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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
ELETSON HOLDINGS INC.,[1]	:	Case No. 23-10322 (JPM)
Debtor.	:	

ELETSON HOLDINGS INC.'S OBJECTION TO MOTION OF ELAFONISSOS SHIPPING CORPORATION FOR RELIEF FROM THE COURT'S ORDERS OF JANUARY 29, 2025 AND MARCH 13, 2025 PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(b)(4) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9024

[1] Prior to November 19, 2024, the Debtors in these cases were: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. On March 5, 2025, the Court entered a final decree and order closing the chapter 11 cases of Eletson Finance (US) LLC and Agathonissos Finance LLC. Commencing on March 5, 2025, all motions, notices, and other pleadings relating to any of the Debtors shall be filed in the chapter 11 case of Eletson Holdings Inc. The Debtor's mailing address is c/o Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119.

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BACKGROUND[1]

1. It is undisputed that at all relevant times leading up to the Effective Date (described below), the Debtors' shareholders included: (1) movant Elafonissos Shipping Corporation ("Elafonissos"); (2) Keros Shipping Corporation ("Keros"); (3) Lassia Investment Company ("Lassia"); (4) Family Unity Trust Company ("Family Unity"); and (5) Glafkos Trust Company ("Glafkos" and, together with Lassia and Family Unity, the "Former Majority Shareholders" and together with Keros and Elafonissos, the "Former Shareholders"). *See* [Docket No. 1300] (the "First Borriello Declaration"), Ex. 9 (the "Greek Petition") (certified English translation) at 32-33.

2. On September 11 and 19, 2024, respectively, the Debtors and certain of the Petitioning Creditors filed competing plans of reorganization in the Debtors' Chapter 11 Cases. [Docket Nos. 1111, 1132] (respectively, the "Debtor Plan" and the "PC Plan," and together, the "Plans"[2]). The Debtors and Petitioning Creditors had previously filed disclosure statements concerning their respective Plans on July 5 and 8, 2024. [Docket Nos. 839, 847] (respectively, the "Debtor Disclosure Statement" and "PC Disclosure Statement," and together, the "Disclosure Statements").

3. The PC Plan contemplated an equity-rights offering that transferred ownership and control of the Debtors from the Former Shareholders to the Debtors' creditors, while the Debtor Plan contemplated that the Former Majority Shareholders would obtain ownership and control of the Debtors on certain terms. *See*

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[1] The long factual background of this case has described in-depth many times, including in the Confirmation Order and the Sanctions Motions (described below), which Holdings incorporates by reference herein. The Background section of this Objection describes only those facts that either were not described within those documents or which are of particular relevance to the Motion.

[2] The Petitioning Creditors also filed a second reorganization plan in the alternative, but that plan is not relevant for purposes of adjudicating the Motion and is not discussed herein. [Docket No. 1131].

Confirmation Decision (defined below) at 27-32, 39-41, 44; *see generally* Debtor Plan, PC Plan. Notably, under both Plans (as ultimately solicited[3]), Elafonissos's existing interests in the Debtors would be extinguished after confirmation. *See infra* ¶ 5. The Plans also provided for the Court's retention of post-confirmation enforcement jurisdiction. PC Plan § 11.1 ("the Bankruptcy Court shall retain jurisdiction" to, among other things, "(d) enter such orders as may be necessary or appropriate to implement or consummate the provisions of" the PC Plan and "(h) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with consummation, implementation, or enforcement of this Plan or the Confirmation Order"); *see* Debtor Plan Art. X (similar).

4. On July 10, 2024, the Court entered an order concerning the solicitation of votes on the Plans. [Docket No. 856] (the "Joint Solicitation Order"). Among other things, the Joint Solicitation Order approved: (1) the Disclosure Statements to be distributed to the holders of claims against and interests in the Debtors entitled to vote on at least one of the Plans (the "Holders"); (2) the forms of (i) the ballots for Holders to cast votes with respect to the Plans (each a "Ballot") and (ii) other written materials to be included in the Solicitation Packages; and (3) the parties' jointly proposed procedures for soliciting votes on the Plans (*i.e.*, the Solicitation Procedures (discussed below)), which were filed as exhibits to the *Notice of Filing of Proposed Joint Solicitation Order Approving Competing Disclosure Statements* [Docket No. 852] (the "Joint Notice").

[3] Earlier versions of the Debtor Plan contemplated the reinstatement of existing equity interests, which rendered the class of equity-interest holders unimpaired, and therefore, ineligible to vote. *See* [Docket No. 370] § II.C.7.b-c.

5. Each Disclosure Statement provided the Debtors' historical background and a description of events leading up to the solicitation of the Plans. The Disclosure Statements also described the manner in which each Plan contemplated funding the Debtors' emergence from bankruptcy, the classes of claims and interests under each Plan, and a description of the recoveries the Holders in each class could expect. Notably, each of the Plans and Disclosure Statements made clear that they contemplated the extinguishment of existing equity interests in Debtor Eletson Holdings, Inc. ("Holdings"). *See* Debtor Plan § II(c)(8)(b), Debtor Disclosure Statement at 12; PC Plan § 3.3(i)(ii), PC Disclosure Statement at 49. The Disclosure Statements also gave the Holders notice of: (1) the deadline by which any objections to the confirmation of any of the Plans must be made; and (2) the date upon which the Court was scheduled to hear arguments concerning the confirmation of the Plans. *See* PC Disclosure Statement at 61; Debtor Disclosure Statement at 15.

6. For soliciting votes from those Holders owning equity interests in the Debtors, including Elafonissos, the Court approved the form and use of the Class 7/9 Ballot.[4] *See* Joint Solicitation Order ¶ 12; form of Class 7/9 Ballot (the "Class 7/9 Ballot") attached as Ex. 14 to the Joint Notice. The Class 7/9 Ballots: (1) advised Holders that they were deemed to reject the PC Plan; but (2) permitted them to cast a vote to accept or reject the Debtor Plan and to indicate a preference between the Plans.[5]

[4] Holders owning equity interests in the Debtors, including Elafonissos, were classified in Debtor Plan Class 7 and PC Plan Class 9. Debtor Plan Class 7 consisted of "Interests," which the Debtor Plan defined as "common equity interest[s] in Eletson Holdings, including, but not limited to, all issued, unissued, authorized or outstanding shares or stock." Debtor Plan at 10, 22-23. PC Plan Class 9 consisted of "Existing Equity Interests," which the PC Plan defined as "all existing equity Interests (other than Intercompany Interests), including without limitation, (a) any and all Parent Equity Interest, and (b) all common and preferred stock and all rights to purchase common and preferred stock in each Debtor." PC Plan at 9, 25.

[5] Because the PC Plan contemplated that the Former Shareholders' interests in Holdings would be extinguished and did not contemplate the distribution any property to the Former Shareholders, the

See Class 7/9 Ballot at 4-5. Like all Ballots, the Class 7/9 Ballots: (1) advised Holders to carefully review the Disclosure Statements and the Plans; and (2) notified Holders that if one of the Plans were confirmed by the Court, the confirmed Plan "will be binding on you whether or not you vote." *Id.* at 3.

