Docket #1640 Date Filed: 05/06/2025

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
ELETSON HOLDINGS INC., et al.,	Case No.: 23-10322 (JPM)
Debtors.[1]	(Jointly Administered)

PROVISIONAL HOLDINGS' MEMORANDUM OF LAW IN OPPOSITION TO ELETSON HOLDINGS INC.'S MOTION TO AMEND THE COURT'S FOREIGN OPPOSITION SANCTIONS ORDER

[1] The Court has ordered the following footnote to be included in this caption: "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" (Dkt. 1515 ¶ 7).

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Provisional Eletson Holdings, Inc. ("Provisional Holdings") hereby submits its opposition to Reorganized Eletson Holdings Inc.'s ("Reorganized Holdings" or "Movant") *Motion to Amend the Court's Foreign Opposition Sanctions Order (Dkt. No. 1537) to (A) Increase the Sanctions Amount and (B) Impose Sanctions on Laskarina Karastamati* (Dkt. No. 1602) (the "Motion"). For the reasons stated herein, and in the accompanying Declaration of John Markianos-Daniolos ("Daniolos Decl."), this Court should deny the Motion.

PRELIMINARY STATEMENT

1. Movant, again, seeks to contort the facts surrounding a series of foreign proceedings, some of which do not even involve or relate to the Debtors in this proceeding. It does so despite *two pending appeals* of the *Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization* (the "March 13 Order"). With the greatest respect to this Court, Provisional Holdings appealed from what Movant calls the "Foreign Opposition Sanctions Order," which created new and affirmative obligations on the parties subject to that Order, including Provisional Holdings, and compelled those parties to take actions—or refrain from even speaking—in proceedings outside of the United States. The March 13 Order thus seeks to override legitimate rights afforded to parties based on the laws in those jurisdictions. These issues, which have not yet been addressed by the appellate courts, will have and have had a significant impact on Provisional Holdings (and the other respondents) both here and around the world and implicate serious issues of international comity and limits on extraterritoriality.

2. For this reason, because the Motion seeks to ***amend*** and substantially expand the March 13 Order, which is now subject to appeals, this Court lacks jurisdiction to consider the Motion. As recently as April 23, 2025—*after* the Motion was filed—Movant itself conceded this very issue (*see* Dkt. 1622 at ¶¶ 35-37). There is no question that the Motion directly implicates

and is intertwined with the issues currently on appeal, and accordingly, the Court should deny or otherwise defer ruling on the Motion.

3. Even if the Court were inclined to consider the Motion—which it should not—the Motion is rife with misrepresentations regarding the foreign filings or purported statements made in those foreign proceedings, some of which indisputably involve non-debtors and non-subsidiaries of Holdings. In fact, Movant has distorted nearly every filing or statement made by parties in foreign proceedings as purportedly undermining the judicial recognition of the Confirmation Order. They do not. As just one example, Movant points to witness testimony in the Greek recognition proceeding where that witness corrected blatant manipulations of the record *by Movant,* including Movant's false statements to the Greek court disputing that Holdings is, and has always, maintained its center of main interests in Greece—a central issue in that proceeding.

4. Movant is attempting improperly to use the Confirmation Order, which limits its reach "to the greatest extent permissible under applicable law," (Dkt. 1223 ¶ 5(iv)), as an all-encompassing sword to eliminate rights under foreign law, effectively gag parties from exercising those rights or making any statements by asking this Court to decide what arguments can or cannot be made in foreign jurisdictions, and embark on a hostile takeover of non-debtor, non-subsidiary entities. Provisional Holdings is preserving its rights and acting in accordance with foreign law, and in fact, there has been no foreign finding that Provisional Holdings is acting contrary to the laws of Greece, Germany, or Liberia, nor has there been any final ruling in favor of Movant in those proceedings.

FACTUAL BACKGROUND

A. Procedural History

5. On October 25, 2024, the Court issued a decision confirming the Petitioning

Creditors' Chapter 11 plan of reorganization (the "Plan") (Dkt. 1212) (the "Plan Confirmation Decision"), and, on November 4, 2024, entered the Confirmation Order (Dkt. 1223).

6. On November 25, 2024, Movant moved for an order pursuant to Bankruptcy Rule 9020 seeking injunctive relief and sanctions (the "First Sanctions Motion") against a range of entities and individuals, including the Debtor's pre-confirmation shareholders, directors, and officers, as well as law firms representing those parties, both foreign and domestic (*see* Dkt. 1268 at 1). Provisional Holdings was not named as a respondent on the First Sanctions Motion.

7. Following an evidentiary hearing and post-trial briefing, on January 29, 2025, the Court issued an *Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization* (the "January 29 Order") (Dkt. 1402) ordering specifically identified parties (referred to as the "Ordered Parties", ***which did not include Provisional Holdings***), among other things, (1) "to comply with the Confirmation Order and the Plan to assist in effectuating, implementing, and consummating the terms thereof," and (2) "to take all steps reasonably necessary as requested by Holding to unconditionally support the effectuation, implementation, and consummation of the Plan, including but not limited to, by no later than seven (7) days from the date of service of this Order in accordance with applicable law . . . taking all steps reasonably necessary to update or amend (a) Holdings' AOR to reflect that Adam Spears is Holdings' AOR and (b) Holdings' corporate governance documents on file with LISCR as directed by Holdings" (Dkt. 1402 at 2).

8. On February 6, 2025, Reorganized Holdings again moved for sanctions against the Ordered Parties (the "Second Sanctions Motion") on the grounds that the Ordered Parties failed to cause the AOR and Holdings' corporate governance documents to be updated (*see* Dkt. 1416 ¶¶ 1- 2, 6-26). On February 20, 2025, the Court issued its decision on the Second Sanctions Motion,

requiring specifically identified parties—which, again, ***did not include Provisional Holdings***—to certify that they have taken certain steps to assist with implementing the Plan and Confirmation Order (2/20/2025 Tr. at 105:10-107:12).

9. On February 27, 2025, the Court entered the *Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization and Imposing Sanctions on Certain Parties* (the "February 27 Order") (Dkt. 1495). The February 27 Order issued sanctions of $1,000 per day against "the purported Provisional Board, Vasilis Hadjieleftheriadis, and the Former Majority Shareholders" and "the AOR" until those parties undertook certain actions relating to updating the AOR and corporate governance documents of Holdings (*id.* ¶¶ 1-2). The February 27 Order was apparently issued after Reorganized Holdings sent an *ex parte* communication including a proposed order to the Court, failing to copy any respondent on the Second Sanctions Motion (Dkt. 1509, Ex. C).

10. On February 19, 2025, Reorganized Holdings again moved for sanctions against the ***Ordered Parties*** (the "Third Sanctions Motion" and, together with the First Sanctions Motion and the Second Sanctions Motion, the "Sanctions Motions"), seeking both monetary sanctions and injunctions for "failing to withdraw their oppositions ***to the judicial recognition of the Confirmation Order*** by Liberian and Greek courts" (Dkt. 1459 ¶¶ 1- 2, 39 (emphasis added)). ***Provisional Holdings was not named as a respondent*** (*see id.*).

