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

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| In re | Chapter 11 |
| RHODIUM ENCORE LLC, et al., | Case No. 24-90454 (ARP) |
| Debtors. | (Jointly Administered) |

**MIDAS GREEN TECHNOLOGIES, LLC'S OMNIBUS OBJECTION TO THE CERTIFICATIONS OFFERED AS EXHIBITS 55, 56, AND 57, TO ALL EVIDENCE FIRST PRODUCED AFTER THE COMMENCEMENT OF TRIAL, AND STATEMENT THAT RULE 9011 SANCTIONS ARE UNAVAILABLE FOR FAILURE TO SERVE THE SAFE-HARBOR MOTION UNDER RULE 7004**

(Relating to ECF Nos. 1793, 1794, 2366, 2397, 2427, and the Wind Down Debtor's Amended Witness and Exhibit List for the July 29, 2026 Hearing)

Midas Green Technologies, LLC ("Midas") submits this omnibus objection to (i) the three attorney and employee "certifications" the Wind Down Debtor filed on July 22, 2026 as Exhibits 55, 56, and 57 to its Amended Witness and Exhibit List for the hearing scheduled for July 29, 2026 (the "Amended List"), (ii) Exhibit 54 and all other evidence first produced or disclosed after the evidentiary hearing on the Debtors' sanctions motions commenced on July 2, 2026, and (iii) any award of sanctions under Federal Rule of Bankruptcy Procedure 9011, which is foreclosed at the threshold because the safe-harbor motion was served only by email — not under Rule 7004 — and respectfully states as follows:



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## I. INTRODUCTION

The evidentiary hearing on the Debtors' sanctions motions commenced on July 2, 2026. Twenty days later — and one week before the date for the continued hearing— the Wind Down Debtor filed the Amended List adding four never-before-produced exhibits: redacted pre-petition invoices of Kirkland & Ellis LLP (Ex. 54) and three newly executed "certifications," each dated July 22, 2026, (1) from Patricia B. Tomasco of Quinn Emanuel Urquhart & Sullivan, LLP (Ex. 55), (2) former Rhodium finance employee Alex Peloubet (Ex. 56, amending an earlier certification offered as Ex. 50), and (3) Elizabeth Brannen, Managing Partner of Stris & Maher LLP (Ex. 57). Each of the three "certifications" is written testimony prepared by or for the very firms whose fees are at issue, are offered mid-trial, and are from declarants who appear on no witness list and whom Midas cannot cross-examine.

The certifications are inadmissible several times over: they are untimely; they are hearsay that satisfies neither Federal Rule of Evidence 803(6) nor Rule 902(11); they rest on inadequate personal knowledge; and they merely certify attorney argument — including the contested allocation of fees "in respect of Midas Green" — dressed as record-keeping fact. The same untimeliness defeats Exhibit 54 and any other evidence the Wind Down Debtor first produced after trial began.

Independently, the Court need never reach the merits of the Rule 9011 request, because Rule 9011 relief is procedurally unavailable. Rule 9011(c)(2) requires that the safe-harbor motion be served "under Rule 7004." The only safe-harbor service the Debtors ever made was Ms. Tomasco's August 7, 2025 electronic letter that transmitted a draft motion "VIA ELECTRONIC MAIL" to Midas's counsel. Email is not a method that Rule 7004 permits, and courts — including a bankruptcy court applying the Fifth Circuit's strict-compliance rule of

*Cadle Co. v. Pratt (In re Pratt)* — deny Rule 9011 motions on precisely this ground without reaching the merits. This Court should do the same.

