Docket #0033 Date Filed: 9/11/2026

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

In re:	§	Chapter 11
Rhodium Enterprises, Inc.	§	Case No. 24-90454 (ARP)
Wind Down Debtor.[1]	§	

THE WIND DOWN DEBTOR'S RESPONSE TO MIDAS GREEN TECHNOLOGIES, LLC'S OMNIBUS OBJECTION AND REPLY IN FURTHER SUPPORT OF THE SECOND SANCTIONS MOTIONS

The Wind Down Debtor,[2] by and through its undersigned counsel, respectfully submits this response (the "**Response**") to *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* [Docket No. 32] (the "**Omnibus Objection**") and in further support of the Second Sanctions Motions.

PRELIMINARY STATEMENT

1. The harm claimed by the Debtors in connection with the Second Sanctions Motions against Midas primarily comprises professional fees that the Debtors incurred as a result of Midas Green's frivolous initiation and prosecution of claims for patent infringement, even after those claims were rejected by the District Court on summary judgment. The Debtors (and now the Wind

[1] The last four digits of the taxpayer identification number for Rhodium Enterprises, Inc. is 6290. The location of the Wind Down Debtor's service address for purposes of this chapter 11 case is 7301 SW 57th Ct, Suite 515, Miami, FL 33143.

[2] Capitalized terms used but not described herein shall have the meaning ascribed to them in the *Request of the Wind Down Debtor to End Abatement of, and Grant, Sanctions Motions Against Midas Green* (*In re Rhodium Enterprises, Inc.*, No. 24-90448) [Docket No. 2427].

Down Debtor) have offered the most reliable possible evidence to substantiate the amount of those professional fees: business records in the form of law firm invoices contemporaneously recording the time and amounts billed to the Debtors relating to Midas Green's vexatious litigation campaign dating back to at least January 2022 (the "**Invoices**"). The Wind Down Debtor also offers the September 12, 2025 declaration of Charles Topping, the Debtors' former general counsel, who will be available for cross-examination at the September 29, 2026 hearing (the "**September 29 Hearing**") on the Debtors' Second Sanctions Motions.

2. Midas Green urges the Court to disregard the Debtors' evidence based on the rule against hearsay. In fact, the Invoices constitute records of regularly conducted activity that are admissible under the business records exception, the foundation for which has been satisfactorily laid through certifications of exactly the kind contemplated by Federal Rule of Evidence 902(11). Moreover, the Invoices are accompanied by sufficient indicia of reliability to be admissible under the residual exception to the hearsay rule as well. There can be no serious doubt that the Court can admit and consider the Invoices as the best evidence of the fees actually incurred by the Debtors arising from Midas Green's frivolous litigation, particularly considering that this matter is proceeding as a bench trial.

3. Nor should any of the evidence offered by the Wind Down Debtor be barred as "late." The relevant Bankruptcy Local Rules require, in effect, that documents and witnesses be identified on a witness and exhibit list at least two days before the date of the hearing at which the evidence will be offered. The Invoices were identified between 69 and 90 days before the September 29, 2026 date of the hearing at which they will be offered. Additional invoices reflecting fees incurred by the Wind Down Debtor in June and July 2026 are provided on the updated witness and exhibit list filed contemporaneously herewith – fully 17 days before the

hearing in question. Mr. Topping was identified as a witness on June 26, 2026 – by Midas Green itself – and again by the Wind Down Debtor on July 22, 2026, more than two months prior to the September 29 Hearing. Midas Green has had more than enough time to consider the Wind Down Debtor's evidence, and even to take discovery (though it has elected not to do so). The evidence should be admitted accordingly.

4. Finally, Midas Green's belated push to defeat the Second Sanctions Motions based on a service issue Midas Green never previously identified should be rejected. As discussed below, the Court manifestly has the power to sanction Midas Green under the circumstances presented here, and the Wind Down Debtor respectfully submits that it should do so.

ARGUMENT

I. The Invoices Are Not Barred by the Hearsay Rule, And Should Be Admitted

5. The Debtors intend to offer into evidence Invoices prepared by Kirkland & Ellis LLP ("**Kirkland**"), Quinn Emanuel Urquhart & Sullivan LLP ("**Quinn**"), Stris & Maher LLP ("**Stris**") and Akin Gump Strauss Hauer & Feld LLP ("**Akin**"). The Invoices cover the periods, and appear at the Exhibit numbers identified below:

Kirkland	January 2022 to August 2023	Ex. No. 54
Stris	April 2023 to January 2026	Ex. Nos. 9, 25, 46
Quinn	February 2025 to January 2026	Ex. Nos. 9, 64
Akin	February 2026 to July 2026	Ex. Nos. 42-45, 61-62

6. The Invoices constitute records made at or near the time the activity was recorded, were kept in the ordinary course of business and pursuant to a regular practice, and therefore are admissible under the "business records" exception to the hearsay rule. *See* FRE 803(6). Pursuant to FRE 902(11), the business records foundation may be laid by a custodian "or another qualified

person" through a written certification, without the need for any testimony or other extrinsic evidence. The Wind Down Debtor submitted certifications from its former Vice President of Finance and Accounting regarding Kirkland's Invoices, and partners at Quinn and Stris establishing the requisite elements for admission of their Invoices.