7. The Joint Solicitation Order also approved the manner in which: (1) votes were to be solicited; (2) ballots were to be submitted and collected; (3) votes to either accept or reject the Plans (as applicable) were to be tabulated; and (4) voter preferences between the Plans were to be tabulated. *See* Joint Solicitation Order at ¶ 7, Joint Notice Ex. 2 (the "Solicitation Procedures"). The Solicitation Procedures provided for the distribution of Solicitation Packages (discussed below) and procedures for establishing the amounts of claims and interests for which votes may be cast. The Solicitation Procedures also included a description of the contents of each Solicitation Package[6] and directed Verita (discussed below) to mail Solicitation Packages to the Holders by regular and electronic mail (where available). Joint Solicitation Order at 3.[7]

8. The Joint Solicitation Order also authorized the Debtors to retain Kurtzman Carson Consultants, LLC *dba* Verita Global ("Verita") as the voting agent responsible for liaising between Holders and the Court regarding votes for and against the Plans.[8] *See* Joint Solicitation Order at 5. In approving Verita's retention, the Court

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Former Shareholders were deemed by operation of law to reject the PC Plan. *See* 11 U.S.C. § 1126(g). Accordingly, the Former Shareholders were only permitted to vote on the Debtor Plan. *See* Debtor Plan at 17; PC Plan at 21; Class 7/9 Ballot.

[6] As set forth in the Joint Solicitation Order and the Solicitation Procedures, Solicitation Packages (discussed below) contained, among other things, a USB flash drive containing the Disclosure Statements with the Plans annexed thereto. Joint Solicitation Order ¶ 9; Solicitation Procedures at 7.

[7] The Solicitation Procedures additionally included special procedures for the service of Solicitation Packages upon Holders that beneficially owned notes. Those procedures are not relevant to the Motion.

[8] On July 31, 2024, the Court entered the *Order Approving Debtors' Application for Entry of an Order Approving the Retention of Kurtzman Carson Consultants, LLC dba Verita Global As Voting Agent Pursuant*

authorized Verita to: (1) distribute Solicitation Packages to Holders; (2) solicit votes on the Plans; (3) receive, tabulate, and report to the Court how the Ballots had been voted; and (4) respond to inquiries relating to the solicitation and voting process, including all matters related thereto. Joint Solicitation Order ¶ 3; Solicitation Procedures at 8 (describing Verita's duties). The Joint Solicitation Order required Verita to file the Voting Declaration (defined below) with the Court on August 13, 2024. *Id.* ¶¶ 17-18.

9. The Joint Solicitation Order provided that any party-in-interest that wished to object to confirmation was required to file an objection: (1) in writing; (2) identifying the name and address of the objecting party and the nature and amount of the party's interest; (3) stating the bases for the objection with particularity; (4) that complied with the applicable rules and other Court orders. It also required that the objection be: (5) filed with the Clerk of the Court with proof of service; and (6) served on counsel to the Debtors, the Petitioning Creditors, and other parties by August 27, 2024 (the "Objection Deadline"). Joint Solicitation Order ¶ 19 (collectively, the "Objection Procedures"). The Joint Solicitation Order stated that "[u]nless an objection . . . is timely filed and served pursuant to the [Objection Procedures], such objection may not be considered by the Court and will be deemed overruled." *Id.* ¶ 20.

10. The Joint Solicitation Order also approved the form of the notice regarding the confirmation hearing. *See id.* ¶ 6, Joint Notice Ex. 1 (the "Confirmation Hearing Notice"). The Confirmation Hearing Notice set forth the date and time of the hearing upon which the Court would consider confirmation of the Plans (the "Confirmation Hearing"), and stated:

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to 11 U.S.C. 327(A) and 503(B)(1)(A) Fed. R. Bankr. P. 2014(A) and 2016(A) and L.B.R. 2014-1 and 2016-1. [Docket No. 907] (the "Voting Agent Order"). The Voting Agent Order granted the Debtors' unopposed application to retain Verita as voting agent. [Docket No. 896].

> ONLY THOSE RESPONSES OR OBJECTIONS THAT ARE TIMELY FILED AND RECEIVED WILL BE CONSIDERED BY THE COURT. OBJECTIONS NOT TIMELY FILED AND SERVED IN THE MANNER SET FORTH ABOVE WILL NOT BE CONSIDERED AND WILL BE DEEMED OVERRULED.

Confirmation Hearing Notice at 5. The Confirmation Hearing Notice additionally advised recipients that that "[t]hose wishing to participate in the Confirmation Hearing in person may appear before the Court" or by Zoom. *Id.* at 3.

11. Finally, the Joint Solicitation Order found that the Solicitation Procedures and contents of the Solicitation Packages: (1) were compliant with the applicable rules; (2) "constitute[d] good and sufficient notice to all interested parties of the relevant dates, deadlines and procedures relating to confirmation of the . . . Plans"; and (3) "provide[d] interested parties with sufficient time to review and consider" all "information and materials relating to confirmation of the . . . Plans" "to make an informed judgment to accept or reject" the Plans and "to object to confirmation of the . . . Plans." Joint Solicitation Order Recitals B-D.

12. On July 17, 2024, Elafonissos was served a package of solicitation materials containing, among other things: (1) the Confirmation Hearing Notice; (2) the competing Plans and their associated Disclosure Statements; (3) a Class 7/9 Ballot; and (4) the Joint Solicitation Order. [Docket No. 932] at 6 and Ex. O (a "Solicitation Package"). The Solicitation Package was served upon Elafonissos via First Class Mail at 118, Kolokotroni Street, Piraeus, Greece (the "Piraeus Street Address"), consistent with the Joint Solicitation Order's direction that Verita distribute solicitation packages via "regular mail and electronic mail (where available)." *See* Joint Solicitation Order ¶ 8.

13. Accordingly, Elafonissos received notice of: (1) the Plans and their potential effects, notably including that both Plans if confirmed would extinguish Elafonissos's interests in the Debtors, *see supra* ¶ 5; (2) Elafonissos's right to vote its

Class 7/9 Ballot and to express a preference between the Plans; (3) the Objection Procedures and the consequences of failing to file and serve objections to confirmation consistent with the Objection Procedures before the Objection Deadline; and (4) Elafonissos's opportunity to be heard at the Confirmation Hearing regarding any Plan-based objections that it wanted to raise.

14. On August 1, 2024, Ioannis Zilakos executed a Class 7/9 Ballot on behalf of Elafonissos. *See* First Borriello Decl., Ex. 10 (the "Elafonissos Ballot"). Mr. Zilakos identified himself on the Elafonissos Ballot as "Director – Vice President" of Elafonissos[9] and indicated that: (1) Elafonissos's mailing address is the Piraeus Street Address; and (2) Elafonissos's email address is "ioannis.zilakos@eletson.com" (the "Zilakos Email Address"). Elafonissos Ballot at 6. Through the Elafonissos Ballot, Elafonissos voted to accept the Debtor Plan and noted a preference for the Debtor Plan. *Id.* at 4; *see also* [Docket No. 941] (the "Voting Declaration"), Ex. B. Elafonissos also certified that it had "received . . . the Disclosure Statements and associated notices" and "acknowledge[d] that the solicitation is being made pursuant to the[ir] terms and conditions." Elafonissos Ballot at 5-6.

15. Elafonissos raised no objections to confirmation on any ground by the Objection Deadline or otherwise in advance of the Confirmation Hearing.

16. From September 9 to 13, 2024, the Court held a weeklong trial concerning the confirmability of the competing Plans (the Confirmation Hearing).[10] At

[9] In addition to his role with Elafonissos, Mr. Zilakos also: (1) was a member of Holdings' board of directors at all relevant times leading up to the Effective Date; and (2) is a member of the purported Provisional Board appointed pursuant to Elafonissos's post-confirmation Greek Petition (each discussed below). *See* Greek Petition at 31.