## II. OBJECTIONS TO THE CERTIFICATIONS (EXHIBITS 55, 56, AND 57)

### A. The Certifications Are Mid-trial Written Testimony From Witnesses Midas Cannot Cross-examine.

The Federal Rules of Evidence apply in this contested matter. Fed. R. Bankr. P. 9017; Fed. R. Evid. 1101(a). The Wind Down Debtor's witness list identifies two witnesses: Jordan Pietzsch and Charles Topping. Ms. Tomasco, Mr. Peloubet, and Ms. Brannen appear on no witness list, were never offered for examination, and executed their certifications on July 22, 2026 — twenty days after the evidentiary hearing commenced. A party may not present its case-in-chief through unavailable witnesses' written statements absent allowing any cross examination of those same declarants after trial has begun. Admitting the certifications would deprive Midas of the right to test the declarants' knowledge, methods, and interest through cross-examination, the "greatest legal engine ever invented for the discovery of truth," *California v. Green*, 399 U.S. 149, 158 (1970) (quoting 5 J. Wigmore, Evidence § 1367 (3d ed. 1940)) — and would circumvent the ordinary mode of presenting testimony in open court. See Fed. R. Evid. 611; Fed. R. Civ. P. 43(a).

### B. The Certifications Are Hearsay And Fail FRE Rules 803(6) And 902(11).

Each certification is an out-of-court statement offered for its truth and is inadmissible hearsay. Fed. R. Evid. 801, 802. The certifications are transparently modeled on Rule 902(11), attempting to lay a business-records foundation for each firms' invoices by declaration rather than live testimony. But Rule 902(11) is unavailable on this record for at least three reasons.

**First**, Rule 902(11) commands that "[b]efore the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them." Fed. R. Evid. 902(11) (emphasis added); see *United States v. Prather*, Case No. 1:21-cr-38, 2023 WL 4564765, 2023 U.S. Dist. LEXIS 123209, at *3–4 (S.D. Ohio July 17, 2023) (self-authentication requires that "[b]efore the trial," the proponent give "reasonable written notice of the intent to offer the record" and make "the record and certification available for inspection"); *Flores v. Allen Henderschiedt Trucking, Inc.*, Case No. 4:22-cv-00778, 2023 WL 6622275, 2023 U.S. Dist. LEXIS 182600, at *7–8 (S.D. Tex. Oct. 11, 2023) (Rule 902(11) contemplates a custodian's declaration "provided to opposing counsel a reasonable time before trial"). The certifications here did not exist before the trial or hearing: they were executed and first disclosed on July 22, 2026, twenty days after the evidentiary hearing commenced. Even a facially valid certification must be made available for inspection early enough to give the adverse party "a fair opportunity to challenge" it, and the Tenth Circuit has affirmed exclusion where the certification was provided "just prior to trial" — days before, not weeks after, trial began — because that timing "deprived Defendants of their opportunity to meaningfully inspect and challenge it." *Stenson v. Edmonds*, 86 F.4th 870, 880 (10th Cir. 2023). The notice requirement is not a technicality; it exists precisely so the opposing party can investigate and, if warranted, depose the certifying declarant before trial — which is why the proper practice is a pretrial motion seeking a Rule 902(11) determination, not a mid-trial filing. *Cf. United States v. Claus*, 2026 WL 1470115, 2026 U.S. Dist. LEXIS 114990, at *6–7 (E.D. La. May 26, 2026) (resolving Rule 902(11) certifications on pretrial motion in limine). A certification created mid-trial is facially noncompliant.