7. Midas Green argues that Mr. Peloubet is not qualified to lay the foundation for the Kirkland's Invoices because he was formerly employed by the Debtors, Kirkland's client, rather than by Kirkland itself. Midas Green is incorrect. The requisite business records foundation for professional fee invoices can be laid either by the professional services firm, or by the client. *See, e.g., MRT Constr. Inc. v. Hardrives, Inc.*, 158 F.3d 478, 483-84 (9th Cir. 1998) (approving admission of attorneys' fee invoices under FRE 803(6) based on business records foundation laid by the client); *see also Pizza Hut, LLC v. Ronak Foods, LLC*, 2022 WL 3544403, at *2-3 (E.D. Tex. 2022) (admitting report prepared by auditor as business record based on FRE 803(6) foundation laid by client). As an employee of Rhodium, Mr. Peloubet was a client of each law firm and therefore may lay the business records foundation for the invoices, which Rhodium received and maintained in the ordinary course of its business. Moreover, Mr. Peloubet was not only an employee of Rhodium, but the Vice President of Finance and Accounting. As such, he was intimately involved with the Debtors' billing and accounting systems and is therefore a trustworthy declarant on this specific topic. Notably, Midas Green has no answer for *MRT Construction* and *Pizza Hut,* cases that the Wind Down Debtor cited in its July 28, 2026 submission.

8. Regarding Quinn's and Stris' Invoices, Midas Green contends that the certifications of partners at those firms are insufficient because they are not "custodians" of the records in question. However, FRE 902(11) provides expressly that the certifying person be *either* the

"custodian" *or* "other qualified witness"; that is, any person with sufficient familiarity with the entity's record keeping practices will suffice. *United States v. Brown*, 553 F.3d 768, 792 (5th Cir. 2008) ("There is no requirement that the witness who lays the foundation be the author of the record or be able to personally attest to its accuracy. A qualified witness is one who can explain the record keeping system of the organization and vouch that the requirements of Rule 803(6) are met.") (internal citations omitted). Ms. Tomasco and Ms. Brannen readily qualify. Next, Midas Green argues that documents "prepared for purposes of litigation" cannot constitute admissible business records, and argues that the Quinn and Stris certifications are "the paradigm" of a document prepared for purposes of litigation. Omnibus Objection at p. 5.

9. This is just a bait and switch. An FRE 902(11) certification always is prepared for purposes of litigation, it is the evidence the certification supports that must be kept in the ordinary course of business. Here, it is the Invoices (not the certifications) that comprise the evidence being offered under the hearsay exception, and the Invoices of course were not prepared for purposes of litigation, the Invoices were prepared for purposes of recording and billing time spent by the relevant law firms in providing services to the Debtors. *See, e.g.*, *United States v. Hamaed*, 2024 WL 3771426, at *4 (E.D. Mich. Aug. 13, 2024) (admitting business records certified under 902(11) as "self-authenticating" and observing that business records are admissible "because – having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial – they are not weaker substitutes for live testimony") (citing *Michigan v. Bryant*, 562 U.S. 344, 392 (2011) (Scalia, J., dissenting).

10. The Wind Down Debtor also complied with FRE 902(11)'s requirement to provide "reasonable written notice of the intent to offer" the Invoices, and to make the Invoices and the certifications "available for inspection." The certifications were filed on the public docket and

sent to Midas Green a week before the hearing on July 29, 2026 (the "**July 29 Hearing**") and nearly 10 weeks in advance of the September 29 Hearing. Midas Green therefore had ample time to inspect the certifications prior to both the July 29 and September 29 Hearings. *See U.S. v. Olguin*, 643 F.3d 384, 390-91 (5th Cir. 2011) (finding that the district court did not abuse its discretion in admitting evidence when the proffering party, pursuant to FRE 902(11), provided written notice of its intent to introduce those records five days before trial); *see also U.S. v. Daniels*, 723 F.3d 562, 580-81 (5th Cir. 2013) (finding that the district court did not abuse its discretion in admitting business records with certifications authenticating them under FRE 902(11) upon three days' review in the middle of a trial).[3]