11. On February 28, 2025, Reorganized Holdings filed a letter with the Court addressing conduct of "the former officers, directors and shareholders of Holdings" (Dkt. 1496 at 1) and addressing in the letter solely actions purporting to "collateral[ly] attack" the Confirmation Order "in foreign jurisdictions" (*id.* at 1-2). On March 3, 2025, Reorganized Holdings then proceeded to file a revised proposed order in connection with the Third Sanctions Motion (the

"Revised Proposed Order"), requesting that specifically identified parties be held in contempt (referred to as the "Violating Parties," ***which did not include Provisional Holdings***), and directing the Violating Parties to "withdraw any and all filings ***that oppose or undermine in any way the judicial recognition of the Confirmation Order***, including, without limitation, filings in the Liberian Proceedings and the Greek Proceedings set forth on Exhibit 1" (Dkt. 1499 (emphasis added)).

12. On March 12, 2025, this Court issued an oral ruling on the Third Sanctions Motion, finding "the following parties . . . in contempt for violating the Chapter 11 plan, the [C]onfirmation [O]rder and the January 29th order": "the former minority shareholders, the former majority shareholders, purported Eletson Holdings, the purported provisional board, and Vassilis Hadjieleftheriadis" (3/12/25 Tr. at 79:17-23). The Court further ruled that those specifically identified parties are "authorized, required and directed to withdraw any and all filings that oppose or undermine in any way the judicial recognition of the confirmation order, including, without limitation, filings in the Liberian proceedings and the Greek proceedings, and are enjoined from making any filings in any court ***seeking to oppose or undermine in any way the judicial recognition of the confirmation order***, including, without limitation, by initiating or prosecuting any legal actions that seek to oppose or undermine the confirmation order" (*id.* at 80:1-10 (emphasis added)).

13. On March 13, 2025, the Court entered the *Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization* (the "March 13 Order") directing the Violating Parties (as defined in the March 13 Order) "to withdraw any and all filings that oppose or undermine in any way the judicial recognition of the Conformation Order including, without limitation, filings in the Liberian Proceedings and the Greek Proceedings set forth on

Exhibit 1," which included the Greek Arbitration Confirmation Petition (Dkt. 1537 ¶ 1).

14. Following letter submissions by Reorganized Holdings and Reed Smith LLP ("Reed Smith") regarding the March 13 Order, on March 25, 2025, this Court issued a further oral ruling on the Third Sanction Motion (the "March 25 Order") (*see* 3/25/25 Tr. at 6:5-9:22). This Court stated that "to the extent that" non-debtor Gas "is acting without the consent of Reorganized Holdings, because the interests in the subsidiaries, including Eletson Gas, vested in Reorganized Holdings . . . [t]he Greek arbitration proceeding violates the [P]lan, the [C]onfirmation Order, the January 29 order, and the March 13 order, and that proceeding is properly included in the March 13th order" (*id.* at 9:22).

15. On March 23, 2025, Provisional Holdings filed a Notice of Appeal of the Court's oral ruling on March 12, 2025 and the March 13 Order (*see* Dkt. 1558). Provisional Holdings' appeal is docketed and pending in the District Court for the Southern District of New York. *See In re Eletson Holdings*, Case No. 1:25-cv-02824-LJL (S.D.N.Y.). Provisional Holdings filed the Statement of Issues to be Presented on April 7, 2025, to include the following:

- Whether it was error for the Bankruptcy Court to grant the "Emergency Motion of Eletson Holdings Inc. for Entry of a Further Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization" filed on February 19, 2025 (Dkt. No. 1459), and issue the Sanctions Order on March 13, 2025.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, exceeded its jurisdiction.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly sanctioned the Appellant to coerce Appellant to take actions beyond the scope permitted by Section 1142(b) of the Bankruptcy Code.

- Whether it was error for the Bankruptcy Court to issue sanctions against the Appellant in the Sanctions Order issued on March 13, 2025.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly sanctioned the Appellant to coerce Appellant to act in a manner contrary to "applicable law" or against rules of international comity.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly grouped Appellant with other entities or persons it was also sanctioning without due consideration of the different powers and rights of the differing entities or persons.

(Dkt. 1581).

16. On March 26, 2025, the Majority Shareholders filed a Notice of Appeal of the Court's oral ruling on March 12, 2025 and the March 13 Order (*see* Dkt. 1563). The Majority Shareholders' appeal is docketed and pending in the District Court for the Southern District of New York. *See In re Eletson Holdings*, Case No. 1:25-cv-02897-LJL (S.D.N.Y.). The Majority Shareholders filed a Statement of Issues to be Presented on April 9, 2025, to include the following:

- Whether it was error for the Bankruptcy Court to grant the "Emergency Motion of Eletson Holdings Inc. for Entry of a Further Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization" (Docket No. 1459) (the "Sanctions Motion") filed on February 19, 2025, and issue the Sanctions Order on March 13, 2025.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, exceeded its jurisdiction.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly sanctioned the Appellants to coerce Appellants to take actions beyond the scope permitted under section 1142(b) of the Bankruptcy Code.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly sanctioned the Appellants to coerce Appellants to act in a manner contrary to "applicable law" or against rules of international comity.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly grouped Appellants with other entities or persons it was also sanctioning without due consideration of the different powers and rights of the differing entities or persons, or as to whether each individual Appellant substantially complied with the Bankruptcy Court's prior orders.

- Whether it was error for the Bankruptcy Court to issue sanctions against the Appellants in the Sanctions Order.

- Whether it was error for the Court to enter the Sanctions Order without sufficient notice to Appellants as to the scope of relief being sought by the Appellees and which was granted in the Sanctions Order.

(Dkt. 1592).

17. On April 9, 2025, Apargo Limited, Fentalon Limited and Desimusco Trading Limited (the "Preferred Shareholders") filed a Motion for Reconsideration of the March 24 Order (Dkt. 1587) (the "Motion for Reconsideration"). In the Motion for Reconsideration, the Preferred Shareholders requested that this Court "should reconsider the March 25 Order and strike and/or vacate the Greek arbitration proceeding from the Sanctions Order" (*id.* at 1). The Motion for Reconsideration is scheduled to heard by this Court on May 29, 2025 (*see* Dkt. 1623).

18. On April 25, 2025, approximately one week before Provisional Holdings' deadline to respond to the Motion, Reorganized Holdings filed the *Supplement to the Motion to Amend the Court's Foreign Opposition Sanctions Order* (the "Supplement") (Dkt. 1629). Pursuant to this Court's May 1, 2025 Order, Provisional Holdings will respond to the allegations contained in the Supplement by May 12, 2025 at 12 p.m. (*see* Dkt. 1637).

B. Factual Background

1. The Greek Provisional Order

19. Since its principal place of business and center of main interests are in Greece, Holdings is, and has always been, under the jurisdiction of Greek law (Dkt. 1407, Ex. B ¶ 8). On November 11, 2024, following the resignation of four of Holdings' directors, two of Holdings' minority shareholders submitted an application to the First Instance Court of Piraeus in Greece requesting the appointment of provisional management of Holdings to ensure the company could continue to function and operate (*id.* ¶ 20; Dkt. 1300, Ex. 9).