[10] During the first two days, the Court held a trial concerning certain claims objections filed by the Debtors. [Docket Nos. 376, 377, and 380].

the Confirmation Hearing, the Court heard live testimony from seven witnesses, including from two of the Debtors' directors and officers who were also shareholders of two of the Debtors' Former Majority Shareholders. *See* Sept. 11, 2024 Hr'g Tr. at 129:7-13, 202:2-12. Notably, Vasilis Hadjieleftheriadis, the Debtors' then-director, vice president, and treasurer, testified that he had worked with all of the Former Shareholders in connection with the confirmation-related proceedings. *Id.* at 142:5-16. The Court also heard extensive arguments from various parties concerning various objections to confirmation, but Elafonissos raised no objections.

17. On October 25, 2024, the Court confirmed the PC Plan and denied confirmation of the Debtor Plan. [Docket No. 1212] (the "Confirmation Decision"); [Docket No. 1223] (the "Confirmation Order"). Through the Confirmation Order, the Court gave the provisions of the PC Plan judicial imprimatur that rendered the PC Plan's provisions enforceable against various parties, including the Debtors' shareholders. The Confirmation Order also specifically ordered as follows:

> The Debtors and the Petitioning Creditors and each of their respective Related Parties are hereby directed to cooperate in good faith to implement and consummate the Plan. . . .
>
> Upon entry of this Confirmation Order, all Holders of Claims or Interests and other parties in interest . . . shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan . . . .

Confirmation Order ¶ 5(i), 12. These provisions specifically bound the Debtors' shareholders,[11] including Elafonissos. *See also* 11 U.S.C. § 1141(a) ("the provisions of a

[11] "Related Parties" under the Confirmation Order includes (among others) the Debtors' "owners" and "current and former . . . equity owners," including Elafonissos. *See* PC Plan § 1.124; *see also* Consummation Order ¶ 1 (defining the "Ordered Parties" as a subset of the "Related Parties" defined in Plan § 1.124). And Elafonissos plainly qualified before the Effective Date—and in the Ordered Parties' misguided view of the post-Effective Date world, still qualifies—as a "Holder[] of . . . Interests" in the Debtors and a "part[y] in interest." *See* PC Plan § 1.89 ("Interest" includes "any equity security"); 11 U.S.C. § 1109(b) ("party in interest" includes "an equity security holder").

confirmed plan bind the debtor . . . and any . . . equity security holder . . . in the debtor . . . whether or not such . . . equity security holder . . . has accepted the plan."). Elafonissos was also bound by the PC Plan's provisions preserving the Court's jurisdiction enforce the Confirmation Order and implement the PC Plan. *See supra* ¶ 3.

18. The Confirmation Order found that the Solicitation Packages were transmitted and served "in good faith and in compliance with" the Joint Solicitation Order and all applicable laws. Confirmation Order Recital E. The Court also found that "transmittal and service were due, timely, adequate, and sufficient based upon the circumstances of the Chapter 11 Cases" and that "all parties in interest had the opportunity to appear and be heard at the Confirmation Hearing." *Id.*

19. On November 4, 2024, the Confirmation Order was served on Elafonissos via First Class Mail at the Piraeus Street Address indicated on the Elafonissos Ballot. [Docket No. 1236].

20. On November 11, 2024, approximately two weeks after being served with the Confirmation Order, Elafonissos and Keros filed a petition (the "Greek Petition") at the Court of First Instance in Piraeus, Greece (the "Greek Court") asking the Greek Court to appoint provisional directors for Holdings in order to prevent the Confirmation Order from being judicially recognized or enforced in Greece. Specifically, Elafonissos asked the Greek Court to empower new Holdings directors to "turn against" the Confirmation Decision and Order and "to oppose" the Confirmation Order's validity "as an impediment to the recognition of the [Confirmation Order] in Greece." Greek Petition at 35, 38, 41. Elafonissos also telegraphed its intent to litigate issues resolved by this Court's previous rulings as if those rulings had never been made. *See id.* at 19-27 (alleging the bankruptcy petition was "bad faith" and the "totally questionable nature of" the Petitioning Creditors' claims previously heard and

adjudicated by this Court). The Greek Petition referenced the Confirmation Decision and quoted the Confirmation Order. *E.g.*, Greek Petition at 18 (referencing Confirmation Decision), 22-23 (quoting Confirmation Order).

21. On November 12, 2024, the Greek Court entered an order granting the Greek Petition and appointing a purported board of directors for Holdings (the "Provisional Board"). *See* [Docket No. 1459], Ex. B (the "Second Borriello Declaration"), Ex. 2 (the "Greek Order") at 41. The Provisional Board purportedly appointed through the Greek Order includes Mr. Zilakos, Elafonissos's duly authorized representative, as a member. *See* [Docket No. 1569-2] (the "Zilakos Declaration") ¶ 1. Since the Greek Order, the Provisional Board and Mr. Zilakos have waged a persistent war on the Confirmation Order in tandem with Elafonissos and Holdings' other Former Shareholders, both in the United States and abroad, including in both Greece and Liberia.

22. Within days following the Greek Order, on November 14, 2024, the Debtors—then still under prior management, and acting through Reed Smith—filed an appeal from the Confirmation Order (the "Plan Confirmation Appeal").[12] The Debtors did not, however, seek a stay pending resolution of the Plan Confirmation Appeal, and never have.

23. Elafonissos never took an appeal from the Confirmation Order or sought to stay the Confirmation Order's effectiveness pending any appeal.

24. The PC Plan became effective on November 19, 2024 (the "Effective Date"). *See* [Docket No. 1258]. A notice regarding the Effective Date and the Plan's

[12] *Eletson Holdings Inc. v Pach Shemen LLC (In re Eletson Holdings Inc.)*, Case No. 24-cv-08672-LJL (S.D.N.Y.), [Docket No. 1].

effectiveness was served on Elafonissos on the Effective Date via First Class Mail at the Piraeus Street Address, and via email at the Zilakos Email Address, both indicated on the Elafonissos Ballot. [Docket No. 1266].

25. On and following the Effective Date: (1) control of the Debtors transferred to the Debtors' creditors, PC Plan § 5.8, and Pach Shemen and its nominee became the Debtors' majority shareholders; (2) the Debtors' then-existing directors and officers were deemed to have resigned, *id.* § 5.10(c), and a new board and CEO were appointed in their place, *id.* § 5.10(a); *see* [Docket No. 1134], Ex. F (identifying Holdings' new directors and CEO); (3) Reed Smith's representation of the Debtors was terminated, *id.* §§ 2.5(a) and 10.6; and (4) Debtors Eletson Finance (US) LLC and Agathonissos Finance LLC were dissolved, leaving Holdings as the only surviving Debtor, *id.* § 12.11.

26. Following the Effective Date, Holdings (now under new management) moved to consolidate control over the Eletson enterprise pursuant to the terms of the confirmed PC Plan. Unfortunately, before and since the Effective Date, Elafonissos and various other parties have both acted affirmatively in violation of the Confirmation Order, and failed to act as required by the Confirmation Order, in order to obstruct implementation of the PC Plan. As a result, Holdings had to bring a series of motions seeking to enforce the Confirmation Order. *E.g.*, [Docket No. 1268] (the "First Sanctions Motion"); [Docket No. 1416] (the "Second Sanctions Motion"); and [Docket No. 1459] (the "Third Sanctions Motion" and, together with the First and Second Sanctions Motion, the "Sanctions Motions"). The Sanctions Motions describe in depth the relevant issues, and they are each incorporated by reference herein. Generally speaking: (1) the First Sanctions Motion sought to coerce certain parties, including Elafonissos, to effect updates to Holdings' registration with the Liberian International Ship & Corporate Registry ("LISCR"); (2) the Second Sanctions Motion

sought to coerce compliance with the Consummation Order (described below) through the imposition of monetary sanctions; and (3) the Third Sanctions Motion sought to coerce various parties, including Elafonissos, to cease efforts to obstruct implementation and recognition of the PC Plan abroad.