11. Finally, the Wind Down Debtor was not required to provide Midas Green with unredacted copies of the Invoices it has submitted. The information visible on the redacted Invoices is sufficient to demonstrate that each entry is for services provided to the Debtors in connection with Midas Green litigation. The information redacted from the Invoices comprises attorney-client privilege and work product doctrine material which the Wind Down Debtor is entitled to protect when sharing Invoices with third parties or filing on the public docket. It is worth noting, moreover, that Midas Green never served a discovery request or otherwise sought any Debtor billing records beyond those offered by the Debtors, despite being aware for at least a full year that the Debtors intended to seek sanctions against Midas Green based on their incurrence

[3] Even if the business records exception somehow were not applicable to the Invoices, the residual exception to the hearsay rule would provide another basis for their admission. The Invoices themselves indicate they were prepared by the law firms in question, each of which appears regularly before this Court, and certainly are more probative on the point for which they are offered – the amount of fees billed by those firms to the Debtors – than any other evidence. FRE 807 therefore would authorize their admission even if FRE 803(6) did not. *See U.S. v. Laster*, 258 F.3d 525, 530-31 (6th Cir. 2001) (finding the district court did not err in admitting invoices under the residual exception where they were more probative on the point offered than any other available evidence, had indicia of trustworthiness, and where their admission would serve the interests of justice); *Scully v. Cashman Equipment Co.*, 2016 WL 4149961, at *3 (C.D. Cal. Aug. 2, 2016) ("[C]ourts have routinely found that commercial invoices and other similar documents are admissible under the business records exception.").

of professional fees. Having sat on its hands for 12 months or more, Midas Green should not be permitted now to claim that the professional fee record somehow is incomplete.

II. None of the Debtors' Evidence Is Untimely

12. According to Midas Green, the Court should refuse to hear any evidence at the September 29 Hearing that was identified by the Wind Down Debtor on its witness and exhibit lists after July 2, 2026. Midas Green's argument thoroughly misapprehends the applicable rule, however. In this Court, parties must exchange exhibits and file witness and exhibit lists "by noon on the day of exchange in accordance with Table 1." *See* Local Bankruptcy Rule 9013-2(b). The "day of exchange" is the day that is two business days before the hearing in question. Since September 29, 2026 is a Tuesday, pursuant to Table 1, the "day of exchange" is Friday, September 25, 2026. *See id*. 9013-2(m). All of the Invoices and witnesses were identified in compliance with the applicable Local Bankruptcy Rule and are therefore timely and admissible.

13. The cases cited by Midas Green are wholly inapposite. In *Geiserman*, for example, the district court exercised its discretion to strike expert testimony designated by a party after the deadline set by the district court in its Rule 16 scheduling order. Here, the Court has entered no scheduling order and, as discussed above, the Wind Down Debtor's witness and exhibit lists are entirely consistent with Local Bankruptcy Rule 9013-2. Moreover, the "four factor test" cited by Midas Green was applied by the Fifth Circuit to determine whether the district court abused its discretion in striking the evidence, not, as Midas Green claims, to determine whether evidence is admissible in the first instance, a question that is reserved to the sound discretion of the trial judge. *Compare Geiserman v. MacDonald*, 893 F.2d 787, 791 (5th Cir. 1990) ("We review the court's exercise of discretion to exclude evidence … by considering the following four factors") *with* Omnibus Objection at p. 8 (arguing the "four factor test … requires" the bankruptcy court to

exclude evidence identified after July 2, 2026); *see also Barrett v. Atlantic Richfield Co*., 95 F.3d 375, 380 (5th Cir. 1996) (noting that "our court gives the trial court broad discretion" to admit or exclude evidence not identified in accordance with pretrial order).

14. Any argument that Midas Green would be prejudiced by the admission of evidence identified after July 2, 2026 is meritless. The July 29 Hearing was adjourned at Midas Green's request specifically to allow Midas Green time to review the Wind Down Debtors' evidence and prepare for the hearing. When the Court asked how much time he needed, counsel for Midas Green first asked for two weeks (August 12, 2026)[4] and then said he would rather have thirty days (August 28, 2026).[5] Ultimately, the Court agreed to adjourn the hearing all the way to September 29, 2026, providing Midas Green with two full months to do whatever additional preparation it wished, far more than the amount of time Midas Green's own counsel contended would be sufficient.