**Second**, the certifications of Ms. Tomasco and Ms. Brannen fail Rule 803(6)(E), because "the source of information [and] the method or circumstances of preparation indicate a lack of trustworthiness." The defect is not that the declarants are employed by the firms whose records they describe — it is that these are not custodial certifications at all. Ms. Tomasco is the Debtors' counsel of record and signed the sanctions motions; Ms. Brannen is the Managing Partner of Stris & Maher and likewise counsel on the sanctions motion. Each executed her respective certification in the middle of trial, for use in her own client's motion, and each certifies not record-keeping practice but her own firm's contested billing judgments: that the work was performed "in respect of Midas Green," and (Ms. Tomasco) that it produced "a successful claim objection against Midas Green eliminating $40 million in claims." A document prepared by trial counsel, during trial, to win the pending motion is the paradigm of a record made for litigation rather than a record made in the regular course of business. *Palmer v. Hoffman*, 318 U.S. 109, 113–14 (1943); *Shambreskis v. Bridgeport & Port Jefferson Steamboat Co.*, Case No. 02 Civ. 2692 (DRH) (MLO), 2008 WL 2001877, 2008 U.S. Dist. LEXIS 37841, at *6–7 (E.D.N.Y. May 8, 2008) (a certification must establish every element of Rule 803(6) — a "failure to meet [any] of the rule's requirements mandates exclusion" — and documents "prepared for purposes of litigation and not in the ordinary course of business" are excludable on that ground alone). Nor would it matter that any recovery would flow to the Wind Down Debtor rather than to the firms: the facts certified are the firms' own conduct and allocations, so a finding that the fees were reasonable and Midas-caused vindicates the declarants' own billing — and the contrary finding would invite reduction or disgorgement of compensation that remains subject to this Court's review. The declarants' stake in the certified facts, and the mid-trial, litigation-driven circumstances of preparation, independently defeat trustworthiness.

**Third**, the certifications layer hearsay upon hearsay. Fed. R. Evid. 805. Both attorney certifications go beyond attesting to record-keeping practices: Ms. Tomasco certifies that Quinn Emanuel's invoices reflect services "in pursuing a successful claim objection against Midas Green eliminating $40 million in claims," and both she and Ms. Brannen certify that the invoices "were previously attached to monthly fee statements and quarterly fee applications to which no objections were maintained or sustained." Those are legal characterizations and litigation arguments — the contested questions of causation, allocation, and preclusive effect at the heart of this dispute — not facts about how billing entries are regularly recorded and processes. A business-records certification cannot smuggle the ultimate issue into evidence as an attestation.

**C. Mr. Peloubet's Amended Certification Lacks Personal Knowledge And Cannot Convert Third-Party Law-Firm Invoices Into The Debtors' Business Records.**

Mr. Peloubet states only that he was "generally familiar" with the Debtors' practices for paying outside counsel. Ex. 56 ¶ 2. General familiarity is not the personal knowledge Rule 602 requires, and it is not a foundation for certifying the accuracy of tens of thousands of time entries recorded by other firms' timekeepers. More fundamentally, the records he certifies —Kirkland & Ellis pre-petition invoices (Ex. 54), Stris pre-petition invoices (Ex. 46), and the Quinn Emanuel and Stris post-petition invoices attached to their fee applications — are the business records, if of anyone, of the law firms that created them. A recipient's retention of another entity's invoices does not make the invoices the recipient's business records for the truth of the services described in them; the entries remain the out-of-court assertions of the absent law-firm timekeepers who made them. Mr. Peloubet had no role in creating those entries, no knowledge of whether the described work was performed, and no basis — other than counsel's say-so — for certifying that any of it was performed "in respect of Midas Green." That allocation is the ultimate disputed

issue under *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101 (2017), and it cannot be established by a records certification from a declarant without personal knowledge.

**D. The Underlying Exhibits Are Redacted And Incomplete.**

The invoices the certifications sponsor are redacted (Exs. 54, 42–46) or filed under seal, and the certifications offer no accounting or explanation of what was removed. Midas objects under Rules 106 and 1006: a party may not prove the amount and reasonableness of fees from records it has edited while denying the opposing party for the complete originals from which completeness and context could be tested.

**E. The Certifications Are Unauthorized Supplementation Of A Closed Record.**

The certifications state they are made "in connection with" the Wind Down Debtor's combined response and reply (ECF No. 2427). Briefing on that paper closed; Midas filed its reply on June 25, 2026. The Wind Down Debtor neither sought nor obtained leave to submit new evidence in support of a fully briefed reply, after the evidentiary hearing commenced. Courts exclude materials submitted after the parties' evidentiary presentations without leave "[o]n this basis alone." *Shambreskis*, 2008 U.S. Dist. LEXIS 37841, at *10–11 (excluding documents submitted after the parties rested where the record had closed for all purposes other than the specific certifications the court had authorized). On this ground too, Exhibits 55 through 57 (and the superseded Exhibit 50) should be excluded.