27. Elafonissos was served via First Class Mail at the Piraeus Street Address and via email at the Zilakos Email Address indicated on the Elafonissos Ballot with: (1) the First Sanctions Motion and a hearing notice on November 25, 2024 [Docket No. 1281]; (2) the Second Sanctions Motion and a hearing notice on February 7, 2025 [Docket No. 1429]; and (3) the Third Sanctions Motion and a hearing notice on February 19, 2025 and February 25, 2025, respectively [Docket Nos. 1532 and 1533]. Elafonissos was separately served at the Zilakos Email Address with: (1) the Second Sanctions Motion on February 6, 2025 [Docket No. 1427]; (2) the Second Sanctions Motion and a hearing notice on February 7, 2025 [Docket No. 1428]; (3) the Third Sanctions Motion on February 19, 2025 [Docket No. 1501]; and (4) a hearing notice for the Third Sanctions Motion on February 25, 2025 [Docket No. 1504].

28. At a hearing held on February 20, 2025, the Court concluded that service of notice of the First and Second Sanctions motions via First Class Mail and e-mail was proper:

> The Court agrees with the Reorganized Holdings that service by Verita and Togut by direct mail and email to former directors, shareholders, and their respective attorneys to be sufficient notice. . . . Also, notice was appropriate as the parties had an opportunity to file objections to the motion [for] sanctions and opportunities to be heard.

[Docket No. 1468], Ex. A (Feb. 20, 2025 S.D.N.Y. Hr'g Tr.) at 92:3-10.

29. Despite receiving service, Elafonissos never filed or raise any objections to any of the Sanctions Motions on any ground before the instant Motion.

30. As is relevant to this Motion, the Court: (1) granted the First Sanctions Motion on January 29, 2025 [Docket No. 1402] (the "Consummation Order"); and (2) granted the Third Sanctions Motion on March 13, 2025 [Docket No. 1537] (the "Foreign Opposition Order" and, together with the Consummation Order, the "Orders").[13] In the Consummation Order, the Court directed certain parties,[14] including Elafonissos, to assist Holdings with implementing the PC Plan by updating LISCR with certain information within seven days. Consummation Order at 3. In the Foreign Opposition Order, the Court found certain parties,[15] including Elafonissos, in contempt of the Confirmation Order and Consummation Order, and directed them to withdraw all filings that oppose or undermine the judicial recognition of the Confirmation Order, including: (1) specific pleadings filed in Greece by Elafonissos and others, including the Provisional Board purportedly created as a result of Elafonissos's post-confirmation actions, *see supra* ¶¶ 20-21; and (2) specific pleadings filed in Liberia by Elafonissos, the Provisional Board, and others. *See* Foreign Opposition Order, Ex. 1.

31. None of the parties subject to the Orders have complied with the Orders.

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[13] The Court also granted the Second Sanctions Motion, but Elafonissos has not asked the Court to reconsider it. *See* [Docket No. 1495].

[14] These parties included: (1) all "Related Parties," as that term was defined in the PC Plan; (2) the Debtors; (3) the existing person of record at Holdings' address of record ("AOR") that was on file with LISCR; (4) the Former Shareholders, including Elafonissos; (5) Holdings' former officers and directors; (6) Holdings' former counsel, including Reed Smith; and (7) counsel for the former officers and directors at the Daniolos Law Firm. Consummation Order at 3.

[15] These parties included: (1) the Former Majority Shareholders; (2) Keros; (3) Elafonissos; (4) purported Provisional Eletson Holdings, Inc.; (5) the purported Provisional Board (defined as: Vassilis Chatzieleftheriadis, Konstatinos Chatzieleftheriadis, Ioannis Zilakos, Niki Zilakos, Adrianos Psomadakis-Karastamatis, Eleni Giannakopoulous, Panos Paxinoz, and Emmanuel Andreulaks); and (6) Vasilis Hadjieleftheriadis. Foreign Opposition Order at 3.

32. Various parties have appealed from the Consummation Order and the Foreign Opposition Order. Each of: (1) the Provisional Board/Reed Smith (February 5, 2025) [Docket No. 1411]; and (2) the Former Majority Shareholders (February 5, 2025) [Docket No. 1413] appealed the Consummation Order.[16] And each of: (1) the Provisional Board (March 24, 2025) [Docket No. 1558]; (2) the Daniolos Law Firm (March 26, 2025) [Docket No. 1562]; and (3) the Former Majority Shareholders (March 26, 2025) [Docket No. 1563] appealed the Foreign Opposition Order.[17] All of these appeals were noticed before the Motion was filed on March 27, 2025, and remain pending as of the date of this Objection.

33. Elafonissos has never appealed either of the Orders.

34. On April 17, 2025, Elafonissos and the Former Majority Shareholders—which are both being represented by the same law firm, Rolnick Kramer Sadighi LLP—docketed a letter in response to motions filed by Holdings the day prior [Docket No. 1611] (the "April 17 Letter"). In the April 17 Letter, Elafonissos argues:

> Reorganized Holdings' Motion to amend the Court's March 13, 2025 Order . . . is improper because that Order has been appealed by the Majority Shareholders (a fact Reorganized Holdings fails to mention in its Motion), divesting the Court of jurisdiction to amend the Order.

April 17 Letter at 1-2 (citing Fed. R. Bankr. P. 8008 and *Ladder 3* (both discussed below in Section I)). Nowhere within its own Motion did Elafonissos mention that

[16] The appeals from the Consummation Order initiated: (1) *Provisional Eletson Holdings Inc. v. Reorganized Holdings Inc. (In re: Eletson Holdings Inc., et al.*, Case No. 25-cv-01312-LJL (S.D.N.Y.) and (2) *Lassia Investment Company v. Eletson Holding Inc.*, Case No. 25-cv-01685-LJL (S.D.N.Y.), respectively.

[17] The appeals from the Foreign Opposition Order initiated: (1) *Provisional Eletson Holdings Inc. v. Reorganized Holdings, Inc.*, Case No. 25-cv-2824-LJL (S.D.N.Y.); (2) *Daniolos Law Firm v. Reorganized Holdings Inc.*, Case No. 25-cv-2895-LJL (S.D.N.Y.); and (3) *Lassia Investment Company v. Reorganized Holdings, Inc.*, Case No. 25-cv-2789 (S.D.N.Y.).

the Orders had been appealed by multiple parties—including the Former Majority Shareholders who co-wrote the April 17 Letter—before the Motion was filed.

ARGUMENT

I. The Motion Cannot Be Granted as a Matter of Law

35. As a threshold matter, Elafonissos asks the Court to grant relief that the Court lacks jurisdiction to grant as a matter of law.

36. A bankruptcy court lacks jurisdiction to grant a Rule 60(b)[18] motion where an appeal from the order from which relief is sought has been filed. Indeed, a bankruptcy court lacks the jurisdiction to even modify its order once the order has been appealed, even if the modification would obviate the appeal:

> The filing of a bankruptcy appeal confers jurisdiction on the appellate court and divests the trial court of control over those aspects of the case involved in the appeal. Once a notice of appeal is filed no lower court should be able to vacate or modify an order under appeal, not even a bankruptcy court attempting to eliminate the need for a particular appeal.