15. Notably, moreover, none of the material about which Midas Green complained during the July 29 Hearing is in any meaningful sense "new." The Topping Declaration was filed on the docket one year ago, at the specific direction of the Court, and Midas Green itself identified Mr. Topping as a witness for the hearing in its witness and exhibit list dated June 26, 2026. The Topping Declaration, filed on September 12, 2025, references pre-petition Kirkland and Stris fees, as well as fees incurred (and anticipated to be incurred) by Stris and Quinn post-petition. All of the invoices relating to post-petition fees have been publicly available on the Court's docket for many months.[6] Midas Green never sought the pre-petition Kirkland and Stris invoices through

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4 *See* July 29, 2026 Hr'g Tr. at 13:3-4.

5 *Id*. at 13:8-10.

6 The Wind Down Debtor attached to its July 28, 2026 submission [Docket No. 11] a version of the Quinn post-petition invoices from September 2025 through January 2026, identified by the Wind Down Debtor as Tab B, that highlights in yellow the entries that the Wind Down Debtor submits are self-evidently Midas Green-related.

discovery (though again, they were referenced in the Topping Declaration one year ago). After Midas Green complained at the hearing on June 30 2026 that it wished to see the invoices, at significant expense, and despite Midas Green's failure to serve any discovery, the Wind Down Debtor gathered those materials and produced them, and they now have been in Midas Green's possession and available for review for fully seven weeks. In short, Midas Green has been provided with more than sufficient notice of, and time to prepare for, all of the evidence that the Wind Down Debtor intends to submit in connection with the September 29 Hearing.[7]

III. The Court Has Discretion to Grant the Second Sanctions Motions

16. In what can only be described as a Hail Mary attempt to avoid answering for its sanctionable conduct, Midas Green next asserts, for the first time, that the Debtors did not serve the Second Sanctions Motions by mail in compliance with Bankruptcy Rule 7004. But Midas Green has waived this argument by failing to raise it for over a year, despite the opportunity to do so through hundreds of pages of briefing and several hearings, and the Court has discretion in any event to award sanctions under Bankruptcy Rule 9011 notwithstanding the existence of any purported defect in service.

17. As an initial matter, Midas has waived any alleged service defect by failing to raise it for over a year, despite ample opportunity to do so. Quinn, the Debtors-then counsel, served Midas Green's counsel with the sanctions motion by email on August 7, 2025, over a year ago.

The highlighted Quinn invoices, which have been available to Midas Green since before the last hearing, are also identified as Exhibit 64. Moreover, the Topping Declaration, filed on September 12, 2025, identified the time entries from Quinn post-petition invoices from February 2025 through August 2025 that were self-evidently Midas Green-related.

[7] Under Bankruptcy Rule 9011, the Court may award the Wind Down Debtor's "reasonable expenses and attorney's fees incurred in presenting … the motion." Akin's fees continue to accrue, with additional redacted invoices presented to the Court as and when reasonably available. The Wind Down Debtor can make "final" invoices available reflecting all fees incurred in connection with the motion to the extent the Court intends to award damages under 9011(c)(2)(C).

The Debtors then filed the First Sanctions Motion, which was substantively identical to the Second Sanctions Motions, on September 4, 2025. The Court held a two-day hearing on September 23 and 24, 2025 concerning Midas Green's frivolous proof of claim during which the Debtors made explicitly clear in open court their intention to refile the motion for sanctions under Bankruptcy Rule 9011.[8] As such, Midas Green cannot seriously dispute that it was on notice of the Debtors' intentions to seek sanctions by at least August 2025 and had more than sufficient opportunity to withdraw the Midas Claims before the filing of the Second Sanctions Motions in mid-October 2025.

18. Since then, this Court has held three hearings and a status conference on the Second Sanctions Motions and Midas Green has filed nine pleadings containing hundreds of pages purporting to defend and justify its actions, and to attack the Second Sanctions Motions. Despite these numerous hearings and filings, Midas Green did not raise any alleged service defect based on email delivery until its Omnibus Objection filed on September 1, 2026.[9]

19. As such, Midas has waived any purported deficiency in email service, and the Court should exercise its discretion to award sanctions notwithstanding any alleged procedural defect. *See In re Kitchin*, 327 B.R. 337, 361-62 (Bankr. N.D. Ill. 2005) (finding that a party proposed to be sanctioned waived their right to object to the movant's noncompliance with procedural requirements of Bankruptcy Rule 9011 because (i) the movant orally moved for sanctions before the court such that the party proposed to be sanctioned had notice of the movant's intent to file a

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[8] *See* September 24, 2025 Hr'g Tr. at 98:17-21 ("In order to be absolutely pristine about this, I think I will file two separate motions. One is a Rule 11 motion, and then the other one will be motion for sanctions under 285 and 105, so that we are absolutely procedurally pristine.").