## III. THE COURT SHOULD EXCLUDE ALL EVIDENCE FIRST PRODUCED AFTER TRIAL COMMENCED

Midas objects generally to all exhibits and evidentiary material the Wind Down Debtor first produced, disclosed, or created after the evidentiary hearing commenced on July 2, 2026 — including, without limitation, Exhibits 54 through 57 that were added to the Amended List on

July 22, 2026 — and to any further "supplementation" under the Amended List's purported reservation of the right to amend "at any time." A party cannot reserve to itself a right the rules and the Court's scheduling do not confer.

The Fifth Circuit's four-factor test for untimely designations requires exclusion of the untimely additions. See *Geiserman v. MacDonald,* 893 F.2d 787, 791–92 (5th Cir. 1990); *Betzel v. State Farm Lloyds*, 480 F.3d 704, 707 (5th Cir. 2007); *Barrett v. Atl. Richfield Co.,* 95 F.3d 375, 380 (5th Cir. 1996). Every factor favors Midas. (1) There is no explanation for the delay: the Kirkland & Ellis invoices date from before the petition; the Quinn Emanuel and Stris invoices were attached to fee applications filed months and years ago; and the declarants' knowledge, such as it is, existed long before July 2. Nothing in Exhibits 54–57 was unavailable before trial. (2) If the evidence is as important as the Wind Down Debtor evidently believes — it goes to its case-in-chief on the quantum and allocation of the fees it seeks — that importance "merely underscores the need for [the party] to have timely designated" it. *Geiserman*, 893 F.2d at 792. (3) The prejudice to Midas is acute: it prepared for and began trial against a fixed exhibit list, with no opportunity to take discovery on the new exhibits, inspect unredacted originals, or examine the certifying declarants. (4) A continuance would not cure the prejudice; it would reward the Wind Down Debtor's own delay with more delay, at Midas's expense, in a dispute where the Debtors' asserted urgency has been their constant refrain.

Midas accordingly requests that the Court exclude Exhibits 54 through 57 and all other evidence first produced after July 2, 2026, and decline to consider any such material for any purpose.

## IV. RULE 9011 SANCTIONS ARE UNAVAILABLE BECAUSE THE SAFE-HARBOR MOTION WAS SERVED BY EMAIL, NOT UNDER RULE 7004

### A. Rule 9011(c)(2) Requires Service Of The Safe-harbor Motion Under Rule 7004, Strictly Construed.

Rule 9011 authorizes sanctions only where the movant has strictly complied with its procedural preconditions. The rule is "penal" and its safe-harbor provisions "should be strictly construed." *Cadle Co. v. Pratt (In re Pratt)*, 524 F.3d 580, 586–88 (5th Cir. 2008); *Elliott v. Tilton*, 64 F.3d 213, 216 (5th Cir. 1995); *Glassman v. Feldman (In re Feldman)*, 606 B.R. 189, 198 (Bankr. E.D.N.Y. 2019). Unlike its civil counterpart — under which a Rule 11 motion is served "under Rule 5" — Bankruptcy Rule 9011(c)(2) commands that the safe-harbor motion "must be served under Rule 7004." The drafters' substitution of Rule 7004 for Rule 5 was deliberate, and it is dispositive. Under Rule 7004 as amended effective December 1, 2024, service on Midas — a limited liability company — required either one of the methods of Federal Rule of Civil Procedure 4(e)–(j) that Rule 7004(a)(1) and (b) incorporate, or first-class mail, postage prepaid, "mailing the copy . . . to an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service." Fed. R. Bankr. P. 7004(b)(3). Email appears nowhere in the rules.