In re Sabine Oil & Gas Corp., No. 16-CV-2561 (JGK), 2016 WL 4203551, at *6 (S.D.N.Y. Aug. 9, 2016) (cleaned up and citations omitted). For this reason, courts cannot grant Rule 60(b) requests for relief from orders that have been appealed. *See In re de Kleinman*, 150 B.R. 524, 526-27 (Bankr. S.D.N.Y. 1992) (denying Rule 60(b)(4) letter motion because pending notice of appeal deprived bankruptcy court of jurisdiction to grant motion).

37. The Orders were entered on January 29, 2025 and March 13, 2025. Appeals from the Consummation Order were taken on February 5, 2025; appeals from the Foreign Opposition Order were taken on March 24, 2025 and March 26, 2025; and broad statements of issues filed with respect to the appeals of both Orders attack the

[18] References herein to "Rules" are references to the Federal Rules of Civil Procedure, and references to the "Bankruptcy Rules" are references to the Federal Rules of Bankruptcy Procedure.

Court's jurisdiction generally. *See supra* ¶ 32; [Docket Nos. 1456, 1462, 1581, 1591, and 1592]. Elafonissos filed its Motion after these appeals were taken, on March 27, 2025. [Docket No. 1569].

38. Elafonissos argues in the April 17 Letter that the appeals from the Foreign Opposition Order "divest[] the Court of jurisdiction" over the Foreign Opposition Order. *See supra* ¶ 34. This is an effective concession that the Court was divested of jurisdiction over the Consummation Order when that order was appealed a month before the Motion, too.

39. Bankruptcy Rule 8008 ("Indicative Rulings") describes the "Bankruptcy Court's Options" in this circumstance, and makes clear that granting the Motion is not one of them. In relevant part, Bankruptcy Rule 8008 provides:

> Motion for Relief Filed When an Appeal Is Pending; Bankruptcy Court's Options. If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because an appeal has been docketed and is pending, the bankruptcy court may:
>
> (1) defer considering the motion;
>
> (2) deny the motion;
>
> (3) state that it would grant the motion if the court where the appeal is pending remands for that purpose; or
>
> (4) state that the motion raises a substantial issue.

Fed. R. Bankr. P. 8008(a); *see Musso v. OTR Media Group, Inc. (In re Ladder 3 Corp.)*, 581 B.R. 7, 12 (Bankr. E.D.N.Y. 2018) (denying Rule 60(b)(4) motion after noting that Bankruptcy Rule 8008 governed since appeal of subject order was pending).

40. Accordingly, the Motion cannot be granted as a matter of law. And for the reasons described below, the Court should deny the Motion under Bankruptcy Rule 8008(a)(2) .

II. Rule 60(b)(4) Relief Is Not Warranted

a. Rule 60(b)(4)

41. Within the Motion, Elafonissos moves to vacate the Orders under Rule 60(b)(4), made applicable here by Bankruptcy Rule 9024.

42. Rule 60(b) relief is extraordinary and can be granted only when the movant is able to prove that exceptional circumstances exist, and does not provide a substitute for the timely exercise of appellate rights. As the Second Circuit said:

> Properly applied Rule 60(b) strikes a balance between serving the ends of justice and preserving the finality of judgments. In other words it should be broadly construed to do substantial justice, yet final judgments should not be lightly reopened. The Rule may not be used as a substitute for a timely appeal. Since 60(b) allows extraordinary judicial relief, it is invoked only upon a showing of exceptional circumstances.

Nemaizer v. Baker, 793 F.2d 58, 61 (2d Cir. 1986) (cleaned up and citations omitted) (reversing grant of Rule 60(b)(4) motion); *see United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270-71, 274 (2010) (affirming denial of Rule 60(b)(4) motion: "a motion under Rule 60(b)(4) is not a substitute for a timely appeal" and "does not provide a license for litigants to sleep on their rights").

43. Elafonissos moves specifically under Rule 60(b)(4), which provides that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding [if] the judgment is void." Fed. R. Civ. P. 60(b)(4). The Supreme Court said in *Espinosa*:

> A void judgment is a legal nullity. . . . [A] void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final. The list of such infirmities is exceedingly short; otherwise, Rule 60(b)(4)'s exception to finality would swallow the rule.
>
> A judgment is not void, for example, simply because it is or may have been erroneous. Similarly, a motion under Rule 60(b)(4) is not a substitute for a timely appeal. Instead, Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on

> a violation of due process that deprives a party of notice or the opportunity to be heard.

Espinosa, 559 U.S. at 270-71 (cleaned up and citations omitted).

44. Elafonissos argues that the Court should declare the Orders to be void under Rule 60(b)(4) "because the Orders are void as to Elafonissos for lack of personal jurisdiction." Motion at 2. As explained below, the Court had personal jurisdiction to bind Elafonissos through the Orders. But even if the exercise of jurisdiction was improper, that alone is not sufficient for Rule 60(b)(4) relief.

45. The Second Circuit has said that "a judgment may be declared void for jurisdictional defect only when there is [1] a **total want of jurisdiction** and [2] **no arguable basis on which the court could have rested a finding that it had jurisdiction.**" *Sec. & Exch. Comm'n v. Romeril*, 15 F.4th 166, 171 (2d Cir. 2021) (cleaned up, emphases added, and citations omitted) (affirming denial of Rule 60(b)(4) motion). The Supreme Court is in accord:

> Federal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an arguable basis for jurisdiction. Total want of jurisdiction must be distinguished from an error in the exercise of jurisdiction, and only rare instances of a clear usurpation of power will render a judgment void.

Espinosa, 559 U.S. at 271 (internal quotation marks and citations omitted). "[W]hen reviewing the denial of a Rule 60(b)(4) motion to vacate for want of jurisdiction," courts "consider only whether there is at least an arguable basis for jurisdiction." *Cent. Vermont Pub. Serv. Corp. v. Herbert*, 341 F.3d 186, 190 (2d Cir. 2003) (affirming denial of Rule 60(b)(4) motion holding "we easily conclude that there is, at a minimum, an

arguable basis for bankruptcy court jurisdiction, because . . . [movant] consented to the bankruptcy court's jurisdiction"[19]).

46. The burden of demonstrating that exceptional circumstances exist, that there is a total want of jurisdiction, and that there is no arguable basis upon which the court could have exercised jurisdiction rests upon the Rule 60(b)(4) movant:

> [Rule 60(b)] movants bear a heavy burden because Rule 60 provides extraordinary relief and is, therefore, generally viewed with disfavor.
>
> In general, any motion for reconsideration is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple.

