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March 19, 2025

Via ECF

Honorable John P. Mastando
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

Re: *In re Eletson Holdings, Inc., et al.*, Bankr. S.D.N.Y. 1:23-bk-10322 (JPM)

Dear Judge Mastando:

We write on behalf of Reed Smith LLP ("Reed Smith") in response to the letter filed yesterday by reorganized Eletson Holdings, Inc. ("Reorganized Holdings") (Dkt. No. 1547) (the "Letter") to address multiple misrepresentations of fact and law in the Letter.

First, Reorganized Holdings falsely asserts that Reed Smith is advocating on behalf of "former management and shareholders" and "former officers and directors of Holdings" (Letter at 1, 2). As this Court is aware, Reorganized Holdings has filed endless sanctions motions *against Reed Smith*, and yet it continues to complain when Reed Smith responds to both defend itself and hold Reorganized Holdings accountable when it strays further and further away from the bankruptcy processes and the law.

Reorganized Holdings' repeated ex parte communications with the Court, including on proposed orders relating to sanctions motion on which Reed Smith and various parties are respondents, violates due process and the Bankruptcy Rules. *See* Bankruptcy Rule 9003 ("Unless permitted by applicable law, the following persons must refrain from ex parte meetings and communications with the court about matters affecting a particular case or proceeding: an examiner; a party in interest; a party in interest's attorney, accountant, or employee; and the United States trustee and any of its assistants, agents, or employees."). Indeed, the "regulation of the conduct of parties in interest and their representative is designed to insure that the bankruptcy system operates fairly and that no appearance of unfairness is created." Bankruptcy Rule 9003, Notes of Advisory Committee (citing H. Rep. No. 95-595, 95th Cong., 1st Sess. 95 et seq. (1977)).

Second, Reed Smith, as well as the multiple law firms against whom Reorganized Holdings has sought sanctions, are entitled to a clear order denying the sanctions motion against Reed Smith and those law firms. Instead, Reorganized Holdings' proposed order tracked Your Honor's ruling precisely, *except the denial of sanctions against Reed Smith and other law firms* and refers the world to a 80-page transcript for that ruling. Reorganized Holdings' position is indefensible and only supports it unprofessional attacks on lawyers.

Third, as to the Greek Arbitration Petition, it is again false to assert that Reed Smith is advocating on behalf of "Holdings' former officers, directors, and shareholders" (Letter at 2). As this Court is aware,

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Reed Smith does represent Eletson Gas LLC ("Gas"), but to be clear, not in the Greek Arbitration Petition proceeding. Reed Smith pointed out that inclusion of the Greek Arbitration Petition in Exhibit 1 to the Order is not consistent with Your Honor's ruling. In fact, Your Honor did not even refer to the Greek Arbitration Petition in Your Honor's ruling, and Reorganized Holdings did not make any arguments about Gas or the Greek Arbitration Petition in its briefing, not in its opening or in its reply brief. It was never argued, and inclusion of the proceeding in the list attached to the Order is contrary to law. The parties who filed the Greek Arbitration Petition—including Gas—are not parties to the bankruptcy proceeding. What Reorganized Holdings now seeks to do is slip in an unconstitutional and statutorily inappropriate extension of the Confirmation Order. If Your Honor intended that the Greek Arbitration Petition—involving proceedings filed *pursuant to the New York Convention*—undermines recognition and enforcement of the Confirmation Order, then Your Honor, respectfully, should make that ruling clear so that it can be subject to review.

Fourth, Reorganized Holdings argues that the Greek Arbitration Petition "frustrates a key asset retained by Holdings under the Plan" (Letter at 2). This is wholly incorrect. Tellingly, Reorganized Holdings does not cite to any provision in the Plan or Confirmation Order to support its assertion that "the arbitration award is vested with Holdings by the terms of the Confirmation Order and Plan" (*id.*). And that is because it cannot—the term "Arbitration Award" (or "Final Award") does not even appear in the Plan or the Confirmation Order. Holdings retains the right, if any, that Holdings had to prosecute "any purported transfer of preferred shares in Eletson Gas LLC" as a Retained Cause of Action, nothing more (*see* Plan §§ 1.65, 1.128, 5.15). Nowhere does the Plan provide that all parties in interest to the Final Award are prohibited from enforcing their own interests arising out of the Final Award or related litigation. Such a finding would be not only be beyond this Court's jurisdiction but would be in direct conflict with the terms of § 5.2(b) of the Plan, which provides that Holdings *may prosecute a Retained Cause of Action*. To assert that parties with potential litigation claims related to a non-debtor—that were not discharged or enjoined by a plan of reorganization—are precluded from asserting their own rights because a reorganized debtor may want to prosecute an action in the future is beyond the scope of the Bankruptcy Code. This also begs the question, if the Greek Arbitration Petition is prohibited by the Plan and Confirmation Order, then why isn't the LCIA Arbitration, filed by Levona against Gas, also not violative of the Plan and Confirmation Order?

Fifth, Reorganized Holdings asserts that the Greek Arbitration Petition "disregards the corporate governance changes that Holdings made through its ***ownership of its interests*** in subsidiaries" (Letter at 2) (emphasis added). It is Reorganized Holdings who is attempting to "disregard corporate governance" by asserting that the assets of a non-controlled affiliate are assets of a parent corporation. Such an assertion would turn decades of textbook corporate law on its head. Justice Belen's Final Award was clear: "[a]s of March 11, 2022 . . . Levona had no membership interest in . . . Eletson Gas" and "[t]he preferred interests in [Gas] were transferred to the Preferred Nominees, effective as of March 11, 2022" (Dkt. No. 1517, Ex. A at 95-96). Nothing in the Plan or Confirmation Order undermines—or could undermine—that finding. Here, again, we ask that the reference be stricken or that Your Honor make the ruling clear. Reed Smith continues to reserve all its rights concerning the Order.

Respectfully submitted,

ReedSmith

Louis M. Solomon

cc. Counsel of Record