions Motion (Docket

[14] Nor did Midas identify any experts as witnesses in connection with the September 23, 2025 hearing during which the First Sanctions Motion was originally set to be decided. On September 5, 2025, the Court provided Midas notice that it would hear the First Sanctions Motion on September 23, 2025. *Scheduling Order With Respect to the Debtors' Motion for Sanctions Relating to Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC* [Docket No. 1609]. However, Midas failed to file a witness and exhibit list identifying any expert witnesses prior to the September 23 hearing. During the September 23, 2025 hearing, the Court – after expressing that it "thought [it] was pretty clear" that the Court would hear "all matters on [the Midas Green] case" on that day – decided to "enforce [the Local Rules] with respect to [Midas's] ability to use witness and exhibits." *In re Rhodium Encore LLC,* Case No. 24-90448 (ARP) [Docket No. 1806], Sept. 23, 2026 Hearing Transcript at 11:23-12:8.

No. 1794), a bankruptcy court may rely on Section 105 to issue orders as necessary to further the purposes of the Bankruptcy Code, including to impose sanctions for contempt and other forms of misconduct. *Rojas v. Citi Corp Tr. Bank FSB (In re Rojas)*, No. 07-70058, 2009 WL 2496807, at *6 (Bankr. S.D. Tex. Aug. 12, 2009). Abuses of the bankruptcy claims process regularly give rise to sanctions orders under Section 105. *See, e.g., Bavelis v. Doukas (In re Bavelis)*, 563 B.R. 672, 687-88 (Bankr. S.D. Ohio 2017) (awarding sanctions under Bankruptcy Code section 105 where claimant filed a claim that had been assigned to another party); *see also In re Royal Manor Mgmt., Inc.*, 525 B.R. 338, 368 (B.A.P. 6th Cir. 2015), *aff'd*, 652 F. App'x 330 (6th Cir. 2016) (affirming an award of sanctions under Bankruptcy Code section 105 based on claimant's vexatious litigation tactics in pursuing its frivolous claim).[15]

IV. The Debtors Have Complied with the Rule 9011 Safe Harbor and Are Therefore Entitled to Rule 9011 Sanctions As Well.

20. Midas Green argues Debtors are not entitled to sanctions pursuant to Bankruptcy Rule 9011 because they have not strictly complied with Rule 9011's safe harbor requirements. Midas is again mistaken.

21. Midas Green argues that the Fifth Circuit Court of Appeals mandates strict compliance with Rule 11 notice requirements, including the "identicality" requirement between the motion served during the safe-harbor period and the motion ultimately filed. *See, e.g.*, Further Opposition to Sanctions Motion 1793 at ¶ 37 (citing *Uptown Grill, L.L.C. v. Camellia Grill*

[15] Midas Green cites *Chambers v. NASCO, Inc*. for the proposition that bankruptcy courts should only impose sanctions under their inherent power and Bankruptcy Code section 105 when there has been a finding of fraud on behalf of the offending party. *See* Further Opposition to Sanctions Motion 1794 at ¶ 43. However, Midas Green mischaracterizes the *Chambers* case. While *Chambers* provides that a court may award attorneys' fees under section 105 when there has been a finding of fraud, it also notes that a court may assess attorneys' fees when a party "shows bad faith by delaying or disrupting the litigation or by hampering enforcement of a court order." 501 U.S. 32, 46 (1991) (internal quotation marks and citation omitted). There is no question that Midas Green acted in bad faith by filing the Midas Claims, including by failing deceptively to disclose that summary judgment had already been awarded to Rhodium. *See Graham v. Dallas Indep. Sch. Dist.*, No. 3:04-CV-2461-B, 2006 WL 507944, at *4 (N.D. Tex. Jan. 10, 2006).

Holdings, Inc., 46 F.4th 374, 389 (5th Cir. 2022); *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d 580, 588 (5th Cir. 2008); *Orchestrate HR, Inc. v. Trombetta,* 178 F. Supp. 3d 476, 498–500 (N.D. Tex. 2016)); *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* ("**Midas Green Opp.**") [Docket No. 1662] at ¶¶ 6, 22, 35 (citing *Pratt*).

22. But the Debtors *have* strictly complied with Rule 9011's safe harbor. That is why the Debtors – to be procedurally pristine and in accordance with this Court's directive – withdrew their First Sanctions Motion and filed the Second Sanctions Motion on October 14, 2025, *see Debtors' Motion for Sanctions Relating to Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC* (the "**Refiled Motion**") [Docket No. 1793], which was a copy of ***the exact same*** motion served on Midas's counsel on August 7, 2025.

23. Nonetheless, Midas appears to argue that the Debtors' service of their Rule 9011 motion from August 7, 2025 somehow expired due to the Debtors' erroneous filing of their First Sanctions Motion. However, Midas does not cite a single case supporting this counterintuitive theory. Nor could it. No case holds that an intermediary, erroneous filing after service of the Rule 9011 motion draft somehow vitiates the existing safe harbor service period.

24. Instead, the case law in the Fifth Circuit – including the very cases Midas cites – state that service of the motion begins the "safe harbor clock," *Pratt*, 524 F.3d at 587 n.26, from which point the opposing party has the 21-day opportunity to withdraw its offending papers. The Fifth Circuit asks only that there be "identicality" between the served copy and the filed motion rather than informal notice, *see Uptown Grill,* 46 F. 4th at 389; *Orchestrate HR*, 178 F. Supp. 3d at 498; *Pratt*, 524 F.3d at 586–87. This is the very identicality Debtors carefully preserved by refiling their sanctions motion on October 14, 2025.

25. The time period between the Debtors' service of the Rule 9011 motion on August 7, 2025 and their filing of the identical Refiled Motion on October 14, 2025 was **68 days** (as counted according to Bankruptcy Rule 9006(a)) – more than three times the 21-day period mandated by the safe harbor rule. *See* Fed. R. Bankr. P. 9011(c)(2)(B). During these 68 days, Midas had more than sufficient opportunity to withdraw its challenged proofs of claim. *Id.* Midas refused, and the Court should reject Midas's improper attempts to take shelter under the safe harbor rule.

CONCLUSION

26. For the reasons described herein, in the Sanctions Request, and in the Second Sanctions Motions, the Wind Down Debtor respectfully asks the Court to grant the Second Sanctions Motions, including the request for Section 285 sanctions, and order Midas Green to pay sanctions in the amounts identified in the Topping and Pietzsch Declarations.

[*Remainder of page intentionally left blank.*]

Dated: June 24, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2026, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Sarah Link Schultz
Sarah Link Schultz