20. On November 12, 2024, the Piraeus First Instance Court issued an order (the "Greek Order") appointing provisional board members with limited authority to take certain urgent corporate actions until the hearing of the respective application on February 4, 2025 (Dkt. 1290, Ex. A at 34-37). Relevant here, the Greek Order provided the provisional board members

with authority to appoint on behalf of Holdings legal representation in certain legal matters involving Holdings, including Holdings' appeal of the Plan and Confirmation (*id*.). To be clear, the Greek Order, was not obtained for purposes of undermining the Plan, but rather ***to preserve Holdings' rights to appeal the Plan Confirmation Decision*** (*see id.* at 35) and to ensure Holdings could continue to operate while the Petitioning Creditors sought judicial recognition and enforcement of the Plan and Confirmation in Liberia and Greece, as promised (*see* Dkt. 847 § VIII.A.3).

2. LISCR Proceedings

21. The issues related to the transition of ownership of Holdings are the direct result of Movant and its affiliates knowingly choosing the path to cut corners at the expense of compliance with applicable non-U.S. law, and to make binding promises only to try to dishonor them later. There is no dispute that Liberia has not recognized the Plan and Confirmation Order.

22. On March 14, 2025, while Pach Shemen's petition to recognize the Confirmation Order was still pending in Liberia, Manolis Andreoulakis received an email from the Liberian International Ship & Corporate Registry ("LISCR") notifying him that "the Corporate Registry has recorded the change of the AOR in respect of ELETSON HOLDINGS INC. (C-40191), a Liberian non-resident Corporation, and your role as an AOR for the subject Corporation has been terminated today, March 13, 2025" (Daniolos Decl., Ex. A).

23. After consulting with Liberian counsel, Provisional Holdings was unable to identify or locate any judicial proceedings or orders that permitted or otherwise explained such a change to the AOR (*see* Dkt. 1603, Ex. 3 ¶ 6 (noting "that the Deputy Registry acting through LISCR, does not provide any reason, justification, or reliance on law, for her decision to remove [Holdings'] agent" and does not "provide any indication whence they derive the authority to unilaterally terminate the appointment of an agent of a Liberian corporation"). Provisional

Holdings then discovered that immediately after the AOR had been changed—without any legal authority—Pach Shemen LLC ("Pach Shemen") ***withdrew its petition*** for the judicial recognition of the Confirmation Order in Liberia on March 14, 2025 (Dkt. 1603, Ex. 2). Provisional Holdings only learned of the withdrawal after "inspect[ing] the records of the Civil Law Division" of Liberia (Dkt. 1603, Ex. 3 ¶ 9).

24. Consistent with Liberian counsel's previous legal advice, i.e., that the Plan and Confirmation Order do not have any legal effect in Liberian before they are judicially recognized there (Dkt. 1289 ¶ 9), Liberian counsel advised Provisional Holdings that Movant's actions were unlawful under Liberian law, and therefore, further advised Provisional Holdings that the matter should be brought to the immediate attention of the Supreme Court of Liberia (Daniolos Decl. ¶ 6). Accordingly, on March 18, 2025, Provisional Holdings, the Majority Shareholders and Elafonissos Shipping Corporation ("Elafonissos") filed a Petition for the Writ of Prohibition in the Supreme Court of Liberia (the "First LISCR Petition") (Dkt. 1603, Ex. 3). On March 19, 2024, the Supreme Court of Liberia issued an order "to return the parties to status quo ante, and stay all further proceedings pending the outcome of the conference" on March 24, 2025 (*id.*, Ex. 4).

25. Unbeknownst to Provisional Holdings, on March 14, 2025 (the same day the AOR was improperly updated), Movant purported to redomicile Holdings from Liberia to the Republic of the Marshall Islands in a clear attempt to circumvent the need to obtain recognition and enforcement of the Plan and Confirmation Order in Liberia (*id.*, Ex. 1). The purported re-domiciliation of Holdings effectively stripped improperly the Liberian court of jurisdiction to consider Movant's and Pach Shemen's actions, leading to the March 28, 2025 order declining to issue the Writ of Prohibition and lifting the temporary stay (*id.*, Ex. 5).

26. On March 19, 2025, Manolis Andreoulakis received another email from LISCR notifying him that "the Corporate Registry has recorded the change of the AOR in respect of EMC INVESTMENT CORPORATION (C-10974) and ELETSON CORPORATION (C-19741), Liberian non-resident Corporations, and your role as an AOR for the said Corporations has been terminated today, March 19, 2025" (Daniolos Decl., Ex. A). The next day, Movant also purported to redomicile Eletson Corporation ("Corp") and EMC Investment Corporation ("EMC Investment") to the Republic of the Marshall Islands (*see* Dkt. 1603, Ex. 6, Ex. 7).

27. Based on legal advice previously received following the first "termination" notice, on March 21, 2025, Provisional Holdings, the Majority Shareholders and Elafonissos filed a Petition for the Writ of Prohibition in the Supreme Court of Liberia (the "Second LISCR Petition") (*id.*, Ex. 8; Daniolos Decl. ¶ 8). Similar to the First LISCR Petition, the Second LISCR Petition sought a temporary stay of the changes to Corp's and EMC Investment's AOR until the petitioners received an explanation or judicial order confirming the legal basis for the changes (Dkt. 1603, Ex. 8 ¶ 6). On April 7, 2025, the Supreme Court of Liberia issued an order requiring the parties "to return to status quo ante, and stay all further proceedings pending the outcome of the conference" on April 10, 2025 (*id.*). On April 24, 2024, the Supreme Court of Liberia denied the Second LISCR Petition (Daniolos Decl. ¶ 8).

3. The Greek Proceedings

28. On February 3, 2025, Movant filed an application for the recognition of the Confirmation Order before the Court of First Instance in Athens and asked the court to immediately issue a provisional order appointing Adam Spears as the manager of Reorganized Holdings until a judgment is issued to such application (Dkt. 1459, Ex. 16). Significant here, in Movant's recognition application in Greece, Movant falsely asserted to the Greek court that Holdings' "true seat, and beyond that, the center of its main interests, ***is located in the State of New York***, (One

Pennsylvania Plaza Suite 3335, New York, NY 10199" (Dkt. 1459, Ex. 16 at 1) (emphasis added). Movant's petition further (and falsely) stated that "[a]s far as Greece is concerned . . . [Holdings] does not maintain its seat there, does maintain personnel, infrastructure, property, and does not maintain banks accounts there (*id.*; *see also id.* at 12 ("The Center of Main Interests of [Holdings] was, ***at the time the insolvency proceedings initiated, and remains to this day, the U.S.A.***" and "alleged detection in Greece . . . is a late myth . . . [and] in fact unfounded in reality.") (emphasis added)). Further, the recognition application was filed under the name "Eletson Holdings Inc" "legally represented by Mr. Adam Spears" (*id.* at 1).