In re Richardson Foods, Inc., 667 B.R. 500, 512 (Bankr. S.D.N.Y. 2025) (cleaned up and citations omitted). This is so even where the Rule 60(b)(4) movant would not have borne the burden at an earlier juncture in the proceedings, such as with establishing personal jurisdiction. *See Burda Media, Inc. v. Viertel*, 417 F.3d 292, 299-303 (2d Cir. 2005) (affirming denial of Rule 60(b)(4) motion claiming improper service under the Hague Convention holding that burden was on movant).

b. Elafonissos Cannot Demonstrate that the Court Had No Arguable Basis for Exercising Personal Jurisdiction

47. Elafonissos argues that the Court should declare the Orders to be void under Rule 60(b)(4) because, according to Elafonissos, "[t]he Court lacks personal jurisdiction over Elafonissos in these proceedings." Motion ¶ 3. Elafonissos argues that "[t]he Court entered the Orders without personal jurisdiction over Elafonissos because (1) Elafonissos was not served with process in accordance with Bankruptcy Rule 7004,

[19] Notably, "[a]lthough parties can consent to personal jurisdiction, it is well settled that they cannot consent to subject matter jurisdiction." *United States v. Vreeken*, 803 F.2d 1085, 1089 (10th Cir. 1986); *Valinski v. Detroit Edison*, 197 F. App'x 403, 406 (6th Cir. 2006) ("parties cannot consent to subject matter jurisdiction, nor can they waive it").

and (2) Elafonissos does not have sufficient contacts with the U.S. such that the Court can exercise jurisdiction over it." *Id.* ¶ 23. But as discussed below, not only did the Court have an arguable basis for exercising jurisdiction over Elafonissos—making Rule 60(b)(4) relief inappropriate, *Romeril*, *Herbert*, *supra*—the Court had a proper basis for exercising jurisdiction.

i. Personal Jurisdiction and Due Process

48. The Supreme Court has said:

> The requirement that a court have personal jurisdiction flows . . . from the Due Process Clause. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty. Thus, the test for personal jurisdiction requires that the maintenance of the suit not offend traditional notions of fair play and substantial justice.
>
> Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived. . . . [R]egardless of the power of the State to serve process, an individual may submit to the jurisdiction of the court by appearance. A variety of legal arrangements have been taken to represent express or implied consent to the personal jurisdiction of the court. . . .
>
> [T]he requirement of personal jurisdiction may be intentionally waived, or for various reasons a defendant may be estopped from raising the issue. These characteristics portray it for what it is—a legal right protecting the individual. The plaintiff's demonstration of certain historical facts may make clear to the court that it has personal jurisdiction over the defendant as a matter of law—*i.e.*, certain factual showings will have legal consequences—but this is not the only way in which the personal jurisdiction of the court may arise. The actions of the defendant may amount to a legal submission to the jurisdiction of the court, whether voluntary or not.

Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702-05 (1982) (cleaned up and citations omitted) ("*Bauxites*"). Important here, the *Bauxites* Court also said: "The expression of legal rights is often subject to certain procedural rules: The failure to follow those rules may well result in a curtailment of the rights." *Id.* at 705.

49. "The Supreme Court has recognized three distinct bases for exercising personal jurisdiction over an out-of-forum defendant in accordance with the dictates of due process: general jurisdiction, specific jurisdiction, and consent." *Fuld v. Palestine Liberation Org.*, 82 F.4th 74, 86 (2d Cir. 2023). Where a party fails to raise a personal-jurisdiction-based challenge at its first opportunity, the party waives that challenge and its consent to jurisdiction is implied. *See Lucas R. v. Azar*, No. CV185741DMGPLAX, 2019 WL 6655262, at *1 (C.D. Cal. Aug. 21, 2019) ("the defense of lack of personal jurisdiction is permanently waived if it is not raised at the first opportunity"); *Fuld v. Palestine Liberation Org.*, 578 F. Supp. 3d 577, 586 (S.D.N.Y. 2022), *aff'd*, 82 F.4th 74 (2d Cir. 2023) (equating waiver of personal-jurisdiction defense with consent to jurisdiction). "If a party consents to appear in a particular forum, whether explicitly or implicitly, it follows that 'maintenance of the suit' in that forum does 'not offend traditional notions of fair play and substantial justice.'" *Id.* (quoting *Bauxites*).

50. Waiver and implied consent to jurisdiction can also result from various "litigation-related conduct." *Fuld*, 82 F.4th at 89.

> [W]ith regard to litigation conduct. . . due process is secured where the conduct supports a presumption of fact as to the existence of personal jurisdiction. Under such circumstances, the assertion of consent-based personal jurisdiction does not offend traditional notions of fair play and substantial justice, and is therefore consistent with constitutional due process.

Id. at 90 (cleaned up and citations omitted).

51. Where a party waives a personal-jurisdiction-based challenge in connection with a proceeding—including a bankruptcy-plan-confirmation proceeding—the party also consents to the court's jurisdiction in subsequent post-judgment proceedings to enforce the order resulting from the proceeding. *See In re Petrie Retail, Inc.*, 304 F.3d 223, 231-32 (2d Cir. 2002) (concluding that creditor's failure to

object to or appeal from plan-confirmation order on personal-jurisdiction grounds provided creditor's consent to the court's jurisdiction over plan-consummation motion).

ii. Elafonissos Implicitly Consented to the Court's Jurisdiction by Submitting the Elafonissos Ballot Without Objection and Engaging in Post-Confirmation Gamesmanship Abroad

52. Elafonissos argues that the Court never had personal jurisdiction over Elafonissos, including in connection with the Consummation Order, which Elafonissos argues is "the first Order imposing affirmative obligations upon Elafonissos." Motion ¶ 20. But the Consummation Order was not the first of the Court's orders that imposed obligations upon Elafonissos. Most relevant here, in the Confirmation Order, the Court specifically ordered as follows:

> The Debtors and the Petitioning Creditors and each of their respective Related Parties are hereby directed to cooperate in good faith to implement and consummate the Plan. . . .
>
> Upon entry of this Confirmation Order, all Holders of Claims or Interests and other parties in interest . . . shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan . . . .

Confirmation Order ¶¶ 5(i), 12. Because these provisions extended to the Debtors' shareholders,[20] the Confirmation Order imposed a number of obligations upon Elafonissos, including affirmative ones. *See also* 11 U.S.C. § 1141(a) ("[T]he provisions of a confirmed plan bind the debtor . . . and any . . . equity security holder . . . in the debtor . . . whether or not such . . . equity security holder . . . has accepted the plan.").

53. Consistent with the Joint Solicitation Order, Elafonissos was served with and acknowledged receipt of a Solicitation Package which included, among other things, the Plans, the Joint Solicitation Order, and the Confirmation Hearing Notice. This gave Elafonissos notice regarding the Plans, the anticipated Confirmation Hearing,

[20] *See supra* note 11 and accompanying text.

and the Objection Procedures, and made abundantly clear that any objection to confirmation filed after the Objection Deadline would not be considered and would be deemed overruled by the Court. *See supra* ¶ 9. Thus, Elafonissos was given notice and the opportunity to be heard with respect to any confirmation-related objections that it wished to raise, including with respect to the Court's exercise of jurisdiction over it.

54. In response, Elafonissos did not file any objections—jurisdictional or otherwise. Instead, it submitted the Elafonissos Ballot, voting for and preferring the Debtor Plan and identifying the Piraeus Street Address and the Zilakos Email Address as where Elafonissos should be served. Elafonissos Ballot at 6. Thus, despite having notice of the Court-ordered Objection Procedures and the opportunity to be heard at the Confirmation Hearing—and affirmatively acting to take advantage of its opportunity to be heard at confirmation through the Elafonissos Ballot—Elafonissos did not challenge the Court's jurisdiction to enter the Confirmation Order and bind it. By failing to do so, Elafonissos waived any personal-jurisdiction-based defense. *See generally* Objection Procedures; Fed. R. Bankr. P. 3015(f)(1) ("An entity that objects to a plan's confirmation must file and serve the objection . . . at least 7 days before the date set for the confirmation hearing."); *Bauxites*, 456 U.S. at 705 ("The expression of legal rights is . . . subject to certain procedural rules: The failure to follow those rules may well result in a curtailment of the rights."); *Azar*, *supra*.

