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April 11, 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 connection with Reed Smith's Motion to Withdraw its Limited Representation of Provisional Holdings (Dkt. 1543; the "Motion") and pursuant to Your Honor's permission, granted during the April 3, 2025 Hearing, of a further submission on a few specific issues raised.

Your Honor raised the question about who is representing Provisional Holdings as "the entity purporting to be the debtor," while matters proceed on appeal. The case law or professional authorities is of three types (the first two below are what I was referring to during the hearing):

First, Reorganized Holdings has accused Reed Smith of wrongdoing and, indeed, unprofessional wrongdoing. They demanded that Reed Smith withdraw from representing Provisional Holdings. I could not imagine a clearer case for imposing estoppel and waiver principles to Reorganized Holdings' about-face now. *See Forman v. Amboy Nat'l Bank (In re Price),* 361 B.R. 68, 79 (Bankr. D.N.J. 2007) (explaining quasi-estoppel and precluding Chapter 11 Trustee from benefitting from inconsistent positions taken throughout proceeding); *In re Nw. Bay, Ltd.*, 2021 Bankr. LEXIS 1123, *25 (Bankr. N.D.N.Y. Apr. 27, 2021) ("Quasi-estoppel 'precludes a party from asserting, to another's prejudice, a position that is inconsistent with a previously-held position.'") (quoting *In re Price*, 361 B.R. at 79).

Second, we know that our Rules of Professional Conduct find it improper to limit an attorney's practice of law. N.Y. R. Prof. Conduct 5.6. Making Reed Smith's withdrawal from this action dependent on Reed Smith's withdrawal from other actions violates New York Rule of Professional Conduct 5.6, in our view. We contacted a legal ethics expert who, like us, is unaware of any case precluding a law firm from representing a client in other actions because of that firm's withdrawal of representation of the client in one action.

Third, in terms of answering the issue not raised by Reorganized Holdings but properly raised by Your Honor—that is, what happens if the matters on appeal are reversed—by way of analogy, when one party out of several is dismissed from a case on a motion to dismiss, which is then appealed under Federal Rule of Civil Procedure 54(b), while the appeal proceeds, the dismissed party is no longer a part of the underlying proceeding. *Cf. Stanford v. Kuwait Airlines Corp.,* 1987 U.S. Dist. LEXIS 10981, at *6

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(S.D.N.Y. Nov. 25, 1987) (rejecting a plaintiff's arguments that a dismissed defendant was "still a party to this action because this Court has not expressly directed final judgment for [the defendant] under Rule 54(b)" and was, therefore, subject to discovery obligations as a party); *In re Agent Orange Prod. Liab. Litig. MDL No. 381*, 818 F.2d 145, 162-63 (2d Cir. 1987) ("[A] dismissed defendant who fails to obtain a Rule 54(b) certification does not remain a party to the case for purposes of determining diversity."). Should the appeal reverse the dismissal, then the party reenters the case with counsel. The outcome would be the same here. If Provisional Holdings succeeds on its appeals, it would be reinstated as the Debtor before this Court and would need to retain counsel accordingly. Provided that Your Honor issued appropriate protections against more meritless accusations against Reed Smith, Reed Smith would be prepared to reenter as counsel, if that was the client's wishes. However, as it stands, Reed Smith's limited tasks in connection with its representation of Provisional Holdings in this Bankruptcy Proceeding have ended. Reed Smith has completed all tasks necessary in the Bankruptcy Court related to this limited engagement of Provisional Holdings (*see* Motion ¶ 5 (listing limited tasks)). Reorganized Holdings has not articulated a legitimate reason for Reed Smith to remain before this Court as a representative of a party it claims does not exist and is not the recognized debtor here in the United States. There are no pending motions against or made by Provisional Holdings, and Reed Smith has already carried out its obligations in submitting notices of appeal and designations of the record of the orders that fell within its limited scope of representation. Reed Smith should be permitted to withdraw.

With permission, let me address the issue of protections. Reorganized Holdings argues that Provisional Holdings does not exist, and that Reed Smith "does not represent Eletson Holdings Inc. (the Togut Firm does) and should be enjoined from making further filings in this Court representing otherwise" (Dkt. 1314 at 3). Reorganized Holdings asserts that Reed Smith is engaging in "violation[s] of the applicable ethical rules, and well-established case law in this Circuit," by appearing here (*id.*). Yet now Reorganized Holdings paradoxically wants Reed Smith to remain before this Court representing a client it asserts does not exist. Reorganized Holdings' game here is clear: it wants to keep Reed Smith before this Court so that it can bring harassing, unsubstantiated, and vexatious sanctions motions **against Reed Smith** with the goal of interfering with Provisional Holdings' right to counsel and right to review of the Court's decisions without having to concede that Provisional Holdings exists. These attacks undermine two core philosophies of our legal system: (1) that "the right to counsel is the foundation for our adversary system," *Martinez v. Ryan*, 566 U.S. 1, 12 (2012), and that (2) "one should not be penalized for merely defending or prosecuting a lawsuit." *F. D. Rich Co. v. United States ex rel. Indus. Lumber Co.*, 417 U.S. 116, 129 (1974). In fact, "[c]ourts have held that frivolous, unfounded motions for sanctions may themselves be sanctionable." *Optigen, LLC v. Animal Genetics, Inc.*, 2011 U.S. Dist. LEXIS 174811, *15 (N.D.N.Y May 23, 2011) (finding conduct sanctionable where a party asked three times in one month for the Court to sanction plaintiff) (*citing Aircraft Trading & Svcs., Inc. v. Braniff, Inc.,* 819 F.2d 1227, 1236 (2d Cir. 1987) (reminding counsel that repeated unfounded requests for sanctions against a party filing a clearly meritorious appeal are sanctionable); *Gen. Elec. Co. v. Speicher,* 877 F.2d 531, 538 (7th Cir. 1989) (holding that motion for sanctions for filing frivolous appeal was sanctionable where the appeal was not frivolous); *Meeks v. Jewel Cos., Inc.,* 845 F.2d 1421, 1422 (7th Cir. 1988) (holding that "sanctions [would] be forthcoming if counsel routinely request[ed] Rule 38 sanctions without careful investigation to determine that the appeal or defense sought to be sanctioned is indeed frivolous" (citation omitted))).

Finally, to the extent the Court grants Reed Smith's motion to withdraw *subject to* finding new counsel, Reed Smith requests that the Court issue an order clarifying that Reed Smith and/or replacement counsel may actually represent Provisional Holdings without the constant threat of sanctions for doing so—an order that would be in line with the one entered by Judge Liman in the District Court. *See, e.g., In re: Eletson Holdings*, Case No. 1:24-cv-08672, Dkt. 35 (Jan. 24, 2025 Order permitting counsel for Provisional Eletson Holdings, Inc. to be heard on purported stipulation of voluntary dismissal of appeal).

Respectfully submitted,

Louis M. Solomon

cc. Counsel of Record