29. On February 3, 2025—the same day—Provisional Holdings filed a joinder, which advised the Greek court that Holdings' Center of Main Interests ("COMI") was, and always has been, in Piraeus, Greece and, further, that the address listed by Movant belonged to Movant's own U.S. counsel—Togut Segal & Segal (*id.*, Ex. 18 at 2). The response noted that, under Greek law, "only the foreign administrator (which cannot be considered to be the bankruptcy or reorganized company itself) may request the recognition" of the Confirmation Order, further stating that the application should be submitted by Adam Spears and not on behalf of Holdings, where the Confirmation Order has yet to be recognized (*id.* at 1).

30. Finally, the joinder stated that, pursuant to the UNCITRAL Model Law, as enacted in Greece in law 3858/2010, a condition for the recognition of the Confirmation Order in Greece is that insolvency proceedings must have taken place before a court of the COMI of the company, in this case Greece (*id.* at 3) ("the reorganization proceedings followed in the USA cannot be recognized in Greece, since it is not a 'foreign main procedure' as it was not conducted in a State where the debtor has the center of his main interests."). Accordingly, because Holdings (at least)

had and has its center of main interest in Greece, a Greek court must approve the reorganization process for it to have any effect in Greece or in any E.U. country (Dkt. 1407, Ex. B ¶¶ 8, 12).

31. On February 5, 2025, after an adversary proceeding, a three-judge panel in Athens, Greece declined to recognize the reorganization of Holdings and declined to recognize Mr. Spears as Reorganized Holdings' representative in Greece (Dkt. 1410, Ex. A ¶¶ 10-11 & Ex. A).

32. On March 19, 2025, the Court of First Instance in Athens held a hearing, at which Laskarina Karastamati provided testimony as a fact witness. Ms. Karastamati testimony related ***solely to Holdings' history and its registered seat*** (*see e.g.*, Dkt. 1603, Ex. 12 (March 19, 2025 Athens Court Hr'g Minutes) at 20-26. Indeed, Ms. Karastamati's testimony was necessary to correct the false representations that Movant made to the Greek court regarding Holdings' COMI (*see e.g.*, Dkt. 1603, Ex. 12 (March 19, 2025 Athens Court Hr'g Minutes) at 20 ("118 Kolokotroni Street in Piraeus, that is where all its businesses are conducted"); 21 (testifying that Holdings' "main decisions, financial, business, where decisions are made and where its objective is realized . . . is Piraeaus [, Greece]); 23 (testifying that since 1985 until present, Holdings' board of directors meet, and business decision were made in, Piraeus, Greece)—not to undermine the judicial recognition of the Confirmation Order as Movant wrongly asserts.

33. Significantly, at that same hearing, Movant's own counsel, Kyle Ortiz, testified that Holdings' COMI was and is in New York, New York—even in 2023 when the bankruptcy proceedings had been filed in this Court (Dkt. 1603, Ex. 12 (March 19, 2025 Athens Court Hr'g Minutes) at 15-18). This is flatly contrary to the filings Mr. Ortiz's firm filed on behalf of its clients throughout these bankruptcy proceedings (*see, e.g.*, Dkt. 1 (involuntary petition noting Holdings' principal place of business is located in Piraeus, Greece); Dkt. 847 ("The Debtors are headquartered in Piraeus, Greece . . . "); Dkt. 1268).

34. Immediately following the hearing, Movant's counsel sent an email to Ms. Karastamati accusing her of "[t]estifying in opposition to recognition of the Confirmation Order in Greece" (Dkt. 1603, Ex. 10), when in reality, as discussed above, she only provided testimony to correct Movant's distortion of facts before the Greek court. Further, Movant went so far as to suggest Mr. Karastamati was violating the Plan and Confirmation by carrying out her duties as a validly appointed officer of non-debtor and non-subsidiary Gas (*see id.*).

35. On April 1, 2025, in an adversary proceeding, a court in Piraeus, Greece issued an order extending its previous order appointing Holdings' provisional board pending further order of that court (Dkt. 1590, Ex. A ¶¶ 6-7). While Ms. Karastami did testify at that hearing, she provided information regarding Holdings' business operations, the arbitration, and the facts giving rise to the bankruptcy proceedings (*see* Dkt. 1603, Ex. 9 at 6-14).

36. In that same proceeding, on April 4, 2025, Elafonissos and Keros Shipping Corporation ("Keros") (together, the "Minority Shareholders" filed an "Addendum in Rebuttal" which addressed a number of issues raised during the April 1 hearing, including the improper re-domiciliation of Holdings to the Republic of the Marshall Islands and Movant's false assertions that Holdings' COMI is in New York, New York (*see* Dkt. 1603, Ex. 9 at 2-6). Notably, in that filing, the Minority Shareholders specifically stated that:

> [T]he foreign insolvency proceedings resulting in No. 1212/25.10.2024 judgment of the Bankruptcy Court for the Southern District of New York was conducted before a court of a state in which Eletson Holdings Inc does NOT have its center of main interests (as required by Law 3858/2010), ***we do not necessarily challenge the jurisdiction of the bankruptcy court for the Southern District of New York and we are not in conflict with the stated non-challenge of that jurisdiction during the bankruptcy proceedings*** (*id.* at 13) (emphasis added).

4. The German Proceedings

37. On November 19, 2024, Adam Spears sent a letter to Berenberg Bank ("Berenberg") (the "November 19 Letter") in Hamburg, Germany purporting to revoke the

banking authorizations of prior representatives for Holdings and ***sixty-three non-Debtor Eletson bank accounts***, including Corp, ***Eletson Gas LLC*** ("Gas"), and ***EMC Gas Investment Corporation*** ("EMC Gas Investment") (a subsidiary of non-debtor Gas), and improperly designating Mark Lichtenstein as the new authorized representative (Dkt. 1290, Ex. G). Spears had no authority to make such changes, and accordingly, Berenberg initially declined to implement the change for several months (*see* Dkt. 1603, Ex. 13) (March 5, 2025 email from Berenberg stating "[a]s already requested several times in the past, please provide us with documents . . . that prove the authority of the individuals listed in the letter to represent Eletson Holdings and its subsidiaries"). As Movant's own evidence makes clear, Berenberg required Movant to provide it with sufficient evidence that it had the requisite authority to access the bank accounts (*see id.*).

38. Further, in late November 2024, Berenberg refused to make any transfer of funds to the entities in reliance on the November 19 Letter (Daniolos Decl. ¶ 9). This had the devastating effect of cutting off entirely non-debtor subsidiaries' access to funds and substantially disrupting business operations, requiring swift action to minimize the disruption (*id.*). Accordingly, Provisional Holdings immediately sought legal advice concerning the improper freezing of accounts (*id.*).

39. Notably, the bank obtained independent legal advice concerning the legal effect of the Confirmation Order in Germany (Daniolos Decl. ¶ 10). The firm retained by Berenberg concluded that, to the extent Holdings' COMI is located in Greece or the European Union, the Confirmation Order is not automatically effective in Germany and requires recognition (*id.*). That ultimately agreed that Holdings' COMI is in Greece (*id.*).