55. Elafonissos was also later given notice of entry of the Confirmation Order, *see supra* ¶ 19, which bound Elafonissos to help implement the Plan and enjoined Elafonissos from engaging in actions to interfere with implementation. Confirmation Order ¶¶ 5(i), 12. That Elafonissos had notice of the Confirmation Order is made crystal clear by its post-confirmation actions in direct violation thereof: *e.g.*, both (1) Elafonissos's post-confirmation actions in Greece seeking to have the Provisional

Board appointed "as an impediment to the recognition of the [Confirmation Order] in Greece" and "to oppose" the Confirmation Order's validity, Greek Petition at 35, 39, 41; *see supra* ¶¶ 20-21; and (2) Elafonissos's efforts in Liberia (and elsewhere) to oppose foreign recognition of the Confirmation Order and undermine the Plan's implementation, *see* Second Borriello Decl., Exs. 11-14, 19.

56. But despite taking these contemptuous actions, Elafonissos never appealed from the Confirmation Order, let alone sought to stay the Confirmation Order's effectiveness pending resolution of an appeal. The Confirmation Order is therefore binding upon Elafonissos. *Maness v. Meyers*, 419 U.S. 449, 458-60 (1975) ("If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal."); *In re New York Int'l Hostel, Inc.*, 194 B.R. 313, 316 (S.D.N.Y. 1996) ("a failure to timely file the notice of appeal deprives the District Court of jurisdiction to review the Bankruptcy Court's order"); *cf. In re Arcapita Bank B.S.C.(c)*, 520 B.R. 15, 26 (2014) (rejecting challenge to confirmed Chapter 11 plan, noting that failure to timely preserve confirmation-related challenge is fatal to the challenge, even where another party preserved the issue). The Confirmation Order cannot be relitigated now through a Rule 60(b)(4) motion. *Richardson Foods*, 667 B.R. at 523-25.

57. The Orders that are the subject of the Motion were expressly entered by the Court in order to enforce Elafonissos's and others' obligations under the Confirmation Order and to see that the Plan is fully implemented. *See* Orders (both styled "*Order[s] in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization*"). Indeed, both Orders were entered to put an end to the obstructionist tactics of various parties—including Elafonissos and the purported Provisional Board Elafonissos had appointed—that violated the Confirmation Order and frustrated

implementation of the Plan. The Court's entry of the Orders was unquestionably proper. *See In re Markus*, 78 F.4th 554, 564 (2d Cir. 2023) ("There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt."); *Gall v. Scroggy*, 603 F.3d 346, 352 (6th Cir. 2010) ("a federal court always retains jurisdiction to enforce its lawful judgments . . . [and] has the authority to see that its judgment is fully effectuated"). Unfortunately, Elafonissos's contemptuous actions continue despite the Orders, and the Plan still is not fully implemented.

58. Elafonissos's arguments that the Court lacked jurisdiction over it sufficient to enter the Orders to enforce the Confirmation Order are, in essence, arguments that the Court lacked jurisdiction over Elafonissos to bind it with the Confirmation Order. But that ship sailed when Elafonissos: (1) submitted the Elafonissos Ballot without raising any objections, establishing Elafonissos's implied consent to the Court's jurisdiction; (2) and failed to timely appeal the Confirmation Order. Further, rather than helping implement the PC Plan consistent with the Confirmation Order following its entry, Elafonissos ran to the Greek and Liberian Courts to try to stop implementation, quoting the Confirmation Order and seeking to oppose its recognition. This gamesmanship was improper "litigation conduct" providing an additional basis for implied consent. *Fuld*, 82 F.4th at 89-90; *see infra* ¶ 64 (discussing Elafonissos's gamesmanship and *Kirwan*).

59. When Elafonissos consented to the Confirmation Order, it also consented to orders, like the Orders, entered to enforce the Confirmation Order. *See Petrie Retail*, 304 F.3d at 231-32 ("Luan did not object or appeal from the sale order, confirmation order, or plan on the basis of personal jurisdiction. Accordingly, in addition to submitting to the bankruptcy court's jurisdiction with regard to its claims against the estate, Luan submitted to jurisdiction of the bankruptcy court with regard to

the sale order and its enforcement. Because the plan consummation motion sought enforcement of the sale order, the bankruptcy court had personal jurisdiction over Luan with regard to the motion."); *see also Wiswall v. Campbell*, 93 U.S. 347, 351 (1876) ("Every person submitting himself to the jurisdiction of the bankrupt[cy] court in the progress of the cause, for the purpose of having his rights in the estate determined, makes himself a party to the suit, and is bound by what is judicially determined in the legitimate course of the proceeding."). The Court thus had jurisdiction to enter the Orders.

c. Elafonissos Cannot Demonstrate that Service Was Inarguably Improper

60. Elafonissos's other argument is that the Orders are void and should be vacated under Rule 60(b)(4) because Elafonissos was not served with process in accordance with the Bankruptcy Rules and the Hague Convention, which Elafonissos argues precludes personal jurisdiction. This argument should be rejected.

61. As a threshold matter, while service under the Bankruptcy Rules and the Hague Convention might have provided another basis to exercise personal jurisdiction over Elafonissos, it was not the only means by which the Court was able to acquire such jurisdiction:

> The acquisition of jurisdiction *in personam* by a Court arises either from valid service of process **or voluntary submission to jurisdiction**. It may be acquired at the time of filing of a suit or by appearance in a suit already pending.

Squeez-A-Purse Corp. v. Stiller, 31 F.R.D. 261, 263 (S.D.N.Y. 1962) (emphasis added). As discussed above, Elafonissos consented to the Court's jurisdiction over the Confirmation Order and, thus, the Orders, providing jurisdiction. *See supra* Section II(b).

62. Whether a defendant has received due process is determined with reference to the Due Process Clause and the case law interpreting it, not the Bankruptcy Rules. *See Kontrick v. Ryan*, 540 U.S. 443, 453 (2004) ("It is axiomatic that [the Bankruptcy R]ules do not create or withdraw federal jurisdiction.") (cleaned up and citation omitted) (citing Fed. R. Bankr. P. 9030 & Fed. R. Civ. P. 82). And the Supreme Court has said that the Due Process Clause only "requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Espinosa*, 559 U.S. at 261 (cleaned up and citations omitted). If a party receives actual notice, the Due Process Clause is satisfied. Thus in *Espinosa*, even though the movant was not served pursuant to Bankruptcy Rule 7004 and the Supreme Court concluded that the movant was "deprived . . . of a right granted by a procedural rule," the Supreme Court concluded that relief under Rule 60(b)(4) was not warranted because the movant received actual notice of the relevant filing and plan and failed to object on that basis before the order was entered. 559 U.S. at 272-75 (affirming denial of Rule 60(b)(4) motion: "the order remains enforceable and binding on United because United had notice of the error and failed to object or timely appeal").

63. It is undisputed that Elafonissos had actual notice of the First and Third Sanctions Motions, which were provided to Elafonissos via First Class Mail and e-mail and the Piraeus Street Address and Zilakos Email Address indicated on the Elafonissos Ballot. *See supra* ¶ 27 (citing affidavits of service). This provides prima facie evidence of proper service, *Wilmington Sav. Fund Soc'y v. Petion*, No. 19-CV-11801 (KMK), 2022 WL 4485345, at *2 (S.D.N.Y. Sept. 26, 2022), and the Court correctly ruled that such service was proper. Even if such service failed to comport with the Hague

Convention—which Elafonissos has not established[21]—that would be immaterial since Elafonissos never has contested that it received actual notice, and it failed to raise any objections at the Consummation Hearings.[22] This is alone sufficient to reject Elafonissos's Bankruptcy Rules/Hague Convention-based arguments. *Espinosa*, *supra*.