### B. The Debtors' Only Safe-harbor Service Was By Email To Counsel.

The record is undisputed. On August 7, 2025, Ms. Tomasco transmitted the draft sanctions motion to Midas's counsel by letter marked "VIA ELECTRONIC MAIL" addressed to four email addresses. No copy was served by first-class mail on Midas; none was served by any Rule 4 method; and Midas itself — the party against whom sanctions are sought — was never served at all, only its litigation counsel. The Debtors then filed their first sanctions motion (ECF

No. 1602), withdrew it, and refiled on October 14, 2025 (ECF Nos. 1793, 1794) without ever serving any version of the motion under Rule 7004. Every iteration of the Debtors' sanctions requests therefore rests on safe-harbor service that never occurred.

Courts deny Rule 9011 motions on exactly these facts, without reaching the merits. In *Kosachuk v. Gabbe (In re Galardi)*, 2025 Bankr. LEXIS 2546, at *6–8 (Bankr. M.D. Ga. Aug. 8, 2025), the movant served the safe-harbor motion and letter by Federal Express and email; the court held that "[t]o commence the safe harbor period, the moving party must serve a copy of the motion for sanctions in accordance with Rule 7004," that "email service is not permitted under Rule 7004(b)," and that even the respondent's concession that he received and was "aware of the Motion for Sanctions and Safe Harbor Letter" was "insufficient under Rule 7004" — and it denied the motion "without reaching the merits." Accord *Good Gateway, LLC v. NRCT, LLC (In re Bay Circle Props., LLC)*, Case No. 15-58440-WLH, Adversary Proceeding No. 19-05284, 2022 Bankr. LEXIS 3150, at *14–16 (Bankr. N.D. Ga. Nov. 7, 2022) (email service does not satisfy Rule 7004); *In re Diloreto*, Bankruptcy No. 07-15413bf, 2008 Bankr. LEXIS 140, at *9–13 (Bankr. E.D. Pa. Jan. 11, 2008); *Enter. Bank & Tr. v. May*, Case No. 4:20-CV-00278 JAR, 2020 WL 7056011, 2020 U.S. Dist. LEXIS 225111, at *8–9 (E.D. Mo. Dec. 2, 2020) (knowledge of the motion does not cure defective service). A Texas bankruptcy court, applying *Pratt*, has likewise denied a Rule 9011 motion served electronically on counsel rather than under Rule 7004 twenty-one days before filing. *In re Silverman*, CASE NO. 10-50237-rlj7, 2010 Bankr. LEXIS 4214, at *2–4 (Bankr. N.D. Tex. Nov. 24, 2010) (denying sanctions where the motion was "served electronically upon" opposing counsel "at the same time it was filed with the court," because the plain language of Rule 9011 and *Pratt* forbid "'substantial compliance'

through informal service" and the respondent was "not afforded the opportunity to withdraw the alleged improper pleading"). That description fits every version of the Debtors' motion.

**C. Rule 5 Does Not Rescue The Defective Service.**

Anticipating the argument, no provision makes Rule 5 service sufficient here. Rule 7004(b) authorizes first-class mail "in addition to the methods of service authorized by Fed. R. Civ. P. 4(e)–(j)" — Rule 4, not Rule 5. Rule 5(b) means appear in Rule 7004 exactly once: subdivision (g) provides that "[i]f, when served, a debtor is represented by an attorney, the attorney must also be served by any means authorized by Fed. R. Civ. P. 5(b)." Fed. R. Bankr. P. 7004(g) (emphasis added). By its terms that is an add-on to service on the debtor, available only when the debtor is the party served; Midas is a creditor, and Rule 7004 contains no creditor-side counterpart. And Rule 9014(b), under which papers served "after the motion" in a contested matter may be served under Rule 5(b), governs follow-on papers in an already-commenced contested matter — never the initiating service.

Three independent points foreclose any contention that the sanctions motion was a mere follow-on paper in the claim-objection contested matter. **First**, Rule 9011(c)(2)'s text is specific — the sanctions motion must be "served under Rule 7004" — and a specific service command controls over the general contested-matter default. The drafters' choice is unmistakable: Civil Rule 11(c)(2) uses Rule 5, and the bankruptcy rule deliberately substitutes Rule 7004. **Second**, a sanctions motion commences its own contested matter; Rule 9011's requirement that the motion "be made separately from other motions" underscores its freestanding character. And the paper that initiates a contested matter must be served under Rule 7004 — including Rule 7004(b)(3)'s requirement of mailing directed to an officer or agent — with only papers served thereafter traveling under Rule 5(b). See *In re Perez*, 2011 Bankr. LEXIS 4159, at *8–9 (Bankr. W.D. Tex.