40. Notwithstanding this, Berenberg continued to restrict access to all bank accounts listed in the November 19 Letter (Daniolos Decl. ¶ 11). Accordingly, ***Eletson Corporation, EMC***

Investments and EMC Gas Investments—all non-debtor subsidiaries—filed writs of action in Germany ***against Berenberg***, requesting that the accounts be released and returned to those entities' control because the Confirmation Order has yet to be recognized in both Greece and Germany, consistent with the legal advice Berenberg received (*id.*).

5. The English Arbitration Confirmation Proceeding

41. On September 29, 2023, the Hon. Ariel Belen ("Justice Belen") issued the Final Award in the JAMS Arbitration (Dkt. 286-1) (the "Final Award"). In the Final Award, Justice Belen awarded over $47 million to Gas for losses arising out of Levona Holdings Ltd.'s ("Levona") egregious misconduct and harm to Gas (*id.* at 64-67, 99-100).

42. On February 9, 2024, the District Court issued a decision confirming, in substantial part, the Final Award (the "Confirmation Decision") (*see* Dkt. 403; *see also* Case No. 1:23-cv-07331-LJL ("D. Ct. Dkt.") at Dkt. 83). In the Confirmation Decision, the District Court concluded that Justice Belen properly exercised his authority "to award relief in favor of Gas and/or the Preferred Nominees as third-party beneficiaries of the LLCA" (D. Ct. Dkt. 83 at 70).

43. On December 16, 2024, Gas filed an application before the High Court of Justice Business And Property Courts of England And Wales Commercial Court seeking an order ***confirming*** the Final Award (the "English Arbitration Confirmation Petition") (Dkt. 1434 at ¶ 38).

44. Gas is a limited liability company formed under the laws of the Republic of the Marshall Islands. The Third Amended and Restated Limited Liability Company Agreement, dated August 16, 2019 (Dkt. 1588-1) ("LLCA"), and its April 16, 2020 Amendment (Dkt. 1588-2) ("LLCA Amendment") govern Gas's ownership structure and management. Gas's membership interests are made up of common unit holders (the "Common Shares") and preferred unit holders (the "Preferred Shares") (LLCA § 2.1). At all relevant times, Holdings has held ***only*** the Common Shares of Gas. Thus, Gas itself is not part of the Debtors' estate (*see* Dkt. 579 ¶ 23 (citing Offering

Memorandum, dated December 12, 2013); LLCA (setting forth ownership structure); Dkt. 721 at 9 (referencing "**non-debtor** Eletson Gas LLC") (emphasis added)). Gas has also never submitted itself to the jurisdiction of this Court.

45. By including the English Arbitration Confirmation Petition in the Motion, Movant appears to assert that it has carte blanche authority to carry out all corporate actions at Gas. Even assuming, without waiver, that Movant had fully consummated its obligations under the Plan and Confirmation Order, it still lacks authority to direct the affairs of Gas based on the LLCA or the Status Quo Injunction issued by Justice Belen in the Arbitration.

46. Pursuant to the LLCA, as amended, (i) the holders of the Common Shares may designate two directors on Gas's Board, (ii) the holders of the Preferred Shares may designate four directors on Gas's Board (LLCA Amendment§ 3.3(a)). And no member may:

> "take part in the management or control of the Company or its activities, vote on behalf of the Company with respect to any action taken or to be taken by the Company, transact any business in the Company's name or have the power to sign documents for or otherwise bind the Company"

(LLCA § 4.1).

47. Further, the LLCA provides that "[t]he Board may appoint individuals that are nominated by a Majority in Interest as officers" of Gas; "***provided, however,*** that during the Class B-2 Period such appointment and nomination ***shall only require a Majority-in-Interest of the Preferred Units***" (LLCA § 3.1(b)) (emphasis added). The "Class B-2 Period" is defined as "the period commencing on the date of funding of any Class B-2 Capital Contributions and ending on the date on which both (i) all outstanding Class B-2 Preferred Units and Class B-1 Preferred Units have been redeemed in accordance with the terms of this Agreement and (ii) the Unpaid Cash Preferred Return is zero" (LLCA at 5). The Class B-2 Preferred Units and Class B-1 Preferred Units have not been redeemed, and accordingly, Gas remains in a Class B-2 Period (*see* LLCA

Amendment). Relatedly, removal of an officer requires a majority of the vote of the directors, (other than the officer being considered for removal, if applicable) (LLCA § 3.1(b)).

48. Additionally, under the LLCA, only the Gas Board has "the sole right to manage and control the business, operations and affairs" of Gas, which includes the appointment of directors to Gas's subsidiaries (LLCA § 3.1(a)) and during a Class B-2 period, the Preferred Shares are permitted to appoint or remove "a majority of the members of the board of each subsidiary" (LLCA § 3.3(c)). Accordingly, without approval of the Preferred Shares, Movant cannot, among other things: (1) execute unanimous written consents of the board; (2) appoint or remove directors; or (3) reconstitute the board of or otherwise direct any Gas subsidiaries.

49. Movant's alleged authority to act for Gas is based on the faulty assumption that the directors formerly nominated by Levona are still on the Board of Gas. That is incorrect. Since March 11, 2022, the Preferred Nominees have held the Preferred Shares. As this Court has itself previously recognized, "as the Arbitrator found (and the District Court confirmed), the transfer of the Preferred Shares occurred on March 11, 2022, which was nearly a year before the involuntary cases were filed" (Dkt. 721 at 36).

50. Even assuming, *arguendo*, that the lack of a judgment in the District Court confirmation proceedings means that the Final Award is not confirmed (it does not), the Status Quo Injunction issued by Justice Belen, which remains in effect "until the later of the final court judgment being entered on any Award or any further order of this Arbitrator" (Final Award at 96), would prohibit Levona from carrying out such actions.

51. The Status Quo Injunction was entered by Justice Belen following a series of attempts by Levona to exercise its control over Gas management including through improperly called board meetings and resolutions (*see* Dkt. 7-3 at 13-14 (listing Holdings' and Corp's request

that Justice Belen issue an order halting Levona from attempting to, *inter alia*, alter the business and affairs of Gas)), notwithstanding the fact that it was the "ultimate question" for Justice Belen to decide (*id*. at 23).

52. In granting Holdings' and Corp's motion, and denying Levona's cross-motion, Justice Belen held:

> The phrase "status quo" refers to, *inter alia*, the value of the Company [Eletson Gas], its assets, ***its current management and operations, and its relationship with the ships' crews***. Levona's argument that the "status quo" means that it is the preferred holder until a ruling otherwise—and accordingly, it can do as it wishes with respect to the Company's assets or other assets in dispute . . . is flawed . . . . Thus, ***preserving the "status quo" is not about who is the preferred holder***, but concerns the rights each party has, and the current value of the Company [Eletson Gas] that must be preserved until I issue a Final Award in this arbitration.