[9] Notably, Midas Green's September 1, 2026 pleading was supposed to be limited to responding to the Wind Down Debtor's July 28, 2026 submission, which addressed evidentiary issues only. *See* July 29, 2026 Hr'g Tr. at 15:8-11 ("We'd like to have the opportunity to, in advance of this new hearing, submit a responsive brief to what was filed last night."); *see also* [Docket No. 11] *passim*.

9011 motion and (ii) no objections regarding the movant's alleged noncompliance with the safe harbor provision were ever raised, even though there had been multiple hearings and status conferences on the 9011 motion); *see also In re Raymond Prof. Grp.*, 420 B.R. 448, 463-64 (N.D. Ill. 2009) (noting courts' discretion to award Bankruptcy Rule 9011 sanctions and finding that a letter sent by the movant's counsel to counsel to the party proposed to be sanctioned warning that the movant would seek sanctions if certain pleadings were not withdrawn 21 days prior to filing the Bankruptcy Rule 9011 motion was sufficient service because it gave the party proposed to be sanctioned notice and opportunity to withdraw its pleadings); *see also Jeffreys v. Rossi*, 275 F. Supp. 2d 463, 480 n. 27 (S.D.N.Y. 2003) (noting that although the movant did not serve their Fed. R. Civ. P. 11 motion 21 days prior to filing it, this "noncompliance was merely technical" and stating that there was sufficient notice of the movant's "intent to move for sanctions and an opportunity to withdraw the offending papers"); *see also Nisenbaum v. Milwaukee County*, 333 F.3d 804, 808 (7th Cir. 2003) (stating that by sending counsel to the party proposed to be sanctioned a letter at least 21 days prior to filing a Fed. R. Civ. P. 11 motion the movant had "complied substantially with Rule 11(c)(1)(A) and [was] entitled to a decision on the merits of their request for sanctions").

20. Finally, even were the Court to entertain Midas's last ditch procedural concerns with respect to Bankruptcy Rule 9011 sanctions, any purported service defect would not impact any of the other bases for sanctions, including the Court's inherent authority under section 105 of the Bankruptcy Code, as well as the Court's inherent authority, and section 285 of the Patent Act. *See, e.g., In re Rodriguez*, 652 B.R. 750, 760-62 (S.D. Tex. 2023) (imposing sanctions on debtor under "11 U.S.C. § 105(a) and inherent authority" where Bankruptcy Rule 9011 sanctions were unavailable because creditor did not comply with safe harbor requirements, and calculating amount

of sanctions based on the amount of legal fees incurred by creditors in responding to frivolous claims and appeals filed by the debtor); *see also In re Rosslyn2016, LLC,* 2026 WL 2039712, *12-13 (S.D. Tex July 14, 2026) (awarding "attorneys' fees under its inherent powers" to do so when "a party has acted in bad faith [or] vexatiously," where court could not impose a monetary sanction under Bankruptcy Rule 9011 because the court was proceeding "on its own initiative" under Bankruptcy Rule 9011(c)(3) rather than pursuant to a party motion under Bankruptcy Rule 9011(c)(2)).

CONCLUSION

21. For the foregoing reasons and those set forth in the Debtors' and the Wind Down Debtor's prior briefing on the Second Sanctions Motion, which the Wind Down Debtor incorporates herein by reference, the Wind Down Debtor respectfully requests that the Court (i) overrule the Omnibus Objection, including Midas Green's objections to Exhibits 55, 56, and 57; (ii) admit all of the Wind Down Debtor's exhibits into evidence; (iii) find that Midas Green has waived any alleged defect in service and/or that Court has discretion to award Bankruptcy Rule 9011 sanctions notwithstanding any such procedural defects; and (iv) grant such other and further relief as is just.

[*Remainder of page intentionally left blank.*]

Dated: September 11, 2026

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

Sarah Link Schultz (State Bar No. 24033047; S.D. Tex. 30555)
Elizabeth Scott (State Bar No. 24059699; S.D. Tex. 2255287)
2300 N. Field St., Suite 1800
Dallas, TX 75201
Phone: (214) 969-2800
Email: sschultz@akingump.com
Email: edscott@akingump.com

-and-

Mitchell P. Hurley (admitted *pro hac vice*)
One Bryant Park, 44th Floor
New York, NY 10036-6745
Phone: (212) 872-1000
Email: mhurley@akingump.com

Counsel to the Wind Down Debtor

CERTIFICATE OF SERVICE

I certify that on September 11, 2026, I caused a copy of the foregoing document to be 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