Oct. 31, 2011) (Rules 3007, 7004, and 9014 "act in tandem"; service of the paper initiating a contested matter was defective where it was mailed to the creditor's address of record but "not direct[ed] . . . to a specific officer or agent" under Rule 7004(b)(3), notwithstanding actual notice, and the resulting orders were set aside). **Third**, this Court has already said so in this case. At the September 24, 2025 hearing, addressing the refiled sanctions motion, the Court explained that refiling the sanctions motion "will start its own timeline. . . . It will be on its own, and start its own process." Hr'g Tr., ECF No. 1719, at 97:5–8, 17–18. A motion that starts "its own process" requires its own, freestanding, Rule 7004-compliant initiating service. The Debtors never made it.

**D. The Defect Is Fatal To The Request And Cannot Be Cured Now.**

Because the safe harbor is a mandatory precondition that must be satisfied before a sanctions motion is filed or presented, the failure cannot be cured retroactively: the challenged papers — Midas's proofs of claim — have long since been adjudicated, so no twenty-one-day opportunity to withdraw them could now be given. See *In re Pratt*, 524 F.3d at 588 (safe-harbor compliance must precede the motion); *In re Galardi*, Case No. 22-50035-AEC, Adv. Proc. No. 24-5015-AEC, 2025 Bankr. LEXIS 2546, at *7 (safe-harbor period is "determined" by proper Rule 7004 service). The service defect also compounds the safe-harbor failures Midas has already briefed in its oppositions (ECF Nos. 2421, 2422), which Midas incorporates by reference: (1) the motion the Debtors filed as ECF No. 1602 was not identical to the draft served, but added grounds the served draft never contained, in violation of the Fifth Circuit's identicality requirement, *Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc.*, 46 F.4th 374, 389 (5th Cir. 2022); (2) the single August 2025 service was consumed by that September filing and could not run in perpetuity to license the withdrawn motion's refiling as ECF Nos. 1793 and 1794 on

October 14, 2025 without a fresh twenty-one-day period; (3) the burden of demonstrating strict compliance rests on the Debtors, *In re Pratt*, 524 F.3d at 588; *Bell v. Dunn, Johnston & Brown*, Civil Action No. 3:10-CV-1-M, 2011 WL 759473, 2011 U.S. Dist. LEXIS 19964, at *9–13 (N.D. Tex. Feb. 7, 2011); and (4) neither substantial compliance nor informal notice will satisfy the rule, *OrchestrateHR, Inc. v. Trombetta*, 178 F. Supp. 3d 476, 498–500 (N.D. Tex. 2016). But the Court need not reach any of that because no version of the motion was ever served under Rule 7004, so as a mandatory consequence Rule 9011 sanctions are unavailable as a matter of law, and the Rule 9011 request should be denied without reaching the merits.

## V. MIDAS'S DECISION NOT TO CALL WITNESSES AT THE EVIDENTIARY HEARING IS NOT SANCTIONABLE

To the extent the Wind Down Debtor suggests that Midas's decision not to produce witnesses at the evidentiary hearing itself supports sanctions, the suggestion fails as a matter of law. Rule 9011 polices one thing: the certification an attorney or party makes by "presenting to the court" a petition, pleading, written motion, or other paper. Fed. R. Bankr. P. 9011(b). It reaches papers, not trial strategy. The Advisory Committee's note to identical Civil Rule 11 confirms that the rule "does not cover matters arising for the first time during oral presentations to the court." Fed. R. Civ. P. 11 advisory committee notes (1993). A decision not to call witnesses presents nothing to the court, certifies nothing, and therefore can violate nothing.