(Dkt. 7-3 at 24 (emphasis added); Final Award at 96 (extended "until the later of the final court judgment being entered on any Award or any further order of this Arbitrator").

53. The managers of Gas at the time of the Status Quo Injunctions were Laskarina Karastamati and Vassilis Kertsikoff. Movant cannot point to any judgment entered by any court or tribunal modifying or vacating the Final Award (or its continuance of the Status Quo Injunction).

54. Thus, if Movant claims that Levona holds the Preferred Shares because there is no final judgment, then the Status Quo Injunction remains in effect because there is no final judgment. And if Movant argues that the Status Quo Injunction is vacated without entry of a judgment, then the Preferred Nominees own and control the Preferred Shares for the same reason.

ARGUMENT

I. THIS COURT LACKS JURISDICTION TO AMEND ITS ORDER

55. This Court lacks jurisdiction to grant Movant's request ***to expand*** the March 13 Order. Upon filing the filing of the notices of appeals of the March 13 Order by both Provisional

Holdings and the Majority Shareholders, this Court was divested of its jurisdiction to amend the March 13 Order. This is dispositive, and accordingly, the Motion should be denied.

56. "[A] bankruptcy judge does not have concurrent jurisdiction with the district court over the subject matter of an appeal." *First Nat'l Bank v. Overmyer*, 53 B.R. 952, 954 (Bankr. S.D.N.Y. 1985). Instead, an appeal "divests the lower court of jurisdiction regarding those issues under appeal." *In re Strawberry Square Assocs*., 152 B.R. 699, 701 (Bankr. E.D.N.Y. 1993) (a bankruptcy court may not exercise jurisdiction over issues which "so impact those on appeal as to effectively circumvent the appeal process"); *see also In re Southold Development Corporation*, 129 B.R. 18, 21 (Bankr. E.D.N.Y. 1991) ("the bankruptcy court in the case at bar was divested of jurisdiction regarding issues on appeal, as well as matters undeniably related to issues on appeal").

57. The legal principle that an appeal divests the lower court of its control over matters on appeal "applies to appeals of bankruptcy court orders." *Asbestosis Claimants v. American S.S. Owners Mut. Protection & Indem. Ass'n (In re Prudential Lines)*, 170 B.R. 222, 243 (Bankr. S.D.N.Y. 1994); *In re Sabine Oil & Gas Corp.*, 2016 U.S. Dist. LEXIS 105029, at *20-21 (S.D.N.Y. Aug. 9, 2016).

58. Further, Bankruptcy Rule 8008 makes clear that the Court has only four options when faced with a motion when an appeal has been docketed and is pending: "(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).

59. Pending appeal, courts may enforce or implement the order at issue, but they may not "expand" or "alter" that order. *In re Winimo Realty Corp.*, 270 B.R. 99, 105-06 (S.D.N.Y. 2001). Courts have found that allowing enforcement "while prohibiting it from expanding upon

them, allows the least disruption of the court's administration of a bankruptcy plan." *In re Prudential Lines*, 170 B.R. at 244. One court described the prohibited conduct as "tamper[ing] in some manner with the appealed order or [seeking] to make a decision on a contested issue identical to one on appeal." *Id.*

60. By its name, the Motion explicitly seeks to ***amend*** the March 13 Order. It is undisputed that Movant did not bring a new motion to sanction the respondents for additional conduct or lack of compliance. Instead, Movant requests that the Sanctions Order be ***expanded***: first, by adding a previously unsanctioned party and, second, by increasing the amount of sanctions. But Movant has in fact conceded (as it must) that this Court lacks jurisdiction to amend and/or modify the March 13 Order while an appeal is pending (*see* Dkt. 1622 at ¶¶ 35-37 ("A bankruptcy court lacks jurisdiction to grant a Rule 60(b) motion where an appeal from the order from which relief is sought has been filed.").

61. In short, there is no question that the Motion directly implicates and is intertwined with the issues on appeal as to the parties who have appealed the March 13 Order (i.e., Provisional Holdings and the Majority Shareholders) (*see* Dkt. 1581; Dkt. 1592). Indeed, the issues on appeal concern, among others, whether this Court erred when it issued the March 13 Order, including that it exceeded its jurisdiction, improperly sanctioned Provisional Holdings to take actions beyond the scope permitted by Section 1142(b) of the Bankruptcy Code, and improperly coerced Provisional Holdings to act in manner contrary to applicable law or against rules of international comity (*see* Dkt. 1581).

62. Reorganized Holdings cites to three cases in support of the Motion, none of which addresses a motion to amend an order from which an appeal is pending. Two of these cases involve orders imposing escalating sanctions for a party's failure to comply the relief ordered in that very

order. *See BOC Aviation Ltd. v. Air Bridge Cargo Airlines, LLC*, U.S. Dist. LEXIS 223726, at *55 (S.D.N.Y. Dec. 12, 2022); *Satyam Computer Servs., Ltd. v. Venture Glob. Eng'g, LLC*, 323 F. App'x 421, 427 (6th Cir. 2009). In the third case, the Second Circuit affirmed a finding of contempt for failure to comply with the District Court's orders, which had already been appealed. *New York v. Shore Realty Corp.*, 763 F.2d 49, 54 (2d Cir. 1985). Significantly, unlike here, *the movants did not seek to amend the underlying orders* but rather to enforce the original orders. *Id.* at 51. That distinction is not only critical, but dispositive, when determining whether or not a court has jurisdiction to amend its orders pending appeals. The latter is permissible pending appeal; the former is prohibited. *Winimo Realty*, 270 B.R. at 105-106.

63. Unless and until the underlying motion is remanded, the Court does not have jurisdiction to decide the Motion. As such, the Court should deny the Motion or in the alternative, defer issuing a ruling pending the resolution of the appeals. *See* Fed. R. Bankr. P. 8008(a); *U.S. Bank N.A. v. Osuji (In re Osuji)*, 2019 Bankr. LEXIS 931, at *20-21 (Bankr. E.D.N.Y. Mar. 27, 2019) ("As the Supreme Court has observed, the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.") (internal citation omitted).

II. MOVANT MISREPRESENTS THE FOREIGN PROCEEDINGS, WHICH DO NOT SEEK TO UNDERMINE THE JUDICIAL RECOGNITION OF THE CONFIRMATION ORDER

64. Instead of following the proper legal requirements, Movant has been abusing the bankruptcy process in order to masquerade as the entire Eletson enterprise, including its non-debtor subsidiaries (such as Gas), by demanding that the Violating Parties conspire with them to violate Greek and Liberian law. This is improper and the Court should swiftly deny the Motion.

A. The LISCR Proceedings

65. Movants seek to impose ***additional*** sanctions on Provisional Holdings for filing the First LISCR Petition and Second LISCR Petition, which sought to address the legal authority relied upon by LISCR to change the AOR of Holdings, Corp and EMC Investment. Neither of these actions seek to "oppose or undermine in any way the judicial recognition of the Confirmation Order." Regardless, the issues surrounding changes to the AOR of those entities are irrelevant.