64. Further, like that of all of the Ordered Parties, Elafonissos's gamesmanship—(1) voting at confirmation without raising any objections, then (2) creating obstacles to implementation in multiple countries abroad following the

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[21] Rule 4(f)(3) allows for the service of process "by other means not prohibited by international agreement, as the court orders[.]" Elafonissos is a Liberian corporation, and Liberia is not a signatory to the Hague Convention. Thus, consistent with the Court's February 20, 2025 ruling, *see supra* ¶ 28, Holdings' service upon Elafonissos did not run afoul of the Hague Convention or Rule 4(f)(3).

The Hague Convention prohibits service: (1) "by postal channels"; (2) if the destination signatory country for postal service has objected to such service. *See* Hague Convention Art. 10(a). But the Hague Convention nowhere even mentions service via email. *See Smart Study Co. v. Acuteye-Us*, 620 F. Supp. 3d 1382, 1394-95 (S.D.N.Y. 2022) (noting that "email is nowhere mentioned in the Convention" before relying upon specific statements by Chinese authorities and concluding that email service on certain China merchants was prohibited). The Second Circuit has never held that the Hague Convention applies to email service. *See Montano v. Herrera*, No. 22-CV-7272 (VSB), 2023 WL 2644340, at *2 (S.D.N.Y. Mar. 27, 2023) (noting that "[c]ourts in this circuit are divided as to whether service by postal channels under the Hague Convention encompasses service by email" before distinguishing *Smart Study* and concluding that service via email in Venezuela was proper under Rule 4(f)(3)) . Neither has any other federal appellate court. *See Peanuts Worldwide LLC v. Partnerships & Unincorporated Associations Identified on Schedule "A"*, 347 F.R.D. 316, 330 (N.D. Ill. 2024) (noting that "[n]o Circuit Court of Appeals has yet directly addressed" the question of the intersection of Hague Convention Article 10(a) and email service before concluding: "Absent controlling precedent on the issue, this court will follow the overwhelming majority of courts in this district in reaching the more straightforward conclusion that the Convention does not prohibit service by email"), *appeal dismissed sub nom. Peanuts Worldwide LLC v. Electrician Guy*, No. 24-2170, 2024 WL 5297821 (7th Cir. Aug. 28, 2024). And even assuming *arguendo* that Greece is the relevant destination signatory country, Elafonissos nowhere even argues that Greece has objected under the Hague Convention to service by email. While Elafonissos argues that "Greece has not acceded to direct service by email as a means of service of process under the Hague Convention," Motion ¶ 32, the Hague Convention does not speak in terms of affirmative accession by the destination signatory country, but in terms of objection. *See* Hague Convention Art. 10(a) ("Provided the State of destination does not object . . . "). Such arguments plainly cannot satisfy Elafonissos's extraordinary burden of proving that service was inarguably improper in this case. *Burda*, *supra*. For many reasons, Elafonissos fails to establish that the Court inarguably erred by deeming service sufficient.

[22] While Mr. Zilakos—a member of the purported Provisional Board that has persistently asserted a right to be heard at every step in these proceedings—declares on Elafonissos's behalf that he is not personally "aware of any service or attempted service upon Elafonissos of the motion papers for the motions underlying the" Orders, Zilakos Decl. ¶ 5, Mr. Zilakos never states that Elafonissos did not actually receive the First and Third Sanctions Motions by mail or email. It is therefore unrebutted that Elafonissos was provided with actual notice of its opportunities to be heard regarding whatever issues it wanted at the Consummation Hearings, but it did not take advantage of those opportunities.

Confirmation Order (and empowering the purported Provisional Board to do the same) but (3) not appealing or staying the Confirmation Order, then (4) failing to attend the Consummation Hearings despite actual notice thereof before (5) now seeking to raise arguable jurisdictional objections to the Confirmation Order's enforcement through Rule 60(b)(4)—is as obvious as it is obstructive, and precludes relief.

65. In a relatively recent case, Chief Judge McMahon rejected a Rule 60(b)(4) argument by a debtor's shareholder that a confirmation order was void because notice of the confirmation hearing was not served in conformity with the Bankruptcy Rules and the Hague Convention, ruling that the movant "waived the right to challenge notice in light of his selective participation in the bankruptcy proceedings":

> [Movant] was fully apprised of the bankruptcy proceedings below and chose not to participate, thinking it would preserve his ability to arbitrate [a claim]. This sort of gamesmanship is inappropriate; more important, it amounts to a waiver of his present objections. . . .
>
> Where, as here, a party has actual knowledge of a matter, he cannot later complain about the form of notice, since it is well established that due process is not offended by requiring a person with actual, timely knowledge of an event that may affect a right to exercise due diligence and take necessary steps to preserve that right.

In re Kirwan Offs. S.a.r.l., 592 B.R. 489, 500-01 (S.D.N.Y. 2018), *aff'd sub nom. In re Kirwan Offs. S.a.R.l.*, 792 F. App'x 99 (2d Cir. 2019) (cleaned up and citations omitted). And in another case in which a Rule 60(b)(4) motion was denied based upon the movant's actual notice, the court discussed how countenancing "procedural gamesmanship" in the face of actual notice would improperly "elevate formality over substance":

> [T]he corporate Defendants obviously could not, and do not, contest that they had actual notice of the lawsuit. Though not dispositive of the question of adequacy of service of process, such notice is evidence that the legislative goal of fair notice, which underlies the rules of service of process, has been fulfilled. . . . A finding that Defendants have waived their objections to service of process fully comports with the purpose of the Federal Rules to avoid procedural gamesmanship. As another judge in this Court noted in a remarkably similar context,

> [t]he Federal Rules do not suggest that a defendant may halfway appear in a case, giving plaintiff and the court the impression that he has been served, and at the appropriate time, pull failure of service out of a hat like a rabbit in order to escape default judgment. To countenance this train of events would elevate formality over substance and would lead plaintiffs to waste time, money, and judicial resources pursuing a cause of action.
>
> Accordingly, this Court concludes that the corporate Defendants have waived their right to contest service of process, and therefore finds no merit to their motion to vacate the Judgment against them as void for lack of personal jurisdiction.

Velez v. Vassallo, 203 F. Supp. 2d 312, 323-24 (S.D.N.Y. 2002) (cleaned up and citations omitted). So here, Elafonissos's gamesmanship should preclude its arguments.

d. Even If the Court Inarguably Erred by Exercising Jurisdiction, Rule 60(b)(4) Relief Is Not Warranted

66. Even if the Court is uncertain whether it properly exercised jurisdiction over Elafonissos, Rule 60(b)(4) relief is improper. Again, the Second Circuit has said that "a judgment may be declared void for jurisdictional defect only when there is [1] a **total want of jurisdiction** and [2] **no arguable basis on which the court could have rested a finding that it had jurisdiction**." *Romeril*, 15 F.4th at 171 (cleaned up, emphases added, and citations omitted); *see Herbert*, 341 F.3d at 190 (affirming denial of Rule 60(b)(4) motion because there was "at minimum, an arguable basis" to conclude defendant consented to jurisdiction). The Court had a proper basis to exercise jurisdiction over Elafonissos, and thus had "at minimum, an arguable basis" for exercising jurisdiction *a fortiori*, precluding Rule 60(b)(4) relief. *Herbert*, 341 F.3d at 190.

CONCLUSION

For the foregoing reasons, Holdings respectfully requests that the Court: (1) enter an order denying the Motion; and (2) grant such other and further relief as the Court deems just and proper.

DATED: April 23, 2025
New York, New York

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