Nor can hearing conduct in 2026 retroactively taint the papers the Debtors actually challenge. In the Fifth Circuit, Rule 9011 compliance is measured by a "snapshot" taken at the moment the challenged paper was signed and filed. *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 874 (5th Cir. 1988) (en banc); *Skidmore Energy, Inc. v. KPMG*, 455 F.3d 564, 570 (5th Cir. 2006). Whether Midas's proofs of claim had evidentiary support is judged as of their filing —

when the district-court action remained pending without a final judgment and the Declaration of Joseph E. Thomas set out the good-faith basis for the patent claims. This Court's own rulings confirm that footing: the October 28, 2025 Memorandum Opinion recognized that "[c]ontinuing to wait indefinitely for a final resolution of the dispute" in the District Court would dissipate estate resources, and provided that it would "serve as a report and recommendation" if the reference were withdrawn (ECF No. 1878 at 20–21), and the Court's separate Report and Recommendation (ECF No. 1880) likewise treated the patent case as unresolved — as it remained until the District Court entered its written order on May 4, 2026. What Midas later chose to present, or not present, at a hearing on the Debtors' own sanctions motions cannot alter that snapshot.

Finally, penalizing Midas for not putting on witnesses would invert the burden of proof. The Debtors are the movants: the burden of establishing a Rule 9011 violation rests on them, and any inherent-power or § 105 sanction requires clear and convincing evidence of bad faith. *In re Parsley*, 384 B.R. 138, 179 (S.D. Tex. 2008); *Goldin v. Bartholow*, 166 F.3d 710, 722 (5th Cir. 1999); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–50 (1991) (inherent-power sanctions demand restraint and a specific bad-faith finding). A respondent to a sanctions motion is entitled to rest on the movant's failure of proof, on cross-examination, and on its legal and jurisdictional objections — including the threshold objections briefed here and Midas's preserved *Stern* and withdrawal-of-the-reference positions — without calling witnesses of its own. Silence in the face of a motion the movant must prove is not evidence of the violation, much less clear and convincing evidence of bad faith; treating it as sanctionable would punish Midas for holding the Debtors to their burden.

The analysis is no different under 11 U.S.C. § 105. Section 105 does not create free-floating sanctioning authority: a bankruptcy court may not use it to contravene other provisions of the Code or the Rules, or to circumvent the American Rule's requirement of specific statutory authorization for fee-shifting. *Law v. Siegel*, 571 U.S. 415, 421 (2014); *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 126 (2015). A § 105 sanction therefore requires the same predicate as an inherent-power sanction — clear and convincing evidence of bad faith abuse of the judicial process — and a litigant's decision to stand on its procedural rights, hold the movant to its burden, and rest without calling witnesses is the exercise of the adversary system, not an abuse of it. Declining to present evidence at a hearing on the opposing party's motion delays nothing, disrupts nothing, and multiplies no proceedings; it cannot support a bad-faith finding under § 105 any more than under Rule 9011.

## VI. CIVIL RULE 11 AND THE COURT'S INHERENT POWERS SUPPLY NO ALTERNATIVE BASIS FOR SANCTIONS

To the extent the Debtors invoke Federal Rule of Civil Procedure 11 — as the caption of their August 2025 draft motion suggested — it has no application here. The Federal Rules of Bankruptcy Procedure, not the Civil Rules, govern procedure in cases under the Code. 28 U.S.C. § 2075; Fed. R. Bankr. P. 1001. Rule 9011 is the bankruptcy counterpart to Civil Rule 11, and it is the exclusive rule-based vehicle for sanctioning papers filed in this contested matter — complete with the stricter safe-harbor service requirement its drafters deliberately imposed by substituting Rule 7004 for Civil Rule 11(c)(2)'s Rule 5. The Debtors cannot evade Rule 9011's service command by relabeling their motion under a rule that does not apply.