66. What is undisputed is that Liberia requires the judicial recognition and enforcement of the Confirmation, and it has not yet done so. Instead, Pach Shemen has withdrawn its petition for recognition and purported to redomicile Holdings in an attempt to circumvent recognition in Liberia (where Holdings has always been incorporated), as it promised it would do. There is no basis on which to issue additional sanctions based on Movant's own strategic actions to side-step compliance with foreign law to properly effectuate the restructuring of Holdings and, by extension, its wholly owned subsidiaries.

B. The Greek Proceedings

67. From the start, the Petitioning Creditors well understood that two of the three debtors—including Holdings—were foreign entities, so re-structuring and/or recognition proceedings would need to occur in both the U.S. and foreign jurisdictions. (Dkt. 847 § VIII.A.3). Indeed, under Greek law, which adopts the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on Cross-Border Insolvency, the plan of reorganization for Holdings, whose COMI is in Greece, must be recognized in Greece before it becomes effective. *See* UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, Art. 17, https://uncitral.un.org/sites/uncitral.un.org/files/ media-documents/uncitral/en/insolvency-e.pdf; Dkt. 1254 at 31:6-8 (recognizing the applicability of UNCITRAL); Dkt. 1407, Ex. B ¶¶ 8, 12 ("Under Greek law, in insolvency cases outside Greece

and the EU, in order for the Confirmation Order and Plan to have any effect in Greece, a Greek Court must recognize and confirm the Confirmation Order and Plan" (citing articles 4, 6 and 15 of law 3858/2010, Uni Membered First Instance Court of Rethymnon 166/2012, Multi Member First Instance Court of Athens 437/2013)).

68. Here, the UNCITRAL Model Law, which has been adopted by both the U.S. and Greece, provides that Greece, Holdings' COMI, has a central role to play in the restructuring of Holdings, and must ensure that it complies with its public policies, including a determination of the existence of bad faith. And Greece has not recognized that restructuring. In fact, a Greek court has ruled affirmatively that Holdings continues to be owned and managed by the pre-Effective Date owners (Dkt. 1410, Ex. A ¶ 11). Further, on April 1, 2025, in an adversary proceeding, a court in Piraeus, Greece issued an order extending its previous order appointing Holdings' provisional board pending further order of that court (Dkt. 1590, Ex. A ¶¶ 6-7).

69. Still further, the Plan and Confirmation Order raise significant issues of extraterritoriality. To the extent the Plan and Confirmation Order purport to override the need to obtain Greek court recognition to restructure a Greek company or restrict a party from exercising rights under foreign law, they impermissibly project the Bankruptcy Code's restructuring provisions extraterritorially. *See Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 417 (2023) (noting presumption against extraterritorial application of U.S. statutes). While this Court directed that the foreign representative of Holdings could "act in any way . . . in any country[,]" (Dkt. 1512 at 2), the Bankruptcy Code expressly provides that U.S. courts may only authorize an entity "to act in a foreign country on behalf of an estate . . . in any way permitted by the applicable foreign law"—not in conflict with it. 11 U.S.C. § 1505 (emphasis added).

70. Movant improperly seeks to have this Court override entirely a party's legal rights

in a foreign country, including controlling what a party may say in another country—an effective, all-encompassing gag order. Movant does not—and cannot—point to any authority that permits such an action by this Court. Nor should this Court, as discussed paragraphs 28-33 above, prevent a party and/or witness from correcting blatant misrepresentations to foreign tribunals. Yet this is exactly what Movant seeks to do. This Court should reject this argument.

C. The Berenberg Proceedings

71. Movant incorrectly argues that it was unable to obtain access to certain Eletson bank accounts "following months of obstruction by the former owners, particularly Mr. Hadjieleftheriadis, who repeatedly challenged [Movant's] authority to access these accounts" (Motion ¶ 21). This lacks merit for at least two reasons. *First*, Movant's own evidence establishes that, despite multiple requests from Berenberg, Movant did not provide Berenberg with "sufficient" information to obtain the requisite authorization to access the accounts until March-April 2025 (*see* Dkt. 1603, Ex. 13) (noting that Berenberg must follow its "standard KYC procedures, which are fully compliant with the KYC law applicable to [Berenberg]"). *Second*, Berenberg is a German bank subject to the laws of Germany. To date, Movant has not obtained recognition and enforcement of the Confirmation Order in either Germany or Greece. Accordingly, the actions filed *against Berenberg*—not Movant—are proper and cannot be construed as undermining the judicial recognition of the Confirmation Order.

D. The English and Greek Arbitration Confirmation Proceedings

72. As a threshold matter, the Motion seeks relief against Gas—a party who has not submitted itself to the jurisdiction of this Court. "[P]ersonal jurisdiction is fundamental to a court's power to adjudicate a case" and "[i]t is well established that a court may not grant an 'injunction over a party over whom it does not have personal jurisdiction.'" *Sec. Investor Protection Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 2013 U.S. Dist. LEXIS 114293, at *29-30 (S.D.N.Y. Aug. 2,

2013) ("*Madoff II*") (quoting *Hyundai Mipo Dockyard Co. v. AEP/Borden Indus.*, 261 F.3d 264, 270 (2d Cir. 2001)). Indeed, even the automatic stay—an injunction that is fundamental to the administration of the bankruptcy estate—while widely recognized as having extraterritorial reach, cannot be enforced against foreign parties over whom the bankruptcy courts lack personal jurisdiction. *Sec. Inv. Protection Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 474 B.R. 76, 82 (Bankr. S.D.N.Y. 2012) ("*Madoff I*") ("[A] bankruptcy court can enforce the automatic stay extraterritorially only against entities over which it has *in personam* jurisdiction."). For this reason alone, the Court should deny any requested relief as it relates to Gas.

73. Further, because Provisional Holdings filed a notice of appeal of the March 13 Order on March 23, 2025, the Court was divested with jurisdiction to expand the March 13 to include Gas (who was not specifically identified as a Violating Part[y] in the March 13 Order) in its March 25 Order. *See In re Strawberry Square Assocs*., 152 B.R. at 701.

74. To the extent Movant purports to require Provisional Holdings—or any other respondent—to direct Gas to withdraw the English Arbitration Confirmation Petition, it lacks authority to do so, and in any event, as discussed below, this relief is not supported by the Motion.

75. *First*, there is no proof—and this Court did not previously consider any—that remotely suggests that the Greek *Arbitration* Confirmation Petition "oppose[s] or undermine[s] in any way the judicial recognition of the Confirmation Order" (Dkt. 1537 ¶ 1). Similarly, Movant cannot point to any proof that the English Arbitration Confirmation Petition "oppose[s] or undermine[s] in any way the judicial recognition of the Confirmation Order" (Dkt. 1537 ¶ 1)—it does not. On this basis alone, the Court should deny the Motion to the extent it purports to require the withdrawal of the English Arbitration Confirmation Petition.

76. *Second*, this Court did not consider Gas's controlling LLCA or the Status Quo

Injunction when it issued the March 13 Order and March 25 Order. Movant acquired only and at most an interest in the Common Shares of Gas by virtue of the Petitioning Creditors' Plan, and nothing more. As Gas's corporate governance documents make clear, there is no basis to find that Gas requires the consent of Movant, or its designated directors, to pursue the English Arbitration Confirmation Petition, where Movant does not control Gas's Preferred Shares.

77. *Third*, the English Arbitration Confirmation Petition does not "frustrate[] a key asset retained by Holdings under the Plan through the Retained Causes of Action" (Dkt. 1547 at 2). The Plan provides Holdings only with causes of action to the extent Holdings possesses a claim, if any, against Gas or the Preferred Nominees (or other specifically identified parties) relating to "any purported transfer of preferred shares in Eletson Gas LLC" or the "transfer of the Award from Eletson Holdings to Eletson Gas and the [Preferred Nominees] as a Retained Cause of Action" (*see* Dkt. 1132 §§ 1.65, 1.128, 5.15; Dkt. 913 at 39). Movant is free to pursue those claims; however, the Plan and/or Confirmation does not—and cannot—enjoin non-debtor entities from asserting their own rights, including against other non-debtor entities.

78. Under the Final Award, as a third-party beneficiary at the least, Gas was awarded over $47 million in damages (*see* Final Award at 99-100). Thus, the Final Award created a separate and independent contract right. Indeed, "[a]n unconfirmed award is a contract right that may be used as the basis for a cause of action." *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984) (emphasis added) (citing *E.A. Bromund Co. v. Exportadora Affonso de Alburquerque*, 110 F. Supp. 502, 502-03 (S.D.N.Y. 1953); *see also Trs. Of the N.Y. State Nurses Assoc. Pension Plan v. White Oak Glob. Advisors, LLC*, 102 F.4th 572, 595–96 (2d Cir. 2024) ("[A]n award has legal force only because the parties have elsewhere promised to be bound by it"); *Stafford v. Int'l Business Machines Corp.*, 78 F.4th 62, 68 (2d Cir. 2023) ("An unconfirmed

award is a contract right . . . "). As Judge Liman acknowledged as recently as March 24, 2025, the Final Award runs in favor of Gas, and "[u]nder the New York Convention, that award can be enforced anywhere in the world, without being reduced to a judgment" (D. Ct. Dkt. 295 at 15).

79. There is no provision in the Plan or Confirmation Order that prevents Gas, as an express third-party beneficiary to the Final Award, from confirming its own interests in the Final Award, including in accordance with the New York Convention. Any other finding is not only contrary to statute, but it also conflicts with the terms of the Plan, which provides only that Holdings retains the right to assert a Retained Cause of Action. To assert that parties with potential litigation claims related to a non-debtor, non-subsidiary 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.

80. *Fourth*, on the reading above, the relief sought by Movant would purport to enjoin the English Arbitration Confirmation Petition, in contravention of the New York Convention, which specifically contemplates multiple, parallel proceedings to confirm an arbitration award (as Judge Liman acknowledged). *See* D. Ct. Dkt. 295 at 15; *CBF Industria de Gusa S/A v. AMCI Holdings, Inc.*, 850 F.3d 58, 73 (2d Cir. 2017) ("New York Convention did away with" "double exequatur" requirement that "'a court in the rendering state recognize an award before it could be taken and enforced abroad'"); *Karaha Bodas Co. v. Negara*, 335 F.3d 357, 367 (5th Cir. 2003) ("By allowing concurrent enforcement and annulment actions, as well as simultaneous enforcement actions in third countries, the Convention necessarily 'envisions multiple proceedings that address the same substantive challenges to an arbitral award.'"); *accord Ingaseosas Int'l Co. v. Aconcagua Investing, Ltd.*, 479 F. App'x 955, 961 (11th Cir. 2012) ("[T]he Convention 'envisions multiple proceedings that address the same substantive challenges to an arbitral

award.'"). The Second Circuit has explained that "[w]hile uniquely empowering courts in the primary jurisdiction to set aside or annul an arbitral award, the Convention also anticipates that an arbitral party that has prevailed may sue elsewhere to enforce an award before the award has been reviewed by courts in the arbitral seat." *Thai-Lao Lignite (Thail.) Co. v. Gov't of the Lao People's Democratic Republic*, 864 F.3d 172, 176 (2d Cir. 2017). In fact, "[u]nder the Convention, a court maintains the discretion to enforce an arbitral award even when nullification proceedings are occurring in the country where the award was rendered." *Karaha*, 335 F.3d at 367.

81. Accordingly, since the New York Convention explicitly contemplates what Movant complains of—numerous and simultaneous reviews of a single arbitration award—any order purporting to enjoin the English Arbitration Confirmation Petition cannot stand. This is especially critical where, as here, Gas has sought confirmation, ***not enforcement***, of the Final Award.

82. Instead, what Reorganized Holdings really is arguing is that this Court should improperly use the Plan and Confirmation to enjoin proceedings filed against its affiliated, alter-ego entities, Levona, Pach Shemen, and Murchinson. This is improper. But in any event, those entities are not without recourse. Levona, Pach Shemen, and Murchinson can seek a stay—which they have not done—of the English Arbitration Confirmation Petition proceeding. *See* N.Y. Conv. Art. VI ("If an application for the setting aside or suspension of the award has been made to a competent authority [of the country in which . . . that award was made] referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award…."). .

83. *Fifth*, Judge Liman expressly held that Eletson's litigation of claims against Levona *do not* violate the automatic stay and thus cannot violate the Stay Relief Order: "The automatic stay itself did not prohibit Eletson from litigating its claims against Levona or from asking the

arbitrator to find that the Preferred Interests ***had been transferred*** to the Nominees" (Confirmation Decision at 83; *see also id.* at 90 (Judge Liman ruling explicitly: "neither the arbitration nor the [Arbitration Confirmation] proceeding infringed upon the automatic stay or the Lift Stay Order.")). This holding applies equally to the English Arbitration Confirmation Petition, which seeks the exact same kind of relief as the District Court arbitration confirmation proceeding. And to the extent that the arbitration confirmation did not violate the automatic stay or the Lift Stay Order, Gas's (a nonparty to that Order) conduct consistent with the Status Quo Injunction and the arbitration confirmation could not violate the Lift Stay Order either.

84. The March 25 Order ignores controlling facts and law, including that Gas is a non-debtor and not a subsidiary of Holdings. There is simply no basis on which the English Arbitration Confirmation Petition can be construed as violating the Plan, the Confirmation Order, the January 29 Order or the March 13 Order. Rather, the English proceeding seeks to preserve clear contract rights arising under the Final Award, which Levona, Pach Shemen and Murchinson have sought to undermine at every step since the Final Award was issued. The Court should deny the Motion.

CONCLUSION

The Court should deny the Motion and grant such other relief as the Court deems proper.

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REED SMITH LLP

/s/ Louis M. Solomon

Louis M. Solomon
599 Lexington Avenue
New York, NY 10022
Telephone: (212) 251-5400
Facsimile: (212) 521-5450
E-Mail: lsolomon@reedsmith.com

Limited Counsel for Provisional Holdings