Nor can the Court's inherent powers fill the gap. Inherent-power sanctions "must be exercised with restraint and discretion," require a specific finding of bad faith by **clear and**

**convincing evidence**, and are limited to compensation for fees the sanctionable conduct alone caused. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–50 (1991); *Goldin*, 166 F.3d at 722; *Goodyear*, 581 U.S. at 108–09. Most fundamentally, *Chambers* instructs that "when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on the Rules rather than the inherent power." 501 U.S. at 50. The conduct the Debtors challenge — the filing and maintenance of proofs of claim — is precisely the conduct Rule 9011 governs. Having forfeited Rule 9011 by failing to comply with its service precondition, the Debtors may not resort to inherent power to accomplish what the rule forbids; that path would nullify the safe harbor for every movant careless enough to skip it. And for the reasons set out in Midas's prior briefing, § 285 fees are channeled through the Patent Act's own framework, which § 105 and inherent power cannot supplant. *Law v. Siegel*, 571 U.S. at 421.

## VII. MIDAS'S PREVIOUSLY BRIEFED GROUNDS INDEPENDENTLY REQUIRE DENIAL OF THE SANCTIONS MOTIONS

Midas incorporates by reference its oppositions to the sanctions motions (ECF Nos. 2421, 2422), its § 285 motion (ECF No. 2397), and its reply (ECF No. 2430), and briefly notes the grounds developed there that independently require denial regardless of the evidentiary and service defects addressed above. **First**, the factual premise of both motions has collapsed: each rests on the contention that the District Court's April 9, 2024 oral ruling finally disposed of the patent case before Midas filed its proofs of claim, but the District Court did not enter its written order until May 4, 2026, and this Court's own October 28, 2025 rulings (ECF Nos. 1878, 1880) treated the patent case as unresolved. Midas's filing of protective proofs of claim while the case remained pending was the prudent protection of its rights, not bad faith. **Second**, § 285 supplies no basis for an award in this forum or on this posture: § 285 authorizes "a district court" — the

court that presided over the patent litigation — to award fees in an exceptional case, *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 548 (2014); *Amneal Pharms. LLC v. Almirall, LLC*, 960 F.3d 1368, 1371 (Fed. Cir. 2020); it "applies only to [patent] infringement actions," not the claims-allowance process, *Cal. E. Labs. v. Gould*, 896 F.2d 400, 403 (9th Cir. 1990); fees incurred in a separate, parallel proceeding the forum court did not preside over are not recoverable, *Dragon Intell. Prop. LLC v. DISH Network L.L.C.*, 101 F.4th 1366, 1372 (Fed. Cir. 2024); the request is unripe because no final judgment has been entered and Rhodium's invalidity counterclaim remains pending, so there is no prevailing party, 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); *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 93–98 (1993); and the statute runs against the losing party, not its counsel. **Third**, 28 U.S.C. § 1927 provides no basis for sanctions here, for the reasons set out in Midas's oppositions. **Fourth**, Midas's request to withdraw the reference of the § 285 issue to the District Court under 28 U.S.C. § 157(d) (ECF No. 2397) remains pending, and Midas preserves its *Stern* objection to the entry of any final § 285 judgment by this Court over its objection.

## VIII. CONCLUSION

For the foregoing reasons, Midas respectfully requests that the Court (i) sustain Midas's objections to Exhibits 55, 56, and 57 (and superseded Exhibit 50) and exclude them; (ii) exclude Exhibit 54 and all other evidence first produced after the commencement of trial on July 2, 2026; (iii) deny the Debtors' request for sanctions under Rule 9011 for failure to serve the safe-harbor motion under Rule 7004; (iv) hold that Midas's decision not to call witnesses at the evidentiary hearing is not a sanctionable act under Rule 9011, § 105, or any other authority the Debtors invoke; (v) hold that Civil Rule 11 and the Court's inherent powers supply no alternative basis

for sanctions; (vi) deny the sanctions motions for the independent reasons set forth in Midas's incorporated oppositions and § 285 motion (ECF Nos. 2397, 2421, 2422, 2430); and (vii) grant Midas such other and further relief as is just.

Dated: August 31, 2026

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 2026, a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Joseph E. Thomas
Joseph E. Thomas